result from the above deviations from the Law of England, in order that it may fully appear that they are of so considerable a character as not to be made, but upon the most urgent and unavoidable necessity.

As to those parts of the Act which give authority for the arrest of persons by Officers of Justice and private persons, and make it their duty to do so, under circumstances where such arrest is not authorized by the Law of England, as in the 1st, 3rd, 4th, and 7th Sections of the Local Act, it follows that officers of Justice and private persons so authorized may, in the exercise of that authority and performance of that duty, do all those things which persons having authority by the Law of England or whose duty it is to arrest offenders may do, but which done without the authority of the Law make the Parties committing them trespassers, and liable as such to the legal consequences of their trespass; and thus the whole Law of England, as it relates to offences against the Persons of individuals, from that of assault to that of murder, becomes entirely reversed.

The Arrest or Search, which by the Law of England is unlawful, might be resisted by a person knowing himself to be and afterwards proved to be innocent; and, if in so doing it should unfortunately happen that the aggressor should be slain by him, the killing would at the most be manslaughter, and in many cases Justifiable Homicide, which under the Local Act would, whether he were innocent or guilty, be Murder; on the other hand, if the death of the party attempted to be arrested should ensue in over-coming his resistance, that, which if done without authority would by the Law of England be murder, becomes in consequence of the authority, given by the Local Act, Justifiable Homicide.

In the same manner where the arrest is under the authority of the Law, as in cases where the Local Act gives an authority Contrary to the Law of England, if the party attempted to be arrested flees, pursuit may be made; and if he cannot be otherwise taken and prevented from escaping, and be slain, it is Justifiable Homicide in the party killing him; but, if he kill any of his pursuers, it is murder; whereas, if the same acts shall be done under the Law of England, the legal consequence of it would be murder in the former case, and Justifiable Homicide or at the most manslaughter in the latter.

Doors may be lawfully broken open and parties resisting it slain, where he, whose arrest is under authority of the Law, betakes himself to his house, which are sacred, and the parties breaking them Guilty of Murder, if the party resisting be killed, where there is no such authority; on the other hand, where under the Local Law the party resisting such an aggression should kill another, he would be guilty of Murder, the same Act committed under the same circumstances would by the Law of England be Justifiable Homicide, or at the most manslaughter.

And in those offences against the persons of Individuals, where death does not ensue, the same Act which by the Local Law would, if committed on a party proved to be innocent, be lawful, and the injured party precluded from legal redress and liable to treble costs if he should bring an action, if committed under similar circumstances under the Law of England would be unlawful, and the injured party entitled to redress in an action for damages.
These results, if happily none have yet occurred of a nature to attract public attention, are nevertheless such as a day may bring forth, and especially when it is considered how large a number of Free Emigrants are now Yearly adding themselves to the population of this Colony, bringing with them their English feelings, and a knowledge which the lowest possess of their personal rights by the Law of England; and that they arrive in this Colony ignorant of this particular Local Law, which is so widely different therefrom; when also it is considered how large a proportion of His Majesty's free subjects travel upon the roads of this Colony, having for lawful purposes fire-arms concealed about them, any one of whom may by the Local Law be lawfully searched and apprehended and taken before a magistrate by any free person, who has reasonable cause for suspicion that he has such in his possession; it is not enough to allege "the absence of any recorded case of abuse or injustice arising out of it," as a reason for continuing the Law. But the fact that it may produce such consequences forms one of the grounds of my opinion against it.

It is a consequence also of the giving authority to private persons to arrest without Warrant upon mere suspicion, and indemnify them from all the consequences of so doing, that there is not that check preserved over their conduct, which may be a security that they will not commit abuses.

An Officer of Justice is amenable to his employers, and may (if not liable to an Action) at all events suffer the loss of his situation, if he act improperly although within the letter of the Law; but a private person, who is indemnified from the legal consequences of his Act, and is liable to no such loss, is far less worthy of confidence than the other; and an innocent person may be seriously injured by a wrongful imprisonment caused by a private Individual, if arrested in a distant part of the Colony, on suspicion of being a transported felon or offender unlawfully at large, and detained in safe custody for several Weeks, and afterwards removed in similar custody to Sydney to be there examined, before he may be able to comply with the requisites of the 2nd Section in proving himself to be free to the satisfaction of the Justice before whom he may be taken.

Whether the circumstances stated in the preamble of the Local Act, Vizt., that "it has been His Majesty's pleasure to appoint this Colony as a place to which felons and other offenders under sentence or order of transportation or banishment shall be conveyed for the purpose of being there employed on the Public Works, or assigned as Servants to private persons for their benefit, on which account it has been found necessary to establish efficient regulations of Police for the control of such transported felons and offenders, and to protect His Majesty's free subjects within the said Colony by laws suited to the actual state and condition thereof" are such as to justify on the ground of necessity alone so wide a departure from the Law of England, will I apprehend depend upon the question whether those objects could be attained by a less sacrifice of the fundamental principles of the Law.

It is true that the Law of England does not contemplate the existence within the British Dominions of a Class of Persons similarly circumstanced to the Convict population of this Colony; but several of its provisions may be made strictly applicable to such a state,
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and where these are wanting, others may be framed preserving the
spirit, and without departing from fundamental and constitutional
principles; thus, although it be admitted to be necessary that any
person should be liable to be arrested without warrant by any Con-
stable or other peace Officer, having reasonable cause to suspect
such person to be a transported felon or offender unlawfully at
large, and in so far as the provisions of the 1st and 8th Sections
of the Local Act legalize such an arrest, and protect the Officer of
Justice making it from all the consequences which might happen
upon attempting it, or might ensue from the arrest proving after-
wards to be wrongful, and although it should be admitted to be
necessary that a private person should be authorised to arrest with-
out Warrant "any transported felon or offender" (preserving by
those terms to the party aggrieved his remedy against the Aggressor,
if he shall prove to be free), both of which, although not within
the letter of the Law of England, might be legalized without in-
vading its spirit; yet it does not follow that the necessity exists
for authorising a private person to do such an act upon bare sus-
picion that a party is a transported felon or offender, and for
protecting him from the legal consequences of his Act, when proved
to be wrongful, to the prejudice of an innocent party who has
suffered by it; and before the latter is deprived of his legal rights
in such a case, the necessity for doing so ought to be shown.

So also as to a person who has been arrested on suspicion of being
a transported felon or offender, although it be admitted to be
necessary to detain such person in custody for a sufficient and rea-
sonable time, in order to ascertain the truth of that fact, and that
might be legalized without any invasion of the spirit of the Law
of England, yet that being done and the means of proving him to be
such being already prescribed by the local Act of 3rd W. IVth,
Sec. 35, and very simple and in the power of any person to obtain,
vizt., "By production of the Indent, or an Extract from it, under
which the party arrived in this Colony, accompanied by proof of his
being reputed to be and dealt with as that person," the necessity
ought to be made apparent for relieving his accuser from that duty,
and imposing upon him the burthen of proving himself to be free to
the satisfaction of the Justice and detaining him in custody until
he does so, and depriving him of his remedy by law, if afterwards
shewn to be an innocent person wrongfully arrested.

And further although it be admitted to be necessary to apprehend
and correct in a summary manner rogues and vagabonds, whether
free or bond, Yet when the English Vagrant Act, 3 Geo. IV, c. 40,
includes in its ample provisions not only all those suspicious per-
sons, who are mentioned in the Local Act, vizt., all such "who shall
be apprehended having in possession any picklock, key, crow, jack,
bit or other implement with intent feloniously to break and enter
into any dwelling house, ware-house, Coach-house, Stable, or out-
building, or having in possession any gun, pistol, hanger, cutlass,
bludgeon, or other offensive Weapon, with intent to assault any
person or persons, or commit any other Illegal Act," and when the
provisions of the English Vagrant Act include many other descrip-
tions of persons, who might with equal propriety be the objects of
summary apprehension and Correction in this Colony, which have
not been, but which might be applied without any departure from
either the letter or spirit of the Law of England, the necessity ought
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to be shewn for imposing upon the party charged the burthen of proving his innocence, and of departing from a fundamental principle of the English Law, that his accuser is bound to prove the facts which constitute the charge against him.

Lastly, if it be necessary to prevent any person from carrying fire-arms or other Weapons unexposed, and to subject any person to be searched upon bare suspicion of having such arms or weapons, concealed and unattended by any other circumstances of suspicion, and to be apprehended and taken before a Justice and detained in Custody, until he prove himself to be free, and further proves that the fire-arms, or other weapons were intended to be used for a legal and innocent purpose, and to deprive him of his remedy by action, if he be afterwards found to be altogether innocent, the necessity ought to appear for any further departure from the principles of the Law of England, than to allow such a search upon mere suspicion to be made by any Officer of Justice, whose person or badge of office being known may protect ignorant persons from making resistance to his authority.

The law in question is nearly similar in its terms, excepting in the provisions of the 5th Section, to the local Act 11th Geo. IV. No. 10, which was subsequently continued for two Years by the local Act, 2 Wm. IV. No. 9, at both which times I had not the honor of a seat upon the Bench of this Colony; but, referring to the preamble of the first mentioned Act, and to the history of the period when it was passed, it appears evidently to have been framed upon a sudden exigency, and was limited to the shortest duration, which, as I am informed, His Majesty's instructions allow for local ordinances passed in this Colony; it is expressly declared that it was only intended to be temporary, under which circumstances I presume that the then Judges of the Supreme Court, feeling themselves bound by the recited necessity of the case which was then stated upon the authority of the Legislative Council to exist, made no representation against it, although I have authority for saying they were of opinion that it was in all its provisions repugnant to the Laws of England.

The case is however very different when the Act is proposed to be a second time prolonged, and thus assures the appearance and character of a permanent law, although its recital still profess a temporary object; since there can be no period of time anticipated, so long as there remains a Convict population within the Colony, when, if not now, a period at which the Legislative Council in their preamble to the present Act no longer state the same necessity or state of the Colony to exist, the character of the act may be more assimilated to the Laws of England.

I would also add that, since the passing of the Act 11th Geo. IV. No. 10, the political and moral character of the people of the Colony must necessarily have undergone considerable changes from the arrival in it of free Emigrants to the number (according to official returns laid by Your Excellency before the Council) during the Years 1830, 1831, 1832, and 1833 of 5,457 persons, and in consequence of the increase of the free population born within the Colony during those Years. Referring to the last census taken on the 2nd of September, 1833, and laid by Your Excellency before the Council, it appears that at that period the total number of free persons within the Colony was 36,318, which number has been since
augmented by fresh arrivals; these latter are so considerable as reasonably to claim for them that the Laws of England shall not be departed from beyond the necessity of the case, arising from the difference of circumstances between the two Countries.

And, notwithstanding that I acknowledge the elements of which the general body of Society in New South Wales is composed to be such as to require the most prompt and vigorous laws for apprehending and bringing offenders to Justice, and for the protection of those concerned in doing so. Yet if that can be done, as I am of opinion it may, upon principles which are not repugnant to the Constitutional Laws of England, the necessity does not exist for departing from them.

I have, &c.,

W. W. Burton.

[No. 13] The following is a Summary of the remarks of Mr. Forbes, Chief Justice of the Supreme Court, upon the representations of Mr. Justice Burton against the Act of the Governor and Council of New South Wales, commonly called the Bushranger's Act, as delivered by him before the Legislative Council.

We are called upon to reconsider the Law, which has lately passed the Legislative Council, in consequence of the representations made by Mr. Justice Burton, in conformity with the mode of proceeding pointed out by the 22d Section* of the New South Wales Act (9 Geo. IV. C. 83). His Honor is of opinion that the local Act of the Governor and Council is repugnant to the Laws of England. The Act of Parliament does not require the Judge, who may consider the proposed Law as consistent with the Laws of England to express his assent to its legality, but it may be fairly assumed, from the Silence of the two other Judges of the Supreme Court, that they do not entertain the Same opinion upon the proposed Law as Mr. Justice Burton. I may be permitted to say in this place that Mr. Justice Dowling concurs with me in opinion that, under the circumstances of the Colony as set forth in the preamble of the Act of the Governor and Council, and with the Judicial knowledge we have that New South Wales is appointed by His Majesty with the Sanction of Parliament as a place for the reception and safekeeping of transported felons, the local Act is not repugnant to the Laws of England, according to the legal meaning of the term, as it appears to us to have been intended to be used in the Act of Parliament. It is in this particular only that we differ from our respected colleague. If by the word "repugnant" be intended every actual difference between any two Laws, then it is admitted that the local Act of the Governor and Council is different from any existing law in England. But I am of opinion that this is putting much too limited a meaning upon the word, and restraining it within much narrower bounds than were contemplated by Parliament. The word itself is not new in a legal sense. Sir William Blackstone, in speaking of the English Plantations, Says their constitutions depend upon the respective Commissions issued by the Crown to the Governors, under the authority of which provincial Assemblies are constituted with the power of making local ordinances, not repugnant to the Laws of England—Com. Vol. 1, page 169. The

* Note 182.
HISTORICAL RECORDS OF AUSTRALIA.

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Remarks by F. Forbes on opinion expressed by W. W. Burton.

clause of the New South Wales Act is in strict keeping with the constitutional Laws of the Colonies, as it is laid down by Judge Blackstone; and I think it is not going too far to hold that Parliament, in applying a word of established use and signification in other Colonies to the constitution of the Legislature of this Colony, must be presumed to have intended to apply it in the sense in which it had been received in the other Colonies, and recognized by His Majesty in Council. By referring to the numerous Laws which have been passed in the American Colonies, particularly such as relate to Slavery, and the discipline of Slaves, it will be found impossible to escape the conclusion, either that such Laws are repugnant to the letter of the English Law, or that the term is received by the Colonial Courts and by the King in Council (whose assent is expressly or impliedly given to every Colonial enactment, before it becomes a complete Law) under a different acceptation from that contained in the representations of the learned Judge, which are now before the Council. Forming my opinion upon what appears to have been the usual interpretation of the word repugnant, as put upon it by the Legislatures and Courts of the elder Colonies, and the Crown Lawyers to whom their enactments have been submitted, and applying my own mind to discover what I think the Imperial Parliament must have intended by the use of it in the Act which creates a Legislative power to meet and provide for the unforeseen exigencies and wants of this remote Colony, I conceive that the word was intended to convey a meaning to this effect; that, in making laws "for the peace, welfare, and good Government of the Colony," the Governor and Council shall take into their consideration the circumstances of the particular matter which requires Legislative provision, and make such a Law as may remedy any particular mischief, consistently with the general principles of the laws of England. I am aware how difficult it is to lay down an abstract rule for the interpretation of Acts of Parliament and that the meaning, I have affixed to the particular clause referred to, is open to objection. I would be understood however to confine it to the Class of legal enactments properly remedial, because the Act of the Governor and Council is a remedial Act or Ordinance. In the particular local law now under consideration, the mischief which is intended to be remedied is recited; it presents a State of Society so widely differing from that of the parent State, as obviously to require a corresponding difference in the Law. The facts set out by the local Legislature, we are bound to assume to be true; and the question is, whether the Laws of England for restraining and preventing the Commission of crime by persons in any degree resembling in condition the transported convicts in New South Wales are sufficient. As matter of fact, the Legislature have declared that they are not sufficient; and every Man, who has local experience of the great number of Convicts who are always at large, and have no other mode of subsistence than such as may be acquired by plunder, of the facilities to escape and concealment, which are supplied by the uncleared forests and trackless retreats of the Colony, of the previous habits and reckless characters of the Convicts, and above all, of the frequency and malignancy of the Crimes which are sought to be prevented and repressed, must concur with the Legislature in thinking that the actual State of England presents
no parallel with the actual State of New South Wales; and that
the existing Laws of England are not calculated for the exist-
ing condition of this Colony, and are not sufficient for the pro-
tection of the Inhabitants. This is the particular mischief which
was required to be remedied. Then the question arises, are the
Governor and Council clothed with sufficient power to meet the
actual state of the Colony, and to pass a coercive law, sufficient
for the protection of the Inhabitants. Assuming my interpretation
of powers delegated to them by Parliament and of the true mean-
ing of the term repugnant to be correct, I think that they do possess
the powers they have exercised, and that the law they have passed
does not go beyond what the principles of their constitution will
allow; and what the British Parliament, prescribing a similar
limitation upon their own powers, would have passed in perfect
consistency with the general Laws of England, under a similar
state of things in any part of the Empire.

It is not necessary for me, on this occasion, to follow the several
arguments of Mr. Justice Burton, beyond the preliminary question
of repugnancy. If the law itself be not repugnant to the Laws of
England, under the state of facts recited in the preamble, then it
is competent to the Governor and Council, in passing the Law for
the apprehension of Convicts unlawfully at large and the suppres-
sion of robbery and house breaking, to protect the persons enforcing
such law against vexatious proceedings, wherever they have acted
bona fide and upon reasonable grounds of suspicion. I apprehend it
to be a clear principle that, wherever the law authorizes one man
to apprehend another for a particular offence, that he may do so
wherever a reasonable ground of suspicion appears that the party
apprehended has committed such offence, although it should after-
wards turn out to be unfounded. I am not aware of any distinc-
tion between a Constable and any other person, where the Law
gives equal authority to both to apprehend. The whole of the
objections of His Honor upon this point are as applicable to the
Vagrant Laws of England, as they are to the Ordinance of the
Governor and Council. The present Vagrant Act of Parliament
(3d Geo. IV, C. 40) which embodies and consolidates the provisions
of the previous Acts, specifies certain cases of vagrancy, such as
usually occur in England; it imposes upon the persons accused the
obligation of giving “a satisfactory” or “a good account of them-
selves” (as it is to be presumed) to the person making the enquiry
or apprehending such persons; it authorizes “any person what-
soever, without any Warrant for such purpose,” to apprehend any
other person offending against that Act; and it enables the person,
who may be sued for any thing done under the Act, to plead the
General Issue, and give the special matter in evidence in his
defence; and, if such person shall be exculpated, it entitles him in
the discretion of the Court to treble Costs. The local Act does
nothing more; the details differ in some particulars from the
Vagrant Act, but there is no difference in principle; one is adapted
to the state of facts in one Country, the other to the State of facts
in another Country; the English Act provides a remedy co-extensive
with the mischief in England; the local Act provides for a more
extensive local mischief. Taking into consideration the actual
State of Society in England, and the actual condition of the people
Remarks by F. Forbes on opinion expressed by W. W. Burton of this Colony, and comparing with them the Vagrant Laws of the former, and the law for apprehending Convicts unlawfully at large and suppressing Highway Robbery in the latter, and also bearing in mind that the end and object of all Laws is the protection of Society, I do not think that the local ordinance has gone beyond the principle of the Imperial Act, or that the Governor and Council have, in any degree, exceeded the just limits of their power.

FRANCIS FORBES,
Chief Justice of the Supreme Court.

ENCLOSURES with Major General Bourke's Despatch No. 89, 15 Septr., 1834.

Appendix B. Relating to the 5th Wm. IV. No. 10. the Interest Act.
2. 4 June, 1834, Votes, etc. Bill referred to Sub-Committee.
3. 2 June, 1834, Letter from Mr. Justice Burton.
4. 10 June, 1834, Votes, etc. Report progress.
5. 12 June, 1834, Votes, etc. Report received. Report with Minutes of Evidence.
6. 18 July, 1834, Votes, etc. Bill to be read a second time on a day mentioned.
7. 25 July, 1834, Votes, etc. Bill committed and amended. Bill as amended.
8. 30 July, 1834, Votes, etc. Bill re-committed.
9. 5 August, 1834, Votes, etc. Bill passed.
10. Act.
11. 22 August, 1834, Votes, etc. Mr. Justice Burton's representation. Vote of adherence.

[These were all papers, printed in the "Votes and Proceedings" of the legislative council, excepting Mr. Justice Burton's representation, which follows: — ]

Mr. Justice Burton to Governor Bourke.

Sir,

Sydney, 25th August, 1834.

I have now the honor to transmit to your Excellency the grounds of my opinion contained in my letter to Your Excellency of the 19th Instant, that the provisions of the Local Act, 5 Wm. IV. No. 10, entitled, "An Act for removing doubts respecting the application to New South Wales of the Laws and Statutes of England relating to Usury, and to limit and define the rate of Interest which may be recovered in cases where it hath not been previously agreed on between the parties," are repugnant to the Laws of England, which are as follows:—

First. "That the provisions of that Act are repugnant to the Statute of 12 Anne, Stat. 2, C. 16, whereby it is enacted, That no person shall take directly or indirectly, for loan of any Monies, wares, merchandise, or other commodities whatsoever, above the value of five pounds for the forbearance of One hundred pounds for a Year, and so after that rate for a greater or lesser Sum, or for a longer or shorter time."
Secondly. I am of opinion that the provisions of that Act are repugnant to the Statute of 9 Geo. IV, c. 83, upon the following grounds.

1. That the Stat. 12 Anne, Stat. 2, c. 16, above referred to, was a Statute "in force within the Realm of England at the time of the passing of the Stat. 9 Geo. IV, c. 83."

2. That by the 24th Section of the last mentioned Act, it is enacted, "That all Laws and Statutes in force within the realm of England at the time of passing that Act" (not being inconsistent therewith, or with any Charter, or Letters Patent or order in Council which may be issued in pursuance thereof) shall be applied in the administration of Justice in the Courts of New South Wales and Van Diemen's land respectively, so far as the same can be applied within the said Colonies.

3. That I am not aware of any reason why the Stat. 12 Anne, Stat. 2, c. 16, could not at the time of the passing of the Stat. 9 Geo. IV, c. 83, or at the time of passing the Local Act now under consideration, be applied within the Colony of New South Wales, and the preamble of the act states no such reason, and the object of it is to prevent the application of that Statute in the administration of Justice in this Colony.

I have the honor to annex hereto, as containing my further views on this Subject, a Copy of my Letter* to your Excellency dated the 2d June last, respecting the provisions of a Bill then laid by Your Excellency before the Legislative Council, "for removing Doubts respecting the rate of Interest which may be recovered in any Action or Suit in any Court of this Colony."

I have, &c,

A true Copy:—E. Deas Thomson, Clk., Col. W. W. Burton.

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

(Despatch No. 91, per ship Harmony; acknowledged by right hon. C. Grant, 24th April, 1835.)

Sir,

Government House, 17 Sept., 1834.

Notwithstanding the intention expressed in my Despatch of the 3rd Augt., 1833, No. 59, of omitting the office of Collector of Internal Revenue in the estimates for 1835, I have the honor to inform you that I found I could not dispense with the services of Mr. Macpherson but at the risk of serious inconvenience and loss to the Public. The Collection of Arrears due on Sales of Crown Lands and Quit Rents and the management of the Sales of land under the present Regulations are matters of the highest importance, which in my opinion no person in the Colony can manage so advantageously as Mr. Macpherson. I believe I may safely assert that to remove this officer for some time to come would prove injurious to the public interest, and I therefore venture to indulge a hope that you will be pleased to approve of his being still retained in employment. I have, &c.,

RICH. BOURKE.

* Note 134.
1834.
18 Sept.

Despatches
acknowledged.

GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.
(Despatch No. 92, per ship Harmony; acknowledged by
lord Glenelg, 20th June, 1835.)

Sir,

Government House, 18 September, 1834.

I have to acknowledge the receipt of your Despatches,
dated respectively 8 April last, No. 73, and 23 May last, No. 83,
on the subject of Emigration as aided by the Bounties and
advances supplied from the Land Revenues of this Colony.

I have caused notices to be published of the expected arrivals
of the female Emigrants mentioned in the former Despatch, and
have no doubt of their being readily employed. You will have
perceived, by my Despatch of the 21st Janry. last, No. 4, which
will probably come to hand before the sailing of either of the
Vessels to be despatched during the current year, that I was
unable to give as satisfactory an account of the Emigrants by
the Layton, as I could have wished. Important as this subject.
is to the Colony and to the credit and permanence of the plan
of Emigration now adopted, I can have no doubt that His Ma­
jesty's Government will employ all practicable means to ensure
a selection from the candidates for assistance of those whose
habits of life will be likely to improve the community, to which
they are transferred.

With respect to the financial part of the subject, I have the
honor to report that the available balance in the Treasury on the
1st July, 1834, arising from Crown Lands, was £27,405 19s. 1½d.
I have to observe however that the necessities of the Commisst.
will require to be supplied from the same fund, unless some mea­
ure be taken by His Majesty's Government to provide for them
in some other way.

If there should be no drain on this account, a further sum of
£15,000 will in all probability be disposable at the end of the year.
It would certainly be advisable to devote the whole produce of the
Crown Lands to Emigration and to take active measures for in­
ducing the description of laborers, mentioned in your Despatch
of the 8th April, namely, young and married agricultural laborers,
to come out. Building mechanics, if of sober habits, would be a
still greater acquisition in the Colony in its present state. This
Government is restrained from commencing many public works,
which are much required and of which the condition of the
Colonial Treasury would justify the undertaking from a con­
sideratn. of the increased difficulty that would be occasioned to
private persons in the erection of their houses and farm build­
ings by any great demand for public purposes on the labor of
the few mechanics in the Colony, whether free or bond. By the
introduction of Mechanics of the foregoing descriptn. in the
year 1831, the Revd. Dr. Lang rendered a most important service
to this Settlement, and it would give me great satisfaction to
learn that his exertions were again directed under the auspices of
H.M. Govt. to the same object.

In obedience to your commands as signified in the latter of
the despatches, to which I have now the honor to reply, I am
concerting measures with the Collector of Internal Revenue for
enforcing by legal process the obligations of those Emigrants,
who have received loans from His Majesty's Government. I am
sorry, however, to repeat my conviction of the impossibility of
obtaining any satisfaction from the far greater number, even
though the process should be carried the length of imprisonment,
and my apprehension that the amount actually obtained will not
compensate the mischiefs that will be occasioned by a resort to
compulsory measures.

I have, &c.,

RICH'D. BOURKE.

GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.
(Despatch No. 93, per ship Harmony; acknowledged by
right hon. C. Grant, 27th April, 1835.)

Sir,

Government House, 19 September, 1834.

I think it right to transmit to you the copy of a Petition
to His Majesty, of which the History is somewhat extraordinary.
It was drawn up, as I am informed, in the month of January
or February last by five or six settlers in the Hunter's River
District, and has since that time been clandestinely carried about
and signatures solicited with much caution and perseverance by
the principal agents in a proceeding, which may, I think, be more
properly called a conspiracy than the exercise of the open and
constitutional right of Petition. The document is said to have
obtained many signatures during the eight months it has been
in circulation; but this is mere matter of conjecture with the
Public and is only known with certainty by those who have the
custody of the paper. Frequently, during the period in question
and within the last few days, this Government has been informed
through one of the newspapers that the Petition is about to be
transmitted, and a change in the administration of the Colony
is confidently anticipated as the result of the appeal to His Ma-
jesty. I do not, however, believe that it has as yet been sent
from hence, though probably the contrivers do not intend to take
such a step openly, as it might occasion a declaration of public
opinion destructive of their object. It is probable however that
copies have been sent to England for circulation in quarters,
where it is hoped an impression unfavorable to my Government
May be produced. I think it proper therefore to lay before you the Copy, which I have very lately obtained; and, though I shall not take up your time by exposing in detail the several misrepresentations it contains, as it is possible the original document may never be presented, yet I am bound to declare, what at the proper time I shall be ready to prove, that it is full of the grossest mis-statements and rests upon an assertion contradicted by the public voice and by the tranquil state of the Colony. Those who have been long acquainted with the country assure me that at no time do they recollect the security of person or property to be less endangered by the crimes of the Convict population, notwithstanding the great augmentation of prisoners since my accession to this Government; whilst the Reports from the Police Magistrates, which I had the honor to transmit with my Despatch of the 15 Janry. last, No. 1, assert the efficiency of the law, which it is the object of the Petition to decry.

I have, &c.,

RICHD. BOURKE.

[Enclosure.]

THE humble Petition of the undersigned Landholders, Employers of Convict Labor and other Free Inhabitants of the Districts of Hunter's River, in the Colony of New South Wales,

To the King's Most Excellent Majesty.

Most humbly sheweth,

That your Petitioners approach your Majesty with the assurance of the most sincere attachment to your Majesty's Person and Government, and with the expression of their gratitude for the liberal policy with which these Colonies have been governed by Your Majesty and your Royal Predecessors.

That your Petitioners are suffering in their property and peace of mind from the insubordinate state of the Convict Population, who of necessity form the great bulk of their Servants. This insubordination your Petitioners ascribe to the insufficiency of the Act of the Colonial Legislature the 3rd William IV. No. 3, together with the lax discipline in the different Government Establishments where Convicts are employed.

That, on the arrival of His Excellency Governor Bourke, the Convicts were governed by an Act of the Colonial Legislature 11 George IV. No. 12, passed in March, 1830, to continue for a period of four years. That this Act maintained a strict discipline necessary for the Government of such a class of people, effectually checking their evil inclinations and securing them against ill treatment, at the same time that it upheld the due authority of the Masters, and gave security to his person and property.

That, about nine months after the arrival of His Excellency Governor Bourke (September, 1832), the Act of Council now in force was passed, which repealed the 11 George IV. No. 2, after it had existed eighteen months only instead of four years, the period for which it had been enacted. Thus your Petitioners are induced to consider the repeal of this Act as hasty, unnecessary and premature,
hasty because His Excellency had been too short a period in the Colony to have formed a correct opinion of its merits; unnecessary because there were not any complaints made of its working badly; and premature in as much as it had yet two years to exist.

That your Petitioners, on the 22nd of August last, presented two Petitions to His Excellency the Governor and the Honoroble the Legislative Council, complaining of the inefficiency of the present Law and praying for relief. On the 28th of the same month, His Excellency laid a Minute before the Legislative Council to the following effect, viz.:

"Petitions having been presented to the Governor and Council complaining of the operation of the Act 3rd William IV, No. 3. I propose to enquire into such of the allegations as appear important."

And then suddenly adjourned the Legislative Council for nine months, or until May next, which Minute and which proceeding of His Excellency your Petitioners humbly consider to be virtual denial of proper enquiry into the truth and justice of their complaints; And now, with a further experience of six Months, and the numerous instances of outrage lately perpetrated, together with a jail crowded with criminals of the deepest dye, requiring an additional Session of the Criminal Court to clear it of its inmates, have more fully confirmed Your Petitioners in their opinions as set forth in the said Petitions.

That, as all hope of redress in this Colony is at end, and as every delay must extend and confirm the evil, your Petitioners humbly approach your Majesty with the earnest Prayer.

That your Majesty will be graciously pleased to vindicate their right to have their Petitions considered by His Excellency the Governor and the Honoroble the Legislative Council, when their enactments are found to be injurious. And that your Majesty will order immediate enquiry to be made into the truth and importance of the allegations brought forward by your Petitioners, and, if founded in Justice, will be graciously pleased to grant relief. And your Petitioners will ever pray, etc.

[Unsigned.]

Governor Bourke to Right Hon. E. G. Stanley.

(Despatch marked "Separate," per ship Harmony.)

Sir,

Government House, 19th Sept., 1834.

In my Despatch of this date, I transmitted the copy of a Petition to the King of the origin and progress of which I gave a short account. I now take the liberty of laying before you a Pamphlet, containing a refutation of the charges alleged in that Petition, drawn up with perfect truth and great clearness. Although it cannot be considered as an official document, I have thought it right to furnish you with a paper which may safely be consulted for information, if at any time the matter of the Petition should be brought into discussion.

I have, &c.,

Richd. Bourke.

* Note 136.  † Note 137.
GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.

(Despatch No. 94, per ship Harmony; acknowledged by Lord Glenelg, 31st August, 1835.)

Sir,


An application was made to me a few days ago by a Mr. James Mudie, a Settler in the Hunter's River District and Justice of the Peace, to transmit to you a pamphlet* which he has had printed here and stated he was about to publish in Sydney and London. As it appeared to me that a printed pamphlet on the eve of publication was not such a document as should be laid before a Minister of the Crown for his consideration and reply, I declined transmitting it, and directed the Colonial Secretary to return it to Mr. James Mudie. Independently of the improper form in which it was proposed to lay this composition before you, the contents are not such as can with propriety be considered of official import. They consist of scraps from Newspapers and criticisms on the Colonial Government mixed up with the history of a transaction, occurring in November last, in which Mr. James Mudie is concerned; but with respect to which I could not discover that anything was sought from His Majesty's Government. It is, in truth, a mere party publication, the proof sheets of which have been handing about the Hunter's River District for some months. If I had forwarded this pamphlet, I could not with decency have refused to transmit the reply with which it is sure to be followed, nor any other publication emanating from the party politics of the Colony.

But, though I thought it my duty to decline forwarding, as an official document, the pamphlet of Mr. Jas. Mudie, I should have been glad to have obtained a copy from the publisher to have laid before you. It is probable, however, that none will be put into general circulation until the vessel sails for England which will convey this Despatch. By that conveyance, you will probably receive a copy from Mr. James Mudie himself.

The transaction, to which it principally refers, is briefly this: Some of Mr. James Mudie's assigned servants, thinking themselves badly treated, absconded from his farm in the Hunter's River District, and, forming a gang, returned to rob the House, and with the intent, as it appeared, to murder the overseer (or partner I believe I should call him) of Mr. James Mudie. The conduct of the gang was violent and atrocious; and, being taken, six in number, tried and convicted, five were executed on Mr. James Mudie's Farm, and one sent for life to Norfolk Island. On their trial, they accused their master and the Magistrates of the district of continued ill-treatment, and, by the earnestness and apparent sincerity of their manner, obtained in a very

* Note 138.
remarkable degree the sympathy of the Public. Without at all delaying the execution of the guilty persons, whose crimes would not have been pardonable even if what they alleged in extenuation had been true, I thought it right to send the Solicitor General and Princl. Supt. of Convicts to enquire into the truth of the complaints. The Gentlemen, whom I Commissioned, discharged this duty with the greatest propriety and laid before me Several depositions taken on the spot. I found on a careful perusal of them that, although it was evident Mr. Jas. Mudie did not treat his servants with the same consideration for their wants and comfort which the neighbouring settlers evinced, yet upon the whole he had not in any remarkable degree transgressed the Regulations of Government. I therefore desired the Colonial Secretary to address to him and to his Partner Mr. John Larnach an official letter, containing some comments upon facts which the investigation had elicited. I have the honor to transmit a copy,* as well as copies of the depositions to which I have referred. I think it will be admitted by you, Sir, upon perusing these documents, that no great severity of animadversion was exercised in observing upon the conduct of Mr. James Mudie and Mr. John Larnach.

With respect to the other matters which Mr. James Mudie has introduced into his pamphlet, they are not worth replying to in detail. They are for the most part accusations of misgovernment, which have often been repeated by a newspaper, the organ of a small party opposed to my administration, but, being contradicted by facts, have never obtained any great share of credit. The principal charge is the same as that made in the Petition from the Hunter's River District, which I have had the honor to bring under your notice in my despatch of the preceding number. I cannot but regret that I should have found it necessary to trespass upon your time by either of these communications. As it is impossible, however, in a public station altogether to avoid misrepresentation or to escape the malicious attempts of party spirit, so it is a duty, which I owe no less to His Majesty than to my own reputation, to neglect no proper opportunity of vindication.

I have, &c.,

RICHLD. BOURKE.

GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.
(Despatch No. 95, per ship Harmony.)

Sir,

Government House, 21st Septr., 1834.

I have the honor to forward a Copy of the Printed acts and ordinances of the Governor and Council of New South Wales for the year 1833.

* Note 138.
Its late transmission has been occasioned by delays on the part of the Contractor for the printing, which rendered it necessary, after much forbearance, to call in the assistance of another person. Every effort shall be made to avoid a similar delay for the future.

I have, &c.,

RICHD. BOURKE.

GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.
(Despatch No. 96, per ship Harmony.)

Sir, Government House, 22 Septr., 1834.

Referring to my Despatch of the 5th May last, No. 45, in which I stated that I would take the earliest opportunity of communicating the name and address of the person with whom the Surveyor General intended to place his Maps for sale, subject to the approval of His Majesty's Government, I have now the honor to forward a copy of a letter from Major Mitchell communicating this information.

I have, &c.,

RICHD. BOURKE.

[Enclosure.]

SURVEYOR-GENERAL MITCHELL TO COLONIAL SECRETARY MACLEAY.

Sir, Sydney, 23rd Septr., 1834.

With reference to that part of your letter No. 34/466, which requires me to inform His Excellency the Governor with whom in London I propose to place my engravings for publication,† that permission may be conveyed to him from the Secretary of State for that purpose, I have the honor to state for His Excellency's information that I have appointed Mr. James Gardner, mapseller in Regent Street, to publish the Map for me in London, and that C. Cassaigne, Esqre., of No. 17 Salisbury Street, Strand, is my Agent for transacting any business connected with it.

I have, &c.,

T. L. MITCHELL.

GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.
(Despatch No. 97, per ship Harmony; acknowledged by lord Glenelg, 28th October, 1835.)

Sir, Government House, 23rd Septr., 1834.

A representation having been made to me by Mr. John Guard, whaling Master of the Barque Harriet, wrecked on the Coast of New Zealand on the 29th April last, that twelve of the crew, who were saved from the wreck, had been massacred by the Zealanders on shore, and that nine men with Mrs. Guard and two children were detained in captivity by them, I called a meeting of the Executive Council to consider what measures were to be adopted under the circumstances. A Minute of the

* Note 139.  † Note 106.
proceedings of Council on the occasion together with the narrative of Mr. Guard are transmitted herewith.

In conformity to the opinion expressed by Council, I concerted measures with Capt'n. Lambert of H.M. Ship Alligator then in Port Jackson for proceeding to demand the restoration of the Captives, directing an officer* and 25 R. and F. of the 50 Regt. to embark on board his Ship, and placing under his command the Colonial Schooner Isabella with a further detachment of the 50th Regt. on board consisting of two officers,† and 40 R. and F. These vessels sailed from Port Jackson on the , since which sufficient time has not elapsed to allow of my being informed of their arrival on the Coast of New Zealand.

I have to add that the Council was not unanimous in the advice proffered on this occasion. The Colonial Treasurer, Mr. Riddell, dissented from the opinion of the majority of the Council; but, having omitted to enter his reasons on the minutes within the prescribed time, he laid before me a memorandum which I have the honor to transmit. I transmit also the copy of a Letter I addressed to Capt'n. Lambert, by which you will perceive that I have considered the principal objection made to the expedition by Mr. Riddell and endeavoured to avert the mischief, which he apprehended, by explaining fully to Capt'n. Lambert the opinions of the majority of the Council with regard to the course most proper to be adopted under the difficult circs. of the case.

You will observe that the Council have recommended that I should represent to His Majesty's Government the urgent necessity of having a ship of War permanently stationed in these Seas for the protection of British and Colonial Commerce and the repression of the numerous outrages which are so frequently committed both by Europeans and natives on the Shores of the South Sea Islands. I cannot too strongly support the opinion of the Council on this subject; and I am prepared to go the length of recommending the British Resident to be withdrawn from New Zealand, and the British Subjects settled there to be warned that they are altogether without the pale of British protection, unless at least one ship of War be stationed permanently in these seas.

I have, &c.,
RICHBD. BOURKE.

[Enclosure.]

[A copy of this minute will be found in a volume in series II.]

* Lt. Gunton.
† Capt'n. Johnson, Ensign Wright.
HISTORICAL RECORDS OF AUSTRALIA.

RIGHT HON. T. SPRING RICE TO GOVERNOR BOURKE.

(Despatch marked "Separate and Confidential," per ship Duchess of Northumberland.)

Sir,

Downing Street, 29th September, 1834.

I do myself the honor of transmitting to you, for your Information, the Copy of a Statement forwarded to me by the Commissr. of Stamps, relative to two Prisoners named Zachariah Shaw and Robert Clayton, and the Son of the latter, who were convicted at Dublin in February last of Forgery, and who sailed from thence on the 22d Instant in the Ship "Royal Admiral."

Under the peculiar circumstances attending the case of these Prisoners, as explained in the accompanying paper, I am to convey to you the Commands of His Majesty that, upon their arrival in the Colony, you will grant to them a "Ticket of Leave," or such other permission as will enable them to proceed with their families to any part of the Colony which they may prefer; But, in granting to them this privilege, especial care must be taken that the parties do not under any circumstances leave the Colony.

I am, &c,

T. SPRING RICE.

[Enclosure.]

TO RIGHT HON. T. SPRING RICE.

"Two persons, named Zachariah Shaw and Robert Clayton, and the Son of the latter, were convicted at Dublin in February last of forging and uttering forged Stamps, and were sentenced to transportation for life. Under peculiar circumstances, of which the Government is already in possession, it was agreed upon, with the consent of Lord Althorp and by the advice of the Attorney and Solicitor General for Ireland, that, on these persons pleading guilty to the Indictment, they should be sent out to New South Wales, together with the families of the two former, as Cabin Passengers, and that, on their arrival, they should be permitted to go to any part of the Colony as free Settlers.

Since their conviction, serious Disclosures have been made by them (particularly by Robert Clayton), which are considered very useful in the prevention of Forgery; and it has been determined upon to give them £100, to be divided between them on their arrival at New South Wales. This Sum has been sent to the Governor by the Surgeon of the "Royal Admiral," in which Vessel the parties with their families sailed from Dublin on the 22d Inst.

UNDER SECRETARY HAY TO GOVERNOR BOURKE.

(Despatch per ship Duchess of Northumberland; acknowledged by Sir Richard Bourke, 8th May, 1835.)

Sir,

Downing Street, 30 Sepr., 1834.

In reference to Mr. Stanley's Despatch to you, No. 73 of the 8th April last, apprising you that a vessel would be despatched with Female Emigrants to New South Wales during the
present Month, I have now the honour to acquaint you that the Ship "Duchess of Northumberland" has been engaged by His Majesty's Government for the conveyance of 300 young Women, at a cost to the Govt. of £3,600, leaving each Emigrant, as in the case of previous Ships, to furnish £5 each, or to give a Promissory note for the payment of £6 in the Colony.

The enclosed Lists contain the names and ages of the young women, whom it is intended should be sent in this vessel; and they have been Selected in Ireland by Committees formed in Dublin and Cork for the especial purpose, at which Ports it has been arranged the Emigrants should be embarked.

I am therefore directed by Mr. Secretary Spring Rice to request that you will pay to Mr. Robert Jobling, Commander of the "Duchess of Northumberland," the Sum of £1,800; and that you will also pay into the Military Chest a similar Sum, which will be the amount of that portion of the freight of the "Duchess of Northumberland" (vizt., £3,600), which has been advanced by the Treasury in this Country.

In conclusion, I beg to acquaint you that this Ship will be the last, it is intended to despatch with female Emigts. to New South Wales during the present year.

I am, &c.,

R. W. Hay.

[Endorsement on original.]

P.S.—In consequence of the number of Girls who have seceded at the last minute, it is impossible to send a list of those who have embarked, the wind being fair, and the ship under weigh.

As, However, the Ship has been engaged for the conveyance of 300 Emigts. and must be paid for that number whether they embark or not, the List in question is not absolutely essential, but at all events, it shall be sent in the next Ship which Sails.

J. D. Pinnoch of the Col. Dept.

Cork, Wednesday Eveng., 15th Octr., 1834.

RIGHT HON. T. SPRING RICE TO GOVERNOR BOURKE.

(A circular despatch per ship Lady Nugent; acknowledged by Sir Richard Bourke, 6th August, 1835.)

Colonial Office, 1st October, 1834.

I have the honor to transmit to you herewith, for your immediate and attentive perusal, a Copy of the Report and Minutes of Evidence of a Select Committee of the House of Commons, appointed to enquire into the Military Establishments and Expenditure in the Colonies and Dependencies of the Crown.

You will perceive, at the opening of their Report, how far the Committee's Enquiries have extended during the last Session, and as it is intended to carry into effect the recommendation.
1834.
1 Oct.

Necessity for detailed information for use of committee.

contained in the conclusion of their Report, vizt., "that the Inquiry into the Military Expenditure and Establishments of all the remaining Colonies and Dependencies of the Crown may be resumed with as little delay as possible, and that a Committee may be appointed for that purpose early in next Session," I have now to call your serious attention to this important subject, so far as relates to the Colony under your control.

On a careful perusal of these Papers, it will readily occur to you how minute an investigation the late Committee instituted into all those Colonies and Dependencies of the Crown, which were brought under their consideration; there can be no doubt that its successor will pursue the same close line of Inquiry. I have to desire, therefore, that you will lose no time in preparing and forwarding to this Office the fullest information on every point, which can possibly come under the examination of the Committee, explaining clearly and with exactness the present state of the Military Establishments in the Colony under your Government, and suggesting any possible reductions which may be carried into effect, without detriment to the Public Service.

I have, &c,

T. Spring Rice.

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

(GDespatch No. 102, per ship Caroline; acknowledged by earl of Aberdeen, 16th April, 1835.)

Sir,

Government House, 1st October, 1834.

I have the honor to forward a Petition from the Trustees of St. Andrews' Scots Church and others praying for your sanction to the appointment of the Revd. John McGarvie as a second Presbyterian Chaplain for Sydney at such salary as you may be pleased to allow.

Mr. McGarvie is at present receiving an allowance of £100 per annum under the authority of Lord Visct. Goderich's Despatch of 12 Jan., 1831, No. 14, by which His Lordship directed that, in the event of the Presbyn. Settlers in any district in the Colony contributing from £60 to £100 a year to a minister of the Scotch national Church, the Governor should bring under the consideration of the Council the propriety of causing a similar sum to be paid to him from the Colonial Treasury, restricting however this permission at that time to two additional Clergymen. There were then two Presbyterian Chaplains paid by the Government, and stipends were afterwards allowed under the authority of Lord Goderich's Despatch to a third at Bathurst and to a fourth at Maitland. The Minister at Maitland died soon after his appointment; and, as the attendants at the Scots
Church in Sydney appeared very desirous that some allowance should be made to Mr. McGarvie to enable them the better to maintain his services at that place, and as no steps had been taken to supply the place of the Minister deceased at Maitland, I permitted Mr. McGarvie to receive for the present the sum before paid to the Chaplain at Maitland, thereby keeping up but not exceeding the number of Presbyterian Clergymen recognized by Lord Goderich.

What is now solicited at your hands by the Petitioners appears to extend beyond this to an addition to the number of the Presbyterian Chaplains of the Colony, since it cannot be intended that the assistance of government should be permanently withdrawn from Maitland, where it is certainly much more needed; and to the minister at which place, as soon as a fit person shall be appointed, I shall be prepared to recommend the restoration of the Salary now transferred to Mr. McGarvie.

The Church, at which Mr. McGarvie officiates, is erected as the Petitioners state by means of subscriptions aided by contribution from the Government of £500, which was made by virtue of the rule established by His Majesty’s Government with reference to the building of places of worship, and in conformity with the intention expressed in the last paragraph of my Despatch of the 30th September, 1833, No. 76. I feel bound however to state that the project for building a second Scots Church in Sydney, in the present state of its population, chiefly originated in a dissention prevailing in the first, and that, did an unity of feeling prevail among the Presbyterians resident in Sydney, there would not appear to be at present any necessity for more than one Church for their accommodation or more than one minister for their instruction.

I take this opportunity of mentioning that an addition to the number of Presbyterian Chaplains is likely to be soon required to supply the wants of the Colony. I have, &c.,

RICHD. BOURKE.

[Enclosure.]

[A copy of this petition is not available.]
Temporary clerks required in office of surveyor-general.

1834.
5 Oct.

Temporary clerks required in office of surveyor-general.

550 HISTORICAL RECORDS OF AUSTRALIA.

10 Oct.

Report by T. L. Mitchell on administration of office of surveyor-general.

1834.
10 Oct.

Report by T. L. Mitchell on administration of office of surveyor-general.

completing and restoring some of the Records of his office which are in an imperfect or decaying state, I appointed the Auditor General, the Collector of Internal Revenue and the Assistant Commissary of accounts to form a Board for enquiring into the facts of the case. I have the honor to transmit their Report, from which it will appear that the current duties of the office afford full occupation to the present Clerks, and that the services of four additional Clerks at £100 per annum for one year will be necessary for the occasional service required by the Survr. General, with whose opinion as to its essential nature the Board entirely concur.

I propose immediately to appoint the four temporary Clerks thus recommended, and beg leave to submit the measure for your approval.

I have directed that strict attendance from nine till five o'clock be required in the Department, as recommended by the Board.

I have, &c.,

RICH'D. BOURKE.

[Enclosure.]

[This report detailed the duties of each clerk by name.]

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

(Despatch No. 104, per ship Redman.)

Sir,

Government House, 10th October, 1834.

In my Despatch of the 5th May last, No. 45, with which I transmitted an engraved map and a Report from the Survr. General of this Colony, I informed you that I had called on that officer to reply to the observations, contained in your Despatch of the 15th June, 1833, No. 17, immediately after its receipt here in the month of November of that year. The production of that map and Report may in a great degree account for the delay, which has occurred on the part of the Surveyor General in furnishing the required explanation; and I have now the honor to lay before you a very elaborate defence in answer to the charge of having misapplied or not sufficiently improved the means placed at his Disposal for the Service of his Departmt. It is not necessary that I should follow the Surveyor General through the whole of his explanation. It may be sufficient to observe that many of the duties, which his Department has been called upon by this Government or by his own direction to discharge, have been extensive and important, requiring much time and labor in their execution. Amongst these may be classed the Survey of Mountain Ranges and streams, which, if accurately
taken, comprise a large portion of the most valuable topographical details. I Concur indeed with the Surveyor General in representing that nothing, which can with any propriety be called a trigonometrical Survey of the Colony as compared with operations of the same kind formerly conducted in England by Mudge and Dalby and now in progress under Colonel Colby in Ireland, has been or could be attempted here. Nevertheless I have no desire to question the correctness of the Surveyor General’s assertion that, by the combination of the points he has taken with the actual measurement of a large portion of the ground, a map has been constructed sufficiently correct for ordinary purposes. I should apprehend, however, that the small scale, on which it is laid down, has diminished its value to the residents of the Colony; but, from the Survey in the office of two inches to the mile, country or district maps of great and general utility may hereafter be produced. The matter of the Report now transmitted, upon which I have principally to remark, relates to the future establishment of the Surveyor General’s Department and the regulations under which the several branches of its service are proposed to be conducted.

I will proceed to notice these in the order and under the heads adopted by the Surveyor General in his letter, commencing at the reverse page of fol. 15, entitled “means of performing the duties required.”

The Survey Branch of the Establishment, as estimated for 1835, consists of One Surveyor General; One Deputy Survr. General; Two Surveyors; Twelve Assistt. Surveyors; Four Draftsmen.

“This number,” the Survr. Genl. observes, “will not be too large if the Survey be continued into the more remote and inaccessible parts of the Counties, which have been defined.” This operation, I am inclined to think, is not necessary in its full extent for the mere purpose of filling up the map; but there are parts of counties, if not whole counties, which, being suited for location, it is desirable to divide into hundreds and parishes according to the King’s instructns. I propose therefore, for this and other useful objects, to retain the Survey Branch at or near the strength of the foregoing detail for the next year.

The measurement of land, applied for to purchase, must, I apprehend, notwithstanding the objections of the Survr. General, be conducted for some time longer on the same footing as at present. The principal regulations for this service are contained in the Govt. notice* of the 1st Augt., 1831, prepared by Govr. Darling and approved by the Secretary of State. It will be seen, by reference to the first par. of that order, that, as soon

* Note 140.
1834.
10 Oct.

Measurement of lands for sale.

as a parish has been regularly surveyed and described, the lands will be sold in conformity to the King's Regulations and nearly in the manner now proposed by the Surveyor General, until this arrangement is complete. I must protest against putting up to sale any land not previously measured and described, so as to enable this Govt. to put a Title Deed into the hands of the Purchaser upon his paying up the Purchase money within one month of the day of sale. To abandon this wholesome course would be to perpetuate the vast expense and inconvenience, to which the opposite practice in past times has exposed both the Govt. and the grantees of Crown Lands. Under the head of roads and bridges, the Survr. General has presented a distorted and rather unintelligible account of this branch of his Department owing, as I imagine, to his anxiety to remove from himself and his assistants the blame, which is generally but in many respects unjustly imputed to them on account of the slow progress made in the works under their charge. It might be supposed, from the Survr. General's letter, that duties were now expected of the Assistant Survr. of Roads unconnected altogether with the service for which he is engaged, and that he is required to perform the office of Hangman. Such, however, is not the fact. In order to prevent, if possible, the work of the convict gangs, whose labor he directs professionally, from being inefficiently performed or wholly neglected, the Asst. Surveyor is empowered, by the Colonial Act, 3 Wm. IV, No. 3, Sect. 28, to receive a complaint from an overseer, and to sentence an offender to 50 lashes, for the due infliction of which a Scourger is provided.

The Asst. Survr. is desired occasionally to see the punishment inflicted. It had been the practice in former administrations to appoint assistant Survrs. at remote stations to be Justices of the Peace, in order to enable them the more effectually to control the convicts then placed more immediately under their charge, as the employment of Supts. of Ironed Gangs had not taken place at that period. I had perceived that this appointment of assistant Survrs. to the Magistracy led them at times to the discharge of the general duties of a J.P. to the neglect of their own proper business. I therefore gave them, by the act I have referred to, only just so much authority as might be useful in procuring labor from the gangs. It is quite contrary to fact to suppose that this jurisdiction impedes the asst. Survrs. in the discharge of their professional duty. It has never been so represented to me; and in truth, by the Regulations for Ironed Gangs introduced in 1832, the Asst. Survrs. have been relieved from the charge of Supce., which, until then, wholly rested with them. At
no time have 500 men been shut up in any one Stockade, nor
has the efficiency of their labor been much diminished by the
necessity for keeping them safely while at work. Some diminu-
tion must no doubt be allowed as the effect of necessary precau-
tion in this respect, but not to the extent set forth by the Sur-
veyor General. If he had noticed the difficulty his Department
has labored under on being required to provide stores by con-
tract, which were formerly supplied by the Commissariat, arising
from their want of practice and official knowledge of such details,
as also the frequent failures of the Contractors, from which
there resulted at times a great deficiency of proper tools and
carriages on the works, he would have given a more clear and
candid statement of the causes, which have led to a general com-
plaint of the little work performed by the gangs. I have, in my
Despatch of 15th Janry. last, No. 1, pointed out to you the
difficulty in rendering this forced labor more efficient. From
its very nature, such an attempt could never be eminently suc-
cessful. No person should know this better than the Survr.
General. When the Road Parties were remodelled in 1832, the
arrangements, by which the number of gangs were reduced and
the Salaries of overseers increased, were all made upon personal
conference with him; and, at his suggestion, I have since allowed
certain indulgences in the issue of food to artificers employed
in Bridge Parties as an inducement to greater exertion. He
might therefore have spared his laborious vituperation of arrange-
ments, many of which were made under his own direction, and
the defects of which he admits he knows not how to remedy.

The part of the system, in which he might have proposed an
obvious and immediate improvement, is in the superintendence
by his Department. Four Assist. Survrs. are not sufficient for
the duties required of them. They might answer if a greater
number of competent Sub-Inspectors could be procured, and if
the Deputy-Survr.-General was employed by his Superior in fre-
quent tours of Inspection. This officer, formerly in the Staff
Corps, a gentleman of activity and abilities, is for the most
retained in the office in Sydney, although willing to work, in a
state of comparative idleness. It may be observed that neither
his name nor office are mentioned by the Survr. General in this
voluminous report.

Town Surv'r's office, fol. 18.—I do not consider any change
necessary in this branch of the Service, unless it be to afford
some additional assistance to Mr. Lewis in the superintendence
of the formation and repairs of the road adjacent to Sydney.
His duty as Town Surveyor, requiring him amongst other things
to report any encroachment on the streets, footways and vacant
Crown Land in Sydney, necessarily occupies a large portion of time in a place where Buildings are rapidly rising and where the boundaries of property are not very well defined. I think therefore it will be necessary to relieve him from the Superintendence of the working gangs now under his charge. Mr. Russell was recommended to me by the Survvr. Genl. about a year ago to measure the allotments of a large portion of Sydney then remaining to be done. His progress has not been rapid. I am not aware that Mr. Russell has been bred an Architect. I understood he had been employed under a Civil Engineer.

Colonial Architect, fol. 18.—The circumstances, under which this office was established, are reported in my Despatch of the 3rd April, 1832, No. 46. It was subsequently annexed to that of the Survvr. General by the command of Lord Goderich, conveyed in His Lordship's Despatch of 11 October, 1832, No. 133. Without any disparagement of Mr. Hallen's abilities, I must decline recommending him for the appointment of Civil Engineer. I have not seen any certificate from Mr. Telford to the effect stated by the Survvr. Genl. I transmit a copy of a letter from Mr. Telford to Mr. Hay, which is the only official document in possession of this Government on the subject of Mr. Hallen's qualifications for employment. If Mr. Hallen should vacate the situation of Colonial Architect, of which I am informed he has some intention, it might be useful as a temporary measure to employ Mr. Lewis in his stead, as, though not an architect by profession having been chiefly employed as an ordnance Draftsman, he is, I understand, practically acquainted with building. It would not however answer to leave him with the joint offices of Colonial Architect and Town Surveyor, as the duties of the former require frequent absences from Sydney, and the latter constant attendance there. In this Colony, where there are many important Buildings to be erected, it would be well worth while to engage an architect of acknowledged ability, and it would be desirable that his office should be entirely separated from that of the Surveyor General.

Civil Engineer, fol. 18.—I am not acquainted with the claims of Mr. John Nicholson to the character of a Scientific Engineer, unless they be founded on the fact of his having edited his father's works. Mr. Lennox will, I hope, turn out to be a useful Builder; but, as the work upon which he is now engaged is his first attempt of any magnitude in the Colony, and having been previously to his arrival employed in subordinate situations only, I must withhold my opinion of his competency, until the work upon which he is engaged is more nearly completed. If, by succeeding in this undertaking, he shall establish his
claim to consideration, I would propose to encrease his Salary
from £120 to £200 per annum. With respect to the Surveyor
General's remarks in conversation with the Governor, it seems
to me to amount to this that the Colony is in want of a com-
petent Civil Engineer, as such a person should possess not only
the power of designing but the practical skill and experience
necessary to direct and superintend the execution of his designs.

From the high character given by the Surveyor-General of Mr.
Thompson, and from the talent he has shewn in the office
arrangements, I beg leave to recommend that he be with-drawn
from the list of Assistant-Surveyors, and retained as principal
Draftsman and that his Salary be made £400 a year. It would
probably occasion discontent, were his rate of pay to be raised
as assistant-Surveyor above others of his class, the maximum pay
of an assistant-Surveyor being fixed at £300. The two Drafts-
men, whom the Surveyor-General proposes to be appointed assistant
Surveyors, are estimated for as such for the next year. An addl.
number of Clerks has been lately authorised for this office upon
the recommendation of a Board, as reported in my Despatch of
the 5th instant, No. 103.

Having gone through the various arrangements proposed by
the Surveyor-General, I think it right to offer a few remarks upon the
dissatisfaction he expresses at the control exercised by the Colo-
nial Govt. over his operations. From the tone of his letter, he
seems to claim an entire liberty of action, and to rely upon his
designation of Commissioner as a ground for the assumption.
If, however, it be useful that the Governor of a Colony, distant
16,000 miles from the mother Country, should possess any Com-
mand over the Civil Servants of his Government, in no Depart-
ment is it more necessary than in that of the Surveyor-General on
account of the importance of his duties and the great expense
attending their discharge, as well as for the purpose of guarding
more effectually against the influence of private interests in
undertaking and executing public works. Accordingly, I have
taken an opportunity of letting the Surveyor-General understand
that, as well with respect to the King's Commands contained in
my instructions as in everything relating to his Department, I con-
sider him amenable to my orders. I need hardly add that I look
to His Majesty's Instructions as my guide for the direction
of any matters to which they relate, and that, in such as are
merely professional, I never interfere with the Surveyor-General's
arrangements.

I have however not always complied with his recommendations
to undertake works of magnitude, nor failed to direct him to
proceed with others which I approved, for reasons which I have no doubt fully justify my interference.

With respect to his complaint of want of support from the late Government, I regret that the Survr. General did not see the propriety of abstaining from any observation of the kind, and from any reference to the correspondence transmitted by my Predecessor's Despatch of the 29th March, 1831.

In that Despatch are set forth many glaring instances of misconduct, arising chiefly out of the assumed independence of action to which I have alluded; and those have been visited by so mild a reproof from the Secretary of State, that he ought either to have omitted all mention of those transactions, or, if he had been obliged to refer to them, should have expressed himself with humility and gratitude in consideration of the treatment he experienced.

I have, &c,

[Enclosure No. 1.]

Richd. Bourke.

[Enclosure No. 2.]

3d Geo. 4. No. 3, Sec 28.

And for the better ordering of Offenders sentenced to work in irons as aforesaid, and of transported felons and offenders employed to work upon the roads or other works of the Colony, whose stations are frequently remote from the places where Petty Sessions are appointed to be held, or where Magistrates reside, it is hereby further enacted and declared that any Surveyor or Assistant Surveyor of Roads, being an Officer in the Surveyor General's Department, and duly appointed in writing under the hand of the Governor for the time being in this behalf, as well as any Justice of the Peace for the said Colony, shall have power and authority to hold a Court from time to time at the place where any iron gang or road party shall be stationed, and to hear in a summary way any complaint on oath, brought by the Superintendant, Overseer or Assistant Overseer of such iron gang or road party against any transported felon or offender in his charge, for refusing or neglecting to work, drunkenness, disobedience of orders, or such other disorderly or dishonest conduct; and, upon conviction, then and there to punish the offender by whipping, not exceeding fifty lashes, to be inflicted by a Constable or other person appointed for such purpose; Provided always, that a full and sufficient Record of every such conviction and punishment shall be made and transmitted to the proper officer as hereinafter directed.

Governor Bourke to Right Hon. E. G. Stanley.

(Despatch No. 105, per ship Caroline.)

15 Oct.

Sir,

Government House, 15 Octr., 1834.

I have the honor to transmit the Copy of a letter with its enclosures, addressed to the Secretary of the Lords Commissioners of the Treasury, representing the difficulty which has
for some time been experienced in obtaining money for Bills on England, and the steps which I have in consequence been obliged to take for enabling the Commissariat to provide for the Military and Convict Service of the Colony. I have previously brought this subject under the notice of their Lordships and of the Secretary of State for the Colonies; and I have now very earnestly to request that a remittance of Specie to the amount of Sixty Thousand Pounds may be sent out with the least possible delay to enable me to repay that sum, which I have been obliged to borrow from the Colonial Funds.

It will be for His Majesty's Government to determine in what way the supplies for the Military Chest are in future to be obtained. If wholly by sale of Treasury Bills in the Colony, I apprehend the annual loss will be considerable, and that it will be advisable to remit a larger quantity of Specie in preference, trusting to the demand for Treasury Bills to defray a part only of the expenditure.

I have, &c.,
Richd. Bourke.

[Enclosure.]
[A copy of this letter is not available.]

GOVERNOR BOURKE TO RIGHT HON. E. G. STANLEY.
(Despatch No. 108, per ship Caroline.)

Sir,

I have the honor to forward herewith two Private acts, passed during the last Session of the Legislative Council, one to enable the Proprietors of the Australian Subscription Library to sue and be sued in the name of their Secretary, the other to enable the Trustees of land granted by this Government as the site of a Chapel for the use of the Methodists to dispose of it with a view to the purchase of more convenient land for a similar purpose. As these acts will not come into operation until they receive His Majesty's allowance, I have thought it right to forward them by the first opportunity; and I have to request that, if no objection should arise, the allowance may be notified as early as possible. The public Acts are in course of preparation and will be transmitted when ready.

I have, &c.,
Richd. Bourke.

[Enclosures.]
[These were copies of the acts of council, 5 Wm. IV.]
Sir, Government House, 18 Octr., 1834.

Referring to the several Despatches, by which I have lately forwarded lists of Conditional Pardons for His Majesty's gracious allowance, and finding that very numerous applications continue to be made for this indulgence by parties whose claims are valid under the Colonial Regulations, I venture again to call the attention of His Majesty's Government to the circumstance of these applications being rendered far more numerous and urgent than they otherwise would be, in consequence of the disabilities* imposed by the Statute, 2 and 3 Wm. IV, C. —, on the Holders of Tickets of Leave.

Before the passing of this Act, the holder of a Ticket of Leave had, quam diu se bene gesserit, all the privileges of a Conditional Pardon. The consequence was that, on the one hand, many were Contented with the minor indulgence, without urging even a well founded claim to a Pardon, and on the other that the best conduct did not so imperatively call for an extension of the Superior indulgence, as at present, when it is necessary to enable the applicant to hold property or even to sue for the wages of his labor.

In the various stages of progress towards reformation among a population such as that formed by the system of transportation, the one for which it is perhaps of the highest importance to provide an appropriate position in Society is that in which, though their conduct affords good reason to hope that they will properly exercise all the privileges of a free citizen, it would be dangerous to relinquish the power of recalling them to servitude in the event of this hope proving fallacious. The knowledge that this power exists is, of itself, from the wariness it induces on the part of the holders of the Indulgence a most important incentive to reformation; and habits, induced from a fear of relapse into their servile condition, may at length be so confirmed as to render it safe to dispense with this check.

The present system is, I consider, injurious in every way. The Holder of a Ticket of Leave, being liable to be cheated with impunity, loses his chief motive to industry and frugality; while the dishonest habits of others are encouraged by the ease with which they can be practised on a large class of their neighbours.

The Government is at the same time embarrassed, in cases where the conduct of a prisoner fully entitled him to a trial of his fitness for assuming all the rights and duties of a free person; but where it may be desirable to make their confirmation

* Note 141.
depend on the manner in which he is found to exercise them under his probation. At present the only instrument, which restores these rights effectually, renders them irrevocable except by a new conviction of a serious offence.

My object in this communication is to remove any surprise that you might otherwise feel at the number of Conditional Pardons sent home, and at the same time to shew the importance of a repeal of the restrictions placed on the minor indulgence of a Ticket of Leave, as far as relates to property, not merely with a view to the relief of the parties, but for the advancement of the first ends of penal discipline.

I have, &c.,

Richd. Bourke.

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

(Despatch No. 110, per ship Redman; acknowledged by lord Glenelg, 5th September, 1835.)

Sir,

Government House, 19 Octr., 1834.

I have the honor to forward herewith a Memorial from Mr. John Westgate, Clerk of the Records at the Sydney Police office, praying that his Salary may be increased from £130 to £150 per annum. This augmentation was held out to Mr. Westgate in the year 1829 in the event of his being approved for his situation at the end of six months; but the instructions of the Secretary of State regarding Salaries placed it out of General Darling's power to fulfill his first intention in this respect.

Under these circumstances and in reliance on the testimonials in favor of Mr. Westgate, which accompany his Memorial, I beg leave to recommend its prayer to your favorable consideration.

I have, &c.,

Richd. Bourke.

[Enclosure.]

[A copy of this memorial is not available.]
of his family from England to New South Wales. You will perceive from the letters of the Police Magistrate of Bathurst, of which I have the honor to transmit Copies, that, although John Murray at one time expressed his willingness to pay that sum, no part of it has in fact been ever paid.

I have, &c.,
RICH. BOURKE.

[Enclosure No. 1.]

MR. T. EVERNDEN TO COLONIAL SECRETARY MACLEAY.

Sir,
Police Office, Bathurst, 22 September, 1834.

I have the honor to acknowledge the receipt of your letter of the 8 instant, accompanied by Copy of a Letter from the Reverend J. J. Fletcher; and in reply thereto beg leave to state for the information of His Excellency the Governor that I have called at the Residence of John Murray at O'Connell's Plains, and found that he was from Home at Sydney; but, on enquiring of the Wife into the circumstances referred to in your said Letter, she informed me that, when His Excellency the Governor was up in this District, Murray presented a Memorial to him requesting him to procure from the Home Government that the Family alluded to in Mr. Fletcher's Letter might be sent out to this Colony, he Murray promising to pay £120 towards the Expenses of their passage on their arrival; but that no money was ever advanced or remitted by him for that purpose; nor do I think his utmost efforts would enable him to realise so large a sum as that stated, namely one hundred and twenty pounds: and I cannot but strongly suspect that this promise was made to induce the Government to incur an expense which he had neither the intention or means to refund.

I have, &c.,

THOMAS EVERNDEN, J.P.,
Superintendent of Police.

[Enclosure No. 2.]

MR. T. EVERNDEN TO COLONIAL SECRETARY MACLEAY.

Sir,
Police Office, Bathurst, 30 September, 1834.

Referring to your letter of the 5 instant, I have the honor to report to you for the information of His Excellency the Governor that, since writing my Letter of the 22 instant in reply thereto, John Murray of O'Connell's Plains has called on me and produced two letters on the Subject referred to in your said Letter, Copies of which I have the honor to Enclose herewith: I have gained no additional Information from Murray himself, the Statement previously made by his Wife to me being merely borne out by him. I see no reason to alter my former opinion as to Murray's motive in making this proposition.

I have, &c.,

THOS. EVERNDEN, J.P.
Supt. of Police.

[Sub-enclosure No. 1.]

MEMORANDUM.

JOHN MURRAY is informed in reply to his Memorial that his application for his Family to be sent out at the Expense of Government, and for whose passage he expresses himself willing to pay a Yearly Sum of Twenty Pounds, will be Submitted for the Consideration of The Right Honorable The Secretary of State for the Colonies. John Murray must therefore send in full particulars as to the Number, Names and Residence of his Family.

PRIVATE SECRETARY'S OFFICE, 12 NOVEMBER, 1832.

R. BOURKE, Pt. Secy.
BOURKE TO STANLEY.

[Sub-enclosure No. 2.]

Colonial Secretary’s Office, Sydney, 6 March, 1832.

JOHN and BRIDGET MURRAY are informed, in reply to their Petition of the 19 January last, praying that their Relatives in Ireland may be forwarded to this Country in the first instance at the Expense of Government, but the amount to be eventually defrayed by them, that there is no public Fund from which such Expense can be incurred; but that, if any of their Relatives are in a Condition and would wish to engage with any Settler in the Neighbourhood of Bathurst or O’Connell’s Plains as Servants or Laborers, they might perhaps be brought out.

for the Colonial Secretary,

True copy:—THOMAS EVERDEN, J.P., Supt. of Police. T. C. HARRINGTON.

EIGHT HON. T. SPRING RICE TO GOVERNOR BOURKE.

(Despatch No. 31, per ship Lady Nugent.)

Sir, Downing Street, 22d October, 1834.

I have received your Despatch No. 92 of the 29th Novr. last, enclosing a copy of the Report of the Committee of the Legislative Council on the Tunnel now in progress for conveying Water into Sydney, which appears to be very little more than half finished, 6,240 feet of the Tunnel being entirely completed, and about 5,000 feet remaining to be done. Having given my consideration to this Report, I have to approve of the completion of the Work according to the suggestions of the Committee, and to sanction the expense proposed in your Despatch of 3d August, 1833, to be incurred on this account, the consideration of which was deferred by my Predecessor, until the above-mentioned Report should have arrived.

I am, &c.,

T. SPRING RICE.

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

(Despatch No. 115, per ship Redman; acknowledged by lord Glenelg, 9th September, 1835.)

Sir, Government House, 22 Octr., 1834.

I have the honor to forward a Memorial from Mr. Thomas Hansen, whose services as Commander of the Colonial Schooner Isabella I have been lately obliged to discontinue on account of his age (upwards of seventy) and consequent infirmities.

He states that he is left without provision and solicits a small pension for his maintenance in consideration of his having been employed in the service of this Government for fourteen years past. His conduct is highly spoken of, as you will perceive from the certificates appended to the Memorial. I do not feel myself at liberty to assist him in any way at the public expense without the sanction of His Majesty’s Government; but I am disposed,
under all the circumstances of the case, to recommend that he be allowed 3s. per day for the remainder of his life, which cannot now long continue, to be paid out of the Military Chest, as his employment was in the Convict Service.

The pay, which he received as Commander of the Isabella, was 7s. 6d. per diem.

I have, &c.,

RICH. BOURKE.

[Enclosure.]

[A copy of this memorial is not available.]

RIGHT HON. T. SPRING RICE TO GOVERNOR BOURKE.
(Despatch No. 32, per ship Lady Nugent.)

Sir,
Downing Street, 24th October, 1834.

I have the honor to acquaint you that The King has been pleased to approve of the 28th Regiment of foot proceeding in Detachments, in charge of Convicts, to New South Wales; and, on the arrival there of the Service Companies of that Corps, the 17th Regiment is to proceed to India to relieve the Regiment first on the Roster to return to England. I am, &c.,

T. SPRING RICE.

RIGHT HON. T. SPRING RICE TO GOVERNOR BOURKE.
(Despatch No. 33, per ship Lady Nugent.)

Sir,
Downing Street, 26th October, 1834.

I have received your Dispatch No. 8 of the 24 January last, submitting for the Consideration of His Majesty's Government two Communications from the Judges of the Colony, the one, in favor of the Augmentation of the Salaries of the Clerks of the Supreme Court to the extent of £100 per Annum 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. Unwilling, as I am, to give my consent to any arrangement by which an additional charge will be incurred to the Colony, I still do not feel myself prepared, under the circumstances represented by the Judges, to decline acceding to their application in both cases. You will therefore consider yourself authorized to make the additions proposed to the Salaries of the first and second Clerks of the Supreme Court from the date of your receiving this Dispatch, and to assign Salaries to the three Clerks, applied for by the Judges, from the date at which you shall receive official Intimation of their respective Appointments, it being my intention to sanction this expence prospectively and not to authorize...
any payments on this account for any antecedent period. It must be further understood that I have consented only to charge the public with the payment of the Salaries of these three Clerks, upon the condition proposed by the Judges themselves that, whenever Circuit Courts may be established (upon which subject I shall shortly have to address you), the Clerks so to be attached to the Judges shall be called upon to “perform those offices, which are executed by the Clerk of Arraigns and Nisi prius in England, without the necessity or Expence of any further Appointments,” and that the Salaries of £150 a year, which is to be paid to each of them, is to be “in lieu of all Fees and Perquisites, which should be accounted for to the Public Treasury in like manner as the Fees of the several Clerks of the Supreme Court.”

I am, &c.,

T. SPRING RICE.

RIGHT HON. T. SPRING RICE TO GOVERNOR BOURKE.
(Despatch No. 30, per ship Lady Nugent; acknowledged by Sir Richard Bourke, 27th April, 1835.)

Sir, Downing Street, 28th October, 1834.

I beg to refer you to the Dispatch of my Predecessor, of the date mentioned in the margin,* on the subject of an Establishment called the Governor’s Body Guard, which had attracted his attention, and which it was the desire of His Majesty should be immediately discontinued as being a very unnecessary expense.

As there does not appear to have been any communication from your government from which I can learn whether those Instructions have been carried into effect, I request to be informed, without delay, whether the Colony has been relieved from this charge; and, if not, that immediate measures may be taken for striking off an expense, which I deem wholly unnecessary, and which, at a time when so many reductions are in progress in other Branches of the Colonial Expenditure, I do not consider myself warranted in continuing.

I am, &c.,

T. SPRING RICE.

RIGHT HON. T. SPRING RICE TO GOVERNOR BOURKE.
(Despatch No. 34, per ship Lady Nugent; acknowledged by Sir Richard Bourke, 9th October, 1835.)

Sir, Downing Street, 29th October, 1834.

Notwithstanding the repeated and urgent representations, which have been made by this Department relative to a Return of the names of Convicts, which both yourself and your

* Marginal note.—No. 156, 28 Mar., 1833.
Predecessor have been required to send home, no Returns of that nature have been received for a later period than the year 1828. I regret to be under the necessity of again calling your attention to the subject, and have now to signify to you the King's Commands that you do give immediate orders for the preparation of a complete Return up to the 31st Decr. next, and for the transmission of the same to England with as little delay as possible, in order that His Majesty's Government may be relieved from the inconvenience, which is at present sustained from not being able to give satisfactory answers to the numerous enquiries, which the friends of the Convicts are in the habit of making at the Colonial Office.

I am, &c.,

T. SPRING RICE.

GOVERNOR BOURKE TO RIGHT HON. T. SPRING RICE.

(Despatch No. 116, per ship Reynolds; acknowledged by lord Glenelg, 22nd August, 1835.)

Sir,

Government House, 30th October, 1834.

I have the honor to request that you will cause to be ascertained and communicated to me the date, on which the sentence of transportation for seven years was passed upon John Fleming, who arrived here by the Ship Eliza from Ireland in the year 1829.

It appears that no dates of trial are inserted in the Indent received by that Ship. The dates were entered on the Muster List from the oral statements made by the prisoners themselves on arriving in Port Jackson. That appearing against the name of Fleming is the 28th July, 1828. He now declares this to be an error and produces an affidavit of Patrick Condon, who arrived by the Ship Mariner (3), stating that the Deponent and Fleming were both tried at Cork on the 5th August, 1826, for the same offence and severally sentenced to 7 yrs. transportation. In the present state of the case, I regard the mem. on the Muster List as the weightier evidence, and have therefore refused to allow Fleming a certificate of Freedom. I was willing to grant him a Ticket of Leave pending further Enquiry; but, as he has not thought proper to accept this, it has been considered most convenient to forward him to Port Macquarie to be there treated as an Invalid, which the state of his health admits of his being not unreasonably considered.

It is unnecessary after the foregoing statement to point out the extreme inconvenience to which this Government is exposed from such an omission in the Indent as that I have mentioned. The fact only came to my knowledge upon the application of Fleming, or a copy should have been before sent in order that
RICE TO BOURKE.

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and, as I understand the present is not a solitary instance of the kind among the Indents received from Ireland, I have directed a search to be made and will forward copies of such others as may be found imperfect by an early opportunity. It is evidently desirable that the dates of trial to be now inserted should be certified with as much formality as the original entries on the Indent, being essential facts upon which this Government has to proceed in carrying the Sentences of these parties into effect. In this case, as in any others that may arise where no authentic date of trial has been received from home, I feel myself placed in a dilemma between encouraging fraud and committing injustice.

I have, &c,

RICHD. BOURKE.

BIGHT HON. T. SPRING RICE TO GOVERNOR BOURKE.

(Despatch No. 35, per ship Lady Nugent.)

Sir, Downing Street, 1st November, 1834.

In reference to the letter addressed to you by my Under Secretary on the 30th of September, directing the payment of £1,800 to the Commander of the Ship "Duchess of Northumberland," being one half of the bounty of £12 for 300 young Women, whom that vessel had been engaged to convey from Ireland, I have now to explain to you that, the arrangements connected with the Selection of these Emigrants having been left wholly to Committees on the Spot, without any interference on the part of the London Committee, it became absolutely necessary to charter a Ship for the conveyance of a Specific number, and, whether that number were embarked or not, to pay to the Owners of the Ship the full amount of the Sum Stipulated.

At the time that such arrangement was made, this Department had of course no reason to suppose that the number of young women would fall short of that which the Ship was calculated to receive. But I regret to inform you that only 226 have embarked, being a deficiency of 74 on the number expected. This deficiency is not, however, attributed to any disinclination on the part of the Irish female Peasantry to leave their Country, but to other causes which I trust will not affect any future efforts, which may be made to admit the Irish Population to a fair participation of the benefits which the assistance afforded by the Government in this respect is calculated to bestow.

The Sum, for which the "Duchess of Northumberland" was engaged in the execution of the Service in question, was at the rate of £17 pr. head for 300 young Women; and the arrangements

1834.

20 Oct.

Necessity for dates of trial in indents of convicts.

Terms of charter of ship Duchess of Northumberland.

Deficiency of immigrants embarked.

Per capita payments for immigrants.
566 HISTORICAL RECORDS OF AUSTRALIA.

1834.
1 Nov.
Agreement re payments.

Instructions re payment of deficiency.

entered into for the payment of that amount was this: that £6 pr. head should be paid on the arrival of the Ship in the Colony, and that the other £6 should be paid on her departure from this Country; leaving each Woman to supply the remaining £5 from her own funds, or, in cases where they might fail, the Treasury undertaking to advance it in this Country on the Parties giving a promissory note for repayment of £6 in the Colony.

The promissory Notes of the Females, who have accepted this assistance, were forwarded to you in the vessel in which the Emigrants were conveyed; but, as the Vessel sailed 74 short of her fixed number, it will be necessary that the extra Sum of £5 pr. head should be paid on that number to complete the amount due to the Owners of the Vessel, according to the explanation before given.

I have therefore to desire that you will pay into the Military chest (in addition to the half of the Bounty of £12, adverted to in my Under Secretary’s letter of the 30th of September, and the amount of the Promissory Notes which have been advanced by the Treasury, as directed also in his letter of 2nd of September) a further Sum of £370, making a total amount of £3,300, which will be that portion of the freight of the “Duchess of Northumberland” which has been paid in this Country, charging the same to the funds available for the purposes of Emigration to New South Wales. I have, &c.,

T. SPRING BICE.

4 Nov.
Furniture for government offices.

RIGHT HON. T. SPRING BICE TO GOVERNOR BOURKE.
(A circular despatch per ship Lady Nugent.)

Sir,

Colonial Office, 4 Novr., 1834.

A question having arisen as to the Articles of Furniture, which it would be proper to supply at the Public Expence for the Government Offices in New South Wales, and as to the mode in which their custody and repair would be most effectually secured, I have the Honor to transmit to you for your guidance the copy of a letter, which has been addressed to one of my Under Secretaries of State by the Secretary of the Treasury on the subject.

I entirely agree with the Lords Commissioners of the Treasury in the propriety of adopting some uniform plan of regulating the supply, safe custody, and repair of Furniture, which may be supplied by the several Colonial Governments to their local Departments; and with this view I have to desire that, in all cases in which Furniture is provided at the Public Expence,
you will adopt those Regulations which were framed more particularly with reference to the Furniture supplied for the Residences of Colonial Governors, and which were transmitted to you in my Predecessor's Circular Dispatch of the 1st of January last.

I have, &c.,

T. Spring Rice.

[Enclosure.]

Hon. J. Stewart to Sir George Grey.


With reference to Mr. Stephen's Letter of 10th Inst., enclosing copy of one from Lt. Govr. Arthur on the subject of Furniture for the Govt. Offices in Van Diemen's Land, I am commanded by the Lords Commissioners of His Majesty's Treasury to acquaint you, for the information of Mr. Secretary Spring Rice, that no specific Regulation has been laid down in regard to the Articles of Furniture to be supplied at the public Expense for the Offices occupied by the Commissariat on Foreign Stations, which would be useful as a Guide to the Governors of Colonies in this respect, the only Rule, established with reference to this Subject in the Commissariat Department, being that half yearly Returns shall be forwarded to this Board from each Station abroad of all Furniture under the Commissary's charge, with explanation of any alterations or additions that may from time to time be made in the same; by which Returns, any purchase of Furniture not requisite or suitable for the proper accommodation of the Persons belonging to the Department, while engaged in the transaction of the public business, would be brought immediately to My Lords' notice, and any misappropriation of the Furniture purchased is guarded against.

With reference to Col. Arthur's Application, My Lords would recommend that he should be enjoined to restrict any Expense under this head to the Purchase of Furniture coming within the description above mentioned, and of plain but substantial quality; and, advertsing to the Articles named in Colonel Arthur's dispatch, viz., Carpeting and Window Blinds, My Lords may observe that the latter would seem requisite in all Climates, but the former would appear to be quite unnecessary, except in Climates where a considerable degree of cold is experienced.

Colonel Arthur should also be instructed to cause periodical Returns of all official Furniture to be made to and inspected by some fit Officer of His Government, who should report to him any irregularity or loss that may occur.

My Lords would further suggest, as the subject has been brought under Mr. Rice's consideration, whether it might not be advisable that similar directions to those he may convey to the Lieutenant Governor of Van Diemen's Land should be addressed to the Governors of the other Colonies, in which the incidental Expenses of the Local Departments are defrayed either from Revenues under the Control of the Crown or from any Funds provided by this Country; and, upon being apprised of the terms of any such communication, My Lords would direct the Commissioners of Audit to see that all charges for Official Furniture, to which they may have reference, are in conformity with them.

I have, &c.,

J. Stewart.
1834.
6 Nov.

Transmission of letter from Sir E. Parry.

HISTORICAL RECORDS OF AUSTRALIA.

RIGHT HON. T. SPRING RICE TO GOVERNOR BOURKE.

(Despatch No. 36, per ship Lady Nugent; acknowledged by Sir Richard Bourke, 6th October, 1835.)

Sir,

Downing Street, 6th November, 1834.

I beg to call your attention to the enclosed Letter, addressed by Sir Edward Parry to my Predecessor in office, dated the 19th Septr., 1833, the original of which appears to have been transmitted to you, in conformity to the established Regulations on that head, for the purpose of being forwarded to England with your Report, but which has not yet arrived. In this Letter, Sir Edward Parry states that he had applied to the Local Government for two Convict Mechanics to replace two others, who had qualified themselves for Tickets of Leave, but that his request has been refused on the ground of its being inconsistent with the established Regulations.

In the absence of any report from you on this subject, I am unable to judge whether there exists any just cause of complaint on the part of the Australian Company against your decision; but, considering the facilities which were promised to the Company in respect to Convict Labor and the inconvenience which would result to the public from any scarcity in the supply of Coal, I should feel disposed to continue to the Company the same number of Convict Mechanics and Laborers as were assigned to them at first, and to perform, according to a liberal construction of the same, every other stipulation which was entered into on the part of this department with the Company at the period the Coal Mines were delivered over to them. I have therefore to request, in case there should exist no special reasons to the contrary, distinct from those which are adverted to by Sir Edward Parry in his communication to this office, that you will consider yourself authorized to complete the number of Convict Laborers for the working of the Coal Mines, to that of which the Establishment consisted, whilst the mines were in the hands of the Government.

I am, &c.,

T. SPRING RICE.

[Enclosure.]

SIR EDWARD PARRY TO RIGHT HON. E. G. STANLEY.

Sir,

Port Stephens, New South Wales, 19 Septr., 1834.

On the 12th Inst., I did myself the Honor, as Commissioner for managing the Affairs of the Australian Agricultural Company in New South Wales, to address to you a Letter on the Subject of a Claim against His Majesty's Local Government for Coals furnished by the Company, which Claim His Excellency General Bourke had declined recognizing for the reasons which I have explained in that communication.
I am now as unexpectedly as unwillingly again under the necessity of addressing you on a subject of still greater importance to the Company's Interests, as relates to their Coal-Works at Newcastle.

For this purpose, I beg once more to call your attention to Mr. Twiss's letter to Mr. Brickwood (the Company's Secretary in London) dated 31st of July, 1828, which formed the Basis of that Agreement between His Majesty's Government and the Company, on the faith of which the latter have erected and are maintaining Coal-Works at so heavy an Expence, and by virtue of which they are bound to provide against any failure in the Supply of Coals to the Public.

In this letter, the following Condition occurs:—

Thirdly. "That, although the assistance required by the Company in regard to Convict Laborers must necessarily depend upon the means, which the Colonial Government may have at its disposal for affording it, yet, as the Government will cease to raise the Coal which may be required for the general Purposes of the Colony, every possible facility and encouragement for this object be afforded to the Company, so that no scarcity of this Article may take place, and the quantity raised be, as far as depends on the assistance of Convict labor, at all times if possible, adequate to the demand."

In accordance with this Stipulation, General Darling, the late Convict labour Governor of the Colony, did afford every facility and encouragement as regards Convict labour in erecting and maintaining the Coal Works. Previous to the working of the Coals being entirely transferred to the Company, a few Extra Mechanics were lent to them from the Government Establishment at Newcastle for a certain number of Months, at the expiration of which they were duly returned to Government. Since that time, the Company's Establishment of Convicts at their Colliery has continued nearly as follows: the number and other particulars here stated being bona fide the Establishment on the 31st Ulto.:

<table>
<thead>
<tr>
<th>Trade</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blacksmith</td>
<td>1</td>
</tr>
<tr>
<td>Stone Cutter</td>
<td>1</td>
</tr>
<tr>
<td>Bricklayer</td>
<td>1</td>
</tr>
<tr>
<td>Carpenter</td>
<td>1</td>
</tr>
<tr>
<td>Sawyers (one pair)</td>
<td>2</td>
</tr>
<tr>
<td>Miners and labourers</td>
<td>37</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>43</strong></td>
</tr>
</tbody>
</table>

It may be necessary to Explain to you that the above small Establishment of Six Convict Mechanics is as necessary to the effective maintenance of the Coal Works as the Miners and Labourers are. The Blacksmith and Carpenter are incessantly occupied in keeping the various parts of the "Pit gear," as well as the Coal Waggons, Coal-skips and railway, in repair, the latter being 329 yards in length. The same remark applies to the Bricklayer, the Chimney, as well as the Brickwork about the Boiler and round the Pit, needing constant repair, and the Services of a Stone Cutter, tho' not constantly required, are sometimes needed to keep
the Stone foundation of the Steam Engine in sound condition. The one pair of Sawyers is quite indispensable, as well to provide wood for the different buildings not yet completed, as to keep the Pit supplied with “Prop Wood” for supporting the roof, above five hundred props being at the present consumption required per month, or about 6,300 per year, all of which have to be brought from several miles distance.

Upon the above mentioned Establishment (which however, as regards regular Miners, is at times barely sufficient to keep up the supply of Coals), the operations of the Company’s Colliery were proceeding with tolerable prospects of Success and the increasing consumption (under their improved mode of working) was beginning to reduce the actual Cost of raising the Coals to the low and hitherto losing price at which they were sold, when I received a communication from the Colonial Secretary of a very alarming nature, inasmuch as it intimates an intention, on the part of the present local Government, to deny to the Company’s Colliery for the future that moderate assistance in the labour of Convict Mechanics, to which for Two years past they have been considered entitled, and without which they must struggle a fresh for the very smallest profit upon this important part of their undertaking.

On the 19th Ulto., I applied in the usual Form to the proper Board for the Assignment of a Bricklayer and a Sawyer for the Colliery, in place of two such Men about to receive Tickets of Leave. At the same time, I wrote a letter to the Colonial Secretary (of which a copy is hereunto annexed) stating for the Governor’s Information the particular circumstances of my application. I also annex a copy of the Colonial Secretary’s reply.

Protest against refusal of mechanics.

Under these circumstances, I am compelled to appeal to your decision whether it be in accordance with the spirit, or even with the letter, of the stipulations above referred to, that the Company should be refused the assignment of two Convicts for the purposes I have mentioned, in consequence of any “Regulations established.” Since those stipulations were entered into; Regulations which have never been opposed to this Specific claim of the Company until now, and which, if applied to the Company’s Colliery, will alter the whole bearing of their Agreement with His Majesty’s Government.

Annual expenditure on wages and salaries at colliery.

It may be proper for me to acquaint you that the Salaries and Wages now paid by the Company to FreePersons employed exclusively in their Colliery, comprising a Manager, a Book-keeper, an Engineer, a Brakesman and a Blacksmith, amount to £1,187 18s. 1d. per Annum, which I am sure you will consider more than a reasonable Annual Outlay for Free-labor in an Infant Establishment of this nature; whereas the principle, now about to be acted upon by His Excellency Governor Bourke, would shortly increase this outlay to the Amount of between £300 and £400 per Annum for the maintenance of Six more free Mechanics.

I beg leave, Sir, most respectfully to assure you that it is impossible for the Australian Agricultural Company to continue the Working of the Coal Mines at the present price of Nine Shillings per Ton to the Public and Eight Shillings per Ton to the Government, if this new and unexpected obstruction be thrown in the way of their operations.

It may not be improper for me to add, in justice to the Australian Agricultural Company and to myself as their Agent, that,
RICE TO BOURKE.

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while difficulties are thus opposed by the Government to the economical working of the Company's Mines, it has been and still is my most anxious desire to afford to the Government every possible convenience and advantage. As one proof of this, I may mention that, so far from taking advantage of the letter of the Company's Stipulations to deliver the Coals to the Government "at the Pit's Mouth," I have always delivered it on board the vessels by the Rail-road constructed at several Thousand Pounds expense for that purpose, by which arrangement alone the Government has been enabled to do away with an expensive Establishment of Carts, Working Oxen, Drivers and Labourers, for shipping their Coals in the former slow method at the Old Wharf, now nearly gone to decay. I am confident in stating that Sixpence per Ton is thus saved to the Government upon every Ton of Coals they consume, while, on the other hand, Ten Tons of Coals are now delivered on board the Vessel in the space of time in which a Cart could deliver one, should the Company's Agent be disposed to insist (as he justly might) on complying with the literal terms of their Agreement.

On all these grounds, I do myself the Honor most earnestly to request, on behalf of the Australian Agricultural Company, that directions may be given for affording to their Colliery Every possible facility and encouragement as regards Convict-labor, in performance of the Stipulation entered into by His Majesty's Home Government on this head, and especially that the Company may not be deprived of that precise kind of labor, which among Free Persons it is the most difficult and expensive to obtain in New South Wales, namely that of Mechanics such as those above referred to.

I have, &c,

W. E. PARRY.

Commissioner for managing the Affairs of the Australian Agricultural Company in New South Wales.

RIGHI HON. T. SPRING RICE TO GOVERNOR BOURKE.

(Despatch No. 37. per ship Lady Nugent.)

Sir, Downing Street, 7th November, 1834.

I transmit to you herewith the Copy of a Report from the Board of Audit to the Lords Commissioners of the Treasury, together with a Statement of Payments made without authority in the years 1831 and 1832 at New South Wales; and I have to request that you will furnish me with the necessary explanations in regard to the payments to Captain Rolland for arrears of Salary as Commandant at Port Macquarie; to Captain Rossi for Secret Service; and to Mr. Garling for Prosecutions before the Quarter Sessions. I have at the same time to call your attention to the circumstance of the Accounts for those years not having been accompanied by Copies of Lord Goderich's Dispatches authorising the payments adverted to by the Auditors, to Dr. Lang, and to the Church Missionary Society, and to desire...
that you will remind the Officer, who is to blame for this oversight, of the Instructions which have been issued by my Predecessors on this subject.

I have further to desire that you will transmit to the Auditors, with the Accounts which may in future be sent home, copies of the Estimates which may be voted by the Council for the year to which those Accounts belong.

I am, &c.,

T. SPRING RICE.

[Enclosure.]

HON. J. STEWART TO UNDER SECRETARY LEFEVRE.

Sir,

Treasury Chambers, 14th April, 1834.

I am commanded by the Lords Commissioners of His Majesty’s Treasury to transmit herewith the Copy of a Report from the Commissioners of Audit, dated 26th Ultimo, together with the enclosed statement of payments requiring the approval of His Majesty’s Government in respect of New Appointments and additions to the Number and Salaries of Persons employed in the Colonial and Convict Establishments in New South Wales, and of payments of a special nature connected with these Services, extracted from the respective Accounts of the Colonial Treasurer and of the Commissary for the Years 1831 and 1832; and I am to request that, in submitting the same to Mr. Secretary Stanley, you will call his particular attention to the payments to Capn. Rolland for arrears of Salary as Commandant at Port McQuarrie, to Mr. Rossi for Secret Service, to Mr. Garling for prosecutions under the direction of the Attorney General before the Quarter Sessions, to the Revd. J. D. Lang on account of the Academical Institution, and to the Board for the Assignment of Convict Servants, and will move Mr. Stanley to cause my Lords to be informed whether these and the other payments comprized in the Statement have been reported to and approved by His Majesty’s Secretary of State, or whether such explanations respecting them have been furnished as may induce Him to consider that they ought to be admitted on the Audit of the Accounts.

My Lords would also request to be furnished for the guidance of the Commissioners of Audit with Schedules of the Establishments at New South Wales and Van Diemen’s Land, as settled in the Year 1832, including the Police and Convict Departments.

I am, &c.,

J. STEWART.

[Sub-enclosure No. 1.]

COMMISSIONERS OF AUDIT TO LORDS COMMISSIONERS OF TREASURY.

Audit Office,

My Lords,

Somerset Place, 26th March, 1834.

We have the honor to submit, for the consideration of your Lordships and of the Secretary of State for the Colonies, a statement of New Appointments and additions in the Number and Salaries of Persons employed in the Colonial and Convict Establishments in New South Wales, and of payment of a special nature connected with these Services, extracted from the respective Accounts of the Colonial Treasurer and of the Commissary for the Years 1831 and 1832.
We take this opportunity of representing to your Lordships that we have not hitherto been in possession of any complete and authorized Establishments of either the Civil or Convict Departments at New South Wales and Van Diemen's Land.

We are aware that these Establishments must necessarily vary considerably from time to time, particularly in respect of the inferior Situations, which must naturally increase in proportion to the increase in the population and the number of Convicts in the Colonies.

We beg leave, however, to request that, if, in consequence of the subject of these Establishments having been recently as we apprehend under the special consideration of His Majesty's Government, any Establishment of the Civil and Convict Departments in New South Wales and Van Diemen's Land shall ultimately receive the sanction of His Majesty's Government, Your Lordships will be pleased to cause us to be furnished with Copies of the same for our guidance in the examination of the accounts for those Colonies.

We have, &c.,

F. S. Larpent.
J. Wishaw.
H. F. Luttrell.

[Sub-enclosure No. 2.]

STATEMENT extracted from the Accounts of C. D. Riddell, Esqr., Colonial Treasurer, and of James Laidley, Esqr., Deputy Commissary General, in New South Wales, for the Years 1831 and 1832, and referred to in Auditors' Report of 26th March, 1834, of New Appointments, and additions in the number and Salaries of persons employed in the Civil and Convict Departments in New South Wales, as well as of payments for Contingencies or of a special nature, with regard to which it is not ascertained how far the same have been approved by H.M. Government.

In the Accounts of the Colonial Treasurer.

No. 1. Jas. Raymond, Junior, a Clerk of the third Class in the Colonial Secretary's Department at £150 a year from 1st June, 1831.

Mr. Raymond's Salary up to 31st May, 1831, was only £100 a year as an Extra Clerk. The authority for his being placed on the Establishment as a Clerk of the third Class is a letter from the Colonial Secretary, in the Governor's name, dated 20th June, 1831, which does not specify the rate of Salary he is to receive.

2. G. M. Slade, Clerk to the Land Board, at £130 a Year from 1st January, 1831. Transferred 1st Decr., 1831, on the abolition of the Land Board to the Board for assigning Convict Servants, at the same rate of Salary.

3. Arrears of Salary due to the late Captain Rolland, as Commandant of Port Macquarie, from 2 April to 16 Novr., 1824, being the difference between 10s. a day, actually paid to him, and the rate of £300 a year, £73 17s. 1d.

As the allowance of £300 a Year to Commandants did not commence till after the period of Capt. Rolland's Service in that capacity, this issue appears to require the approval of the Secretary of State.

4. Pay of the following extra Clerks, prisoners of the Crown, in the Colonial Secretary's Department at 1s. 9d. a day:—R. Beattie from 13 Sept., 1831; J. Furby from 11 Sept., 1831; W. Watt from 1 October; Thos. Furby, from 26 November. The allowance to W. Watt ceased on the 30th April, 1832. The others are continued in pay throughout the Accounts of 1832.

5. F. Rossi, Principal Superintendent of Police, Secret Service Money disbursed by him, paid 26 October, 1831—£76 6s. 4d.

No other Documents are produced than Mr. Rossi's receipt and the Governor's Warrant.

6. Fredk. Garling, Esqr., Clerk of the Peace, allowance for filing information in the absence of the Attorney General from 7 January, 1830, to 26 June, 1831, at the rate of £100 a Year—£146 16s. 11d.

This Office is not aware whether the allowance in question to Mr. Garling has been sanctioned by the Secretary of State.
1834.
7 Nov.
---
Statement of new appointments, etc., extracted from accounts.

7. Same person for prosecuting, under the direction of the Attorney General, all Crimes, Misdemeanors and other offences brought for trial before the Court of Quarter Sessions; a like allowance of £100 a Year from 27 June, 1831, to 30 Sept., 1832—£126 10s. 2d.

It will be seen by the preceding item that this allowance was originally granted by the Governor for the performance of a duty during the absence of the Attorney General, and the Commission was expressly directed to terminate at the time the present Attorney General, Mr. Kinchela, entered upon the functions of his Office, viz., the 27th June, 1831. The allowance was however subsequently continued to Mr. Garling in consequence of a representation from Mr. Kinchela. The accounts in the Audit Office do not afford the means of ascertaining whether it has been continued for a later period than the 30th Sept., 1832.

8. Revd. J. D. Lang on acct. of the contribution to be made by Government towards the establishment of an Academical Institution in Sydney—£1,500.

The Audit Office is not aware how far this issue has had the sanction of the Secretary of State, or to what further extent the Governor may have been authorized to contribute towards the intended object.

9. A. McLeay, Colonial Secretary, sundry expenses incurred on account of the Department in 1829—£124 15s. 4d. viz.: To Mr. Mathew Gregson for his Services in preparing certain returns for transm. to England, after he ceased to be a Clerk in the Coll. Secy.’s Offn., £80; To Moore and Moore, Attorneys, being the Amount of their taxed Bill of Costs in the case of the King agst. Hall for libel in 1829, £144 15s. 4d.—£124 15s. 4d.

With respect to the Sum of £44 15s. 4d. paid to Messrs. Moore, their receipt expresses that it was paid to them subject to the approval of the Secretary of State. It appears that the case for Libel was commenced by the late Solicitor Genl. and that Mr. Moore, one of the Attornies, who also held the Situation of Crown Solicitor, had to proceed with it on the demise of the Solicitor General, until its termination, and that the Business did not in any way devolve upon him as Crown Solicitor. Under these circumstances, the Attorney Genl. recommended payment of Messrs. Moore’s bill of Costs.

10. Board for the assignment of Convict Servants.—1st Member C. D. Riddell. £100 a year; Member F. A. Hely, £100 a year; Clerk G. M. Slade, £130 a year; from 1st Decr., 1831.

Messrs. Riddell and Hely were previously Members of the Land Board at the same Rates. That Board having been abolished, they, as well as Mr. Slade, were transferred to the New Board established for the Assignment of Convict Servants.

11. Ambrose Hallen, Colonial Architect at Sydney, at £400 a year from 1st April, 1832.

Mr. Hallen’s previous Salary was £350 a year, as Town Surveyor in the Deptt. of Public Works, and he was appointed to his present situation and Salary on that Department being abolished.

12. H. F. Drinkwater, Clerk in the Auditor General’s Department at £160 a year, transferred at the same rate of Salary to the Post Office Deptt. from 26 June, 1832.

This transfer took place in consequence of a report from the Auditor General, representing that the strength of the Post Office Establishment was inadequate to the performance of its Duties.

13. F. Mitchell, Sundry Articles purchased in Feb., 1832, to be sent as presents to the Chiefs of the South Sea Islands in H.M.S. Zebra—£50.

The quality of the Articles and fairness of the prices are certified by the Master attendant. The ferry, having thus become public property, was let for Government Account, and Credit is shewn in the Accounts of the Collector of Internal Revenue for the Sums periodically paid to the local Government on account thereof.

14. Captain Wilson, late Director of the Public Works, to enable him to defray the expenses of his passage to England (paid 10 April, 1832)—£100.

This Officer was suspended from his duties on the 13th of February, 1832, in consequence of an investigation into charges preferred against him; and the Department of Public Works was subsequently abolished.

15. Richd. Jones Estimated value of the Punts, etc., at Wiseman’s Ferry, purchased in June, 1832—£267.

The fairness of the terms, on which this purchase was made by the local Government, is duly attested by the Master attendant. The ferry, having thus become public property, was let for Government Account, and Credit is shewn in the Accounts of the Collector of Internal Revenue for the Sums periodically paid to the local Government on account thereof.

Tenders were invited; the quality of the Blankets and fairness of the prices are duly certified by the competent Departt. The Colonial Secretary states, in a letter to the Auditor General of 31 May, 1832, that the object of the purchase was to contribute to the comfort of the Natives, and to encourage a friendly disposition in them towards the Settlers.


These Sums were issued, as the Warrant states, on account of the yearly Amount (£500) voted by the Legislative Council for the said Mission in July, 1832.


These Vouchers are accompanied by an abstract, signed by the Colonial Architect, of "Accounts of expenses incurred for furniture and repairs to Government Houses at Sydney and Parramatta," which are stated to amount as follows:—for Sydney to £100 2s. 7d.; for Parramatta, £677 8s. 6d.—£777 11s. 11d. But, on referring to the Governor's Warrant dated 22nd Decr., 1832, and to the particulars accompanying it, those expenses are stated at £752 5s. 13d., the difference of £4 14s., apparently omitted in the Colonial Architect's abstract, forming part of the Sum of £126 1s. 1d. described opposite. No other payments are found in these accounts in respect of the Warrant above mentioned, excepting those here stated; it is therefore supposed that the remaining items will be charged in the forthcoming Treasurer's Account for 1833. The Audit Office is not aware whether application has been made by the local Government to the Secretary of State for his sanction to this expenditure, in respect of the repairs of the Government Houses at Sydney and Parramatta.

Medical Department, Liverpool. Assistt. Surgeon Mr. K. Robertson at 10s. a day and £50 pr. annum in lieu of Quarters from July, 1831.

This appears to be a New Appointment, in addition to the previous strength of the Medical Department at Liverpool; it is stated to be temporary, but appears to have continued to the latest period of the Accounts in this Office.

By Order of the Board,
Audit Office, Somerset Place, 26th March, 1834. G. S. Englebach, Inspector.

Sir,
Downing Street, 8th November, 1834.

I herewith transmit for your information Copy of a letter from Colonel Arthur, together with my reply, relative to a claim which the Owners of Transports, engaged in the conveyance of Convicts to Van Diemen's Land, have preferred to be exempted from a duty of Six Pence per Ton, to which all Vessels arriving at Hobart Town are subjected by the Port Regulations.

The same reasons may not exist at Sydney for imposing a Tonnage Duty, corresponding to that established at Van Diemen's Land; and, if none has been levied there on the Shipping generally, it is not the object of my present despatch now to establish it; but I have deemed it expedient to apprize you of the opinion, which I have expressed to Colonel Arthur upon the subject as one of the grounds on which the Owners of this particular class of Ships proceeding to Van Diemen's Land have claimed to be relieved from the charge, is that no duty of this kind is levied at Sydney.

I am, &c.,

T. Spring Rice.
Liability of convict ships to tonnage dues.

Legal opinion re liability of convicts ships to tonnage dues.

Instructions for collection of tonnage dues on convict ships.

1834.
8 Nov.

Liability of convict ships to tonnage dues.

1834.
8 Nov.

Liability of convict ships to tonnage dues.

Legal opinion re liability of convicts ships to tonnage dues.

Instructions for collection of tonnage dues on convict ships.

HISTORICAL RECORDS OF AUSTRALIA.

[Enclosure No. 1.]

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.
Van Diemen's Land,

Sir,

I have the honor to transmit for the consideration of the Secretary of State the accompanying copy of an opinion of the Law Officers of the Crown, relative to the liability of Convict Transports to pay the charge of 6d. per Ton imposed in lieu of all former charges by the Port Regulation Act. The question hinges upon this: was it the intention of the Secretary of State, in the Despatch of the 18th of November, 1825, to exonerate such vessels from every charge to which other Ships were liable?

I would submit that the 6d. per Ton is not to be looked upon in the light of a Tax, but of Compensation to the Government for work and labour done in providing a good Wharf, and bringing fresh water by an aqueduct to the Sea side for the convenience of the Shipping, an advantage in which the Convict Transports participate equally with every class.

I have, &c.,

GEO. ARTHUR.

[Sub-enclosure.]

MR. E. MACDOWELL TO THE COLONIAL SECRETARY.

Sir, Macquarie Street, 14th January, 1834.

I have the honor to acknowledge the receipt of your Memorandum of the 2nd instant, transmitting, by direction of His Excellency The Lieutenant Governor, two letters from the Collector and Controller of Customs relative to the liability of Transport Ships to the payment of Tonnage Dues under the new Port Regulation Act, and, in reply thereto, beg to report that, inasmuch as by law Prison Ships are liable to the duties imposed under the recent Act of Council, The Attorney General concurs with me in thinking that these duties ought to be levied until His Excellency can ascertain from the Secretary of State whether Lord Bathurst's letter intended to exempt Prison Ships, which certainly have no Agent of Transports on board, from those charges, in lieu of which the Tonnage duty has been substituted.

I have, &c.,

EDWARD MACDOWELL.

[Enclosure No. 2.]

RIGHT HON. T. SPRING RICE TO LIEUT.-GOVERNOR ARTHUR.

Sir, Downing Street, 17 Novr., 1834.

My Under Secretary has laid before me your letter to him of the 31 of Jany. last, submitting a question arising out of the construction of a despatch from the Secretary of State, dated 18 Novr., 1825, vizt., as to the liability of Transports, employed in the conveyance of Convicts to Van Diemen's Land, to pay the same duty of 6d. per Ton, as all other Vessels entering the Ports of that Colony are subjected; and I have now the honor of acquainting you that, considering the purposes for which this charge is imposed, as explained in your letter, I see no reason whatever for exonerating the Transports so employed from this payment, the enforcement of which upon them will of course be continued as heretofore.

I am, &c.,

T. SPRING RICE.
RIGHT HON. T. SPRING RICE TO GOVERNOR BOURKE.

(Despatch No. 39, per ship Lady Nugent.)

Sir,

Downing Street, 15 Novr., 1834.

With reference to your Despatch No. 19 of the 5th of February, and No. 104 of the 7th of Decr., 1833, reporting the arrangements which you had made for the custody and repair of Public Buildings in New South Wales, and recommending that a Branch of the Ordnance Department should be stationed in that Colony, I have the honor to enclose, for your information and guidance, a copy of a letter, which has been addressed to this Department by desire of the Lords Commissioners of the Treasury, to whose consideration those Despatches were referred.

You will perceive that it is in the contemplation of His Majesty's Government to send out to the Australian Colonies some Officers of the Ordnance Department to take charge of the Military and Convict Buildings and Stores, and whose services might be made available in the performance of any analogous duties for the civil Government.

Their Lordships, however, have thought it right, as a preliminary to the adoption of any such measure, to charge the Colonial Revenues with a part of the Expenditure from which they were relieved in the year 1827, and which is at present defrayed by the Mother Country.

Concurring, as I do, with their Lordships in the opinions which they have expressed on this subject, I have to instruct you to take measures for providing out of the Revenues of New South Wales, from and after the 1st of July, 1835, for such charges, as are now defrayed from the Military Chest, for the Police Establishment, for Gaols, and for a certain portion of the Colonial Marine, the expense of which is estimated at about £25,000 per annum, the Commissariat still continuing to pay, from funds provided from this Country, all charges immediately connected with the custody and superintendence of the Convicts, including the Penal Settlements and the Judicial Establishments and also the Vessels employed in communicating with the Penal Settlements and detached Military Stations.

It only remains for me to call your attention to the concluding observations in the enclosed letter upon the subject of certain Disbursements, on account of Repairs of Buildings undertaken by you without the previous authority of His Majesty's Government, and to convey to you my authority for commencing with the concurrence of your Council all such repairs as may be from time to time requisite for the proper maintenance of any of the Public Buildings, provided such repairs are only undertaken upon regular and specific Reports of Survey and Estimates.
You will also understand that this authority is not to comprise the erection of new Buildings or additions to existing Buildings; neither is it to be understood to warrant alterations in any Public Buildings, except in so far as they can be incidentally made in the course of any repairs that may be otherwise necessary.

I am, &c.,

T. SPRING RICE.

[Enclosure.]

MR. F. BARING TO SIR GEORGE GREY.

Sir,

Treasury Chambers, 23 Sept., 1834.

I am commanded by The Lords Commissioners of H.M. Treasury to request you will state to Mr. Secretary Spring Rice that their Lordships have had under consideration the communications from your Department of 5th Oct., 1833, and 4th June and 16th July last, relating to the arrangements, made by the Officers administering the Governments of New South Wales and Van Diemen's Land, for the custody and repair of Public Buildings in the respective Colonies, in consequence of the reductions recommended by the Commission of Colonial Inquiry in the Departments previously charged with these services, and also various other representations from the Officers Commanding the Troops, and from the Officers of the Commissariat on those Stations on the same subject; but My Lords have hitherto been induced to defer making any reply to these communications under the impression that some contemplated alterations in the Military Departments of this Country might have rendered nugatory any decision on the points, to which they related.

I have now however to request you will observe to Mr. Rice that it appears from Documents before My Lords that the reductions in those branches of the Colonial Establishments at New South Wales and Van Diemen's Land, connected with Public Works and Buildings, have occasioned the transfer of the charge of all Buildings appertaining to the Military, the Convict and the Police Departments to the Commissariat on the respective Stations, on the ground that the Expenses of these Departments are defrayed from the Military Chests. The expediency of devolving on the Commissariat a charge of this description, in addition to the other extensive duties it has already to perform in these Colonies, is very questionable; and, as My Lords moreover find that it has been considered necessary to attach Clerks of the Works to this Department, and otherwise to augment it in consequence of this arrangement, they conceive that the employment of a branch of the Ordnance Establishment in these Colonies might very possibly be quite consistent with those principles of economy, to which their attention was called in the communication from Mr. Hay of the 12th February, 1833. But it has occurred to My Lords that it would be right, as a preliminary to the adoption of any such measure, to consider how far it may be necessary that so large a portion of the Public Expenditure in these Colonies should still continue to be defrayed from the Funds of this Country through the medium of the Military Chests.

My Lords observe that the existing arrangements in this respect were adopted in the year 1827 upon the discontinuance of the Specific Parliamentary Grants for the Civil Establishments in the