HISTORICAL RECORDS
OF
AUSTRALIA.
COMMONWEALTH OF AUSTRALIA.

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OF

AUSTRALIA.

SERIES 1.

GOVERNORS' DESPATCHES TO AND FROM ENGLAND.

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INTRODUCTION.

SIR GEORGE GIPPS.

During the administration of Sir George Gipps, there were important changes in the social and economic conditions in the colony, which materially affected the current and future development and administration. The immediate cause of many of these changes was a condition of monetary confusion which began to develop about the year 1839 and became acute in the year 1843; but the secondary causes were numerous and far-reaching, and some had been in process of development for many years.

During the first three and a half decades of the colony, land had been granted to settlers subject only to a small annual quit rent which was irregularly collected. The settlers obtained labour by the assignment of convicts which was subject only to the cost of maintenance. Many of the crops were purchased by government for the maintenance of convicts in public employment. The prospects of the accumulation of wealth were thus attractive to immigrant free settlers as the government supplied the land and labour virtually free and purchased most of the products of farming. When free land grants were abolished in favour of sales of land by auction, the prospects were still attractive. Colonial banks were established, and bills were easily discounted. Capital was then invested largely in wool-growing; in 1832, 1,515,156 lb. of wool were exported and in 1842, 9,428,036 lb., and in 1833 the price of wool increased to 3s. per lb.

In the year 1834, an act of council, 5 Wm. IV, No. 10, was passed whereby the rate of interest was fixed at 8 per cent. for all agreements in dispute in the supreme court when the rate of interest was not specified in the agreement. By the same act, it was declared that the usury laws of England were not in force in the colony; therefore any rate of interest could be enforced if specified in a mortgage.
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The prospects of the profitable employment of capital thus created in the colony led to an immense influx of British capital, with a consequent drain on the colony for interest and dividends. This new capital was introduced principally by the establishment of new banks of issue, deposit and discount, and of loan and trust companies. This influx of capital created a fictitious prosperity; there was a period of progressive rise in prices of land, live stock and commodities; over-speculation was prevalent under the belief that the prospects of the colony were unlimited, and that anything purchased could be resold at a higher value at a later date. Personal extravagance prevailed and there was a remarkable and excessive growth of the city of Sydney.

Whilst these changes were being effected, there were great changes in the principles of governmental administration. These changes were the abolition of the transportation and assignment of convicts, the systematic promotion of immigration, and monetary adjustments in consequence thereof.

Transportation of convicts to the colony was abolished in the year 1840 by an order-in-council,* and the system of assignment in the following year. The labour market was provided thereafter entirely by free labour. The costs of production, therefore, were increased by the costs of wages, and merchandize was affected in the same way.

Immigration was promoted under two systems (a) the government and (b) the bounty. Under the government system immigrants were selected in England and sent to the colony in ships chartered by government. Under the bounty system, immigrants arrived by any ship by arrangement with private individuals, who received bounties on their introduction. The financing of the first system was arranged chiefly in England by advances from the English treasury, which were repaid by the colonial treasury to the military chest of the commissariat at Sydney. The financing of the second system was effected in the colony by payment from the colonial treasury direct to shipowners or to others entitled to the bounty. The funds to meet this expenditure were provided by the revenue from the sales of land, and large areas were sold to maintain a constant flow of immigrants both to relieve distress in England and to provide free instead of convict labour in the colony. Over-speculation in land unfortunately developed.

* See page 701 et seq.
These changes necessitated readjustments in public finance. The following sums were realised annually from the sale of land:—In 1836, £105,163; in 1837, £120,171; in 1838, £116,324; in 1839, £154,744; and in 1840, £313,052. When these sums were received, a portion was lodged in the banks, and a portion in coffers in the treasury vaults. At the beginning of the year 1836, it was the practice to keep about £5,000 in each of the four banks then in Sydney; but these deposits were rapidly increased, until in September, 1837, three of the banks held £124,000, whilst at the same time there was £245,250 in the treasury coffers. In the year 1838, there was a diminution owing to the payment of large sums for immigration, the average for the year being £90,000 in the banks and £180,000 in the coffers. In the year 1839, there was constant fluctuation, and at the close of the year there was £75,000 in the banks and £124,000 in the coffers. In the year 1840, the number of banks had increased to five, and there was an extraordinary increase in deposits in them. By payments to shipowners and their agents, the deposits fell to £66,000 in the banks and £38,900 in the coffers in February. In May, the deposits in the banks had risen to over £120,000, and in July to £188,000, the money in the coffers remaining at £38,900. In August the deposits in the banks increased to £248,000, and in October they reached the maximum at £281,000. On the government deposits, the banks paid at first 2½ per cent. and afterwards 4 per cent. In the beginning of the year 1841, the government withdrew the large deposits and made special deposits of £15,000 at 7 per cent. in each of eight banks then trading. In August, 1841, it was necessary to reduce these special deposits to £8,000 each to meet current expenses, and, before the end of the year, these special deposits were cancelled also. The total effect of these operations was that the government, between November, 1840, and November, 1841, withdrew £260,000 from the banks to finance the expenditure on immigration.

The accumulation of these large amounts of government deposits bearing interest forced the banks to discount liberally, and the freedom of discount caused an increase of over-speculation. The large withdrawals by government in the twelve months preceding November, 1841, forced the banks to reduce their discounts rapidly. To show the effect of this, the strength of the collective banks must be realised. In 1843, the total liabilities
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of the banks to the public amounted to £1,076,319, and the total assets £2,718,507. Of the deposits (£853,593), fully two-thirds (£569,062) formed the current accounts of customers who were also discounters, and the banks held a set-off in current bills. At the same time, the banks held £380,066 in coin. If the coin and two-thirds of the deposits be deducted from the general totals, it is evident that there were general assets of £1,769,379 to meet liabilities of £127,191. It is evident also that the trading position of the banks collectively was very strong. The position of the banks from the shareholders' position is also of interest. Public opinion is shown by the value of the shares on the open market. In October, 1843, these values were as follows:—Bank of New South Wales and bank of Australia, sixty per cent. discount on the amount of the instalments paid on the shares; Commercial banking company of Sydney, forty per cent. discount; bank of Australasia and Union bank, par; Sydney banking company, fifty per cent. discount; Port Phillip bank, not quoted.

As has been noted, the effect of the banks accepting large deposits at interest from the government was to force the banks to increase their discounts. A proportion of the proceeds of the bills discounted was invested in the purchase of land and paid to the colonial treasury, which redeposited the money in the banks; and it again became available for further discounts. A vicious circle was thus established, which assisted considerably the mania for over-speculation in land. This mania continued until the government were compelled to withdraw large sums to finance immigration, and the banks were forced to reduce their discounts.

The colonial banks at this period issued notes of various denominations, which formed the staple currency of the colony whilst little gold was available. During the first half of the year, 1838, the value of bank notes in circulation was £117,300 16s. 2d. During the succeeding quarterly periods, there was a progressive increase until the value reached a maximum of £228,802 1s. 8d. in the first quarter of the year 1841. There was then a rapid progressive decrease until, on the 30th of September, 1843, the value of the bank notes in circulation was only £155,626. There was thus a decrease of twenty-nine per cent. in the value of bank notes in circulation during the short period of two and a quarter years. It must, however, be remembered that the fluctuations in the note issues were not due to any concerted action by the banks, and
directly corresponded with and were therefore indicative of the rise and fall of the retail trade in the colony. If any bank had inflated its note issue beyond the legitimate demands of trade, the over-issue would have been returned in one week by other trading banks, and payment would have been required in specie at their weekly settlements on Monday.

At the beginning of this period, in addition to bank notes, the principal circulating medium in country districts was the "orders" of individuals in payment for goods, wages, services, etc., which passed from hand to hand as currency. When the banks limited their discounts and the accommodation granted to the public, there was a general loss of private credit, and these "orders" practically disappeared from circulation. This change, associated with the decrease of the bank note issues, resulted in many districts being deprived entirely of all currency.

Financial readjustments were also necessary owing to the abolition of the transportation of convicts. The maintenance of convicts in the colony had caused the expenditure of large sums of money by the English treasury. The expenditure was financed by bills drawn in the colony by the commissariat department. These bills were sold to merchants, banks and others, and had formed a principal means of remitting money from the colony. This governmental expenditure on convicts was equal to and served in lieu of an article of export. With its abolition, the colony was forced to seek a substitute from its own resources.

Notwithstanding the large withdrawals from the banks in 1841, the colonial treasury was forced at the beginning of the year 1842 to raise money by debentures at 8 per cent. This issue was unpopular with the banks. The Commercial bank was the first to assist the government, and accepted debentures to the value of £16,000. Subsequently the other banks accepted collectively £50,000, the Union bank paying only £98 per cent. These debentures had a currency of twelve months; but, on due dates, the government was unable to meet them, and, by arrangement with the banks, the debentures were extended for a further period of twelve months.

There were additional contributory factors to the monetary confusion in the fall of the two staple colonial products—wool
and oil—in the world's markets, and the results of a drought in the colony.

The price of wool fell one-half, and the interest on English capital borrowed and invested in grazing was as the result paid largely from capital.

The drought, which prevailed in the colony during the years 1837-1842, caused the failure of the harvests. Large importations of grain were necessary. It was estimated that one-third of the wheat and flour consumed in the colony was imported in the years 1839 to 1842. The declared value of these was £820,000, but an expert estimated the actual cost at £1,600,000. This caused a direct cash loss of £400,000 a year to the colony for the four years.

When the position reached a crisis in the year 1843, the total amount of bills discounted was £2,340,000, bearing interest at 10 per cent. At this time, it was estimated that the private wealth per head for an estimated population of 150,000 persons was £125, or a total of £18,750,000; but the smaller capitalists or "middle class" held the greater proportion of ready money.

As the direct and indirect result of the monetary confusion there were many failures of public companies, the principal with the estimated respective losses to shareholders being the following:—General steam navigation company, £50,000; Sydney auction company, £57,000; Hunter river auction company, £20,000; bank of Australia, £300,000.

The general results of all these factors were that many persons of great reputed wealth were reduced to a condition of financial embarrassment; many became insolvent either from their own imprudent speculations or from the bankruptcy of others; as discounts had been granted most freely to the large capitalists, over-speculation had been greatest in that class, and accordingly the smaller capitalists became the most solvent class; and finally there was a general abolition of all confidence and credit, and the community became one of sellers and no buyers.

In August, 1843, a committee of the legislative council was appointed to consider "the means of staying the further evil consequences to be apprehended from the monetary confusion, lately and still prevalent in the colony." The evidence of experts was
taken by this committee. These experts deprecated any legislative interference, and held the opinion that no artificial remedy was of any value. They considered that the monetary confusion was due to an excessive disproportion between the profits of money and the profits of industry, and to the decrease of the latter without a corresponding decrease of the former. The principal remedy proposed was a voluntary reduction by the banks and mortgagees of the rate of interest from 10 to 6 or 7 per cent. Stress was laid also on the necessity for "more mouths" and "more markets"; for the reduction of expenditure to the lowest practical level; for the abolition of the lavish system of credit; and for the reduction of imports to a reasonable value which the colony could easily pay. It was also suggested that a producer was entitled to the benefit of a protective duty sufficient to meet taxation, but not to compete with the natural advantages of other countries.

Notwithstanding expert opinion, the committee recommended legislation for the introduction of the Prussian system of pfandbriefes or pledge certificates. This system was as follows:—"a landed proprietor wishing to raise money upon his property applies to a Land-board, which values it and agrees to lend him the credit of the State for one-half the valuation." The proprietor was then given one or more pfandbriefes or pledge certificates with half-yearly interest coupons attached. The interest on these certificates was fixed at a lower rate than the interest paid by the proprietor to the land board, and the difference was used by the land board as a sinking fund for the redemption of the certificate and the ultimate release of the proprietor.

The committee also recommended the issue of "land-board notes" to a limited extent in lieu of pledge certificates. It was proposed that these notes should be legal tender and convertible into coin on demand at the treasury; that half of all payments to government, except for the purchase of land, should be made in these notes; and that the total issue of these notes should be limited to half (viz., £200,000) of the estimated annual revenue of the colony.

On the 7th of November, 1843, a "Bill to restore public confidence and to provide for and regulate the issuing and lending of Land-board notes and pledge Certificates, and for other purposes therein contained," was introduced by the chairman of the
committee, R. Windeyer, and read a first time in the legislative council. The bill was strongly opposed within the council by the official members principally, and without the council by a large section of the press and the public. It was considered that the bill was in direct opposition to the expert evidence given to the committee, and that it was an attempt to pledge the credit of the community in favour only of a section. On the 6th of December, it was proposed in council that the "Bill be read a third time this day six months." This motion was negatived by eleven votes to nine, and the third reading was passed on a similar division. The majority consisted of the unofficial members of council, who were settlers and merchants. On the 12th of December, the council was informed that Sir George Gipps had withheld Her Majesty's assent from the bill.

Further legislation on finance was unsuccessfully proposed. On the 25th of August, 1843, W. C. Wentworth introduced into the legislative council "A Bill to regulate the Interest on Money, and for other purposes therein mentioned." On the 20th of September, the Revd. J. D. Lang presented a petition in support from certain colonists to the council "praying the council to pass a Law, restraining the rate of interest to a fair and reasonable amount." On the following day, however, on the bill introduced by W. C. Wentworth, the council, by twenty-one votes to twelve, carried an amendment "That the Bill be read a second time this day six months." The proposal for legislative interference with the rate of interest was thus shelved.

An act of council was, however, passed, which contributed largely towards the relief of the graziers; and the principle, then initiated, has had an important and beneficial influence on the development of the grazing industry to the present day. This was the act of council, 7 Vict., No. 3, entitled "An Act to give a preferable Lien on Wool from season to season, and to make Mortgages of Sheep, Cattle and Horses valid without delivery to the Mortgagee." It was introduced into the legislative council on the 10th of August, 1843, by W. C. Wentworth for the express purpose of increasing the credit and affording relief to owners of live stock. It was passed on the 15th of September, 1843. The principle was elaborated by a subsequent act of council, 9 Vict., No. 30, passed on the 8th of November, 1845.
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Whilst these various proposals for the relief of the monetary confusion were under consideration, a proposal for the establishment of a "national bank" was brought forward. It was suggested that a "Colonial National bank" should be established founded entirely on "government securities." This bank was to be managed by a board of commissioners. It was to be a bank of issue and deposit, and was to be prohibited from discounting. Notes of the value of £1 and upwards, payable on demand in silver coin, were to be issued, and the private banks were to be prohibited from the issue of any notes. It was contended that no private bank should have any power to create or to regulate a currency, and that the profits derivable from a circulating currency were rightly the profits of the community. A petition from certain residents in the district of Hunter river was presented to the legislative council on the 8th of November, 1843, in favour of such a bank. The proposition, however, never became the subject of practical politics.

The issue of government notes by the colonial treasury was also suggested in the press, but without practical result.

The financial restoration of the colony was thus left to natural evolution in the hands of private financiers. An important step was taken by the Commercial banking company of Sydney and the Union bank. From the 1st of October, 1843, these banks reduced the interest on one hundred day bills to six per cent., and on bills over one hundred days to eight per cent. At the same time, the same banks fixed the interest on the lowest daily balance in each month to the credit of current accounts at two per cent., and on deposits, subject to three months' notice of withdrawal, at three per cent. The bank of Australasia also strengthened its position by making a further call on the shares.

Great relief was obtained by graziers by the introduction of the practice of boiling down. This practice was introduced in 1843 by Henry O'Brien, a settler in the southern districts. It was found that, by boiling down a full-grown sheep, the value of the products in tallow, hides, mutton hams, etc., was fourteen shillings. The effect of this discovery was that sheep, formerly unsaleable, soon acquired a value from five to eight shillings per head.

If the community is regarded as divided into three classes, wage earners, small capitalists, and large capitalists, it will be noted
that this period of monetary confusion affected each class in different ways. By their superior opportunities of discounting bills, the large capitalists indulged in most over-speculation, and, when property and live stock became virtually unsaleable, were most embarrassed financially. The small capitalists collectively held the greater amount of ready money, and, when properties were sacrificed, were able to purchase them. With the restoration of credit and reasonable values, the purchaser became one of the class of large capitalists and the former owner one of the small capitalists. The large capitalists were the largest employers of labour; when they became embarrassed financially they were compelled to reduce their establishments and speculations, and large numbers of labourers, artisans and mechanics became unemployed. An era of self-protection amongst all classes developed, and gave rise to associations for mutual protection. This change was due to the readjustment of social and economic conditions, some of which have still to be noted as the changes developed.

In the year 1839, the "Australian Society of Compositors" was an active body and was governed by a "trade council." This society proposed a strike to raise the wages of compositors to a level with those of other mechanics, but the proposal was abandoned because sufficient strength could not be mustered. In March, 1839, the trade council of this society addressed a letter to the compositors of Great Britain, in which it was alleged that great misrepresentations had been made as to the prospects of wages and employment in the colony, and that these misrepresentations were due to a desire of the master printers to create a surplus of labour and thereby to enable them to dictate their own terms of employment.

On the 14th of July, 1840, "A Bill to amend an Act, intituled, 'An Act for the better regulation of Servants, Labourers and Work people'" was introduced, and read a first time in the legislative council, and referred to a sub-committee for report. The former act, 9 Geo. IV, No. 9, had been passed on the 17th of July, 1828, and provided: (1) that servants neglecting or refusing to work, or absenting themselves from work, might be brought before a magistrate, and, on conviction, be sentenced to six months in the common gaol, or to three months in the house of correction; (2) that persons, employing servants previously retained, might be fined not more than £20 nor less than £5; (3) that servants,
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spoiling, destroying or losing the property of employers, should pay double the value of the property, or be committed to gaol for one to six months; and (4) that, on proof of ill-usage by an employer, a magistrate might cancel the agreement and order the payment of six months' wages to the servant. The new bill was proposed by the police committee of the legislative council, because of the defects in the act, 9 Geo. IV, No. 9, "that no engagement except for time is cognizable under that Act; and, secondly, that it is necessary, in order to bring a case under its jurisdiction, that the servant should be employed upon a farm or estate, which in effect excludes more than half the Colony from its operation, as no hired labourer at a stock station, or employed beyond the boundaries of location,* can now be rendered amenable for any breach of agreement or misconduct." The sub-committee presented its report on the 8th of September, and, owing to the necessity for the association of convicted servants with ordinary convicts, recommended that female servants should be exempted from imprisonment. The sub-committee also proposed that a bill should be introduced "for adopting the Laws in force in England for the prevention of illegal combinations."

When published, the bill was opposed strongly in the press and by the working-classes. It was stated in the press that the bill was "very odious and dangerous" and affected "the personal liberty of the subject." A meeting of protest by the working-classes was held at the Sydney Mechanics' school of arts on the 28th of September, 1840. An "operative" named McBeath occupied the chair, and, in reporting the meeting, the press stated that, "notwithstanding the crowded and miscellaneous character of the assemblage, it appears to have been conducted with decency throughout, if we except a little tumultuous excitement in gaining places at the commencement." Six resolutions were carried to the effect: (1) that the bill was an attempt to reintroduce an obsolete act; (2) that, while admitting "the necessity of some enactment for the protection of employers against dishonest workmen," the provision for fines and imprisonment was objectionable; (3) that the meeting was not averse to immigration; (4) "that it is a cause of the deepest regret to observe among the higher classes of society in this colony a disposition to deny" to the humbler classes common justice; (5) that the attempt to pass the bill justified the demand for a representative assembly; and (6)

* See page xix.
that the chief justice be requested to present a petition to the legislative council.

On the 29th of September, the chief justice presented to council the petition, signed by two thousand eight hundred and fifty-six mechanics and other operatives of Sydney, "purporting that, although the Petitioners admit that the existing Act for the Regulation of Servants, Labourers and Work People is unsuited to the present state of the Colony, they are apprehensive that, if the Bill now before the Council to amend that Act be passed into a law in its present form, some of its provisions will be found too harsh and stringent and will operate partially; particularly that Employers will have it in their power to oppress and defraud their Workmen on undefined charges of ill-behaviour or misdemeanor, while no protection is afforded to Workmen against unjustifiable insolence and provocation on the part of the Employer; that it appears unjust to punish Servants by pecuniary fines, and also by imprisonment; that the oath of one interested individual should not be deemed sufficient proof for the conviction of a free British subject; that greater powers are conferred on Justices of the Peace than they ought to possess, inasmuch as many of them are not only incompetent to decide on the value of labour, but, for the most part, they are themselves Employers of Labourers, and must necessarily, even if unconsciously, be biassed in their feelings; that the effect of the proposed Bill will, in the opinion of the Petitioners, certainly be to deter Operatives from emigrating to this Colony; they pray that such a law may be passed as will afford equal protection and security both to Masters and Servants." The petition was informal, as no signatures were on the same sheet of parchment as the petition itself; but the council overlooked the informality on account of "the rank in life of the Petitioners, and their probable ignorance of the practice in such cases."

When the bill was debated in council, the chief justice and attorney-general stated that the subject was one of great difficulty, and the chief justice objected to the principle of placing a man, guilty of breach of contract, on the same footing as a criminal.

As the result of criticism, the bill was amended, and passed on the 20th of October, 1840, as the act, 4 Vict., No. 23, entitled, "An Act to ensure the fulfilment of Engagements and to provide for the adjustment of Disputes between Masters and Servants in
New South Wales and its Dependencies." By this act, the act, 9 Geo. IV, No. 9, was repealed, but sections two and three quoted above were re-enacted. It also provided that artificers, manufacturers, journeymen, workmen, shepherds, labourers or other servants refusing to work, etc., or to complete piecework, might be sentenced by two or more magistrates to forfeiture of wages, and to the payment of twice the amount of damages sustained by the employer, or in default thereof to imprisonment for three months in the common gaol; that persons, hiring themselves, etc., and receiving wages in advance, and then refusing to complete their agreement, might be sentenced to the common gaol or to hard labour in the house of correction for three months; and that no female servant should be committed to any gaol or house of correction.

This act was amended by the act of council, 9 Vict., No. 27, passed on the 12th of November, 1845. The principal amendments were to provide for breach of contract by artificers, shearsers, harvesters, sheep-washers, etc.; for the recovery of wages; for certificates of discharge for servants for production prior to re-employment; and for the assessment of damages for ill-usage of servants.

When the condition of monetary confusion became acute in 1843, the number of unemployed in Sydney was much increased, and there was considerable discontent. Meetings of unemployed were held on the racecourse (now Hyde park) and the government was urged to grant employment on public works at any rate of wages, which would ensure a bare subsistence. On the 5th of September, 1843, the Australian mutual protection association was formed "to endeavour to obtain the amelioration of the condition of the working-classes," to secure "the return of fit and proper persons to represent them in the City and Legislative Councils," and to encourage "manufactures," etc. Thus the first political labour league was formed. The entrance fee for members was one shilling, and the subscription one penny per week. Within two months, four hundred and thirty-nine members were enrolled, "besides a considerable number who are paying the entrance money of 1s. by instalments." General meetings were held once a week; the association was controlled by a committee, who also met once a week, with power to call special meetings. The membership was not confined to employees, but included a
number of employers of labour. Six members of the city council were amongst the first members. The first funds collected were expended in printing the rules, in calling public meetings, and in preparing petitions to the legislative council.

The Revd. J. D. Lang presented to council on the 26th of September, 1843, a petition from the association, “praying the Council to devise some means of immediate and permanent relief for the unemployed Artizans now in Sydney,” and, on the 1st of November, a petition from upwards of four thousand residents of Sydney with the same object. This second petition was referred to a sub-committee for report. After taking evidence, the sub-committee reported that there were twelve hundred and forty-three unemployed mechanics or labourers in Sydney, of whom eight hundred and four had wives with seventeen hundred and one children dependent on them; that these unemployed had been created entirely by causes due to the monetary confusion; and that the concentration of the unemployed in Sydney was due (1) to the extraordinary demand for mechanics and labourers for the expansion of the city during years of imaginary prosperity; (2) to the excessive introduction of mechanics instead of agricultural labourers as immigrants; and (3) to the number who were unable to accept employment in the country owing to their families. The sub-committee were of opinion, “that there is no foundation for the idea that prevails in certain quarters, viz., that a considerable portion of the unemployed in Sydney consists of persons, who have been attracted to the city from the interior by the allurements of a town life; neither have they any reason to credit the statement that the unemployed are, in almost every instance, standing out for higher wages; and it is simply a want of employment at any wages that constitutes their present calamity.” The sub-committee further stated that the distress would have been much greater except for “the extraordinary and unprecedented cheapness of the necessaries of life” at the time. This cheapness was probably due to the natural effects of monetary confusion forcing quick realisations by the traders. As measures of relief the sub-committee induced the benevolent society to attend to the most urgent cases, “in the hope that any extraordinary disbursement for such unforeseen emergency would hereafter be taken into favourable consideration by the Legislature.” It also secured the appropriation by the council of the sum of £500 for the
conveyance of unemployed of the class of mere labourers to the interior, where employment was available, and recommended the additional appropriation of a similar sum for a similar purpose. The sub-committee also urged the executive immediately to undertake the public works, which had been authorized by the council, and to secure the co-operation of the city corporation of Sydney in devising means of further employment.

In the petition referred to the sub-committee, it had also been proposed that all convicts, whether under assignment to private individuals or employed on public works, should be removed from Sydney in order to provide employment for free labour. With regard to the first class of convicts, the sub-committee considered that it would "neither be expedient nor humane to exercise such a power"; and, with regard to the second class, that the petitioners were mistaken as to the prospects of employment to be obtained thereby, for the convicts were employed on public works, which would not be undertaken except by convict labour.

The report of the sub-committee was adopted by the legislative council on the 29th of November, and forwarded to the governor with a request that he give instructions for carrying into effect the recommendations. In January, 1844, a public meeting, presided over by the mayor of Sydney, carried resolutions approving of the recommendations.

As the result of these proposals, the distress was gradually alleviated.

At the beginning of this period, the problem of the squatters was unsatisfactory, and some readjustment was urgently required.

As the flocks and herds of the colony increased, their owners found that there was insufficient pasturage in the settled districts, which were confined to nineteen settled counties. The lands outside these counties were described as beyond the boundaries of location. The practice then arose amongst the owners of sending flocks and herds beyond these boundaries for grazing purposes. Wherever any good grazing land was found unoccupied, a small hut was erected and the flocks and herds grazed in the neighbourhood. The area occupied was known as a station, and the owner as a squatter. These stations soon extended for hundreds of miles beyond the boundaries of location; and at first, being subject to
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no supervision or regulation, considerable lawlessness prevailed. A system was then established whereby occupation licenses were granted for one year, subject to a fee of £10. These licenses entitled a grazier to occupy any unoccupied land for the term of the license. They were renewed annually, but the renewal was at the discretion of the authorities; and therefore there was an insecurity of tenure for the squatters. On the 22nd of March, 1839, an act of council, 2 Vict., No. 27, was passed to regulate the occupation of crown lands and to provide means for defraying the expense of a border police to maintain order beyond the boundaries of location.

The insecurity of tenure was a constant source of anxiety to the squatters, especially when financially embarrassed during the monetary confusion, and various proposals were made to overcome the difficulty. In 1842, the bishop of Australia proposed that the purchase of land by a squatter should entitle him to the lease of a certain area; if the land was purchased at the minimum price of twelve shillings per acre, he proposed that the lease should be of ten times the quantity purchased, for a term of sixteen years; if purchased at twenty shillings per acre, of sixteen times the quantity purchased for a term of sixteen years.

With the development of financial stringency, active agitation was commenced in 1842 by the squatters on the question of tenure. The immediate cause was the refusal to renew a license for William Lee in the western district on the ground that he had ceased to occupy his station. The facts were as follows:—During the absence of Lee, his men were forced to leave his station on account of the drought and attacks by aborigines. Lee asked for an inquiry in order to prove that the removal of his stock was only temporary and unavoidable. Although supported by eight magistrates, Lee's request was refused and his license cancelled. In August, 1842, a meeting of graziers was held at Bathurst to prepare a petition, which was presented to the legislative council on the 18th of August. The petitioners stated that the insecurity of tenure caused a depreciation in the value of live stock, drew attention to the injustice of the official decision on the license to W. Lee, and prayed the amendment of the act, 2 Vict., No. 27, in order that the tenure of crown lands might be placed on a more secure footing.
INTRODUCTION.

No action was taken; but the system of occupation or depasturing licenses became more confused. Under the system, no limit was placed on the area occupied in one district or adjacent districts under one license. This caused serious anomaly; e.g., the three largest squatters held collectively 305,920 acres under three licenses, amounting to £30 annually, which was equivalent to a rental of one shilling for 510 acres; whilst the three smallest squatters held collectively 13,440 acres for the same fees, equivalent to a rental of one shilling for 22 acres.

Sir George Gipps determined to reorganise the system, and, on the 2nd of April, 1844, issued new regulations. By these regulations, on and after the 1st of July, 1845, a separate license of £10 annually was required for each station; a station was limited in area to twenty square miles, unless the commissioner considered more was required with reference to the quantity of stock and its increase, when a second license was to be granted if the interests of the public permitted; every area at a greater distance than seven miles from one station was to be regarded as a separate station and required a separate license; and no one license would cover a station capable of depasturing more than five hundred head of cattle and seven thousand sheep.

When these regulations were published, there was an immediate protest by the squatters throughout the colony. On the 9th of April, 1844, a meeting of stockholders was held at the Royal hotel, Sydney, with Dr. William Bland in the chair. Seven resolutions were carried, and amongst the movers and seconders were W. C. Wentworth, Benjamin Boyd, John Blaxland, Thomas Walker, Charles Nicholson, George Macleay and William Lawson. The most vital resolution was: "That the system of granting licenses for so limited a period as twelve months is highly objectionable; that, in addition to the evil arising from so short a term, its injurious consequences are aggravated by the right of occupancy being uncertain, and rendered liable to change at the will or caprice of the Executive Government, either by alteration in the regulation of the stations, or by increase in the charge for occupation. That, consequently, this uncertainty of right of occupancy of Crown lands has a ruinous tendency upon the most valuable property in the Colony, has a very demoralizing effect on the entire community, and must continue so, until a fixity of tenure is granted to the occupier." Other resolutions were passed to identify the
INTRODUCTION.

commercial and trading classes of the community with pastoral interests; to authorise the preparation of petitions to H.M. the Queen, the British parliament, the governor and the legislative council, and to appoint a committee.

By the fifth resolution, “The Pastoral Association of New South Wales” was formed “to secure a due protection to the pastoral interests of this Colony.” The annual subscription of members was fixed at £1 to defray the expenses of the association.

During April, May and June, similar meetings of protest were held at Scone, Goulburn, Penrith, Mudgee, Camden, Singleton and Melbourne.

In a despatch dated 3rd April, 1844, Sir George Gipps proposed additional regulations for the approval of the secretary of state. These regulations incorporated the principles proposed by the bishop of Australia in 1842. It was proposed that every squatter, after an occupancy of five years, should have the chance of purchasing three hundred and twenty acres of his run for a homestead. The land was to be purchased at a minimum of £1 per acre, but the squatter was to be allowed the value of his improvements. On the purchase of a homestead area, the balance of the run was to be leased for a fixed term of eight years at £10. A second or successive purchases of homestead areas would entitle the squatter to a second or successive renewals of the lease for eight years. All sales of homestead areas were to be by auction, and the purchaser was entitled to the lease of the rest of the run. Some adjustments of the license fees in proportion to the stock depastured were also proposed. The crown also maintained the absolute right of pre-emption.

In some way, these proposals of Sir George Gipps were disclosed and were published in the Sydney Morning Herald on the 13th of May, 1844. On the 16th of May, the Pastoral association, to which Benjamin Boyd had been elected chairman, issued a strong protest. The principal objections were an alleged additional insecurity of tenure, and the subjection of the renewal of the lease to the virtual payment of a premium in the purchase of the homestead area, the amount of the premium depending on the competition in the auction room.

Nineteen petitions from various districts, containing six thousand, five hundred signatures, were presented to the legislative council in protest against the regulations of the 2nd of April, 1844.
INTRODUCTION.

On the 30th of May, 1844, a select committee was appointed by the legislative council to inquire into land grievances, and this committee presented its report on the 20th of August. The report was strongly in favour of the squatters and recommended the repeal of the regulations of the 2nd of April, and of the act of council, 2 Vict., No. 27, which had been renewed in 1841 by the act of council, 5 Vict., No. 1, and proposed the establishment of some form of security of tenure of crown lands. The committee also requested that the future management of crown lands should be vested in the governor and legislative council.

The report was adopted by the council, and addresses to H.M. the Queen and to the British parliament embodying the recommendations were adopted on the 19th of December. The reply to the address to H.M. the Queen was announced in the council on the 15th of May, 1846, to the effect that "Her Majesty did not think it necessary or advisable to state the course which she might be advised to pursue."

In this struggle between Sir George Gipps and the squatters, Sir George Gipps was undoubtedly correct in initiating regularity in the squatting system. In a despatch to the secretary of state, he stated, however, that he wished the regulations had been initiated in England and not left at his discretion. At the time he proposed the change, many of the squatters were financially embarrassed and the value of live stock was low. The condition of monetary confusion thus largely contributed to the organised opposition to necessary reforms. The reforms, however, were not completed during the administration of Sir George Gipps.

The final episode in the struggle took place in the council. On the 3rd of June, 1846, on the initiative of Sir George Gipps, a bill to continue for one year the act of council, 5 Vict., No. 1, expiring on the 30th of June, was introduced. The council thereupon refused to consider the bill and adopted an address to the governor repeating the former grievances. In reply, Sir George Gipps stated that the address required no reply nor did he intend to give any, at the same time disclaiming all responsibility for the possible results. The council then declined to transact further business until the new governor arrived, and adjourned its sittings until the 21st of July. Though adjourning, the council could continue
some of its business through the committees it had appointed. In order to counter this move, Sir George Gipps issued a proclamation proroguing the council until the 25th of August.

It will be noted that, during the administration of Sir George Gipps, the evils caused by an abundant public revenue and the expenditure of large sums of money by government were demonstrated. It created a fictitious prosperity in the colony, associated with great personal extravagance and the unnecessary overgrowth of the capital city. It was followed by monetary confusion, associated with financial embarrassment of the capitalistic class and unemployment of the labouring class. It indirectly caused the first organisations of capital and labour for self-protection, with the usual fallacious reasonings on each side.

_February, 1924._

FREDK. WATSON.
DESPATCHES
HISTORICAL RECORDS
OF
AUSTRALIA.

SERIES I.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 24, per ship Hope; acknowledged by
marquess of Normanby, 12th August, 1839.)

My Lord,

Government House, 1st February, 1839.

I think it right to acquaint your Lordship that four Emigrants with families, as marked in the margin,* who lately arrived in this Colony by the Emigrant Ship "Charles Kerr" from Limerick, have complained that they left Ireland in the expectation of being conveyed to South Australia; and that they were induced to embark by the representations of Colonel Wyndham, who is, I believe, a Proprietor in the County of Clare and also in South Australia.

I enclose copies of the statements, which have been made by these four men to the Agent for Immigration, in order that such enquiries may be instituted respecting them as your Lordship may deem proper.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

STATEMENTS of certain Emigrants by the Charles Kerr, who left Ireland under the expectation of being conveyed to South Australia, and not to New South Wales.

JAMES THOMSON, Aged 34, Wife and four Children, is a Native of Mount Shannon, and rented one Acre of Land of Colonel Wyndham, on Lissafin, County of Clare; States that he waited on the Colonel at his Office in George Street, Limerick, to know whether or not his Lease, which was expired, would be renewed; That the Colonel, instead of giving him a decisive answer, strongly persuaded him to go to South Australia, and promised on his word of honor to settle him comfortably there; until then Thompson had never heard of

* Marginal note.—Mr. Smith, Wife and 2 Children; Jas. Thompson, Wife and 4 Children; Patk. Gaynor, Wife, and 4 Children; Jas. Shaughnessy, Wife, and 1 Child.
1839.
1 Feb.

Statements by four immigrants ex ship Charles Kerr.

that part of the Country; but, on the Colonel's advice, and also on
his promise to provide him with a free passage and to settle him
comfortably there, he consented to withdraw his claim for a renewal
of the Lease and to go there. All the arrangements for his passage
were made by the Colonel or his Agent with the Immigration Agent
at Limerick. Dr. Hall went at the Colonel's request to Ennis to
examine himself and family, the result of which was their being
passed for a free passage. Thomson most distinctly states that, at
the time of his examination, the impression that he was about to
be sent to South Australia was continued; and he clearly under­
stood that, although he was to come to Sydney first in the "Charles
Kerr," it was only to be en route; and that he was to be sent on
from hence to South Australia, and provided for at the Colonel's
expense. On passage out, a rumour existed on board that part of
the Immigrants were bound for South Australia; on hearing which,
Dr. Smith immediately contradicted the Report. On that, Thom­
son waited on the Doctor to explain the way in which he had been
induced to emigrate, and requested to be informed whether or not
he had Letters from the Colonel to any one here to arrange for his
being forwarded from hence to his presupposed destination. On
being assured to the contrary, he still fancied that such directions
must have preceded him; and it was only on his arrival here, and
ascertaining the great distance between the two Colonies, that he
discovered the fallacy of his expectations, and how completely he
had been deceived.

PATRICK GAYNOR, Aged 33 years, Wife and 4 Children. Held a
House and one eighth of an Acre of Land from Colonel Wyndham
at Lissafin. On the Colonel's visit to Limerick, he gave all his
Tenants a Dinner, and told them he would send any who chose,
free of cost, to America. They refused to go to that Country, on
which he said he would send them to South Australia. The fol­
lowing day Gaynor's Wife waited on the Colonel, who asked her
several questions, and ended by saying he would clothe them all,
and send them to his Sister, Mrs. Gawlor, at South Australia, where
they would be provided for for life. The remainder of this Man's
Story is the same as the other. He was allowed a Passage in the
"Charles Kerr" to Sydney, expecting to be sent on from hence.

WILLIAM SMITH, Aged 23 years, Wife and 2 Children, Held Three
quarters of an Acre from the Colonel at Lissafin for 1½ year, on
which he built a House. On the expiration of the Lease, he sent for
Smith, told him he would take him out of poverty, and settle him
on his property at South Australia. He had no idea of emigrating
until the Colonel's offer, which he was induced to accept, and now
finds himself deceived like the others.

JOHN SHAUGHNESSEY, Wife and one Child, Leased one Acre of
Land from Colonel Wyndham at Lissafin; applied to the Colonel
for the purpose of being sent to South Australia to his property.
Colonel was not at home, but his Manager promised to speak to him
on the subject. A short time after he received a Letter to attend
at Ennis for examination. Colonel Wyndham's Agent at Ennis paid
him £1 and gave him some clothes, and like the others he was all
along under the impression that he was going to the Colonel's
property in South Australia. J. DENHAM PINNOCK,
Agent for Immigration.

Immigration Office, Sydney, 10th Jany., 1839.
GLENELG TO GIPPS.

LORD GLENELG TO SIR GEORGE GIPPS.
(Despatch No. 22, per ship Fergusson.)

Sir,
Downing Street, 4th February, 1839.

Referring to my Despatch, No. 169, of the 31st of July last, in which I acquainted you that I should select two gentlemen to proceed from this Country to fill the office of Police Magistrate at New South Wales, and to my despatch, No. 213 of the 24th of September, notifying the appointment of Mr. Fenwick, I have now to acquaint you that I have selected Mr. Hugh Grant, who will shortly proceed to the colony to fill the second appointment referred to.

I have, &c.,
GLENELG.

LORD GLENELG TO SIR GEORGE GIPPS.
(Despatch No. 23, per ship Fergusson.)

Sir,
Downing Street, 8 February, 1839.

I transmit to you herewith, for your information and guidance, a copy of a letter from Mr. La Trobe on the subject of his passage from Sydney to Port Phillip, together with a copy of the reply which has by my direction been returned to that communication.

I have, &c.,
GLENELG.

[Enclosure No. 1.]

MR. C. J. LA TROBE TO SIR GEORGE GREY.

Sir,
7 Sackville Street, 25th January, 1839.

Subsequent to my last interview with you, I have become convinced that, notwithstanding the offers made to me on the part of Mercantile Men to convey me to Port Phillip direct, it is far more advisable for me, as far as the discharge of my Public Duty is concerned, to proceed to Sydney at once and in the first instance; and that, to this all private considerations must yield. I have accordingly secured my passage to Sydney on board a Vessel (The Fergusson), which will Sail in all probability before the close of the first Week in March. In reference to my further passage from Sydney to Port Phillip, I am anxious through you, Sir, if there is no impropriety in so doing, to present the request, etc., to Lord Glenelg, that a recommendation might be forwarded to Sir George Gipps suggesting, in case it can be done without inconvenience to the Public Service in the Colony, that I might be assisted in proceeding by the use of one of the small Government vessels under his Control. I presume to lay claim to this indulgence from the assurance that, apart from additional personal and Family Expenses, those otherwise incident to the conveyance of the heavy
HISTORICAL RECORDS OF AUSTRALIA.

1839. 8 Feb.

Freight, which the infant state of the Colony of Port Phillip con­
strains me to carry with me from England, and which includes
My future dwelling, will be inconveniently great.
I have, &c.,

CHARLES JOSH. LA TROBE.

[Sir George Grey to Mr. C. J. La Trobe.

Downing Street, 8th Feb'y., 1839.

Having laid before Lord Glenelg your Letter of the 25th
Ultimo, I am directed to acquaint you, in reply, that His Lordship
would not feel justified in issuing any instructions to the Governor
of New South Wales, which would have the effect of involving
a further charge on the Public than that which has been already
sanctioned by the Lords of the Treasury on account of your Passage
to Port Phillip; but that a Copy of your Application will be sent to
Governor Sir George Gipps with a view to his affording you any
assistance, in proceeding from Sydney to Port Phillip, which can be
rendered without expense or inconvenience to the Public.
I have, &c.,

GEO. GREY.

[Sir George Gipps to Lord Glenelg.

Government House, 12th Feby., 1839.

I have the honor to submit herewith to your Lordship a
copy of a letter, which I have received from Major Barney, the
Colonial Engineer, requesting that a supply of Two thousand
yards of Iron Railway may be sent out from England to facilitate
the execution of the Public Works, with which he stands charged;
and I beg leave very strongly to recommend to your Lordship
a compliance with this request.

A large number of Convicts are employed in different parts of
New South Wales in quarrying Stone, removing earth, and other
very laborious occupations, in which temporary railroads are
GIPPS TO GLENELG.

universally used in England; and the same degree of benefit would beyond any doubt be derived from their introduction into New South Wales.

I would take the liberty of suggesting that the Railway should be purchased by Mr. Barnard, and sent out as far as possible in Emigrant Ships.

I have, &c.,
GEO. GIPPS.

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

SIR GEORGE GIPPS TO LORD GLENELG.
(Despatch No. 28 per ship Hope; acknowledged by marquess of Normanby, 18th July, 1839.)

My Lord,
Government House, 15th Feb., 1839.

With reference to your Lordship's Despatch of the 6th Augt., 1838, No. 174, authorising me to offer the appointment of Clerk of the Crown at Port Phillip to Mr. Ryan Brenan, and to the subsequent Despatch of the 25th Augt., No. 187, by which that authority is annulled by the confirmation of Mr. Brenan in another appointment, I beg leave to report to your Lordship that, a few days previous to the receipt of the former of those Despatches, I had appointed Mr. Henry Nelson Carrington to the situation of Clerk of the Bench and Clerk of the Peace at Port Phillip at a salary of £200 a year, with leave to practise privately as a Conveyancer, but not as an Attorney, in any Court that may be established at Port Phillip.

Mr. Carrington has, I have little doubt, accepted the appointment at this low rate of salary merely as a means of introducing himself to the knowledge of the Public, and will probably not continue to hold it long without demanding an increase in his salary; nevertheless, as I believe him to be a competent person, I would respectfully recommend him for confirmation, should your Lordship not have appointed any one in the room of Mr. Brenan.

Mr. Carrington practised some time as an Attorney in the Isle of Man, and is now admitted an Attorney of the Supreme Court of New South Wales. He has been only one year in the Colony, but, as during the greater part of it he has been employed in the Office of the Crown Solicitor, he has had a good opportunity of becoming acquainted with the nature of the business, which he will have to perform at Port Phillip.

I have, &c.,
GEO. GIPPS.
1839.
20 Feb.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(A circular despatch per ship Fergusson.)

Sir, Downing Street, 20 February, 1839.

Upon the resignation by Lord Glenelg of the Seals of this Department, Her Majesty has been graciously pleased to place them in my hands.

In the relation which has thus been established between us, it will be my constant desire to Communicate with you upon all subjects connected with the Administration of the Affairs of the Colony under your Government, in the spirit of confidence so essential to the success of Her Majesty's Service in that part of Her Majesty's Dominions.

I have, &c.,

NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 32, per ship Hope.)

My Lord, Government House, 20th Feby., 1839.

I beg leave to report to your Lordship that, in consequence of the numerous depredations which have of late been committed by the Aboriginal Inhabitants of this Country on the Flocks and Herds of the Colonists, depastured beyond the Settled Limits of the Colony, and of the atrocities which in return have been committed on the Aborigines by the Shepherds and Stockmen in charge of those flocks and herds, I have deemed it proper to call an extraordinary Meeting of the Legislative Council for the purpose of submitting to it a Bill for the establishment of a Police force in those distant Districts.

I enclose for your Lordship's information a Copy of the Address which I delivered at the opening of the extraordinary sitting; and also a Copy of the Bill, which I then laid upon the Table of the Council.

I have, &c.,

GEO. GIPPS.

[Enclosure No. 1.]

[A copy of this address* will be found in the "Votes and Proceedings" of the legislative council.]

[Enclosure No. 2.]

[This was a copy of the act of council 2 Vict. No. 27.]

SIR GEORGE GIPPS TO LORD GLENELG.

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

My Lord, Government House, 21st Feby., 1839.

On reading over my Despatch to your Lordship of the 9th Jany., 1839, No. 9, it appeared to me that the word

* Note 1.
"preposterous," in the concluding sentence of it, may appear to have been used offensively towards the Bishop of Australia; and, as nothing would give me greater pain than to be supposed to say or imply anything offensive to His Lordship, for whom both officially and privately I have the highest possible respect, I beg to request your Lordship's permission that the concluding words of that Despatch, viz., "Preposterous in the extreme," may be changed into "One of which the People of the Colony would have just reason to complain."

I have, &c.,
Geo. Gipps.

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Marquess of Normanby to Sir George Gipps.
(Despatch No. 1, per ship Fergusson.)

Sir,
Downing Street, 22 February, 1839.

I have the honor to transmit to you copies of a correspondence between this Department and Major Fraser, a Military Settler, shewing the circumstances under which I have been induced to sanction a delay in his proceeding to New South Wales.

I have, &c.,
Geo. Gipps.

[Enclosure No. 1.]

The Memorial of James Fraser, late Brevet Major, 34th Foot, of Douglas, Isle of Man,

Humbly sheweth,
24th January, 1839.

May it Please your Lordship
Your Memorialist sold out of the Army with a view of settling in New South Wales, and for that purpose received a letter from Lord Hill to be given to the Governor, which letter Memorialist has in his possession, and according to the regulations it should have been delivered to the Governor 3 months ago to entitle Memorialist to receive the remission of purchase money according to rank and Services.

Your Memorialist from Family circumstances and sickness during the past year was prevented going to Australia, but intends proceeding there in April; therefore most earnestly entreats your Lordship will be pleased (on account of his Wife and 4 children, together with the long and faithful services of his family for 130 years during 5 Reigns) to grant Memorialist a letter to the Governor, New South Wales, stating the cause of delay, and so enable him to receive remission of purchase money of his rank according to the recommendatory letter of Lord Hill, in case the Governor should object to it on account of it not being presented to him in the year.

Most humbly submitted by
James Fraser, Late B. Major, 34 Foot.

N.B.—Testimonials of character, etc., also sick certificates enclosed.
Sir, Downing Street, 8th February, 1839.

I am directed by Lord Glenelg to acknowledge the receipt of your Letter of the 25th Ultimo, and to acquaint you in reply that, if you are able to shew that you have been prevented by ill health from reaching New South Wales within the period prescribed by the general Regulations, you will be relieved from the Forfeiture of your right to the remission of purchase money on Land in that Colony. But the Medical Certificate, which you have transmitted, does not satisfactorily establish that fact. On your furnishing a Certificate distinctly shewing that your health has been such since the date of Lord Hill's Letter as to prevent your going to New South Wales within the period prescribed, Lord Glenelg will be prepared to issue the necessary instructions to the Governor, in the event of the arrival in the Colony within a limited time, to relieve you from the forfeiture which you would otherwise incur.

I am, &c,

GEO. GREY.

[Enclosure No. 3.]

Major Fraser to Lord Glenelg.

My Lord, Douglas (Isle of Man), 15th Feb., 1839.

I have the honor to acknowledge the receipt of your Lordship's Letter of the 5th Inst., and beg leave now to enclose a medical certificate more explicit than the former one, shewing that the state of my own and family's health were such, at the time I should have gone to Sydney in order to arrive within the year from my selling out, that I could not proceed; and, from having been in a delicate state of health all the winter, I should esteem it a very great indulgence if your Lordship would allow me to remain here until April in order to have the benefit of milder weather before I embark.

I have, &c,

JAMES FRASER, late Major, 34th Regt.

[Enclosure No. 4.]

Under Secretary Stephen to Major Fraser.

Sir,

Downing Street, 22 Feb., 1839.

I am directed by the Marquess of Normanby to acknowledge the receipt of your letter of the 15th Inst, and to acquaint you in reply that, under the circumstance of the case, his Lordship is happy to accede to your application for permission to defer your departure for New South Wales until the month of April next.

I have, &c,

J. STEPHEN.
GIPPS TO GLENELG.

accounts of Mr. Deputy Commissary General Miller for the year 1837 of the sum of £18, which had been stolen from the Clerk of the Treadmill at Sydney; and I have the honor to report on this subject as follows:

Early in the morning of the 4th Feb., 1837, the Office of the Treadmill was broken open, and the money in question, which had been received for the grinding of Corn, taken away, as well as some wearing apparel and other articles belonging to the Clerk of the Mill, valued by him at £30. The Office in question is a small detached brick building, containing only one room, situate in the yard of the House of Correction, and immediately within the Gateway. At the time of the Robbery, a night watchman was kept on the premises, and three Constables slept in a building within about 12 yards of the office; how the robbery could have been committed without detection is still therefore a matter of surprise. A reward was offered for the apprehension of the thieves, but, although suspicion fell upon a man named Joshua Dunne, no discovery was made that could bring any one to Justice.

An Iron Chest was subsequently supplied by order of Sir Richard Bourke, and the Superintendent of the House of Correction, instead of the Clerk, has since had charge of the money. Payments have also been regularly made by him monthly to the Commissary General; but I regret to say that the sum received from the Mill during the year 1838 was very trifling compared with the receipt of former years, which is partly to be attributed to the fact of the Mill having been a considerable time out of repair, and partly in all probability to circumstances connected with this Establishment, which I shall report in a separate Despatch.

I subjoin a Memorandum of the sums received on account of the Treadmill by the Commissary General in each of the last five years.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

MEMORANDUM of sums paid into Military Chest on account of the grinding of Corn at the Treadmill.

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SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 34, per ship Alfred; acknowledged by marquess of Normanby, 14th August, 1839.)

My Lord, Government House, 22nd Febry., 1839.

In connection with the subject of my Despatch of this day's date, No. 33, I beg leave to report to your Lordship that the House of Correction and the Debtors' Prison, which are situated very near to each other (though not within the same enclosure) were, until very lately, under the charge of the same person, a Mr. Michael Roberts Weston, who received a salary for both duties of £150 a year. As Keeper of the Debtors' Prison, he was under the control of the Sheriff, but at the House of Correction he had no immediate Superior. Mr. Weston died suddenly on the 23d Novr. last, and it was then discovered that practices of a most corrupt nature had been long going on in the House of Correction. Not only had he been accustomed to receive money as a bribe to exempt men from labor, but he was in the habit also of setting aside a portion of the Bread and Meat, allowed as daily rations to the Prisoners, for the purpose of giving an extra allowance to those who had the means of making him a remuneration for it. The Cook of the Establishment (a Convict), who was privy to and a party in these proceedings, has been tried for his offence, and sent to an Ironed Gang. One free Constable has been sentenced to imprisonment for twelve months, and two others have been dismissed. On the discovery of these practices, which could not have been so long carried on without detection, had the Keeper of the House of Correction been subject to the immediate control of any superior officer of Government, I proposed to put the person, who might be appointed to succeed Mr. Weston, under the control of the Sheriff, as well in the House of Correction as in the Debtors' Prison. Against this however, the Sheriff remonstrated as being foreign to his duties; and the Judges, to whom I referred the question, having given it as their opinion that he could not (under the Charter of Justice) be required to perform such a duty, I had no resource but to separate the two Offices. Mr. Weston received, as I have said, £150 a year, of which £100 was charged to the Debtors' Prison, a Colonial Establishment, and £50 to that of the House of Correction, a Convict one paid out of the Military Chest. In separating them, I have allotted a salary of £100 a year to each office; but, in the Debtors' Prison, I have been able to reduce one Turnkey at £75 a year, so that there will be a saving to that amount in the charge on the Colonial funds, though an increase of £50 on the Military Chest. This I must submit to your Lordship, I
could not avoid unless I had overruled the objections of the Sheriff and the Judges, which, without your Lordship's express directions, I did not feel authorised to do.

Mr. Abbott (formerly Head Turnkey) has been appointed Keeper of the Debtors' Prison; and Mr. Welstead, formerly a Noncommissioned Officer in the Bengal Horse Artillery, Keeper of the House of Correction.

I have also to report to your Lordship that I have placed the House of Correction under the supervision of the First Police Magistrate.

I have, &c.

GEO. GIPPS.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 2, per ship Fergusson.)

Sir, Downing Street, 23 February, 1839.

I transmit to you, herewith, for your information and correspondence guidance copies of a correspondence, which has passed between this Department and the Board of Treasury on the subject of a Requisition for Medicines, etc., for the use of the Civil Hospitals in New South Wales for the year 1839.

I have, &c.

NORMANBY.

[Enclosure No. 1.]

MR. F. BARING TO UNDER SECRETARY STEPHEN.


I have it in Command from the Lords Commissioners of Her Majesty's Treasury to transmit Copy of a letter from the Secretary at War, dated 6th Instant, with the requisition for Medicines for the Civil Hospitals in New South Wales for 1839, therein enclosed, and to request you will move Lord Glenelg to inform my Lords whether he has been apprized by Sir George Gipps of the circumstances, which may have occasioned the same to have been forwarded to the Army Medical department without having been previously submitted for his Lordship's approval and sanction, and whether he is of opinion that it will be proper that the Army Medical Board should be authorised to comply with the said requisition.

I am, &c.

F. BARING.

[Enclosure No. 2.]

VISCOUNT HOWICK TO MR. F. BARING.

Sir, War Office, 9th January, 1839.

I have the honor to transmit herewith a Requisition for Medicines, etc., for the use of the Civil Hospitals in New South Wales for the year 1839, which has been forwarded to this office from the Army Medical Department, in order that the Lords Commissioners of the Treasury may give such directions as their Lordships may think necessary thereupon.

I have, &c.

HOWICK.
HISTORICAL RECORDS OF AUSTRALIA.

[Enclosure No. 3.]

UNDER SECRETARY STEPHEN TO MR. F. BARING.

Sir, Downing Street, 23rd January, 1839.

Having laid before Lord Glenelg your letter of the 17th Instant, I am directed to acquaint you in reply, for the information of the Lords Commissioners of the Treasury, that his Lordship has received no report from Sir George Gipps of the circumstances, which occasioned the transmission to the Army Medical Board of the requisition for Medicines, to which you refer for the Civil Hospital in New South Wales, without having been previously submitted for his Lordship's approval and sanction. Lord Glenelg is of opinion that it will be proper to authorize the Army Medical Board to comply with the requisition, as it appears to have been supervised by the local Judicial Officers and to have been approved by the Governor.

I have, &c.

J. STEPHEN.

[Enclosure No. 4.]

MR. F. BARING TO UNDER SECRETARY STEPHEN.

Sir, Treasury Chambers, 6th February, 1839.

I have it in command from the Lords Commissioners of Her Majesty's Treasury to acquaint you, for the information of Lord Glenelg, with reference to your letter of 23rd Ultimo, that, in accordance with the opinion expressed by his Lordship, my Lords have informed the Secretary at War that they considered it advisable that the Requisition for Medicines for the Civil Hospital in New South Wales should be complied with, unless the officers of the Army Medical department should consider any part of it superfluous or unnecessary; and that my Lords have also requested Lord Howick to give the necessary directions for the preparation and consignment of the Articles to New South Wales, and to apprise their Lordships of the expense which may be incurred for this purpose.

I am, &c.

F. BARING.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 3, per ship Fergusson.)

Sir, Downing Street, 23 February, 1839.

I have the honor to transmit to you the copy of a letter and its enclosure, which has been addressed to this Department by desire of the Lords Commissioners of the Admiralty, relative to certain criminal acts, which Mr. C. H. Hart, Master of the British Cutter "Lambton," is charged with having committed in the Pacific, and I have to request that you will take the necessary steps for investigating this case, with a view to the proceedings against the parties, suggested in the letter of the Proctor to the Admiralty.

I have, &c.,

NORMANBY.
SIR JOHN BARROW TO UNDER SECRETARY STEPHEN.

Sir, Admiralty, 18 February, 1839.

I am commanded by My Lords Commissioners of the Admiralty to transmit to you the accompanying Copy of a letter from the Proctor to the Admiralty, together with its enclosures, relative to certain criminal Acts, which Mr. C. H. Hart, Master of the British Cutter "Lambton," is charged with having committed in the Pacific; and I am to request that you will lay the same before Lord Glenelg and move his Lordship to cause the whole of them to be forwarded to Sydney, with orders to the proper authorities to proceed according to Mr. Townsend's suggestions.

I have, &c.

JNO. BARROW.

MR. W. TOWNSEND TO SIR JOHN BARROW.

Sir, Doctors' Commons, 16th February, 1839.

I had the honor to receive your Letter, dated 5th Instant, transmitting a Letter from Rear Admiral Sir F. L. Maitland, with its several enclosures, particularized in the accompanying enclosure (all which are herewith returned) relative to certain criminal acts, which Mr. C. H. Hart, Master of the British Cutter "Lambton," is charged with having committed in the Pacific, and signifying to me the directions of my Lords Commissioners of the Admiralty to report what measures it may be necessary to take on the occasion.

I beg leave to report, for the information of their Lordships that, as it is stated in Sir F. L. Maitland's letter that the Governor of Macao, within whose Jurisdiction Mr. Hart was, had declined transferring him to Captain Elliot, Her Majesty's Chief Superintendent of British Trade in China (for the purpose of being dealt with according to the English Law), and it is further stated that the "Lambton" belongs to the Port of Sydney, New South Wales, and that several of the Crew, who were in her at that time when the offence charged against Mr. Hart was committed, have returned there, it appears to me that the most advisable course to pursue will be to transmit these Papers to the Government of New South Wales with directions to cause the matter to be investigated there in order that Mr. Hart and any other Persons accused, when coming within reach of its authority, may be brought to trial in that Country; and I beg to add that it appears to have been the Admiral's intention, had Mr. Hart been delivered up, to have sent him, with such witnesses as could have been obtained, to Sydney in order to his being delivered over to the Civil Authorities there.

I have, &c.,

W. TOWNSEND.

REAR-ADMIRAL SIR F. L. MAITLAND TO MR. C. WOOD.


I transmit, to be laid before My Lords Commissioners of the Admiralty, the various documents described in the accompanying Schedule, and numbered as per Margin, connected with the case of Mr. C. H. Hart, Master of the British Cutter "Lambton," belonging to the Port of Sydney in New South Wales.
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Papers transmitted.

As this perhaps is one of the most extraordinary instances on record of persons perfectly unauthorized by Law sitting in Judgment over a fellow creature, condemning him to death, and deliberately carrying that sentence into execution, I have been induced to forward, not only the correspondence, which has passed between Captain Elliot, H.M. Chief Superintendent of British Trade in China and myself, as well as copies of the sworn declarations of part of the crew of the "Lambton," and of Mr. Hart's own deposition made before the Governor of Guam, one of the Mariana Islands; but also a copy of a Narrative written by John Plumb, late a Seaman of the "Falcon," of London, which was wrecked on the Island of Ascension* in the Pacific in July, 1836, and beg to observe that, although the Narrative cannot be considered as legal evidence, it is nevertheless very important by giving a clear and simple detail of all the circumstances, which gave rise to this extraordinary case, and at the same time throws so much light on the practices of those trading with the Natives of the remote Islands in the Pacific Ocean, that I deem it of great importance to place this document in their Lordships' hands.

As Captain Elliot will communicate to the Secretary of State for Foreign Affairs the measures he considered it his duty to adopt towards the apprehension, with a view to the trial, of Mr. Hart, I will not enter further into those particulars than to state, for their Lordships' information, that the Governor of Macao, after causing him to be arrested upon a requisition from the Chief Superintendent for the purpose of his being delivered up, to be brought before a British Tribunal, declined transferring him to that officer, and called upon him to bring his proofs under the consideration of a Court at Macao, constituted in conformity with the Portuguese Law.

Against this proceeding, Captain Elliot remonstrated and protested on the grounds that the accused was an Englishman, and that his crime was committed on board of a British Vessel, at a place in no way subject to the Portuguese Authority, and to which the Jurisdiction of the Court of Admiralty of England extended.

After twenty four hours' confinement, the Governor in compliance, as he states, with the Law of Portugal, released Mr. Hart from prison; and, if he has not left the place, is now at large at Macao.

It was my intention, had the prisoner been given up to Captain Elliot, to have ordered Commander Blake of the "Lorne" to receive him on board that Sloop, with such witnesses as could be obtained here, and to proceed with them to Sydney, and there deliver them over to the Civil Authorities; this being the most advisable course, as the Vessel belongs to that Port, and several of the Crew, who were in her at the time the offence is said to have been committed, having returned to New South Wales, might have been available as witnesses for the prosecution or defence.

Their Lordships will observe that little is said in the depositions of any of the "Lambton's" crew about the affair at Nuttic (one of the Raven or Seven Islands), which is one of the charges brought by "Marshall" against Mr. Hart, and which he represents as a murderous attack, made on the Natives for the purposes of

* Marginal note.—Lat. 6° 55' N., Long. 158° 30' E.
plundering the place of all the Tortoise shell, Mats, Nets, etc., which charge, together with that of the Execution of " Nanawah," led to the proceedings instituted by Captain Elliot in this case; both of which circumstances, however, are known only to Marshall by report, while on the other hand it appears, by the deposition of William Rogers, that the "Lambton" had no other object in proceeding to Nuttie than to trade; and that her crew were first attacked by the natives, of whom several were killed by the Cutter's people in defending their own lives in the conflict which consequently ensued; and he positively denies that any violence was offered to the women on that occasion.

But where such a sacrifice of Human life has taken place, it appears to me desirable that some enquiry should be made on the spot; and it is therefore my intention, as soon as I can spare a ship for that service, to send her to the Island of Ascension, and the Seven Islands, that the Captain may be able to enquire into and afterwards report upon both cases.

In addition to the several documents already mentioned, I forward a copy of Commander Blake's letter of the 29th June last, alluded to by Captain Elliot, in his communication to me of the 18th Ultimo, in which he adverts to the general character of Marshall, and the motives by which, it would seem, he was induced to prefer the charges against Mr. Hart.

I have, &c,
FRED. L. MAITLAND,
Rear Admiral and Commander in Chief.

SCHEDULE of papers transmitted in Rear Admiral Sir F. L. Maitland's letter No. 58 of the 17th August, 1838.

No. 1.—Copy of a letter from Captain Elliot of the 18th July, 1838, with Marshall's declaration against Mr. Hart, of the "Lambton" Cutter.
No. 2.—Sir F. L. Maitland's reply thereto of 19th July, 1838.
No. 3.—Copy of a letter from Captain Elliot with depositions from three of the Crew of the Lambton, dated 28th July, 1838.
No. 4.—Copy of a letter from Captain Elliot, in reference thereto, and upon the subject of arresting Mr. Hart, 9th August, 1838.
No. 5.—Copy of Sir F. L. Maitland's reply, 10th August, 1838.
No. 6.—Copy of Mr. Hart's own declaration at Guam, Translation from the Spanish.
A. John Plumb's Narrative.
b. Commander Blake's letter, 29th June, 1838.

FRED. L. MAITLAND,
Rear Admiral and Commander in Chief.

[Sub-enclosure No. 1.]
CAPTAIN ELLIOT TO THE REAR-ADMIRAL.

Sir,

The Enclosure, I have the honor to submit, is a declaration recently made before me by a person named William Marshall, describing himself to be a subject of Her Majesty and sets forth a series of highly criminal charges against Mr. Hart, the master of the British Cutter "Lambton" belonging to the Port of Sydney just returned from Manila, and now at Hong Kong.

The main defect of this evidence, you will observe, is to be found in the fact that Marshall does not seem to have witnessed either of these felonies charged against Mr. Hart, but relates only what he has collected from the general report of persons said to be concerned.

Captain Blake has suggested in his letter to you of the 29th Ultimo that there is some reason to believe Marshall may have been influenced by vindictive feeling towards Mr. Hart, and it is strongly confirmatory of this view that the vessel had been here between two and three months before his deposition was made, and that it followed upon a course of disagreement and quarrels between the parties.
Giving the utmost attention however to these favorable considerations respecting Mr. Hart, I still feel assured you will concur with me that the terrible allegations set forth in Marshall's deposition should be subjected as soon as possible to Judicial investigation.

I hope to be excused from suggesting that New South Wales seems to be the most eligible place for that purpose, because the vessel belongs to that Port and the greater part of the Crew are understood to have returned there. It is now my intention to furnish Mr. Hart with a copy of Marshall's deposition and to call upon him to furnish any reply he may think fit to all the charges therein set forth.

The consideration of further proceedings may be deferred till his answer has been received.

CHARLES ELLIOT, Chief Superintendent.

[Annexure.]

DECLARATION BY W. MARSHALL.

William Marshall being asked, declared that he was willing to attest to the best of his knowledge and belief; And, having signed it in my presence. He was accordingly sworn to the above effect by me on this eighteenth day of May in the year of our Lord one thousand eight hundred and thirty eight.

CHARLES ELLIOT, Chief Superintendent of the Trade of British Subjects in China.

True Copy:—CHARLES ELLIOT.

It was in December, 1836, I joined Capt. C. H. Hart at Manila on a trading voyage to the South Pacific Ocean, and, after a stay of about two months at Guam, arrived at Ascension Island, at which place some months previous Capt. H. told me, he had an engagement with the Natives, in which a number were killed, and that the King was hung to the yard Arm of the "Lambton." Also that the second Chief (Ishapou) was shot in his bed or "Loach" by some men who were paid by him. The reason, he gave, was that the Ship "Falcon" of London, Capt. Hinckson, had been wrecked there and Capt. H. of his men killed by the natives. It is generally said that Capt. Hinckson was to blame, having previously shot one of the natives who was in the act of plunder and struck the principal Chief; this, I have heard, Capt. Hart and several of the "Falcon's" crew acknowledge to have been the occasion of the outrage on the part of the Natives. On my arrival at Ascension in July, 1837, I was so pleased with the Island that I remained there nearly six months, during which time the above account was confirmed by many of the natives especially by the Chief, Soctell, and also by the white men resident on the Island; and, immediately on our arrival there, active preparations were made for the long talked of attack upon Nuttie, one of the 7 or Ravens Islands; and, after cartridges were made, the large Cutter rigged, 7 or 8 extra white men and a number of Natives taken on board, each with their Fire Arms, spears, etc., away they went accompanied by the Canoes, who, after three days' fighting and killing every man except one, whom they could not find, plundered the place of all the Tortoiseshell, Mats, Nets, and in short everything moveable, the females were ravished, some before the blood of their husbands was cool, and many of the youngest and best looking were distributed amongst the men and brought over to Ascension; one of them was delivered of a child either on board the cutter or as she came there; the one Capt. Hart, brought over he presented to the Chief Narnikin's daughter "(Ishapou)" who used to treat her as a Servant, and at last so barbarously that T. Lindrey, the trading master, took her from them; some of those brought over were fine looking Girls.

After Capt. H.'s return from Nuttie, and paying the men and natives who accompanied him, he went to the Southward and took with him some Ascension Men and one Irishman, Patk. Gorman, whom he created the Ishapaw of the Island, and was to obtain Shell for him until his return from the S'ward; during Capt. H.'s absence, Paddy discovered an old man, bed ridden, who could not have lived many days and shot him in cool blood, and was otherwise so base a character that two Canoes full of the Ascension Natives set off at all risks to gain their native Island, one of which has never been heard of or the 7 W.M. persons it contained; one of the number, Barlow "was a native Chief; in about Six months, Capt. H. arrived again at Ascension with Paddy to recruit for fresh Subjects after a few days wooding and otherwise refreshing; I joined the Cutter and we again set sail, touching again at the Ravens Islands, were we left Paddy and his three wives and a fresh supply of Ascension Natives and Canoes, with the following white Men, viz.: Jack Lacey, G. Robinson, Beuthe Armomer, Fred. Randell and another, whose name I cannot remember (J. Parker), with their Girls; those who had wages due were paid in Trade such as Musquets, Magazine of Powder, Pistols, Balls, Iron Swivel, Rum, and the Cutter with sails complete. A set of Laws were formed for their Government, Crimes and Punishment, etc. All the shell was to be kept exclusively for Capt. Hart except any Ship should call there, and they were actually in want of necessities. I made a copy of them and recd. each of their signatures; we then
Normandy to Gipps.

Proceeded to Manila. The number slain at Nuttie is differently stated, the Natives say 80; I heard Paddy say 84 with the one he shot afterwards. It is however doubtful.


If Capt. Hart said that he committed this action at Nuttie in self defence, it is false, for I heard him say nearly twelve months before at Manila and afterwards at Guam that they had plenty of Tortoiseshell at Nuttie, and that they would not part with it, because it was their Maquhawe, but he intended to take it and kill every man on the Island; he further said he knew where they kept it for T. Lindrey had seen it in the cookhouse.

Maquhawe means in their language their God.

True Copy—Charles Elliot.

[Sub-enclosure No. 2.]

Sir F. L. Maitland to Captain Elliot.

Sir, Macao, 19th July, 1838.

I have received your letter of yesterday's date, enclosing a copy of the Letter deposition of William Marshall, on the subject of certain highly criminal charges, acknowledged, which he has preferred against Mr. Hart, the Master of the British Cutter "Lambton"; and, in reply, I have to acquaint you that, before any measures can be taken by me, it will be absolutely necessary that some direct proof, either by the evidence of persons present or an acknowledgement on the part of Mr. Hart himself, direct evidence, that the extraordinary facts therein stated were effected by his direction, or that he was concerned therein, should be shewn.

And that, when such evidence is obtained, I will give the matter my most serious consideration, and act in the way most likely, in my opinion, to bring this remarkable case before a Court authorized to make judicial enquiry into it.

I have, &c.,

FRED. L. MAITLAND,
Rear Admiral and Commander in Chief.

[Sub-enclosure No. 3.]

Captain Elliot to Sir F. L. Maitland.

Sir, Canton, 28th July, 1838.

With reference to the subject of my Despatch to Your Excellency, dated the 18th Instant, I have the honor to transmit the copies of Examinations of three Seamen of the "Lambton," taken by me on the day of my departure from Macao.

The testimony of William Rogers, you will observe, is direct as to the lawless execution of the man "Yamawah," on board the Cutter "Lambton," and the other evidence involves hardly less pressing reason for the submission of her whole proceedings in the Pacific to judicial investigation.

By her papers, she appears to have been registered at Sydney in the year 1830 as the property of the Australian Agricultural Company; but Mr. Hart declares her to belong, one half to Messrs. A. B. Smith of that place, and the other half to himself.

The proofs required by Law for the establishment of this account of the property are entirely wanting, and this fact of itself furnishes a strong reason for sending the Vessel to Sydney where she was last registered.

I have, &c.,

CHARLES ELLIOT, Chief Superintendent.

[Annexures.]

Examinations.

Personally came and appeared before me, James Sindrey, aged about 22 years, a Native of London, has served his time to the Sea, entered on board the Cutter J. Sindrey re "Lambton" about thirty months since, as near as deponent can remember; the voyages under Cutter was then at the Island of Ascension in the Pacific; Mr. Charles Hart was C. H. Hart, Master of her; she was employed on a trading voyage amongst the Islands for Tortoiseshell; believes she had been out from Sydney in New South Wales about four months; her cargo was of a general nature such as beads, Axes, Tobacco, etc.; as far as deponent can remember there were about 14 People "Europeans"; there were also three New Zealanders on board (Men). After deponent first joined the Cutter, she went to the "Raven or Seven Islands"; cannot exactly say how they bear from Ascension; they were a day and a night running there; When the Cutter arrived at Nuttie, deponent and one or two others tried to land; the surf was so high that they were obliged to go back; the next day they went ashore again in the boat, Mr. Hart the Commander accompanying them; there were four other hands and deponent; the boat was armed; there were five muskets in the boat; they were not loaded; when they first landed, the natives received them well; they began dancing and appeared to be contented; there might be about forty men in all and three women; deponent and a native of Ascension, who had come over with them, went up into the bush with two of the people of the Island.

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The Commander and the others remained with the Boats. After a short time, depo­nent separated from the Native of Ascension and all of a sudden he heard him call out, “Jim take care of yourself, for the natives are getting their clubs and knives and coming to kill you.” Upon this depo­nent looked about him and saw his best chance was to run through them to the boat. In doing so, they struck at depo­nent with a knife and struck him in the hinder part of the two legs, with a Club, When depo­nent got to the boat, he found the Captains and the others loading their Muskets. The Native of Ascension had got to the Boat just before depo­nent; they then shoved off and went on board the Cutter, which lay about 4 Miles off, to the best of depo­nent’s recollection there were no shot fired that day at all: Depo­nent can swear that he did not fire one himself. The Cutter then sailed away to “New Ireland” and from thence to New South Wales, Nothing further of the least conse­quence having taken place during this voyage.

On about the 22d May, 1836, sailed again from Sydney in the Cutter also on a similar trading voyage to the Pacific. Mr. Hart was still the Master, but almost the whole of the Crew were changed. The Native of Ascension still remained, and went in the Cutter to his own Island (Ascension). In standing into Ascension, depo­nent and the Master, then at the Mast head, descried a vessel ashore on the reef; whilst they were conversing on the subject, a Canoe came aboard with five white men in her. They told us that the wrecked vessel was the “Fal­con” of London, Mr. Hinckston, Master; thinks that they said the “Falcon” had been cast away about a month. There were also laying there two Schooners both under the ensigns of the Sandwich Islands. One commanded by Mr. Duarte, a Frenchman, and the other by a Gentleman also of the name of Hart; one of the vessel’s name was the “Avon”; cannot remember the name of the other. We learnt from the five men, who came on board in the Canoe, that Captain Hingston of the “Falcon,” the second Mate and four of the Crew had been killed by the Natives of (Ascension). They said that the Natives had been attempting to plunder them on shore and set the wreck on fire. Captain Hingston threatened to beat them if they came to rob him any more. It then seemed that the Chief “Nanawah” determined to kill the Captain, which was accordingly done by his people with Clubs: the second Mate and the others were reported to be killed the same day. Whilst the cutter “Lambton” was laying at Ascension, Mr. Hart the Master received a letter from a European living on shore known by the name of Cook; depo­nent believes that he was an Englishman; also heard that there had been a consultation held by the three Captains upon the wreck on fire. Captain, which was accordingly done by his people with Clubs; the second Mate and the others were reported to be killed the same day. Whilst the cutter “Lambton” was laying at Ascension, Mr. Hart the Master received a letter from a European living on shore known by the name of Cook; depo­nent believes that he was an Englishman; also heard that there had been a consultation held by the three Captains upon the wreck on fire. Captain, which was accordingly done by his people with Clubs; the second Mate and the others were reported to be killed the same day. Whilst the cutter “Lambton” was laying at Ascension, Mr. Hart the Master received a letter from a European living on shore known by the name of Cook; depo­nent believes that he was an Englishman; this letter warned Capt. Hart that the Natives intended to attack the three Vessels at night and cut them off. There may be about three thousand people upon the Island; they are generally very well armed, and depo­nent should think that they have about four hundred Muskets amongst them, they are not well off for powder. There are four Principal Chiefs upon the Island, of whom “Nanawah” was one; depo­nent knows about Cook’s letter because the Captain shewed it to him. The three vessels laid at Ascension this time about a fortnight, but the Natives would not allow them to wood and water, and they were expecting every night to be attacked; and last it was determined by the three Captains to procure wood and water by force, and they manned and armed the three Boats. The two Captains Hart went in the boats, but Captain Duarte remained on board to take charge of the vessels; depo­nent went in the Cutter’s boat with Mr. Hart; there were four or five boats and about forty Armed Europeans in them; there was also the half of one of the Native Tribes in their Canoes; there might be about five hundred in all; this half tribe was friendly to us but at war with “Nanawah.” We had to fight our way on shore, but none of our people were killed or wounded. Depo­nent did not see more than two of “Nanawah’s” tribe killed; did not observe that any were wounded; we then proceeded to wood and water and went aboard again. Depo­nent can solemnly swear that no abuses were committed on the women on this occasion: Depo­nent does not know what became of “Nanawah,” because, after the attack, he was sent away to Leeward to trade for Yams and provisions; he went with a Native in a Canoe; depo­nent was told by the People of the Cutter, when he came back, that “Nanawah” had been hanged. That he was hung to the Cutter’s yard arm, also heard that there had been a consultation held by the three Captains upon the subject of this execution: heard also that the two Super carges assisted at the consultation, but no one else; does not know what “Nanawah” was hung for, but supposes it was for giving orders for the death of Capt. Hingston and the other people of the “Falcon”; there were none of the “Falcon’s” people in the bands of “Nanawah,” when he was hanged, or any other Europeans; some of the “Falcon’s” people were on shore, taking charge of the wrecked property, but they could come off to the vessels when they thought fit, but not without some risk; depo­nent does not know that any thing else took place at this time at Ascension. Depo­nent was then left there by Captain Hart, together with a Mr. Gumbric, a Supercargo, to carry on trade, and the Cutter herself and one of the Schooners, Commanded by the other Capt. Hart, went away with part of the “Falcon’s” Colors of the Name of the Marianne Islands. Depo­nent remained on the Island of Ascension altogether about 15 Months, during which the Cutter visited it two or three times; they were left with Tobacco, Rum. Axes, Musquets and Powder to trade with. There were about Forty White People settled on the Island altogether.
NORMANBY TO GIPPS.

principally deserters from Whalers, Sick People, etc; Deponent was never molested
during the whole time he remained at Ascension; considers the Cutter "Falcon" out of avarice, but generally they are good people; Deponent never went to
the Ravens Island on the second voyage from Sydney, that he has belonged to
her, but knows that the Cutter went there.

When she came back from the Raven Islands to Ascension, two or three Native
Women, and five or six or three boys came up in her; Deponent believes
up with their own consent; About eight months since, deponent left the Pacific in the
Cutter, and came up to Manila and from thence on to China. Deponent knew
Mr. Marshall on board the Cutter and believes that he was passenger; Deponent
saw Mr. Marshall drunk; cannot positively say who the Cutter belongs to, but
believes she belongs half to Mr. Hart and half to Mr. Petre; does not know where
Mr. Petre lives but supposes he is at New South Wales. Deponent was never molested
Cutter and knows nothing else about the proceedings; Deponent can solemnly
swear that he was not present when "Nanawah" was hung.

JAMES SINDREY.
Sworn in my presence at Macao, this twenty fourth day of July in the year of our Lord, One thousand eight hundred and thirty eight.

Chief Superintendent of the trade of British Subjects in China.

1839.
23 Feb.

JAMES SINDREY.
Sworn by me and signed in my presence at Macao, this twenty fourth day of July in the year of our Lord one thousand, eight hundred and thirty eight.

Chief Superintendent of the trade of British Subjects in China.
PERSONALLY came and appeared before me GEORGE RICHARDS, aged about thirty four years, a native of Gravesend in Kent, a Blacksmith by trade, entered on board the late Ship "Falcon" of London, Hinekston, Master, at Ascension in the Pacific about the month of May, 1836.

For eighteen months before this, deponent had been living ashore at Ascension, being cast away in the English Whaler "Corsair" in the neighbourhood of Ascension, and contriving to get there with great difficulty in a Whale Boat. Shortly after Deponent joined the "Falcon," she also was cast away on the reef of Ascension in the act of going to Sea. After this took place, there were disputes among the chiefs with respect to the property and the tribe of one of them, "Nanawah," began to plunder it and set fire to the wreck.

"Nanawah's" tribe killed Capt'n. Hinckston, the Second Mate and three other Men. Deponent did not see Capt'n. Hinckston and the other Men killed, as he was upon an opposite Island; does not know that "Nanawah" killed them, but knows that he was on the spot at the time and that it was done by his orders. Is of opinion that "Nanawah" had determined to kill all the White men upon the Islands and all the other Chiefs above him. Shortly after this the Cutter "Lambton" came in, and there were also laying there two Sandwich Island Schooners, Captain Duarte and Captain Hart. When the "Lambton" came in, it was determined by the three Captains and the Doctor and two Mates of the "Falcon" and other persons on shore to get possession of "Nanawah's" person because it was feared that he would incite the Natives against them and attack the vessels; There were at this time no Europeans Prisoners in "Nanawah's" possession. The Captains succeeded some days after this in possessing themselves of "Nanawah's" person; they did not take him by force; but he was persuaded by a White man, who had been several years on the Island, to give himself up to the Captains; this White man was known by the name of "Jim the Cooper"; Deponent believes that "Jim persuaded Nanawah" to give himself up upon a promise that the Captains would not hurt him; Deponent cannot swear this but believes it; knows that "Nanawah" was hung at the yard Arm of the Cutter "Lambton"; did not see him hung because Deponent was in another part of the Island, but heard it generally reported; is of opinion that, if "Nanawah" had not been put out of the way, he would have killed all the white men on the Island and made himself a Piratical Chief; The Natives are generally good people but "Nanawah" was a bad and dangerous man; Deponent did not go to the Raven Islands in the Cutter "Lambton"; knows nothing of what took place at Nuttic; joined the Cutter at Ascension in September last; knows nothing else concerning the Cutter's movements.

GEORGE RICHARDS.

Sworn before me and signed in my presence at Macao, this Twenty fourth day of July in the year of our Lord One Thousand, Eight hundred and thirty eight.

CHARLES ELLIOT.

Chief Superintendent of the Trade of British Subjects in China.

[Sub-enclosure No. 4.]

CAPTAIN ELLIOT TO SIR F. L. MAITLAND.

SIR, Wellesley, in Toongkoo Bay, 10th August, 1838.

In answer to your letter of the 9th Instant, upon the subject of the charges committed beyond the limits of any defined Jurisdiction falls within the competency of the Senior officer of Her Majesty's Ships before whom they may be authentically submitted, I shall certainly not shrink from the responsibility of issuing a Warrant for Mr. Hart's arrest.

My only absence at Canton and our subsequent mutual engagement in pressing Public Duties has prevented my earlier recurrence to this Subject.

I have, &c.,

CHAS. ELLIOT, Chief Superintendent.

[Sub-enclosure No. 5.]
being arrested by you, as H.M. Chief Superintendent of the Trade of British Subjects in China, I shall not fail to adopt immediate measures for forwarding him to Sydney, in New South Wales, that the Authorities there may take such steps as they may think necessary for submitting his conduct to a Judicial Investigation.

I have, &c.,

FRED. L. MAITLAND,
Rear Admiral and Commander in Chief.

[Sub-enclosure No. 6.]

DECLARATION BY C. H. HART. inquiry by Don Juan Baptista Acha, Ensign of the National Navy and Port Captain.

I do certify that, by a Superior order from His Excellency the Captain General, Governor as well as Commander in Chief of Marine of these Islands, agreeably to the request of Captain C. H. Hart of the English Cutter named Lambton, sailed from China, performed by this office under my direction the communications, of which the following are a literal Copy.

To His Excellency The Commander in Chief of Marine, C. H. Hart, Captain of the English Cutter Lambton, sailed from China,

Most humbly sheweth,

That, in the month of May, 1836, Your Petitioner set sail with this Cutter from the Port of Sydney (New Holland) with a view to go to the various Islands in the Pacific Ocean for the Trade of Tortoise shell and " Balate " and other productions of those Islands. On the 19th August of the same year, He anchored opposite to the Ascension Islands, where he met two small vessels anchored, belonging to the Sandwich Islands, one under the Command of a Frenchman, and the other under that of an Anglo American. And he saw at the same time a wrecked Ship.

The Captains of the Schooners acquainted your Petitioner that she was the English Whaler " Falcon," and that the Natives of the Island had in a barbarous manner murdered her Captain, the 2nd Mate and four of the Crew, putting out their eyes with the point of a pike, tying a rope round their necks, and dragging them over the shore before their own companions. And they told your Petitioner that there existed yet on the Island the remaining people of the Crew, and that both they and the Crews of the two Schooners lived in a constant fear of another attack on the part of the Islanders, who had told them that they would not leave a single white man there, shewing their intentions by firing upon the boats, when they attempted to go on shore with the muskets robbed from the Whaler. Some time after, your Petitioner received an advice that it was intended to attack the vessels, and kill (if possible) every one of the crews. Seeing no other manner of saving his countrymen from the hands of these wild men, but through violence (and as they were unable to get water, wood, or provisions of any kind), He made an attack upon the nearest villages, and succeeding in setting at liberty his countrymen. On this occasion, we seized the Chief Assassin and Instigator of the remaining Islanders, the same one who had formed the plan of attack on the vessels.

After a consultation amongst the Captains and officers of the three vessels, it was resolved that, as they were separated from any authority or laws, it was absolutely necessary to make an example of him, in order that we might be released from the impending danger; And thereupon this man paid with his own life the penalty of his Crime.

The consequence of this measure was, as proposed, a cessation of the continued injuries, they had suffered. Then the Crew of the Whaler was divided between Petitioner and the Schooner Unity, when they sailed for the Mariannas, where they arrived on the 29th September; And, forthwith upon his landing, your Petitioner informed the Governor Don Francisco Villalabos of the event, and other particulars of his voyage. Afterwards your Petitioner departed from the Mariannas to this City, where he received as freight different Articles and Gun Powder, partly belonging to the " Relegiosos Recoletos " (two persons of which order, and some Military men employed by the Government, He conveyed), and returned to the Mariannes, when, having accomplished his duty regarding the Gun powder of the Government, as it is recorded on the returned permit (" tornaquia"), which exists in the hands of the Commissary of artillery, your Petitioner proceeded to his trade of tortoiseshell among the Islands. And, on the 9th January of this year, He returned to Manila in order to careen his Vessel; which having been done, and thinking her fit to be employed with advantage in China, he set sail for that place, where, having arrived, he embarked on board a Ship going to Sydney the Tortoiseshell he brought as freight. Then he continued trading at Lintin till the 28th of May, when, having heard some reports about his own conduct on the Pacific Ocean, and wanting a Document to justify it, he came back to this City, with a view to request from the late Governor of Mariannes a Document of the circumstances of his arrival there, and of the information he gave him upon the subject. And for all this your Petitioner entreats your Excellency will be pleased to take information of Don Francisco Villalabos (who lives actually
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Inquirby
Spaniards re
transactions
of C. H. Hart
in South seas.

Manila, 19th June, 1838.

The Port Captain will charge himself, according to the established rules, with the justification the Petitioner presents and entreats, furnishing him with the proper document.

In the town of St. Michael "extra Maros" of Manila on the twenty second day of June, in the year Eighteen hundred and thirty eight, appeared, by virtue of a competent order, Don Francisco Villalobos, Captain in the National Artillery, who before me the actual Notary sworn, and promised under his word of honor to tell the truth on whatever thing he should be demanded. And, being asked of his name and office, said to be the same one as the aforesaid, and Captain of the mentioned body.

"Questioned, if he knows Mr. C. H. Hart, Captain of the English Cutter "Lambton."
"Answered, that he knows him, because he had been with this vessel during the time the Deponent was Governor of those Islands."

"And, after being made acquainted with the exposition the said Captain has presented to His Excellency The Commander in Chief of Marine.—"Answered, that, on the arrival of Captain C. H. Hart at the Mariannes in the Cutter under his command "Lambton," together with the aforesaid Schooner, both of which conveyed the Shipwrecked people of the English Whaler "Falcon," saved from the shipwreck which took place on one of the banks of the Ascension Island, the Deponent concluded, from the relation of several of the said Individuals, that those Islanders had killed the Captain of the "Falcon," Mr. C. Hingston, and other persons of his crew; That the remaining of them, finding themselves strong, defended themselves against those Islanders. And surely they would have been their unhappy victims, if there had not arrived some small vessels, who assisted them, and saved them from the ferocity of those barbarians, of whom all the Crews assembled, including that of Captain Hart, caused the punishment to which he refers."

That he informed the Supreme Government of this incident, and several other unfortunate events of such a nature, which took place during the time he had the command of the Mariannes, and that Mr. C. H. Hart deserves in his opinion the character of an honest man; that he has nothing further to add than what he has just declared. And, after a perusal of this deposition, again confirmed under his word of honor, that all he has deposed is true, being of 46 years of age; And to which is subscribed his Name with that of JUAN BARTISTA ACHA.

FRANCISCO VILLALOBOS.

Before me:—APOLINARIO HERNANDEZ.
of the wrecked Ship took revenge for these assassinations, causing a dreadful havoc of those wild Men, and the same cacique included. And, instead of him, they appointed another one more inclined to the white men, with the approbation and acknowledgment of the Caciques of the adjoining Islands, and of the Natives remaining in that one, where the Murders remained.

I permitted to Mr. Sands, late Chief Mate of the wrecked ship, the sale of the articles he brought up, as it appears from the inclosed paper, which I herewith beg to transmit for the information of your Excellency, etc., etc., etc.

True Translation from the Spanish—CHARLES ELLIOT, Chief Superintendent.

[Sub-enclosure marked A.]

NARRATIVE BY JOHN PLUMB.

The ship Falcon belonged to Messrs. C. and T. Jarvis of Upper Thames Street, Statement by London, and was fitted out by them to proceed on a Sperm Whaling Voyage. When J. Plumb re-ordered for Sea, her value was estimated at £14,000 or £16,000. I am not certain of transactions which we sailed from London on the 24th May, 1834, well provided with necessaries for the voyage, and a young, active and agreeable crew.

Nothing particular occurred during our passage out, with the exception of losing a man overboard. On our arrival off Sandalwood (an Island to the S.W. of Timor), we saw a few Whales, and cruized off these some time, but with very bad success.

From thence we went into Copang, a Dutch port in Timor, and after getting necessary refreshment proceeded to the Molucca passage to cruise till the Japan Season. We saw an abundance of Whales there, but so cunning we could very rarely get near them.

March, 1833, bore up for the Island of Salebabo to refresh previous to our departure for Japan. On our passage to Japan, we were driven very much to the Westward, and found ourselves in a fine view of Whales; where we continued to cruise the whole season without being troubled by other Ships. We left in September (after making a good season) and bore up for Guam (the principal of the Mariana Islands), where we got a good refreshment, and sailed for New Guinea in October.

Whales were very plentiful there and not much harassed. We continued to do exceedingly well till March, when we found by the Pumps that our oil was leaking, which compelled us to leave our ground sooner than we should have done. Just at the time we were about to start for Guam again, we fell in with the Cutter "Lambton" of Sydney, Captain Hart, who had come direct from the Island of Ascension. Captain Hingston told him he was going into Port to break out his Oil; he directly advised him to go to Ascension, being nearer than Guam, a more snug harbor, a place where we could get refreshments very cheap, and get the work done peaceably, there being no grog. Unfortunately the fine description of the place induced Capt. H. to bear up for it, and we arrived there in the beginning of April.

Our decks were crowded with natives long before we came to an Anchor. We were very much pleased with their friendly manners; they brought off quantities of cooked Bread Fruit, Yams, Cocoa Nuts, and splendid Belts, worked by the native women, for which we gave them small pieces of Tobacco, Pipes, etc. We were ready for Sea in about five weeks, during which time we had no disagreement with the Natives. We were still compelled to remain here, having the wind constantly from N.E., which renders it very hazardous to attempt to beat so heavy a Vessel through a narrow dangerous channel.

Shortly after we had completed all our work, we were very much surprised one forenoon to see the Girls stealing away in the Canoes, and going ashore apparently very much frightened, and others stole away in a corner of the Forecastle crying. On being questioned as to the cause of their grief by a man who had been living on the Island sometime, they said they were afraid to tell; but immediately asked him, what so many natives were doing on board; and why the canoes lying under the stern were allowed to remain there, so well armed as they were with Spears and Storees. The man immediately suspected their intentions; he immediately came on deck and communicated his suspicions to the Mate, who merely laughed and told him to go about his business. Finding he treated it so lightly, and thinking from the uneasiness of the girls there really must be some cause to make them so, I went aft and spoke to the Captain, who thought it was all nonsense. While speaking to him, a high Chief girl came and advised him to clear the decks of all the men; and told him it was their intention to take the ship and murder all hands. The decks were quickly got in readiness; the whole of the Canoes pulled astern of the Ship a short distance, and held a consultation about 10 or 15 minutes, and then dispersed.

We were told afterwards by a young Chief, who proved himself to be a good friend of ours, that a proposition was made by the oldest son of Hesshipow (the King of the tribe) to the other Chiefs to make an attempt to take the Vessel.
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Statement by J. Plumb re transactions at Ascension island.

by force; the greater part of them being unwilling, the remainder thought it impracticable by a few, and abandoned all thoughts of it; but he, who first proposed it, being more sanguine than the rest, determined to muster all His own Cooleys, and try to effect his stratagem, what he could not get assistance enough to do by force. It appears they were to have murdered the Mate and Captain first, and the others were to have jumped on deck immediately and have murdered the crew. After this, we kept a more strict watch than we had done before, with plenty of arms constantly ready, fearing they might attack us in the night.

Finding the wind constantly at N.E., the Captain determined on towing the Vessel out the first opportunity. The morning of the 7th July appeared favorable to our purpose, it being quite claim. At 5 A.M., we hoisted the anchor up, and commenced towing with our four boats; and, when near the entrance of the passage, a breeze sprung up from the old quarter. We hauled our wind with the larboard tacks on board, and stood across the passage, tacked again with a fine working breeze, and stood over towards the reef running out from the mainland, and stood in rather close; the Captain gave orders for the boats to pull to starboard to get her round; but, before we could do so, a squall took her back; she got sternway, went in the rollers, drove down the reef a short distance, and then struck. We exerted ourselves to the utmost to get her off, but all our efforts to do so proved entirely useless.

The Captain, finding all attempts to save her ineffectual, told us we had better save our clothes first, and, if the weather continued moderate, hoped we would save as much of the cargo and stores as possible. We did as he requested, and, during the 14 days we were able to work on board, succeeded in saving nearly all her stores, and 900 barrels of the cargo, and landed it on a small Island near the Wreck, belonging to a chief living on the Main, but not without first asking his permission. After this time, it came on to blow very heavily for three days; the Vessel went to pieces, and the remainder of the cargo floated away. Means were now to be taken to protect the property we had saved, and for this purpose the Crew were divided into three watches, one to be on Nassalley, the Island where the principal part of the property was landed, one on a small Island, close to it, called Nor, where the Captain lived, and the other on liberty to relieve each other weekly. We endeavored to keep mastic oil and the Native mess as much as possible, making the Chiefs presents. Notwithstanding this, they encouraged their people to steal, and we took no harsh measures to prevent them, till the morning of the 7th August, when Captain H. went over to Nassalley from the Island over to Nassalley from the Island. Mr. Wood, the Second Mate, told him it was quite useless for the people to remain there any longer, as the natives had become so bold they took property out of the House, and bid them defiance. On hearing this, he became very much engaged, and, seeing Nanawah, the Chief, asked him what he meant by encouraging his people to steal, after having made him so many presents; he gave some saucy answers, and Captain H. told him by the shoulders and shook him. While doing so, a Cooley, who was behind him, was in the act of darting a spear, when one of our people warned him of his danger; he immediately loosed Nanawah, and sprang on the fellow, took the spear from him, and broke it about his head. They did not appear to take any more notice of it, but went on, as usual, with their work. Shortly afterwards, Captain H. returned to Nor to breakfast, and several of the Natives went away in their Canoes to Nanawah's Station on the Main, and having breakfasted, he returned to Nassalley with more arms, ammunition, etc., taking his own Pistols in his pocket, and a pair for Mr. Wood. Not having sufficient musket Balls, he took some lead for the purpose of making some, and, while over the fire in the act of doing so, a great number of Canoes were seen coming towards the Island. The Captain was told of it, and cautioned by a Malay we had, whom we used to call Mahomet; he merely looked, and, putting him by the shoulder, said, "Never mind, Mahomet, they dare not attempt to hurt us, we are too strong for them," and again resumed his occupation. He had not done so long, when they landed, and a fellow came slyly behind him, and struck him on the back part of his head with a piece of heavy red wood, about 2 feet and a half long; he sprang nearly six feet, and fell flat on his face with his arms extended. A brother of the Chief then came up and killed him; by this time, the others were attacked, but were soon overpowered by numbers; the Cooper fought bravely with a large knife, and was the last man killed. The Malay, an English boy, and a Native of Waoahoo escaped across the reef to Nor, the Natives firing at them the whole time with muskets. Having entire possession of the Island, they made ropes fast round the necks of those they had murdered, and dragged them round the Beach. Till all the skin was completely torn off the lower parts of their bodies and extremities. They then plucked the Captain's eyes out with a spear, and with a knife and Iron Bolt scored them about the heads, and in other respects acted with the greatest brutality.

News of the dreadful occurrence was immediately sent to Warji, the second Chief of the tribe, with whom Captain H. had been living; he came to our assistance with a great number of his people, and sent an Under Chief over to the Island to demand the bodies of our people; they gave them up without any resistance. The Carpenter made a coffin for the Captain, and the other bodies were put in Mats and interred as decently as time and circumstances would allow.
After having determined on the best means of defending ourselves in case of an attack, we despatched a message down to Kitty (another Harbor about 20 miles to seaward of the place where we had been lying (king), having heard the Schooner Avos of Woahoo was lying there, to acquaint Captain Denoldt with our misfortune, and to request his assistance, which he refused, unless we consented to consign the whole of the property to him, which we were compelled to do. About the 12th of August, the Cutter "Lambton" of Sydney, Capt. C. Hart, and Schooner "Unity" of Woahoo, Capt. W. Hart, came in. We then mustered very strong, there being about seventy white men besides about 400 natives belonging to another tribe, who had come to our assistance. Our enemies, hearing that we were making preparations to punish them for their barbarity, repeatedly sent saucy messages on board, and told us they should stand their ground, having plenty of five arms and ammunition. Each boat belonging to the different vessels had a swivel mounted in the bows, and every man his musket, Bayonet, and Cartouch Box, with 18 rounds of Ball Cartridge. When all was in a state of readiness, the Cutter was towed into the passage, and anchored abreast a large Cook House, belonging to the old King's eldest son at his station near Tamer. The boats were then pulled in shore, as near as the flat would allow, and several shots were fired from the 12 pounder on board the Cutter, and the Signal made for us to land; we all left the boats, and attempted to land, but very foolishly on a side rendered almost inaccessible by rocks; the natives, seeing us act so bravely, were very daring, kept slingting stones at us, shaking their spears, and occasionally firing muskets, and in fact putting us at total defiance. Our natives did not get out of their canoes, seeing they had no chance of using their spears or slings; however, we killed a few this day. The next day we commenced the same as the day before by firing from the Cutter into the House; at the same time, our Natives had drawn their canoes up abreast our boats, close to their landing place, and seemed really bent for fighting. They challenged them in the usual manner; but, finding they would not show themselves, all left their Canoes and followed the white men, who by this time were near on shore. They, of course, were more active among the stones and Bushes than we were; they chased them in fine style, and speared many as they were running away. After plundering and destroying the House, the Natives on our side challenged them again, but received no answer, so we left, leaving about 14 lying dead. The wounded must have crawled among the bushes, as we could not find any after the fight was over. The Natives had a very warlike appearance, when they were standing up in the Canoes, abreast our boats: they all of them had on their best ornaments, which is customary when they go to War, and each carried his sling and spears. Before they attempted to leave their Canoes, they all stood up, beat the sides of their Canoes with their spears, blew their Coach Shells, and used other means to endeavor to get them out to fight, in Native Fashion, but they would not. Their custom is to go before the place in their Canoes and challenge them out, and, if they do not come to any reconciliation by the challenged coming forward and offering the Cava root, they generally go on shore, pull their Cocoa nuts and Cava, and destroy a few Houses, after which they leave and go home, and sing of the great Victory they have achieved. The second day we rigged a raft, finding the 12 pounder on board the Cutter could not do very much execution being too far off. It was well manned and armed. We placed one of the Avon's guns on it, fire for lighting the Matches, a flagstaff with colors flying, and two men playing the Drum and Fife. We towed it out and anchored it on the side of the place we first attacked, but the Natives were not to be intimidated by appearances, for they were in the water, dancing, quivering their spears, and daring us to come on, but a very short time before we anchored at the time we were within Musket shot of them. Captain Hart of the Unity had the command of it; he liked long balls better than close quarters with the natives. The next day we purposed going to Tamer, the residence of the King Hesshipow; but, hearing next morning that he had deserted it, we went on shore and burned a few houses, and did other mischief at a small place on the Main land belonging to a petty Chief.

The same day hearing that Hesshipow was concealed in a small house a short distance in land, we went in search of him, but he managed to avoid us. We made great havoc on our way, burning houses, and destroying Bread fruit, Cocoa nut, and Plantain trees, besides their Cava, which they value most. The petty Chiefs of the tribe, who had remained neutral from fear of incurring the displeasure of either party, seeing we were doing so much mischief, became alarmed for the safety of their places, and several of their people came with them on board every morning and made the Captain an offering of the Cava root to show that they were friendly towards us; but it was never accepted. Not finding themselves quite secure as we had always rejected the Cava, and finding we were determined to get the King, they knew they had nothing to fear from him, when the Vessels were gone, so thought it most prudent to join us and ensure our friendship. The people were told, if either of the Chiefs allowed any of the Murderers or those concerned in the Nassalleys affair to go in either of their tribes, we would proceed in the same manner with them as we had done with the others. The other Chiefs were so intimidated by this that they would not allow them to remain at any of their places, so their only resource was to fly to the Mountains.
of where they were escaped at a place about 7 miles off on the top of a Mountain. We immediately sent a party of natives to land at a place about 7 miles to windward of where we lay, to cross the mountains, and cut them off in their retreat. As soon as we thought they had time to get up to the place, where they were to land, we started on shore, as we had about the same distance to walk, but by a most miserable road over hills and through swamps. Owing to the badness of the road, the inland party was up with them first, and had a pretty smart running fight, in which several of the enemy were wounded; of our side, only one, who was wounded by a spear in the thick part of the thumb. As we were ascending the last part of the hills, which was very steep, we could hear their yells, as soon as the fight began, but could not get to their assistance. When we had gained the path which leads round the Upper part of the mountain, we found they had made great preparations for us, having large piles of stones, placed at distances of 2 or 3 fathoms, ready to hurl down as we were getting up, but, being surprised by the inland party, they could not wait to receive us; had such not been the case, in all probability some of our party would have received considerable injury, as the others had the greatest advantage, having a firm footing, while we were obliged to haul ourselves up by the roots of trees. Our Natives set fire to all those people's huts, in which they found many things which had belonged to the "Falcon," but we allowed them to retain possession of them of course. All remained very quiet for a few days, with the exception of burning a few deserted houses, and cutting a small place belonging to a petty Chief, who acted with the greatest barbarity at the time the people were murdered. The boats were manned at midnight, and pulled in quietly with muffled oars, thinking to take them by surprise, but, when a few yards of the beach, received such a volley of stones as compelled us to lie off again. They began to presume a great deal of good on having repulsed us for a moment. War horns were blowing in all directions, and numbers of them down on the water side, dancing shouting and bidding us defiance. The night was dark, and we could not see the people, but our principal mark was a house which we knew they were before. When we were prepared, we gave them the contents of our swivels and 7sholes to one side, which silenced them. After a short time one or two of them came down, and challenged Wargi and his people, but on condition that the white men were not to interfere. Two days after this, we received a message from the King of another tribe to say Heshhipow had taken refuge in an old House on his land, that we were at liberty to go and take him, when we thought proper; and we might depend on not meeting with any opposition from him or his natives. A Canoe well manned with natives and two white men concealed in the bottom of her was despatched immediately. When they got to the place where they were to land, they rushed through the bushes up to the House; a Native was first up, and saw Hesshipow lying by the side of his wife. He levelled his musket and lodged the contents in her arm. Heshhipow not being wounded took the hint and jumped out of a window, when a white man shot him through the back and he fell; the natives carried him to the Canoe, and he was brought up to the harbor. The next morning they took him on shore and buried him; the next day, while some white men and natives were searching for Nanawah on a small island, called Manird, a native boy pointed out the Man, who murdered the Captain; he was secured and left near a House on the beach, ready to be brought down to the Vessel at daylight, but managed to make his escape. He mingled with the others again, and the boy was the first one who saw him; he levelled his musket; but, it missing fire, he threw it down, and snatched one out of a man's hand, who was standing near him, and shot the fellow dead. They brought him alongside the Cutter about Noon, with news that they expected to catch Nanawah before night. In the course of the afternoon he was found standing against a Bread Fruit tree, quite dispirited; when he saw the man near him, he did not attempt to resist or escape, but merely said "I know what you want, Jim, shoot me where I stand; I am tired of Life, for I am hunted by every one." He was told it was not the Captain's intention to injure him, but merely to transport him to another Island, where he would be a chief still, and that he would have the privilege of taking his wives and family with him.

After a deal of persuasion, he consented, but begged of the man not to take him on board the Avon, and gave as a reason that he knew what his fate would be, if he fell into Captain Doutoit's hands. He arrived on board the Cutter about 7 O'Clock in the evening, and showed by his dress, but not by his manners, that he did not place implicit confidence in the promises that had been made to him, being dressed in all his best ornaments, which is customary with those people when going to War, or on any occasion where their lives are in danger. He behaved with great confidence during the Evening, and sat at the Cabin Table drinking Grog, and smoking Segars. When questioned about the deed he had done, he gave very bold answers, did not seem to feel the least contrition, and at last said "It is of no use to bother me about it any more. I have done it, and I am now in your power, do with me as you think proper." We chained him to a Stanton on deck during the night, and kept strict watch over him in the morning; his confidence seemed to fail him on seeing the Cross-Jack yard lowered down and a rope with a Hangman's knot in the end rove through a block at the yard arm.
Some of the Sailors were putting it on their necks, which made him suspicious that it was intended for him. He called the man who brought him on board and said:

"You have brought me to a pretty Island, Jim; but I am quite prepared, it is just what I expected."

At 9 o'clock, all being ready, the Hangmen came on board; these were two black men belonging to the "Unity," looking more like Fiends than Men; they were dressed in long red gowns, with long wigs made of Canvas thrummed with Manilla rope yarns, and their faces painted red, which gave them a most hideous appearance. When Nanawah saw them, he asked who they were, and when told their office he seemed to shrink with horror. After his arms were pinioned, they came to lead him on the Forecastle, when he groaned heavily and with difficulty walked to a cask placed abaft the 12 pr. on the starboard side of the forecastle, which he mounted with the assistance of two men. When the rope was on his neck, and a bandage over his eyes, he was asked if he had any more to say, or any message to his wife; he said "no," the only request he had to make was that he should die by the hands of Narleck (one of the Chiefs who first came to our assistance); this was not attended to. The signal was given, the gun fired, and he was run up in the smoke. He remained hanging till 12 o'clock when he was cut down. The Natives fowed him on shore by the neck, scratched a hole and buried him across Hesshipow's breast. Having succeeded in capturing the principal objects of our revenge, we made preparations for our leaving, after making the Chiefs who had assisted us a handsome present, and giving them letters of recommendation to other Captains, who might chance to call there.

This statement was written and handed to me by John Plumb, late Seaman and boat steerer of the Whale ship "Falcon," afterwards a Seaman on board the "Lambton" Cutter, and left behind at the Maran Islands sick by Captain Hart. This man was brought from these Islands to Manilla, and sent by the Spanish Government to Singapore, from whence he was taken by me at the request of Dr. Montgomerie, the Resident Surgeon, and delivered over to the General Hospital at Calcutta on the 1st June last.

JOHN M. STEWART,
Barque Bengal Packet.

[Sub-enclosure marked B.]

COMMANDER BLAKE TO Sir F. L. MAITLAND.

Sir,

Her Majesty's Sloop Laone, Manila, 29th June, 1838.

As I conclude you will have heard from Captain Elliot an account of some very irregular proceedings said to have been committed by the English Cutter "Lambton," Hart Master, the bearer of this letter, I deem it my duty to acquaint you with the particulars of those transactions as far as I have been able to collect them here.

It appears the "Lambton" was employed out of Sydney, N.S.W., in collecting Tortoise shell, beche de mer, etc., from the numerous Islands in the Pacific, and, in prosecution of this object, arrived in Augt. last at the Island of Ascension in Latitude about 6° 55' N. Long., 158° 30' E.; finding there the English Schooners "Avon," commanded by Dudoit a British subject, a Native of the Isle of France, and "Unity" commanded by T. S. Hart an American, both from the Sandwich Islands, and in the same occupation as the "Lambton." It seems that, on the "Lambton's" arrival (the "Unity" likewise only having arrived that morning), a canoe came on board with two or three European Seamen in her, bringing information that the English Whale ship "Fa'con" of London had been wrecked there some few weeks previous; that the natives had assembled in multitudes and plundered the wreck; that they had murdered the Master, the Mate, and three or four men, and committed atrocious cruelties on them; and that the remainder were then on shore associated with a tribe supposed to be friendly to them, at all events at variance with the general Mass of the collected Natives. They were described to be in a most perilous situation, and assistance was requested from the Cutter and two Schooners. The boats of these vessels in passing to and from the shore were fired on by the Natives, who had provided themselves with muskets and ammunition from the wreck of the "Falcon." The crews therefore of the three vessels joined together, armed themselves, pulled on shore, and, with the assistance of the friendly tribe before mentioned, attacked a party of the natives, routed and killed a vast number of them, and fired the village. They were then advised to offer a larger reward for one of the principal Chiefs, who was well known, which was accordingly done in the shape of rum, Tobacco, Trinkets, and various other descriptions of European goods. This it appears had the desired effect, as the chief, betrayed by this inducement among his own people, voluntarily went on board the Cutter and gave himself up, when he was immediately put in irons. In the meantime the remainder of the ship wrecked crew were still on shore, and here it appears, at this Juncture, a most extraordinary step was taken jointly by the three Commanders of the "Lambton," "Avon," and "Unity." This was no less than a determination, under their view of the late transaction, to hold what they termed a "Consultation."
on board the "Lambton" and condemn to death the Chief, who had surrendered himself as prisoner. And strange to relate this was done, and the Chief was accordingly hanged on the following morning on board the "Lambton." This extreme measure, strange as it seems to have been adopted by such an Authority, it is said, had the effect of rescuing the remainder of the ship wrecked crew, with which the Cutter and two Schooners sailed a few days afterwards for the Marianne Islands (the Ladrones) a dependency of this Government, and there laid a deposition of the occurrence (I think much as I have related it) before the Governor, who has transmitted the whole of the documents to the Governor here. A Man named Marshall had made a strong deposition respecting this transaction before Captain Elliot previous to my leaving Macao, the "Lambton" being then at Hong Kong. It appears that the Master (Hart) on hearing this immediately quitted on a sudden, a movement which bore a suspicious appearance; however his object, as he says, was to lose no time in hastening here to procure from the Government the documents which he considers will explain his conduct and exculpate him. With these, he returns tomorrow.

As to the act of hanging the Chief under such circumstances and such authority, I presume there can be but one opinion as to its gross unwarrantable illegality. However Mr. Hart seems desirous of concealing nothing but states the fact as it occurred, and seems to rest his justification and defence on what he terms the necessity of the case. As it appears from several applications I have had from respectable quarters, offering any security for him in case I should be disposed to detain him, that he is actually bound to Macao without delay, I have deemed it advisable to abstain from interfering with him, especially as on his arrival the whole of the documents will without doubt, Sir, be laid before you.

It is reported here that Marshall's deposition was made from vindictive motives; he is said to have been well treated by Mr. Hart, and that on a subsequent disagreement he went before Captain Elliot and made the deposition in question. He is represented here as being a bad character, and I am informed that he was expelled from this place by the Government. From thence she again returned here, and went on to China, where she was engaged in smuggling opium until her sudden departure from thence, already mentioned, for this place about a month since.

I have thought it right, Sir, to state thus much to you as it has come to my knowledge here; and I believe the outline of the transaction to be correct, though different versions will no doubt accompany the detail, which must necessarily be subjected to varied interpretations. I have, &c,

P. L. BLAKE, Comr.
Marquess of Normanby to Sir George Gipps.

(Despatch No. 4, per ship Fergusson; acknowledged by Sir George Gipps, 23rd December, 1839.)

Sir, Downing Street, 25 February, 1839.

With reference to previous correspondence between this Department and the Government of New South Wales I have the honor to transmit to you Copies of two letters which have been addressed to my Under Secretary by Messrs. Fairlie, Clark and Innes relative to their claim to compensation for the value of Land and Buildings resumed by the Colonial Government, together with the answers which, by direction of my predecessor, have been returned to those Communications. And I have to request that you will furnish me with a Report on the Statements contained in Messrs. Fairlie and Co.'s letters.

I have, &c.,

Normanby.

[Enclosure No. 1.]

Messrs. Fairlie, Clark, Innes and Co. to Under Secretary Stephen.


Our having left so long unnoticed the Official Reply,* which we had the honor to receive from you under date 14th Sept., 1836, regarding our claim on the Govt. of N. S. Wales, may have led to the conclusion that we had been induced by the Statements in the Report of Governor Bourke, referred to in that Letter, and which we were indulged with permission to transcribe, to relinquish the further prosecution of our appeal. This, however, is not the case, since, the longer we reflect on our position, the greater is our sense of grievance by the Act of the Colonial Govt. But the probable change of our Representative at Sydney having left it for a time uncertain, to whom we could effectively refer the statements in question, with a view to their satisfactory disproof or denial by information obtained on the spot, some period may yet elapse ere we shall be enabled in that mode to meet the adverse opinion entertained by Her Majesty's Secretary for the Colonies on the authority of Govr. Bourke's Report.

In the meanwhile availing ourselves of His Lordship's willingness to receive any additional considerations that we might be disposed to lay before him, it may not be unimportant that we should now take the liberty of intimating that we expect to have it in our power to produce a complete answer to many of the statements adduced in the Report, and if not a refutation of the specific "facts" therein alleged, yet at least such comment upon them as shall materially change their aspect, and serve to dissipate the misapprehension, which an exparte and hostile view of them, taken in the Colony, may have raised to the prejudice of our claim.

But, indeed, on a careful retrospect of the matter, it cannot be needful to wait a Return from Sydney to offer a sufficient refutation of that view. The merits of our claim are surely not to be weighed by certain facts, as ruled by a strict principle of Law, the absolute rights of Govt. under which could never have been disputed.

* Note 2.
by our agent or his Legal advisers, if the matters were put upon that issue alone. But the supreme Court of Sydney is a Court of equity as well as of Law. As such, the Appeal was understood to be made to it, and, upon our rights in equity, we still hold that there cannot be stronger ground than that which we possess. If it be supposed that the facts, referred to, apply with equal force to the Equity as to the Law of the case, we respectfully but most strongly deny the justice of that assumption. The circumstances upon record leave it, as we contend, indisputably shown that the equivalent of property, or what has been by universal admission and practice of dealing in the Colony regarded as such, assigned to us for a valuable consideration, has been taken by Government for public purposes; that, under our present ejection, we have not received any value for that property, and that therefore we are entitled on all just considerations to be “compensated” at the “public expense.” Nor will we yet believe, whether we can disprove the official statements satisfactorily to His Lordship or not, that H.M. Govt, will finally commit towards us an Act of manifest injustice, which must follow from their confirmation of the proceeding of the Colonial Authorities, in having taken without payment or compensation Land from us, when, of the numerous tenures in Sydney, which might be reclaimed on the same principle, and in the same arbitrary manner, the Holders are left, and there is no doubt will continue in undisputed possession, while those parties, who were formerly Tenants on similar terms, and whose Lands have been resumed, have obtained approved compensation. We only desire to be placed on an equal footing of privilege with our fellow subjects possessing Territorial interests in the Colony. Our case as it stands is manifestly one of signal deprivation and hardship, which the concurrent voice of the Settlement (excepting alone the immediate organs of the Gov’t.) has almost unanimously declared to call loudly for relief; and you will permit us to add, in return to your Remarks upon the Declarations adverted to, both of the Jury and Inhabitants, that the leading facts, and such as ought to be the most influential, must have been generally known in an affair, which caused so much public sensation as the present; and that the united general judgment is not usually unsound, where simple Equity is concerned, apart from the application of what may doubtless be considered in this instance notoriously obsolete Law.

In confirmation of the grounds here taken, we beg your perusal of the accompanying Letter from our former agent in Sydney, Mr. William Walker, addressed to us on seeing the report of Govr. Bourke, which we took leave to submit to his inspection. You will bear in mind that this Individual is a Gentleman, who has long since quitted the Colony, is wholly disinterested in the result of this question, and quite prepared to substantiate his testimony in person. He certifies to the incorrectness of the Report in asserting that Mr. Steele, our agent, appealed to the Law. He was (it is truly and most forcibly said) “in possession of the premises, and only desired to retain it; but Govt. appealed to the Law, and dispossessed him, not by a verdict on the merits of the case, but, as stated by the Jury, on the ruling of the Judge that a point of Law would oblige them to give a verdict in favor of the Crown, which they therefore did, but as expressed by themselves very unwillingly.”

* Note 3.
Then, as to the Certificate of the Inhabitants so unjustly impugned by the Report, the same writer unhesitatingly asserts that so far from its being true that the parties to that Document had probably neither opportunity or inclination to possess an accurate knowledge of facts, many of them, including several Members of the Legislative Council, were intimately acquainted with every particular relating to the subject.

But the more important point of Mr. Walker's testimonial is doubtless that where in conclusion he quotes, from the extraordinary document (as the official Report is pleased to term it) at present referred to, as follows: "That the case of The King v. Steele is the only instance on record in the Supreme Court of N. S. Wales, in which the strict legal prerogative of the Crown has been assisted upon by the Crown Lawyers, and held by the Court to invalidate any of the aforesaid Tenures."

It is upon this broad fact, which we see no where denied in the Report, and considering that legal distinctions and minor circumstances, as to the periods of Lease or Notice of the intended resumption of the Land, can be of no moment whatever, in the view of that fact, and of the striking Evidence of public opinion so unequivocally manifested in our favour, it is on this basis that we rest our right to redress at the hands of an Executive, which professes to administer impartial justice to all the subjects of the Realm.

Upon the shewing of the Governor himself, it could not establish any precedent to cause future inconvenience, since it would appear that Ours is the only case in the settlement upon which such a question can now arise.

In corroboration of the views hereby shewn, we beg reference to the accompanying Abstract of the official statements, with a marginal commentary on such points as seemed to convey plausible objections to our claim. We must crave your indulgence for some prolixity, as the subject is one of great importance to us. We trust that we have shewn that there is nothing in Governor Bourke's Report, which ought in reason or equity to invalidate the demand, and therefore still hope it will be allowed, and that, although tardy, we shall yet obtain through H.M.'s Secretary for the Colonies that measure of redress, which we have so long sought in vain.

We have, &c.,

Fairlie, Clarke, Innes and Co.

[in liquidation].

[Sub-enclosure No. 1.]

Mr. W. Walker to Messrs. Fairlie, Clarke, Innes and Co.

Gentlemen,

No. 14 South St., Finsbury, 29 October, 1836.

After having perused the documents you sent me relative to your claim to an Opinion of allotment of Land in the Town of Sydney, N. S. Wales, which you have been deprived of by a late decision of the Supreme Court of that Colony, I cannot arrive at any other conclusion than that you have been very arbitrarily and unjustly dealt with, for I believe your case is one, which stands alone in the annals of that Colony. I resided in Sydney from the year 1813 to 1831 (with the exception of a few years' absence), and I am unable to call to mind any instance, in which the Govt. there resumed possession of Land held by Lease, or even only by long undisputed possession, if obtained by the party holding for a valuable consideration, without making compensation.

The Report of Sir R. Bourke to Lord Glenelg on this subject contains some observations, which, I think, are incorrect, for instance, it is there stated that Mr. Steele, your agent, in rejecting the offer of the sum of £613 Is. in full of all claim whatever on Government for the property in question, appealed to the Law, though

* Note 3.
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HISTORICAL RECORDS OF AUSTRALIA.

1829.
25 Feb.  

Opinion of W. Walker re claims of Fairlie, Clark, Innes and Co.  

Replies to despatch from Sir R. Bourke.

Extracts, Governor Bourke's Desp. dated 4th March, 1836.

Extract.—"Mr. Steele refused to consent to the condition attached to the offered payment, and even took measures for retaining by force the possession of the Land in dispute. I therefore placed the case in the hands of the Law Officer," etc.

Remarks.—It is admitted that Mr. Steele had possession. What measures he took for "retaining it by force" are not stated. Does not this act of the Governor seem to contradict his own Despatch, where it elsewhere says that "Mr. Steele appealed to the Law?"

Extract.—"They have evidently been induced to make common cause with the Memorialist, under the impression of his case being similar to that of many others who have a clear, equitable, but no legal title against the Crown. "The offer made on the authority of Lord Goderich was sanctioned on the mere score of equity."

Remarks.—Should it not be admitted that the Memorialist has this clear equitable title, if the offer of compensation was made to him on the score of equity. The principle is surely allowed by it. The sufficient quantum is a practical difference, and on this shewing the only one that can exist.

Extract.—"In rejecting that offer Mr. Steele appealed to the Law."

Remarks.—Mr. Steele considered the appeal of Government was made to a Court of Equity as well as to a Court of Law. But the verdict of the Court was ruled by the Law alone.

Extract.—"How inconsiderately the subscribers to the declaration have appealed to the supposed convertibility of Town Leases into Grants. In the great Majority of cases this convertibility arose from a positive clause in the Lease itself."

"Where the Clause has not been inserted (as it was not in the Lease now in question), the Government often made a Grant in its own discretion. "In a Proclamation, issued by Genl. Darling in 1829 with the avowed object of quieting Titles to Town allotments, it was conceded that mere occupancy prior to 1823 should entitle the Holder or His Representative to a Grant. But this was not only received as an Act of gratuitous Bounty, great satisfaction being expressed by the Public at large at the time, it contained an exception which manifested in the clearest language the sense the Government entertained of its right to withhold this boon at pleasure. That exception comprized all the land, which it was thought convenient to reserve for public purposes, among which was specifically described the Land now in question, and also that of which the Lease was originally given up by Mr. Palmer in Exchange for it in the year 1802."

Remarks.—But why should the Memorialist's case form a solitary exception to the Grant, when Govt. often made a Grant in its own discretion? In General Darling's Proclamation of 1829, it was "conceded that mere occupancy prior to 1823 should entitle the Holder or His Representative to a Grant"; and, if that excepted the Lands now in question, it appears by the Report itself that, of plots of Land which had been equally excepted in a former Govr.'s Proclamation of 24 July, 1807, and had buildings erected on them, the owners or holders were expressly permitted to build on other ground, unoccupied in the Town of Sydney. Memorialist asks only a similar boon. Wherefore should his be the single instance in which it is not granted?

Extract.—"The present case is farther distinguished from all others by the early manifestation on the part of Government of a determination to resume the Land."

* Note 4.
Then why was not the resumption sooner made, and does not the long forbearance or neglect of Government, in regard to dealing with it as their own, lessen the purpose of the present enquiry in the hands of the Claimant up to the period of the suit of ejectment in the year 1834? The key of the buildings, which is the recognized symbol of legal possession, had been during the entire previous interval in the hands of the Claimant's Agent.

**Extract.**—"When Governor Macquarie complained of even a lease having been granted by his Predecessor, no impression could have existed of the convertibility of leases into grants," etc.

**Remarks.**—That such expectations were in existence is proved by the recollection of persons then resident in the Colony; and those expectations were so strong that it was thought prudent to set them at rest by the Proclamation of 1829 before referred to.

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Mr. Bannister the Atty. General reports, that it appeared just to pay the sum of £513, which the Govt, offered to pay (why should anything be offered but from a sense of Justice of making compensation?), Mr. Willm. Walker, now at home. The £513, which the Govt, offered to pay, was for the supposed value of a small Windmill and Bakehouse erected on the premises. The larger windmill, "which still stands there," was a far more costly erection. The impropriety of the original lease and the building on insecure title, etc., was admitted. The impropriety of the original lease and the building on insecure title, etc., was admitted. The impropriety of the original lease and the building on insecure title, etc., was admitted.

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But, if possession was in the Crown, and if the right was so perfect, why not insist on the removal at the time notified? And, when the matter was referred to the Home Secretary and no answer returned, what should be reasonably inferred, but that the Home Government did not think it right or worth while to confirm the threatened resumption of General Macquarie. Their silence and can be considered in no other light than as a tacit admission that the party holding should be allowed to continue in possession.

**Extract.**—"The attention of Sir Thomas Brisbane was called to it in 1825, and Mr. Bannister the Atty. General reports, that it appeared just to pay the sum of £513 with interest on an assignment of the property valued, and possession being given up of the land comprised in the expired lease, and farther stating that the land was leased to Mr. Palmer improperly, and that he built on an insecure title, etc.

"In 1801, an order was issued which gave him full notice of the situation in which he allowed himself to be placed in 1802."
Remarks on report of solicitor-general.

Extract.—"The next letter of Mr. Bannister gave Notice to Mr. Walker that he was directed by the Governor to file an Information of Infrusion for the recovery of this Land. There is, however, no record of such Information having been filed, and whether that was owing to Sir Thomas Brisbane's recall from the Govt. of the Colony immediately after, or whether it was rendered unnecessary by the Crown getting quiet possession, does not satisfactorily appear; but, on the late trial, it was proved that the Crown was in possession in the year 1828 or 1829, and continued in possession until 1831, when the Servants of Mr. Steele got into possession by means of a stratagem and dispossessed the Crown. It was this made it necessary to bring the act of Infrusion agt. Mr. Steele, and I think under the circumstances it was imperative to assert the rights of the Crown by instituting those proceedings, which led to the trial already alluded to," etc., etc., to the end of the Clause.

Remarks.—Please remark here "No information was filed." Why not, if the right to eject was clear? That the Crown never got "quiet possession" is sufficiently shown above. It should be made appear in what way the Crown obtained the Possession. The Evidence, on which it is said to have been proved, discovers at best a very equivocal possession. See Report of this Trial. Why did the men in Govt. employ abandon the place? Why were the Trees planted there by order of Govt. destroyed? Why did the overseer of the Weigh Bridge desert his charge? Can this loose kind of holding be deemed proof of possession to defeat the claim of the subject, such as this case should require? Then it is said that Mr. Steele obtained possession by stratagem, and dispossessed the Crown. Now this is surely an unfair way of stating the matter; if, as seems too probable from the general spirit of the Document, it be implied that the agent used any deceit or fraud. Had he so done, would it not have been susceptible of exposure at the trial (The King be it recollected agt. the subject), and would not the evidence of such a fact have been most important on the side of the Crown, if such evidence could have been adduced. Unless to create a precedent for the benefit of the Crown in other cases which is not even pretended, with all submission, we deny that the circumstances here were in the least imperative to assert the rights "of the Crown, by instituting those proceedings." The real facts were these: The place was abandoned, or the charge of it neglected (which is the same thing) by the Govt. officers, and Mr. Steele, feeling he had the best right to it, from those possessing the Key, and having heretofore so long held it, re-entered and took possession on their behalf, a possession which had been never formally relinquished.

It is true Mr. Steele could not expect a "deviation from the legal course of Judicial proceedings" if such proceedings were instituted. But why recur to any Tribunal. Why was not the case decided by the Executive Council, in pursuance of a letter from the Secretary of State, the existence of which, as charged in the Memorial, is not denied. And the reference submitted the matter to the Governor in Council to be decided on its merits. Why is the Solicitor General " ignorant " of the circumstances? Why was not the case referred to the Chief Justice of the Colony for decision? The case was directed by the Governor to file an information of Intrusion for the recovery of this Land. There is, however, no record of such Information having been filed, and whether that was owing to Sir Thomas Brisbane's recall from the Govt. of the Colony immediately after, or whether it was rendered unnecessary by the Crown getting quiet possession, does not satisfactorily appear; but, on the late trial, it was proved that the Crown was in possession in the year 1828 or 1829, and continued in possession until 1831, when the Servants of Mr. Steele got into possession by means of a stratagem and dispossessed the Crown.

—As to the danger apprehended to other property in Sydney held under a similar tenure, there can be no cause for apprehension, for it so happens that there is not a similar tenure in the whole Colony."

Remarks.—This is a palpable misapplication of the term "similar tenure," which was clearly not used as implying that other properties in the Govt. domain were liable to be so treated, but simply that the equitable right of possession, interfered with in this instance, might disturb the holders of other Lands occupying on so better title; and in this view the decision in our case was calculated to excite, and has effectually given real ground of alarm throughout the Colony. In the case of other Lands, the fact of their being out of the Govt. Domain would not render the Occupants less liable to expulsion, if Government saw fit from any cause hereafter to exercise their strict legal right.

Extract.—"It appears that several other Leases as well as Mr. Palmer's were made of parts of the Government Domain, where the Botanical Gardens are now enclosed and near Mr. Palmer's also; but, on the expiration of their respective terms, the Land was resumed by the Crown of all save that leased to Mr. Palmer."
"And see the following Govt. order of 23d July, 1807, giving notice to parties holding Tenements on Govt. Lands to remove, etc. It concludes, 'On the 1st day of Novr. next, the present occupiers are required to quit possession of the said Houses, taking away, or disposing of their materials, the sd. grounds being wanted for Govt. purposes.' His Excellency is ready, on application to that effect, to grant permission to the said persons to build on such other grounds unoccupied in the Town of Sydney, as shall not interfere with his arrangements on this head.'

Remarks.—Here is a formal notification, given to sundry parties specified holding Lands on Govt. Domain, to remove themselves and their premises within a given period. But the Land occupied by Mr. Palmer is not included in this order. What can be the inference but that Govt. did not wish or intend to disturb him? If ever, it should surely have been on that occasion. The occupants described in the notice were not only allowed to take away or dispose of their materials, but promised ground to build on in other parts of the Town of Sydney. It need not be enquired whether those persons availed themselves of the permission; but it may most importantly for the present purpose, whether any of the persons so removing to other Lands have been subsequently dispossessed? If those who received notice to quit have obtained Lands in Exchange, in which they remain undisturbed, and those Lands are now treated as property in the simple, it can have truly be treated as if an occupant, who had no such original notice to quit, and who has held the property for so many years as has been done in the present case, should be entitled to compensation when it becomes necessary for the purposes of Govt.

Extract.—As the Memorial acknowledges that the Land was especially excepted in the Proclamation of General Darling in 1829, it is unnecessary to do more than allude to that fact.

Remarks.—This Proclamation has been already adverted to. Any objection arising upon it must be amply met and disposed of for the present object by the consideration that, whenever Lands have been resumed by the Govt. equivalent compensation has been uniformly given, whatever may have been the original tenure. In the cases specified above, the parties had held no Lease, but were known as the description of Settlers called Squatters merely, having thus the lowest claim to compensation of any, but which they nevertheless obtained.

Extract.—The entire merits of the case were not laid in Evidence before the Jury who tried it, because it would be superfluous to do so. From the nature of the Defence set up by the Defendants, the only point raised was so narrow that it would be beating the air to give Evidence of matters, that could not change the verdict in point of Law. It was fully made known to the Jury that the entire facts were not laid in evidence before them for that reason, which I conceived was obvious to them.

Remarks.—The assumption here is perfectly gratuitous, as to the narrowness of the defence set up. The defence was on general grounds, although the legal ones were insisted on that the Crown was bound to prove its Title to the Land in dispute, as decided in the case of the King v. West above referred to; that a sufficient possession by Defendant to bar the Crown, namely, possession of twenty years, was held by Defendant, and that the latter was not required to prove the negative of the King's having been 20 years out of possession. These points were argued on, but the general issue was also pleaded, which would have involved a consideration of the full merits of the case. This line of defence, however, the Court arbitrarily rejected, and not only so, but the strictly legal ground argued for the Defendant, viz., possession of 20 years, was over ruled by the doctrine laid down (most monstrously as applied to a Colony of so recent settlement) that the King's Title could not be invaded under an adverse possession of 60 years! The Court ruled that in all cases, even after an adverse possession of 20 years and upwards, where the Defendant may plead not guilty of Intrusion, under the Statute of James 1st before referred to, that he must nevertheless begin and shew his title; that no legal title can be made out except by Grant under Seal of the Colony, or by proof under the Nullum Tempus Act of an adverse possession as against the Crown of not less than 60 years. This Doctrine of Law must involve consequences so extensive, and so injurious to the Settlers in N. S. Wales, that a remark on it, somewhat more in detail, may be here excusable.

In expounding the act of James as applicable to this case, the Judge appears to be inconsistent with himself. Having said that 'The King as the universal occupant was presumed to be in possession, until the contrary appeared, whereas, in case of a fiddle, the fact of possession was a sufficient Title for Defendant.' that this Prerogative of the Crown had been restricted to a certain extent by the statute of James 1st, by which it was enacted; that, when the King should have been out of possession or should not have taken the profits of any Lands or Hereditaments within the space of 20 years before any Information of Intrusion brought to recover the same, in every such case, the Defendant might plead the general issue immediately, if he should think fit, and that "in such cases, the Defendant should retain the possession he had at the time of Information exhibited, until the title should be tried, found and adjudged for the King," further 'That the
36 HISTORICAL RECORDS OF AUSTRALIA.

Statute professed its intention to remit a part of the Royal Prerogative in certain cases only, namely where the Crown had been out of possession for 20 years.* In a subsequent part of his address, he states, "There is nothing in the facts in proof before the Court, which would take away the subject's right of Entry at Common Law. What would prevent his (a subject's) recovering, except the Statute of limitation, 21 James 1, Cap. 10, which takes the right of Entry after 20 years adverse possession"; and then adds "That statute does not apply to the Crown!": "By the Laws of England, the King, in virtue of his Crown, is the possessor of all the unappropriated Lands of the Kingdom, and all his subjects are presumed to hold their Lands by original Grant from the Crown." It is also a "clear rule of the same Law, that the right of the Crown cannot be taken away by an adverse possession under 60 years!" This discrepancy in the Judge's charge is surely too obvious to pass without notice: in the first instance, he declares the Royal Prerogative to be restricted by Act of Parliament by an adverse possession of 20 years, and afterwards he pronounces absolutely, and without assigning any reason for it or accounting for its substantial disagreement with the prior part of the charge, "That statute does not apply to the Crown! ! !"

It follows, from the most extraordinary holding of the Judge, that a 60 years' possession could alone be sufficient to bar the rights of the Crown, and, from the decision of the Court upon it in the present case, that the titles of all Landed Estates in N. S. Wales, except those held by special Grant from the Crown and Letters Patent passed under the Seal of the Colony, have become invalid, and the absolute necessity is thus clearly shewn of some quieting Act to relieve the apprehension of the Proprietors. Will the Home Government advisedly perpetuate this alarm by refusing adequate compensation to the Holders of the Land in question?

Extract.
—"As to the usage of the Colony on which the Jury ground their Certificate, it will be seen by the foregoing statement that the usage in similar cases was contrary to that which they assume it was for all the other Land, either leased or occupied within the Boundary line of the Government Domain, was resumed upwards of 20 years ago."

Remarks.—This Clause misrepresents the Certificate altogether. The certificate does not intend, "as the custom and usage of the Colony," that the Lands within the Govt. Domain had not been resumed, but that they were so taken as in the present case "for public purposes," full compensation was awarded, and this, as elsewhere remarked, is not denied in the Govr.'s Report under consideration.

[Sub-enclosure No. 4.]

REMARKS of the Colonial Secretary's Office, Sydney, attached to the Report.

Extract.—"Previously to the Proclamation of 8th July, 1829, by General Darling, nearly the whole of the allotments in Sydney were held by the Title of mere occupancy on expired Leases or under Leases still in existence, there being but very few Grants made."

"(Then follows an enumeration of Leases for 14 years, of which copies are annexed.)

"These facts go somewhat to prove that Leases were not considered as giving a claim to Grants, but that the Government even cancelled unexpired Leases, and gave fresh ones to other parties, and the last case that the erection of a dwelling House only procured the party a Lease."

Observations thereon.
Remarks.—By this Proclamation, it was conceded (as noticed heretofore) that mere "occupancy prior to 1823 should entitle the Holder, or his Representative to a Grant." Here it is admitted that previously there had been but very few Grants made; so much the more reason then for Indemnification to be expected by the Holder of an expired Lease, when so many, some even "mere occupants," were indemnified by that measure.

In the present case, valuable and substantial Buildings were erected on the premises, at a cost in the aggregate of not less than £5,000, and, in the year 1814, the Memorialists purchased the Title thereto for a bona fide consideration of £3,789 12s. 6d.

Extract.—"All these Leases were in the same form; and the only conditions were the erection of Buildings and payment of Quit Rent," etc., etc.

Remarks.—Governor Macquarie's Leases, it is afterwards said, were for 14 and 21 years, but "it does not appear that he exercised the right of resuming the Ground on their expiration!"

Sir Thomas Brisbane's Leases (of June, 1823) were for 21 years, promising a Grant, on paying a fine equal to 21 years of the Quit rent or the erection of approved Buildings of the value of £1,000.

Extract.—"General Darling's Proclamation of 8th June, 1829 (which however only applies to Sydney) guarantees Grants of all Lands with certain exceptions
specifically mentioned, whether held under permission occupancies, expired Leases, or otherwise, and is the foundation of all titles excepting Grants."

**Remarks.**—The allotment in question being the one exchanged by Mr. Palmer for a lot in the Town of Sydney (which was leased to Capt'n Joseph Foveaux, purchased by the said Palmer, converted into a Lumber-yard for the use of Government, and since sold at £25 6s. per foot, and the proceeds applied to the Colonial Revenue), this parcel of Land, so received in Exchange, is itself situate in the Township of Sydney on the West side of Farm Cove.

The exception to the promise of Grants, as applied in this instance, has been already made upon at some length, and it is hoped satisfactorily disposed of.

**Extract.**—"With the exception of a few Grants in Paramatta, the remainder of the allotments are held on Leases for 21 years from June, 1833, and by permission occupancies, but mostly the latter."

"The ground in all the other old Towns is entirely held without any written Document; Nor is there any correct record on the subject, but it is supposed that Leases were intended."

**Remarks.**—May not these admissions of the Report itself be appealed to. If all these originally loose Tenancies of Land are to remain undisturbed, Why should not that of the Memorialist also. Or how can it be equitably reclaimed by Governments without compensation adequate to its worth?

**Extract.**—"With regard to the Declaration of the Inhabitants, there appears but little requisite to notice, as the case on which it was brought forward is a special and very different one to all the others," etc., etc.

**Remarks.**—The Declaration is evidently unanswerable on the face of this comment but by pronouncing it inapplicable, or impugning the good judgment of the subscribers. But can this be a fair mode of meeting a Document so numerously and respectably signed by Members of the Legislative Council, by Clergymen, Magistrates, Barristers, Merchants and Bankers, so as undeniably to exhibit the general Sentiment of the Colony. It cannot be inapplicable as shewing the just pretensions of the Memorialist, unless he be deemed to be distinguished as a solitary victim of irresponsible power.

Although the Government were not "specifically pledged to give Grants of all lands leased," they have virtually done so by the Proclamation* of 1839, and by allowing the Holders to remain unmolested; and, where any portion of such Land has been required for "public benefit," there ample remuneration has been given by Grants of allotments in other places.

It is almost a cruel mockery to designate the hope of similar redress as an "unauthorized expectation."

**[Sub-enclosure No. 5.]**

**Extracts Solicitor General's Report, dated 30th Novr., 1855.**

**Extract.**—"Besides the portion of Land formerly leased to Mr. Palmer by Gov- ernor King, Mr. Steele took possession of an acre of Land adjoining it, to which his report of constituents never before laid claim, and kept possession until he was dispossessed by the Writ of possession obtained in this case."

**Remarks.**—There was full guarantee, in the character of those Mr. Steele represented, against any undue retention of Land exceeding the allotment for which he was contending. It does not appear that the excess was pointed out to him, or any demand made for it by Government independently of the general question. It was singular to make this a matter of complaint under the circumstances, and seems to shew how little in the nature of real objection there is to bring forward.

**Extract.**—"I stated that it was in 1831 that Mr. Steele got possession of the Land in question by means of a stratagem. As I find in his Memorial to the Secy. of State an acknowledgement of that fact (paragraph 10), I now perceive it was in the year 1823 that such possession was taken."

**Remarks.**—A most complete begging of the question that any "stratagem" was used. Let the Govt. shew how they obtained possession. The place was vacant and Mr. Steele occupied it, as he believed and still contends he had full right to do. Can this be called stratagem? See preceding observations on this head.

**Extract.**—"As to the Document signed by the Landholders, etc., of N. S. Wales, it is not for me to make further comment upon it than to express my surprise at seeing so many respectable names affixed to such a Document."

"If the circumstances of the King v. Steele were familiar to the majority of those whose names appear to it, I think they never could have lent their names to Mr. Steele."

**Remarks.**—There is more important testimony to the respectability of the Inhabitants' Declaration. Ought the Solr. General's expression of surprise to invalidate its effect and bearing upon the case? It needs only to be asked that many of the parties to the Declaration, and those too among the most respectable, are known to be old Residents, and intimately acquainted with every particular of the Transaction from first to last.

* Note 4.
Inability to give decision without reference to governor.

[Enclosure No. 2.]

SIR GEORGE GREY TO MESSRS. FAIRLIE, CLARKE, INNES AND CO.

Gentlemen.

Downing Street, 1st February, 1839.

I have laid before Lord Glenelg your Letter of the 15th Ultro. In reply, his Lordship directs me to observe that, as the representations which that Letter contains are still avowedly incomplete, it could answer no useful purpose to resume now the consideration of the subject to which they have reference. Lord Glenelg cannot, however, omit the present opportunity of observing that the course of proceeding adopted in this case is very inconvenient, and tends to protract indefinitely the ultimate decision of the claims of the parties interested. When exception is made to the decision of the Government of a Colony, and especially of so remote a Colony as New South Wales on grounds of which that Government has not been fully apprised, it becomes inevitable that they should be consulted on the new matter alleged, before their decision can be overruled by the Ministers of the Crown. The effect of references to so very remote a place as N. S. Wales is to consume little less than twelve months in obtaining the necessary explanations. In order to avoid this inconvenience, Lord Glenelg and his Predecessors in office have given repeated Public notice in all the Colonies that appeals against the decisions of the Local Authorities should be communicated to those authorities by the appellants previously to their transmission to Europe, in order that the question, when ultimately reaching this office, might be presented in so complete a manner as to admit a final decision without the delay and inconvenience of a reference to the Colony for official answers to the allegations of the Appellants. By the observance of this rule, H.M. Govt. have been enabled to bring to an early close many questions which must otherwise have continued unsettled for an indefinite period. If in the present case you had, through your Agents in the Colony, communicated to the Governor the statements which you have now laid before Lord Glenelg, his Lordship would have been prepared to express a final opinion upon them. At present he can only state that they do not appear to him to justify any change in the course already taken; although, should such be your wish, his Lordship is ready to transmit these Papers to the present Governor for his Report.

I am, &c.

GEO. GREY.

[Enclosure No. 3.]

MESSRS. FAIRLIE, CLARK, INNES AND CO. TO SIR GEORGE GREY.

Sir,

London, 8 Febry., 1839.

We are honored with your letter of the 1st Instant, in reply to our Address to your Department of the 15th Ultimo, and have to express our regret that the course of proceeding, we have adopted in reference to our claim on the Government of New South Wales, should be pronounced by Lord Glenelg as “very inconvenient.” The necessity of bringing this matter again before his Lordship, we had hoped might be justified by the well known delay in obtaining explanations from so remote a quarter, and more especially in the present case, in which there were circumstances already intimated, which must greatly enhance the difficulty.

Had the Appeal to Her Majesty's Minister against the decision of the Colonial Government been made thus in the first instance,
GIPPS TO GLENELG.

1839.

25 Feb.

1839.

25 Feb.

Reasons for
renewal of
claim.

it would doubtless have been justly open to animadversion on the
ground of inadvertence of the proper course of proceeding, referred
to as having been publicly notified in the Colonies. But, in the
present case, that form has already been observed, and the observa-
tions, we submitted, were founded upon a report received by his
Lordship from the Governor of New South Wales, and, in fact were
offered in pursuance of his Lordship's implied permission; and
consequently it did not occur to us that a second notification to the
local Government could be considered necessary.

In the absence of expected communications from our Agent in
New South Wales, it was felt that the matter should not appear
to be neglected on this side; and it was also conceived, upon in-
vestigation of the Report itself and applying the partial information
received, that a sufficient answer could be given to satisfy the
doubts of the Home Government, and induce it to recognize the
claim. In such an expectation, we conceive, by the concluding
paragraph of your letter, we are doomed to suffer disappointment,
although, as the reconsideration of the subject is said to have
been declined as answering at this time no useful purpose, we per-
mit ourselves to hope that the intimation given of our statement,
appearing to his Lordship not to justify any change in the course
hitherto taken, may yet be found not finally irrevocable after our
remarks shall have been referred to the Colonial Government.

In this view we should desire to take advantage of his Lordship's
offer to forward the papers to the present Governor for his report,
and beg the favor of their being transmitted accordingly.

We have, &c.,

FAIRLIE, CLARKE, INNES and Co.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 5, per ship Fergusson.)

Sir,

Downing Street, 26 February, 1839.

I have received your dispatch No. 147 of the 22nd of Sep-

tember last, reporting the progress of the Expedition which had

sailed from Sydney on the 18th of the same Month, under the

Command of Captain Sir J. Gordon Bremer for the North Coast

of Australia, for the purpose of establishing a Settlement there;

and I have to convey to you the sanction of Her Majesty's Gov-

ernment of the assistance, which you have rendered to that

Expedition.

I have, &c.,

NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 36, per ship Alfred.)

My Lord,

Government House, 26th Feb., 1839.

With reference to my Despatch of the 19th Decr. last,
No. 200, in which I reported that seven men had been executed
for an atrocious massacre of the Aborigines of this Country, and
MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(A circular despatch per ship Fergusson; acknowledged by Sir George Gipps, 27th September, 1839.)

Sir, Downing Street, 27 February, 1839.

I have the honor to transmit to you a copy of a Work,* which has been published by Mr. Montgomery Martin, containing a statistical account of the British Colonies.

You will perceive that, in compiling this Work, Mr. Martin has had access to the various Blue Books in this Office. I should be glad to receive your opinion whether the Publication contains generally an accurate account of the Colony under your Government.

I have, &c.,

NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 37, per ship Alfred; acknowledged by marquess of Normanby, 14th August, 1839.)

My Lord, Government House, 27th Feby., 1839.

I have the honor to forward herewith a copy of the Report, which I have received from the Board of Officers, which, in my Despatch of the 22nd Novr., 1838, No. 189, I stated I had ordered to assemble for the purpose of enquiring into the causes which had produced so much sickness on board vessels, chartered during the last year by Government to bring out Emigrants to New South Wales.

I concur with the Board in thinking that the sickness is principally to be attributed to the excessive number of children

* Note 5.
embarked; to the want of proper authority on the part of the Surgeon Superintendent; and to his being generally unacquainted with the previous habits or dispositions of the people. I concur also in the remark made by the Board that, when Emigrants are taken from a District laboring under any peculiar pressure of poverty or distress, there must be an increased chance of disease being engendered on their passage.

The suggestions of the Board for alterations in the Diet of the Emigrants, and for varying it according to their previous habits (so different in different parts of the United Kingdom) appear to me to be judicious.

The advantage of having Cabin Passengers in Emigrant ships seems to be rather of a more questionable nature, as the support, which they would afford to the authority of the Surgeon, might be balanced by other disadvantages. I have however, in a former Dispatch,* offered my opinion to your Lordship that Cabin Passengers, whose passages are to be paid for by the Colony, should as far as possible be sent out in Emigrant ships; this is particularly desirable with respect to Clergymen and School masters.

The most important recommendation however of the Board is that the Victualling, as well as the conveyance of the Emigrants, should in future be submitted to public competition, and made the subject of contracts. If the expenses of Government Emigration can be reduced by no other means, I am disposed to think that this should be tried; but it is in England rather than in New South Wales that the chances of its proving successful can be estimated. The Bounty system, however, has been found so far superior to that of Government Emigration, both as to the description of persons supplied by it, and the cost of their passage, that, in the present state of the finances of the Colony, it appears to me very doubtful whether any other should be persevered in.

I have, &c.

GEO. GIPPS.

[Enclosure.]

BOARD OF OFFICERS TO SIR GEORGE GIPPS.

Sir,
Immigration Office. Sydney, 18th January, 1839.

We do ourselves the honor to acknowledge the receipt of the Colonial Secretary's Letter of the 5th Decr., 1838, conveying to us the desire of your Excellency that we should constitute a Board for the purpose of enquiring into, and reporting on the probable causes which have produced during the present year a greater degree of sickness on board of Immigration Ships, freighted by the Government, than in those fitted out under the Bounty System.

We regret that our Report has been so long delayed; but it must be evident to your Excellency that, in entering upon a range of enquiry so extensive and important as that pointed out in our

* Note 6.
in instructions, it was absolutely necessary to avail ourselves of much
Documentary Evidence calculated to throw a light on the various
subjects brought under our consideration. Some unavoidable delay
was incurred in procuring those papers; but we have now the honor,
after much anxious enquiry and deliberation, to submit our Report
to your Excellency; and we sincerely trust that our recommendations
and suggestions may prove useful in perfecting the future
conduct of a branch of the Public Service of such vast importance
as Immigration must be to this Colony and to the Mother Country.

The first subject referred to in our instructions is, "Whether, in
the selection of Immigrants, a sufficient attention has been paid to
their state of health, and to their ability to bear a Sea Voyage and
a sudden change of diet."

In order to acquire as correct information as possible on this
point, we deemed it of the utmost importance to examine any of
those Surgeons, who might still be in the Colony, who had brought
out Immigrants; and we have come to the conclusion that, with
the exception of the Medical Officers who had been sent home from
this Country to select and bring out their own Immigrants, we pos­
sess no means of ascertaining the degree of caution exercised by
the home Agents in their selection. With respect to those Sur­
geons who have had the privilege of exercising their own judgement
in selecting and bringing out their people, we are not aware that
there is an instance of one of their Ships arriving in a sickly state,
unless it might be urged that the " John Barry " came under that
denomination. We beg, however, to observe that, although Dr.
Boyter was in that instance sent home for the purpose of selecting
and bringing them out, he was obliged by indisposition to relinquish
at the last moment their superintendence during the Voyage; and,
however unexceptionable their selection might have been, yet, from
the fact of the Surgeon who brought them out joining the Ship
at the time of sailing, it was impossible for him to possess that inti­
mate acquaintance with their respective constitutions as he would
have done had he been brought into daily contact with them whilst
engaged in the task of selection.

In reference also to the case of " the Layton," which sailed from
Bristol in September, 1837, and whose people were selected by the
Surgeon who brought them out, mortality to a great extent cer­
tainly appears to have existed amongst the children, Seventy of
whom died out of One hundred and seventy-eight; but this we may
venture to assert arose from the Measles having been imported into
the Ship, and was a circumstance which it must be apparent to
your Excellency is not at all times under human control. It may.
however, be presumed that that Disease shewed itself early in the
Voyage, and that in other respects no sickness existed, from the
fact of the Ship having arrived in a perfectly healthy state. We
also deem it proper, in reference to this Ship, to draw your Excel­
lency's attention to the circumstance, stated in the Agent General's
first Report to the Secretary of State (Vide page 6), which led that
Officer to choose the Immigrants from those Districts where local
pressure existed, for, notwithstanding the " Layton " having, with
the exception of the loss of the children before alluded to, arrived
in a healthy State; yet, if this principle continues to be acted on,
sickness may be expected to prevail amongst a class of people, who,
from the want of previous employment in their respective occupa­
tions, have perhaps been for some time in a comparative State of
poverty, both in diet and clothing; and whatever judgement and
discernment the selecting Officers may exercise, yet they must be,
collectively speaking, a class of people by no means calculated to
undertake a long Voyage with the same impunity as if they had
been chosen from a population where distress did not exist.

We are led to dwell further on this point from the circumstance
of having observed, in the directions recently issued by the Emigra-
tion Agent General in London (Vide par. 6), an injunction con-
fining the selecting Officers to a particular District for each Ship,
and forbidding them to receive any other, no matter how eligible.
The tendency of such an order, however calculated to relieve local
poverty, must circumscribe the operations of those Officers in this
important duty; and may compel them to receive in many instances
individuals quite unsuitable to undergo the physical hardships of
a long voyage, or likely to prove serviceable to the Colony on their
first arrival.

In further illustration of our own conviction of the absolute
necessity which exists for a previous acquaintance on the part of
the Surgeon Superintendent with the constitutions and habits of
the people, confided to his care during the passage, we beg to bring
under your Excellency's Notice some of the leading features con-
nected with the Ships "Palmyra," "William Rodgers" and "Mait-
land," the disastrous result of whose voyages have, we presume,
given rise to the appointment of this Board. Owing to the depar-
ture of the Surgeon Superintendent of the "Palmyra" previous to
the commencement of our enquiries, we have been unable to receive
any personal information from that Officer; but it appears from
his returns that Scarlet fever broke out amongst the Children early
in the Voyage, carrying off twenty-six.

In reference to the "Maitland," it appears, from the evidence of
Surgeon Smith, R.N., that he was totally unacquainted with the
people committed to his charge; That he, along with them, embarked
on the 21st June, and the Ship sailed on the 24th; and that, until
the day of embarkation, he had not seen one Immigrant. Upon
examining his sick Journal, it appears that Scarlet fever made its
appearance so early as the 26th June, being only two days after
sailing; and further, that Sixty-three cases occurred during the
Voyage, Sixty two of which were Children; the effects of this
Disease were Dropsy in some cases, and general emaciation in
others, causing thirty-five deaths during the Passage; which doubt-
less produced a tendency to sickness amongst the remaining Pas-
sengers. It is evident, therefore, that this epidemic must have
been imported into the Ship, and was not the result of the non-
adoption of any precautionary measures for the preservation of
health.

As regards the "William Rodgers," it appears from the state-
ment of Mr. Reid that he was similarly circumstanced in having
no personal communication with his charge, previous to their em-
markation, which was on the 11th May, the Ship sailing on the
13th.

With respect to the comparative state of health which has existed
on board the Government Ships and those sent out on the Bounty
System, it undoubtedly appears much in favor of the latter; but
that circumstance may in our opinion have arisen principally from
the excessive number of children embarked in the former.
1839.
27 Feb.

Report by board of inquiry re sickness on immigrant ships.

Selection of immigrants.

Supply of clothing.

Authority of surgeon superintendent.

In twenty-three Ships sent out by Government there were on board:

<table>
<thead>
<tr>
<th>Adults</th>
<th>Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>3,640</td>
<td>3,068</td>
</tr>
</tbody>
</table>

or nearly equal; whereas in the Bounty Ships, in ten of Mr. Marshall's, there were:

<table>
<thead>
<tr>
<th>Adults</th>
<th>Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,644</td>
<td>697</td>
</tr>
</tbody>
</table>

and in four by the London Immigration Committee:

<table>
<thead>
<tr>
<th>Adults</th>
<th>Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>936</td>
<td>368</td>
</tr>
</tbody>
</table>

which in both instances will give but about one child to Three Adults.

It will, we presume, be admitted, that in proportion to the number of children embarked on board Ship, sickness or health must prevail in a long voyage; they are more liable to disease, and more susceptible to the evils arising from change of diet and temperature. In reference to this point, we also beg to draw your Excellency's attention to the present "passengers Act,"* which calculates three children under Seven as equal to one Adult. Those Officers, who have had charge of Immigrant Ships, are too well aware how injurious this clause is; for the habits and infirmities of Infants soon point out that they require as much room as an Adult, and hence a serious evil arises from excessive numbers. The difficulty also of at all times obtaining a suitable diet on board Ship is another evil; and to this may be added the danger of their bringing disease on board. As instanced in the case of the three Ships (Layton, Maitland and Palmyra) before alluded to. In support of this view, we again beg to advert to the comparative number of Adults and children on board those Vessels:

<table>
<thead>
<tr>
<th>Vessels</th>
<th>Adults</th>
<th>Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Layton</td>
<td>122</td>
<td>178</td>
</tr>
<tr>
<td>Palmyra</td>
<td>151</td>
<td>141</td>
</tr>
<tr>
<td>Maitland</td>
<td>223</td>
<td>127</td>
</tr>
</tbody>
</table>

With respect to the second Article relative to the sufficiency of clothing, we beg leave to observe that the Supplies originally ordered by the Government were certainly inadequate; but we perceive, by a late order promulgated by Mr. Elliott, that a considerable and efficient increase has been insisted on.

With reference to the third point submitted to our consideration "as to the sufficiency of authority vested in the hands of the Surgeon Superintendent," we have to state to your Excellency that we are not aware that that Officer possesses any, not even the power of stopping the daily Rations of those who may behave themselves in a disorderly manner. It is a complaint almost universally made of the great difficulty experienced in controlling the people efficiently, and in enforcing the fulfillment of the necessary regulations for the preservation of order and health; and this must be still more evident in those cases where the Surgeons Superintendent may not have had an opportunity of becoming acquainted with the people under their charge previous to embarkation.

It is equally evident that the Surgeons Superintendent of Ships fitted out under the Bounty System, possess no greater power of control than that assumed power exercised by the Surgeons Superintendent of Government Vessels; but we are desirous of drawing your Excellency's attention to the circumstance that, in the former or Bounty Ships, the assumed authority of the Surgeons in enforcing regulations for the health and comfort of all on board is backed by the moral and physical force of a large body of respectable Cabin Passengers, whose support cannot fail to have a

* Note 7.
considerable influence over the minds of a class of people, by no means at any time easily controlled, more particularly on Ship Board.

We now beg to advert to the two succeeding clauses relating to diet, which, from their intimate connexion with each other, we deem it most conducive to the object your Excellency has in view to offer our conclusions on jointly. We are then of opinion that sufficient attention has not been paid to the dieting, consistent with the previous habits of the people, either from England, Ireland, or Scotland; for it appears that the same quantity of Oatmeal has been put on board of Ships from England, as in those from Scotland and Ireland; whilst, on the other hand, the same quantity of Biscuit has been supplied to Ships from Scotland and Ireland as to those from England. From the evidence of all the Medical Officers, it unquestionably appears that the allowance of Biscuit in all the Ships is more than sufficient for health or for actual consumption. In the Ships from England, it would no doubt be a great saving to the Government, and equally beneficial to the Immigrants, if the allowance of Oatmeal was altogether stopped except for Medical purposes, and the daily ration of Biscuit reduced one fourth; and to issue to them in lieu thereof a moderate allowance of Cheese, an Article of diet to which the English people, and more especially those from the Southern Counties, are much accustomed.

With respect to the Ships from Ireland and Scotland, the daily allowance of Biscuit may very properly be reduced one fourth, but continuing to issue the same allowance of Oatmeal. It appears also that the quantity of Flour daily issued is more than necessary, and may be discontinued altogether on days on which Pork and Pea-Soup are served out. With respect to the victualling of Children under (2) Two Years, we cannot but consider it rather inconsistent that Infants should be supplied with the same Articles of diet as those issued to Adults, and which it is impossible they can consume. We therefore conceive that their present description of food should be totally changed, and that they should be supplied with such quantities of Rice, Arrow-root and preserved Milk, as the Surgeon Superintendent may think necessary.

The reduction, above alluded to, will cause a considerable saving to the Government, and enables us to recommend an issue of preserved Meat twice a week on Beef days (checking of course the Salt Beef on such occasions) to the extent of half a pound to Adults and a proportionate quantity to children.

The extra expense attendant on the supply of this Article would by no means amount to the reduction, which would be judiciously effected by the adoption of the change we have recommended.

Having now alluded to most of the points submitted to our consideration, it only remains for us, in conclusion, to offer to your Excellency any suggestions, which may appear practicable with a view to reduce the expense of Government Immigration.

It must be evident to your Excellency that there are various items of outlay incurred in the present System of engaging Ships, which, so long as that is in force, cannot, we conceive, be reduced. Indeed the only one which, on reference to the Accounts of the Auditor General, appears to us as at all susceptible of reduction is the sums paid under the head of allowance money for surplus provisions. There has been paid to the Captains of the first twenty Vessels, fitted out by Government (exclusive of the John Barry and
Adam Lodge, and ending with the Saint George) on that account, inclusive of necessary money, no less a sum than £3,259 12s. 4d., independent of their usual Gratuities, amounting to £50 for the Officers of each ship. Calculating necessary money on an average of £50 for each ship, there will still remain on the score of allowance for surplus provisions alone a sum of £1,660, average about £83 to each captain. In two ships (the Parland and Maudarin), the respective sums paid under that head, taking the foregoing data of £50 necessary money for our calculation, were to the former £273, and to the latter £240, being nearly equal to the balance of a six months' victualling account. We think this allowance might be abolished by inserting a clause in the Charter Party, holding the masters responsible for their victualling accounts, but at the same time allowing a fair proportion for wastage.

But this is a trifling reduction on so large an annual expenditure; and the only mode, by which in our opinion both a saving can be effected in, and the efficiency promoted of this important branch of the public service, is by totally abolishing the present mode of engaging ships, and substituting in lieu of it that system recommended and adopted by the late London Emigration Committee; namely, the chartering of vessels for the conveyance of immigrants selected through the agency of government direct from private individuals at a certain sum per head for males, females and children; half of which should be payable on departure for all embarked, and the remainder on arrival for those disembarked, subject of course to the approval of the local authorities as to the manner in which the spirit of the Charter Party may have been observed.

Such ships should be fitted up at the owners' cost, and find provisions, water, bedding, medical stores, and comforts, etc., on a fixed scale, and under the direction of the naval Emigration agents either in London or at the outports. The advantages of such an arrangement are obvious. It would be the means of entirely supplanting the existence of various contingent expenses and allowances, the amounts of which are not frequently rendered in until long after the arrival of ships in the colony, thereby causing an intricacy in the accounts and much inconvenience.

It would also effect a great saving in the balance returned on account of surplus provisions, stores, and fittings, which, after being landed at the expense of the government, are invariably sold by auction at a very low price; indeed we know of an instance where bread of an excellent quality, which may be presumed to have cost 17s. 6d. to 18s. 6d. per hundred weight in England, has been sold at 5 and 6 shillings. The same remark may be considered as applying generally to other articles of provision.

We consider that ships, in every way eligible for the service and well provisioned and equipped, could to any extent be found to convey immigrants from England to this colony, and on terms corresponding with the sums now granted for the passage of immigrants brought out on bounty.

The whole of the 'tween decks should be expressly and exclusively devoted to the accommodation of the government immigrants. A six months' supply of provisions and water should be put on board, the quality of which should be subject to the approval of the naval Emigration Agent stationed at the port, where the ship might be allowed to carry no general cargo: but, with a view to enable the ship owner to undertake the service on terms of mutual advantage, the whole of the poop cabins (merely reserving
GIPPS TO GLENELG.

one for the Surgeon Superintendent who would of course be appointed by the Government) might be appropriated to his emolument, together with a specific allowance, say 30 Tons, for the reception of his Passengers' Luggage.

It will be evident to your Excellency that one principal cause of the greater expense, incurred in the present System of Chartering Government Immigrants Ships than in those bringing out People on Bounty, arises from the circumstance of the Poop Cabins, which generally afford the most valuable remuneration to the Owners, being unoccupied and consequently lost to the Service. By the adoption of the System which we now recommend, not only would the reservation by the Ship Owner of those Cabins considerably decrease the expense of engaging Vessels for the purpose of conveying Immigrants hither; but, what is of still more importance, and our views on which we have had the honor to bring under your Excellency's Notice in another part of this Report, it would procure a body of respectable Passengers whose presence would tend much to check any opposition on the part of the Immigrants to the exercise of the Surgeon's authority in enforcing his regulations for the health and comfort of all.

We have now, Sir, fully and fairly stated our opinions on the various points submitted to us; they have been considered most carefully, and are the result of the most anxious desire to arrive at just conclusions; and, in transmitting this our Report, we must again repeat to your Excellency our sincere hope that our recommendations may be instrumental in averting a future loss of life, and in giving increased efficiency to Emigration to this Colony.

We have, &c,

J. DENHAM PINNOCK, Chairman,
Agent for Immigrant.

JOHN DOBIE, Surgeon, R.N.,
Health Officer, Port Jackson.

JAMES LAURENCE, Surgeon, R.N.

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SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 38, per ship Alfred; acknowledged by Lord John Russell, 11th October. 1839.)

My Lord,

Government House, 27th Feby., 1839.

In my Despatch of this day's date No. 37, I have confined myself to the topics, which naturally grew out of the Report transmitted with it on the subject of disease having prevailed during the course of the last year in a much greater degree on board ships, chartered by Government for the conveyance of Emigrants, than in the vessels which brought to the Colony Emigrants on the Bounty system.

The necessity, however, under which the Colony is now placed, of applying by far the greater part of the land fund to defray the charges, which have been transferred from the Military Chest to the Colony during the last four years, forces me most reluctantly to represent to your Lordship that there will in all
HISTORICAL RECORDS OF AUSTRALIA.

1839.
27 Feb.
Despatches re finances.

1839.
27 Feb.
Despatches re finances.

On the financial prospects of the Colony, I beg leave to refer your Lordship to my Despatches of the 12th Oct. last, Nos. 160 and 161, and of the 31st Oct., No. 177, also to my Separate Despatch dated 3rd Novr., 1838; observing that, since they were written, I have had the honor to receive your Lordship's Despatches of the 28th Augt. last, No. 195, and 4th Sept., No. 208, conveying to me the final decision of the Lords of the Treasury on representations made to your Lordship by my Predecessor in the years 1835, 1836 and 1837.

The great cause, why Emigrants sent out by Government are at once more expensive and less valuable to the Colony than those imported on Bounty, appears to me to be that they are usually taken from Districts laboring under the pressure of penury, want or disease. That the relief of such Districts is of prime importance in the conduct of Emigration, I most readily admit; but I trust your Lordship will allow me to observe that it might seem but reasonable that some portion of the expense of the passage of Emigrants from such districts should be borne either by the Parishes, which are relieved by their Emigration, or by the British Government.

I have, &c.,
GEO. GIPPS.

1 March.

Imperial statutes to be transmitted annually.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(A circular despatch per ship Fergusson.)

Sir, Downing Street, 1st March, 1839.

Her Majesty's Government, having had under their consideration the inconvenience, which may arise in the Colonial Possessions of the Crown from an imperfect acquaintance in the Legislative Bodies and Courts of Justice with the Acts passed from time to time by the Imperial Legislature, have made arrangements for supplying annually to each of the British Colonies so many copies of those Acts as may be required for the respective Legislatures and Courts of Justice.

This grant is made contingent on the regularity of your sending home annually four copies of the printed Laws or Proclamations passed by your Government during the year, as already required by your general Instructions. There will accordingly be annually transmitted to the Colony under your Government 3 copies to be distributed as follows:—For the use of the Executive Govt. to be deposited with the Colonial Secy. 1 Copy; For the use of the Legislative Council, 1 Copy; For the Supreme Court of Justice, 1 Copy.
You will make such arrangements, as shall appear to you to be necessary, in concert with the Legislative Bodies and the Judges of the Courts of Justice, for the safe custody and preservation of these copies of Acts of Parliament.

I have, &c.,

NORMANY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 6, per ship Fergusson.)

Sir,

Downing Street, 3 March, 1839.

I have received your Despatches of the 5th and 6th of October last, Nos. 156 and 157, with their Inclosures, the former respecting the Trial and Execution of a Native of New Zealand for the Murder of a British Subject, the other containing a report of the Murder of another Englishman in the same quarter.

Under all the circumstances of the case, I am not disposed to withhold my approval of the course adopted by Mr. Busby on this occasion in bringing the Criminal to Trial and Punishment.

The details now before me afford still further evidence of the necessity of adopting those measures, of which my Predecessor's Dispatch No. 251 of the 1st of December last conveyed to you an intimation, and which I trust Her Majesty's Government will be able speedily to mature.

I have, &c.,

NORMANY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 7, per ship Fergusson.)

Sir,

Downing Street, 3 March, 1839.

I have received your Dispatch No. 118 of the 1st of August last, enclosing a Memorial addressed to my Predecessor by Mr. W. Morgan, late Agent of Mr. Walkinshaw employed in bringing Emigrants into the Colony.

The object of Mr. Morgan's Memorial I perceive to be to obtain a remission of the Quit Rent chargeable on his Land; and also to be allowed to take out in Land, at the late minimum price of 5s. per acre, the amount of certain promissory notes (with interest) which he holds from certain Emigrants brought out by him as above mentioned.

I concur with you that, for the reasons which you have stated, it will be impossible to comply with the prayer of this Memorial, and you will have the goodness to acquaint Mr. Morgan that such is the decision of Her Majesty's Government.

I have, &c.,

NORMANY.
1839.
3 March.

Despatch acknowledged.

Regret at sectarian quarrels.

HISTORICAL RECORDS OF AUSTRALIA.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 8, per ship Fergusson.)

Sir, Downing Street, 3 March, 1839.

I have received your Dispatch No. 144 of the 17th of September last, with its several Inclosures, relative to a Controversy which has arisen between Mr. Justice Willis and the Revd. Dr. Polding.

It is not without very lively regret that I learn from this Despatch that animosities, founded on questions of a religious nature, have arisen in the Colony of New South Wales. It is scarcely possible to exaggerate the political and social evils, which must result from the growth of a habit so alien from the Charitable and forbearing spirit of Christianity.

Without presuming to offer advice on a matter of this kind to the Reverend and Learned persons, who have thought it their duty to engage in this Controversy, I conceive that I shall best discharge my duty by permitting it to pass silently into the oblivion into which I am happy to learn that it had fallen.

I am convinced that your authority and influence will be exerted to the utmost to prevent or if necessary to allay any similar disputes hereafter; and to prove that the most genuine attachment for the creed and Ritual of one Body of Christians is compatible with an habitual regard for the feelings and tenderness, even to the prejudices of the Members of other Religious Communions.

I have, &c,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 10, per ship Fergusson.)

Sir, Downing Street, 4 March, 1839.

I have received your Dispatch No. 145 of the 19th of September last; and, with reference to the communication addressed to you by my Predecessor on the 7th of November last, No. 235, I have to convey to you my approval of the reappointment of Mr. and Mrs. Bell to the charge of the Female Factory at Parramatta.

I have, &c,

NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.
(Despatch No. 41, per ship Alfred; acknowledged by marquess of Normanby, 30th July, 1839.)

My Lord, Government House, 4th March, 1839.

I have the honor to report to Your Lordship that I have given leave of Absence for eighteen months to Mr. Campbell...
Drummond Riddell, the Colonial Treasurer of New South Wales, on an application from him, of which I have the honor to enclose a Copy.

I beg leave also to report that I have approved of the nomination by Mr. Riddell of Mr. Pieter Laurentz Campbell, lately a Police Magistrate of the Colony, to act for him as Colonial Treasurer during his absence. Mr. Campbell will, according to the Regulations, receive one half of the salary of the Treasurer, and Mr. Riddell, during the time he may be on Leave, will, subject to your Lordship's approval, be entitled to the other half.

The Securities given by Mr. Riddell for the correct performance of the duties of his office, were a personal Bond of £10,000, and two Bonds of £5,000 each, from Sir James Riddell (his Brother) and Mrs. Riddell (his mother); but these Securities being, in the opinion of the Law Officers of this Government, rendered invalid by Mr. Riddell's absence on leave, I beg to report that a New Bond has been entered into, a copy of which is here-with forwarded, as also a copy of a letter from the Crown Solicitor on the subject of it. Your Lordship will perceive that Mr. Riddell's own personal security for £10,000 is renewed, and two additional Securities given for £5,000 each, one by Mr. Macleay (the late Secretary of the Colony) to one of whose daughters Mr. Campbell is married, the other by Major Innes, a Settler at Port Macquarie, who is married to another of Mr. Macleay's daughters, these Securities being substituted for those of Sir James Riddell and Mrs. Riddell; a further Security for £10,000 is also given by Mr. Campbell, making a total of £30,000 instead of £20,000.

I beg further to draw your Lordship's attention to the statement in the Crown Solicitor's letter that, whenever Mr. Riddell may resume his functions, New Bonds should be entered into by his sureties.

I trust I may be permitted to recommend to your Lordship an extension of six months to Mr. Riddell's Leave on the expiration of the eighteen months, for which alone I have power to give him permission to be absent. The satisfactory way, in which Mr. Riddell has provided for the performance of his duties during his absence, will prevent any inconvenience being felt by such an extension of his indulgence, should your Lordship think it proper to grant it to him.

I enclose a Certificate of the time up to which Mr. Riddell has received his full salary in the Colony, from which date I have to request that the Colonial Agent may be instructed to issue to him half salary.

I have, &c.,
Geo. Gipps.
1839.
4 March.

Application by O. D. Riddell for leave of absence.

Certificate re salary of O. D. Riddell.

5 March.

Marquess of Normandy to Sir George Gipps.

(Despatch No. 12, per ship Fergusson; acknowledged by Sir George Gipps, 22nd August, 1839.)

Sir,
Downing Street, 5 March, 1839.

I beg to transmit a Copy of an Application, which has been received at this Department from Messrs. Codd, relative
to a debt which they state to be due to them by Mr. F. W. Small, who I perceive, at the date of the last Blue Book received from your Government, held the appointment of Clerk to the Master Attendant of the Dock Yard; and I have to request that you will communicate this representation to Mr. Small for any observations which he may have to make on the subject.

I have, &c.,

NORMANBY.

[Enclosure.]

MR. E. CODD TO RIGHT HON. H. LABOUCHERE, M.P.

Sir, 15 Fludyer Street, 26 February, 1839.

We have the honor to state, for the information of the Marquis of Normanby, that we acted for some years as Half Pay Agents to Lieutenant F. W. Small, and continued to do so until he went abroad in the year 1832, since which date he has drawn the amount from the Military Chest in Sydney, New South Wales, or Hobart Town, Van Diemen's Land, according as he happened to be in one or the other of these Colonies. Mr. Small was invariably in advance with us when he left England, and we have made repeated applications to him for payment of our claim. In the Month of January, 1838, when we last wrote to him, his Debt to us amounted to no less than £191 9s. 8d.; but we not only do not obtain payment of any part of the debt, but he will not take the slightest Notice of our Letters to him. He has held Colonial appointments in addition to His Half Pay; and, when we last heard of him, he was filling the Office of Clerk to the Petty Sessions in Sydney, an appointment, which at least ought to teach him to do justice, if he had not, ere he held it, learned to do so; but he nevertheless seems to be equally disinclined as before so to act in our case.

Under these circumstances, we venture to request that the Secretary of State will be pleased to instruct the Governor of the Colony to call upon Mr. Small to make arrangements for the gradual liquidation of our claim upon him. We have no desire to distress him, and shall be satisfied with any Instalments that the Governor may deem sufficient; but, as Mr. Small is holding a colonial appointment in addition to his Half Pay, and as his absence from England prevents our taking legal Proceedings against him, we trust that the Marquis of Normanby will consider this a fit case for His Lordship's interference in our behalf.

We have, &c.,

for MESSRS. CODD, ED. CODD.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 13, per ship Fergusson.)

Sir, Downing Street, 5 March, 1839.

I have received your Dispatch No. 143 of the 14th of September last, enclosing a letter from the Judges of the Supreme
Court, in which they suggest a repeal or alteration of the Statute, 54 Geo. 3, Cap. 15, as regards the allowing Debts to be proved in any Court in New South Wales by the Affidavit of a Party in England; and I beg to say that this question shall be taken into consideration, whenever the Bill for the Government of New South Wales shall be brought before Parliament.

I have, &c.,

NORMANBY.

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Sir George Gipps to Lord Glenelg.

(Despatch No. 42, per ship Alfred; acknowledged by marquess of Normanby, 24th August, 1839.)

My Lord, Government House, 5th March, 1839.

With reference to my Despatch of the 10th Oct. last, No. 159, in which I reported the resignation by Mr. Close of his Seat in the Legislative Council, I beg now to inform your Lordship that, in consequence of the continuance for another year of the New South Wales act of the 9th Geo. IV, I have, since that Despatch was written, found it necessary to appoint (subject to the approval of Her Majesty) a successor to Mr. Close, and that I have so appointed Captain Philip Parker King of the Royal Navy.

I beg to assure your Lordship that, bearing in mind the objections which were urged on a former occasion to Captn. King, on account of his relationship* to Mr. Hannibal McArthur, I did not nominate him until driven almost by necessity to do so. In the hope that Sir Francis Forbes, late Chief Justice of the Colony, might be induced to accept the vacant seat, I refrained from offering it to any one until after he returned to the Colony. On finding that his state of health would not allow him to undertake the duties of a Legislative Councillor, I made a tender of the Seat (chiefly in consequence of the advice of Sir Francis Forbes) to Mr George Wyndham of Hunter's River, a gentleman greatly respected and of high repute for talents and education in the Colony. Mr. Wyndham having declined on the ground of his private affairs requiring his undivided attention, I offered the Seat to Mr. William Cox, the eldest of four brothers, who are justly reckoned amongst our most respectable and wealthy Settlers. Mr. Cox however declined on the ground that his domestic habits rendered him unfit for the duties of public life. After thus experiencing a third refusal, I thought I should not be considered as wilfully contravening your Lordship's intentions by offering the Seat to Captain King. I accordingly did so and

* Note 8.
explained to him all the circumstances under which I felt myself at liberty to ask his acceptance of it.

Your Lordship is, I believe, aware that Captain King is a Son of a former Governor of this Colony, and that he has himself rendered very essential services to it by his accurate nautical surveys and researches. In point of ability and general information, he stands distinguished above any other person whom I could have selected; and he may also be considered in the Council in some degree as the Representative of the large body of Naval and Military Settlers in New South Wales, who have done so much to raise the character of the Colony. Though connected by family ties with what is here called the anti-emancipist party, he is a man liberal in his politics, as well as prudent and moderate in his general bearing.

I trust therefore that Captain King's appointment may meet with your Lordship's approval, and be graciously confirmed by Her Majesty.

I have, &c.,

GEO. GIPPS.

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MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 14, per ship Fergusson.)

Sir, Downing Street, 6 March, 1839.

I have received your Dispatch No. 119 of the 3rd of August last relative to the claims of Mr. R. Dawson to Land.

It appears to me sufficiently clear from your statements that Mr. Dawson's complaint of his not having obtained that portion of Land, for which he originally applied, is groundless; and also that the quantity awarded to him by the Council was commensurate with his claims, not only as being the full amount, for which he applied, but also as being the whole extent to which he shewed himself to be entitled according to the Schedule of property, which he gave in on making his application.

I therefore consider that Mr. Dawson's claims have been fully satisfied.

I have, &c.,

NORMANBY.

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MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 15, per ship Fergusson.)

Sir, Downing Street, 6 March, 1839.

I have received your Dispatch No. 120 of the 6th of August last enclosing the Memorial of Mr. F. Flanagan for an additional Grant of Land, which had been refused him by the
Local Government in consequence of his not having made his application within the period prescribed by the Government Notice of the 7th of June, 1827.

Mr. Flanagan, I perceive, attempts to account for the delay by stating that he resides at a distance from Sydney, and is frequently for months without receiving any news from thence; but he acknowledges that he was informed by the Government Notice on the eve of Christmas Day, that is, five days before the expiration of the period allowed, and he permitted a further delay of nearly six months to elapse before making his application. This I consider fatal to his claim, and you will have the goodness to inform him that I regret I do not feel justified in complying with his application.

I have, &c,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 16, per ship Fergusson.)

Sir,

Downing Street, 7 March, 1839.

I have had under my Consideration your Dispatch No. 121 of the 8th of August last, with the two Memorials therein inclosed from Mr. James King.

1st. Mr. King complains that, in the year 1827, he received an insufficient Grant of Land.

You observe that there is no reason to doubt the sound discretion exercised on that occasion by General Darling. At any rate, Mr. King had suffered his claim to be dormant for eleven years, and for seven years after the abolition of the system of free Grants. I cannot, therefore, entertain this claim.

2nd. With regard to the alleged insufficiency of the Secondary Grant awarded to Mr. King, you have already been informed, in reference to the claim of Mr. Granville, that it was not intended that the Secondary Grant should exceed the original Grants, nor could it at all be a matter of course that they should equal the first Grant in extent. Mr. King's claim to a maximum Secondary Grant is, therefore, inadmissible.

3rd. With reference to Mr. King's claim on account of his having established a Pottery at his Estate, and his having been the first to export Sand to England to be used in the Manufacture of Glass, I must leave you to form an estimate of the claims, which he may have on the Public on those accounts; and I perceive it to be your opinion that the reward, which has been offered to him, is commensurate with his claims.

I have, &c,

NORMANBY.
Sir, Downing Street, 8 March, 1839.

I have the honor to acquaint you that the Lords Commissioners of the Treasury have directed a further advance of Eleven thousand, five hundred and forty two Pounds to be made to the Agent General for New South Wales on account of the current services of the Colony.

You will take measures for the repayment of the amount thus advanced into the Military Chest on the Station.

I have, &c.,

NORMANBY.

Sir George Gipps to Lord Glenelg.

(Despatch No. 45, per ship Alfred.)

My Lord, Government House, 8th March, 1839.

With reference to my Despatches of the 17th Augt., 1838, No. 125, and the 24th Sept., No. 148, on the state of disease in which the Convicts from the ship “Lord Lynedoch” had been landed on the 8th Augt. preceding, I have now the honor to forward to your Lordship a final Return, by which your Lordship will perceive that the total number of deaths, which are to be attributed to the ravages of the Scurvy in this case (including those which occurred at Sea) are 28; that 23 men have been invalided; and 179 discharged from Hospital, many of whom will however feel the effects of the disease for the rest of their lives.

Your Lordship will also observe that, out of 330 Convicts embarked in this vessel, only 89 altogether escaped disease. The number of deaths stated above is exclusive, I should also observe, of 11 which occurred in the Ship from other diseases, so that the total number of deaths was as follows:—

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<td>do other diseases</td>
<td>11</td>
</tr>
<tr>
<td>After landing, of Scurvy</td>
<td>20</td>
</tr>
<tr>
<td>Total</td>
<td>39</td>
</tr>
</tbody>
</table>

I have, &c.,

GEO. GIPPS.

Marquess of Normanby to Sir George Gipps.

(Despatch No. 19, per ship Fergusson.)

Sir, Downing Street, 9 March, 1839.

I have the honor to acknowledge the receipt of Your despatch No. 154 of the 1st October last with a report on the
1839.  
9 March.

progress of the Settlement of Port Phillip and recommending that two Emigrant ships should be sent to that quarter.

I enclose, for your information, the copy of a letter from the Agent General for Emigration, stating that the necessary arrangements will be made for complying with your recommendation.

I have, &c.,

NORMANBY.

[Enclosure.]

MR. T. F. ELLIOT TO UNDER SECRETARY STEPHEN.

Sir, 2 Middle Scotland Yard, 7th March, 1839.

I have the honor to acknowledge your Letter of the 2nd Inst., enclosing a Report from Sir Geo. Gipps on the progress of the Settlement of Port Phillip, in which it is recommended that two Emigrant Ships should be sent to that quarter, the first to sail as soon as possible, and the second to follow after a lapse of four or five months.

I beg leave to state, for the information of the Marquis of Normanby, that all the earlier Ships, which it is proposed to despatch in April, are already engaged for Sydney; but that I have taken measures for effecting an arrangement, by which a Party of Emigrants will be enabled to start from Greenoch on their voyage to Port Phillip in the latter part of May, and that I shall have it in my power to despatch a second Vessel to the same place in the Autumn, in conformity with the recommendation of Sir Geo. Gipps.

I would suggest that the present information should be communicated to the Governor in reply to his Despatch.

I have, &c.,

T. FRED. ELLIOT.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 20, per ship Fergusson.)

Sir, Downing Street, 9 March, 1839.

I have the honor to acknowledge the receipt of your Despatch No. 71 of the 4th of May last respecting the gratuities to Surgeons of Emigrant Ships.

The subject was referred to the Agent General for Emigration, and I enclose Copy of his reply.

I have signified to Mr. Elliot my approval of the mode in which it is proposed to regulate these Gratuities by the payment of 10s. 6d. for every Passenger, whether Male or female, Adult or Child, who is disembarked in the Colony to which they may have proceeded.

I have, &c.,

NORMANBY.

[Enclosure.]

MR. T. F. ELLIOT TO UNDER SECRETARY STEPHEN.

Sir, 2 Middle Scotland Yard, 5th March, 1839.

In reference to your Letter of the 1st of November, enclosing a Despatch from Sir Geo. Gipps, No. 71 of the 4th of May,
accompanied by a recommendation of the Council that the Gratuities to Surgeons of Emigrant Ships should be regulated by the number of passengers they actually land as is the case in the Convict Service, and, advertting to the Information which has been procured from the Comptroller of Transport Services in elucidation of this subject, I have now the honor to make the following Report:—

I apprehend that there can be no doubt of the advantage of the principle of the mode of remuneration recommended by the Council and the Governor. With regard to the rate at which it ought to be fixed, it appears that the head Money allowed in the Convict Service is 10s. 6d. for every passenger; and as the average number embarked in Emigrant Ships is about 270, the same allowance would afford the Surgeons of these ships, if they landed their whole complement, very nearly the amount of their present fixed gratuity of £150. The average number, on the other hand, of the people embarked in Convict Ships appears to be only 223, which would afford some difference of remuneration in favor of the officers, who had the superintendence of Emigrant ships, a difference which seems desirable, as the latter charge is supposed to be one of more difficulty and anxiety. I propose therefore, with Lord Normanby's permission, to establish the regulation that henceforward the gratuity to Surgeons of Emigrant Ships is to consist of a payment of 10s. 6d. for every Passenger, whether Male or Female, Adult or Child, who is disembarked in the Colony.

It would seem advisable, if this proposal be approved, to communicate its adoption to the Board of Admiralty and to the Governor for their information. I have, &c.,

T. FRED. ELLIOT.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 46, per ship Eweretta; acknowledged by marquess of Normanby, 14th August, 1839.)

My Lord,

Government House, 9th March, 1839.

I have the honor to report to your Lordship that Mr. Justice Burton has signified to me his intention of now availing himself of the Leave of Absence granted to him by your Lordship's Despatch of the 28th Augt., 1837, No. 369, and that he returns to England by the ship which will convey this Despatch.

The two most distinguished Barristers of New South Wales, namely, the Attorney General and Mr. Roger Therry, having each declined an appointment to the Bench on the terms whereon alone I have the power to offer it to them, I am likely, I regret to say, to experience some difficulty in filling up the vacancy, occasioned by the temporary absence of Mr. Burton. I have now, by the advice of the Chief Justice, offered the situation to Mr. Alfred Stephen, late Attorney General of Van Diemen's Land, and I await his answer before I take any further proceedings.
In justice to the Attorney General, I should however add that he has expressed his readiness to take the vacant seat on the Bench in the event of my calling on him to do so for the advantage of Her Majesty's Service.

I have the honor to enclose a Certificate from the Colonial Treasurer of Mr. Burton's having received full pay in the Colony up to and including the 8th March, 1839, and I have to request that his half salary may be issued to him by Mr. Barnard from that day.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[A copy of this certificate is not available.]

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 47, per ship Eweretta; acknowledged by marquess of Normanby, 14th August, 1839.)

My Lord,

Government House, 9th March, 1839.

With reference to my Despatch of this day's date, No. 46, in which I informed your Lordship that I had, at the recommendation of the Chief Justice, offered to Mr. Alfred Stephen of Van Diemen's Land the Seat on the Bench of the Supreme Court, temporarily vacated by Mr. Justice Burton, I have now, at the request of the Chief Justice, the honor to forward to your Lordship a copy of a letter which has been addressed to me by His Honor in consequence, as it would seem, of an apprehension that some illwill may have been excited against him by the advice, which on this occasion he is known to have given me.

I will only beg leave to add that I am myself perfectly satisfied not only that this advice was conscientiously given to me by the Chief Justice, but also that it was the best, which he could have given under the circumstances of the case. I have, &c.,

GEO. GIPPS.

[Enclosure.]

[A copy of this letter is not available.]

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 21, per ship Fergusson.)

Sir,

Downing Street, 10 March, 1839.

I have received your Dispatch No. 122 of the 10th of August last with the Memorial therein inclosed from Mr. T. Potter Macqueen, praying for a Secondary Grant of Land in addition to that of 20,000 Acres, which he has already received.
The case of Mr. Macqueen clearly does not come within the description of those admitted by Lord Glenelg’s Dispatch of the 31st of July, 1836. That Dispatch only admitted the claims to Secondary grants of those persons, who had emigrated under the assurance contained in the Printed Notices issued in 1826 and 1827, that they should, on performing certain conditions, receive additional Grants.

Mr. Macqueen received his Grant in 1824, when no such promise was held out to Emigrants generally, and there is no record of such an assurance having been given in his individual case. His Claim is, therefore, clearly inadmissible.

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SIR GEORGE GIPPS TO LORD GLENELG.

Government House, 11th March, 1839.

With reference to your Lordship’s Despatch of the 29th March, 1837, No. 282, which grants to officers of the East India Company’s Maritime service the same advantages in the acquisition of Land in the Australian Colonies as are allowed to officers of the Royal Navy, I beg leave to report to your Lordship that the following questions have occurred in this Colony, in settling the claims of officers under these Regulations, and to request your Lordship’s decision thereon;

1. Whether it be the intention of Her Majesty’s Government to confine these advantages to the small body of East India Officers, who belong to what is called the Bombay Marine, and who are supposed to be engaged in services analogous to those of the Royal Navy; or to extend them to the whole body of officers, lately engaged in the East India Company’s Commercial service afloat;

2. In the latter case, the way in which the relative ranks of Officers are to be settled, and whether an Officer, who may have obtained the rank of Commander of an Indiaman, is to date his services from the time of his first embarkation or from that of his being rated as a Mate or a Commander;

3. Whether officers are required to make their applications within any limited period from the time of their quitting the service, as is the case with Military officers in the Queen’s service, who are required not only to show that they left the Army for the purpose of becoming Settlers, but also to arrive in the Colony within a year from the time of their having parted with their Commissions.
The case, on which these questions have arisen, is that of Captain Edward Lambert Adams, who claims to rank as a Lieutt. Colonel from the time at which he was sworn into the command of a vessel, vizt., the 2nd Octt., 1822, but who first went to sea on the 27th March, 1815.

I should observe that Captain Adams has been allowed, subject however to your Lordship's approval, a remission of £250, being that of a Field Officer of more than 20, but less than 25 years' service.

I enclose Copies of the documents, on which the claim of Captain Adams has been admitted.

Other claims of the same nature, or from officers of the same service, will in all probability be shortly received, and it is on this account that I am desirous of being honored with your Lordship's commands.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[Copies of these papers are not available.]

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 22, per ship Fergusson.)

Sir,

Downing Street, 12th March, 1839.

I have received Your Dispatch No. 123 of the 13th of August last enclosing a Memorial from Mr. H. I. Pilcher, which he had addressed to my Predecessor in consequence of his having been refused a Secondary Grant of Land by the Commissioners appointed to enquire into the claims of settlers to such Grants. As it appears to have been established by the Commissioners that Mr. Pilcher had not made the outlay on his Primary Grant necessary to the validity of his claim, I cannot authorize a compliance with the prayer of his Memorial. The circumstance of his having expended the prescribed amount of Capital on other Land at a distance of 25 Miles is not sufficient to give him a Title to a Secondary Grant.

I have, &c.,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 23, per ship Fergusson.)

Sir,

Downing Street, 12 March, 1839.

I have received your Dispatch No. 124 of the 15th August last, reporting on the application of Mr. G. Wentworth.
It does not appear very clearly on what grounds General Darling refused Mr. Wentworth’s application for Land in 1831, altho’ probably the fact of his being then in possession of 5,000 Acres, which had been gratuitously granted to his Father, may have served to influence the Governor’s decision. Mr. Wentworth, however, seems to have made no representation on the subject until five years after the Change in the Land Regulations, and I cannot now entertain his claim.

I have, &c.,

NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 49, per ship Alfred.)

My Lord,

Government House, 12th March, 1839.

I have the honor to forward herewith a Minute of the Proposed Proceedings of the Executive Council of this Colony in the case of a man, named Thomas Holden, who was convicted on the 8th Nov., 1838, of the murder of his Wife. Your Lordship will observe that sentence of death was not passed upon Thomas Holden, but death only recorded against him; and that the Chief Justice, who tried him, has recommended that his sentence be commuted to Transportation for Life to Norfolk Island. In forwarding this recommendation for the gracious approval of Her Majesty, I would beg leave respectfully to submit whether Power in cases like the present, when the sentence is only death recorded, the commutation of sentence might not be carried into effect by the authority of the Governor without reference to England. My Commission gives me power to pardon all Offenders and remit all offences, save those of treason and wilful murder, with respect to which I can only reprieve until Her Majesty’s pleasure shall be known; but, in cases where sentence of death is only recorded, no reprieve by the Governor is necessary, the judgment itself having by the 2nd Clause of the 4 Geo. IV, C. 48, the effect of a reprieve by the Court; and though the law may allow the execution of the Criminal against whom sentence of death is recorded, no case has, I believe, as yet happened, in which a person so sentenced has been actually executed.

As the detention of a person in Prison for the long period, which must elapse before Her Majesty’s pleasure can be signified to this distant Colony, is always attended with inconvenience, it is of some importance that I should be rightly instructed in this particular.

The crime of murder was excepted by the 4 Geo. IV, C. 48 from the cases, in which death might be recorded against a
1839.
12 March.

Prisoner instead of being passed upon him; but a recent Act of Parliament which I have not now before me, has, I believe, brought murder as well as all inferior crimes within the operation of that Statute. 

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[A copy of these minutes will be found in a volume in series II.]

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 24, per ship Fergusson.)

Sir, Downing Street, 13th March, 1839.

I have received your Dispatch No. 127 of the 20th of August last, enclosing a Memorial from Mr. Alfred Glennie, praying for a Grant of Land in New South Wales.

It appears not only that Mr. Glennie never received any promise of Land, but that he was not qualified to become a Grantee prior to the change of system.

His application is, therefore, wholly inadmissible.

I have, &c.,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 25, per ship Fergusson.)

Sir, Downing Street, 13 March, 1839.

I have received your Dispatch No. 128 of the 22nd of August last, enclosing a Memorial from Mr. J. Mackay, in which he prays that he may receive Bounties at the rate of £6 per Head for certain Hill Coolies, whom he had introduced from India into New South Wales, and I concur in the opinion which you have expressed that this Claim is quite inadmissible.

I have, &c.,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 26, per ship Fergusson.)

Sir, Downing Street, 14 March, 1839.

I have the honor to acknowledge the receipt of your Dispatch No. 135 of the 31st August last, reporting that you had granted Leave of Absence to Mr. H. B. Bradley, the Second Clerk in the Supreme Court of New South Wales.
I approve of your having granted this indulgence to Mr. Bradley, and I have sanctioned the payment to him of Half Salary during his absence; but you must not consider this as a precedent for granting Leave of Absence with Half Salary to every Class of Officers serving under your Government, who have been nominated to their Appointments in the Colony.

Mr. Bradley was not provided with the usual Certificate of the date up to which his Salary was paid in the Colony. I have, therefore, sanctioned the payment of his half Salary from the 20th August last, the date at which the Vessel, in which he embarked is certified to have sailed from Sydney.

I have, &c.,
NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.
(Despatch No. 51, per ship Alfred; acknowledged by marquess of Normanby, 14th August, 1839.)

My Lord, 
Government House, 14th March, 1839.

I have the honor to enclose herewith for your Lordship's information a Return of the number of Immigrants, introduced into this Colony on the Bounty system during the year 1838, by which your Lordship will perceive that 557 men, 567 women, and 468 children have been introduced for the total sum of £22,071. For every 100 adults, 41 children only have been introduced; whereas, by the Returns transmitted by me with my Despatches of the 3rd Oct., 1838, No. 155, and 8th Feb., 1839, No. 26, it will be seen that, in ships fitted out by the Government, the corresponding number is 101 children for every 100 adults.

I have, &c.,
GEO. GIPPS.

[Enclosure.]

[This return detailed the names of seventeen ships, the dates of arrival, the number and sex of the immigrants, and the amount of bounties paid.]

SIR GEORGE GIPPS TO LORD GLENELG.
(Despatch No. 53, per ship Alfred; acknowledged by marquess of Normanby, 14th August, 1839.)

My Lord, 
Government House, 16th March, 1839.

I am sorry to have to report to your Lordship that another Quarantine of Government Emigrant Ship, the "Garrow," has been placed in Quarantine. The "Garrow" sailed from Belfast on the 9th Nov., and arrived at Port Jackson on the 2nd instant.
The Measles and Hooping Cough made their appearance on board soon after the vessel left Ireland; and Typhus fever appeared during the latter part of the voyage. Five deaths occurred on board, and, when the vessel reached Sydney, there were 17 cases on board of Typhus fever, five of which were dangerous. The sick are at present doing well, and only six new cases have occurred since the Emigrants were landed. I am therefore in hopes that, in the course of a few days, the healthy portion of them may be released.

The Surgeon of the "Garrow" reports that both Typhus fever and Measles were raging at Belfast when the Emigrants by this vessel were embarked.

Geo. Gipps.

Marquess of Normanby to Sir George Gipps.

(Despatch No. 27, per ship Fergusson.)

Sir,

I have the honor to acquaint you that, on the recommendation of the Society for the Propagation of the Gospel, and the approval of the Bishop of London, I have sanctioned the Appointment of the Revd. James Sylveston Wilson and the Revd. Charles Woodward to the Ecclesiastical Establishment of your Government; and that the Agent General has been authorized to issue to each of those Gentlemen the usual Allowance of £150 for passage and outfit.

I have, &c.,

Normanby.

Sir George Gipps to Lord Glenelg.

(Despatch No. 56, per ship Caroline; acknowledged by Lord John Russell, 12th October, 1839.)

My Lord,

I have received from Mr. Busby, British Resident at New Zealand, a Copy of a letter which he addressed to your Lordship on the 22nd Feby. last, in which Mr. Busby enters into a justification of himself against some statements, which he considers injurious to himself in the official Reports of Captain Fitzroy of the Royal Navy (lately employed in the "Beagle," Surveying Vessel), and also complains of the neglect with which he considers himself to have been treated by Sir Richard Bourke, my Predecessor in this Government. As I do not however see any points in Mr. Busby's letter requiring an explanation from me, I shall content myself with respectfully referring your Lordship to Sir Richard Bourke's own Despatch on the affairs of New Zealand, No. 86, of the 9th Sept., 1837.
Since I entered upon this Government, I have received two or three applications for instructions from Mr. Busby, but always on points regarding which I have found myself quite without authority either to instruct or advise him; and I therefore think it my duty to avail myself of this opportunity of stating to your Lordship that, seeing the very little advantage which has resulted from the employment of Mr. Busby at New Zealand, I should in the present state of our Finances feel extremely happy if the Colony of New South Wales could be relieved from the payment of his salary of £500 a year.

Your Lordship is aware that this charge upon the Colony has frequently been objected to by most of the unofficial Members of the Legislative Council, and I think it more than probable that, on the next occasion of bringing forward the Annual Estimates, I shall have to carry it by the Votes of the official Members alone.

I have, &c.,
GEO. GIPPS.

SIR GEORGE GIPPS TO LORD GLENELG.

My Lord,

Government House, 23rd March, 1839.

Having by your Lordship’s Despatch of the 5th Sept. last, No. 209, been directed to enquire into the circumstances, under which a payment of £3 was made into the Savings Bank of New South Wales in favor of Catherine Kenny, a female Convict, in consequence of a recommendation of the Ladies’ Committee for the Superintendence of Female Convicts that women, remaining with a good character in their places for certain definite periods, should receive corresponding rates of gratuity, I have now the honor to enclose to your Lordship a Copy of a letter from the Colonial Secretary of this Colony to the Deputy Commissary General, by which the payment was sanctioned. The proposal for paying these rewards was, I understand, originally made by the Committee of the British Society for the reformation of Female Prisoners, and, in consequence of their recommendation having been transmitted through the Colonial Office, it was considered I believe to bear in some degree the approval of the Secretary of State. I regret to say that, though I have made very diligent search for the papers which were so transmitted, I have not been able to discover them. I have little doubt, however, of their being the papers, which accompanied Sir George Grey’s letter to my Predecessor of the 4th Sept., 1834, and which are alluded to in your Lordship’s Despatch of the 5th Feb., 1836, No. 106.
I am informed by the Deputy Commissary General that no payments have been made by him on this account beyond the one to Catherine Kenny; some applications are now however before me and many more will probably be received. As the women have been told on their arrival that these rewards will be paid to them for good conduct, I shall not feel myself at liberty without express orders from your Lordship to discontinue them.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

COLONIAL SECRETARY THOMSON TO DEP. COMMISSARY-GENL. OF ACCOUNTS.

Colonial Secretary's Office,
Sydney, 4th September, 1837.

It having been proposed by the Ladies' Committee for the Superintendence of Female Convicts in this Colony, and approved by the Governor, that Women remaining with a good character in their places for certain definite periods shall receive the Gratuities specified below, viz.:

For one year .................... one pound
" two years .................... two pounds
" three years .................... three pounds;

I am directed by His Excellency to transmit to you the accompanying recommendation of the Ladies in favor of the prisoner named in the margin,* and, in acquainting you that these rewards are to be paid from the Military Chest as a Convict expenditure, to request that you will prepare a Warrant in favor of the Principal Superintendent of Convicts for the Sum of three Pounds to be deposited in the Savings Bank for the benefit of Catherine Kenny, who is certified to have served with good conduct the prescribed period of three years which entitles her to that Gratuity.

I have, &c.,

E. DEAS THOMSON.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 58, per ship Caroline; acknowledged by lord John Russell, 26th October, 1839.)

My Lord,


I have the honor to forward herewith to your Lordship a Copy of a letter and of its enclosure, which I received on the 9th Febry. last from Mr. Roger Therry (an eminent Barrister of Sydney), praying, on behalf of himself and the subscribers for the erection in Sydney of a Statue† of Sir Richard Bourke, that the said Statue may, when finished, be sent out to this Country in a Government Emigration Vessel or other Vessel free of expense.

* Marginal note.—Catherine Kenny.
† Note 10.
GIPPS TO GLENELG.

I cannot transmit this application without earnestly recommending it to the favorable attention of your Lordship, convinced as I am that a compliance with it will be highly grateful to the People of the Colony.

The Statue is in course of execution by Mr. Bailey, R.A., and is expected to be ready about August, 1840. I have, &c,

GEO. GIPPS.

[Enclosure.]

MR. R. THERRY TO COLONIAL SECRETARY THOMSON.

Sir, Hunter Street, Sydney, 9th February, 1839.

I have the honor to request that you will submit to the notice of His Excellency the Governor the two accompanying resolutions, adopted at a Meeting of the Subscribers to a Statue of Sir Richard Bourke, K.C.B., held at the Mechanics' School of Arts on December 21st, 1838.

In order that His Excellency may be assured that the request for the transmission of the Statue free of charge for freight proceeds from a large and respectable body of the Colonists, which might aid His Excellency's favorable interference on behalf of the Subscribers, I take the liberty of transmitting also a Copy* of the "Australian" newspaper, which contains the names of the Subscribers, and the amount of their respective contributions. To the List of paid Subscribers which this paper contains, I beg to add there has been a very considerable accession since the date of its publication.

With respect to the resolution respectfully requesting His Excellency to appropriate the spot† where the two main roads cross each other in about the centre of Hyde Park, as a Site for the Statue, the Subscribers hope that, as they have some reason for believing that they are indebted to His Excellency's discernment and taste for the suggestion that this spot would be an eligible one for a Statue, His Excellency would be pleased to sanction the appropriation of this Site for the position of the Statue proposed to be erected in honor of Sir Richard Bourke. I have, &c,

R. THERRY,
Hon. Secretary to the Meeting.

[Sub-enclosure.]

RESOLUTIONS.

Hunter Street, Sydney, 9th Febry., 1839.

At a Meeting of the Subscribers to a Statue of Sir Richard Bourke, K.C.B., held at the Mechanics' School of Arts on the 21st Decr., 1838, it was

1st. Resolved.—That the Secretary be directed to write to the Colonial Secretary respectfully requesting the interference of the Governor for the transmission, free of charge for freight, of the Statue in one of the transport vessels usually engaged in the public service.

2nd. Resolved.—That the Governor be respectfully requested to appropriate the spot where the two main roads cross each other in about the centre of Hyde Park for the erection of the Statue of Sir R. Bourke, K.C.B. R. THERRY,
Hon. Secretary to the Meeting.

* Note 10.  † Note 11.
MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 28, per ship Calcutta; acknowledged by Sir George Gipps, 28th August, 1839.)

Sir,
Downing Street, 26 March, 1839.

I transmit to you herewith, for your information and guidance, the Copies of a Correspondence between my Under Secretary of State and Mr. John Pym relative to an arrangement, to which I have consented, for enabling parties, on whose behalf he writes, to pay to the Agent General for Emigration in this Country such amount as they may be prepared to invest in the purchase of Land at Port Philip, receiving credit for it in the purchase of Land in the Colony under the ordinary Regulations the money being applied to the purposes of sending out Emigrants.

I have, &c.,
NORMANBY.

[Enclosure No. 1.]

MR. J. PYM TO LORD GLENELG.

My Lord,
29 Tokenhouse Yard, City, 9th Feb., 1839.

I am Agent to the Colonization Commissioners for South Australia for the sale of land in that Colony, and have had an application made to me for Land at Port Phillip. The party applying wishes me to invest for him the sum of Ten Thousand Pounds. Will you do me the favor to inform me what is the present upset price of Government Land at Port Phillip, and whether I could be permitted to pay that or any other sum of money into the Colonial Office in London, on account of Land to be afterwards pointed out and put up at Auction in the usual way in the Colony?

The party here would require the Colonial Office to give them credit for the money paid, and to have credit for that amount in the Colony, without reference to the price Per acre, that the Land may sell at by Auction.

And also, whether the party making such a payment here, would be allowed to nominate to the Government Emigrant office a certain number of agricultural and other Laborers to be taken out passage free, the said laborers being to be sent out to work for wages on the Land so purchased?

To obtain this latter privilege is the inducement for making the payment in this Country.

I have, &c.,
JOHN PYM.

[Enclosure No. 2.]

SIR GEORGE GREY TO MR. J. PYM.

Sir,
Downing Street, 15th February, 1839.

I am directed by Lord Glenelg to acknowledge the receipt of your Letter of the 9th Instant and to acquaint you in reply that unappropriated Land at Port Philip is disposed of only by sale at public auction, being put up at a minimum price of not less than 12s., subject however to be increased to a higher upset price at the discretion of the Governor of New South Wales, within which Government Port Philip is comprised.
I am further to acquaint you that, on payment of any sum for this purpose to the Agent General for Emigration in this Country, he will be directed to expend it in sending out Emigrants to that District of the same class as that from which Emigrants are selected for other parts of New South Wales, and to be approved by the Agent General. The party paying such sum for this purpose would, on production of a receipt for it, receive credit for the amount in payment for land, to be purchased in the Colony under the ordinary regulations.

For any further information as to the class of Emigrants coming within such an arrangement, I am to suggest that you should apply to the Agent General for Emigration, whose address is No. 2, Middle Scotland Yard.

I am to add that it would not be possible to restrict the Emigrants to work on the land so purchased, as, on their arrival at Port Philip, they would be entitled to enter into any engagement, which they might consider advantageous to themselves.

I have, &c,

GEO. GREY.

[Enclosure No. 3.]

MR. J. PYM TO MARQUESS OF NORMANBY.

My Lord,

29 Tokenhouse Yard, 13th March, 1839.

The Prospectus, I have now the honor to enclose, will acquaint your Lordship with the particulars of an Association for promoting the Emigration of a superior class of Laborers and Artizans to the Australian Colonies and more especially to Port Philip.

Your Lordship will perceive that the primary object in view is the introduction of moral and industrious Emigrants. It is intended also that a portion of the profits, which the Association may derive, shall be applied to the erection of Episcopal Chapels, Schools and other useful institutions.

In order to furnish the means of immediately sending out Emigrants nominated by themselves, the Trustees have subscribed funds for the purchase of 12,000 acres of Land at Port Philip at the next sale by public Auction; and they propose to pay into the Government Emigration Office the minimum price of Land in conformity with the existing regulations, and in conformity with the arrangement entered into with Her Majesty's Colonial Secretary on the 15th of Feby., 1839.

It having been intimated that Her Majesty's Government have in contemplation to raise the minimum price of Land above that now in operation, the Association trust that this alteration may not be made applicable to them. And it is of the utmost importance that the field of their operations should be as much concentrated as possible; they further solicit the assistance of Her Majesty's Government in allowing this land to be put up to Public competition in one Lot, rather than in several lots; since it will be obvious to your Lordship that means of education or religious assistance cannot be provided at present to a great number of localities. It being understood that the selection of the land shall not be made within forty miles of the Town of Melbourne.

Not doubting that your Lordship will concede to the Association these facilities of prosecuting their plans, in which the moral and religious welfare of the Colony is concerned,

I have, &c,

JOHN PYM, Manager.
[Enclosure No. 4.]

RIGHT HON. H. LABOUCHERE TO MR. J. PYM.

Downing Street, 24 March, 1839.

Sir,

I am directed by the Marquess of Normanby to acknowledge the receipt of your Letter of the 13th Instant, and to acquaint you, in reply, that Her Majesty's Government cannot authorize a departure in favor of the parties, on whose behalf you write, from the general Regulations under which the Public Sales of Land at Port Phillip are conducted. His Lordship can only undertake to authorize the Agent General for Emigration in this Country, on the payment to him of such Amount of Money as you may be prepared to invest in the purchase of Land in that District to expend it in sending out Emigrants of the description, stated in Sir George Grey's Letter of the 15th Ultimo, and allow Credit for the Amount so paid in the subsequent purchase of Land in the Colony under the ordinary Regulations. Lord Normanby directs me to add that he cannot direct the Governor to put up the Land to auction, as you request in one large portion, instead of in the smaller regulated Allotments. Such an Arrangement would in all probability have the effect of wholly preventing competition at the Sale.

I have, &c,

HY. LABOUCHERE.

27 March.

Transmission of letter.

Recommen­

dation of G. M. Lewis for employment.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 29, per ship Calcutta; acknowledged by Sir George Gipps, 21st October, 1839.)

Sir, Downing Street, 27 March, 1839.

I transmit to you the copy of a letter addressed to me by Mr. Lewis, the late Commander of the Colonial Vessel belonging to your Government, which was employed in search of the Crew of the "Charles Eaton."

His object is to obtain employment at Port Phillip or more immediately under your Government. If it should be in your power to appoint Mr. Lewis to any situation for which he may be considered eligible, I should be glad to hear of his success.

I have, &c,

NORMANBY.

[Enclosure.]

MR. C. M. LEWIS TO MARQUESS OF NORMANBY.


My Lord Marquess,

Not having had the honor of a personal introduction to your Lordship, I take the most ready opportunity of submitting to your Notice those claims, which I have been urging upon your predecessor Lord Glenelg, from whom I anticipate (had he remained in Office) receiving some compensation for my past exertions, having been strongly recommended to him in the Despatches from Lieutenant General Sir Richard Bourke, late Governor of New South Wales.
I must first inform your Lordship that I received permission from the Local Government in New South Wales to return to England in charge of a youth (Master William D'Oyly), whose parents and Brother had been murdered* after the loss of the "Charles Eaton," wrecked on her passage through Torres Straits; and whom it was my good fortune to save from a similar fate, as he had also fallen into the hands of the Savages. The "Charles Eaton" was wrecked in 1834, and I was despatched, by order of the Governor, in search of the survivors in Her Majesty's Schooner "Isabella." While in the command of that Vessel (after enduring great privations and encountering many difficulties), my exertions were at length crowned with success, and I was enabled to rescue Master D'Oyly and another Boy, some years older, both of them having been with the Savages upwards of two years.

Without encroaching too much, however, upon your Lordship's time, I have only to observe further that many persons of Rank and character in this Country have forwarded testimonials to me of a most flattering nature, and that, in having mentioned my expectations of receiving countenance and support of the Right Honorable the Secretary for the Colonies, your Lordship will allow me to say that I do not allude to any pecuniary reward, my Views being confined solely to the Emoluments which are to be derived by Honor able exertions under Government; and, if your Lordship would confer upon me the situation of Harbour Master and Master attendant of Port Phillip, for which situation by my professional and Colonial experience of eight years I am, I trust, peculiarly qualified, or indeed grant me any other appointment which I may be deemed competent to hold, I shall always entertain the most grateful sense of your Goodness and have, &c., &c.,

C. M. LEWIS.

As an near relation of Master William D'Oyly mentioned above, I desire to express my sense both of the Ability shewn by Captain Lewis in effecting his rescue, and of his Kindness in care of the Child during his passage home.

ROBT. WILLIAMS, Grosvenor Square.

J. WILSON, Mayor. ARNOLD and WOOLLETT.

JOHN PIRIE, AID. JNO. SHEPHERD, IND. DIR.

THOS. KELLY, Alderman.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 30, per ship Calcutta.)

Sir, Downing Street, 28 March, 1839.

An application has been made to me in behalf of Mr. John Jermyn Symonds, the youngest Son of the Surveyor of the Navy. Mr. Symonds is about to proceed to Sydney, and is anxious to be appointed to the Surveyor General's Department. I beg, therefore, to recommend him to your notice in case an opportunity should occur of employing him in that Department or in any other for which he may be qualified.

I have, &c.,

NORMANBY.

* Note 12.
Despatch acknowledged.

Improvement in convict discipline.

Employment of convicts in government gangs.

Cessation of assignment of convicts as domestic servants.

Delay in ordering badge for convicts.

Inability to modify system of tickets of leave.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 60, per ship Caroline; acknowledged by lord John Russell, 23rd October, 1839.)

Government House, 29th March, 1839.

My Lord,

I had the honor, on the 18th Decr. last, to receive your Lordship’s Despatch No. 147 of the 6th July, 1838, in which I was directed to carry into effect certain measures for the improvement of Convict Discipline, which had been recommended to your Lordship by the Lieutt. Governor of Van Diemen’s Land in his Despatch of the 7th Octt., 1837.

I now propose to report to your Lordship the extent to which these recommendations have been carried into effect in this Government, and the reasons why they have not been more fully complied with.

1. The first recommendation, which was that Convicts on their arrival in this Colony should be coerced in Government Gangs, distinct from what are called “Punishment Gangs,” has been carried into full effect, the minimum term of employment in the service of Government being fixed at six months.

2. The discontinuance of the system of assigning Convicts to be employed as Domestic servants, or for the purposes of luxury. This also has been carried into full effect, No Convicts having been assigned for such purposes since the commencement of the present year.

3. An obligation for Convicts in Assignment to wear a distinguishing Badge. This is not yet carried into effect, for, as the measure is one which has been adopted on the recommendation of the Lieutt. Governor of Van Diemen’s Land, I have thought it only proper to wait until it shall first have been put in force in that Colony, in order that I may adopt the same Badge and preserve the uniformity which it is desirable, as far as circumstances will admit, to maintain in the treatment of Convicts in the two Colonies. I have informed the Lieutt. Governor that I wait only a communication from him to carry your Lordship’s instructions into effect.

4. A modification of the present system of Tickets of Leave. This recommendation has not yet been carried into effect, and I regret the more my inability to accomplish it, because I entirely concur in the views which Sir John Franklin entertains on the subject. Your Lordship must however be aware that, whilst the Statute* of the 2 and 3 Willm. IV, Ch. 62, which has been so often complained of by this Government, remains unaltered, it is quite beyond the power of any Local authority to legalize the holding of property by Convicts, or to give to Convicts the indulgence even of a minor Ticket of Leave, who have been in

* Note 13.
the Colony less than 4, 6 or 8 years, according as their sentences are for 7 or 14 years, or for Life.

Having thus stated to your Lordship the extent, to which I have been able to carry into effect the orders conveyed to me by Your Lordship's Despatch of the 6th July last, I trust I may be excused if I venture to make a few observations upon each of the four propositions in question.

1. With respect to the coercion of Convicts for a limited time after their arrival in Government Gangs, I beg distinctly to assure your Lordship that I concur entirely in the propriety of the principle, which is involved in your Lordship's instructions; unfortunately however in practice, from the want of proper means of superintendence and the impossibility of rendering the coercion of Convicts in Government Gangs effective, much of the good is lost, which might be expected from it. Before I left England, I had the honor to propose* to your Lordship the employment of two Companies of Sappers and Miners in the superintendence of Public Works; but, from your Lordship's Despatch of the 23rd March, 1838, No. 91, I am led to apprehend there is but a small prospect of my obtaining them. I regret also to inform your Lordship that Major Barney, the Commanding Engineer, who has the Chief control over the labor of all Convicts in Government employment, has reported to me officially that the system of control by Soldiers of the Line, established by my Predecessor, is (he is forced to acknowledge) a complete failure. For the same reason, that is the want of competent superintendence, I have found myself unable to attempt the carrying into effect of many of the views of Captain Maconochie, as developed in the various papers submitted by him to Her Majesty's Government, and more recently explained by himself in a Book published by him in Van Diemen's Land, though to a very great extent I approve of his suggestions.

2. With respect to the discontinuance of assignment for Domestic service, or for the purposes of Luxury and in Towns. On this subject I beg respectfully to refer to my own Despatch of the 8th Oct., 1838, No. 158, by which your Lordship will perceive that I have anticipated, and even gone beyond the orders communicated to me by your Lordship's Despatch of the 6th July last.

3. On the subject of a Convict Badge, I beg to assure your Lordship that no exertion shall be wanting on my part to carry into effect the instructions which I have received, as soon as I learn the way in which they have been acted upon by the Lieutt. Governor of Van Diemen's Land; but, at the same time, I think it due to myself respectfully to observe that it is a measure of...
which I very much doubt the propriety. The Regulations for wearing the Badge being once established, penalties must of course be imposed for the disuse of it, and thus a new class of conventional crimes, not involving moral delinquency, will be established, leading of course to increased punishments. The best men will be those, who feel most the degradation of the Badge, and who therefore will be most inclined to disobey orders by the disuse of it; and, as they will probably be often encouraged to do so by their Masters, the Government will be brought into fresh collisions with the very persons to whom it ought to look for support in carrying its regulations into effect. Although Assignments for the purposes of Luxury are discontinued, the Convicts formerly assigned for such purposes have not been withdrawn. The Domestic Servants, Grooms, Coachmen and Footmen of the gentlemen of greatest wealth and of most importance in the Colony are still Convicts, and it will certainly require all the power of Government to enforce the wearing of a Convict Badge over their Liveries.

4. A modification of the orders now in force respecting Tickets of Leave. I have already stated that I feel most anxious to be in a position to carry these alterations into effect; but that so long as the Statute* I have alluded to, 2 and 3 Wm. IV, Ch. 62, remains in force, it appears to me impossible to do it to any extent that can be beneficial.

I have, &c,

GEO. GIPPS.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 31. per ship Calcutta; acknowledged by Sir George Gipps, 24th December, 1839.)

Sir, Downing Street, 30 March, 1839.

With reference to my Predecessor’s dispatch No. 10 of the 17th January last, I now transmit to you a copy of a letter from the Director General of Military Hospitals relative to the state of the Medical Department in New South Wales.

In the former dispatch on this subject, Lord Glenelg stated that he would not have hesitated to have accepted the resignation of the various Officers of the Medical Establishment of the Colony, if that resignation had not been coupled with the condition of a retiring allowance to each.

You will perceive that, in the enclosed communication, Sir James McGrigor states his conviction that the Colonial Medical Officers cannot be allowed to remain in their Offices with any advantage to the public service; and he assigns as his reason that they are too independent in their wealth and influence in the

* Note 13.
NORMANBY TO GIPPS.

Colony to submit to the discharge of their duties under control; and that they have evinced to the latest period a determination to resist, and, confiding in their opulence and weight in the Colony, to force upon the Government a return to the old establishment replete with abuse.

It will be right that these Officers should be given to understand that, unless they are prepared to submit themselves to the control of the Head of the Department and to afford him a willing co-operation, they must be prepared to give up their appointments.

At the same time, I trust that the admonition, which has been conveyed by Sir James McGrigor to Dr. Thompson, in regard to those essential points in which he has hitherto failed, will have its due effect.

You will immediately report any vacancies, which may occur in the Medical Establishment, in order that measures may be taken for filling them up in the manner pointed out by Sir James McGrigor.

I have, &c.,

NORMANBY.

[Enclosure.]

SIR JAMES McGRIGOR TO UNDER SECRETARY STEPHEN.

Sir,

Army Medical Deptmt., 5th Feb., 1839.

I have the honor to acknowledge the receipt of your Letter of the 25 Ulto., inclosing Copies of two Despatches* received from the Governor of New South Wales, the one enclosing a Memorial from certain Officers of the Medical Establishment and reporting generally on the state of that Department; the other, written, with reference to my Letters therein adverted to, on the subject of the position and allowances of the Deputy Inspector General of Hospitals, together with the Copy of a Despatch, which Lord Glenelg has addressed to Sir Geo. Gipps in answer to his two communications, and directing me to address such instructions to Dr. Thompson, as the good of the public service and the justice of the case may require.

In reply, I beg leave to submit, for the consideration of Lord Glenelg, that, while I freely admit the Deputy Inspector Genl. has been deficient in blandness of manners and conciliatory address towards the Colonial Medical Officer, yet, as it is manifest that from his first landing Dr. Thompson was met with such a determined opposition by the whole body of them (an opulent and influential one) and by their numerous friends, his situation was no easy one for any man of common patience and temper.

It was perhaps to be expected that an Officer experienced in the duties, sent out to control Expenditure, diminish Emoluments and supervise the manner in which the several Officers discharged their Public Duties, would be unacceptable, let his Address and manner be what they would; but they appear to have evinced to the latest period a determination to resist, and, confiding in their opulence and weight in the Colony, to force upon the Government a return to the old Establishment replete with abuse. From a full consideration of all that has occurred from the time the Deputy Inspector

* Note 16.
1839.
30 March.

Necessity for removal of colonial medical officers.

Proposed limitation of private practice of officers.

Imperfect statements of expenditure.

General was sent out, and a revision of the voluminous correspondence which has passed on the subject. I feel convinced that the Colonial Medical Officers now in New South Wales cannot be allowed to remain with any advantage to the Service of the Public. They are too independent from their wealth and influence in the Colony, which they have acquired, to submit to the discharge of their duties under control, and it will be much to the advantage of the service that they be replaced by Officers, who, knowing from the time of their appointment what is required of them, will not murmur at any orders they may receive for the zealous discharge of their duties. I am of opinion that none of these Officers should be allowed to hold any other Office in the Colony, but should be confined entirely to the execution of their Medical Duties.

Looking to the situation of the Colony and to the Education and professional talent of Gentlemen to be sent out to fill the Medical Appointments, it would not be right to deprive the Civil population of their aid; but I submit that they should not be permitted to enter on private practice except when it did not interfere with the execution of their public duties, and under Regulations to be established by the Governor, to be enforced by the Deputy Inspector General of Hospitals. Whenever the extent of their practice interfered with their public duties, they should be obliged to resign their public appointments, and this would be no hardship on them, as possibly by that time the practice of their profession in Civil life would render them independent of their appointments, and younger and more active men might then be appointed to succeed them.

I concur entirely in opinion with Sir R. Bourke that the comparative statements of the Medical Expenditure under the Colonial Medical Officer, and since it fell under the superintendence of Dr. Thompson, does not give the perfect view of the case, for the expenditure of Medicines, Materials and instruments with various contingencies, all of which only Professional Men can properly judge of, should enter into all such statements.

In conclusion, I beg to submit, for the consideration of his Lordship, a copy of the Letter, which I have addressed to Deputy Inspector General of Hospitals Dr. Thompson on the subject.

I have, &c.,

JAS. MCGRIGOR.

[Sub-enclosure.]

SIR JAMES McGRIGOR TO DEP. INSPECTOR-GENERAL THOMPSON.

Sir,

The Secretary of State for the Colonies having been pleased to send to me various communications lately transmitted to him, relating to the unfortunate disputes which have existed so long between you and the Colonial Medical Officers, and which are so injurious to the public Service; and I concur, in the opinion of Lord Glenelg, Sir Richard Bourke and Sir George Gipps, that, whatever might have been the conduct of these Gentlemen in your carrying into effect measures naturally very unpalatable to them, you have evinced much want of blandness of manner, and of firmness and decision of purpose, before which opposition on their part would have gradually given way. In entering into a correspondence with the Editor of a Newspaper, you have acted most injudiciously, and brought on yourself the appearance of unfairness in bringing forward extracts only, which brought censure on Dr. Mitchell and kept back those which showed that equal censure had been bestowed on yourself; and you have thus granted a victory to your opponent and to his numerous supporters on the Trial. * It

* Note 17.
GIPPS TO GLENELG.

is certainly discouraging to observe that you have never yet been able, by correction of existing abuses, to reduce the expenditure, and that in all the Hospitals the Medical Expenditure in the Colony has very considerably increased since you entered on the superintendence; and it is still more startling to observe that you have never yet extended your inspections in the Colony beyond Windsor, 30 miles from your residence. I believe the travelling allowance at first granted did not enable you to make the Inspection tour of the distant Hospitals; but, as I learn that an increased allowance has been granted, and as I am confident that, if you can show that this is unequal to your visiting the most distant stations, Sir Geo. Gipps will not be disinclined to grant you your actual expenses. I beg that you will no longer delay inspecting every Station and Hospital in the Colony, nor in sending me an Inspection report of each in duplicate, one of them to be sent to the Secretary of State.

You will of course submit a Copy of these Reports to the Governor.

J. V. Thompson.

J. MCGRIGOR.

SIR GEORGE GIPPS TO LORD GLENELG.

(My Lord, Government House, 1st April, 1839. 1 April.

On the 16th Jany. last, I had the honor to receive your Lordship's Despatch, No. 176, of the 9th Augt., 1838, directing me forthwith to raise the Minimum Price of Crown Land from 5s. to 12s. per acre; and I accordingly issued a Government notice on the 23rd of the same month to the effect that this alteration would take place immediately, and without distinction as to whether the lands had been previously advertised at a lower rate or not. I was perfectly aware in doing this, that the measure would be a very unpopular one in the Colony, and that the application of it to lands, which had been previously advertised at a lower price, would be particularly complained of; nevertheless, I considered the instructions contained in your Lordship's Despatch to be peremptory; it appeared to me moreover that, as the Government must have the right of withdrawing land from sale, or of buying it in at a Public Auction, which is enjoyed by every private individual, there could be no breach of faith in the proceedings; and I was consequently prepared to resist whatever clamour might be raised against it. Within a few days however after the issue of the Notice, of which I have spoken, I found myself placed in a most disadvantageous position by the arrival in the Colony of the Van Diemen's Land Gazette of the 18th Jany., by which it appeared that the Lieutt. Governor of that Colony had taken a different view of the instructions conveyed to him by your Lordship, and had announced that the rise in the minimum price would not affect the lands, which had previously been advertised at a lower rate. In this predicament, I thought it right to take the advice of my Executive Council on the subject, and I enclose for your Lordship's information, copies of the various Minutes, which were made by the Council on the occasion.
I have further to report to your Lordship that, in conformity with the advice of the Council, a second Notice was issued on the 6th Feb., informing the Public that the course of proceeding in New South Wales would be assimilated to that of Van Diemen's Land; consequently a large quantity of land (not less than 300,000 acres) must be sold, and many months elapse, before the instructions conveyed in your Lordship's Despatch No. 176 can be carried into any efficient operation.

It may be right that I should explain to your Lordship how it happened that so large a quantity of land as 300,000 acres should have been advertised at a less price than 12s. per acre, and not sold when your Lordship's Despatch arrived. It has long been the custom of this Government to allow individuals to send in applications for any lands they desire to purchase, even though they shall not have been surveyed. Immediately on the receipt of the applications, the lands are advertised for sale, and the upset price named; the day of sale is not however appointed, but an intimation is given that the day will be fixed in a future advertisement, to be issued after the lands are measured. From the slow progress of the Survey, it frequently happens that many months and even two or three years intervene between the first advertisement and the second, and thus there is always a vast quantity of land unsold, though months or years may have elapsed since it was first advertised, and the upset price of it notified to the Public. In order to prevent the inconvenience, which has been felt on the present occasion to arise out of this practice, I beg to inform your Lordship that I have by a recent order directed that the upset price shall never be named in any advertisement, unless the day of sale be named also.

I have delayed writing to your Lordship on this subject, until I could report the effect which the expected rise (for it is as yet only an expected rise) in the minimum price of land has had upon our Land Sales. Two sales have taken place since the receipt of the order, one on the 13th Feb., the other on the 13th March. Abstracting from each sale the land, which on account of its superior situation or fertility would have commanded a high price under any circumstances, I find that, on the 13th Feb., 21,807 acres of ordinary land, put up at 5s. per acre, sold for the sum of £6,827, being at the rate only of 6s. 3½d. per acre; and that, on the 13th March, 54,348 acres sold for £14,118, or at the rate of only 5s. 2½d. per acre. These results would seem to shew either that, in the present state of the Colony, the ordinary lands of it are not worth much more than 5s. per acre, or that there is for the present a determination on the part of the Public not to give a higher price for it. These results are
however I should observe exclusive of Port Phillip, where 15,576 acres were sold on the 13th Feby. for £10,272, or at an average of 13s. 4½d. per acre.

Your Lordship will perceive by the Minutes, which I enclose of the proceedings of the Executive Council, that I brought under the consideration of the Council the question of the way in which officers of the Army or Navy, claiming remission in the purchase of land, were to be effected by the New Regulations respecting the minimum price of it; and that, by the advice of the Council, all officers serving in the Colony, who sent home their applications to retire from the Army and become settlers prior to the 23rd Jany. last, and all officers who bona fide left England on the faith of the orders of 1834, or without being aware of the altered position in which they were placed by the order of the 1st August, 1838, will for the present have the full benefit which was allowed to officers under the former Regulations.

I trust that under the difficulties which I have alluded to, augmented as they were by the dissatisfaction universally expressed in the Colony at the rise in the minimum price of Land, your Lordship will not disapprove of the measures which I have adopted.

I have, &c,

GEO. GIPPS.

[Enclosures.]

[Copies of these minutes will be found in a volume in series II.]

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 32, per ship Calcutta.)

Sir, Downing Street, 2d April, 1839.

I have received your dispatch No. 142 of the 12th September last, containing explanations with regard to the increase in the expenses of the Convict Establishment in New South Wales, and I have to acquaint you that the Commissioners of Audit have been authorized to admit those expenses.

I have, &c,

NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 63, per ship Caroline; acknowledged by lord John Russell, 24th October, 1839.)

My Lord, Government House, 3rd April, 1839.

With reference to my Despatch of the 5th March last, in which I reported to your Lordship that I had, subject to Her Majesty’s approval, appointed Captain Philip Parker King of the Royal Navy a Member of the Legislative Council of this
Colony, I beg now to acquaint your Lordship that Captain King, since his nomination, has received from England the appointment of Resident Commissioner of the Australian Agricultural Company, which lately became vacant by the death of Colonel Dumaresq.

It is right that I should inform your Lordship that Captain King apprised me of the possibility of his receiving this appointment at the time when I offered him the Seat in Council, and that he both accepted the seat, and now holds it on the distinct understanding that he is to resign it, if your Lordship does not consider it proper that the Commissioner of the Australian Agricultural Company should be also a Legislative Councillor. Captain King indeed, immediately on receiving the appointment of Commissioner, expressed to me his readiness to resign his seat in Council, if I thought it desirable that he should do so; but I, on the contrary, requested him to retain it, until your Lordship's pleasure shall be known, as the difficulty, which I experienced in filling up the late vacancy, reported to your Lordship in my Despatch above alluded to, has made me by no means desirous of having another seat at my disposal.

If I had now to nominate a Legislative Councillor, my choice would lie between Mr. James Macarthur and Mr. Wentworth, both of whom are (at least by reputation) well known to your Lordship. But Mr. James Macarthur was lately engaged in England as the agent of that political party, which already has a great majority in the unofficial part of the Council, and Mr. Wentworth is a person whose appointment would undoubtedly be very obnoxious to that party. He is however a man of vast influence in the Colony, as well as of vast possessions, of great knowledge also and experience in everything that concerns it; and, though in former days he was extremely violent in his opposition to Government, he has for a long time past, and especially since his retirement from the Bar, become moderate in his politics, and was friendly throughout to the administration of Sir Richard Bourke. His name stands high on the list of those who were recommended for the Council by Sir Richard Bourke in his Confidential Despatch to your Lordship of the 26th Dec., 1835; and it would I think be good and sound policy to attach such a man to the Government by placing him in the Council, instead of leaving him to find his own way into it, as he undoubtedly will in the event of a Representative form of Government being even in a modified degree introduced into the Colony.

I have, &c.,
Geo. Gipps.
MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 33, per ship Calcutta.)

Sir, Downing Street, 4 April, 1839.

I have the honor to acknowledge the receipt of your despatch No. 133 of the 28th August last, respecting the refund by Mr. Atkins of the sum of £12 9s. paid for that Gentleman for Clerical Robes, while he was officiating at Norfolk Island.

As it is not the intention of Her Majesty's Government to enforce this claim, the necessary directions have been given to the Commissioners of Audit on the subject. I have, &c,

NORMANBY.

[Enclosure No. 1.]

UNDER SECRETARY STEPHEN TO MR. A. Y. SPEARMAN.

Sir, Downing Street, 18th Decr., 1838.

With reference to your Letter of the 3rd March last, I am directed by Lord Glenelg to transmit to you, for the consideration of the Lords Commissioners of the Treasury, the enclosed copy of a Despatch from the Governor of New South Wales in answer to the instructions, which were sent to him in consequence of your Letter.
with respect to the transmission of Plans and Estimates for Public Buildings to be defrayed from Colonial Funds.

I am to request that you will observe to the Lords Commissioners that Lord Glenelg cannot but admit the force of the objections, which Sir George Gipps urges to the adoption in New South Wales of the precautions against extravagance in Public Works to which Your Letter refers. Adverting to the nature of those objections, Lord Glenelg would suggest, for the consideration of the Lords Commissioners of the Treasury, whether in respect to so distant a Colony some better security might not be devised against an improvident expenditure on Public Buildings than that of transmitting plans and estimates to this Country. That proceeding in the case of New South Wales would seldom involve a delay of less than twelve Months; and moreover there is no person in England, who possesses that exact local knowledge which is necessary, in order to form a sound opinion as to the fitness of any such plans or the accuracy of any such Estimates. If sent back for revision and for a further report, an additional delay of another year is unavoidable. The result would be progressive injury to the Colony, no less indefinite in its operation, and a perpetual augmentation of just dissatisfaction. The subject is of the greater importance since the question affects not only new South Wales but the other Eastern Colonies.

I have, &c.,

JAS. STEPHEN.

[Enclosure No. 2.]

MR. F. BARING TO UNDER SECRETARY STEPHEN.

Sir, Treasury Chambers, 17th January, 1839.

In reply to your Letter of 18th Ultimo with reference to the Despatch from the Governor of New South Wales, therein enclosed, in which Sir Geo. Gipps urges the objections which he entertains against the adoption in that Colony of the precautions to check extravagance in Public Works, I have it in command from the Lords Commissioners of Her Majesty's Treasury to request you will observe to Lord Glenelg that his Lordship will have been fully aware that Sir Geo. Gipps was under a misconception in remarking that it never had ' been the custom to have plans and estimates for Colonial Works and Repairs' from New South Wales; and that it has been customary to require the transmission of such estimates for all Works involving a considerable expenditure from that as well as from all other Colonies, in which the appropriation of the Local Revenues rests with the Governor and a Council, appointed by or on behalf of the Crown.

I am to request you will further state to his Lordship that my Lords are disposed to admit the necessity for the exercise by a Governor of a distant Colony of some discretionary Power in sanctioning the execution of ordinary Works and of repairs, as well as in other cases of emergency; but, as my Lords consider that references for the sanction of the Home Government, in the case of all Works involving a large amount of Expenditure, constitute a very material and useful check upon improvident appropriations of local funds in those Colonies, where the Legislative Body is not responsible to the local constituencies as their Representatives, their Lordships feel bound to withhold their concurrence in any general asset
to the proposition of Sir Geo. Gipps, unless Lord Glenelg is prepared to suggest some other satisfactory mode of controlling the proceedings of the local Authorities in the disposition of Colonial Funds; at the same time however, my Lords consider the transmission of Plans, only to be necessary, where they are required for the elucidation of an Estimate.

My Lords are also desirous of observing to Lord Glenelg that the more important of the Works enumerated by Sir Geo. Gipps had been the subject of specific reference to the Home Government without, so far as they are aware, any material inconvenience having been thereby occasioned; and that my Lords apprehend the Expenditure relating to the erection of Churches will be governed by the general directions and authority, which the Governor has received in regard to providing for religious Instruction.

I have, &c.,

F. Baring.

[Enclosure No. 3.]

UNDER SECRETARY STEPHEN TO MR. F. BARING.

Sir, Downing Street, 29th January, 1839.

I have laid before Lord Glenelg your Letter of the 17th Inst., conveying the observations of the Lords Commissioners of the Treasury on the objections urged by the Governor of New South Wales to the application to that Colony of certain precautions imposed with a view to check extravagance in Public Works.

You observe that Sir George Gipps is under a misconception in remarking that it never has been the custom to have plans and Estimates for Colonial Works and Repairs from New South Wales; and that it has been customary to require the transmission of such estimates for all Works involving a considerable Expenditure from that as from all other Colonies in which the appropriation of the local Revenues rests with the Governor and a Council appointed by or on behalf of the Crown.

In reply, I am directed to state that the Governors of New South Wales and Van Diemen’s Land do not appear to have observed with regularity the practice of sending home plans and detailed estimates of Public Buildings about to be undertaken.

The principal Works, enumerated in Sir Geo. Gipps’ Despatch, were commenced in pursuance of the sanction conveyed by Mr. Stanley’s Letter of the 27th July, 1835; and, although that Letter adverted to the propriety of the Governor sending home plans and Estimates, whenever permanent and expensive Buildings and Works were contemplated, no such plans and Estimates have since been transmitted.

You observe that, with the exception of admitting the necessary exercise of some discretionary power in the Governor of a distant Colony in sanctioning the execution of ordinary Works and Repairs, and in acting in cases of emergency, their Lordships feel bound to withhold their concurrence in any general assent to the proposition of Sir Geo. Gipps, unless Lord Glenelg is prepared to suggest some other satisfactory mode of controlling the proceedings of the local Authorities in the disposition of Colonial Funds. In reference to this observation, Ld. Glenelg directs me to state that, although in cases, such as the erection of a Government House, wherein Works of magnitude are contemplated and will bear
1839.
5 April.

Proposed submission of plans and estimates to local board.

Opinion in favour of submission of plans and estimates to England.

Discretionary power granted in cases of emergency.

postponement without inconvenience to the Colony, his Lordship thinks that it might still be advisable to call for plans and estimates, together with detailed explanations in justification of the proposed expenditure; yet being still impressed with the considerations stated in my Letter of the 18th Ultimo, he would suggest whether a sufficient practical check might not be effected by having the plans and Estimates for Public Works and Buildings in those Colonies submitted to the supervision of a local Board, consisting of Members of the Legislative Council, together with the Commanding Royal Engineer and the Colonial Architect. The Estimates, when so adopted with the sanction of the Governor, might be sent home with plans of the Works or Buildings for the information of Her Majesty's Government, and be subjected to any comments which they might call for, and which might guide the local Authorities in subsequent Works without creating a delay injurious to the interests of the Colony. Lord Glenelg would be glad if their Lordships should feel it practicable to adopt some arrangement of this nature.

I have, &c.,

JAMES STEPHEN.

[Enclosure No. 4.]

MR. G. J. PENNINGTON TO UNDER SECRETARY STEPHEN.

Sir,

Treasury Chambers, 1st April, 1839.

In reply to your Letter of the 29th January last, further on the subject of the regulations to be observed relating to Expenditure incurred by the Governor of New South Wales for Public Works, I have it in command from the Lords Commissioners of Her Majesty's Treasury to request you will state to the Marquess of Normanby that my Lords continue to be of opinion that the exercise by the superior authorities in this Country of a certain degree of preliminary control over the proceedings of the Colonial Government with respect to such Public Works or Buildings as are likely to involve considerable expenditure from the Colonial Funds, by ensuring due care and circumspection on the part of the Colonial Officers in the preparation and revision of the Plans and Estimates, and in commencing the Work, is beneficial to the Interests of the Colonists; and that, as works of any magnitude are usually some time under consideration, my Lords apprehend that no material inconvenience would in general be found to result from a reference to this Country.

I am to request that you will, however, observe to his Lordship that, when the execution of a Public Work is called for under such circumstances that the postponement of it for a previous reference to the authorities here might create a delay injurious to the Interests of the Colony, my Lords would certainly not object to the adoption of some such arrangement for the revision of the Plans and Estimates as that suggested in your Letter; but my Lords would wish it to be distinctly understood that any discretionary authority of this description is only to apply to Works, of which the expense is defrayed from Colonial Funds, and not to those Barrack or Convict Buildings, of which the Expense is usually defrayed from Funds provided by the Home Government.

I have, &c.,

G. J. PENNINGTON, Pro. Sec.
GIPPS TO GLENELG.

1839.
5 April.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 64, per ship Caroline; acknowledged by lord John Russell, 25th October, 1839.)

My Lord,
Government House, 5th April, 1839.

I have the honor to transmit herewith a letter, which has been addressed to your Lordship by Mr. Macquoid, the Sheriff of this Colony, in consequence of my having communicated to him your Lordship's Despatch of the 28th August, 1838, No. 198, on the subject of his Precedency.

I have, &c.,

GEO. GIPPS.

[Enclosure]

MR. T. MACQUOID TO LORD GLENELG.

My Lord,
Goderich Lodge, Sydney, 30th March, 1839.

His Excellency The Governor having kindly favored me by an early communication of your Lordship's dispatch, dated 28th August, 1838, in reply to my letter addressed to the Governor of the 15th March, 1838, on the subject of my precedency in this Colony; and His Excellency having been pleased to say that he would transmit any farther representations which I might think it necessary to make, I have the honor to avail myself of this, and beg leave respectfully to urge the following observations for your Lordship's consideration.

1st. The Office I hold of Sheriff of New South Wales is entirely distinct from that of "Provost Marshall": a "Sheriff" is provided for in the Charter of Justice for this Colony and the duties clearly defined to be the same as those required to be performed by a Sheriff in England. Indeed, from a perusal of the Secretary of State's letter, dated Jany. 22nd, 1824, to Sir Thos. Brisbane, it must be obvious that, on first constituting the Office of Sheriff for this Colony, it was His late most gracious Majesty's intention to render the Office as nearly analogous ("exactly analogous" are the words used) to that of a Sheriff in England as local circumstances would admit of.*

2nd. I have, as a Sheriff in England is said by Lord Coke to have, "triplicem custodiam," viz., Vita Justitiae, Vita Legis et Vita Republicanæ, etc., Vita Justitiae to serve process and to return indifferent Juries for the trial of men's lives, liberties, Lands, and goods; Vita Legis, to execute process and make Execution which is the life of the law; and Vita Republicanæ to keep the Peace (Co. Litt 168).

3rd. I am as duly qualified to serve as Sheriff here by reason of my possession as a Sheriff in England is required to be by numerous Statutes, I admit the principle to its fullest extent that, "as the Sheriff both in Criminal and Civil cases may have the custody of men of the greatest property in the County, his own Estate ought certainly to be large that he may be above all temptation to permit them to escape or to join them in their flight."

* Marginal note.—Extract from the letter here alluded to.

"As the duties of Sheriff in England expire at the end of a year, and as the situation of Sheriff in New South Wales is exactly analogous, you will consider that Mr. Mackanen's Office expires annually, and will therefore take care to reappoint him without any further instructions from me."
1839.
5 April.
Absence of county court.

Similarity of office and duties to sheriff in England.

Claim for precedence.

4th. It is true that hitherto as Sheriff I have held no regular Court similar to a County Court in England; but it is equally true that the action of Replevin is frequently resorted to; an action which, according to the Law of England, which is also the Law of this Colony as far as it can be applied, may be prosecuted in the County Court, be the distress of what value it may.

My office and duties, therefore, I would respectfully submit, being thus similar to those of a Sheriff in England, seem to entitle me to somewhat more consideration than a mere Provost Marshall; an Officer known to the Civil Law indeed, but unknown to the common Law of England; and known for the most part, if not altogether, save in Courts of civil Law, only in those Colonies where that law has prevailed. In Newfoundland for instance, a purely British Colony (as New South Wales also is) and in Upper Canada, we find a Sheriff but no Provost Marshall except in the Court of Vice Admiralty of the former Colony.

I never did expect that Precedency should be given to me beyond what was reasonable, or what I understood and had a right to calculate upon as appertaining to the Office when I accepted it.

I do therefore most respectfully and earnestly submit to your Lordship that the Rank, which after some correspondence* on the subject was finally fixed for me by Sir G. Murray when Secretary of State for the Colonies, and which I have held for more than 8 years, cannot now be taken away from me, whatever may have been the practice in other Colonies.

During the sittings of the Supreme Court the constant attendance of the Sheriff as its Chief Ministerial Officer is expected; and, viewing the intimate relation which must necessarily exist between the Judges and the Sheriff in the performance of most of his duties, it appeared to me of importance to a right understanding of the case under consideration to request the opinions of their Honors, opinions both disinterested and authoritative, which, having obtained, as a mark of respect to your Lordship I have the honor to forward herewith.

In conclusion, I wish to observe that my holding the Rank fixed by the Secretary of State in Jan'y., 1831, cannot possibly interfere with the Rank of any other Officer so as to occasion just grounds of complaint; the Puisne Judges having now been placed in their proper position, and the Colonial Secretary and Attorney General, the first as Member of both Councils, and the latter as Member of the Legislative Council must as such always have the Precedency over the Sheriff secured to them.

I have, &c,

T. MACQUOID,
Sheriff of N. S. Wales.

[Sub-enclosure No. 1.]

Mr. Justice Dowling and Willis to Mr. T. Macquoid.

Sir,
Sydney, New South Wales, 4th March, 1839.

In reply to your letter of the 4th Instant, requesting us to say, in what position, we are of opinion, the Sheriff of New South Wales ought to be placed in any table of precedence formed for this Colony, with reference to the rank which

*Marginal note.—Copy of the Colonial Secretary's letter communicating the Secretary of State's decision here alluded to, dated Sydney, 7th January, 1831.

Sir, "I have the honor to inform you, by the direction of His Excellency, that the Right Honorable the Secretary of State has been pleased to signify that the Sheriff of New South Wales is to take Precedence next after the Members of the Legislative Council.

"I have the honor, etc., Alexr. MacLea."
NORMANBY TO GIPPS.

It is manifest from the Official letter sent to you of date 7th January, 1831, that, at that time the Right Honorable The Secretary of State had assigned you precedence next after the Members of the Legislative Council, and until that arrangement shall have been expressly rescinded, it would seem to us to be still obligatory, inasmuch as the Printed Rules and Regulations, recently sent hither, contemplate their adaptation to the local circumstances of each Colony.

We have, &c.

JAMES DOWLING, C.J.

JOHN WALPOLE WILLIS.

[Sub-enclosure No. 2.]

MR. JUSTICE BURTON TO SIR GEORGE GIPPS.

Sir, Supreme Court, Sydney, 7th March, 1839.

I am extremely concerned to find that, in the Table of Precedency contained in the Book of Rules and Regulations lately transmitted to this Colony for the Guidance of Public Officers, the Sheriff has no place assigned to him. At the request of that Officer, and thinking it due to him as well as to the Office of Sheriff, I request your Excellency will be pleased to bring this subject under the particular notice of the Right Honourable the Secretary of State, with the expression of my hope that the Sheriff may be confirmed in the rank which he has held in this Colony for upwards of nine years, and his removal from which I am aware he conceives to be injurious to him; and I would respectfully add that I think it is such as the Sheriff of this Colony ought to retain.

I have, &c.

W. W. BURTON.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 35, per ship Parkfield.)

Sir, Downing Street, 6th April, 1839.

I have received your despatch, No. 149 of the 25th of September last, relative to the proposed gratuity to Mr. Lewis, Commander of the Colonial Vessel “Isabella,” in consideration of his meritorious exertions in attempting to rescue the Survivors of the Crew of the “Charles Eaton.”

Her Majesty’s Government do not conceive that the circumstance, to which you advert of the Ship not having belonged to the Port of Sydney, could in any respect affect the claim upon the Government or Inhabitants of the Colony for assistance in rescuing or relieving the Crew.

I have only therefore to refer you to my Predecessor’s despatch, No. 49 of the 18th of Decr., 1837, and to instruct you to propose to the Legislative Council of Your Government a Grant to Mr. Lewis of a sum not exceeding £300, which Her Majesty’s Government have already stated their readiness to sanction.

I have, &c.,

NORMANBY.
1839, 6 April.

Act for establishment of border police and regulation of occupation of crown lands.

Powers granted to commissioners.

Assessments on live stock for maintenance of police.

Occupation licenses.

Maintenance of rights of crown to waste lands.

**HISTORICAL RECORDS OF AUSTRALIA.**

**SIR GEORGE GIPPS TO LORD GLENELG.**

*(Despatch No. 65, per ship Caroline; acknowledged by lord John Russell, 26th October, 1839.*)

My Lord,

Government House, 6th April, 1839.

With my Despatch of the 20th Feby. last, No. 32, I had the honor to forward to your Lordship a Copy of the address with which I opened, on the 14th of the same month, an extraordinary Session of the Legislative Council of this Colony, and also a Draft of the Bill which I then laid before the Council for the establishment of a Police Force beyond the limits of location. I have now the honor to submit to your Lordship the Act as it has passed the Council, and to express a hope that it may, on your Lordship's recommendation, receive the approval of Her Majesty.

With respect to former Acts which have been passed to regulate the occupation of Crown Lands beyond the Borders of Location, I beg to refer your Lordship to Sir Richard Bourke's Despatch of the 14th Sept., 1836, No. 100, and to my own Despatch of the 7th Novr., 1838, No. 180, and a separate Despatch of the same date. The Act, now submitted for Her Majesty's approval, proceeds upon the same principle as these prior ones, but goes beyond them in the powers which are given to the Commissioners, and also authorises the levying of a tax or assessment on Cattle depastured beyond the Boundaries to defray in part the expense, which must be incurred for the maintenance of the Police. This assessment, which is fixed at 1d. per annum for every sheep, 3d. for every head of horned cattle, and 6d. for every horse, depastured on the lands beyond the Boundaries, is expected to produce about £7,000 a year, whilst the Licences at £10 each, which are to be granted as heretofore for the occupation of the land, will produce probably from £5,000 to £6,000 a year; and though these two sums together form but a small amount for the protection of the immense tract of Country extending from Port Phillip almost to Moreton Bay, I could not as a first experiment propose the raising of a larger sum.

I trust it will appear to your Lordship that the rights of the Crown to the wildlands of the Colony are sufficiently protected in this act, proceeding as it does on the principle explained in the Despatch of Sir Richard Bourke to which I have alluded. The price of the Licence, which is analogous to rent, is still to be determined, as it formerly was by the Crown, the amount of the assessment only being fixed, and the produce of it appropriated by the Act; and the temporary occupancy of the land under the Licence is expressly declared to give no permanent right over it whatever. The country being entirely unsurveyed, and indeed

* Note 18.
very imperfectly explored, except on the Banks of a few of the
principal Rivers, it would have been impossible to define the
limits; which are to be occupied by the Flocks or Herds of any
individual. The Licence gives only a general right to depasture
Cattle or Sheep on the Crown Lands, in the same way as a right
of Common is enjoyed in England or as Licences to cut Timber
are granted in Canada.

The Commissioners have powers under the 10th Clause to
adjudicate in cases of encroachment by any New Comer, on
what is called the established Run of the first occupant; but this
is only granted to preserve order, and gives no more protection
to any occupant than that which he might seek in a Court of
Law, it having been decided in the Supreme Court of the Colony
that a right of occupancy is good against everybody but the
Crown; and I may here remark that, in a very recent case (Scott
v. Dight), tried on the 22d ulto., damages to the amount of £200
were given for an intrusion by the Defendant on the established
Run of the Plaintiff, though the Plaintiff held only a general
Licence from the Crown. The difficulty in such cases is to decide
what constitutes occupancy, and this in the first instance the Act
leaves to the decision of the Commissioner.

Your Lordship may probably observe that no mention is made
in the act of the protection of the Aborigines, although, as stated
in my opening address to the Council, it was principally intro­
duced for the purpose of putting a stop to the atrocities which
have been committed both on them and by them, and which I
have reported in various Despatches to your Lordship. The Law
however, as it respects the Aborigines, required neither improve­
ment nor alteration, the means only were required of putting
the Law in execution; these it is hoped will be supplied by the
Police to be established under the Act, and it will be of course
for the Executive Government to direct the application of them.

It may possibly be objected that, by facilitating the occupation
of these distant lands, and giving security to the Flocks and
Herds which are depastured there, we encourage the dispersion
of our Population, and lessen the inducement to purchase lands
within the limits of location; but, in anticipation of such objec­
tions, I would crave permission to remark that it is too late to
calculate the evils of dispersion in New South Wales. All the
power of Government, aided even by a Military force ten times
greater than that which is maintained in the Colony, would not
suffice to bring back within the limits of our twenty counties the
Flocks and Herds, which now stray hundreds of miles beyond
them; and therefore the only question is whether we will abandon
all control over these distant regions, and leave the occupiers of
them unrestrained in their lawless aggressions upon each other
and upon the Aborigines, or make such efforts, as are in our
power, to preserve order amongst all classes.

In conclusion, I have only to state that the details of the act
were very carefully arranged by a Committee of the Council,
who examined a number of persons most conversant with the
state of the country beyond the limits of location, which Com­
mittee made a report* to the Council, of which I enclose a copy.

I have, &c.

GEO. GIPPS.

P.S.—A Bill of Lading is enclosed of the Box, which contains
the engrossed copy of the act on Parchment. G.G.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 36, per ship Parkfield; acknowledged by
Sir George Gipps, 24th November, 1841.)

Sir, Downing Street, 8 April, 1839.

I transmit to you the Copy of a letter addressed to my
Predecessor by Mr. Swanston on behalf of the Port Philip Asso­
ciation, enclosing the Copy of a Correspondence which had passed
between that Gentleman and the Colonial Government of New
South Wales.

As Mr. Swanston adverts to "the unfavorable situation, in
which the Association are at present placed by the absence of
Instructions to the Governor of New South Wales, in conformity
with Lord Glenelg's recorded promises to the Association," I am
unwilling in this instance, from the lapse of time which would
result from such a step, to require Mr. Swanston to forward his
Communication thro' your hands.

On examining the correspondence in 1837, to which Mr. Swan­
ston refers, there appears to be no just ground for his representa­
tion that its not having been communicated to the Colonial Gov­
ernment at the time, as originally intended, has placed the Asso­
ciation in an unfavorable situation.

You will perceive, indeed, from the enclosed Copies of that
Correspondence, and especially from the letter addressed by Mr.
Stephen to Mr. Spottiswoode on the 27th July, 1837 (which
appears not to have been communicated to you by Mr. Swan­
ston) that, if the Colonial Government had been in possession
of these documents, they would have been able at once to negative
the claim of the Association "that, to give a fair benefit of the
allowance of £7,000 to which the local Government had admitted
their claim, a grant should be given them of a portion of Land

* Note 19.
NORMANBY TO GIPPS.

at a moderately reduced price, without Competition, the excess of the fair value of which should at least be equal to £7,000."

I have only farther to state that I approve of your having referred the Association to Lord Glenelg's Dispatch No. 34 of the 10th July, 1837, as the rule by which Your proceedings in this case would be guided.

I am, &c.,

NORMANBY.

[Enclosure No. 1.]

MR. C. SWANSTON TO LORD GLENELG.

Hobart Town, Van Diemen's Land, 3rd October, 1838.

I have the honor on behalf of the Port Philip Association to bring under Your Lordship's consideration the untoward situation in which that Association is now placed consequent upon the recent Sale of Crown Lands at Port Philip.

In so doing it will not be necessary for me to advert to all the Correspondence, which has taken place between the agents of the Association and your Lordship's Department together with the Local Government of New South Wales since the first Settlement was made in June, 1835. It will be sufficient for me to state that while Your Lordship declined to accede to the several proposals made by the Association, you at the same time were pleased to admit that the Association were entitled to receive every consideration at the hands of the Government. The nature of that consideration was also clearly laid down in the letter of Sir George Grey of the 4th August, 1830, addressed by Your Lordship's direction, that your Lordship could not depart from the decision, at which you had previously arrived, of directing General Bourke, then the Governor of New South Wales, to put up the lands for Sale, it was stated "that the Governor had at the same time been instructed to protect the fair claims of the Association to a priority of purchase of any lands on moderate and easy terms, which they may have already occupied, or on which they may have actually effected any improvements."

The opinion, entertained by the Association in consequence of such an Instruction having been issued of your Lordship's favorable disposition towards them, was still further confirmed by a subsequent letter of Sir George Grey of the 10th May, 1836, containing the following passage that "the instructions already alluded to would. His Lordship hoped, embrace every provision, which is required by a due regard to the Interests and reasonable expectations of the parties, by whom the Settlement had been made."

The Claims of the Association were considered in October, 1836, before the Executive Council of New South Wales in consequence of Your Lordship's Instructions, when three members of the Association attended; the Council decided that it was impossible to comply literally with Your Lordship's instructions and that therefore the priority of purchase must be refused, but that a sum of money might be allowed, in the shape of Remission in the purchase of Land, to reimburse the Company for some expenses, which they had incurred in the formation of the Settlement, a Sum afterwards fixed at £7,000.
This decision, My Lord, was fatal to the interests of the Association, contrary I would submit to your Lordship's original intention, and one which, with all respect for The Council, cannot be sustained upon a cool and impartial consideration of the circumstances.

The Council, My Lord, assumed that it was impracticable to sell the Lands by auction, and at the same time to concede a priority of purchase to the Association; but, My Lords, there did not in fact exist any such impracticability. For, after the upset price had been fixed, it surely could not have been impracticable to have allowed the Association, in accordance with Your Lordship's promise, to purchase the Lands which they had occupied, or upon which they effected any improvements, while the remaining lands might have been disposed of at the same time by Public Sale. But the Council, it appears, must have considered that Your Lordship intended that all the Lands indiscriminately should be put up for auction, and, as therefore this was not practicable if the Association were to be allowed a priority of choice, they declined at once to admit their claim.

It would, I submit my Lord, have been more in conformity with the strict rules of equity, had the matter again been referred to Your Lordship's consideration, for that the claim to a priority of purchase should be considered was as clearly laid down in the Instructions, as that the Lands should be sold. If therefore the Council determined that Your Lordship intended that all the Lands should be included, still there is no reason why the one portion of the Instructions should be adhered to in preference to the other, especially when such a decision involved a total disregard of a claim already admitted, and of which the extent alone remained to be determined.

But if, my Lord, there was any doubt whatever of the original intention of the Instructions issued relative to the Association to Sir Richard Bourke, that doubt is at once removed by the following passage in Mr. Stephen's letter, addressed by Your Lordship's directions to Mr. Spottiswoode, dated 27th July, 1837. "In giving directions to allow the association a priority of purchase at such a reduced price as the Governor of the Colony, with the advice of the Executive Council, might fix as the upset price of Land at Port Philip, Lord Glenelg designed to anticipate and prevent this inconvenience" (namely that which would arise to the association from others purchasing the Land, which they had occupied or effected improvements upon). "If for example a House and Garden occupying together an acre of Land had been formed at the expense of the association, it appeared to His Lordship unreasonable that any such improved spot should be the object of general competition, supposing for the sake of illustration the general upset price to have been fixed, not at the usual rate of 5s, but at the reduced rate of 4s. an acre; then it was His Lordship's design that the acre of ground with the house and the other improvements upon it should be offered to the Association at 4s."

Exactly similar, my Lord, was the interpretation, which the Association affixed to the passage in Sir George Grey's letter of the 14th April, 1836, respecting improvements effected, upon the faith of which, placing the utmost reliance and never doubting but that Your Lordship's instructions as interpreted by Mr. Stephen would be carried into effect, they continued to carry on their improvements upon the Lands, which they had occupied, and what, My Lord, has:
been the result of their reliance? that some of their lands have been sold by the Crown to others at an enormous price, which they never would have attained, but for the improvements effected by the Association, that they have been deprived of their homesteads and their Stations, and that they have actually sustained the precise inconvenience (I would venture to substitute the word injury), which Mr. Stephen has stated it was the object of Your Lordship’s instructions to prevent.

The Sale of lands, to which I allude, took place on the 12th Ultimo; and, in the full expectation that some sufficient instructions must have been received by His Excellency Sir George Gipps to carry out Your Lordship’s promises to the Association, I addressed a letter to His Excellency recapitulating the circumstances connected with the claims of the Association, a Copy of which and of my correspondence upon this subject with the Government of New South Wales I have the honor to enclose; and, at the same time, an agent was sent from Van Diemen’s Land by the Association at a very considerable expense to confer with Sir George Gipps. His Excellency, however, declined affording them the protection they required, as he had not received any communication from Your Lordship upon the subject, and considered that he was therefore bound to abide by the instruction in Your Lordship’s Despatch, No. 341 dated 10th July, 1837, upon the subject addressed to his Predecessor, which I hope Your Lordship will excuse me for remarking does not appear to me to correspond with the assurances, contained in Sir George Grey’s Letter and in that of Mr. Stephen already referred to by me.

The Agent accomplished all that under such circumstances he was enabled to do by leaving a protest with the Governor against the sale of the Lands, which the Company had occupied, and upon which they had effected improvements; and Your Lordship will perceive that he was deterred from adopting the course usually resorted to, viz., making open protest at the Sale by the intimation, made to him in the Colonial Secretary’s letter of the 8th September, 1838, “that any interference on his part to affect the Bidding at the Sale would be held to annul the agreement under which Seven thousand pounds had been allowed to the Association.”

But the Association had not the opportunity to purchase, even if so disposed, inasmuch as, as has been shewn in Mr. Under Secretary Stephen’s correspondence, the Remission of Seven thousand Pounds in the price of Lands so purchased would have been to the Association in fact no Remission at all.

I have thus, My Lord, brought very briefly under Your Lordship’s Request for consideration the circumstances connected with the present situation of the Association in the full assurance that the same spirit, which prompted Your Lordship in the first instance to issue instructions to protect the fair claims of the Association, will now induce Your Lordship not to leave them in the unfavorable situation, in which they are at present placed by the absence of Instructions to the Governor of New South Wales in conformity with Your Lordship’s recorded promises to the Association, in consequence of which they now discover that their enterprise, toil and anxiety are not only unrewarded, but in truth have been used as a means of injury to themselves for the benefit of others and the great gain of the Government of New South Wales.
I cannot, my Lord, believe that it was ever the intention of the British Government that no immunities nor privileges should be granted to the Association; such a belief indeed could only be grounded on a distrust of Your Lordship's explicit assurance.

Your Lordship cannot but remember that we became three years ago, without shedding one drop of the blood of the Aborigines, the pioneers in a District that had hitherto been profitless to the British Crown, and where the blessings of civilization were unknown; and when Your Lordship reflects that a most friendly intercourse was opened by us with the natives which yet subsists, and that Port Philip is now a flourishing settlement already yielding a considerable Revenue to the Crown and bidding fair at no distant day to rival if not surpass its more advanced neighbours, and that, in bringing about these results, the association have been mainly instrumental, I feel a confidence that the fair claims, which Your Lordship has admitted the association to possess, will not be permitted thus to be taken from them. It is, I am sure, merely necessary to remind Your Lordship that these claims have been admitted, and I doubt not that Your Lordship and the Government, with which Your Lordship is connected, will speedily determine in what way they shall receive that consideration, to which, in May 1836, they were pronounced by Your Lordship to be entitled, and that, in determining, the recent injury sustained by the Association will not be overlooked. I have instructed the agent of the Association, Mr. Mercer, to wait upon Your Lordship, and I have the honor to request that your Lordship will be pleased to communicate with him upon the subject of this letter.

I have, &c,

C. SWANSTON.

[Sub-enclosure No. 1.]

MR. A. PERRY TO COLONIAL SECRETARY THOMSON.

Sir, Pelly's Hotel, 5th September, 1838.

When I had the honor of an interview with the Governor and yourself on Monday last, you were kind enough to say that an Official Letter containing His Excellency's determination on the subject of my application on behalf of the Port Philip Association should be sent me in the course of that day. I have not yet received that Letter, and, as I intend leaving Sydney almost immediately, shall be much obliged if you will forward it to me in the course of today.

I am, &c,

A. PERRY.

[Sub-enclosure No. 2.]

COLONIAL SECRETARY THOMSON TO MR. C. SWANSTON.

Colonial Secretary’s Office,

Sir, Sydney, 5th September, 1838.

I am directed by His Excellency Sir George Gipps to acknowledge the receipt of your communication of the 30th July, and in reply to inform you that, as the Governor heard nothing from the Secretary of State on the subject of the application, which it was Mr. Spottiswood's intention to make to His Lordship in July, 1837, His Excellency had nothing whatever to communicate to you or to the parties in Van Diemen's Land, who were Members of the late Port Philip Association.
I am further to inform you that, as the instructions which were received prior to the date of the late acting Governor's communication to you of the 20 February last are quite conclusive, and allow to the Members of the Association a compensation of Seven thousand pounds, to be taken out in Land sold at Auction, it is quite out of Sir George Gipps' power to permit Land to be selected at the price of five shillings an Acre, and that it would be unjust to other parties to defer the Sales, which have been already advertised to take place.

I have, &c.,
E. DEAS THOMSON.

[Sub-enclosure No. 3.]
MR. A. PERRY TO SIR GEORGE GIPPS.

Sir,
Sydney, 7th September, 1838.

The decision of Your Excellency respecting the claims of the Port Philip Association to Land in that Colony being, as the members conceive, at variance with the instructions of the Secretary of State to Your Excellency's Predecessor Sir Richard Bourke, I deem it my duty, on behalf of the Association, respectfully to protest against the Sale advertised for the 12th September upon the following grounds:—

1st. That the Land, now advertised for sale, was purchased by the Association from the Aboriginal Natives.

2nd. That, under that purchase, the Association were lawfully in the occupation of the Land in question prior to the date of Lord Glenelg's dispatch to Sir Richard Bourke of 10th May, 1836.

3rd. That the instructions of Lord Glenelg to His Excellency Sir Richard Bourke were to protect the fair claims of the Association "to a priority in the purchase, on moderate and easy terms, of any Lands, which they might have then occupied or on which they might have actually effected any improvements." And Sir Richard Bourke was directed, in order to afford this protection, to make every arrangement which might appear to him to be reasonable.

4th. That the Association, being thus in the occupation of the Land advertised for Sale under the double title of a fair and equitable purchase from the Natives and of the distinct authority of the Secretary of State for the Colonies, are ready to purchase that Land to the extent of the Sum awarded them by the Sydney Government, and upon the terms specified by Lord Glenelg.

I should willingly have abstained from making the present protest, as it is far from the wish of the Members of the Association to cause the slightest embarrassment to Your Excellency's Government. But, as it appears to me that there can be no doubt of the legality of their occupation (for neither Lord Glenelg nor any of the eminent Lawyers, whose opinions have been taken, question the right of the Natives to transfer the occupation of the Land in whomsoever the right of the soil may be), and, as Lord Glenelg has authorised the purchase of the occupied Lands on moderate terms, which the Members of the Association agree to, I consider that I should not discharge my duty to the Gentlemen, for whom I act, if I did not protest against the present Sale both to Your Excellency and to any person proposing to be purchasers.

I have, &c.,
ARTHUR PERRY, Agent for the Association.
8 April, 1839.

Letter acknowledged.

Despatch submitted.

Prohibition of interference at auction sale.

[Sub-enclosure No. 4.]

**COLONIAL SECRETARY THOMSON TO MR. A. PERRY.**

Colonial Secretary's Office, Sydney, 8th September, 1838.

Sir,

With reference to your letter, dated 7th instant, protesting, as Agent to the Port Philip Association, against the sale of Land at that settlement, advertised to take place Wednesday next the 12th instant, I am directed by the Governor to inform you that, as, from the arguments in your letter, His Excellency concludes you must be unacquainted with the contents of a Despatch from Lord Glenelg, written on 10th July, 1837, he has desired the accompanying Copy to be forwarded to you.

I am further to inform you that any interference on your part to affect the Biddings at the Sale will be held to annul the agreement under which Seven thousand pounds has been allowed to the late Association. I have, &c,

E. DEAS THOMSON.

[Sub-enclosure No. 5.]

(This was a copy of the despatch from Lord Glenelg to Sir Richard Bourke, dated 10th July, 1837, which will be found on page 787 et seq., volume XIX.)

[Sub-enclosure No. 6.]

**MR. A. PERRY TO COLONIAL SECRETARY THOMSON.**

Sir, Pelly's Hotel, 10th September, 1838.

Letter acknowledged.

When I forwarded my Protest to His Excellency, I certainly was not aware of the contents of that Despatch. By delivery of that Protest, however, I consider that I have discharged my duty towards the Gentlemen for whom I act, and I beg to assure you that it is not my intention in any way further to interfere with the Sale advertised for the 12th of this Month. I have, &c,

ARTHUR PERRY.

[Sub-enclosure No. 7.]

**MR. C. SWANSTON TO SIR GEORGE GIPPS.**

Van Diemen's Land, Hobart Town, 30th July, 1838.

Letter acknowledged.

On the 14th December last, I had the honor to address the Colonial Secretary of New South Wales on behalf of the Port Philip Association, requesting him to move Colonel Snodgrass, The Acting Governor, to defer, for the reasons therein submitted, the Sale by Public Auction of any of the land at Port Philip, ceded to the Association by the Aboriginal Natives, and then in the occupation of the Members of that Association; and, on the 21st of April last, I had the honor to receive that Officer's communication of the 20th of February, in reply thereto, informing me that the Acting Governor could not interfere with the arrangements made by Sir Richard Bourke, but that my Letter should be handed over to Your Excellency, whose arrival in the Colony as Governor was then daily expected.
From the terms of that letter, it will not, I trust, be deemed unnatural for the Association (considering the very large Capital they have embarked at Port Phillip) to have expected a further communication from the Government of New South Wales upon my letter of the 14th of December, 1837, before any further steps were adopted for the disposal by Public Auction of any portion of the land, to which I referred; and, under this reasonable expectation, I hope I shall be pardoned in expressing their disappointment upon perceiving in the Sydney Gazette of the 30th May, 1838 (which only arrived here two days since), the first intimation that thirty three lots of those very lands are announced for Sale by Public Auction on the 12th September next. In expressing this feeling of disappointment, I can however assure you that the Association are too well aware of the numerous and important duties, which must necessarily have devolved upon Your Excellency, since your assumption of the Government of New South Wales, to ascribe to an intentional cause the omission alluded to; and I may add that they feel equally assured of receiving at your hands a calm consideration and an unbiased judgment upon whatever representations, relating to this subject, they may bring under your notice. With these convictions upon our minds, and with a sincere desire to bring the lengthened proceedings of this case to a speedy and satisfactory termination with the Sydney Government, I will as briefly as possible review our transactions and present position for the more immediate information of Your Excellency, who may not have had the opportunity of looking into the correspondence.

In May, 1835, the land at Port Phillip, to the extent of Six hundred thousand Acres, having been formally sold and legally transferred by the chiefs of the Native Tribes, to whom it belonged, to the Association under certain engagements to be performed by the Association, application was made, for the reasons assigned in the correspondence to Her Majesty's Government through The Right Honorable Lord Glenelg The Secretary of State for the Colonies, for a recognition and confirmation on the part of the Crown of that arrangement; but His Lordship declined to acknowledge a Title to land so acquired; and, although the opinions* of Dr. Lushington and several of the most eminent Lawyers in England upon such a subject were submitted for His Lordship's consideration, in which they contended that "the right of the Soil in question does not rest in the Crown," Lord Glenelg declined to acquiesce in that doctrine without, however, affording any legal opinion in support of his views; and it is here not unworthy of particular consideration, since the question, in whom the right of the Soil is vested, is one of Law and not of Policy, and must ultimately be decided by Law alone, that in no part of the correspondence will it be found that Lord Glenelg distinctly denies the right of the Soil at Port Phillip to have been vested in the Native Chiefs, whilst that right has been fully recognized by the Sydney Government in the declaration that, "with respect to the engagement entered into by the Natives, by which certain articles are to be delivered to them by the Association annually, the Council are of opinion that, in consideration of the land being now offered for Sale, the engagement should be upheld by and at the sole expense of the Local Government."

* Note 20.
Shortly after the Association took possession of the land ceded to them by the Native Chiefs, Sir Richard Bourke issued a Proclamation, dated 26th August, 1835, declaring in effect that the Association were trespassers on Crown Lands; and, although Lord Glenelg confirmed that Proclamation, yet it must be evident from the vindictory tenor of his despatch to Sir Richard Bourke of the 13th April, 1836, that he had strong misgivings of the legality of the proceeding, and that His Lordship was influenced by expediency and not by reliance on Law alone.

His Lordship, however, admitted that the Port Philip Association had given birth to an undertaking, which deliberate reflection would have recommended rather than have discouraged; and, being evidently very desirous of conferring upon them an especial advantage in acknowledgement thereof, he states (in a letter* addressed to Mr. Mercer of 14th April, 1836) that the land at Port Philip will be put up for Sale at a reduced upset price, adding, as explanatory of his desire to confer an advantage on the Association, that he will however instruct the Government to have a careful and just regard to the various circumstances relating to the Association's proceedings, and to make every reasonable arrangement for protecting their fair claims to a priority in the purchase on moderate and easy terms of any lands, which they may have already occupied, or on which they may have actually effected any improvement; and, in order to show that Lord Glenelg fully contemplated the uninterrupted occupation of the Lands at Port Philip by that Association, and had intended to exempt those lands from the operation of the ordinary mode of disposing of land by Sale at Public Auction, he informed Mr. Mercer on the 10th May, 1836 (after he had received Sir Richard Bourke's Proclamation of August, 1835, declaring the Association to be trespassers) "that his instructions will be found to embrace every provision, which is required by a close regard to the interests and reasonable expectations of the Association, by whom the Settlement at Port Philip had been made."

In October, 1836, three Members of the Association proceeded from Van Diemen's Land to New South Wales upon the invitation of Sir Richard Bourke to have some claims of the Association adjusted speedily and satisfactorily, when it was admitted that the Association had a just claim on the Government for Seven thousand pounds in compensation for the Public services performed by them at Port Phillip; but, instead of allowing them to take that sum in land by priority of purchase at a reduced upset price, Sir Richard Bourke would only grant them a remission to that extent in the purchase of any land, they might buy at Public Auction, on the ground that Lord Glenelg's instructions to allow them priority of Purchase and at the same time to sell land by Public Auction were impracticable from their inconsistency.

In this state matters remained until I was honored with The Colonial Secretary's letter of the 27th November, 1837, to which mine of the 14th December (already referred to) was in reply; and in that I endeavoured to point out that Lord Glenelg's intention of granting priority of purchase had not been carried out by the allowance of remission money. I am unwilling to lengthen this communication by a repetition of the arguments, adduced in my letter of the 14th December, 1837, in support of that position, and would therefore respectfully refer your Excellency to it, in the

* Note 20.
hope on a perusal of it you will concur with me that it is not desirable to encumber this part of the case with additional embarrassment, since it must be obvious to Your Excellency that, if the view I have advanced of Lord Glenelg’s instructions be correct, the claims of the Association for additional compensation will be augmented by a departure therefrom. I must however remark that I do not think it a reasonable ground for depriving the Association of the benefit of Lord Glenelg’s clearly expressed intention of priority in the purchase of land, on the assumption that it is impracticable, because inconsistent with the general instruction to sell lands at the same time by Public Auction; and I therefore submit with much respect that the inconvenience or injury arising out of irreconcilable instructions (if they exist) should not be visited upon the Association, but that the Members should rather derive the benefit of a liberal construction of any inconsistency, which has not emanated from themselves; but, in order to convince your Excellency of the practicability of carrying through the instructions, I am quite prepared to select land on behalf of the Association to the extent of Seven thousand Pounds in one or more blocks, as Your Excellency may require, at five shillings per Acre, that being the upset price fixed upon the land at Port Philip by the Governor and Executive Council on the 21st October, 1836, although I consider that that upset price, being the same as has always been fixed for Crown Lands in New South Wales, is neither a reduced upset price nor as moderate or easy to the Association as Lord Glenelg himself contemplated. Upon this point, I shall only further add that the Association have invested additional property to the extent of at least Fifty thousand Pounds at Port Philip upon a firm reliance on Lord Glenelg’s promise of a priority of choice in the purchase of the lands occupied by them, never for one moment doubting that by those words His Lordship intended in truth and in good faith to confer upon them an equitable advantage for the services, he acknowledges the State had derived from their enterprise, humanity and Capital.

Under all those circumstances, I feel no reluctance in submitting the reasonable expectations of the Association to the notice of Your Excellency; and I should hope that, on an impartial review, Your Excellency will at once permit the Members to select Twenty eight thousand Acres of Land (namely, Seven thousand Pounds at five shillings Per Acre) in adjustment of the compensation demand.

Before closing this letter, I would beg to remark that it appears by the Government Notice of the 29th May that the Thirty three lots of land at Port Philip for Sale on the 12th September next contain in the whole but Twenty nine thousand, nine hundred and seventy acres; and I would therefore submit for your consideration that, if the Government of New South Wales contemplated, as would appear from the terms of The Colonial Secretary’s letter to me of the 27th November last, that the Association should purchase land at that Sale to the extent of Seven thousand pounds that there would not be the most remote reason for affirming that the land they would so acquire would be on the easy and moderate terms contemplated by Lord Glenelg, since they would not only be exposed to the operation of the feelings of jealousy which may be entertained against them, but also from the smallness of the quantity of land offered for Sale, as well as from the improvements

1839.
8 April.
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8 April.

Objections to purchase of land at auction sale.

...effectuated on the lands by buildings and depasturing their flocks, they would have to contend against an unexpected and extraordinary competition, which would effectually preclude them from purchasing at or near to the upset price, and thereby further deprive them of the benefit of Lord Glenelg's instruction to have extended to them a careful and just regard to their circumstances, as well to debar their "fair claims" from that species of protection His Lordship has so unequivocably promised; and I can have no hesitation in assuring Your Excellency that, if the Members could have contemplated a course of proceeding so ingeniously circumscribed with disadvantages peculiar to the Association, they would much rather have preferred receiving a money compensation at the time of the Award, and enter the Market as ordinary purchasers of land.

None of the observations in this letter are offered with a view to disturb the proceedings of the Government of New South Wales for the Sale of the lands at Port Philip, the Association being aware that with Her Majesty's Government alone can be determined the question, in whom is vested the right of the Soil; if the Members can now adjust the compensation awarded them in 1836 by the Sydney Government, and they hope Your Excellency will not deem this their application for effecting that object either unreasonable or illtimed, when you reflect upon the vast extent of Capital embarked by them at Port Philip, and the serious injuries they have already suffered by delays, they have not occasioned and could not counteract.

I have, &c.,

C. SWANSTON.

[Sub-enclosure No. 8.]

Letter of introduction for A. Perry as agent for Port Phillip association.

[Sub-enclosure No. 9.]

COLONIAL SECRETARY THOMSON TO MESSRS. C. SWANSTON AND J. SIMPSON.

Gentlemen,
Colonial Secretary's Office, Sydney.

By the command of His Excellency Sir Richard Bourke, I do myself the honor to inform you that the Secretary of State for the Colonies has approved and confirmed of the resolutions of the Executive Council of this Colony on the subject of the claims of the Port Philip Association, as communicated to you and the late Mr. Gellibrand on the 26th October, 1836.

I have, &c.,

C. SWANSTON.
I am also directed to inform you that, some progress having been made in the measurement of land at Port Philip, a sale may be expected early in the next year, and to request that you will report to this Government the name of an Agent authorised by the Association to purchase Lands for their use to whom such lands may be conveyed, remission to the amount of Seven thousand pounds being allowed in the price, in pursuance of the resolutions of the Council above referred to.

A true Copy:—C. Swanston.

[Sub-enclosure No. 10.]

MR. C. SWANSTON TO COLONIAL SECRETARY THOMSON.

Hobart Town, Van Diemen's Land, 14th December, 1837.

I had the honor this day to receive your letter (37/777) of 27th Ultimo acquainting Mr. Simpson and myself, on behalf of the Port Philip Association, by command of His Excellency Sir Richard Bourke, that the resolutions of the Executive Council as communicated to us on the 26th October, 1836, had been approved and confirmed by the Secretary of State for the Colonies; and that, as a sale of Land at Port Philip may be expected early in next year, you request that the name of the Agent authorised to purchase for the Association may be reported to the Government of New South Wales.

In reply to this letter, I am directed by the Association to have the honor of conveying through you to the Government of New South Wales their obligation for the acknowledgment thus given on the part of His Majesty's Government, as well as of the Local Government of New South Wales, to their claim for consideration under their Treaty of Settlement with the Aborigines of Port Philip for a portion of that Territory; but feeling, at the same time, that the resolutions of the Executive Council do not carry out the intentions of Her Majesty's Government, as announced by Lord Glenelg, in regard to the compensation to be awarded to the Association for their services to the state in the formation of the Settlement at Port Philip, I am to request you will be good enough to submit to His Excellency the Governor this our respectful but firm protest against the Public Sale of any of the land, ceded to the Association by the Natives and now in the occupation of the Members of the Association, until the further instructions of Lord Glenelg shall have been received, as to the final adjustment of the amount and nature of the compensation to be granted to the Association, since the Association entertains no doubt, from the tenor of several of the communications which have very recently passed between Lord Glenelg and the supporters of the Association in England, that His Lordship will most justly permit the members to select at a fixed upset price whatever quantity of land, it may be hereafter decided they are entitled to by virtue of the amount of money compensation to be allowed to them without subjecting the lands, so selected, to competition in any way. It is under this conviction that the protest of the Association is now submitted; and, in order that His Excellency the Governor may be assured that this step has not been adopted without sufficient grounds, I beg to offer for His
1839.
8 April.

Claim to purchase of land without submission to auction.

Reconsideration promised by Lord Glenelg.

Request for delay in public auction.

Proposal for reserve of selected land.

Excellency’s information the following extract from a letter addressed by Mr. John Spottiswoode to Lord Glenelg on the 18th of July last, and received here on the 12th Instant.

“I think I satisfied your Lordship that, if they (the Association) had competitors at the Auction, this might be no remission at all, though it might be intended; and I ventured to suggest to your Lordship from myself that, to give the association the fair benefit of the allowance of £7,000, to which the local Government admitted their claim, a Grant should be given them of a portion of land at a moderate reduced price without competition, the excess of the fair value of which should, at least be equal to £7,000. I considered that this must have been your Lordship’s real meaning when you gave directions to allow a priority of purchase at such a reduced price.

“You were good enough to say that you would take this suggestion into consideration, and, as it was only made verbally, I have now put it upon paper to keep it in your Lordship’s recollection, hoping for a determination favorable to a set of men, who have acted honorably towards the Natives, the good effect of which is evinced by the continued quiet and content of the Native Population at this Settlement.

“I believe the same can hardly be said of any other Colony on the New Continent. I do not venture to urge again the suggestion last made to your Lordship by Mr. Mercer, but have confined myself to the suggestion of a fair mode of carrying into execution that remuneration for expenses incurred, which the local Government has reported as fitting to be granted to them.

“I cannot at the same time omit expressing to Your Lordship my humble opinion that men, who have performed the difficult task of founding a Colony in amity with uneducated Natives, and who have maintained the relations of brotherly love with them, are deserving of every encouragement.”

It is gratifying to me, and I feel assured that it will be equally so to the known liberal views of His Excellency Colonel Snodgrass to be enabled to assure you that the effect of Mr. Spottiswood’s personal communications with Lord Glenelg and of the letter, from which I have extracted, has been to induce His Lordship to state that “he will reconsider the matter”; and, under this information, the Association feels a confidence that His Excellency will not hesitate to defer the sale by public auction of any of the land to which I have referred, until the question of preemption is settled, in order that future inconvenience to the Government, upon any loss the Association might sustain by a contrary course, may be prevented and the subject go unembarrassed to Parliament, if the friends of the Association should eventually find that course necessary. In the mean time, however, I am authorized to acquaint you, for the information of The Governor, that the Members of the Association are quite willing and prepared to select immediately such lands as they have reason to expect they will ultimately receive in liquidation of their claims, for the purpose of their being reserved for future confirmation by Lord Glenelg; and this proposition is respectfully submitted with a view to facilitate the sale of the adjacent Lands, in the measurement of which some progress appears by your letter to have been made.

I have, &c,
C. Swanston.
Colonial Secretary Thomson to Mr. C. Swanston.

Colonial Secretary's Office,
Sir, Sydney, 20th February, 1838.

In acknowledging the receipt of your letter of the 14th December last on behalf of the Port Philip Association, protesting against the public Sale of any of the Land ceded to the Association by the Natives, and now in the occupation of the Members of the Association, until the further instructions of Lord Glenelg shall have been received as to the final adjustment of the amount and nature of the compensation to be granted to them, I am directed by the Acting Governor to inform you that His Excellency has delayed to this period any reply to it, in the hopes that the final instructions expected from the Secretary of State in consequence of Mr. John Spottiswood's representation of the 18th July might have arrived, and which His Excellency regrets to say has not, although letters have been received from His Lordship to the beginning of November but nothing on this subject.

His Excellency therefore can only express his regret at being unable to interfere with the original arrangements, made by His Lordship and communicated to the Association in my letter dated 27th November, 1837. above alluded to, and will therefore hand over your letter to Sir George Gipps, whose arrival in the Colony as Governor may be daily expected.

I am, however, directed to acquaint you that, from the small progress made by the Surveying Party in the District of Port Philip, His Excellency does not expect that any portion of the land will be actually disposed of by public Sale before the month of July next, by which time a year will have elapsed since Mr. Spottiswood's application and the matter will have met with full consideration. His Excellency will be happy to learn that the final result is to the satisfaction of yourself and the Association.

I have, &c,

E. Deas Thomson.

Mr. J. Spottiswoode to Lord Glenelg.

My Lord,
Great George Street, 18th July, 1837.

I take the liberty of addressing this letter to you, in consequence of the conversation I had the honor of having with you on the 10th Instant, relative to the applications to your Lordship of the founders of the Settlement at Port Philip in New South Wales for Grants of Land, partly free, and partly at a fixed price as a renumeration for their services in founding the Colony by arrangement with the Natives, and with their full consent and concurrence, and as a compensation for the expenses they had incurred in so doing.

Your Lordship is fully aware that the Local Government, in consequence of their General Instructions for their guidance, did not think themselves justified in following out your Lordship's suggestions in behalf of the Association of Settlers at Port Philip; but they suggested that the sum of £7,000 should be remitted in part of the purchase money of Land, which might be acquired by the Association by purchase at auction.
I think I satisfied your Lordship that, if they had competitors at the auction, this might be no remission at all, though it might be intended as such; and I ventured to suggest to your Lordship from myself that to give the association the fair benefit of the allowance of £7,000, to which the Local Government admitted their claim, a grant should be given them of a portion of Land at a moderate reduced price, without competition, the excess of the fair Value of which should at least be equal to £7,000. I considered that this must have been your Lordship's real meaning, when you gave directions "to allow a priority of purchase at such reduced price," etc.

You were good enough to say that you would take this suggestion into consideration; and, as it was only made verbally, I have now put it upon paper to keep it in your Lordship's recollection, hoping for a determination favorable to a set of men who have acted favorably towards the natives, the good effect of which is evinced by the continued quiet and content of the Native population at this settlement.

I believe the same can hardly be said of any other Colony on the new Continent. I do not venture to urge again the suggestion last made to your Lordship by Mr. Mercer in his letter to you of the 23d June last, of a free grant of 5,000 or 15,000 Acres more at a fixed price to each of the 17 Individuals Composing the Association; but I have confined myself to the suggestion of a fair mode of carrying into execution that remuneration for expenses incurred, which the Local Government has reported as fitting to be granted to them.

I cannot at the same time omit expressing to Your Lordship my humble opinion that Men, who have performed the difficult task of founding a Colony in amity with uneducated natives, and who have maintained the relations of brotherly love with them, are deserving of every encouragement.

I am, &c,

JOHN SPOTTISWOODE.

[Enclosure No. 3.]

UNDER SECRETARY STEPHEN TO MR. J. SPOTTISWOODE.

Sir,

I am directed by Lord Glenelg to acknowledge the receipt of your letter of the 18th Instant, in which you propose, on behalf of the Association of Settlers at Port Philip, "that to give them a fair benefit of the allowance of £7,000, to which the Local Government had admitted their claim, a grant should be given them of a portion of Land at a moderate reduced price without competition, the excess of the fair Value of which should at least be equal to £7,000." The motive you urge in favor of this mode of proceeding is that, if the association should make the purchase in the ordinary manner at a Public Auction, they would in effect receive no remission at all.

If the Land to be purchased by the Association should consist of tracts, upon which they had effected permanent improvements in the belief that their contract with the natives would be confirmed, and if those improvements should for the sake of argument be assumed to be worth £7,000, Lord Glenelg readily perceives that, if the Land should be purchased by the association at a public Auction, an allowance of £7,000 to the purchasers might, as you state, be no remission at all. It would simply be to leave them in
possession of their own improvements. To whatever extent those improvements fell short of £7,000 in value, the same principle would still apply altho' to a less extent.

In giving directions to allow the association a privity of purchase at such a reduced price as the Governor of the Colony, with the advice of the Executive Council, might fix as the Upset price of Land at Port Philip, Lord Glenelg designed to anticipate and prevent this precise inconvenience. If, for example, a House and garden, occupying together an acre of Land, had been formed at the expense of the Association, it appeared to His Lordship unreasonable that any such improved spot should be the object of general competition. Supposing for the sake of illustration the General upset price to have been fixed not at the usual rate of 5s., but at the reduced rate of 4s., then it was his Lordship's design that the acre of ground, with the House and all the other improvements upon it, should be offered to the association at 4s. But, in point of fact, the actual outlay, effected in Buildings or in any permanent improvement of the soil before the decision of the Government was made known at Port Philip, appears to have been so inconsiderable as scarcely to have attracted the notice either of the local Authorities or even of the Agents of the Association itself. Their estimated outlay of £7,000 appears to have been devoted almost exclusively to other objects.

To maintain that a deduction of £7,000 from the price offered by the highest bidder at a Public Auction for improved Lands would not be an equivalent advantage to the bidder to that amount, would be not only to contradict an apparently obvious truth, but would also be in direct opposition to the result of daily experience in the Australian Colonies. Both on the Eastern and Western Coast of New Holland, and in Van Diemen's Land, purchasers by Auction are constantly effected by Military Settlers, subject to a remission to a fixed Amount, according to their rank and services in the Army and Navy.

Amongst the large number of such purchases which have taken place, it has never yet been objected by any one of the purchasers that he did not obtain a real and substantial advantage to the full amount of the sum so remitted.

For these reasons, Lord Glenelg considers himself bound to adhere to the instructions, which he has already addressed to the Governor of New South Wales; although his Lordship is ready to transmit to that Officer a copy of this correspondence to remove any possible ambiguity, as to the sense in which his original Instructions respecting priority of purchase are to be understood.

I am, &c.,

Jas. Stephen.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 66, per ship Caroline; acknowledged by Lord John Russell, 13th November, 1839.)

My Lord,

Government House, 8th April, 1839.

In various Despatches written during the course of the last six months, I incidentally mentioned to your Lordship that the Colony was suffering very greatly from the long continuance
of a most oppressive drought.* With my Despatch of the 26th Jany. last, No. 22, I transmitted to your Lordship an Act of Council (No. 26) which was passed to admit the importation of Grain and Flour, free of any charge of duty or wharfage, and I have now to explain to your Lordship that, at the time that act was passed, it was hoped no further measures on the part of the Government would be required, but that whatever deficiency might exist would be supplied by the activity of the merchants of Sydney. The Harvest in Van Diemen's Land was known to have been an abundant one; at that time also, though the wheat Harvest in New South Wales had failed, there was every appearance of an ample crop of maize; and the enquiries, which I made privately and confidentially amongst our Merchants, led me to expect large importations of Corn, both from South America and India. Circumstances, I am sorry to say, were however so much changed by the middle of last month that, though disinclined on general principles to interfere in such matters, I considered I could no longer be justified in remaining inactive. Wheat had risen to 15s. per bushel; supplies from Van Diemen's Land had come in far slower than was expected (whether from a real deficiency, or from the effects of a monopoly, or holding back for an advanced price, I am unable to say). A second Drought had destroyed our Maize Harvest, which, as I have observed, was expected to be a good one; and it came to my knowledge also that no supplies were to be expected from South America in consequence of the orders, which were sent thither in October and November having been limited to a price, at which Wheat was not to be obtained there. I accordingly brought these circumstances under the consideration of my Executive Council, and I have now the honor to transmit to your Lordship Extracts of various Minutes, which were made by the Council between the 15th and 31st days of March last; and I have to report to Your Lordship that, in consequence of the recommendation of the Council, a reduction has been made in the quantity of Flour or Bread, issued as a Ration to Convicts throughout the Colony; and that engagements have been entered into between the Government and certain Mercantile houses for the importation from India of 100,000 Bushells of Rice on a principle which I shall presently explain.

Wheat is now 20s. a Bushel in Sydney, and Maize, of which the ordinary price is 2s. 6d. or 3s., has risen to 12s. Hay is £20 a ton; Fresh Butter and Vegetables almost unknown. The Emigrants, who arrive from England, remain in our Streets, without employment, whilst they add materially to the number of mouths to be fed by Government. Our Contractors have very generally

* Note 21.
failed to fulfil their engagements, and we have had to make fresh
Contracts at enormous prices, which will almost complete the
exhaustion of our Treasury. In the Interior, the drought has
been far more oppressive even than on the Sea Coast; only a
fortnight ago, hundreds of miles might have been traversed,
within the located districts of the Colony, without seeing either
a blade of grass or a drop of water; and, among the Cattle at
least, Famine may be said to have existed in all its horrors.

I am happy, My Lord, to be able to announce that within the
last few days rain has fallen pretty generally in the Colony,
which, though it cannot relieve us from the deplorable state in
which we have been for the last two or three months all at once,
has had the effect of reviving in some degree the failing spirits
of the People.

It remains for me to explain to your Lordship the principle
on which bargains have been made between Government and the
Merchants of the Colony for the importation of Grain.

Tenders were called for by the Government to shew the lowest
guaranteed price, at which Merchants or others would engage to
bring Corn or Rice to the Colony in good merchantable condi­
tion, the whole risk of the voyage and the chance (which is not
inconsiderable) of the spoiling of the Cargo being on the Im­
porter; The Corn or Rice to arrive within a certain specified time,
under a penalty equal to one third of the guaranteed price; The
Importer to declare within seven days after the arrival of any
and every Cargo, whether he will give it to Government at the
guaranteed price, or sell it on his own account, and, in the
event of his choosing to do the latter, he will have no claim
whatever on the Government.

The result of the tenders has been to fix the Government guar­
anteed price at about 7s. 4d. per bushel, and consequently, unless
Wheat fall to a price below 7s. 4d. (which is very improbable)
before the 31st Decr. next, no loss or expense whatever will fall
upon the Government.

In the year 1835, the Government of this Country imported
Wheat on its own account, and suffered a loss by it of upwards
of £4,000, though the quantity imported was far less than that
which we have now agreed for.

I should explain to your Lordship that as the route to India
by Torres Straits is not open before the month of April, nothing
would have been gained, had tenders been called for a month or
even six weeks sooner.

I have, &c.,
Geo. GIPPS.
Proceedings of the Executive Council relative to the failure of the Wheat and Maize Crops, and the measures adopted to encourage the importation of Wheat, Wheaten flour and Rice.

EXTRACT from Minute No. 6 of the year 1839, dated 15th March.

Present:—His Excellency the Governor; His Excellency Major General Sir Maurice Charles O'Connell, K.C.H.; The Honorable the Colonial Secretary.

His Excellency the Governor informed the Council that, in consequence of the long continued drought and the failure of the Wheat and Maize Crops, and consequent high price of flour, he deemed it necessary that some measure should be introduced to diminish for a limited period the consumption of flour; to accomplish which object, His Excellency is of opinion that, in lieu of a portion of the ration of Wheaten flour appointed by the existing regulations to be issued to Convicts in the Service of Government, an increased ration of beef or mutton should be substituted; the portion of flour to be so withheld from the weekly ration, His Excellency is of opinion should not exceed two pounds of Seconds Wheaten flour; in lieu of which, he thinks the quantity of beef or mutton to be substituted should be two pounds, or of salt pork one pound and a quarter.

His Excellency is further of opinion that a Notice should be published, authorising and recommending the adoption of a similar measure on the part of all assignees of Convict Servants.

The Council unanimously concur in opinion with His Excellency, and advise the issue of the Notice above mentioned, and that this regulation should remain in force until the first day of January next.

EXTRACT from Minute No. 8 of the year 1839, dated 28th March.

Present:—As before, with the addition of the Right Reverend the Lord Bishop of Australia.

With reference to the proceedings on the 15th Instant relative to the failure of the Wheat and Maize crops, and the high price and apprehended scarcity of Flour, His Excellency the Governor informed the Council that, with the view of obtaining as nearly accurate an estimate as practicable of the actual quantity of wheat and flour at present in the Colony, and of the probable prospects as to when and from whence a further supply may be looked for, and of ascertaining whether it would be advisable that the Government should still abstain from the adoption of any direct measures for the purpose of procuring such a supply, and for acquiring correct data upon which to regulate such measures if deemed necessary, His Excellency had directed the attendance to be requested of as many as could conveniently be obtained of the Merchants and other persons engaged in the importation or manufacture or sale of grain and flour to be examined before the Council.

Messrs. James Barker, John Terry Hughes, James Blackett, millers, importers and Contractors, and John Lamb, S. K. Salting, J. W. Gosling, Thomas Walker, and ________, Flower Merchants and importers, were then severally introduced and examined; and was also Deputy Commissary General William Miller; their Evidence will be found in the Appendix.

The Council, after careful and mature consideration of the information thus obtained, are of opinion that it is highly necessary
that measures should be immediately taken by the Government for the purpose of procuring as early a supply as practicable of Wheat and Wheaten flour, to the extent of from one hundred to one hundred and fifty thousand bushels, which it appears, from the Evidence of the Gentlemen examined, may with most certainty be obtained from Bengal and the other provinces of British India; Valparaiso and other South American Ports may also be resorted to for the same purpose; Grain and flour obtained from thence being generally of better quality than is usually procurable in India.

The Council are further of opinion that it is not advisable that the importation of the necessary supply should be effected by purchases made, or ships chartered by the Government; but that the Colonial Merchants and Importers should be encouraged and induced to undertake the accomplishment of this object by the offer, either

1st. Of a Bounty at a fixed rate; or
2nd. Of such a Bounty as would save the importer from loss in the event of a fall in the Market price, and varying accordingly; or
3d. Of the Guarantee by the Government of a fixed price on arrival, with the option to the importer of taking that price, or of selling at his own risk and relieving the Government from any claim; or
4th. As has been suggested by some of the Gentlemen examined, by the offer of a guarantee by the Government to make good to the importers any loss sustained by them by the Market price being on arrival under an agreed on rate.

That, for the purpose of ascertaining what may be a fair and equitable Bounty or what should be the price to be guaranteed by the Government, The Council are of opinion that a Notice should be immediately published, requesting from the Merchants, and other persons engaged in the Grain and Flour Trade, Tenders for the importation of those articles under any of the modes above mentioned; that is to say, what is the lowest rate of Bounty or by what rate of guaranteed price the persons tendering will be induced to undertake the importation of specified quantities of good, sound, marketable wheat, or wheaten flour, to be imported from Calcutta, or some other Market of British India, or from Valparaiso, or some other Port of America; the Notice to state also that the Wheat or Flour must arrive in Sydney between the first day of October, and the thirty first day of December both of the current year; and the good or bad quality of the same be submitted to a Board of Officers to be appointed by His Excellency the Governor, the determination of which Board to be final.

The Council also advise that a similar measure be adopted for encouraging the importation of a limited quantity of Rice from Java or the Adjacent Islands to the extent of about fifty thousand bushels, to arrive between the first day of July next, and the thirtieth day of September following.

Extract from Minute No. 9 of the year 1839, dated 30th March.

Present, as on last occasion.

With reference to the proceedings on the 28th Instant, His Excellency the Governor requested the opinion of the Council more definitely as to which of the several modes of proceeding for the encouragement of the importation of wheat and flour therein suggested, it will be advisable to adopt.
The Council, after further consideration of the subject, are of opinion that the third of the modes suggested by the last Minute is probably the best to be adopted, viz.: The guarantee to such importers of Wheat and Flour, as are under specified, of such a fixed price upon the arrival in Port Jackson of those Articles, as may be ascertained by advertisement for Tenders to be the lowest at which persons disposed to enter into Contracts, containing the several stipulations adverted to in the last Minute, will be induced to undertake the speculation; with the option to them, upon the arrival of such Wheat or Flour, of declaring their intention of delivering the same to the Government at such fixed price, or of holding their importations for sale at their own risk, provided such declaration is made within One Week after the arrival of the same in Port Jackson.

The Council are further of opinion that One hundred thousand bushels of Wheat, or an equivalent quantity of Flour, will, with fifty thousand bushels of rice from Java, be sufficient to meet the exigencies of the Colony until the end of the present year.

The Council are of opinion also that it will be advisable that such a quantity of Wheat for seed should be imported from Van Diemen's Land, as will enable the Government to assist such persons as may require aid in like manner as was done in the year 1836.

True Extracts from Minutes, No. 6, 7 and 9 of the year 1839, of the proceedings of the Executive Council.

W. MACPHERSON,
Council Chamber, Sydney, April, 1839. Clerk of Councils.
under the Ordnance Storekeeper the custody of the Colonial Stores, I am happy at length to be enabled to report to your Lordship that this arrangement is concluded.

Mr. Rogers, the Ordnance Storekeeper, took charge of the Colonial Store Department on the 1st day of the present year, but it was not in my power to dispense with the services of Mr. Barrow, the late Colonial Storekeeper, until the 1st of the present month, in consequence of his having to make up his accounts, and give over his charge to Mr. Rogers; neither had I it in my power to dispose earlier of Mr. Barrow, whom I have now been able to appoint Police Magistrate at Wellington Valley. Mr. Barrow's salary of £300 a year will be saved by this arrangement, though a new charge of £200 a year, as a remuneration to Mr. Rogers, will be incurred. A Compensation to this Officer for the great amount of extra work, which is thrown upon him, is stipulated for in the letter* from Mr. Byham to Mr. Spearman of the 6th Novr., 1837; and your Lordship is, I believe, aware that Mr. Rogers, far from courting the office at that rate of remuneration, actually declined it, until ordered to undertake it by the Board of Ordnance.

Mr. Barrow had four Clerks, with one of whom Mr. Rogers will I hope be able to dispense; it is not however so much in the reduction of the Establishment, as in the improved method of conducting the business of the Department, and particularly in checking the Requisitions which are made on it, that I look for advantage from this measure.

Your Lordship will also understand that the Colonial Store Department is not abolished by this arrangement, but only placed under the charge of an Ordnance Officer, as the Colonial Engineer Department was placed some time ago under the charge of the Commanding Royal Engineer. A Separate establishment of Clerks and Foremen is kept up for each of these Departments, in order that no increased expense may fall upon the Ordnance, it being on these terms alone that the Board of Ordnance would consent to the arrangement.

I have, &c.,

GEO. GIPPS.

SIR GEORGE GIPPS TO LORD GLENEILG.
(Despatch No. 69, per ship Caroline.)

My Lord,

Government House, 13th April, 1839.

In reply to your Lordship's Despatch of the 15th May, 1837, No. 317, requesting information respecting the affairs of a person of the name of Daniel McCullum,† formerly a Surgeon at Sydney, but who died in the year 1818, I have now the honor to forward a Copy of the Will of the said Daniel McCullum, as

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* Note 22.  † Note 23.
HISTORICAL RECORDS OF AUSTRALIA.

1839.
13 April.

Transmission of papers re estate of D. MeCallum.

also an Extract from a letter addressed by the Registrar of the Supreme Court to the Secretary of this Colony on the subject of the property left by Daniel McCullum, and the way in which it was disposed of.

I transmit only an Extract from this letter, as the first part is explanatory of a mistake which had arisen between this Daniel, and another person of the name of Peter McCullum, to which mistake is in part to be ascribed the delay which has taken place in answering your Lordship's enquiries on the subject.

I have, &c,

GEO. GIPPS.

[Enclosure No. 1.]

WILL OF D. McCALLUM.

IN the name of God, Amen, the eight of June, one thousand eight hundred and eighteen. I, Daniel McCallum, Surgeon of Sydney in the County of Cumberland, New South Wales, being very sick and weak of body, but of perfect mind and memory, thanks be to God, therefore calling unto mind the mortality of my body and knowing that it is appointed for all men once to die, do make and ordain this my last Will and Testament; that is to say principally and first of all, I give and recomand my soul unto the hands of Almighty God that gave it, and my body I recommend to the earth to be buried in decent christian burial at the discretion of my executors, nothing doubting but I shall receive the same again at the general resurrection by the Mighty power of God. And, as touching such worldly estate wherewith it has pleased God to bless me in this life, I give demise and dispose of the same in the following manner and form; I give and bequeath to Bridget Fitzpatrick all my stock of horned cattle together with the house and premises and furniture I now occupy, situate in Cumberland Street, Sydney, and further the said Bridget Fitzpatrick shall have all the profits arising from my three farms situate at Liverpool, until the arrival of my wife or Daughter or my three Grandchildren; and, on their arrival, the said farms shall be delivered unto them free of all Mortgage or debts. I desire that I may be buried in a plain coffin and a headstone at my head with my name and age engraved thereon. I nominate and appoint James Dempsey and Bridget Fitzpatrick my sole executors. At the arrival of my wife, daughter and three Grandchildren the said three farms are to be divided equally amongst them.

DANIEL McCALLAM.

signed, sealed, published, pronounced and declared by the said Danl. McCallum as his last Will and Testament in the presence of William Davis, William Cassidy, James Dempsey.

Probate granted to Bridget Fitzpatrick 27th Novr., 1818.
Goods sworn not to exceed the value of £50.

(Daniel McCallum) Probate granted to James Dempsey of Sydney, Stonemason, surviving executor of the deceased 2nd September, 1819.

Goods sworn not to exceed the value of £250.

True copy:—J. E. MANNING, Registrar.
Supreme Court, Sydney, 6 April, 1839.
13 April

EXTRACT of Letter from Registrar Sup. Ct. to Col. Secy.,
8 April, 1839.

I HAVE now the honor of enclosing a Copy of the Will of this Daniel McCallum, who died here so long ago as in 1818, by which three Farms now in one, situate at George's River near Liverpool, were devised to his family at home.

From Mr. Dempsey, son of the late surviving Executor, I am informed that some six or seven years ago the property in question was sold by Public Auction for £70 to Francis Ewen Forbes of Liverpool by Mr. Charles Henry Chambers under a Power of Attorney from England.

I now recollect having given this same information with a Copy of the Will in 1837.

The Memorial of the Registry of the Conveyance in my Office is now before me, and I perceive the Deed of Sale was dated the 23rd August and three Farms of 60 acres, 160 acres, and 50 acres, together 270 acres, were thereby conveyed by Mary McCullum or McCallum and Jane McCullum or McCallum to F. E. Forbes by C. H. Chambers, the Attorney of the said Mary McCallum and Jane McCallum.

I have, &c.,

J. E. MANNING,
R., S. Court.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 38, per ship Parkfield; acknowledged by Sir George Gipps, 31st August, 1839.)

Sir,
Downing Street, 15 April, 1839.

I transmit for your information and guidance the copy of a letter from the Master General and Board of Ordnance in answer to representations addressed to the Board of Admiralty from Rear Admiral Sir F. Maitland and from Captain Bethune of Her Majesty Ship Conway relative to the defenceless state of the two Settlements at Sydney and Hobart Town.

I have, &c.,
NORMANBY.

[Enclosure.]

MR. R. BYHAM TO UNDER SECRETARY STEPHEN.

Sir,
Office of Ordnance, 5 April, 1839.

Having laid before the Master General and Board of Ordnance your Letter dated the 16th ultimo and its enclosures respecting the want of fortifications at Sydney and Hobart Town, I have the honour to acquaint you, for the information of the Secretary of State for the Colonial Department, that the Master General and Board have not yet received the plans and estimates for the defence of the harbour of Hobart Town and the River Tamar, called for on the 3rd August last, as stated in my Letter to you of that date.
At Sydney, nothing has been done towards the defences since the Ordnance took charge of them; and, by an inspectional report and plans dated 1st September, 1836, it appears they were in a very dilapidated state when transferred to this Department; the Master General and Board are compelled to admit the correctness of the report enclosed in your letter, regarding the defenceless state of the Harbours in question against shipping; but, with the Military force stationed in these Colonies and a British population generally, the Master General and Board hope to be depended upon against a foreign enemy, they do not apprehend any serious danger, although it is desirable that some assistance should be afforded to the Colonists in securing their commerce and property from desultory attacks, such as Captain Bethune describes as feasible.

The Master General and Board have therefore called upon the Commanding Royal Engineer for a report with plans and estimates of what he considers necessary for the protection of the principal Sea ports of New South Wales against desultory attacks from foreign cruisers.

I have, &c.,
R. BYHAM.

SIR GEORGE GIPPS TO LORD GLENELG.
(Despatch No. 70, per ship Caroline.)

My Lord,

With reference to my Despatches of the 4th and 9th March last, Nos. 41 and 46, in which I reported to your Lordship that I had given Leave of Absence to Mr. C. D. Riddell, the Colonial Treasurer, and to Mr. Justice Burton, I have the honor to state to your Lordship that, some few days after those Despatches were written, my attention was drawn by Mr. Justice Willis to the 22nd Geo. III, Ch. 61, under the enactments of which the Governor and Council of any Colony are empowered to grant Leave of Absence to Public Officers, and not the Governor only. It has not I believe hitherto been the custom for the Governor of this Colony to consult his Executive Council on cases where he deems it proper to grant Leave of Absence to Public Officers, nor is he directed to do so by the Section (No. 3), which relates to Leave of Absence in the Book of Regulations published under your Lordship’s authority in March, 1837.

It has not I believe hitherto been the custom for the Governor of this Colony to consult his Executive Council on cases where he deems it proper to grant Leave of Absence to Public Officers, nor is he directed to do so by the Section (No. 3), which relates to Leave of Absence in the Book of Regulations published under your Lordship’s authority in March, 1837.

I have nevertheless, in consequence of the representation of Mr. Justice Willis, thought it right to bring the matter under the consideration of my Council, and I have now to report to your Lordship that Leave of Absence has been granted respectively to Mr. Justice Burton and to Mr. Riddell, in the terms of the 54th Geo. III, Ch. 61, by the Governor and Council of New South Wales.

I have, &c.,
GEO. GIPPS.
GIPPS TO GLENELG.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 39, per ship Parkfield.)

Sir,

Downing Street, 16 April, 1839.

I have received your dispatch No. 138 of the 5th September last, reporting the issue of a Notice by your Government prohibiting the entry into its Port of Produce, brought from Dutch East India Possessions; and I have to acquaint you that Her Majesty's Government are of opinion that, under the circumstances of the case, the course which you adopted was perfectly proper.

I have, &c.,

NORMANBY.

1839.

16 April.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 40, per ship Parkfield; acknowledged by Sir George Gipps, 23rd January, 1841.)

Sir,

Downing Street, 17 April, 1839.

I have received a Memorial from Mr. John Thomas Maughan of Sydney, praying for an additional Grant of Land in New South Wales.

You will be so good as to call on Mr. Maughan for a Copy of his Memorial.

If it should appear to you that the Memorialist is entitled to a further Grant, you will take the necessary steps for conferring it upon him without the delay of a reference to this Country.

Should Mr. Maughan's claim be inadmissible, I have to request that you will report the result of the investigation into this Case.

I have, &c.,

NORMANBY.

17 April.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 71, per ship Caroline; acknowledged by Lord John Russell, 18th November, 1839.)

My Lord,

Government House, 17th April, 1839.

I have the honor herewith to transmit to your Lordship a Copy of a letter, which has been addressed to me by the Chief Justice of this Colony, in consequence of an opinion expressed by Mr. Justice Willis that he cannot act as Judge of the Vice Admiralty Court, without coming within the perils of the 7th Sect. of the Charter of Justice* of the Colony.

Should your Lordship be of opinion that the objection raised by Mr. Justice Willis is a valid one, I would suggest that the difficulty might be got over by an order in Council abolishing

* Note 24.
1839.
17 April.

the fees, which are now payable in New South Wales to the Judge of the Vice Admiralty Court, which Order Her Majesty is empowered to issue by the 1st Sect. of the 2d Willm. IV, Ch. 51.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[A copy of this letter will be found in a volume in series IV.]

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MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 41, per ship Parkfield.)

19 April.

Admission of expenditure on convict services.

Sir,

Downing Street, 19th April, 1839.

I have received your dispatch No. 107 of the 14th July last in explanation of certain Expenditure incurred for Convict Services in New South Wales; and I have to acquaint you that Her Majesty's Government have authorized the admission of that Expenditure.

I have, &c.,

NORMANBY.

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SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 72, per ship Caroline; acknowledged by lord John Russell, 28th October, 1839.)

19 April.

Health of J. W. Willis.

Problem of retiring allowance.

My Lord,

Government House, 19th April, 1839.

Herewith I have the honor to transmit a copy of a letter, which has been addressed to me by Mr. Justice Willis for the purpose of being brought under your Lordship's notice.

I have every reason to fear that the state of Mr. Justice Willis' health is such, as to render it improbable that he can long continue to perform efficiently the duties of the Bench; but, as Mr. Willis will not, even when this Despatch reaches your Lordship, have completed two years' service in New South Wales, much as I may desire that Mr. Willis' case may be favorably considered, I must say I am not prepared to recommend that any portion of his retiring allowance should be charged on the revenues of this Colony.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

MR. JUSTICE WILLIS TO SIR GEORGE GIPPS.

Sir,

Sydney, New South Wales, 30th March, 1839.

The precarious state of my health has not indeed hitherto precluded me from the discharge of my present Judicial Duties; but I should be deficient in all candour, were I not to state that my physical powers are, I much fear, too seriously impaired by disease*.

* Marginal note.—Medical Certificate of this date. Appx. No. 1.
contracted in the anxious Performance of my Official functions elsewhere, to authorize me to entertain a reasonable expectation of my Services proving efficient for any very lengthened period.

I, therefore, in compliance with the established Regulations, and the recent Dispatch of the Right Honorable the Colonial Secretary of State, take leave most respectfully to submit to Your Excellency a detailed Statement, shewing my age, the nature and length of my Services, the Salary and Emoluments of my Office, and of the Offices I have formerly had the Honor to hold, and of the losses and expenses I have sustained, in the hope that Your Excellency will have the goodness to bring the same under the Notice of Her Majesty's Government, in order that my case "be specially treated on its own merits, and a fair consideration given to my claim to a reasonable retirement," on the contingency I contemplate of ere long "becoming incapable from infirmity to discharge the duty of my Office."

In April, 1827, I was nominated to the appointment mentioned in the Official Despatch of Lord Goderich of the 19th July, 1827; and on the assurance of the then Under Secretary of State, the Right Honorable Sir R. W. Horton, that my Salary as Equity Judge should commence from that time, though the Patent was not then completed, and relying on the information I received that these appointments were "a better thing" than that of a Puisne Judge at the Cape of Good Hope with a Salary of £1,500 per An., I expended upwards of £3,000 in a suitable outfit for myself and family, and proceeded to my destination.

The Circumstances detailed in the then Secretary of State's Despatch of the 25th of November, 1827, prevented the erection of a Court of Equity in Upper Canada (which indeed has not until within the last few years been established), and I have never received any Emolument whatever in consequence of this Appointment.

Owing to the Evils arising from the Absence of the then Chief Justice of Upper Canada, "without any provision having been made, in compliance with the Statute for the due Discharge of his Duties in his Absence," I was constrained Judicially to declare that, as the Colonial Law, by which the Court of King's Bench in Upper Canada is constituted, enacts, "That a Chief Justice, together with two Puisne Judges shall preside therein," all that was done by the Court, when sitting in Banco, in the absence of the Chief Justice, was in my opinion "illegal." For the expression of this opinion from the Bench, when called upon to act in a manner I deemed to be illegal, I was removed from my seat on the Bench of the Court of King's Bench of Upper Canada, by Lieutenant Governor Sir Peregrine Maitland, acting without the report of his Council.

‡Marginal note.—Upper Canada. See Copy Appx. No. 3. See also Dispatch of 9th of April, 1827.
||Marginal note.—Stat. 22d Geo. 3d, c. 75, amended and extended by Stat. 54 Geo. 3, ch. 61.
which the Law* requires on such occasions being then made, and
deprived of my Salary of £900 per an. Sterling as a Puisne Judge
of that Court.

I was thus compelled to leave my family in Canada, and repair
immediately to England to seek redress; and owing to my Absence
I suffered Injury and Affliction of the deepest Nature, which neces-
sarily incurred most painful and expensive legal Proceedings;†

The then Colonial Secretary of State, instead of complying with
my most earnest request to take such Steps as would enable me to
enter the fullest Inquiry in a Court of Law,‡ after I had fully
answered every charge that was brought against me, and he him-
self had informed me that he thought me right,§ referred the matter
of my amotion from Office to the Lords of the Privy Council, thus
putting me to further Expenence to a considerable Amount; and, in
January, 1829, their Lordships declared my Amotion not to have
been Illegal, but refused to state the reasons on which their decision
was founded.¶ I have, however, good reason to believe, from the
Information I received, that this decision rested solely on the Power
of exercising the Royal Prerogative, the tenure of Judicial Office in
Upper Canada being then **during pleasure only, and not **during good
behaviour as in England.

During the Session of the Provincial Parliament of Upper Canada
of 1829, the whole of my conduct was scrupulously investigated and
fully approved* of by the House of Assembly of that Colony, who
thereupon voted an address** to His Majesty the King, dated the
29th of March, 1829, praying for „my reinstatement as their Judge,
as most desirable for the Peace and Happiness of the Province,
and the restoration of public Confidence in the administration of
the Law.”

The Local Legislature of Upper Canada, I am informed, also
passed an Act, which has since become the Law of the Colony,
declaring my Opinion to be correct, and making it a Misdemeanor
put to any other Construction on the Statute constituting the Court
of King’s Bench in that Colony than that for which I was re-
med from Office.

The Law of England is the Law of Upper Canada when not
altered by any Local Ordinance. On the 15th of June, 1830, it was
admitted†† in the British House of Commons that the presence of
the Lord Chief Justice of the Court of King’s Bench in England
was essential, whenever that Court might sit in Banco. In 1832,
the first sitting of the Court of King’s Bench in England for
Michaelmas Term in that Year was appointed for the 5th of No-
vember, and the Jury and others were then in attendance accord-
ingly, Mr. Justice Littledale however, on entering the Court.

* Marginal note.—Stat. 22d Geo. 3, c. 75.
† Marginal note.—3d William 4, Sess. 1832. Act to dissolve the Marriage of
John Walpole Willis, Esqre., with the Rt. Honble. Lady Mary Isabelle, his now wife,
and to enable him to marry again and for other purposes.
‡ Marginal note.—See Printed Papers laid before the Privy Council, 29th January,
1829.
§ Marginal note.—Min. of Conversation at Coll. Office, 24 Decr., 1828.
¶ Marginal note.—See Copy of Letter from Clerk of the Council, 14th Novr., 1829,
and enclosed Extract of Min. of committee of 3d Jan., 1829. Appx. No. 6.
†† Marginal note.—See Journal of the House of Assembly of Upper Canada by Law
directed to be transmitted to the Coll. Office.
** Marginal note.—See Address to His Majesty for a Copy of this Doct. voted by the
House of Commons on the 31st July, 1832. See Mirror of Parlt., Vol. 4, P. 34, 85.
†‡ Marginal note.—See Parliamentary Debates.
stated* "that he had conferred with the other Judges relative to proceeding with the different Cases, which had been set down for Trial, as some doubts were entertained whether the Judges had power to try cases at Nisi Prius in consequence of death having deprived them of the valuable services of the late Lord Chief Justice (Lord Tenterden); they had consulted several Authorities upon the point, and they had come to the conclusion that they had not power to try the Causes, unless the parties on both sides gave their consent."

Thus was I removed from my Judicial Office in Upper Canada for acting in strict accordance with the Local Statute constituting the Court of which I was a member, and according to the Law as solemnly laid down by His Majesty's Judges of the Court of King's Bench in England.

From the period of my amotion, I was constantly led to expect another Appointment, but was suffered to remain in suspense at considerable cost till 1830, when I received an intimation of immediate Employment. On the 9th of March, 1831. I was offered† and accepted the appointment of Vice President of the Court of Civil and Criminal Justice of British Guiana with a Salary of £1,500 per An., and on that occasion His Majesty's Colonial Secretary of State was pleased to write to me as follows:—"It affords me much pleasure to have this opportunity of expressing the conviction, which I have derived from all the inquiries into your conduct in Upper Canada, that, in the various public transactions in that Colony in which you participated, your personal Honor and Integrity were free from Reproach."

Although I was called upon to be ready to embark immediately, yet I was detained in England by subsequent Official arrangements for some Months, without being allowed any Salary until Embarkation, and then only half pay during the Voyage.‡

For some time after my arrival in British Guiana (which is Payment admitted to be one of our most expensive Colonies) my Salary of was very irregularly paid, being almost always very considerably in arrear, and, when received, it was paid at the rate of fourteen Guilders in the Pound, though the then current Rate of Exchange averaged at least sixteen.§

A more recent Order in Council|| than that under which I was appointed Vice President being adopted, I thereby became first Promotion Puisne Judge of British Guiana, and thus, as sole Judge of the Roll Court of the District of Demerara and Essequibo, and a necessary Member of the Supreme Civil and Criminal Courts of Demerara and Berbice, the chief part of the Judicial Business of the Colony devolved upon me.

I found, when I commenced, that the arrears of the Civil Business of the Court had accumulated for more than two years, and that the ordinary delay was such as to render it an Object for the fraudulent Debtor to go to Law for the sake of time.¶ I strenuously co-operated therefore with the Chief Justice Wray in improving the ancient Code of Procedure; and, although at first opposed by that Gentleman and the second Puisne Judge in my endeavours improvement of code of procedure.

* Marginal note.—See Law Reports.
† Marginal note.—See Dispatch of this date.
‡ Marginal note.—See Correspondence with Coll. Departt. on this subject, and Copy of Lord Goderich's Letter of the 11 July, 1831. Appx. No. 6.
§ Marginal note.—British Guiana. See Dispatches on this Subject in 1833.
|| Marginal note.—See Orders in Council of 23d April, 1831, and of 20th June.
¶ Marginal note.—British Guiana. See Dispatch addressed to Govr. Sir B. D'Urban, 16th Octr., 1832.
1839. 19 April.

Inquiries re "consolidated slave law."

Reforms proposed in practice of supreme court.

to accelerate the Proceedings, I was enabled by increasing Exer-
tions and holding double sittings,* to dispose of all Arrears and
frustrate future delay.

In addition to this Mass of Forensic Business, sitting as I did
as a Judge under an Order of His Majesty in Council, and called
upon to administer that admirable Order in Council, known as
the Consolidated Slave Law of the 2nd of November, 1831, which
the Colonists at that time refused to acknowledge, I deemed it my
duty to ascertain whether any of the Provisions of this Law were
inconsistent in that Colony, and found after a minute comparison
and investigation that the Order in Council of the 2nd of November,
1831, was fully borne out by previously existing Law, and that it
was in fact a mere declaratory enactment. My Notes on this sub-
ject were forwarded to the Colonial Secretary of State by His
Excellency Sir B. D'Urban, the then Governor of British Guiana,
who in a note† addressed to me on the 11th of October, 1832, says,
"If you will impose upon yourself the trouble of drawing up the
answer which you propose to the Objections of the Delegates, it
will be of great importance. I am rejoiced that your Notes will
have reached Lord Goderich by the time that these Gentlemen can
have concoted any fresh assault; they were dispatched on the
19th of July." In further compliance with the wishes of His Excel-
Iency the Governor, and in furtherance of the desire of His Ma-
esty's Government, I answered‡ the objections of the Delegates,
and stated the result of my Inquiries with reference to the claim
of the Colonists to legislate for their own internal affairs, without
any interference on the part of His Majesty in Council. This
letter is thus acknowledged§ by His Excellency the Governor, "I
am exceedingly obliged for the trouble you have taken. Nothing
can be more clear and incontrovertible than the unbroken line of
Evidence which is so skilfully and so irresistibly deduced from it."
I had also the Honor to receive|| through His Excellency the Gov-
ernor, "The Thanks of His Majesty's Colonial Secretary of State
for the exertions I had made and for the light which my inquiries
had thrown upon a subject of so much importance," and inviting
further communication.** I therefore again addressed His Excel-
Iency the Governor on the subject, from whom I had the Honor
to receive a very flattering note.

In August, 1833, in consequence of a confidential communication
with the then Acting Government Secretary of British Guiana. I
was induced to write him a Private letter** stating my views re-
specting the Practice of the Supreme Court, and how I thought
it might be improved. This Letter, though a strictly Private one,
found its way into the Hands of His Excellency the Lieutenant
Governor Sir J. C. Smyth, by whom it was communicated to Chief
Justice Wray, and, having caused some little controversy between

* Marginal note.—See Official Returns.
† Marginal note.—British Guiana. See Copy of that Note, App. No. 7.
‡ Marginal note.—British Guiana. Letter to Gov. Sir B. D'Urban of 18th Oct.,
1832, and of 16th of Oct., 1832, transmitted by the Gov. to the Secy. of State.
§ Marginal note.—17th of Oct., 1832. Copy of Letter of this Date from Sir
|| Marginal note.—British Guiana. Despatch of 30th of Decr., 1832, enclosed with
a note from Sir B. D'Urban of 7th Febry., 1833.
** Marginal note.—British Guiana. Letter of 24th Augt., 1833.
that Gentleman and myself, His Excellency was pleased to issue an Official Minute of the 28th of August, 1833, in which he was good enough to say,

"I am obliged to Mr. Willis for his suggestions. His letter to Lt. Col. Hammill has necessarily led to a more careful and minute investigation, from which His Majesty's Service cannot but derive considerable benefit."

In September, 1833, I was officially called upon to suggest such Improvement in the New Code of Procedure as I deemed expedient, and my Report* on that occasion was honored by His Excellency the Lieutenant Governor with the following Minute. "I have read with much interest this very clear and well reasoned paper, and which in my opinion places the Talents and Activity of Mind of the author in a very favorable point of View." This Report is also mentioned with approbation in a subsequent Despatch of the Right Honorable the Secretary of State for the Colonies. In subsequent Proceedings both with regard to the Practice of the Supreme Court and a Tariff of the Fees, I had the satisfaction to learn that the course I pursued was approved of both by the Governor of British Guiana and His Majesty's Colonial Secretary of State.

On the 14th of May, 1835, I was appointed to act as Chief Justice during the absence of the late Mr. Charles Wray; and on that occasion I was informed by His Excellency Sir J. C. Smyth, as the fact is, that I was entitled to one-fourth of the Salary of the Chief Justice (then £3,000 per an.) in addition to my own Salary as first Puisne Judge, which would have amounted to £2,250; but His Excellency said "that, as my Salary as Chief Justice would be only £2,000 instead of £3,000 per an. in consequence of his Instructions on Mr. Wray's retirement, to reduce the Salary to that sum. I should be conferring on obligation on him by relinquishing the £250 per an. which would enable him to provide for another Puisne Judge" and to this, on the faith of retaining the Office, I assented.

Shortly after my appointment as Chief Justice, Sir Lionel Smith, as Governor General, superseded for a time Lieutenant Governor Sir J. C. Smyth for the purpose of endeavouring to make the necessary arrangements for a Civil List; and I have the pleasure of knowing that my private exertions with the Colonial Members of the Court of Policy tended to accomplish that important Object.

In November, 1835, Mr. Wray's resignation of Office was announced; and, in answer to my application to be confirmed as Chief Justice, I received a letter† from the Right Honorable the Secretary of State for the Colonial Department, by which I was informed "that, before my application reached the Secretary of State, His Majesty had been pleased to appoint Mr. Bent to be Chief Justice of British Guiana."

In February, 1836, my Health sank under my Exertions, and I very narrowly escaped death. In consequence of the recommendations of my medical attendants, leave of Absence was granted for

† Marginal note.—British Guiana. See Dispatch of 14th of Oct., 1832.
| Marginal note.—British Guiana. Dispatch of 25th of Jan'y., 1836.
| Marginal note.—Medical Certificates above alluded to.
my return to Europe for the Recovery of my Health; but, according to established Regulations, I was put on half pay from the 1st of April, the day from which my leave of Absence commenced.

By the Certificates of Dr. Crawford of Bath and Dr. Holland of London, transmitted to the Right Honorable the Colonial Secretary in June, 1836, it will appear that my return to Guiana would most probably have proved fatal. Nevertheless, having already expended upwards of £4,000 in consequence of Government Appointments (and thus exhausted my private Property and the means of remaining in England); in order to be at my Post at the expiration of my leave, I took my passage in the Heart of Oak from Liverpool to Demerara, and forwarded my Baggage; but, within a few days previously to my intended Embarkation, I received in the kindest manner my present appointment,* and gave up the Passage I had engaged at some pecuniary loss.

Unlike all other Judges who had hitherto come out to this Colony from England, I have received only half pay;† instead of full pay according to the Charter of Justice, during my Voyage. I have never had the benefit of any Grants of Land nor of Convict Labour;‡ advantages which, independently of any retiring Pension or Allowance, were sufficient to have enabled any other Judge in this Colony (except Mr. Justice Burton and myself, who have never enjoyed them) amply to provide for themselves and their Families, when weary of their Judicial Duties. How I have been employed since I came here, independently of my regular Judicial Avocations, will be seen by my letter to Your Excellency of the 15th of Decr., 1838.

My Exertions in Guiana and the dangerous Illness with which I was afflicted have now left me, at the age of 46, so feeble and debilitated§ from frequent pain in my side (proceeding, it is feared, from derangement of the Liver) pain which is greatly augmented, whenever I sit for any length of time in a crowded Court, that I feel myself almost incapable to discharge my Judicial Duties, especially when under the excitement and anxiety of Criminal and Nisi Prius Proceedings; and thinking, as I do, that I should be guilty of dereliction of Principle, were I to conceal this Fact, I have ventured to make this Statement, with a view to its transmission for the consideration of Her Majesty's Secretary of State for the Colonial Department by your Excellency, with such observations as in your Estimation the case may deserve, a case which I can have no objection, should it be requisite, at any time to Submit to the Imperial Parliament.

I have, &c.,

JOHN WALPOLE WILLIS.

[Appendix No. 1.]

DR. J. MITCHELL TO MR. JUSTICE WILLIS.

My dear Sir,

Cumberland Place, 10th January, 1839.

In answer to your Communication of the 8th Instant, I beg to acquaint you that I have attentively considered your case since I first saw you in March last, and, having compared my own observations with the different medical certificates which you have sent to Mr. Under Secry. Stephen 28th and 29th of April, 1837.


‡ Marginal note.—New South Wales. See Dispatch of 2nd of Febry., 1838, enclosing a Representation from the Judges of this Colony on the subject of their Salaries.

§ Marginal note.—Letter of 23rd of March, 1836, before mentioned from Medical Attendants.

...
you have submitted to my perusal, am of opinion that your general health has been and now is in a delicate state; that you have been suffering from and now occasionally labour under functional derangement of the Liver. Yet, although your health is still delicate, and you have occasional Hepatic derangement, I cannot say that there is any aggravation of Symptoms, or that you are less able to perform your Judicial Duties than you were on your arrival in this Country. Under these circumstances, I am unable to state "the probable extent of time for which you may fairly hope to be able to exercise your Judicial functions, including such of them as are necessarily accompanied with the fatigue and excitement of long Public Trials of Criminal and Nisi Prius Courts, not admitting of Adjournment." I can only state it as my opinion, that the fatigue and excitement of such Trials are calculated to injure your Health, and aggravate any symptoms of Hepatic derangement under which you may be labouring.

J. W. Willis

[Appendix No. 2.]

MESSRS. BLAIR AND ALLEYNE TO GOVERNMENT SECRETARY

Sir,

At the request of His Honor the Chief Justice, we beg leave to state, for the information of His Excellency the Lieutenant Governor, the condition of health which at present incapacitated His Honor for attending His Judicial avocations. His Honor is labouring under a dangerous disease exasperated by having continued his official duties while the symptoms were at all supportable; and, though we are happy in being enabled to state that an amendment has taken place, still we do not consider His Honor out of danger; but that, if the mitigation of symptoms be even uninterruptedly progressive, a considerable time must elapse before His Honor can safely resume the labours of his office.

We have, &c.

DANIEL BLAIR, Chir.
J. H. ALLEYNE, M.D.

[Appendix No. 3.]
1839.
19 April.

Necessity for equity court in upper Canada.

Inability to erect equity court in upper Canada.

Historical Records of Australia.

Extract from a despatch from Lord Bathurst to Major General Sir Peregrine Maitland, K.C.B., dated Downing Street, 9th April, 1827.

"The rapid growth of the population, and the consequent increase in the number of commercial and other transactions in the province, must be met not only by a proportionate increase in the number of the judges, but perhaps also by an enlargement of their jurisdiction. I understand that at present there is no tribunal in the country discharging the functions of a court of equity, and that there is consequently a failure of justice in those numerous and more important cases which belong exclusively to courts of that nature. In the probable advance of the province, the want of a tribunal, competent to execute trusts and to protect the property of infants, must be felt as an extreme inconvenience. It has therefore occurred to me as a subject highly deserving attention, whether the judicial office of Chancellor, under the title of Master of the Rolls or Vice Chancellor, might not advantageously be committed for the present either to the Chief Justice, or to one of the inferior judges of the Court of King's Bench. An arrangement of this nature might, if necessary, form the basis of some more systematic arrangement in future times."

"Your Excellency is aware that a similar measure has been adopted in Nova Scotia, and that, under a recent Act of parliament, a system very similar has been introduced into the Court of Exchequer in England.

"You will consider and report to me whether this measure, or any modification of it, could be adopted in Upper Canada."

[Appendix No. 4.]

Right Hon. W. Huskisson to Major-General Sir P. Maitland.

Sir,

Downing Street, 25th November, 1829.

The question of the erection of a court in the province of Upper Canada for the administration of that part of the law of England, which in this country is administered in the Court of Chancery, having been brought under the consideration of the law officers of the Crown, they have reported it as their opinion that there is considerable doubt whether His Majesty lawfully could, by letters patent under the great seal without the intervention of parliament or of the local legislature, create any new judge in equity in Upper Canada.

They recommend that, if a judge in equity be appointed, he should bear the title not of Master of the Rolls, but of Vice Chancellor to the Governor, observing that the title of Master of the Rolls might lead to misconceptions in consequence of unfounded analogies which might be drawn between the office to be created in Upper Canada and the ancient office of Master of the Rolls in England. The law officers of the Crown have further suggested whether, instead of erecting a distinct and independent tribunal, it might not be expedient to invest the existing common law court with so much of an equitable jurisdiction as upon due consideration may be thought useful or necessary to the province; and they observe that this jurisdiction might be exercised as in the Court of Exchequer in England, in the same tribunal and by the same judges who administer the common law.

In consequence of this report, it has been deemed expedient not to proceed with the proposed letters patent for erecting the office of Master of the Rolls in Upper Canada. As, however, the establishment of a Court, competent to execute trusts and to protect the property of minors, appears indispensable to the due administration of justice in the province, you will avail yourself of the earliest opportunity of recommending the subject to the attention of the legislative council and house of assembly; and you will inform them that His Majesty will be ready to concur in the enactment of any law, which may be properly framed for the establishment of an equitable jurisdiction. For the information and assistance of the legislature, it will be proper to call upon the Attorney and Solicitor general and the Judges of Upper Canada for a report of their opinion as to the most convenient method of carrying this object into execution. But whether a new tribunal be erected or new powers be imparted to the existing tribunal, the act ought to be so framed as to require the intervention of the royal authority to accomplish the purposes of the legislation.

For the principle, that all courts are courts of the King, and that justice is to be dispensed only by Officers commissioned by the King for that purpose, cannot be too fully recognized or too strictly enforced. As it appears that Mr. Willis, at present one of the judges of the province, quitted this country upon an understanding that, in the event of the erection of a new Court of equity, he was to preside in it, that intention will, of course, be carried into execution, if the provincial legislature should ultimately decide upon constituting a separate court of equity. In that event, you will consider and report to me what additional remuneration ought to be allowed for the discharge of these additional duties, and out of what fund, and in what manner that remuneration would be most properly made.

I have, &c.,

W. Huskisson.
Mr. C. Greville to Mr. J. W. Willis.

Council Office, Whitehall, 14th Novr., 1829.

In reply to your Letter of the 7th Instant, addressed to the Lord President of the Council, requesting to be favored with the reasons for the decision of the Lords of the Council on your case, I am directed by His Lordship to transmit to you a copy of the Minute agreed upon by Their Lordships on the 30th January last upon hearing counsel in support of the prayer of your Petition, and to acquaint you that it has not been the practice of their Lordships, in similar cases, to assign reasons for their decisions.

I am, &c,

C. Greville.

Extract of Committee Minute of the 30th January, 1829.

READ Memorial of John Walpole Willis, Esqr., late Judge of the Court of King's Bench in the Province of Upper Canada, Setting forth That the Governor of the said Province has removed him from his said office and praying to be reinstated or for other Relief. Their Lordships heard counsel in support of the Petition of the said J. W. Willis, Esqr., wherein he complains of being illegally removed from his said Office by the said Lieutenant Governor, Sir Peregrine Maitland. Their Lordships agreed to report as Their Opinion to His Majesty that the dismissal of the said John Walpole Willis from his said Office was not illegal, unwarranted or void.

Mr. C. Douglas to Right Revd. Bishop of Sodor and Man.


I am desired by Lord Goderich to reply to your communication respecting the salary of Mr. Willis. As your Lordship appears to take an interest in this matter, I regret to be obliged to convey to you the established rules of this office which preclude the possibility of Mr. Willis receiving any part of His Salary before the period of His embarkation. Lord Goderich would feel gratified could He in this instance depart from the general rule; but your Lordship will easily see the necessity of adhering to those regulations which have been always acted upon by His predecessors in office.

I have, &c,

Charles Douglas.

Sir B. D'Urban to His Honor J. W. Willis.

Private.

Thursday, 11th Octr., 1832.

I am exceedingly obliged to you for the documents and passages you have been so good as to send for my perusal; and, if you will impose upon yourself the trouble of drawing up the answer which you propose to the objections of the delegates, it will be of great importance. I am rejoiced that your Notes will have reached Lord Goderich by the time that these Gentlemen can have concocted any fresh assault. They were dispatched on the 19th of July. The Intended Petition, announced in the Gazette, to which you advert, before my arrival, was never laid before the King. After I came, the Chairman of the Meeting waited upon me with it, and left it for my perusal. I declined to send it, and I have cut out of the letter books the answer (X) with which I returned it. I am no Lawyer, and I am ashamed therefore to enclose my own view of the point (which however I do trusting to your indulgence and because it holds but a few lines) for your perusal.

The other Papers, which I send, will I think be more or less interesting to you. These are:

B. a confidential letter of Lord Bathurst with 4 documents referred to in it.
C. The Charter of Berbice and Extracts from The Despatches of H.M. Gt. to Govr., Bentinck, directing the Levy of Taxes to which you allude.
D. an order of the Council of Ten to the Govr., and Court of Policy, disapproving of some of their proceedings, and per se altering some and announcing the Enactment of others.
E. a correspondence between Mr. Falch and Mr. Wt. Horton.
F. (Merely for your perusal if you should desire it, for you have seen it before) Lord Goderich's Despatch upon the Maltas, in which he seems to have made up his mind with sufficient decision; and I should have rested in that belief, but for the peculiarity of His last Private letter, now in your hands, and which occasioned my calling upon you to take so much trouble.

Faithfully yours,

B. D'Urban.
1839.
19 April.

Thanks of Sir B. D'Urban.

Salary for J. W. Willis as acting chief justice.

1839.
19 April.

My dear Sir,

I am exceedingly obliged for all the trouble you have taken. Nothing can be more clear and incontrovertible than the unbroken line of Evidence which you have adduced, to the important issue which is so skilfully and so irresistibly deduced from it.

I will have it carefully and confidentially copied, so that you may afterwards have a Copy to retain.

I should hope that it will not be necessary to send home copies of all the documents which you cite, for it will require a long time to collect them; and yet the Colonial Office can probably have recourse to very few of them, if I do not send them. Of most of them you cite the substance. As to this point, be so good as to enlighten me; I am going up the East Coast upon some military business until Sunday, when I shall return and when perhaps you will let me find a note upon this Question on my table.

Very faithfully yours,

R. D'URBAN.

[Appendix No. 10.]

Colonial Secretary Thomson to Mr. Justice Willis.

Colonial Secretary's Office, Sydney, 23rd February, 1838; dispatched 7 March.

Having laid before the Acting Governor your letter of the 27th of December last, in which you request to be allowed the whole instead of Half of your Salary as Puisne Judge of the Supreme Court during your Voyage out, and refer to the sixth Clause of the Charter of His late Majesty King George the 4th, for establishing Courts of Justice in New South Wales as authorizing the payment, I am directed to inform you that the Charter seems to have been intended to meet the case of a Chief Justice only; and that, although the Puisne Judges, appointed in augmentation of the Establishment, might be considered entitled to benefit by it, yet His Excellency does not think that it can be applied to the case of a Judge appointed to a vacancy. The question will, however, if you desire it, be referred for the decision of the Secretary of State.

I have, &c.,

E. DEAS THOMPSON.

Sir George Gipps to Lord Glenelg.

(Despatch No. 73, per ship Caroline; acknowledged by lord John Russell, 16th October, 1839.)

My Lord,

Government House, 20th April, 1839.

I have the honor herewith to forward to your Lordship a copy of a letter and an accompanying paper called a Decree, which I have received from the person who styles himself the
Sir George Gipps to Lord Glenelg.

(My Lord, Government House, 22nd April, 1839.)

I beg leave to report to your Lordship that my attention has been lately drawn to the very great expense of supplying the different Establishments of this Government with Stationary; and it has occurred to me that it would, with your Lordship's sanction, be desirable to try the experiment of getting Stationary from England.

I transmit therefore herewith two Demands, one of which I would propose to have supplied from Her Majesty's Stationary office through the Ordnance, in the usual way that supplies are forwarded to this Government by that Board, the other I would propose should be supplied through the Colonial Agent, Mr. Barnard; by which means, as the Demands are for precisely the same articles, we shall be able to judge of the advantage, which either of these modes presents over the one now in practice of obtaining supplies of these articles by competition in Sydney.

I have, &c.,

[Enclosures.]

Geo. Gipps.

[These requisitions have been omitted.]
nomination he had made of Mr. P. L. Campbell to act for him during his absence.

Before I signified to Mr. Riddell my approval of his nominee, I distinctly stated to him that Mr. Campbell would be his substitute in his capacity of Colonial Treasurer alone, and would not be entitled to a seat in the Executive Council, as it appeared to me that no person in the Colony but the Governor could have a right to nominate an Executive Councillor.

Mr. Riddell expressed his entire concurrence with me in this opinion, as he afterwards did in a more formal manner, when the question came before the Council. Mr. Campbell was also made acquainted with my view of the subject, before he undertook to act for Mr. Riddell; and he repeatedly declared to me that he neither wished nor expected to have a seat in Council. Your Lordship will therefore, I am sure, be surprised to hear that, within a few weeks after Mr. Riddell's departure, Mr. Campbell, without giving me any notice of his intention or alluding in any way to the understanding on which alone he was admitted to act for the Treasurer, has made a written demand to be sworn a Member of the Council. I have of course refused to comply with his application, and my only reason for writing on this subject is to guard against the possible effect that any representation from Mr. Campbell may have upon your Lordship.

I enclose to your Lordship Copies of Mr. Campbell's application and of the Answer, which by my direction was returned to it, also a copy of a Minute of the Executive Council, made when Mr. Campbell's appointment was yet incomplete, by which your Lordship will perceive that the Executive Council, Mr. Riddell being present, were unanimously of opinion that Mr. Campbell had no right to a seat in it.

I beg distinctly to assure your Lordship that I should not have approved of Mr. Campbell as Mr. Riddell's nominee, if I had thought that such approval would have the effect of placing him in the Council; and I trust it may not be considered harsh or unreasonable if I add that, after Mr. Campbell's recent conduct, I would not willingly admit him either to my Councils or my confidence.

Should your Lordship therefore be of opinion that the Council were wrong in their decision, and that the person acting for the Colonial Treasurer ought to be admitted to a seat in Council, I trust your Lordship will allow me respectfully to request that the return of Mr. Riddell to the Colony may be accelerated, as it now would be difficult to make any new arrangement for the performance of his duties during his absence.

I have, &c.,

Geo. Gipps.
MR. P. LAURENTZ CAMPBELL TO SIR GEORGE GIPPS.

Sir,

Colonial Treasury, 20th April, 1839.

With reference to Your Excellency's proclamation of the 24th February, 1838, announcing the Queen's gracious nomination as one of the Members of the Executive Council of the Colonial Treasurer of this Territory, "or of the Colonial Treasurer of the said Territory for the time being," I have the honor respectfully to request that Your Excellency will appoint a time for my attendance to take preliminary Oaths and to enter on the duty, which Her Majesty has been pleased to attach to the Office I represent.

I assure Your Excellency that personally I should be willingly spared the responsibility of this branch of my Office; But, being after the best consideration and advice induced to believe that the policy of the Queen's Government has for important reasons linked together the Colonial Treasurer's deliberative and ministerial functions, I feel that I should share in a much more serious responsibility by voluntarily relinquishing so important a part of the duties which, by Your Excellency's appointment taken in connexion with the Proclamation to which I have referred, I am called upon to fulfil.

I am indeed aware that at present Your Excellency and the Acting Members of Council take a different view of my position; this I was at first inclined to attribute to the knowledge of some documents to which I have not access, emanating from the same high authority as Her Majesty's appointment above alluded to. Being however informed by Mr. Riddell, with Your Excellency's permission, that the case of the Archdeacon is considered a precedent for mine, and presuming therefore that this supposed parallel is the sole ground of my exclusion, it becomes my duty to state that I am quite unable to acquiesce in this view of my case, and to record my respectful protest against it, on the simple ground that, pending the Absence of the Archdeacon, there was at no time any person in the Colony to whom the description of "Archdeacon for the time being" was applicable, whereas I am in every respect, "The Colonial Treasurer for the time being." If indeed these words alone had been used, it might have been objected that Mr. Riddell's leave of absence does not deprive him of that character, and that, as he is incapable of sitting, no one can sit in his stead. The very peculiar and significant repetition, however, The Colonial Treasurer, or the Colonial Treasurer for the time being, seems expressly intended to meet this objection, and to remove all shadow of doubt that the person lawfully exercising for the time being the Chief ministerial duties of the Colonial Revenue should be present at the deliberations of Council to represent that Revenue and tender to the local Government such information and advice as his daily Official Experience may suggest.

Should Your Excellency still take a different view of the case for any reasons referable to Royal Instructions or other documents to which I have not access, I would respectfully request that I may be favored with Copies of such portions of them as are interpreted to control Her Majesty's appointment, announced by the Proclamation before referred to.

I have only in conclusion to account for the delay which has taken place in this communication by stating that I was desirous of annexing a Copy of the Bond, which Your Excellency's Government...
1839.
27 April.

Surprise of Sir G. Gipps at letter.

Decisions by executive council.

Minute of executive council re vacancy caused by absence of C. D. Riddell on leave.

HISTORICAL RECORDS OF AUSTRALIA.

received from myself and Sureties, in which my Office and position as Acting Colonial Treasurer are clearly defined. For this Copy I have applied, but, not having yet received it, I beg leave to request that when procured it may be laid before the Executive Council together with this letter.

I have, &c.,

P. LAURENTZ CAMPBELL.

[Enclosure No. 2.]

COLONIAL SECRETARY THOMSON TO MR. P. L. CAMPBELL.

Colonial Secretary’s Office.

Sir, Sydney, 32rd April, 1839.

I am directed to acknowledge the receipt of your letter of the 20th Instant addressed to the Governor, and to state to you that it is not without considerable surprise that His Excellency has received from you an application to be sworn in as a member of the Executive Council, it having been most distinctly explained to you by Himself, before He approved of your nomination by Mr. Riddell, that your being allowed to act for the Colonial Treasurer would not intitle you to a Seat in Council, and it being also fresh in His Excellency’s recollection that you repeatedly stated to Him yourself that you had no desire or expectation whatever to be placed in the Council.

I am further directed to inform you that you must, His Excellency apprehends, have misunderstood what Mr. Riddell was authorised by Him to say to you respecting the precedent afforded in the case of the Archdeacon, as the question before the Council, when that precedent was alluded to, was not whether the person acting for the Colonial Treasurer should sit in the Council, but whether it was necessary to complete the Council to its full number by the nomination of any other person; the question whether the person acting for the Colonial Treasurer should sit in the Council in consequence of his so acting having been previously submitted to the Council and decided in the negative.

I have, &c.,

E. DEAS THOMSON.

[Enclosure No. 3.]

EXTRACT from Minute No. 4 of the year 1839, of the Proceedings of the Executive Council, dated 26th February, 1839, relative to the Leave of absence from the Colony, granted to the Colonial Treasurer Mr. Riddell.

PRESENT:—His Excellency the Governor; His Excellency Major General Sir Maurice Charles O’Connell, K.C.H.; The Right Reverend the Lord Bishop of Australia; The Honorable the Colonial Secretary; The Honorable the Colonial Treasurer.

His Excellency the Governor informed the Council that the Colonial Treasurer Mr. Riddell, having obtained leave of absence from the Colony for eighteen months, has nominated Mr. Pieter Laurentz Campbell to act for him as Colonial Treasurer during his absence of which arrangement His Excellency has been pleased to approve; and he now requests the opinion of the Council, whether it will be necessary to fill up the vacancy in the Executive Council caused by Mr. Riddell’s absence?

By the second clause of Her Majesty’s Instructions, “the Colonial Treasurer, or the Colonial Treasurer for the time being, is nominated an Executive Councillor”; the First point for the
consideration of the Council is, does Mr. Campbell's appointment to be Acting Colonial Treasurer constitute him de facto an Executive Councillor during Mr. Riddell's absence, or the time Mr. Campbell may hold that Office under the terms of those Instructions.

If the Council shall be of opinion that Mr. Campbell's appointment as Acting Colonial Treasurer does not de facto constitute him an Executive Councillor, the next point for their consideration will be, should Mr. Riddell's absence on Leave for a Limited period be deemed such an absence from the Colony as to render it necessary to appoint a person to fill the vacancy in the Council thereby caused, or should it be held to be such a temporary absence only, as does not render it such an absence only, as does not render it necessary to make such an Appointment?

In Her Majesty's Commission,* one clause in reference to the Office of an Executive Councillor declares that, if it shall at any time happen that, by the death, resignation, or departure from the Colony of any Member of the Council, there shall be a vacancy in the same, the Governor is in such case authorised and required to appoint so many persons to be Members as shall make up the number present to four, and no more.

Another clause declares that, if in consequence of the suspension of any of the Members of the Executive Council, or their inability to attend from any temporary cause, there should not be a sufficient number of Councillors to form a Quorum of two, exclusive of the Governor or other Member presiding in his absence, the Governor shall be authorised, provided the nature of the Case shall in his judgment render it necessary, to appoint from time to time such a number of persons to act during the temporary incapacity of such Executive Councillors, as that the number present may be two and no more, exclusive of the Governor or Member presiding in his absence.

The Council are of opinion that the approval by His Excellency the Governor of Mr. P. L. Campbell's nomination to act as Colonial Treasurer during Mr. Riddell's absence does not constitute such an appointment, as would entitle him, in terms of the Royal Commission and Instructions, to a seat in the Executive Council as Colonial Treasurer.

The Council, adverting to the terms of the Royal Commission with respect to filling vacancies in the Executive Council, consider that there are two cases contemplated; one of a permanent character, such as death, resignation, or departure from the Colony, in which it is imperative on the Governor to fill up the vacancy; and one of a temporary nature, such as suspension from Office or temporary absence, in which the vacancy is not to be filled up until the number of Executive Councillors falls below the quorum of two, and then only in case the Governor shall deem it necessary.

On the present occasion, viewing Mr. Riddell's absence for a definite period of eighteen months as of a temporary nature only, the Council are of opinion that the Governor is neither authorised nor required to fill up the vacancy which will thereby be caused.

The Council may also adduce the precedent of the case of the Lord Bishop of Australia, whose seat in the Council remained vacant from the Month of March in the year 1834, when His Lordship went to England as Archdeacon, to the month of September 1836, when he resumed his seat in the Council as Bishop.

A True Extract:—WM. Macpherson, Clerk of Councils.
Sydney, 25th April, 1839.

* Note 25.
SIR GEORGE GIPPS TO LORD GLENELG.
(Despatch No. 78, per ship Caroline.)

My Lord,

Government House, 3rd May, 1839.

With reference to your Lordship's Despatches of the 15th May and 21st June, 1838, Nos. 107 and 133, on the subject of supplying a Steamer for the use of the Government of New South Wales, I have the honor to inform your Lordship that I referred these Despatches, as well as the whole question of the propriety of having a Steamer, to a Board of Officers consisting of the Deputy Commissary General, the Auditor General, and the Master Attendant; and that they have made a Report, of which I enclose a copy.

Concurring as I do with the view which these officers now take of the subject, I conclude that the question of having a Government Steamer may be considered as for the present set at rest.

Steam communication will, I have little doubt, be established very shortly by private enterprise along the whole extent of this Coast, and it is not difficult even now for the Government to hire a Steamer whenever one is required.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

REPORT.

Sydney, 1st April, 1839.

We, the under signed, having by desire of His Excellency the Governor assembled as a Board to report on a proposition for procuring a Steam Boat to supersede the use of the two Government vessels now employed, beg to present the following as the result.

The two Government Vessels referred to, the Brig Governor Phillip and the Cutter Fyans, are employed solely in the conveyance of Convicts, the Troops sent to guard them, and Articles of provisions, between Sydney and the Penal Settlements of Norfolk Island and Moreton Bay; and, as the latter is immediately to be discontinued, the Cutter will then be unnecessary.

The expenses of these Settlements and consequently of the Vessels are defrayed from the Military Chest; the estimated Expenditure for the Current year is £1,541 19s. 6d.

It has occasionally been found necessary to hire other vessels in addition, but almost always in cases where the conveyance of the surplus produce of the Settlements was the object; and, as the expense was thereby repaid, it is not requisite to be taken into account.

The Governor Phillip when full conveys about 70 Convicts, a Guard of 30 Men (for which purposes a Prison and Barracks are fitted up between decks), 5 Cabin Passengers and about 80 Tons of Cargo.

While they continue to raise Grain on the Island for their own consumption, six voyages per annum are sufficient and which the Governor Phillip can perform, accidents and necessary repairs excepted.
A Steam Vessel of sufficient size for these seas would necessarily be of much greater capacity both for passengers and cargo than the Governor Phillip; and, as the voyage to and fro (reckoned at 1,800 miles) would easily be performed by Steam in 12 days, the number of Voyages requisite to be made would leave the Steam Vessel unemployed more than three fourths of the year.

Were the Government possessed of a Steam Vessel, the Board are not aware of any eligible employment, in which she could be engaged during the interval. It must be admitted that occasions do occur and may from time to time be expected, when it would be found of great importance to have a Vessel of the kind at hand; but there is no ground to sanction the incurring of a permanent expense for the purpose.

There are now four Steam Vessels of size sufficient for a sea voyage belonging to Sydney, another is building, and it may reasonably be expected that the number will shortly be increased so as to afford the opportunity of hiring one when requisite.

The Board are therefore of opinion that the Government of this Colony has not employment sufficient for a Steam Vessel, and that there is no reason whatever for incurring the great expense of procuring one, and the permanent Outlay which it would necessarily occasion.

W. MILLER, D.C.G.

WM. LITHGOW, Aud. Gl.

JNO. NICHOLSON, R.N., Harbour Master.

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MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 42, per ship Amelia Thompson.)

Sir,

Downing Street, 4 May, 1839.

With reference to my despatch, No. 28, of the 26th of March last, respecting the arrangement entered into with Mr. Pym and other Gentlemen associated with him for the purchase of land at Port Phillip, I now transmit to you the copy of a letter, and of its enclosure, from the Agent General for Emigration on the same subject.

I have, &c.,

NORMANBY.

[Enclosure.]

MR. T. F. ELLIOT TO UNDER SECRETARY STEPHEN.

Sir,

2 Middle Scotland Yard, 26 April, 1839.

In reply to your letter of the 28th Ulto. containing the Secretary of State's Instructions respecting an arrangement entered into with Mr. Pym and other gentlemen associated with him for the purchase of Land at Port Phillip, I have the honour to transmit for the information of the Marquess of Normanby the enclosed copy of a letter, I have had occasion to address to Mr. Pym in pursuance of the views embodied in the correspondence communicated to me for my guidance on this subject.

I have now the honour to request that Mr. Barnard may be authorized to receive such deposits, as may from time to time be made by Mr. Pym, or on account of him or the other gentlemen associated with him, not exceeding the sum of Ten Thousand Pounds in
1839.
4 May.

Proposed arrangements for deposit of money in London for purchase of land at Port Phillip.

...all, to be expended in Emigration to Port Philip, and that Mr. Barnard may be directed to give me immediate notice of each such deposit, in order that I may communicate it to the Colonial Authorities, and make such other arrangements as are requisite under the terms of the engagement formed with Mr. Pym; and, as the Association for which Mr. Pym is acting has not any corporate character, I would suggest that, in order to prevent disputes hereafter as to Agency or representation, each payment should be accompanied by a declaration of the name of the party in the Colony to whom it is wished that credit should be allowed for a corresponding amount in the purchase of Land, and that this name should appear on the face of Mr. Barnard's receipt for the money.

I beg leave also to observe that it appears necessary that Instructions should be sent to the Governor acquainting him that, under an agreement made between the Secretary of State and Mr. Pym, on behalf of himself and others, credit is to be allowed in the purchase of Lands at the Settlement of Port Phillip to such persons acting as their agents, and for such amounts, as may from time to time be notified in letters from me, giving notice of the receipt by Mr. Barnard of Deposits, made by them, for the purpose of being expended in Emigration.

T. FREDK. ELLIOT.

[Sub-enclosure.]

MR. T. F. ELLIOT TO MR. J. PYM.

Sir,

2 Middle Scotland Yard, 23 April, 1839.

...Agreement with reference to your letter of the 15th Instant. I have the honour to make to you the following communication:

I have applied to the Secretary of State to authorize Mr. Barnard, the Colonial Agent, to receive such sums as you, or the gentlemen associated with you, may from time to time wish to deposit for the purpose of being expended in the Emigration of Labourers to Port Phillip, the whole amount of Deposits not to exceed the sum of £10,000 in all.

Immediately on receiving advice from Mr. Barnard of the receipt of any such Deposit, I shall be prepared, under the general Sanction already given by the Secretary of State, to transmit a document to the Colony granting credit to the Society's Agent there for a corresponding amount in the purchase of Land within the Settlement of Port Phillip.

It will be necessary that, at the time of making the first payment, the Agent shall be named to whom credit is to be given accordingly; and it must be distinctly understood that the Government is not to be answerable for the consequences of any differences, which may possibly arise between the Association and its Agents, but that all, which it undertakes, is to give credit for the value of each payment to each individual, as may be pointed out at the time the payment itself is made.

I can engage to convey Emigrants to Port Philip at the same rate of expenditure, as that charged by the South Australian Commissioners, namely at a sum not exceeding Twenty Pounds per head for each adult; And I will offer no objection to allowing the Association from the date of each payment, a period of Twelve Months within which to select and offer for conveyance such people as they would wish to be taken out by means of those Funds, upon the understanding that, if the whole number which that sum would...
carry have not been produced within the above mentioned period, the balance of money remaining afterwards is to be expended by this Department for Emigration purposes generally, and in the same manner as any other part of the ordinary Land Revenue of the Colony.

But with regard to fixing an exact time within which this office shall be bound under all circumstances to find a passage for the Emigrants after the date of their being first tendered by the Association, I apprehend that there are seasons of the year when any such engagements might prove very inconvenient, and that it is perhaps hardly suited to the nature of a business dependent so much on the supply of shipping and on other variable circumstances. I can only say that I will spare no pains not to delay the people unnecessarily, but that I observe that a positive limit has not been found requisite or advisable in the very analogous operations of the South Australian Commissioners, and I should be unwilling to adopt one in the present case.

The Emigrants to be offered by the Association must be in all respects conformable with the regulations for the time being, in regard to other Emigrants sent out by Government to New South Wales; and they must be entirely subject to the discretion of this Office as to their acceptance or rejection, to be signified either on written Testimonials alone, or after personal Inspection besides, as may on experience be found most convenient and proper. I enclose for your information a copy of the Regulations at present in force.

With regard to children, you will observe that it will be necessary to settle the rate at which they shall be charged for in the conveyance of families brought forward by the Association. On this point, I shall shortly address you again.

I have, &c.,

T. FREDK. ELLIOT.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 79, per ship Duchess of Kent; acknowledged by lord John Russell, 26th April, 1840.)

My Lord,

Government House, 7th May, 1839.

I have the honor to forward herewith a Memorial respecting some Land in Sydney, which has been addressed to your Lordship by Mr. Frederick Wright Unwin, a Solicitor practising in this Colony.

Mr. Unwin is in undisputed-possession of the land in question, having purchased it of the Government in 1837; but he seeks now to get back the purchase money, on the ground that the Government exacted payment from him for the land at a time when it was properly his own; and he brings forward a document (No. 2 appended to his Memorial), which he contends would have satisfied Sir Richard Bourke of the justice of his claim, if he had been able to produce it earlier. The case is one of considerable intricacy, but I will endeavour to state it as clearly and impartially as I can.
Mr. Unwin derives his claim from a person of the name of Greenaway, who arrived in New South Wales in Feb., 1814, was appointed Acting Civil Architect in Novr. of the same year, and in that capacity was allowed by General Macquarie to occupy the land in question, and a house on it which had theretofore been the residence of the Colonial Surgeon; and the real point at issue is whether Greenaway ever acquired from General Macquarie a property in the land, or whether he held it merely during pleasure as a Public officer. In proof of its being a gift from General Macquarie, Mr. Unwin could only produce to Sir Richard Bourke, the document appended to his Memorial, marked No. 1, which consists of a rough drawing of some buildings, intended to be erected by Greenaway on the land in 1820, on which drawing the words, “Approved, L. Macquarie,” are to be seen in the General’s own writing. But Mr. Unwin now produces the document, No. 2, which is the copy of a letter written in 1815 by Captain Gill, then of the 46th Regt., and acting as Engineer to the Colony, which (if the letter be genuine) certainly is a proof that General Macquarie had then consented to give the land to Greenaway; but, from the subsequent part of the same letter, it seems that the land was to be given to him, not so much in reward for services rendered, he having been then less than a year in the Public employment, as to enable him to carry into effect certain improvements which the Governor was desirous to see effected; the other document, No. 1, shows what these improvements were, and the circumstance of the Elevation of the buildings being submitted for the Governor’s approval seems to show that the erection of them was a condition of the promise; for, had the land been absolutely Greenaway’s, the Governor’s approval of the proposed buildings would in no way have been necessary.

The buildings never were erected, and consequently the promise made to Greenaway of the land never was confirmed by the official deed, which was necessary to give it validity. Captain Gill’s letter moreover is not in existence, but only a copy of it; and, allowing this copy to be correct, it is but a loose and scarcely an official document, not emanating from the proper functionary, who would have been either the Surveyor General or the Colonial Secretary, and can prove nothing more than that an intention once existed on the part of Governor Macquarie to give Greenaway the land, which intention might, for anything we know to the contrary, have been abandoned as loosely as it was formed, or altogether merged in some subsequent arrangement.

Mr. Unwin argues that many titles have been confirmed in Sydney, which rested upon no better foundation; but this I
apprehend will avail but little in opposition to what it is now my duty to lay before your Lordship, respecting a Proclamation* by General Darling, of which Mr. Unwin has omitted to make any mention in the statement of his case.

Great confusion having been found to arise from the want of validity of the titles to land in Sydney, a Proclamation was issued by General Darling on the 8th June, 1829, confirming all doubtful titles, but reserving to the Crown certain parcels of land, which were enumerated and described in a Government Notice of the same date; and, among the parcels of land so reserved and described, was the very land in question being No. 34 on the list. If Mr. Greenaway, who was then living, had any confidence in his own claim, this was certainly the time when he ought to have come forward and made it good; he did not however do so; but, becoming some time afterwards embarrassed in his circumstances, he sold to Mr. Unwin a portion of the land for £150, which Mr. Unwin (who is a Lawyer) must have bought with a full knowledge that the Title was a doubtful one, General Darling's Proclamation being a matter of the greatest notoriety in the Colony and of the highest interest to every inhabitant of Sydney. The remainder of the land was shortly afterwards taken in execution by the Sheriff, on the supposition that it was Greenaway's, and sold for £30 to a person, who again sold it to Unwin; but the Law Officers of the Crown then interfering, an Action of Intrusion was brought against Greenaway, and, judgment being given against him, the Crown re-entered upon both portions of the land. Mr. Unwin thereupon moved for and obtained a Rule (dated the 16th Sept., 1834), calling upon the Attorney General to shew cause why the judgment obtained in the action of Intrusion should not be set aside; but, instead of ever following up this Rule, Mr. Unwin availed himself of some expressions, which dropped (it is presumed hastily) from the Judge, to carry his case before certain Commissioners, who had then been recently appointed under an act of Council (4 Geo. IV, No. 9) to hear and determine upon claims to Grants of land between individuals, in cases where the land was acknowledged to be out of the Crown, but who had no power to investigate cases, to which the Crown was a party. The present Attorney General attended to protest against the jurisdiction of the Commissioners, who nevertheless not only heard the case, but reported in favor of Mr. Unwin. Sir Richard Bourke however, by virtue of the authority reserved to him in the 7th Clause† of the act of Council, refused to act on their report, and declared their whole proceedings to be a nullity.

* Note 4.  † Note 25.
Mr. Unwin subsequently (in 1837) obtained a valid Title to these same lands by purchase from the Crown for the sum of £2,820, the price that he had formerly paid, when he purchased on a bad title, having been only £180, vizt., £150 for the portion purchased of Greenaway, and £30 for the portion which was sold by the Sheriff.

I enclose for your Lordship's satisfaction a copy of the Report of the Commissioners, as well as of the Minute by which it was set aside by Sir Richard Bourke; also a copy of a Report from the Crown Solicitor in explanation of the proceedings before the Commissioners.

Your Lordship will observe that Mr. Unwin says he is satisfied Sir Richard Bourke would have admitted his claim, if Captain Gill's letter had been before him. I feel bound however to say that I can trace nothing whatever to lead to such a conclusion, whilst to myself it has appeared that this copy of an unrecorded letter from Captain Gill is too weak a document to cause me to reverse the effect of the judgment of the Supreme Court in the Action of Intrusion, to set aside the decision of Sir Richard Bourke, adopted under the advice of his Law Officers, and to unsettle the arrangement of 1837, which was made with the consent of all parties.

I think it however only right to add that, if Greenaway had been able to produce Captain Gill's letter in 1829, General Darling might probably, according to the practice of those days, have confirmed him in the land; and that possibly, even in 1833, Sir Richard Bourke might not have caused the action of Intrusion to have been brought against Greenaway, if satisfied of the existence of this letter; but your Lordship is well aware that the practice in this respect is very properly becoming every year less lax, and that titles are now investigated much more rigorously than they formerly were.

I have, &c.,
Geo. Gipps.

[Enclosure No. 1.]
That your Memorialist, who is a proprietor of some adjacent property, applied to Mr. Greenway and finally agreed with him to purchase a portion of this land for the sum of £150.

That, previously to completing his purchase, your Memorialist inquired into the Nature and particulars of the title, and ascertained that Mr. Greenway had been put into possession of the land by the Government in the year 1815, from whence he had a continued actual occupation; that, in 1823, the Government had made a claim to the land and an Information of Intrusion had been filed by the Attorney General for its recovery, which, upon the explanation afforded by Mr. Greenway and the inspection of his documents, had been abandoned; and that since that proceeding he had continued in undisturbed ownership to the time of your Memorialist’s purchase in December, 1832, a period of nine years.

That at the same time Mr. Greenway produced to Your Memorialist a document bearing the Signature of Governor Macquarie and Containing expressions amounting to a gift of the land and of which the accompanying paper marked No. 1 is a true copy.

That these expressions appeared to Your Memorialist to be unequivocal, and the abandonment of the proceedings taken by the Government upon the production of this document and their subsequent acquiescence in Mr. Greenway’s possession for the long space of Nine years after the knowledge of his claim and the grounds, on which it was supported, had been fully brought under their notice, could not but satisfy the most cautious purchaser; and your Memorialist without further hesitation paid the purchase money and accepted a conveyance.

That, in the month of February, 1834, a creditor of Mr. Greenway’s obtained a judgment against him and issued execution, under which the Sheriff levied upon and sold by Public Auction the remainder of this land to Mr. Chambers of Sydney, from whom your Memorialist subsequently purchased it, and thus became the proprietor of the whole of the original allotment.

That about the same time the Government again claimed this land, and a new Information was filed by the Attorney General against Mr. Greenway; but no notice whatever was given to your Memorialist who remained in entire ignorance of the whole proceeding.

That, in April, 1834, the Sheriff, by virtue of the Judgement obtained by the Crown under this Information, entered on the land, and gave possession to the Commissioners appointed by an Act of the Legislative Council for the protection of Crown lands.

That your Memorialist, astonished to find himself dispossessed of his property without notice or trial, immediately enquired into all the Circumstances, and ascertained that, after the sale by the Sheriff, and when Mr. Greenway had ceased to have any legal interest in the land, he had withdrawn the plea he had filed to this Information, confessed judgement and thrown himself on the mercy of the Crown in the hope of obtaining a deed Grant and thus acquiring a new Title.

That, feeling the gross injustice of this measure, Your Memorialist applied to the Supreme Court, who instantly granted a rule calling on the Crown Law officers to shew cause why this judgment should not be set aside; and, on the discussion that took place, the Judges stated that the case was especially fitted for the
1839. 7 May.

Memorial of F. W. Unwin claiming refund of purchase money on land.

Court of Commissioners for investigating claims to Grants of land then just established, and recommended that the case should be carried into that Court.

That, in obedience to this direction, Your Memorialist filed his Petition and brought his case before the Commissioners.

That the case came on to be heard by the Commissioners on the 20th June, 1835, when the Attorney General attended on the part of the Crown, opposed Memorialist’s claim, and cross examined his witnesses.

That, after Memorialist’s two first witnesses had been examined, the Attorney General objected to the Jurisdiction of the Court, which objection was over-ruled by the Commissioners and the evidence on the part of the Memorialist completed.

That, on the 23d day of June, the case on the part of the Crown was heard, when the Attorney General again attended and produced and examined his witnesses.

That on a subsequent day the Commissioners met and gave judgment in favor of your Memorialist.

That, although your Memorialist admits that by the act of Council the decision of the Commissioners is not made obligatory upon the Government, yet he confidently submits to your Lordship’s sense of Justice that, as his case was brought before them by the direction of the Supreme Court of the Colony, with the knowledge of the Law Officers of the Crown, and that the Law Officers did in fact attend and put your Memorialist’s title on trial by that tribunal, that it was not dealing fairly with him afterwards to repudiate that decision; because Your Memorialist is well assured that, if the adjudication of the Commissioners had been in favor of the Crown, that the Government would have relied upon it as conclusive against your Memorialist.

That Sir Richard Bourke’s reason (as your Memorialist understood) for refusing to ratify the decision of the Court of Claims was that Governor Macquarie never intended to give the land to Mr. Greenway, and that the sketch of the building shown in the document above referred to was of too splendid a description for an individual, and must have been intended for a public purpose; and that no document had been produced affording clear proof of such gift; and, your Memorialist having at that time no further evidence (all information being withheld from him by Mr. Greenway), he was glad to retain the land on the terms fixed by Government, viz., to pay for it at a valuation, which was subsequently made by the Surveyor General and Collector of Internal Revenue at £2,820, part whereof, viz., £1,050, has been paid by your Memorialist, and for the balance your Memorialist has executed a Mortgage and a Grant of the land has been accordingly made to him.

That, after this arrangement was completed, your Memorialist heard accidentally of Mr. Greenway’s death, and that papers of importance to your Memorialist had been found by his family, from whom your Memorialist shortly after received the attested Copy of the letter from Captain Gill, Civil Engineer, a copy whereof is annexed and marked No. 2.

That your Memorialist, considering the terms of this letter clear proof of the alienation of the ground by the Government, applied to His Excellency Sir George Gipps to refer the case anew to the Court of Claims, a change having occurred in the meantime of two out of the three Commissioners composing the Court.
That Sir George Gipps has refused your Memorialist's request on the ground that, although he is satisfied that an intention did exist on the part of Governor Macquarie to give Mr. Greenway the land on condition of building, that such conditions having never been performed the whole proceeding became of no value or importance; to which your Memorialist begs leave to remark that, both by Captain Gill's letter and the sketch, the Government retained the right of pulling down and selling the materials of an old building occupying the site on which Mr. Greenway proposed building was to have been erected (being the frontage to George Street); that the Government never did pull down this old house; and that the same was standing at the time of the Grant to your Memorialist; the performance of the Condition was therefore rendered impossible by the act of Government.

That it is evident therefore that, although both Governors agree in refusing your Memorialist's Claim, that they do so from totally different views of the subject; Sir Richard Bourke requiring that evidence of an original intention to give, which Sir George Gipps admits to exist, and which is satisfactorily proved by the production of Captain Gill's letter. The Commissioners on the Contrary, composed of the Surveyor General and two Barristers of experience and great acquaintance with the mode in which land was disposed of by the earlier Governors, and having the experience of the multitude of cases brought before their Court to guide them, were unanimously of opinion that your Memorialist had proved his claim.

That your Memorialist submits to your Lordship's candid consideration that the expressions in Captain Gill's letter “that, as a remuneration for your services rendered, he will give you the ground” and “when you can purchase the materials, if they should be of any service to you”; the reiteration of the same conditions in the sketch. “Mr. Greenway proposes, as Governor Macquarie has given him the ground according to the above plan, to build immediately and to pay for the materials at a valuation”; the abandonment of the suit Instituted by the Crown, and the possession of Mr. Greenway for the long period of years from 1815 to 1834, with the full knowledge of his claim by the Governor, afford proof that a gift of this land was bona fide made to Mr. Greenway; and that such gift was not the ordinary one made by the earlier Governors to the Settlers, but a payment for past services; and that these facts, corroborated by the adjudication of the Court especially appointed for the determination of claims of this nature on three separate hearings, form altogether a stronger case in your Memorialist's favor than could have occurred if his claim had not been founded in justice and in truth.

That your Memorialist merely seeks at your Lordship's hands an opportunity of a trial of his case by the Supreme Court of the Colony and a Jury of his country, a request which he is sure Her Majesty's Government would reluctantly deny to any British subject; and that upon such trial the issue may be whether or not this land was bona fide given by Governor Macquarie to Mr. Greenway; or that his case may be again referred to that Court which the peculiar circumstances of the earlier Colonial Titles have rendered necessary to their equitable adjudication.

And your Memorialist will ever pray. F. W. Unwin.
1839.
7 May.

Sketch of intended buildings.

[Sub-enclosure No. 1.]

[This was a "Sketch of intended Building for F. H. Greenway" and a plan of the land, endorsed "Dotted Line present Boundary; Dark Line Boundary of Mr. Greenway's ground to build on according to the perspective Sketch annexed, making Argyle Street nearly square with George Street." The whole was endorsed "Approved—L. Macquarie, Sydney, 22nd Augt., 1820," with also the endorsement quoted in the memorial.]

[Sub-enclosure No. 2.]

CAPTAIN GILL TO MR. GREENWAY.

Sir, Sydney, 22nd November, 1815.

Conditions for grant of land to F. H. Greenway.

I have His Excellency's command to state to you that, as a remuneration for your services rendered, he will give you the ground on which the two Surgeons' Quarters now stand, and that, if you can make the house tenable for your family until you have built one, it shall be put in repair for you according to your wishes; it is however intended by the Governor to sell the materials and take it down in less than two years to make way for your plan of improvement, when you can purchase the materials if they should prove of any service to you.

You will be allowed a Horse kept by Government to go round the public works; your family will be on the Stores; you will be allowed a nominal salary; and your per centage according to the practice of your profession will be paid you in Land, cattle, Timber, etc., according to a fair valuation, your travelling expenses to be paid out of the public fund.

J. M. Gill, Engineer.

[Enclosure No. 2.]

COMMISSIONERS' REPORT.

The Commissioners beg leave to report to His Excellency the Governor that they had no direct proof of a promise of the Land claimed in this memorial, but they had satisfactory evidence adduced before them that Governor Macquarie had given this Land to Mr. Greenaway prior to August 22nd, 1820, from a plan of an intended Building to be erected thereon, which bore the above date, and which was on that day subscribed by Governor Macquarie as having been approved of by him.

There was proof that Mr. Greenaway had been in possession of this land about 6 years before that date, and the intrinsic evidence of the fact, afforded by several remarks made on the plan which was further corroborated by evidence that those remarks were actually written on the plan before it was submitted to Governor Macquarie for his approval, left no doubt but that this land had been previously given to Mr. Greenaway. The memorialist did not claim under a Possession of 20 years, for he proved but about 18 or 19 years such Possession; nor did he claim under the Proclamation of Governor Darling of June 8th, 1820, as this Land was thereby excepted. Mr. Greenaway sold this land in December, 1832, to Memorialist, after which, vizt., in April, 1834, the Sheriff gave possession of the same Land to the Memorialist, vizt., on the 18th June, 1834, under a writ of Habere facias possessionem issued out of the Supreme Court. The Solicitor General protested against the Jurisdiction of the Commissioners on the ground that the Land was claimed by the Government for the use of His Majesty. By the evidence of Mr. Greenaway, it appears that Sir Thomas Brisbane had promised to give him a Grant of this Land; and that, the then Attorney General, Mr. Saxe Banister, having commenced Proceedings against Mr. Greenaway to recover the said Land for the use of Government, he afterwards abandoned them and had told Mr. Greenaway...
that he had a right to the land. It is clear that a certain Building on the Land, when Mr. Greenaway took possession, was to have been paid for, but that it never was paid for, and therefore this may have led to the error if any as to the land itself never having been given away. The possession given to the Commissioners and that afterwards to the memorialist by the Sheriff seem in no manner to have decided anything as to the right of the memorialist. Both proceedings have been between parties in no way interested at the time. The Commissioners on an attentive consideration of the Act do not feel the force of the Solicitor General’s objection to their Jurisdiction for the reasons stated by him, viz., that the Land is claimed by His Majesty, because in point of fact the rights of His Majesty are absolute in every case submitted to them under the Act. Until a Grant has actually been made out, all Lands are clearly the property of His Majesty. But the Act requires the Commissioners to decide in all cases brought before them, according to the Equity and Good conscience of the Case, at the same time the seventh Clause,* which declares that His Excellency the Governor shall not be “obliged to make and deliver any such Grant unless His Excellency shall deem proper so to do,” seems strictly applicable to cases like the present and would seem to imply the possibility of cases arising, and which the Commissioners might conceive themselves bound to decide in one way, and His Excellency to act contrary to such decision. The Commissioners on the whole case, after most anxious consideration, felt bound to, and did deliver their determination in favor of the Memorialist, subject to a respectful suggestion to His Excellency the Governor to take the opinions of The Attorney and Solicitor General whether or not the Proclamation of Governor Darling of the 5th of June, 1829, divest the Commissioners of any jurisdiction in this case, dated this 29th day of February, 1836.

SYDNEY STEPHEN.
R. THERRY.

[Enclosure No. 3.]

Copy of Sir Richard Bourke’s Minute on Mr. Greenaway’s Papers.

Mem,

This memorial was placed in my hands a few days ago by Mr. Greenaway. I gave him no hope of being able to accede to the application it contains. I have read it and can find no sufficient reason for again entering upon a question, which I imagine was set at rest by the resumption on the part of the Crown of the land claimed by Mr. Greenaway. I understand the Sheriff had put the Crown into possession. Yet I find Mr. Greenaway speaks of being in occupation. The Col. Secy, is requested to make enquiry and report both as to the present occupation of the Land and in what manner it is proposed to dispose of it for the public advantage. Mr. Unwin was ejected at the same time with Greenaway, if I understand the case aright. The Proceeding before the Comms. is a nullity. I trust I shall find the Govt. Officer is in possession as he ought to be. If he did not, the Col. Secy. will please to make such enquiry as shall enable me to know who is to blame.

6 July.

Copy of Col. Secy.’s Minute.


SER. I. VOL. XX—K  * Note 25.
1839.
7 May.
Minute by
Sir R. Bourke
on claims of
F. H. Greenway.

I HAVE directed the Dy. Sr. General to divide the ground herein
referred to into building allotments conformably to the plan for the
improvement of George and Argyle Streets.

Let Mr. Greenway be informed in reply to his Memorial that,
on a former occasion, I gave the fullest consideration to his repre­
sentations and arrived at the conclusion that he had no valid claim
to the land in question. Consistently with a due regard to the public
interest, I can not now accede to his request for a rehearing of the
case. Inform him that the land is about to be sold.

3rd August.

R.B.

[Enclosure No. 4.]

MR. F. FISHER TO COLONIAL SECRETARY.

Sir,

Crown Solicitor's Office, Sydney, 22nd June, 1836.

Having reference to your letter of the 17th May last, trans­
mitting to me Report of the Commissioners of Claims in favor of
Mr. Unwin to certain Land in Argyle Street, with extracts from
letters of the Surveyor General and Dr. Kinchela on the subject.
and requesting me to communicate with  the Attorney General in
the matter and report whether the Land in question forms part of
the Ground rescued from Mr. Greenway by process of law for the
Crown and is in possession of the Crown.

I do myself the honor to state that, having communicated with
the Attorney General, who as Solr. General had the conduct of this
matter, I find from him that there is no doubt whatever of the
land claimed by Mr. Unwin being part of the Land, which Mr.
Greenway claimed from four different Governors in succession and
where they all agreed in thinking he had no valid claim to. Pre­
vious to the Commissioners entering upon the Claim made by
Mr. Unwin, the present Attorney General protested against their
Jurisdiction in that case; and I am instructed by him to state that
he is still of opinion that the Commissioners had no such Jurisdic­
tion as they exercised, it appearing that the Crown had not only
not recognised the original title or claim of Mr. Greenway, but had
actually proceeded against him by Writ of Intrusion and obtained
Judgment thereon, and possession under the Process of the Court
has been taken for the Crown of all the Property claimed by Green­
away including of course that claimed by Mr. Unwin; all of which
circumstances were stated by the then Solicitor General to the
Commissioners and proof offered to them of those facts, which it
is now admitted are not disputed, nor is there any question of the
identity of the Land.

I deem it right to report for His Excellency's information that
the enclosed Copy of a Rule in the Supreme Court has been served
upon me as Crown Solicitor.

This Rule was granted 16th of September, 1834. and I am in­
fomed by the Attorney General that he has always been ready to
argue this Case upon such rule; and I have to request that His
Excellency will instruct the Crown Law Officers with respect to this
Case and in what manner he directs them to act herein.

I have, &c.

FRANCIS FISHER, Crown Solicitor.
GIPPS TO GLENELG.

[Sub-enclosure.] 1839.

RULE OF SUPREME COURT.

The King, and Plaintiff, Rule of court and former decision on land held by F. W. Unwin.

In the Supreme Court. Francis Howard Greenway, Defendant. Tuesday, the sixteenth day of September, in the year of Our Lord, 1834. Upon reading the Affidavit of Mr. Frederick Wright Unwin, It is ordered that the Plaintiff shall upon Notice of this Rule to be given to his Attorney shew Cause on Saturday, the fourth day of October next, why so much of the proceedings had under the Injunction issued therein as relates to certain premises, which were in possession of the said Frederick Wright Unwin on the 13th day of April last, should not be set aside upon the motion of Mr. Norton.

F. W. Unwin in person.

By the Court.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 80, per ship Duchess of Kent; acknowledged by lord John Russell, 27th December, 1839.)

My Lord, Government House, 10th May, 1839.

With reference to my Despatch of the 16th March last, No. 53, in which I reported that the Emigrant Ship "Garrow" had been placed in Quarantine, I have now the honor to forward to your Lordship a copy of a Report made to me by a Board of Officers, which I caused to be assembled in order to enquire into the probable causes of the disease which prevailed on board this vessel.

By this Report, your Lordship will perceive there is good cause to suspect that the sickness, if not occasioned, was at any rate considerably aggravated by the circumstance of a large quantity of salt having been put into the vessel before she was sent to sea. The ship was a new one, built of green timber in New Brunswick, and the salt appears to have been introduced in great quantities between her timbers, for the sake of preserving them. Whether this was known to the Government agent at the Port, where the vessel was chartered, could not be ascertained; but it seems to be a point worthy of enquiry, as also whether, if the salt was introduced without his knowledge and after the signing of the Charter party, the owners would not be liable for damages.

I should add that the "Garrow" was detained in Quarantine 27 days, and some portion of the Emigrants by her 13 days longer; also that two deaths occurred whilst they were so detained, and that the expenses, which have fallen on the Colony by the Quarantine of this ship, cannot be estimated at less than £500.

I have, &c.,

Geo. Gipps.

[Enclosure.]

REPORT BY BOARD OF OFFICERS.

Sir, Immigration Office, 8th May, 1839.

We do ourselves the honor to acknowledge the receipt of your letter of the 27th ultimo, directing us to enquire into and report on the probable causes of the Sickness which occurred on board ship Garrow.
board the Government Immigration Ship "Garrow" on her Voyage from Belfast to this Colony.

In forwarding for the information of His Excellency the Governor the accompanying evidence, which we have collected on this Subject, we regret very much indeed the want of power on our part to enforce the attendance of the Carpenter of the Vessel, now at Work in this Town, whose evidence, as he had been in the Ship from the commencement, might have shewn whether or not the Salt, which appears by the testimony of all to have been introduced in quantities between the Timbers, No doubt for the purpose of preserving the Wood, was done before or after the chartering the Ship by the Government Agent.

It is the Opinion of Doctor Goldney that that officer was not cognizant of it. From the Nature of conversations which repeatedly took place on the passage, he, Doctor Goldney, frequently told the Master that the Government would in all probability withhold the remainder of the Charter party; and indeed the evidence of Andrew Ritchie corroborates this.

In conducting this enquiry, we have been compelled to rely almost entirely upon the Evidence of the Immigrants, with the exception of One Man William Cunningham, the Boatswain. The whole agree as to the excessive dampness of the Vessel between decks, notwithstanding all the attempts of the Surgeon Superintendent to avert that evil by the almost constant use of Stoves.

The Stench arising from the holds, so strongly remarked by all, might and most probably did arise from fungus substance which usually exudes from green Timber when not exposed to the atmosphere.

The bad effects of a number of persons confined in a small space constantly breathing an atmosphere so humid and vitiated must, we presume, be evident to His Excellency as conducive to sickness; and, although perhaps not producing Fever of a Typhoid Nature in the first instance, yet in time was almost certain to assume that Type. This was strongly verified in the late American War with England, when both Governments from circumstances were compelled to Build Ships with unseasoned Timber; and which, notwithstanding the many advantages a Ship of War may be supposed to possess over an Immigrant Ship in checking this evil, were almost universally Sickly.

And we would here beg leave to call the attention of His Excellency to those very clear and comprehensive instructions, issued under the Authority of Sir Richard Bourke to Surgeons who might be authorised to Charter their own Ships after they had Selected their Immigrants confining them to such as might be "British Built"; and which regulation it would be well if the Government in England, as well as Private Individuals importing Immigrants, would yet strictly observe.

We have questioned minutely these persons individually, and cautioned them that the evidence they were about to give, they might hereafter be called upon to affirm on oath, as to the degree of attention which Doctor Goldney paid to his duties. They one and all expressed themselves in terms of gratitude; and we beg more particularly to refer His Excellency to that of Andrew Ritchie, who, from his previous habits as an old Soldier, was perhaps more capable of judging on this point than any of the others.
From all the information we have been able to collect, very much of which does not appear in evidence, we feel ourselves bound to inform His Excellency that in our Opinion Dr. Goldney did use every means in his power to avert and correct the Mischief which an unwholesome Vessel was likely to have upon the health of those placed under his care.

We have, &c,

JAMES DENHAM PINNOCK, Agent for Immigration.
JOHN DOBIE, R.N., Health Officer.
JOHN NICHOLSON, R.N., Harbour Master.

[Sub-enclosure.]

PROCEEDINGS of an Enquiry held at the Immigration Office on the
4th and 6th May, 1839, for the purpose of ascertaining the prob- able cause of Sickness on Board the Government Immigrant
Ship "Garrow" on her passage from Belfast to this Port.

Dr. GOLDNEY, Surgeon Superintendent, R.N., Examined—I was Appointed to the "Garrow" on the 25th October by Mr. Elliott, Emigration Agent, and joined the Ship at Belfast on the 5th November. The Immigrants, who were Selected by Dr. Hall, were all embarked on the following day, and the Ship Sailed on the 9th. I had reason to Object to one Child with hooping Cough, but was compelled to take it on Board. This disease prevailed on board during the Voyage, No doubt introduced by this case. On the 17th November or 12 days after Sailing, Measles Shewed itself and 43 cases Occurred, two of whom died; it however ceased a Month before our Arrival.

Typhus Fever first Shewed itself on the 20th January, and 29 cases took place, one of whom died. About the last fortnight of the passage, it assumed a Virulent Type; the Symptoms from the very first were of an Alarming Nature, partial delirium being One of the permanent and primary Symptoms: it appeared latterly to go through families; the first Case was in that of a family Who were living Close to the Main Hatchway. I am decidedly of Opinion that the dampness of the hold, arising from a quantity of Salt having been put between the Timbers, was the Cause of the form of Fever. The Stench from the Hold was extremely fetid.

Question. Upon your appointment to the Ship, did you examine her Hold?
Answer. So; all the Water, provisions and Stores were on Board.

Question. You have Stated that the Hold of the Ship was damp and unwhole­some; from What Circumstance do you Conceive did that arise?
Answer. The Ship was quite new, and built at Nova Scotia, North America, of Green Timber, which led the Owners, I suppose, to introduce a quantity of loose Salt into all the Airholes and between the Timbers for the purpose of preserving it.

Question. When did you first Ascertain this?
Answer. About a Month after Sailing.

Question. What led you to discover this?
Answer. Finding a Nasty, fetid damp Smell, arising from the air holes in the lower deck where the people were living, and particularly in the Hospital, in which there were no Sleeping Berths built up against the Ship's Side, I passed My Arm down Some of the holes, and pulled up a quantity of damp Salt.

Question. Did you adopt any means to correct this?
Answer. As the introduction of Salt was quite general throughout the Sides of the Ship down to the keelson (by the Master's admission who, on My Complaining to him of this, replied, "Well, this was known before I left Liverpool"), the only means I thought likely to check the evil effects was by planking up the holes, which Could only be done in the Hospital for want of Sufficient planks.

Question. Was your Mode of cleansing the lower deck, and what Other Steps did you take to arrest this evil as far as possible?
Answer. The deck was cleared every Morning by dry Scraping, and Stoves were kept burning every day, when the Weather would admit of it. Certainly five days in the Week; large Wind sails were kept in the Hold during the forenoon, and the people were kept off the Lower deck as much as possible. The powder of the Chloride of Lime was frequently Strewed in the hold, and also on the lower deck; it was used as far as it would go.

Question. On your joining the Ship did you observe that She was more than usually damp below?
Answer. Yes; on going below to the lower deck, I immediately felt a cold, damp Sensation, and desired the Captain to place Stoves there. I made a Remark to Lieutenant Forrest, the Emigration Agent who engaged the Ship, of the dampness of the lower deck. Without being, at all aware of its Cause, on visiting her at Liverpool, Who replied, "I have kept Stoves constantly below, and desired the Captain to con­tinue them on the passage to Belfast." I likewise made the Same Observation to
150 HISTORICAL RECORDS OF AUSTRALIA.

1839.
10 May.

Proceedings of inquiry re sickness on ship Garrow.

Lieutenant Miller, the Emigration Agent at Belfast, who Spoke to the Chief Officer about it, who replied that Stoves were kept below on the passage. I may here State that my own Cabin, which was painted at Liverpool, was Still wet when I joined her at Belfast, and I was Obliged to remove it with a Cloth. I mention this Circumstance as a Corroboration of what I have Stated relative to the Greenness of the Timber throughout the Ship.

Question. Did you Attempt to clean out the Hold during the Passage?
Answer. As far as possible. In the Main and forehold, the water casks were so large that it was difficult to remove them; but the After Hold, where the Provisions were, was kept clean; but so damp was the air, even where the dry provisions were Stowed, that the Bread in 30 Bags was quite Soft and Mouldy.

Question. Had you any Means of becoming acquainted with the habits of the people previous to your taking charge?
Answer. None. Dr. Hall left the next Morning. I never Saw One of them before they embarked.

Question. Was Typhus Fever prevailing at Belfast, or had you any means of ascertaining whether any of the People had had Typhus previous to embarkation?
Answer. It was prevailing in the Neighbourhood. I discovered after Sailing that Several of them had been Affected Shortly before they embarked, but had recovered; and from this circumstance I conceive that a predisposition existed in the Constitutions of Many, and merely requiring Some exciting cause, Such as living in a damp, humid atmosphere, to re-produce it. In one family five persons had been Affected on Board, and one of the Daughters had been a patient in the Typhus Fever Hospital at Belfast.

Question. Where were you on the first appearance of this fever?
Answer. To the Eastward of the Cape in Latitude 38° 51' and Longitude 21° 22'; but it was not until we were considerably farther to the Eastward that the Symptoms Assumed a form which left no doubt on my mind as to the nature of it. I therefore had no Other alternative but to proceed on the passage.

Question. Did you find it confined principally to those whose duties led them into the Hold?
Answer. Two Immigrants, whose duty was principally in the Hold, were attacked; and who frequently complained of headache and nausea after being there; and, upon Cleaning out the Hold at Spring Cove, three Seamen, who were so employed, were attacked with Typhus and received by me to the Lazarette.

WILLIAM CUNNINGHAM, Boatswain of the "Garrow," Examined.

Question. When did you join the "Garrow"?
Answer. Upon the 5th November at Belfast.

Question. How long have you been at Sea?
Answer. About 10 years and a half.

Question. Did you Observe any thing particular in the "Garrow" more than in any other Ship in which you have Sailed?
Answer. She was damp below; the Beams on the upper deck, which were varnished, were never dried.

Question. Are you aware of the Cause of this dampness?
Answer. I am not, unless it was the Salt which was introduced in the air holes and between the Timbers.

Question. Do you know the quantity of Salt introduced into the air holes?
Answer. I have heard Mr. Murphy (the Second Officer) and the Carpenter Say that there were between 40 and 50 Tons. I understood She was a New Ship built at Meramechée, and that this was her first passage, after her arrival in England.

Question. Have you ever been in one of those ships before?
Answer. No.

Question. Did you ever Observe an unpleasant Smell arising from the Hold?
Answer. There was a damp, Sickly, Stinking Smell.

Question. From your Observations on Board of Ships, in What State was the Lower deck kept, the deck on which the Immigrants lived?
Answer. It was always kept very dry and clean; and Stoves were kept burning below, nearly every day.

ANDREW RICHIE, An Immigrant, Examined.

Question. What Family have you?
Answer. I have a Wife and four Children.

Question. Were any of your Family Sick during the Passage?
Answer. No.

Question. Where was your Berth?
Answer. I was close to the Hospital.

Question. Did you Observe any Smell coming up from the Hold?
Answer. I often Observed a kind of Steam coming out of the Hatches and it had a Sickly Smell; and, when I used to go below for my box, I used to feel a Sickly heavy, unwholesome Smell.

Question. Have you ever been at Sea before?
Answer. Yes, I have been both in a Man of War and a Transport, having been a Soldier in the Artillery.
GIPPS TO GLENELG.

**Question.** Did you, during your passages in those Ships, ever feel the Sensation you have just described?

**Answer.** No, I couldn't say I have.

**Question.** Did you hear any of the people complain of the Smell?

**Answer.** I have heard them Say there was a Shocking Smell below.

**By Dr. Gouldney:**—**Question.** Do you recollect my being in the Hospital and putting my hand down the air holes and drawing up a quantity of damp Salt, and shewing it to the Captain?

**Answer.** Yes, I recollect your putting your hand down, drawing Something up of a damp, dusty nature; and shewing it to the Captain; but I was not near enough to See Whether it was Salt or Not.

**Question.** Did you hear me Make any remark to the Captain at the time?

**Answer.** Yes. I heard you remark that the Sickness arose from the dampness of the Salt; and that, if the Government knew of it, they would not receive payment for the Vessel. The Captain's reply was that “the Government did know it, and that letters had been written to the Government about it.” The Captain Ordered the air holes to be planked up.

**By the Court:**—**Question.** In your experience in passages on Board Ship as a Soldier, What is your Opinion as to the State in which the deck was kept?

**Answer.** My opinion is, and I have been both in a Man of War and a Transport, that I never Saw them kept in better Order, clean, dry, and wholesome, Stoves below every day, and I never Saw a Surgeon either in the Army or Navy pay more Attention to his duty, Night and day, than Dr. Gouldney, and this is the Opinion of us all.

**Arthur Clarke, an Immigrant, Examined.**

**Question.** Are you a Married Man?

**Answer.** Yes, I have a Wife and four Children.

**Question.** Were any of your Family Sick during the passage?

**Answer.** Yes, My daughter had the Fever.

**Question.** Have you ever been on Board a Ship before?

**Answer.** No.

**Question.** Did you go down in the Hold frequently?

**Answer.** Yes, to get my clothes out, and I was Always glad to get up again to get from that Weighty Smell.

**Question.** Did you hear any of the Other people complain of the Smell?

**Answer.** Yes, numbers.

**Question.** Was the lower deck damp or dry, or did you observe any bad Smell arising from the Hold?

**Answer.** Yes, the beams were constantly damp; for I never put my Shoulders against them, but my Shirt Stuck to them; and I could not fancy what it was 'till I saw the varnish which was not dry; there was a damp, heavy, Sickly Smell from the Hold, which I often remarked to Dr. Gouldney.

**Question.** Did you go down in the Hold frequently?

**Answer.** Yes, to get my clothes out, and I was Always glad to get up again to get from that Weighty Smell.

**Question.** Did you hear any of the Other people complain of the Smell?

**Answer.** Yes, numbers.

**Question.** Was the Ship on the lower deck damp or dry?

**Answer.** The Beams were always damp.

**Question.** Did you Observe any peculiar Smell coming from the Hold?

**Answer.** There was a damp, Stinking Smell.

**Question.** Were you in the habit of going down the hold?

**Answer.** Yes. I was down Occasionally and always felt a headache and Sickness. I was Attacked with Fever the day after I had been in the Hold.

**Question.** What do you think this dampness arose from?

**Answer.** I Suppose from the Vessel being packed with loose Salt, which I understood to be between her Timbers, Some of which I Saw the Carpenter bring out in his hand in the Hospital.

**Question.** Did you hear any of the people complain of the dampness and Smell?

**Answer.** Yes, Several; they Said it made them Sick.

**Question.** How were the decks kept clean?

**Answer.** They were Scraped clean every Morning, and no damp clothing was allowed to be kept on the lower deck, and Stoves were daily kept burning.

**Question.** Did you Observe any dampness in the Clothing of the People?

**Answer.** Yes; on hanging the Clothes up on Nails by the Side of the Ship at Night, they were always wet next Morning.

J. Denni Pinnoe, Agent for Immigration.


John Dobie, R.N., Health Officer.

Immigration Office, Sydney, 8th May, 1839.
1839.
11 May.

Reforms proposed in convict system.

Diminution of transportation.

Changes in administration of Norfolk island.

Prison to be erected at Norfolk island.

Transmission of book re prisons.

HISTORICAL RECORDS OF AUSTRALIA.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 46, per ship Amelia Thompson.)

Sir,

Downing Street, 11th May, 1839.

Her Majesty's Government having had under their consideration the Report of the Select Committee* of the House of Commons on Transportation, I transmit to you, for your information and guidance, the inclosed copy of a letter addressed by Lord John Russell's directions to this Department, from which you will learn the general intentions of H.M. Government as to the changes to be immediately effected in the existing system. The first result of the proposed arrangements will be a material diminution in the number of Convicts to be transported during the present Year.

The Instructions, which you have already received for the gradual abolition of the system of Assignment with a view to its ultimate abandonment, will have prepared the Colony for this Change.

With respect to Norfolk Island, it is the intention of H.M. Government that an essential alteration should be made in the system of punishment pursued there. The healthiness of the Climate, the fertility of the Soil, and its entire separation from intercourse with ordinary emigrants, render it peculiarly fit for the reception of a large number of Convicts, subject to careful superintendence and discipline, and for whom regular means of employment must be provided. H.M. Govt. hope that this may be effected with little, if any increase of expense, owing to the facilities which exist for rendering the labours of the Convicts productive. In order to carry this proposal into effect, a Prison will require to be erected, capable of holding as many Convicts as can be conveniently and profitably employed in the Island, and so arranged as to facilitate the adoption of the most effectual means of enforcing an improved system of discipline, and that, for this purpose, as no correct estimate can be formed here of the expenses to be incurred in the erection of such a Prison at Norfolk Island, I have to desire that you will, at your earliest convenience, transmit to me such an Estimate, together with a Plan of the proposed Building.

In my Predecessor's "Circular" Dispatch of the 21st Octr., 1837, he transmitted to you a Volume containing Extracts from the Second Report of theInspectors of Prisons in this Country containing Plans of Prisons; and I now transmit to you a subsequent Volume on the same subject, which will afford you the requisite information on this subject. In the meantime, you will consider yourself authorized to incur such expenses as may be

* Note 27.
necessary for the temporary accommodation of an increased number of Convicts in that Island; and, of those who shall arrive in New South Wales from this Country in the course of the present Year, you will send as large a portion to Norfolk Island as you think can be properly received there.

The Convicts themselves may be advantageously employed in making this temporary accommodation.

A small increase in the Military Guard will probably be required, which you will send from the Troops now stationed in New South Wales.

The general principles, which are to guide the future management of transported Convicts, are:

1st. that a fixed period of imprisonment should, in the first instance, be allotted for the punishment of the Crime of which the Prisoner has been Convicted;

2nd. that the actual period of imprisonment should be liable to a subsequent abridgement, according to the previous character of the prisoner, the nature of his crime, and his conduct during his punishment;

3rd. That, when allowed to leave Norfolk Island, he should not be assigned to any individual in Australia, but should enjoy advantages at least equal to those of a ticket of Leave.

No prisoner is to be detained in Norfolk Island longer than fifteen years.

In order fully to carry these regulations into effect, it is desirable that, as far as possible, Norfolk Island should be appropriated to Convicts from the United Kingdom, and that persons convicted of offences in New South Wales should be confined in some other part of the Colony, or employed on the Roads.

In order to carry the new system fully into effect, the superintendence of it should be intrusted to an Officer, on whose qualifications for the duty the best reliance can be placed. He should feel a deep interest in the moral improvement of the Convicts, and be disposed to devote his whole energies to this important object. The opposite faults of over-severity and over-indulgence should be carefully avoided, as alike destructive of any good effect on the Prisoners.

A residence will be provided for the Superintendent, and he will receive a Salary of £800 a year. I leave the selection of the Officer in the first instance in your hands, subject to my Confirmation. On this arrangement taking effect, the Civil Allowance at present allotted to the Military superintendent would cease, and a revision of the existing establishment would be requisite.
1839.
11 May.

I have at present only further to desire that you will communicate to me any observations and suggestions, which you may have to offer connected with this important branch of the duties involved in the Administration of your Government.

I have, &c.,
NORMANBY.

[Enclosure.]

MR. F. MAULE TO SIR GEORGE GREY.

Sir, Whitehall, 30 Jan., 1839.

I am directed by Lord John Russell to acquaint you, for the information of Lord Glenelg, that, in conformity with the intentions of Government on the subject of Transportation, he proposes to make the following arrangements:—

1st. The number of Convicts to be employed in the Hulks in Great Britain during the present year will be increased to 3,500.

2d. The number of Convicts to be employed at Bermuda will be increased to 1,000, of whom 200 will be sent out in the Spring and 200 at the end of the year.

3. The number of Prisoners in the Penitentiary will be for this year 800, being an increase of 260.

4. It is not proposed at present to diminish the numbers of Convicts to be sent from Ireland.

5th. The probable number of Convicts to be transported this year, will consequently be about 2,000.

6th. It is proposed to improve the system of punishment and instruction now pursued on board the Hulks.

7th. It is proposed to build a New Prison on the separate System for 500 Prisoners.

While these changes are taking place at home, accompanying alterations must take place abroad; and Lord John Russell directs me to transmit to you the following suggestions for Lord Glenelg's consideration:—

1st. That instructions should be sent out to prepare the Governors of New South Wales and Van Diemen's Land for the immediate diminution and approaching discontinuance of the practice of Assignment.

2nd. That instructions should likewise be sent to prepare buildings in Norfolk Island for the reception of convicts from the United Kingdom, and that the Government of that Island should be entrusted to some Officer in whose Zeal and intelligence Lord Glenelg can confide.

3d. That General Instructions should be given as to the future treatment of Convicts confined in the Australian settlements, subject to such variations from time to time as experience may suggest, founded on the principles stated in the report of the Committee of the House of Commons, and in conformity with the Views of Government.

I am, &c.,
F. MAULE.
MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch marked "Separate," per ship Amelia Thompson.)

Sir,

Downing Street, 11 May, 1839.

Referring to my dispatch of this day's date, No. 46, I beg to point out that, altho' the contemplated arrangements in regard to transportation may require an increase of the Establishment and Expenditure at Norfolk Island, they will at the same time naturally afford opportunity, as they come into operation, for a considerable diminution in the Establishments connected with the superintendence of Convicts in New South Wales; and it will be important that you should keep that object in view in all proceedings, which may be adopted under the new arrangements, and especially in selecting, as far as possible, the parties employed in the future Penal Stations from the existing Establishments for the superintendence of Convicts.

I have, &c.,

NORMANBY.

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MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch marked "Confidential," per ship Amelia Thompson.)

Sir,

Downing Street, 11 May, 1839.

In my Dispatch of this date, No. 46, I have referred in general terms to the qualifications of the Officer to be entrusted with the Superintendence of Norfolk Island, and I have left the selection in the first instance in your hands.

It had been the intention of H.M. Government to have directed you to offer the Appointment to Captain Maconochie, who recently held the office of Private Secretary to Sir J. Franklin, and whose attention, as you are aware, has been much directed to the subject of Convict Discipline. It has, however, been thought unadvisable to make this selection without previous Communication with yourself and Sir John Franklin. In suggesting, therefore, Captain Maconochie as a person apparently well qualified for the Office, you will understand that a discretion rests with you as to his appointment; and, altho' I shall be happy if, after communicating with Sir J. Franklin, you should be enabled to offer it to Captain Maconochie, you will consider yourself authorised to make any other provisional Appointment in the event of any valid objection occurring to Captain Maconochie's nomination.

I have, &c.,

NORMANBY.
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1839.
13 May.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 51, per ship Duchess of Kent; acknowledged by Lord John Russell, 22nd January, 1840.)

My Lord,

Government House, 13th May, 1839.

With reference to your Lordship’s Despatch of the 10th Augt., 1838, No. 177, and the previous correspondence which has taken place on the subject of a retiring allowance to Dr. Anderson, late Surgeon on the Establishment of this Colony for Convict services, I have the honor now to enclose a Copy of a letter, which has been addressed by Dr. Anderson to the Colonial Secretary, setting forth the particulars of his claims, and also a Copy of a letter, commenting on those claims from Dr. Thompson, the Principal Medical officer of the Colony.

Dr. Anderson entered the Naval service of Great Britain as an assistant Surgeon on the 5th June, 1809, and was promoted to be a Surgeon on the 12th April, 1814.

He entered the Colonial service as an assistant Surgeon on the 18th Feb., 1824, at the Salary of 7s. 6d. per diem, was promoted to the rank of Surgeon on the 1st Jan., 1829, at 14s. subsequently increased to 15s. per diem, and was resident Surgeon at Parramatta for twelve years.

Besides his pay of 15s. a day, he had forage for one horse and an official residence; he was also allowed to practise privately, which added, I have reason to suppose, considerably to his income.

What Dr. Anderson calls his extra services at the Female Factory, I cannot consider as affording him any additional claim, as I can look upon them only as the ordinary duties of his appointment.

For his extra services at the Female Orphan School, he received £100 a year from the Colony, which was I consider a very ample remuneration.

Should Dr. Anderson’s claims to a retiring allowance be admitted, I am inclined to think that the ordinary halfpay either of a Naval or of a Military Surgeon would be the maximum that he could reasonably expect.

I think it right to add that I can trace no record of the arrangement mentioned by Dr. Thompson, by which Naval or Military Surgeons are supposed voluntarily to have relinquished all claim to halfpay on entering the service of the Colony.

I feel that I ought not to close this Despatch without adverting to the one, which I had the honor to address to your Lordship on the 23rd April, 1838, No. 65, on the state of the Medical Department of this Colony, to which Despatch I have not yet received an Answer.

I have, &c.,

Geo. Gipps.
GIPPS TO GLENELG.

[Enclosure No. 1.]

COLONIAL SURGEON ANDERSON TO COLONIAL SECRETARY.

Sir, Parramatta, 5th April, 1839.

I am honored by the receipt of your letter of the 28th of February last, apprising me by command of His Excellency Sir George Gipps that, with reference to my application dated the 21st of November, 1837, and transmitted home by Sir Richard Bourke, The Lords Commissioners of Her Majesty's Treasury had been pleased to state that, so far as regards my application for Extra Remuneration for Extra Services, Their Lordships do not find that any specific proposition has been made by the Governor, without which they are not prepared to entertain such claim; and that, in the event of my Retirement or Superannuation, Their Lordships would be prepared to consider my claim to a retired allowance for Services in New South Wales, on being furnished with the usual specification of the causes of such retirement with a statement of the appointments and emoluments which I have held.

In reply, I do myself the honor to state that I was appointed Colonial Assistant Surgeon on 18th of February, 1824, with pay in colony; at the rate of Seven shillings and sixpence per diem. I was promoted to the rank of Surgeon on 1st of January, 1829, with a pay of fifteen shillings per diem, and continued in the service until 31st of December, 1838, when, as you are aware, I was compelled to retire from the service on account of ill-health.

To assist Their Lordships in determining the rate of retiring allowance to which these services and emoluments may be fairly considered to entitle me, I beg to add that I entered the Naval Service on the 5th of June, 1809, as Assistant Surgeon, with a pay of Six shillings and sixpence per diem, and served until the 12th of April, 1814, when I was promoted to the rank of Surgeon with a pay of Ten shillings per diem, increased during the last four years of Naval Service to Eleven Shillings per diem, being a period of above Fourteen years and a half. My total period of service amounts therefore to twenty nine years and a half, and, had I continued in the Naval Service, I should have been entitled to retire in the Month of June in the present year 1839 on a full pay of Fifteen shillings per diem.

Their Lordships will not, I trust, consider me undeserving of a retiring allowance merely because ill-health contracted in the service has prevented me from fulfilling by five months and five days the entire period of Thirty years.

For a Statement of the Extra Services performed during the greater part of the Fifteen years that I held a Colonial appointment, I beg to refer to my former application, which has already been placed before Their Lordships, with the authentication of Sir Richard Bourke's Despatch,* and of which I do myself the honor for their greater convenience to annex a copy. In that paper, I took the liberty of pointing out that these services were the same as are now performed by the Police Magistrate of Parramatta, and rewarded by an Extra Salary of One Hundred Pounds a year; And I trust therefore that His Excellency and Their Lordships will not consider as too large a remuneration the sum of One thousand Pounds or an addition of Five Shillings per diem to the retiring allowance above suggested, whichever they may prefer.

* Note 28.
Should it be considered more advisable to assign me one consolidated sum in lieu of the whole, calculated either as the price of an annuity, or on any other more equitable principle, I shall be perfectly willing to accept it, and indeed would prefer this arrangement.

My age on the 31st of December, 1838, the date of my retirement was upwards of Fifty years, as I was born on the 21st October, 1788.

In requesting you to take an early opportunity of laying these statements before Sir George Gipps. I feel that I can confidently appeal to you to confirm any part with which His Excellency, from his comparatively recent residence in the Colony, may be personally less perfectly acquainted. I trust therefore that the suggestions I have ventured to make will obtain His Excellency's approval and recommendation, and that these will insure an early confirmation on the part of their Lordships. I have, &c.,

M. ANDERSON,
late Colonial Surgeon.

[Enclosure No. 2.]

DEP. INSPECTOR-GENERAL THOMPSON TO SIR GEORGE GIPPS.

Your Excellency. Sydney, 11th May, 1839.

I had the honor in a former communication to allude to the Original application of the Colonial Surgeons for a retired allowance, and which, not having been submitted to me officially, I only knew of by accident; and I have, in addition to the observations brought under Your Excellency's notice on that occasion, to observe on the present communication from Mr. Anderson, the late Colonial Surgeon at Parramatta, which Your Excellency has submitted for my observation and opinion.

That as a Colonial Medical Officer Mr. Anderson is decidedly not entitled to any retired allowance. there being no precedent for the same, nor any stipulation made with the Colonial Surgeons, on receiving Appointment, that they should expect any consideration whatever on retiring from the Service; so much the contrary. I have always understood that, in accepting the increased rate of pay in 1828 and being gazetted as Surgeons, those that were Half Pay Officers of the Navy or Army gave up all future claim whatever to their Half Pay with the exception of Dr. Bowman.

To give a Colonial Medical Officer a retired allowance, or Half Pay as such. would be to create an evil precedent, and to give it to an Officer, who retires in comparative early life and for his own convenience, is completely at variance with the established Rules of both the Military and Naval Service. If. on the other hand, an Officer of either of those Services retires on Half Pay from Ill health, it is not assuredly from the Officer's own statement that he is permitted to do so, but on the case being submitted to the investigation and opinion of a competent Medical Board named by the Principal Medical Officer and of which he ought to be the President.

Mr. Anderson founds his claim partly on account of the extent of his duties, while, in point of fact. they were not to be put in competition with those of any of the other Full Colonial Surgeons at Sydney. Liverpool or Newcastle; and if, in addition to what
he brings forward, he had alluded to the Medical charge of the Female Orphan School; it must be recollected that he was paid £100 per annum extra from the Colonial Funds for that duty. If it should be hereafter the wish of Government to allow the Colonial Medical Officers any consideration on retiring from length of Service or ill-health, I should think the most equitable plan would be to place them in the circumstances of Military and Naval Surgeons in regard to Land, and give them a remission in the purchase money according to rank and period of Service, viz., Surgeons (with rank of Captains) 20 yrs. Service and upwards in whole £200 15 yrs. Do. or less £150 Assistant Surgeons (as Subalterns) 20 yrs. service and upwards £150 7 yrs. Service or less £100 At the same time, I beg to observe that the Colonial Surgeons are very differently circumstanced from Officers of the Services alluded to. I should thank the most equitable plan "would be to place them in the circumstances of Military and Naval Surgeons in regard to Land, and give them a remission in the purchase money according to rank and period of Service, viz., Surgeons (with rank of Captains)

JNO. V. THOMPSON, Dep. Inspector General.

MARQUESSE OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 47, per ship Amelia Thompson; acknowledged by Sir George Gipps, 15th November, 1839.)

Sir,

Downing Street, 16 May, 1839.

I transmit to you herewith a copy of a Letter from the Secretary to the General Commanding in Chief, inclosing a Copy of a Communication addressed to the Director General of the Army Medical Department by the Principal Medical Officer at Madras, respecting the health of the Soldiers undergoing solitary confinement, and the alleged state of the Cells of the Prisons in Sydney. I also inclose a Copy of the answer, which has been returned by my direction to Lord F. Somerset’s Letter; and I have to request that you will favor me with a report on this subject, taking the necessary measures in the meantime for the reformation of the alleged abuses, if they should still exist.

I have, &c.,

NORMANBY.
1839.
16 May.

Results of state of prisons at Sydney.

Marquess of Normanby to the report of Dr. Lewis, and submit to his Lordship the expediency of causing the Prisons in that Colony to be so repaired and ventilated as that they may be no longer prejudicial to the health of those who are committed to them.

The Marquess of Normanby will observe that the cells at Sydney are in such a wretched and filthy state that the prisoners have in some cases been found to be covered with vermin, and in others have, after a few weeks' confinement, been afflicted with rheumatism, and removed in consequence to the Hospital, where they have passed a great portion of the period during which they were condemned to be imprisoned, thereby defeating the object of their sentence, and rendering this species of punishment ineffective, as well as injurious to the future efficiency of the Soldier.

I have, &c,

FitzROY SOMETSET.

[Sub-enclosure.]

DR. JOHN MURRAY TO SIR JAMES MCGRGORE.

Sir, Madras, 25th June, 1838.

Having had occasion to make inquiry here respecting the health of Men sentenced to Solitary confinement and the state of the cells, in which Prisoners are placed, the following information respecting the Prison Cells in New South Wales has been elicited from Dr. Lewis, Surgeon of Her Majesty's 4th, lately arrived from that station, which I consider it my duty to communicate to you.

"In New South Wales, I had numerous opportunities of seeing men, who were sentenced to six months' solitary confinement and upwards; and, if they were not frequently in Hospital during the time which was generally the case, they came out pale and emaciated, their general health much impaired, and in some cases covered with Vermin. In Sydney, where the cells were wretched, being damp and ill ventilated, Men could not withstand Confinement in them for more than a fortnight or three weeks without getting Rheumatism, by which means one third of their time was spent in the Hospital."

I have also seen many incipient cases of Scorbutus arising from this cause, but never allowed the Disease to gain ground for want of timely Hospital treatment.

I have, &c,

JOHN MURRAY, M.D.,

Dy. Inspr. Genl. of H.M. Hospitals.

[Enclosure No. 2.]

UNDER SECRETARY STEPHEN TO LORD FITZROY SOMERSET.

My Lord, Downing Street, 16 May, 1839.

Having laid before the Marquess of Normanby your letter of the 4th instant, I am directed to acquaint you in reply that his Lordship will instruct the Governor of New South Wales immediately to institute an enquiry into the state of the Prisons in that Colony, and to do whatever may be necessary for the reformation of the abuses said to exist there. But his Lordship regrets that Dr. Lewis should apparently have left New South Wales, and should have repaired to Madras, before he communicated to the Military
or Civil authorities the lamentable state of the prisons referred to. Lord Normanby would suggest, for Lord Hill’s consideration, whether Dr. Lewis ought not to be called on for some explanation of his apparent remissness in this matter.  
I have, &c.,  
J. STEPHEN.
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HISTORICAL RECORDS OF AUSTRALIA.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 50, per ship Amelia Thompson.)

Sir,

Downing Street, 17 May, 1839.

I have received your dispatch No. 174 of the 26th October last, enclosing a letter from Mr. Charles Marshall who wishes to obtain employment in New Zealand.

I have to request that you will acquaint Mr. Marshall that I have no means of complying with his request.

I have, &c,

NORMANBY.

1839.
17 May.

Refusal of employment for C. Marshall in New Zealand.

Refusal of compensation for W. Rotton.

18 May.

Despatch acknowledged.

Acceptance of resignation of E. C. Close.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 51, per ship Amelia Thompson.)

Sir,

Downing Street, 18 May, 1839.

I have received your despatch No. 175 of the 27th October last, enclosing a duplicate of the representation from Mr. Walter Rotton referred to in my Dispatch No. 37 of the 9th Ult., containing his appeal against the decision of the local Government in regard to his claim to a portion of land.

I can perceive no sufficient reason to justify the interference of Her Majesty's Government in opposition to the clear opinion of the local authorities. In this as in almost every instance in which the right of the public at large are enforced strictly against an individual Member of Society, there may be some plausible ground of complaint. But the evil of making a precedent in favor of such a claim as that now before me could not with safety or justice to the Public be encountered. I cannot therefore direct the compensation to be granted to Mr. Bolton for which he applies.

I have, &c,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 52, per ship Amelia Thompson.)

Sir,

Downing Street, 18 May, 1839.

I have received and laid before the Queen your dispatch No. 159 of the 10th October last, enclosing the copy of a letter from Mr. E. C. Close, a Member of the Legislative Council of New South Wales, tendering the resignation of his seat in that Body, and I am commanded to acquaint you that her Majesty has been pleased to accept the resignation of Mr. Close.

I have, &c,

NORMANBY.
NORMANBY TO GIPPS.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 53, per ship Amelia Thompson.)

Sir,

Downing Street, 20 May, 1839.

I have received your despatch No. 184 of the 10th November last, notifying the arrival of the four persons to act as Protectors of Aborigines in the Colony of New South Wales, under Mr. Robinson, and adverting to the projected removal of the Aborigines from Flinders Island.

I concur with you in opinion that it would have been imprudent and indefensible to have adopted any measure for the introduction into New South Wales of those natives in the face of an opposition, so generally pervading the Colony and sanctioned by so high an authority as that of the Bishop of Australia and the other Members of the Committee of Council, appointed to investigate that question.

I beg to add that there appears to have been no promise or expectation held out to the Protectors under the authority of this Department of any further emolument than the amount specified in the official despatch* notifying the appointment of those Officers.

I have, &c.,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 54, per ship Amelia Thompson.)

Sir,

Downing Street, 21 May, 1839.

I have received your dispatch No. 170 of the 22nd October last, on the subject of Sir Thomas Brisbane's claim to a Reserve of 10,000 Acres of Land directed by Lord Bathurst to be made for him on certain Conditions; and I have to express my full concurrence in the views which you have taken of this question.

I have, &c.,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 55, per ship Amelia Thompson.)

Sir,

Downing Street, 21 May, 1839.

I have received your dispatch No. 164 of the 13th Octr., 1838, in which you report the circumstances under which you had placed Mr. Kinchela in the temporary Office of advising Council to the Government with a Salary of £500 a year, instead of adopting the arrangement by which it was proposed that he should receive a compensation at the same rate for the loss of his Office of Attorney General until otherwise provided for.

* Note 30.
1839.
21 May.

I entirely approve of your having required Mr. Kinchela to contribute some labor in return for his annual allowance, and you will express to that Gentleman my acknowledgment of the becoming and liberal spirit in which he acquiesced in that arrangement.

I have, &c.,
NORMANBY.

22 May.

MARBESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 56, per ship Amelia Thompson.)

Sir,
Downing Street, 22 May, 1839.

I have received your dispatch No. 167 of the 18th Octr. last, transmitting the additional information required by Lord Glenelg on the representation of William Henry.

On this full explanation of the case, it appears to be evident that Henry had no claim to retain possession of any portion of the land; and I can therefore only approve the course adopted by the local Government in this case.

I have, &c.,
NORMANBY.

23 May.

SIR GEORGE GIPPS TO LORD GLENELG.
(Despatch No. 84, per ship Duchess of Kent; acknowledged by lord John Russell, 25th April, 1840.)

My Lord,
Government House, 23rd May, 1839.

I have the honor herewith to forward a letter, which has been addressed to your Lordship by Mr. T. Aubrey Murray, claiming an Additional Grant of Land as the Representative of his Father.

The facts stated by Mr. Murray are, I believe, correct, and it may be admitted that, if his Father had been alive at the time when your Lordship's Despatch No. 180 of the 31st July, 1836, arrived in the Colony, he would have been entitled to an Additional Grant.

Mr. Murray's claim was however overruled by Sir Richard Bourke on the ground that the privileges, conferred on settlers in New South Wales by the Regulations of 1826 and 1827, were strictly personal, and such as could not pass either by Inheritance or Devise to any other parties. I subjoin copies of two Minutes made by Sir Richard Bourke on Mr. Murray's claims, in order that your Lordship may the better be able to judge of the grounds on which they were overruled.

Mr. Murray is the only person, who has as yet brought forward a claim for an additional Grant, founded on an inherited right;
but, if his claim be allowed, I have little doubt that others of a similar nature will be advanced, and that, in the investigation and settlement of them, much trouble will be occasioned by the necessity to which the Government will be put of ascertaining who are the rightful heirs or Devisees of the original Settler.

I have, &c.,
GEO. GIPPS.

[Enclosure No. 1.]

THE Memorial of Terence Aubrey Murray, of Yarrowlumla* in the Colony of New South Wales,

To Lord Glenelg, Secretary of State for the Colonial department, etc., etc., etc.,

Humbly Sheweth,

That your Memorialist is the son of the late Mr. Terence Murray, who emigrated to this Colony in the year 1827 upon the faith of the then existing land regulations; That, by those regulations, emigrants were promised secondary Grants of land, conditionally that they effected within seven years improvements to a certain amount on those which they were to receive immediately upon their arrival. That his father, having fulfilled the condition, was entitled to the benefit of that promise in 1834, and doubtless would have obtained it if the Government at that time entertained any claims of the kind. That he died in 1835 leaving his possessions in the Colony to your Memorialist and his heirs for ever. That your Memorialist, upon the Government's Giving notice in the close of the year 1837 of its intention to enquire into such claims, preferred that to which under these circumstances he considered himself entitled as the representative of his father, but was informed by Sir Richard Bourke that he could not entertain any but those of original donees, and that he afterwards applied to Sir George Gipps who informed him that he saw no reason for departing from the decision which had thus been Given.

He now most respectfully submits his claim to your Lordship, soliciting your consideration for the circumstances upon which it is founded and praying that you will authorise its being received and investigated.

As In duty bound Your Memorialist will ever pray.

T. AUBREY MURRAY.
Yarrowlumla, Co. Murray, New South Wales, 10 June, 1839.

[Enclosure No. 2.]

Copy of a Minute made by Sir Richard Bourke.

(37/6,704.)

Were every claim of a devisee or heir at law for an additional grant like the present, that of a son who has continued the possession and completed the conditions imposed on the Father, it might be easy to admit the cogency of the application.

But it is not to be overlooked that, in a great variety of cases, the property of the Original Settler will by his death become divided and sub-divided into a variety of remote and perhaps contingent interests. How, in these cases, is the additional grant to be apportioned? And is not the difficulty, perhaps impossibility of effecting

* Note 31.
it, a strong argument against the probability of its having been intended by the regulation to render the claim for a secondary grant transmissible to representatives?

Whatever the interpretation be, it must, I presume, be general. The obligation cannot be admitted in a simple case, and denied in a complicated one.

I must therefore decide against admitting the claims of any but original grantees.

24 Sepr.

[Enclosure No. 3.]

COPY of a Minute made by Sir Richard Bourke, dated the 23rd Novr., 1837.

"I gave the case, within which Mr. Murray's claim falls, the best consideration of which I am capable before I decided against its admission; and I have given, on 37/6,704, the reasons which led to the decision. They are in my mind conclusive against the transmission of such claims to Representatives."

R.B.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 57, per ship Amelia Thompson; acknowledged by Sir George Gipps, 11th November, 1839.)

Sir,

I have the honor to acquaint you that the Lords Commissioners of the Treasury have directed a Warrant to be prepared for the issue to the Agent General for New South Wales of the sum of Twenty six thousand, Nine hundred and fifty Pounds as an advance on account of your Government, and the Paymaster General has been desired to pay one moiety of that amount to him forthwith.

You will be so good as to take the necessary measures for repaying the amount into the Military Chest of the Colony.

I have, &c.,

NORMANBY.

(Marquess of Normanby to Sir George Gipps.

(A circular despatch per ship Mary Anne.)

Sir,

Downing Street, 25th May, 1839.

The Lords Commissioners of Her Majesty's Treasury have recently had under consideration claims to compensation, made by the Owners of three American Vessels for the services of certain Slaves, which had been brought to the Bahamas and Bermuda in the American Ships "Comet," "Encomium," and "Enterprize," and had been seized by Officers acting in Her Majesty's Name.
The Lords Commissioners have adjudged the claims made by the Owners of the two former Vessels to be well founded, and have rejected the demand on the part of the Owners of the "Enterprize."

Considering it desirable in the event of any Slave Vessel entering the Port of the Colony under your Government, or being driven upon its shores, that you should be in possession of the reasons which have guided the Lords Commissioners in these decisions, I transmit herewith, for your information, copies of two Treasury Minutes detailing the grounds on which these decisions have been founded.

I have, &c.,

NORMANBY.

[Enclosure No. 1.]

COPY OF TREASURY MINUTE OF 12TH APRIL, 1839.

Read Report from Mr. Rothery dated 30th Ulto. submitting the Treasury result of his proceedings, in pursuance of the Arrangement provided for by the Board's Minute of 4th June last, in regard to the Inspection of Documents in the possession of the Minister of the United States of America relating to the value of the American Slaves, wrecked at the Bahamas in the Vessels "Comet" and "Encomium," and of the directions conveyed to him on the 29th January last to attend at the Office of the American Legation for that purpose.

From this report, and from the annexed Copies of Documents, it appears that Mr. Stevenson is in possession of satisfactory proof of the Amount of Insurances effected on 146 Slaves on board the "Comet," and on 13 of the Slaves on board the "Encomium"; and My Lords conceive that these Insurances are sufficient Evidence of the valuation of the Slaves by their Owners, and of the Loss sustained by Subjects of the United States, either as Owners or Insurers, from the transactions which led to the interference of the British Custom House Officers, and to the Liberation of the Slaves. My Lords, therefore, resume the consideration of the proceedings relating to the Claims preferred for Indemnification for losses in respect of these slaves, as well as for Slaves subsequently liberated at Bermuda from on board the American Vessel "Enterprize," and have again before them the several Communications received from the Secretaries of State for the Colonial and Foreign Departments, with the Reports of the British Office's and Functionaries relating to the Wrecks of the Vessels and the Liberation of the Slaves brought into the Port of Nassau, as well as to the proceedings with respect to the "Enterprize," and Copies of the Communications with the American Legation respecting the Claims of the Owners or Insurers for compensation. My Lords also refer to the Communication made by their direction to Viscount Palmerston on the 15th December, 1836, which, referring to opinions of the Law Officers of the Crown then before the Board, apprized his Lordship that it had appeared to the Law Officers, on adverting to the circumstances attending the Wrecks of the "Comet" and the "Encomium," and to the period at which those Wrecks occurred, "that the relation of Owner and Slave was not necessarily dissolved on the arrival of the slaves in the British Colony, but that the Slaves being virtually
in the possession of the Owners, were seized by a Functionary of the British Government, and that, altho', had there been no interference on the part of the English Government, the Owners might not in either case have been able to reship the Slaves, yet, if the Seizure was wrongful and prejudicial, some Compensation would be due, and the Party aggrieved is to be favorably heard when he imputes the whole of his Loss to the injury done to him"; and that, in accordance with this opinion, My Lords would be prepared, on being furnished with specific information as to the value of such of the Slaves on board those two Vessels as remained at the Bahamas, to have under consideration the amount of Compensation it may be reasonable to allow for any Injury the American Owners may be presumed to have sustained from the interference of the British Functionaries in landing the Slaves at Nassau, and to make application to Parliament for the means of discharging the same.

But the Law Officers of the Crown having further stated that the Owner of "the Slaves on board the 'Enterprize'" (which Vessel had entered the Port of Hamilton in Bermuda on the 11th Feby., 1835), "never was lawfully in possession of them within the British Territory; for that, the moment the ship entered the Port, they were Free, as Slavery had been abolished throughout the British Empire, and they had acquired Rights which the Courts there were bound to recognize and protect"; and the Law Officers had also remarked that "however the Cases of the 'Comet' and 'Encomium' may be disposed of, they are the last of the sort that can occur; for, upon the most mature consideration of the subject, they were of opinion that, Slavery being now abolished throughout the British Empire, there can be no well founded claim for Compensation in respect of Slaves that may come under any Circumstances into the Colonies, any more than into the Mother Country." Lord Palmerston was at the same time further apprized that My Lords considered the Claim respecting the Slaves in the "Enterprize" to be finally disposed of by the principle thus laid down, and that the recurrence of any similar Claim in future is likewise thereby precluded.

My Lords further refer to the Note addressed to the American Minister and Viscount Palmerston on the 7th January, 1837, communicating the Decision of the British Government to the foregoing effect with respect to the Claims in question, and likewise to the Statements relating to the value of the Slaves in the "Comet" and "Encomium" furnished by the American Minister, and to Lord Palmerston's further Note of 12th September, 1838, signifying the Opinion of the Government that no Claim for Compensation could be entertained in respect of certain of the Slaves from the "Comet," who had escaped from the Custody of the Owners, and were on shore at large previously to the time of the Seizure by the Officers of Customs, or on other Slaves who had subsequently returned to their former Servitude in the United States; and that any assessment of Compensation must have reference not to an estimated valuation of the produce of the Sale or employment of the Slaves at the place of their destination, which the Statements received from the American Minister appeared to contemplate, but to such value as might be satisfactorily shown to have attached to them at the period of their embarkation for the Voyage in the course of which the Wrecks occurred.

From the Report and Documents now submitted to the Board by Mr. Rothery, it appears that, of 164 slaves who had been embarked
in the "Comet," Insurances had been effected on 146; and it further appears, from the representation of an Agent who had proceeded to the Bahamas to reclaim these Slaves on behalf of the Insurers, that, of the above number embarked who had all been saved from the Wrecks, 11 had escaped from their owners by swimming on Shore immediately after their arrival at Nassau, 5 in all had returned to Servitude in the United States, and 2 had died, thus leaving 146, in respect of whom Compensation would be payable. It also appears that, of 45 slaves embarked in the "Encomium," Insurances had been effected on 13 only; and that of the number embarked, who had likewise all been saved and brought into the Port of Nassau, 12 had returned with their Owners to the United States, leaving in this case therefore 33 for whom Compensation could be claimed. The Documents further shew that the Insurance effected on 146 slaves in the "Comet" amounted to 70,000 Dollars, equivalent, at a rate of Exchange stated to have been concurred in by Mr. Stevenson, to £14,000; and My Lords are of opinion that this Insurance may be adopted as a fair valuation of the 146 Slaves of whose services the Owners were divested by the interference of the Officers of Customs.

With respect to the Case of the "Encomium," it is shewn that the Insurances effected on 13 of the Slaves, amounted to 6,200 Dollars, giving an average valuation of 477 Dollars nearly for each Slave; and, as this average also very nearly accords with the average of the Insurance in the case of the "Comet," My Lords conceive that it may be reasonably adopted as a fair scale of Valuation for the remaining 20 Slaves; and accordingly that the above sum of 6,200 Dollars, with the addition of 9,539 Dollars, representing the proportionate value of the 20 uninsured Slaves, and constituting an amount of Dollars 15,739 equivalent to £3,147 16s. may be properly assumed as a fair valuation of the 33 Slaves of whose Services the Owners were divested in the case of the "Encomium."

My Lords, having also proceeded to consider the title of the Claimants to the above mentioned compensation, to Interest for the whole or any portion of the period during which the payment has been deferred, and having adverted to all the Circumstances that have delayed the admission and adjustment of the Claims, are of opinion that the Parties are entitled to some further consideration in this respect; and that it will accordingly be proper to allow Interest on the Sums that may be assigned as Compensation for the Slaves, at the rate of £4 per Centum per Annum from the dates of the respective seizures by the Officers of Customs at the Bahamas to the period at which My Lords shall be prepared to direct payment of the Compensation to be made.

Write to Mr. Fox Strangways transmitting Copy of the foregoing Minute, in order that it may be submitted for the consideration of Viscount Palmerston with reference to the Correspondence that has taken place respecting the claims of the subjects of the United States of America to which it relates; and request that, unless Lord Palmerston should see reason to dissent from the arrangements thereby contemplated, My Lords will cause an Estimate to be prepared and submitted to Parliament with a view to the requisite vote for carrying the same into effect being obtained.

At the same time Mr. F. Strangways will suggest to Viscount Palmerston that, in apprising the Minister of the United States of
the Intenions of Her Majesty's Government with respect to the adjustment of the Claims for Compensation for the Slaves in the "Comet" and "Encomium," it will be advisable that he should not only be informed that the proposed payment is to be final and conclusive as regards these two cases, but likewise that his attention should be again particularly called to the principles on which it has been considered that some Indemnification might be due to the Parties, who sustained loss by the liberation of the Slaves wrecked in those Vessels; but that no claim can be recognized for any such Indemnification in respect of the Slaves, who were in the "Enterprise," or of any other Slaves thrown within the British Jurisdiction in the Colonial Possessions or otherwise, subsequently to the Abolition of Slavery throughout the British Dominions, and availing themselves of the protection of the British Laws; and My Lords have also to suggest that the American Minister should further be informed that it is only with distinct reference to this principle that My Lords would feel warranted in making the application to Parliament they have now proposed.

[Enclosure No. 2.]

COPY OF TREASURY MINUTE OF 6TH DECEMBER, 1836.

Read a Letter from the Solicitor dated 3rd Ulto., transmitting the further Case submitted to His Majesty's Law Officers, in pursuance of the directions given by My Lords' Minute of 19th April last. relating to the Claims preferred by the Minister of the Government of the United States of America for Compensation to the Owners of the Slaves in the Vessels "Comet" and "Encomium," wrecked on the Bahama Islands, and in the vessel "Enterprise" driven by Stress of Weather into the Port of Hamilton in the Island of Bermuda, together with Opinion of the Law Officers thereon.

In this Opinion the Law Officers state that, "having considered these cases with an anxiety proportioned to their importance and difficulty, they have finally come to the conclusion that the Claim of the American Government is not well founded with respect to the 'Enterprise,' but that it is well founded with respect to the 'Comet' and the 'Encomium.'"

That they "conceive the Rule, by which all such Claims are to be decided" to be, "that the Slave Owner is entitled to Compensation when he has been lawfully in possession of the Slaves within the English Territory, and he has been disturbed in his possession of them by a functionary of the English Government; but not otherwise."

That "the Owner of the Slaves on board the 'Enterprise' never was lawfully in possession of them within the English Territory."

That "the moment the Ship entered the Port at Bermuda they were Free; as Slavery had been abolished throughout the British Empire, they had acquired Rights which the Courts there were bound to recognize and protect."

The Law Officers then proceed to state that their "former opinion that this was a Case for Compensation on the ground that the ship was driven in by Stress of weather and therefore by the Law of Nations not subject to Our Municipal Law, now appears to them to be erroneous, from their having disregarded the distinction between Slaves and inanimate objects or irrational Animals. As to the latter, the property of the Owner would continue when the Ship containing them is driven by Stress of Weather into any
Foreign Port, and the Owner would be aggrieved if he were to be deprived of what belonged to him by the Municipal Law of a State to which he had not voluntarily submitted himself. But Slaves, as human beings, are to be heard before their fate is decided. Here there are three Parties to the transaction; and those who were Slaves, when they come into a Country where the state of Slavery is unknown, and is forbidden, are instantly in the Situation of Aliens, who have always been Free. They can in no shape be restrained of their liberty by their former Masters any more than by a mere Stranger. If they were given up to him, they would be aggrieved and would be entitled to sue for Damages. It would be absurd to say that, where a State prohibits Slavery, as often as a Slave Ship takes refuge in one of its Ports, a liability shall be incurred, either to the Owner, if the Slaves be liberated, or to the Slaves, if they are delivered up. Where Slavery is forbidden, the Law of Nations cannot be considered as violated by the Municipal Law; and, the Slaves being liberated according to that Law, there is no wrong, and there shall be no Compensation. But the Law Officers further state that, applying the same rule to the case of the 'Comet,' Compensation seems to be demandable. In January, 1831, the state of Slavery was permitted in the Bahamas; and, Property in Slaves being recognized in British subjects residing there, a Foreigner might lawfully have been in possession of Slaves, if he did not infringe any of the Laws by which Slavery was regulated. The relation of Owner and Slave was not necessarily dissolved on the arrival of the Slaves in the Colony. If the Slaves, the Ship being lost, had got on Shore without ever being under the Control of the Owner in the English Colony, the Law Officers should have thought their case could not be distinguished from that of Fugitive Slaves, who, it is well settled, cannot be reclaimed by their former Master, and for whom no Indemnity can be claimed. But in the present case, the Law Officers think 'the Slaves were actually in the possession of the Owner within the English Territory; and they were illegally seized by a Functionary of the English Government;' and that, 'Had it not been for this voluntary interference, there can be little doubt that the Slaves would have been re-shipped in the Vessel prepared to receive them, and would have reached their Port of Destination.'

The Law Officers then observe that 'the case of the 'Encomium' does not substantially differ from that of the 'Comet.' When this shipwreck happened, Slavery was still allowed in the Bahamas; the Slaves had never been freed from the Control of the Owner; and, being virtually in his possession, they were seized by a Functionary of the English Government.' That 'it may be contended that, although there had been no interference on the part of the English Government, the Owner might not in either case have been able to reship the Slaves; but, if the Seizure was wrongful and prejudicial, some Compensation would be due, and the Party aggrieved is to be favorably heard when he imputes the whole of his Loss to the Injury done to him.'

The Law Officers finally remark that they "have great Satisfaction in thinking that, however these cases of the 'Comet' and 'Encomium' may be disposed of, they are the last of the sort that can occur; for, upon the most mature consideration of the Subject," the Law Officers are of Opinion "that Slavery, being now abolished throughout the British Empire, there can be no well founded claim.
for Compensation in respect to Slaves that may come under any circumstances into the Colonies, any more than into the Mother Country.”

My Lords have again before them the several Communications from His Majesty’s Secretaries of State for Foreign Affairs and for the Colonies, relating to these Claims, and refer to the Minute of their Board of 19th April last respecting them.

Lord Melbourne and the Chancellor of the Exchequer observe to the Board that they conceive it will be advisable that a Copy of the Opinion now given by the Law Officers should be forwarded to Viscount Palmerston; and that his Lordship should be informed that My Lords consider the Claims respecting the Slaves in the “Enterprize” to be finally disposed of by the principle therein laid down, and that the recurrence of any similar claim in future is likewise thereby precluded. But that, as it has appeared to the Law Officers on adverting to the circumstances attending the Wrecks of the “Comet” and “Encomium,” and to the period at which those wrecks occurred, that “the relation of Owner and Slave was not necessarily dissolved on the arrival of the Slaves in the British Colony,” but that the Slaves, “being virtually in the Possession of the Owners, were seized by a Functionary of the British Government,” and that, although, “had there been no interference on the part of the British Government, the Owners might not in either case have been able to reship the Slaves,” yet, “if the Seizure was wrongful and prejudicial, some compensation would be due, and the Party aggrieved is to be favorably heard when he imputes the whole of his Loss to the Injury done to him”; this Board would be prepared, on being furnished with specific Information as to the value of such of the Slaves on board these last mentioned Vessels as remained at the Bahamas, to have under consideration the Amount of Compensation, it may be reasonable to allow for any Injury the American Owners may be presumed to have sustained from the interference of the British Functionaries in landing the Slaves at the Bahamas, and to make application to Parliament for the means of discharging the same.

My Lords entirely concur in these suggestions, and they are therefore pleased to direct that a Letter be written to Mr. Fox Strangways, transmitting, with reference to his Letter of 27th August last, and to the previous communications from Viscount Palmerston’s Department on the subject of the American Claims for the Slaves now in question, copies of the Minute of this Board of 19th April last, and of the Opinion now given by the Law Officers, and stating, for the information of Lord Palmerston in the terms suggested by Lord Melbourne and the Chancellor of the Exchequer, that My Lords will be prepared, in conformity with this opinion, to have under consideration, and apply to Parliament for the Amount of Indemnification that should be granted to the Owners of the Slaves in the “Comet” and the “Encomium”; and that My Lords would suggest, provided Lord Palmerston sees no objection to the course of proceeding they now propose, that his Lordship should communicate with the Minister of the United States thereon, in order that this Board may be furnished with such information respecting the pecuniary Value of the Slaves as will enable My Lords to form an opinion as to the amount of the Compensation the Owners may be entitled to receive from the British Government in consideration of the circumstances under which the Services of the Slaves have been lost to them.
GIPPS TO GLENELG.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 58, per ship Amelia Thompson; acknowledged by Sir George Gipps, 15th November, 1839.)

Sir,

Downing Street, 27 May, 1839.

With reference to my dispatch No. 47 of the 16th Inst., I transmit, for your information, the copy of a letter addressed to this Department by desire of the General Commanding in Chief, stating that he will not fail to point out to Dr. Lewis his remissness in not reporting the state of the Prisons in New South Wales until after he had quitted the Colony.

I have, &c.,

NORMANBY.

[Enclosure.]

LORD FITZROY SOMERSET TO UNDER SECRETARY STEPHEN.

Sir,

Horse Guards, 20th May, 1839.

Having had the honour to submit to The General Commanding in Chief your Letter of the 16th Inst., I am directed to request you will offer the Marquess of Normanby his best acknowledgments for his immediate attention to his representation with respect to The condition of the Jails in New South Wales, and assure his Lordship at the same time, that Lord Hill will not fail to point out to Dr. Lewis the remissness of which he has been guilty in delaying to report the state of the Prisons in the Colony, until after he had left it, and had proceeded with his Regiment to India.

I have, &c.,

FITZROY SOMERSET.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 85, per ship Duchess of Kent; acknowledged by lord John Russell, 14th November, 1839.)

My Lord,

Government House, 27th May, 1839.

In obedience to the instructions contained in your Lordship's Circulars of the 24th May and the 18th Sept., 1838, I have called on Mr. Henry Donnison, a Magistrate of this Territory, for copies of the letters which were addressed by him to your Lordship on the 15th Decr., 1837, and the 3rd April, 1838. These copies having been furnished to me, with an explanatory letter from Mr. Donnison of the 30th March last, of which a copy is herewith enclosed, I now have to submit to your Lordship the following particulars respecting Mr. Donnison's complaint.

Mr. Donnison preferred, in the month of Octt., 1837, to Sir Richard Bourke through the Colonial Secretary, a complaint against a Convict named James Freeman for some misconduct which it is not now essential to refer to. It happened however that this Freeman had been, on the 17th of the previous month of July, recommended by Sir Richard Bourke for a Conditional Pardon, of which circumstance Mr. Donnison was informed, though as it now appears only verbally, by the Colonial Secretary.
Mr. Donnison finding that nothing was done to stop Freeman's Pardon, and not perhaps fully comprehending the operation of the 33rd Clause of the 9th Geo IV, Ch. 83, which it was the object of the Colonial Secretary to explain to him, felt himself aggrieved, and in consequence, immediately after Sir Richard Bourke's departure from the Colony, addressed himself to your Lordship.

As the case is one in which the Colonial Secretary, as the organ of the Government is chiefly concerned, I think it right to enclose to your Lordship a Copy of the explanation which has been afforded to me by that Officer of the whole proceeding.

In order to enable your Lordship to judge of the irritated feelings under which Mr. Donnison addressed himself in Decr., 1837, to your Lordship, it may be proper for me to state that Mr. Donnison was one of the gentlemen, who recovered Damages about that time against Captain Faunce, a Police Magistrate, for false imprisonment, which case was brought under your Lordship's notice by Sir Richard Bourke, and finally disposed of by your Lordship's Despatch of the 24th July, 1838, No. 166.

I am happy, My Lord, to be able to add that, at a very recent interview which I have had with Mr. Donnison, he has expressed to me a wish that no further notice may be taken of his letters to your Lordship, but that the whole matter may now be dropped.

I have, &c,

GEO. GIPPS.

[Enclosure No. 1.]

MR. H. DONNISON TO COLONIAL SECRETARY.

Sir, Brisbane Water, 30th March, 1839.

I beg to acknowledge the receipt on the 28th instant of your letter of the 11th reiterating the request, contained in that of the 27th November last, that I would furnish the Governor with a Copy of my letter of the 15 December, 1837, to the Right Honorable the Secretary of State on the subject of James Freeman, then a prisoner of the Crown, in order that it may be forwarded home for the consideration of Lord Glenelg.

I have now the honor to enclose for that purpose a Copy of that letter (of the 15th Decr., 1837) as well as of another of the 3d April, 1838, and to request that His Excellency, in forwarding them to the Secretary of State, will inform him that I did not address him directly in ignorance of the regulations much less in disregard of them, as I should never be guilty of that disrespect to a Minister of the Crown.

I am of opinion, although I may be in error, that the course which I adopted was in conformity with the Spirit of the regulations, and that mine was one of those "Cases where some especial and Sufficient reason can be assigned" for departing from their Strict letter.

Those regulations (Letter of 17 Novr., 1831) point out that it is the duty of Governors of Colonies "to receive with attention all
representations properly and respectfully addressed to them." Sir Richard Bourke had virtually refused to take notice of my respectful representations, and, in fact, in that and other instances shut the door of communication against me. The regulations make no provision for this, the Secretary of State having doubtless never contemplated such a circumstance.

Sir Richard Bourke left the Colony about the 5th December, 1837; my letter to the Secretary of State was not written until I had learnt that he had departed, as I waited to the last moment for the chance of some explanation or redress. On the 26th Decr. I received the letter dated 8th Decr., which His Excellency will perceive, on reference, merely relates to the simple fact of Freeman's application having been recommended. Freeman has since received a Conditional Pardon, which probably he would not have done had attention been paid to my representation of the 28th Octr., 1837, and that was one reason with me for not wishing to occupy His Excellency's time in this matter as the step is past recall.

I have not sent copies of my letters of the 28th Octr. and 20th Novr., 1837, to the Colonial Secretary, nor of his of the 5th Decr., to me, presuming they will be furnished officially. I will of course do so if required.

HENRY DONNISON.

P.S.—The deposition of T. A. Scott in the case of Rex. v. Bean and Donnison, to which I allude in my letter of 28th Octr., is in the hands of the Attorney General.

[Enclosure No. 2.]

Copy of a Memorandum from the Colonial Secretary.

It may be necessary to explain, with reference to Mr. Donnison's complaint of not having received a written answer to his representation of the unfitness of Freeman to obtain a Conditional Pardon, that it was received just at the time that Sir Richard Bourke was closing the business of his administration of the Government, when a more than usual number of cases of urgency and importance pressed upon the early attention of this department. It appears, upon a reference to the documents in this Office, that Freeman's application for the pardon, although dated on the 31st March, 1835, was not received here until January, 1837. Having gone through the usual investigation at the Principal Superintendent of Convicts' Office and received the Governor's approval, it was transmitted to the Secretary of State in July, 1837, with a number of others. Mr. Donnison's objection was not received until the 20th October following, nearly four months afterwards. I distinctly recollect Mr. Donnison calling upon me some short time subsequently, when I explained to him the state of the case, and informed him that as, in conformity to the provisions of the Act of Parliament 9 Geo. IV. Cap. 83, the Pardon came in force, if approved by the Sovereign, from the day of its date, it would be quite useless at so late a period to forward any representation upon the subject to the Secretary of State. I instanced to him certain cases in which the parties had committed Offences between the time of the transmission home of the pardon with the Governor's recommendation, and the receipt of Her Majesty's approval, and in which it was proposed not to issue the Pardon; but, upon a reference again home, the case was submitted to the Law Officers there, who considered...
1839.
27 May.
Statement by
E. D. Thomson
re complaints
by H. Donnison.

it imperative on the Governor to issue the Pardons notwithstanding the Subsequent misconduct of the individuals and Such Pardons had been issued accordingly.

Mr. Donnison having applied again on the 26th Novr., 1837, for an answer to his letter of 28th October, 1837, he was written to on the 7th of the following Month, two days after Sir Richard Bourke’s embarkation for England.

30th April, 1839.
J. Deas Thomson.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 59, per ship Amelia Thompson.)

Sir, Downing Street, 28 May, 1839.

In consequence of recent Dispatches received from you relating to the amount of emigration of the labouring Class required in the Colony of New South Wales, and the means of the Land Revenue to defray the Cost of such Emigration, and in Consequence, also, of Deputations of Persons connected with the Colony having called my attention to the same subject, I thought it right to instruct the Agent General for Emigration to furnish me with his opinion and report on that point. I enclose, for your information, a copy of the Communication which I have received from him in reply, together with a copy of a letter from the Secretary to the Board of Treasury, from which you will perceive it to be the intention of H.M. Government that Emigration to New South Wales should be carried on by the Agent General for the present year to the same extent as the preceding year.

I take this opportunity of acquainting you that I have received your Dispatch No. 177 of the 31st Octr. last, with a Printed Copy of the Report of the Committee of the Legislative Council on Emigration, but unaccompanied by the appendix* to which frequent reference is made in the Body of that Report.

That Document shall not fail to receive the attentive consideration of H.M. Govt. In the meantime I have referred it to the Agent General for Emigration for any observations and suggestions which he may have to offer. I have, &c,

NORMANBY.

[Enclosure No. 1.]

TO MR. F. BARING.

Sir,

Referring to your letter of the 21st of January last on the subject of the revenue and expenditure of New South Wales and the funds applicable to emigration. I am directed by the Marquess of Normanby to transmit to you, for the consideration of the Lords Commissioners of the Treasury, the enclosed copy of a Report from the Agent General for Emigration relative to the extent to which emigration should be carried to that Colony during the present year.

* Note 32.
Although the suggestion of Mr. Elliot that Emigration to N. S. Wales should be carried on during this season to the full extent of last year appears to be in accordance with the terms of your letter of the 21st January, to which I have referred, Lord Normanby would wish to be informed whether, on a consideration of Mr. Elliot's present report, their Lordships are of opinion that his suggestion should be sanctioned.

I have, &c., [Unsigned]

[Sub-enclosure.]

MR. T. F. ELLIOT TO UNDER SECRETARY STEPHEN.

Sir, 2 Middle Scotland Yard, 22 April, 1839.

In reference to your letter of the 22nd uto., accompanied by some recent Despatches from Sir Geo. Gipps on Emigration and Finance, and adverting also to the Deputations which have waited upon the Marquess of Normanby on the same subject, I have the honor to submit the following Report for his Lordship's consideration.

It appears by the Governor's Despatch of the 19th of August, Finances of 1838, that the Land Revenues had fallen off considerably; and that, assuming the expenditure on Emigration at £100,000 per annum, Sir George Gipps estimated that nearly the whole accumulated balance in New South Wales would be exhausted by the end of the present year, and that the accruing Revenues afterwards would be unequal to the expenditure at that rate. But, in point of fact, the outlay on emigration to New South Wales by this Department alone amounted to about £116,000 last year; and, although some deduction is to be made for the proceeds of the remains of Stores and provisions sold in the Colony, it must be more than counterbalanced by the demands on the public funds for bounties on Emigrants arriving in private ships. These cannot, I apprehend, be assumed at less than £30,000 last year. There has been no notice yet, that I am acquainted with, of the renewal this year of the allowance of bounties. But it appears from the preceding statement that the continuance of the expenditure under this Department alone will be enough, according to the data of the Governor's calculation, to absorb by the end of this year the accumulated balance of former periods, and to leave the Revenues afterwards deficient.

It is proper to observe, however, that there are not wanting Anticipations reasons to hope that the general decline of the Revenue in New South Wales may have been, at any rate to the extent to which it had gone, temporary. I have understood that a Law was in contemplation, at the latest dates, to check illicit distillation, which had materially impaired the Spirit Duties. Again, the depression of the Wool-market at home in 1837 is pointed out by the Governor as one probable cause of diminution in the Sales of Land in the Colony in 1838. And, so far as a judgment may be formed from the unexampled numbers of Settlers who have been setting out of late for New South Wales with the view of buying land, it can hardly be anticipated that the receipts from that source will not be as high this year as they have been at any period before.

Making every allowance, however, for these considerations, the state of affairs, at the time when the Governor wrote, has brought distinctly into view the possibility of a deficiency in the revenue, and the question of the measures which in that case would become advisable in regard to Emigration.
1839.
28 May.

Under these circumstances, great uneasiness, as Lord Normanby is aware, has been excited amongst Gentlemen interested in the welfare of the Colony. Several Deputations have waited upon his Lordship, and have deprecated a stoppage in the supply of labor, at a moment when an annual course of Emigration has just been set into steady operation, and when Capital is proceeding into the Colony faster than ever; and they suggest that, instead of having recourse to that alternative, the Government should rather raise whatever funds might be wanted, upon the credit of the Land Revenue; on which security, it is stated, money could be procured in the city of London without difficulty, and on moderate terms.

So far as my opinion may be required on this proposal, I would state that I entirely concur in the inconvenience of putting a check to the newly created flow of Emigration to New South Wales; and in the event of the proper funds proving inadequate to its maintenance at its present rate, I feel no doubt that the best remedy, both in regard to the interest of the Colony, and to the ultimate good of the Revenue itself, would be not to curtail the amount of Emigration, but to borrow the necessary funds for its continuance on the credit of the future receipts from Land. But having submitted this opinion in general terms, I am unwilling to proceed further at present; because I believe a Report of the Council on the whole subject of Emigration, probably including this topic, may be daily expected from the Colony.

In the meanwhile, it may be observed that, whether or no the Revenue should prove ultimately defective, and whatever may be the decision taken on the project of a Loan, there seems sufficient reason not to diminish the rate of Emigration this year; for the excess of Expenditure would only, on the most unfavorable assumption yet considered, accrue towards the end of the year, and could be very easily balanced, even if the plan of borrowing funds should not be adopted out of the first proceeds of the Land Revenue next year.

Postponing then, for the further information expected from the Colony, the question of a Loan, I beg leave to apply at once very earnestly for authority to carry on the emigration of this season to the full extent of that of last year; so that, while time is taken to deliberate on the larger proposal raised by the highly respectable Deputations which have waited on Lord Normanby, the supply of labor to the Colony will not in the interval undergo any abatement, and thus their chief object will for the present be secured.

I have, &c,

T. FREDK. ELLIOT.

[Enclosure No. 2.]

MR. G. J. PENNINGTON TO UNDER SECRETARY STEPHEN.

Sir,

Treasury Chambers, 21 May, 1839.

With reference to your Letter of 30th Utto., and the Report from the Agent General for Emigration therein enclosed, the expediency of encouraging Emigration to New South Wales this year to the same extent as during the last year, I have it in command from the Lords Commissioners of H.M. Treasury to request you will acquaint the Marquis of Normanby that, adverting to the representations against any present diminution of the Expenditure for promoting Emigration, which are stated to have been submitted to his Lordship, and to the consideration that, from the large accumulation
which had occurred of Funds applicable to that purpose, the means of meeting Emigration Expenditure during the greater part of the present year to the same extent as last year are already provided, my Lords conceive that it may be advisable that Emigration to that extent should be continued for the present year; but I am to request you will further observe to his Lordship that this concurrence of my Lords in the suggestion of the Agent General is given without any reference to the Loan, which has been suggested for this object, any proposition respecting which must necessarily be accompanied by very explicit information as to the arrangements the local Government would feel enabled to make for securing a due payment of Interest and liquidation of the Principal.

I have, &c,

G. J. PENNINGTON, Pro. Secy.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 86, per ship Duchess of Kent.)

My Lord, Government House, 29th May, 1839.

I have the honor to enclose herewith answers to the Queries, which accompanied your Lordship’s Circular Despatch of the 20th May, 1838, respecting the means of finding employment in New South Wales for young persons who may have been detected in the Commission of Crime in Great Britain or Ireland.

Your Lordship will be satisfied by these Answers that there will be no difficulty in finding employment for Juvenile Offenders of either sex, but especially for Boys, should Her Majesty’s Government decide on sending them to New South Wales. The Government Establishments in this Colony may offer perhaps some facilities for the management or disposal of Juvenile offenders, which are not to be found elsewhere; but I nevertheless must avow that it appears to me very doubtful whether a Convict Colony be adapted to the purpose which the Government has in view with respect to them. It is much to be feared that, though called apprentices, they will for the most part be associated with and treated as Convict servants, and that in fact apprenticeship in New South Wales will be found to differ but little from Assignment.

Your Lordship is aware that the practice has long prevailed of transporting Boys to New South Wales. I enclose a Return of the numbers which have arrived, and been Assigned to Private service in each of the last six years; also a copy of the Government Regulations respecting the mode of assigning them.

In connection with this subject, it may not be improper to inform your Lordship that both Boys and Girls from the Orphan Schools in the Colony are placed out as apprentices under an Act of Council passed in the year 1834 (5th Wm. IV, No. 3).
1839. 29 May.

Boys and girls from orphan schools as apprentices.

About thirty Boys have been apprenticed in each year since the passing of this Act; and, though they are I fear in too many cases allowed to mix with and to be little distinguished from Convict Servants, their general conduct has been satisfactory. The greater part of the Boys are apprenticed to Mechanics and Tradesmen, and the demand for them is always greater than can be supplied. Girls from the Female Orphan School are apprenticed in the same way, and though the demand for them is not so great as for the Boys, there is no difficulty in disposing of them.

I have, &c.

GEO. GIPPS.

[Enclosure No. 1.]

Reply to queries

ANSWERS to the Queries which accompanied Lord Glenelg's Circular Despatch to Sir George Gipps, dated 20th May, 1838.

Question. 1st. What are the kind of skilled Laborer most needed and valuable in the Colony?—Answer. 1st. Carpenters, Blacksmiths, and generally all Mechanics are in demand; Shoemakers and Tailors very much so.

Question. 2nd. What is the Average rate of Wages paid for such Laborer?—Answer. 2nd. From 5s. to 8s. per diem.

Question. 3rd. Is it redundant, or could the Market usefully absorb any and what number of additional Hands?—Answer. 3rd. Very considerable additional numbers could be employed.

Question. 4th. What is the average rate of Wages paid for unskilled Labour?—Answer. 4th. 3s. to 4s. 6d. a day in the Towns. In the Country £15 to £20 per annum with Rations Lodging and Fuel for themselves and Families.

Question. 5th. Does the supply of unskilled Labourers meet the demand, or is it materially deficient?—Answer. 5th. It is very short of the demand especially in regard of Domestic Servants.

Question. 6th. Is the demand for such Labour steady, or is likely to be materially increased or diminished within the next few years?—Answer. 6th. Not likely to diminish. In all probability will vastly increase.

Question. 7th. What Sums might an unskilled Labourer without family earn Yearly?—Answer. 7th. An Agricultural Laborer without Family £21 to £30, with Rations and Lodging.

Question. 8th. Is there any extensive demand for Female Labour, and what might an unmarried female earn Yearly?—Answer. 8th. For Female Domestic Servants (especially Cooks) the demand is considerable; Wages from £8 to £16; Cooks £20.

Question. 9th. Would any considerable portion of the Community be willing to receive Juvenile Offenders as apprentices into their Houses, provided they were satisfied that they had not been confined in the ordinary Prisons but in Penitentiaries especially adapted for the purpose of their instruction and reformation and the Discipline which they had there undergone had power effectual?—Answer. 9th. People would be found ready and even anxious to receive Juvenile Offenders on their Establishments either in Town or Country; but it may be doubted whether they would take them generally into their Families, or make any essential distinction between them and their ordinary Convict Servants.
Question. 10th. Would the Colonists be inclined to pay a small premium for the services of such apprentices, so as to cover the expense of their passage from this country?—Answer. 10th. Agriculturists (but not tradesmen or mechanics) would pay perhaps a small premium from £1 to £5, but not sufficient to pay the expense of their passage from England. They would pay more or less in proportion to the term for which the services of the Boys were guaranteed to them or to the degree in which they were secured against being deprived of them by the government, for what might be deemed improper management.

Question. 11th. Would there be any difficulty in appointing an officer as protector or guardian of such apprentices, who might effectually watch over their interests during the period of their indentures?—Answer. 11th. There would be no difficulty whatever in appointing such an officer, provided a competent salary were allowed, but he would have very great difficulty in performing effectually the duties of his office, even though the apprentices were indentured only to persons living within a limited distance of Sydney; if the distance were not limited, it would be scarcely possible for him to watch over their interests or in any way control their masters.

Question. 12th. Would boys coming from such a penitentiary, instructed and skilled in agricultural labour, in the use of the plough, spade, axe, etc., and having some knowledge of tailoring, shoemaking, and of such trades as are most needful for emigrants, be sought for and preferred in the market for skilled labour?—Answer. 12th. They would certainly be sought for; whether preferred either to convict or free laborers would depend on various circumstances, though principally on the comparative dearness or cheapness of their labour.

Question. 13th. In what number at one time would it be desirable to send out boys?—Answer. 13th. Not more than 300 in the year, or more than 50 at a time.

Question. 14th. Are there facilities and materials for the formation of a committee to receive, superintend and locate the boys upon their arrival in the colony, to report from time to time to her Majesty's government their proceedings, and to give accounts of the treatment, condition, and conduct of the boys?—Answer. 14th. Upon such a committee, I should propose to employ principally government officers; a single government officer would be better than a committee; people have not leisure to serve gratuitously on committees.

Question. 15th. Would the situations of the boys be mostly in towns, or in the rural districts?—Answer. 15th. This would depend on the government. I should recommend that no boy be taken to a greater distance than 30 miles from Sydney, or, which is nearly the same thing, beyond the county of Cumberland.

Question. 16th. How long after their arrival out would they be before they obtained situations?—Answer. 16th. They would I think obtain situations readily.

Question. 17th. Where could they be kept in the interim, and how could they be employed?—Answer. 17th. There is no place at present where they could be kept separate from convicts. It would be necessary to provide one; but that would not be difficult.
1839.
29 May.

Question. 18th. If sent into the interior, how far would they be from the Seat of Government?—Answer. 18th. Answered in Nos. 11 and 15.

Question. 19th. Would there be any check on the spot upon improper treatment from masters and any one in authority to whom the boy could make his complaint?—Answer. 19th. Partly answered in No. 11. They might be placed under the particular protection of the Police Magistrate of every town or district; but there would be a difficulty in causing the masters to make any distinction between them and their convict servants.

Question. 20th. What would be the temptations and facilities of the boys running away from their masters?—Answer. 20th. The ordinary temptations which exist in all countries, the love of change and the desire to better their conditions by getting employment for wages.

Question. 21st. Where would they in case of escape be induced to go?—Answer. 21st. They might roam about the country, and attempt to get employment in parts of it where they would not be recognized, or they might try to get on board some vessel for the purpose of leaving the colony.

Sydney, New South Wales, 1st May, 1839.

[Enclosure No. 2.]

[This was a return of 991 convict boys, who had arrived in the colony in the years 1833-38, of whom 881 were assigned, and for whom there had been 1,322 applicants.]

[Enclosure No. 3.]

[This was a copy of the Government Gazette, dated 20th March, 1833, containing a notice about convict boys.]

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 61, per ship Mary Anne.)

Sir, Downing Street, 3d June, 1839.

I have received your dispatch No. 179 of the 5th Nov. last, enclosing copies of the acts passed by the Legislative Council of New South Wales in the sessions of 1837 and 1838.

With regard to the Acts of 1838, I shall defer submitting them to the Queen, until I have received the explanatory dispatch, which you state will accompany the printed copies of them.

In reference to the Acts of 1837, I have to make to you the following communication; and for more easy reference I transmit a list of those acts* with their titles.

The Act No. 1, 8 Wm. 4, for regulating the appointment of the Surveyor of the Town of Sydney and for transferring to other persons certain powers heretofore vested in the Surveyor General of the colony of New South Wales and in the Surveyors and Assistant Surveyors of Roads in the said colony, has been

* Note 33.
referred to the Master General and Board of Ordnance in so far as affects the duties of the Officers of the Royal Engineers within the Colony.

The Act No. 4, being the Annual Appropriation Act for 1838, was confirmed and allowed by Lord Glenelg’s Dispatch No. 195 of the 28th August, 1838.

The Acts, No. 5 for regulating the temporal affairs of the Church of England, and No. 7 for regulating the temporal affairs of the Church of Scotland within the Colony, were forwarded to this Department with Sir R. Bourke’s dispatch No. 105 of the 4th Novr., 1837, and were referred respectively to the Society for the propagation of the Gospel and to the Committee of the General Assembly of the Church of Scotland on Colonial Churches. As soon as I am placed in possession of the sentiments of those Bodies on the Acts in question, I shall be prepared to take her Majesty’s Pleasure upon them.

With regard to the other Acts enumerated in the List, I have to signify to you Her Majesty’s gracious approval and allowance of them.

I have to request that you will give to the proper officers of your Government such instructions as may ensure punctuality in the transmission of the Acts of the local Legislature in the manner prescribed.

I have, &c.,

NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 88, per ship Duchess of Kent; acknowledged by lord John Russell, 23rd November, 1839.)

My Lord,

With reference to the Despatch, which I had the honor to address to your Lordship on the 14th March, 1838, No. 39, preferring a claim to half salary during the interval, which elapsed between Sir Richard Bourke’s departure from the Colony and my own assumption of the Government, and also to your Lordship’s Despatch of the 7th July of the same year No. 148, admitting my claim to half-salary for that period, I have the honor to inform your Lordship that, on the receipt of the last mentioned Despatch, I caused your Lordship’s decision to be notified to Coll. Snodgrass through the Auditor General; and that some months afterwards, viz., on the 4th March last, I drew the half salary, to which your Lordship had decided me to be entitled. No repayment however having in the mean time been made by Coll. Snodgrass, I caused a letter to be addressed to him on the subject by the Colonial Treasurer, and I have now the honor to enclose to your Lordship a Copy of the reply received
184 HISTORICAL RECORDS OF AUSTRALIA.

1839.
4 June.

Criticism of claim of K. Snodgrass to full salary.

Proposal for adjustment with K. Snodgrass.

by the Treasurer, in which your Lordship will perceive that Colonel Snodgrass demurs to the authority of your Lordship in disallowing his claim to full salary.

Upon Coll. Snodgrass' letter, I think it only necessary to observe that, as the Act of Council* awards the salary of £5,000 a year to the Governor, or the acting Governor for the time being, I, as Governor, had as much right, even in the strict construction of the words of the Act, to the whole salary, as Coll. Snodgrass had in his capacity of acting Governor; and it appears to me that the only case, in which the Acting Governor can be entitled to the whole salary, is when there is no Governor. If, for instance, the Governor on the spot were to die, the acting Governor would be entitled to full salary from the date of his death, until the day when a Successor might be appointed to him by Her Majesty, because during this interval there would be no Governor; but, as soon as a Governor is appointed and gazetted, and that your Lordship's Despatches are addressed to him, the case is altered; and to maintain that a person so gazetted and so addressed by the Secretary of State is still not the Governor, until he opens his Commission on the spot, would be contrary to reason as well as to long established practice in every analogous case.

I shall await your Lordship's directions before I take any farther steps in this matter, though I think it not inexpedient to suggest to your Lordship what appears to me the readiest way of getting rid of all difficulty in it. A proposal is before the Legislative Council, as stated in my Despatch of the 4th Novr., 1838, No. 187, for granting to Coll. Snodgrass remuneration for certain extra services performed by him whilst holding the situation of Brigade Major in the Colony, which remuneration, if granted, will afford a means of obtaining repayment, without having recourse to any unpleasant extremities.

I have, &c.,
GEO. GIPPS.

[Enclosure.]

[A copy of this letter is not available.]

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 63, per ship Mary Anne.)

5 June.

Sir,
Downing Street, 5th June, 1839.

With reference to the Circular dispatch addressed to you by Lord Glenelg on the 13th Novr. last and to the correspondence therein enclosed with the Lords Commissioners of the Treasury,

* Note 34.
I now transmit, for your information and guidance an Extract of a letter from the Secretary to that Board, relative to the temporary arrangements to be made for filling up appointments in the Customs Departments in the Colonies when casual vacancies may occur, and also in regard to the arrangement of salaries to Officers of the Customs. I have, &c.,

NORMANBY.

[Enclosure.]

EXTRACT OF A LETTER FROM G. J. PENNINGTON, ESQRE., TO JAMES STEPHEN, ESQRE., DATED TREASURY CHAMBERS, 1ST MAY, 1839.

"MY LORDS are desirous of observing to Lord Normanby that the communications made to his Lordship's Predecessor by direction of this Board on 16th Novr. and 21st December, 1837, relating to the Customs Establishment in Ceylon, and in Nova Scotia and Newfoundland, will apprise his Lordship of the principles upon which it has been considered advisable by this Board that appointments in the Establishments of that Department in the Colonies should be filled. In accordance with these principles, my Lords have to suggest that the Lieutt. Governor of Van Diemen's Land should be informed that, in the event of situations in the Customs Establishments in the Colonies becoming vacant, it is the duty of the officers in charge of the Colonial Government to authorize such temporary arrangements only as may be necessary for keeping the Department in a due state of efficiency, until the directions of this Board can be obtained; and that, in those arrangements, the services of officers already in the Department should, as far as practicable, be made available; and, if the provisional appointment of additional officers is unavoidable, those appointments shd. be confined to the subordinate situations in the Department, and on all occasions the persons thus employed should be given to understand that their employment is only temporary.

"My Lords are at all times ready to attend to suggestions for the more economical performance of any branch of the public service or arrangement of any Public Department under their control; and, as far as may be consistent with the efficiency of any Department and with a due regard to the just claims of Individuals who have been placed therein, to pay immediate attention to every proposition for that purpose; but my Lords cannot consider the Governor of a Colony at liberty to reduce the scale of Salary assigned after due enquiry and deliberation by the superior authority in this country, most competent to judge of the extent of trust to be reposed in the officer, or of the degree of information and ability required for the proper execution of the duties likely to devolve on him, more especially when the office is connected with an Establishment of such general importance as that of the Customs to the trading interests of the Empire at large, and in which it is so very desirable to avoid all local influence, and when the officer has moreover undertaken a long and expensive voyage on the faith of the prospect of provision held out to him.

"I am further to desire you will state to Lord Normanby that there would be strong objection to blending the offices of Landing Waiter
and Searcher in the Customs and of Colonial Harbour Master, as their respective duties and interests have in other cases been found incompatible.

"I am likewise to request you will state to his Lordship that my Lords deem it necessary to remark that the Establishments and expenditure of every branch of the Department under the management of the Board of Customs, both in this Country and in the Colonies, are in every instance under the exclusive direction of, and regulated by my Lords' Board; and that, in those cases in which the expenses of the Department are not paid as at Van Diemen's Land out of the general collections, special provision has been made by Local Legislative enactment with my Lords' concurrence for placing at their disposal such sums as may be requisite for defraying those expenses.

"My Lords have at all times every disposition to attend to suggestions from the Executive or Legislative Authorities in the Colonies relating to any modifications of the Establishments or Expenditure in question; but although, in the case of Van Diemen's Land and of some other Colonies, where it has been considered necessary to make the special provision above adverted to, my Lords have been induced, with a view to preserve uniformity in the accounts of the Local Treasuries, and to give the Local Authorities every requisite cognizance of the whole of the Local expenditure, to assent to the payment into the Treasury of the gross amount of the duties collected by the Customs department without the customary deduction of the expenses of collection, and to the payment of these expenses from the Treasury under the Governor's Warrant in the same manner as other disbursements of the Colonial Government, it was not in any respect their intention, in sanctioning this course of proceeding, to delegate to the Colonial Govts. any discretionary power of regulating the Salaries of the Customs Establishments or to place the officers of that Department, who are particularly charged with the execution of Laws, and the enforcement of regulations which having reference to the general Commerce of the Empire may often appear inimical to particular local interests, in any respect in dependence on the local Colonial Authorities.

"Referring to these considerations, I am to request you will in conclusion move the Marquis of Normanby to point out to the Lieutenant Governor of Van Diemen's Land the misapprehension, into which his Excellency appears to have fallen, in regard to the exercise of an option in providing for Salaries assigned by my Lords' Board for the Customs Establishment; and that Sir John Franklin may be at the same time apprized that the charge for this Establishment constitutes one of those heads of expenditure already fixed under the sanction of H.M. Government, to which reference is made in the 6th Section* of the 5th Chapter of the 'rules and regulations' issued by the Secretary of State on 30th March, 1837; and that, should the practice before adverted to of paying over the collections without deduction give rise to any difficulty in providing for that change, my Lords would be under the necessity of reverting in the case of the Colony under his Government to the ordinary usage in regard to the expenses of collection by desiring the officers to make the requisite deductions for defraying these expenses before their collections are paid over to the Treasurer."

* Note 35.
Sir George Gipps to Lord Glenelg.

(Despatch No. 89, per ship Duchess of Kent; acknowledged by Lord John Russell, 19th November, 1839.)

My Lord,

Government House, 7th June, 1839.

With reference to my Despatch of the 9th March last, No. 46, in which I informed your Lordship that I had offered to Mr. Alfred Stephen a seat on the Bench of New South Wales, vacant by the absence of Mr. Justice Burton, I have now the honor to report that Mr. Alfred Stephen, having accepted the same arrived* in this Colony on the 7th May, and was duly appointed by me an Acting Judge of the Supreme Court, with the advice of the Executive Council, in the terms† of the 22nd Geo. III, Ch. 75.

I cannot make this report to your Lordship, without expressing my decided opinion that Mr. Stephen's appointment is now viewed with very general satisfaction in the Colony; and I beg to do this particularly in reference to my Despatch of the 9th March, No. 47, with which I transmitted a letter to your Lordship from the Chief Justice of New South Wales.

Mr. Alfred Stephen has, for the purpose of accepting this seat on the Bench, given up a very lucrative practice in Van Diemen's Land, a practice which, according to his own statement, brought him in more than double the income which he will receive as a Judge. I therefore feel it my duty to recommend, as strongly as I can with propriety, the confirmation of Mr. Stephen's appointment, should this be placed within your Lordship's power either by the resignation of Mr. Justice Burton or by the appointment of an additional Judge, a measure which was announced to me to be in contemplation by your Lordship's Despatch of the 3rd April, 1838, No. 98.

I have been requested by Mr. Stephen to forward to your Lordship the accompanying copy‡ of a Van Diemen's Land newspaper, containing addresses which were presented to him on the occasion of his leaving that Colony; and I have great pleasure in bringing the same under your Lordship's notice, as they satisfactorily prove the high estimation in which Mr. Stephen was held by all classes in that Colony.

I also enclose to your Lordship a copy of Mr. Stephen's letter to me on the subject of his appointment.

GEO. GIPPS.

[Enclosure.]

[A copy of this letter will be found in a volume in series IV.]

* Note 36. † Note 37. ‡ Note 38.
1839, 10 June.

Report required re T. Sims.

Sir, Downing Street, 10 June, 1839.

I transmit to you the copy of a letter from Mr. Sewell, applying for information respecting the fate of Mr. Thomas Sims, a Builder in New South Wales; and I have to request that you will send home any information which you may be able to obtain on the subject.

I have, &c.,

NORMANBY.

[Enclosure.]

MR. T. SEWELL TO MARQUESS OF NORMANBY.

My Lord Marquiss, 19 Castle St., Holborn, 7 June, 1839.

I shall esteem it an act of great kindness if your Lordship will inform me at your earliest convenience if Mr. Thomas Sims, a Builder, etc., residing in King Street, Sydney, New South Wales, is still living.

His Relations have repeatedly written to him but have received no answer, which I hope will be considered a sufficient apology for my troubling your Lordship with this application.

I have, &c.,

THOS. SEWELL.

Application by K. Snodgrass for payment for extra services.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 72, per ship Mary Anne; acknowledged by Sir George Gipps, 3rd October, 1840.)

Sir, Downing Street, 10 June, 1839.

I have received your dispatch No. 187 of the 16th Nov. last with a Minute of the Legislative Council of New South Wales respecting an application from Lieutt. Colonel Snodgrass for remuneration for services which he performed in the Colony, unconnected with his duties as Brigade Major.

I transmit, for your information and guidance, the copy of a letter from the Board of Treasury on this subject, by which you will perceive that you are authorized to grant to Lieut. Col. Snodgrass additional pay for the period in question.

I have, &c.,

NORMANBY.

[Enclosure.]

MR. G. J. PENNINGTON TO UNDER SECRETARY STEPHEN.

Sir, Treasury Chambers, 17 June, 1839.

With reference to your letter of the 17th Ult. and the Dispatch therein inclosed from the Governor of N. S. Wales, respecting the application for remuneration brought by Lt. Colonel Snodgrass before the Legislative Council of that Colony, for services which he has performed since 1829 unconnected with his duties as Brigade Major, I have it in command from the Lords Commissioners of H.M.'s Treasury to request you will state to the Marquis of Normanby that, altho' my Lords consider retrospective claims of the
GIPPS TO GLENELG.

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description of those preferred by Colonel Snodgrass to be liable to just obligation, they will not withhold their sanction for the issue to that Officer from Funds applicable to Convict services in N. S. Wales of the amount of the Extra Pay at the rate of 7s. 6d. per diem, which had been granted to the officer who had succeeded him in the Command and superintendence of the Mounted Police for the period from 1st January, 1829, to 18 Oct., 1830, during which he is stated to have performed the duties of that Appointment; but my Lords cannot recognize any claims to further Additional Allowance for Fuel or Forage in respect of that Appointment, or for further remuneration for the charge of arms or ammunition from which, on the formation for other purposes of a regular Ordnance Establishment in N. S. Wales, he had been relieved.

I am further to request you will move Lord Normanby to convey the requisite authority to the Governor of N. S. Wales for the issue of the additional Pay to Colonel Snodgrass which My Lords have now sanctioned.

I am, &c.,

G. J. PENNINGTON, pro. Secy.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 90, per ship Duchess of Kent.)

My Lord, Government House, 10th June, 1839.

I have the honor to report that, in obedience to the directions contained in your Lordship's Despatch of the 21st Decr., 1838, No. 267, and the Treasury letter which accompanied it of the 19th of the same month, I have enquired into the way in which the Religious Books, delivered from certain Convict Ships to the Revd. Willm. Cowper of Sydney, have been disposed of, the Books being those which are alluded to in several statements furnished to the Treasury by the Comptroller of Victualling.

The Revd. Mr. Cowper states that these Books have been distributed by him to the different Convict Establishments throughout the Colony under the sanction of the Lord Bishop of Australia; that none of them have been sold; and that, if sold, they would in his opinion realize but a very small sum, as not only are the Books from Convict Ships received generally in a torn and damaged state, but they are all also marked with the word "Convict" on the outside.

Mr. Cowper estimates the value of the Books at the following sums:

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Authority for payment to K. Snodgrass for extra services.

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1839.
10 June.
Proposed test sale of books.

11 June.
Approval of regulations re assignment of convicts.

12 June.
Appointment of Revd. R. Allwood.

In order however to arrive at the more correct value of these Books, I beg to report that I have directed the next quantity, which shall be received of them, to be put up to auction and sold, with the other stores delivered from the ships.

On this subject, I beg also to refer your Lordship to my own Despatch of the 3rd Sept., 1838, No. 136.

GEO. GIPPS.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 65, per ship Mary Anne.)

Sir, Downing Street, 11 June, 1839.
I have received your dispatch No. 158 of the 8th October last, enclosing additional Regulations for the Assignment of Convicts in New South Wales, which you had issued with the advice of the Executive Council of your Government, and I have to acquaint you that Lord John Russell, to whom your dispatch was referred, has expressed his approval of the whole of these Regulations.

I have, &c,
NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 66, per ship Mary Anne.)

Sir, Downing Street, 12 June, 1839.
I have the honor to acquaint you that the Revd. Robt. Allwood, having been recommended by the Society for the Propagation of the Gospel, and approved by the Bishop of London, has been appointed to the Ecclesiastical Establishment of New South Wales; and that I have authorized the Agent General to pay him the usual allowance for outfit and passage, on the production of a Certificate of his having engaged his Passage to the Colony.

I have, &c,
NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.
(Despatch No. 91, per ship Duchess of Kent; acknowledged by lord John Russell, 9th November, 1839.)

My Lord, Government House, 12 June, 1839.
I have the honor to report to your Lordship that I opened the Session of the Legislative Council of this Colony for the despatch of the ordinary business of the year on the 11th Inst.; and I beg to enclose to your Lordship a copy of the address, which I delivered on that occasion.

I have, &c,
GEO. GIPPS.

[Enclosure.]
[A copy of this address will be found in the "Votes and Proceedings" of the legislative council.]
GIPPS TO GLENELG.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 67, per ship Mary Anne.)

Sir,
Downing Street, 13 June, 1839.

I have received your dispatch No. 182 of the 8th Novr. last relative to the expense, estimated at £500, of preparing certain Returns with reference to Convict discipline, which have been called for by the House of Commons.

Having referred your dispatch to the Lords Commissioners of the Treasury, their Lordships have stated in reply that, as you appear to have adopted every proper precaution for preventing any unnecessary expense in the preparation of the Returns called for by the House of Commons, they are not aware that any further Instructions can be given on the subject.

I have, &c,
NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.
(Despatch No. 92, per ship Duchess of Kent; acknowledged by lord John Russell, 15th November, 1839.)

My Lord,
Government House, 13th June, 1839.

In the Despatch No. 84, which I addressed to your Lordship on the 7th June, 1838, I had the honor to bring under your Lordship's notice the great inconvenience felt in this Colony from the Monopoly of Coal which is supposed to be held by the Australian Agricultural Company. I have now the honor to submit to your Lordship a Memorial, which I have received on the same subject from the Directors of the Gas Company of Sydney.

As I have not yet received an Answer to my Despatch above alluded to, I trust I may respectfully urge upon your Lordship the extreme importance to the People of this Colony of the question which is raised in it respecting the Monopoly of Coal.

I have, &c.,
GEO. GIPPS.

[Enclosure.]

The Humble Memorial of the undersigned, being the Directors of the Australian Gas-Light Company, in the Colony of New South Wales.

To Her Majesty's Principal Secretary of State for the Colonial Department, etc., etc.,

Humbly sheweth,

1. That the Australian Gas-Light Company aforesaid was instituted in the year 1836, and was legally organized by an Act of the Governor and Legislative Council of the said Colony, passed in the Eighth year of the reign of His late Majesty King William the Fourth, intituled,
1839.
13 June.
Memorial from directors of Australian gas company re monopoly of coal-mining by A.A. company.

"An Act for lighting with Gas the Town of Sydney, in the Colony of New South Wales; and to enable certain Persons associated under the name, style, and firm of 'The Australian Gas-Light Company,' to sue and be sued in the name of the Secretary for the time being of the said Company, and for other purposes therein mentioned."

2. That it being generally understood that the Australian Agricultural Company had received from the Government of His late Majesty King George IV the privilege of being the exclusive workers of Coal Mines in this Colony for a long term of years, your Memorialists felt it their duty, in justice to the Company they represent, to apply to the local Government for official information as to the extent and duration of such monopoly; and, in reply they were informed, by a letter from the Honorable the Colonial Secretary to their Solicitor, dated the 10th November, 1838, that the arrangements made by Her Majesty's Government with the Australian Agricultural Company prevented the local Authorities from giving permission to any other Society or Persons to open Coal Mines without the previous sanction of the Secretary of State; but that His Excellency the Governor had referred the subject to your Lordship, in the hope that the Government might be allowed to work or cause to be worked some Coal that had recently been discovered in Bass Straits. (Vide Appendix A.)

3. That, the said letter not containing all the information which your Memorialists thought it desirable they should possess, they again addressed the local Government, by a letter from their Secretary to the Honorable the Colonial Secretary, dated the 10th December, 1838, stating that, your Memorialists deeming it of great importance to the interests of their Company that they should clearly understand the nature, extent, and duration of the restrictions imposed upon the public with reference to this subject, since their consumption of Coal would be the heaviest charge upon the Company's operations, they most respectfully requested that His Excellency the Governor would be pleased to permit a copy of the Secretary of State's Instructions, or any other document relating thereto, to be furnished to them for that purpose. (Vide Appendix B.)

4. That, in reply to the said application, your Memorialists had the honour to receive a letter from the Honorable the Colonial Secretary, addressed to their Secretary, dated the 9th January, 1839, enclosing an extract of the letter of Agreement between the Colonial Government and the Australian Agricultural Company, relative to the working of the Coal Mines, and explaining, at the same time, that it was, in consequence of the absence of any more conclusive document, that His Excellency had thought it necessary to make application to your Lordship, as communicated to your Memorialist's Solicitor in the letter aforesaid. (Vide Appendix C.)

5. That, on referring to the Act of Parliament under which the Australian Agricultural Company aforesaid is constituted, (5 George IV. Cap. 86), and to the Royal Charter granted in pursuance of that Statute, your Memorialists find that nothing in either of the said instruments contained gives to the said Company any Monopoly of Coal, or other Mines or Minerals whatsoever; the
privileges of the said Company not extending beyond the right of holding Lands as a Body Corporate, and as mere Agriculturists.

6. That your Memorialists can therefore arrive at no other conclusion than that any exclusive privilege, held by the said Company with respect to Coals and Coal Mines, must be founded upon some arrangement made by the Secretary of State for the time being.

7. That, at the time such arrangement was entered into, the consumption of Coal was confined principally to private dwelling-houses, from which circumstance, and from the comparative smallness of the then population, the Monopoly might not have caused any serious inconvenience; but, at the present day, when Steam Machinery, both on land and on water, has been extensively introduced into the Colony, and is rapidly becoming more and more extensive, and when, by the instrumentality of the Company represented by your Memorialists, this large and thriving metropolis is about to be lighted with Coal Gas, and when, moreover, by the increasing scarcity of wood fuel, and the great advancement of the town in houses, population, and manufactures, the demand for Coal is every day becoming more extensive, it will be manifest to your Lordship, that the said Monopoly becomes a serious incumbrance to the public and a cause of deep but just complaint.

8. That the said Monopoly is felt by your Memorialists, and by the community at large, as the more grievous, inasmuch as Coal abounds in many parts of the Colony, and in some places, as your Memorialists have reason to believe, of better quality than that supplied from the pits of the aforesaid Australian Agricultural Company.

Wherefore your Memorialists humbly pray that your Lordship will be pleased to take the premises into your most favorable consideration, and take such measures for the early termination of the said Monopoly, as to your Lordship may seem consistent with the rights and interests of your Memorialists, and other Her Majesty's loyal and dutiful subjects in the Colony of New South Wales.

And your Memorialists will ever pray, etc., etc., etc.

W. V. Wilson, Chairman.
T. Shadforth.
Geo. Barney.
David Chambers.
A. B. Spark.
Charles Nicholson.

Ambrose Warren.
Pat. Barker.
Thomas Woolley.
Edye Manning.
Wm. Macpherson.
Adolphus Wm. Young.

Sydney, New South Wales, 20th May, 1839.

[Appendix A, referred to in Paragraph 2.]

Sir, Colonial Secretary's Office, Sydney, 10th November, 1838.

In acknowledging the receipt of your letter of the 5th Instant, requesting Monopoly of information with regard to the right of the Australian Agricultural Company to the coal-mining exclusive working of Coal Mines, I am directed by the Governor to inform you that the arrangements made by Her Majesty's Government with the Company prevent the A.A. company, local authorities from giving permission to any other Society or persons to open such Mine without the previous sanction of the Secretary of State.

His Excellency however has referred the subject to that Minister in the hope that the Government may be allowed to work, or cause to be worked, some Coal that has recently been discovered in Bass' Straits.

I have, &c.,

E. Deas Thomson.

To D. Poole, Esqr., Solicitor to the Australian Gas-Light Company.

Ser. I. Vol. XX—N
1939. 13 June. Request for details re monopoly granted.

[Appendix B, referred to in Paragraph 3.]

Sir, Australian Gas-Light Company, Sydney, 10 December, 1838.

I am desired by the Directors of this Company to acknowledge the receipt of your letter to their Solicitor, dated the 10th Ultimo, informing him, in reply to his of the 5th, that the arrangements made by Her Majesty's Government with the Australian Agricultural Company prevent the local authorities from giving permission to any other Society or persons to open Coal Mines without the previous sanction of the Secretary of State; and that His Excellency the Governor had referred the subject to that Minister in the hope that the Government may be allowed to work, or cause to be worked, some Coal that has recently been discovered in Bass' Straits.

The Directors deeming it of great importance to the interests of the Company that they should clearly understand the nature, extent, and duration of the restrictions imposed upon the public with reference to this subject, since their consumption of Coal will be the heaviest charge upon the Company's operations; they have directed me to request, more respectfully, that His Excellency the Governor will be pleased to permit a copy of the Secretary of State's instructions, or any other documents relating thereto, to be furnished to me for that purpose.

To the Honorable The Colonial Secretary.

I have, &c.,

R. MANSFIELD, Secretary.

[Appendix C, referred to in Paragraph 4.]

Reverend Sir, Colonial Secretary's Office, 9 January, 1839.

Transmission of agreement.

In compliance with the request contained in your letter of the 10th ultimo on behalf of the Australian Gas-Light Company, I have the honour to forward you an Extract of the letter of Agreement between the Colonial Government and the Australian Agricultural Company relative to the working of the Coal Mines, and to explain at the same time that it was, in consequence of the absence of any more conclusive document, that His Excellency thought it necessary to make application to the Secretary of State, as communicated to Mr. Poole in my letter of 10th November last.

I have, &c.,

E. DEAS THOMSON.

The Reverend R. Mansfield, Secretary to the Australian Gas-Light Company.

EXTRACT from Colonial Secretary's Letter to Sir Edward Parry, Commissioner for the Australian Agricultural Company, dated 25 June, 1830.

Agreement re monopoly of coal-mining for N.A. company.

(10) "No Land is to be granted by Government during thirty one years after the date of the present Grant without a special Reservation of all Coal and Coal mining for the A.A. company, for the purpose of working any Coal Mines to any other Company or Individual without previous sanction of the Secretary of State, which, however, would probably be granted, if the Company were to avail themselves of their Monopoly by imposing an exhorbitant price for their Coals."

14 June. Refusal to interfere in case of J. Catterall.

SIR, Downing Street, 14 June, 1839.

I have received a letter from Mr. Joseph Catterall dated the 15th Decr. last, on the subject of a fine* imposed upon him by Mr. Justice Burton for an alleged contempt of Court; and I have to request that you will acquaint Mr. Catterall that I must disclaim, on behalf of Her Majesty's Executive Government, all right of interference in this matter.

I have, &c.,

NORMANBY.

* Note 40.
Sir George Gipps to Lord Glenelg.

(Despatch No. 93, per ship Duchess of Kent; acknowledged by Lord John Russell, 16th November, 1839.)

My Lord,

Government House, 15 June, 1839.

At the earnest request of Mrs. Jane Du Moulin, Widow of the late Surgeon Du Moulin of the 50th Regiment, I do myself the honor to forward to your Lordship a copy of a Memorial, which she has lately addressed to Major General Sir Maurice O'Connell, the Officer Commanding Her Majesty's Troops in the Colony, and which has been, I believe, transmitted by Sir Maurice O'Connell to Lord Hill.

Mrs. Du Moulin previously addressed a Memorial to me, praying for a Grant of Land, and it is in consequence I believe of my having expressed to her my inability to comply with her request, that she has endeavoured to bring her case under the consideration of Her Majesty's Government through a different channel.

Mrs. Du Moulin is left in very distressed circumstances with twelve children dependent on her; and it is within my knowledge that her deceased husband (who died very suddenly) was on the point of retiring from the service for the purpose of settling in this Colony, and of availing himself of the usual advantages granted to officers in the purchase of land.

If any case therefore could arise to justify a departure from the strict Regulations of the service, I think Mrs. Du Moulin's request might be accounted one; but, at the same time, I do not feel myself at liberty to press it with any greater degree of earnestness on the attention of your Lordship.

I have, &c,

Geo. Gipps

[Enclosure.]

The Humble Memorial of Jane, the Widow of the late James Andrew Du Moulin, Surgeon of Her Majesty's 50th Regiment of Foot, deceased.

To The Right Honorable General Lord Hill, Commander in Chief of Her Majesty's Army, etc., etc., etc.

Sheweth

That your Memorialist's late Husband aforesaid received his first Commission as Assistant Surgeon in His Majesty's Army on the 28th April, 1804, and thence continued to serve his King and Country until the close of the Peninsular War, throughout the whole of which he served with fidelity and honour; on the 25th April, 1834, he had the honour to receive a Commission from His late Majesty, dated the 23rd April, 1834, appointing him Surgeon of the 50th Regiment then under orders to proceed to New South Wales.

That your Memorialist's late Husband arrived with his family in this Colony on the 15th September, 1834, and departed this life on the 14th January last, leaving your Memorialist and thirteen children, nine of whom are wholly dependent upon her for Support.
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HISTORICAL RECORDS OF AUSTRALIA.

That, at the time of his lamented decease, it was the declared intention of your Memorialist’s late Husband to retire from the Army in a short time and to commence his pursuits as a Settler, claiming the remission in his purchase of Crown lands to which as an Officer in the Army he was entitled under Government regulations.

That the remission of purchase Money, to which your Memorialist’s late Husband was entitled as a Surgeon in the Army of upwards of Twenty years’ Service, was £200 Two Hundred Pounds, being equal to 800 Eight Hundred Acres of land at the minimum price of five shillings 5s. p. Acre.

That, under the distressing circumstances of the case, the great length of Service, and the numerous surviving family of the late Dr. Du Moulin, your Memorialist is induced to hope that your Lordship will favourably view her memorial, and will in your Lordship’s goodness further bring the Subject to the notice of the Right Honorable The Secretary of State for the Colonies in the hope that he will Authorize a grant of Eight Hundred acres of land, being made to Her as an equivalent for the remission to which her late Husband was entitled as aforesaid.

And your Memorialist will ever Pray, etc., etc., etc.,

JANE DU MOULIN.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 70, per ship Mary Anne.)

17 June. Sir, Downing Street, 17 June, 1839.

Shipment of With reference to your dispatch No. 129 of the 23d Augt.

last, I transmit for your information the copy of a letter from the Board of Treasury, stating that the necessary directions have been given for procuring and sending to New South Wales the Convict clothing and stores required for 1839-40.

I have, &c,

NORMANBY.

[Enclosure.]

MR. G. J. PENNINGTON TO UNDER SECRETARY STEPHEN.

Sir, Treasury Chambers, 13 June. 1839.

Instructions I have it in command from the Lords Commissioners of H.M. Treasury to acquaint you, for the information of the Marquis of Normanby, and with reference to your letter of the 8th March last, that my Lords have requested the Master General and Board of Ordnance to give directions for procuring and transmitting to N. S. Wales the Convict Clothing and Stores required for 1839-40 according to a reduced List furnished by the Ordnance Board valued at

For Convict Stores ........................................ £603

Materials for making Female Clothing ............ £1,739;

and I am further to acquaint you that my Lords have also desired the Comptroller of the Stationery to supply the stationery applied for.

I have, &c,

G. J. PENNINGTON, pro. Secy.
NORMANBY TO GIPPS.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch marked " Separate " and " Confidential," per ship Mary Anne.)

Sir,

Downing Street, 17 June, 1839.

I transmit to you herewith copies of a correspondence with the Lieut. Governor of Van Diemen’s Land with reference to a doubt, which has been raised by the Puisne Justice of the Supreme Court of that Colony, with regard to the legality of the appointment under which Sir John Franklin is acting as Lieut. Governor of Van Diemen’s Land.

I hope that long ere this Sir J. Franklin will have communicated with you as to the necessity of the Commission* of the Governor of Van Diemen’s Land being transmitted to and deposited in that Colony. If that unfortunately should not be the case, you will lose no time in sending down the Commission in order that it may be duly proclaimed.

In order to remove any doubt as to the legality of the acts of the Lieut. Governor, I propose to introduce into the Act, which must be passed during the present Session for continuing the New South Wales Act, a Clause containing such provisions as may be necessary for that purpose.

I have, &c.,

NORMANBY.

[Enclosures.]

(1) Despatch from Sir John Pranklin to Lord Glenelg, dated 22nd January, 1839;
(2) Letter from chief justice Pedder to colonial secretary Montagu, dated 27th December, 1838;
(3) Letter from Mr. Justice Montagu to colonial secretary Montagu, dated 31st December, 1838;
(4) Letter from colonial secretary Montagu to chief justice Pedder, dated 3rd January, 1839;
(5) Statement re commissions by chief justice Pedder, dated 11th January, 1839;
(6) Commission for chief justice granted by Sir John Franklin, dated 19th December, 1838;
(7) Despatch from Sir John Franklin to Lord Glenelg, dated 2nd February, 1839;
(8) Commission for Sir John Franklin as lieut.-governor, dated 2nd July, 1838;
(9) Two despatches from Marquess of Normanby to Sir John Franklin, dated 17th June, 1839.

Copies of these papers will be found in a volume in series III.)

* Note 41.
1839.
18 June.

Protestant chaplain for convicts.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 71, per ship Mary Anne.)

Sir,
Downing Street, 18 June, 1839

I have received your dispatch No. 183 of the 9th Nov. last, and I have to convey to you the sanction of Her Majesty's Government for the appointment of a Protestant Chaplain for the religious Instruction of the Convicts in New South Wales, with a Salary of £200 per annum, together with an extra allowance of £130 a year.

I have, &c.,
NORMANBY.

19 June.

Instructions re leave of absence for J. H. Plunkett.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 73, per ship Mary Anne; acknowledged by Sir George Gipps, 20th March, 1841.)

Sir,
Downing Street, 19 June, 1839.

I have received your Dispatch No. 203 of the 27th December last, enclosing an application for Leave of Absence from the Attorney General of New South Wales.

With reference to the difficulties which you have reported in acceding to Mr. Plunkett's application, I can only observe that Leave of Absence must be granted to that Gentleman on the best terms, which it may be possible to make with a due regard to the public expense, and to the efficient discharge of the duties of his Office.

I have, &c.,
NORMANBY.

20 June.

Pension for Sir F. Forbes.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 75, per ship Mary Anne.)

Sir,
Downing Street, 20th June, 1839.

I have received your dispatch No. 162 of the 15th October last, reporting that the Legislative Council of New South Wales had, after considerable opposition, voted a pension of £700 a year to Sir F. Forbes, the late Chief Justice of the Colony, to the end of 1839.

Having referred your dispatch to the Lords Commissioners of the Treasury, their Lordships have stated in reply that they only deem it necessary to observe, with reference to the Proceedings of the Council above adverted to, that the Pension of Sir Francis Forbes cannot be defrayed from any other source than the revenues of New South Wales.

I have, &c.,
NORMANBY.
SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 95, per ship Palestine.)

My Lord,

Government House, 20th June, 1839.

On the receipt of your Lordship's Despatch No. 255 of the 8th Decr., 1838, enclosing a copy of a letter from Mrs. Catherine Hanmer, and directing me to cause enquiries to be made respecting her husband, the son of Captain Hanmer, formerly Barrack-master of Nottingham, I have the honor to inform your Lordship that, in answer to an advertisement which I caused to be inserted in the Government Gazette of this Colony, the only information I have received is that a young man named Hanmer sailed from London in the year 1833 by the ship "Resource," J. J. Coombes, Master, that he then appeared about 19 years of age, and that he left the ship at Simon's Bay (Cape of Good Hope), having there received the offer of a situation.

I have &c.,

GEO. GIPPS.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 76, per ship Mary Anne; acknowledged by Sir George Gipps, 15th November, 1839.)

Sir,

Downing Street, 21 June, 1839.

With reference to my despatch, No. 58 of the 27th ultimo, I transmit, for your information, the copy of a Letter and its enclosure from the Secretary to the General Commanding in Chief, with a further communication from Surgeon Lewis in explanation of his former report, relative to the state of the Prison Cells in New South Wales.

I have &c.,

NORMANBY.

[Enclosure.]

LORD FITZROY SOMERSET TO UNDER SECRETARY STEPHEN.

Sir,

Horse Guards, 13 June, 1839.

Referring to my letter of the 20th Ult., relating to the state of the Prison Cells in N. S. Wales, I am directed by the General Commanding in Chief to transmit to you, for the information of the Marquis of Normanby, the Copy of one from Surgeon Lewis of the 4th Foot stating in explanation that, since the period alluded to in his Communication to Dr. Murray, almost all the Cells both at Parramatta and Sydney, in consequence of his representation to his Commanding Officer on their state, had undergone such repairs and alterations together with new ones about being built, as to leave no further grounds for any report from him on that head.

I am, &c.,

FITZROY SOMERSET.
1839.
21 June.

Repairs and alterations to cells at Parramatta and Sydney.

Explanation re previous report.

[Sub-enclosure.]

SURGEON LEWIS TO SIR J. MCGRIGOR.

Sir, Junior United Service Club, 2nd June, 1839.

With reference to Dr. Murray's Report from Madras on the subject of Solitary Confinement in the Army causing the General Commanding in Chief's disapprobation of my apparent remissness in not having, previously to my leaving N.S. Wales, drawn the attention of the Civil and Military Authorities to the bad state of the Cells in that Colony, I have the honor to state in explanation that, since the period alluded to in my communication to Dr. Murray, almost all the Cells, both at Parramatta and Sydney, in consequence of my representation to my Commanding Officer on their state, have undergone such repairs and alterations, together with new ones about being built, as to leave no further grounds for any report from me on that head.

I beg leave further to add that, had I known Dr. Murray intended to have made my partial communication the subject of an official report, having in it given my opinion solely on the deleterious effects produced by protracted solitary confinement, as it was then carried into effect, in comparison with the other modes of Military Punishment. I did not consider it necessary to make the above explanation, which I hope will be sufficient to remove the blame which has been attached to me.

I have, &c.,

THOS. LEWIS, M.D.,
Surgeon, 4th King's Own.

22 June.

Instructions re half salary for C. M. Lewis.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 77, per ship Mary Anne.)

Sir, Downing Street, 22 June, 1839.

I have received your dispatch No. 195 of the 8th Dec. last respecting Mr. Lewis, late Master of the Colonial Vessel "Governor Phillip."

As Mr. Lewis has returned to New South Wales, I have only to refer you to my dispatches Nos. 29 and 35 of the 27th March and the 6th April last, and to leave the question of Mr. Lewis' half Salary to your decision.

I have, &c.,

NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 96, per ship Palestine.)

My Lord, Government House, 22nd June, 1839.

In reply to your Lordship's despatch No. 131 of the 20th June, 1838, written at the instance of Mr. H. N. Jevens, and making enquiry respecting the fate of Elinor Dwyer, I have the honor to acquaint your Lordship that, after some trouble,
NORMANBY TO GIPPS.

Elinor Dwyer has been discovered, and that she is married and doing well in the Colony. I enclose to your Lordship a Copy of a letter respecting her, which has been addressed to my Private Secretary by Mr. David Dunlop, Police Magistrate of the Town of Penrith, distant about 40 miles from Sydney.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

MR. D. DUNLOP TO PRIVATE SECRETARY.

Sir, Penrith, 10th June, 1839.

With reference to your letter of the 5th inst., accompanied by copy of that of Mr. Ivers to Lord Glenelg, dated 15th June, 1838, I do myself the honor of reporting, for the information of His Excellency the Governor, that I have seen Elinor Dwyer, daughter of Michael Dwyer, a Tenant on the Iverstown Estate, who informs me that she has been in this Colony about five years, of which she has been married two to Robert Willis, now residing at Minchinbury in this District in the service of Mr. Murray.

Of her identity there can be no question; from her answers to my questions, She appears in good health and satisfied with her situation.

I have, &c.,

DAVID DUNLOP, Police Magistrate.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 78, per ship Mary Anne.)

Sir, Downing Street, 24 June, 1839.

I transmit, for your information and guidance, the copy of a letter from the Board of Treasury, enclosing extracts of a letter from the Board of Ordnance respecting the Regulations for keeping the Accounts of Ordnance and Convict Expenditure at New South Wales.

I have, &c.,

NORMANBY.

[Enclosure No. 1.]

MR. G. J. PENNINGTON TO UNDER SECRETARY STEPHEN.

Sir, Treasury Chambers, 21 June, 1839.

I have it in Command from the Lords Commissioners of H.M. Treasury to transmit Extract of a letter of 16 Novr., 1838, respecting the regulations for keeping the Accounts of Ordnance and Convict Expenditure at N. S. Wales, and referring to the Communication made to you on the subject to which it relates on the 9th Octr., 1837, I have to request you will submit the same to the Marquis of Normanby, stating that my Lords have signified to the Master General and Board of Ordnance, and to the Commissariat
and Military Officers in N. S. Wales their approval of the arrange­ments suggested by the Master Geneval and Board; and that you will further move his Lordship to apprize the Governor of N. S. Wales of such approval.

I am, &c.,

G. J. PENNINGTON, pro. Sec.

[Enclosure No. 2.]

EXTRACTS from letter of Secretary of the Ordnance, dated the 16th November, 1838.

"I HAVE the honor, by Command of the Board of Ordnance, to acknowledge the receipt of your letter dated the 22d Ulto., enclosing a Copy of one from D.C.G. Miller, dated N. S. Wales the 4th of April last, respecting the regulations for keeping the accounts of Expenditure for buildings, Stores, etc., for the Convict Establish­ment in that Colony.

The Board have also received a communication on the same subject from the respective Officers of the Ordnance at the station dated the 11th June last.

It appears, by the letter of the 4th of April from Mr. Miller, that the regulations and arrangements authorized by the Lords Commrs. of H.M. Treasury coincided exactly in principle, and nearly so in practice, with those which were already acted upon in the Command, so that very little alteration was found necessary, and with one exception were in full effect.

The exception, to which Mr. Miller alludes, is in the doubt entertained by the Ordnance Storekeeper whether the standing Regulations of the Ordnance Department will admit of his ren­dering accounts to the Commissary of accounts, but which Mr. Miller expects will be removed on receipt of the Instructions from the Board of Ordnance, and upon this point their Lordships require information.

The respective Officers of the Ordnance at Sydney in their letter of the 11th of June acknowledge the receipt on the 5th of the preceding month of the Board’s Instructions of the 22d of Novr., 1837, by which it appears that Mr. Miller’s expectation has been fulfilled, inasmuch as every difficulty seems to have been removed, except with reference to the paragraph of those Instructions in which the Storekeeper is strictly enjoined not personally to draw upon the Military Chest for the payment of services not provided for in the Ordnance Estimates.

The object of this restriction was to protect the Ordnance from claims for repayment at home for Services performed for other Departments, which may be accomplished by the means decided upon by the Governor with a slight addition, should it meet with the concurrence of the Lords of the Treasury.

It appears, by the Colonial Secretary’s letter of the 5th of June last (a copy of which accompanied the letter from the respective officers of the Ordnance), that the Governor, after mature consider­ation, had come to the following decision, namely:—That the Vouchers for Convict Services shall continue to be made as at pre­sent by the Ordnance Officers; That, being prepared and certified by the Ordnance Officers, they shall next be forwarded to the Com­missariat of Accounts for examination, previous to payment; That
after examination they shall be returned to the Ordnance Storekeeper, who will then pay them by means of a Draft on the Military Chest, which Draft, however, shall be quite distinct from the drafts which he is in the habit of drawing for Ordnance Services; That the Vouchers after being thus paid shall be made up by the Ordnance Storekeeper either Monthly or Quarterly, and sent with accompanying abstracts to the Commissary of Accounts, who will transmit them to the Audit Office in London.

"The Board direct me to state to you that they are not aware of any objection to these arrangements, if they be sanctioned by the Lords of the Treasury, with the clear and distinct understanding that the amount of Drafts so drawn by the Ordnance Storekeeper is not to be reclaimed from the Ordnance in England; and to put this matter beyond a doubt the Board propose that the Drafts be headed as follows, Vizt.:

"Convict Services.
"Not chargeable to the Ordnance.

"The Board also beg to recommend that, in the event of any change taking place by which the Ordnance Storekeeper may be directed to draw upon the Treasurer or other Colonial Officer for Colonial Services, the Drafts so drawn by him be headed as follows, Vizt.:

"Colonial Services.
"Not chargeable to the Ordnance.

"On receiving a communication of their Lordships' concurrence herein, the Board will give Instructions to their Officers in N. S. Wales to the effect proposed.

I have, &c.,

R. BYHAM."

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 79, per ship Mary Anne.)

Sir,

Downing Street, 25 June, 1839.

I have received your dispatch No. 163 of the 13th October last, reporting the grant of £1,750 as a commutation for a pension of £250 per annum, proposed to be granted to Mr. McLeay, late Colonial Secretary, and conveying the recommendation of the Legislative Council that a grant should be made to Mr. McLeay of £4,000, being the amount of two years' Salary of his former Office.

In referring this dispatch to the Lords Commissioners of the Treasury, I felt compelled to state that, finding that my Predecessor had formed an opinion decidedly unfavorably to Mr. McLeay's claim to a gratuity of two years' amount of his Salary, I could not recommend that claim for their Lordships' sanction.

With regard to the payment made to Mr. McLeay in commutation of the retired allowance to be granted to him from the Revenues of the Colony, the Lords Commissioners have expressed
their sanction of that payment, altho' they are of opinion that it is not by any means advisable that arrangements of that description should be carried into effect without the previous authority of Her Majesty's Government. I have, &c.,

NORMANBY.

Sir George Gipps to Lord Glenelg.

(Despatch No. 97, per ship Palestine; acknowledged by lord John Russell, 11th February, 1840.)

My Lord,

Government House, 25th June, 1839.

By a Despatch dated the 14th Sept., 1837, No. 91, Sir Richard Bourke brought under the notice of your Lordship a letter from the Officers of Customs of the Port of Sydney, proposing that Mr. Cooper, the present Comptroller at Sydney, should be removed to Port Phillip, and that, as a measure consequent thereupon, Melbourne should be declared a Free Warehousing Port.

The proposal for the removal of Mr. Cooper, not having been approved by the Commissioners of Customs, was negatived by a Treasury letter dated the 21st May, 1838 (enclosed in your Lordship's despatch to myself of the 29th May, 1838, No. 113), and the contingent proposal for making Melbourne a Free Port fell to the ground with the abandonment of the original one.

I now beg leave to report to your Lordship that, in the full confidence of Sir Richard Bourke's recommendation being acted on in England, the officers of Customs in this Colony allowed for a time on their own responsibility goods to be shipped in bond from Sydney to Port Phillip, but that, on receipt of your Lordship's Despatch above alluded to, they equally on their own responsibility caused the indulgence to be discontinued. This discontinuance produced, as your Lordship may well imagine, no small degree of dissatisfaction, and a Meeting was in consequence held in the month of April last at Port Phillip, at which it was resolved to present a Memorial to me upon the subject. This Memorial was presented to me on the 12th inst., and I have the honor to transmit to your Lordship a Copy of it, as well as of the Answer which I caused to be returned to it.

By this answer, your Lordship will perceive that I have given directions to the Collector of Customs again to grant the same indulgence, the responsibility for the measure being thus transferred from the officers of Customs to myself.

I trust your Lordship will, in consideration of the rising commerce of Port Phillip and the daily increasing importance of the Town of Melbourne, approve of what I have done, and that, on your Lordship's representation to the Lords of the Treasury, an
order in Council may be procured, declaring Melbourne to be a Free Warehousing Port, similar to that which, on the 20th Novr., 1835, was issued in favor of the Ports of Sydney, Hobart Town, and Launceston.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[Copies of these two papers will be found in a volume in series III.]

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 81, per ship Mary Anne.)

Sir,

Downing Street, 27 June, 1839.

With reference to Lord Glenelg's dispatch No. 91 of the 23d March, 1838, I have now to acquaint you that, after mature consideration, Her Majesty's Government have come to the decision that the adoption of the proposed arrangement of substituting two Companies of Sappers and Miners for two Companies of the Line in New South Wales would be attended with so much additional expense and with such a derangement of the plans for reliefs and for the internal economy of Regiments of the Line, serving in that Colony, that they find themselves compelled to regard it as impracticable.

I have, &c.,

NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 98, per ship Palestine; acknowledged by lord John Russell, 14th December, 1839.)

My Lord,

Government House, 27th June, 1839.

Herewith I have the honor to forward a letter, which has been addressed to your Lordship by Mr. P. L. Campbell, who, in the absence of Mr. Riddell, is acting as Colonial Treasurer of New South Wales; and, in so doing, I beg to refer your Lordship to my Despatch of the 27th April last, No. 76, on the subject of Mr. Campbell's claim to a seat in the Executive Council of the Colony.

Accompanying Mr. Campbell's letter are certain official documents which have been printed* by him without my permission or knowledge, a breach (as I submit to your Lordship) of duty which is rendered more glaring by his having omitted, among the documents so printed, to include a letter of considerable importance in respect to his claim, which was, in pursuance of my order, addressed to him by the Colonial Secretary on the 11th May last; of this letter, I have now the honor to enclose a copy.

Mr. Campbell has acted for some years as a Police Magistrate of the Territory, and in that capacity distinguished himself by

* Note 42.
his zeal and activity; He is also a competent man of business, but he is not, as I have already stated to your Lordship, a person whom I could recommend to be placed in the important and confidential situation of an Executive Councillor in this Colony. Upon his own repeated assurance to me, and to my Private Secretary, that he did not seek, expect, or wish to have a Seat in the Council, and in the knowledge that my Council concurred with me in thinking that he would not as acting Treasurer be entitled to such a seat, I did not hesitate to accept him as a substitute for Mr. Riddell in the office of Treasurer; but I pledge my honor to your Lordship that I would not have accepted him, if I had conceived that by so doing I was placing him in the Executive Council. I therefore beg again respectfully to request that, if your Lordship should be of opinion that the Council were wrong in their decision, and that the person acting for the Colonial Treasurer ought to be admitted to a seat in Council, Mr. Riddell's return to the Colony may be accelerated, as it now would be difficult to make any new arrangement for the performance of his duties during his absence.

I have, &c.,

Geo. Gipps.

[Enclosure No. 1.]

[A copy of this memorial is not available.]

[Enclosure No. 2.]

Colonial Secretary Thomson to Mr. P. L. Campbell.

Colonial Secretary's Office,

Sydney, 11th May, 1839.

Sir,

I am directed by the Governor to inform you that, having had under His notice a letter addressed by you on the 9th Instant to me, and with which you returned one that I had addressed to you on the 5th, apparently on the ground that in such letter the office in which you act had been improperly described. His Excellency feels himself very reluctantly called on to remark that, even if an informality as is imagined by you had existed, it would have scarcely been consistent with the respect which is due to the official organ of the Government to return it on that account.

Whether you were addressed as Acting Colonial Treasurer, or as Acting for the Colonial Treasurer, or acting as the Colonial Treasurer, can in no way alter the position in which you are placed in respect to the Government; the Governor considered and still considers it as a matter of very little moment; but, when you attempted to give an importance to it by objecting to be addressed as acting for the Colonial Treasurer, and claiming (apparently with some ulterior object in view) to be called the Acting Colonial Treasurer, His Excellency decided that you should officially be addressed in the former way, as it appeared to Him most correctly to describe the position in which you are really placed in respect to the Government; and Sir George Gipps did not come to this decision without having under His eye the first official communications.
which were made by Mr. Riddell and by yourself to me on the
Subject.
In Mr. Riddle’s letter of the 21st January asking for leave of
Absence, there is the following passage:—
"As the Ship in which I propose to take my passage will not
Sail ‘till the middle of March, I shall take care long before that
time arrives to lay before him (the Governor) the name of some
unexceptionable person who will be proposed to Act for me in my
absence," and your first letter on the Subject written only two days
later, viz., on the 23rd January commences as follows:—
"I have the honor to inform you that it has been proposed to
me by Mr. Riddell that I should act for him in his office of Colonial
Treasurer during his absence on leave." I have, &c.,
E. DEAS THOMSON.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 82, per ship Mary Anne.)

Sir,
Downing Street, 28 June, 1839.

I transmit to you copies of two letters from the Agent
General for Emigration respecting Mr. Suggate, whom it was
found necessary to supersede from the charge of the Emigrant
ship “Aliquis.”

Under the circumstances stated by Mr. Elliot, I have autho-
rized Mr. Suggate to retain the sum of £70, which was advanced
or given to him on his appointment as Surgeon Superintendent of that
Vessel.

I am, &c,
NORMANBY.

[Enclosure No. 1.]

MR. T. F. ELLIOT TO UNDER SECRETARY STEPHEN.

Sir,
2 Middle Scotland Yard, 31st May, 1839.

I have the honor to return herewith the Memorial from Mr.
Suggate, which was referred to me by Lord Normanby’s direction,
requesting an appointment to be Surgeon Superintendent of an
Emigrant ship on the ground of his having been superseded last
year without sufficient reason from the “Aliquis.”

The circumstances, under which I applied for the directions of
the Colonial Department on that subject, and was instructed in
reply to name another Surgeon to the “Aliquis,” may be collected
from the letter I wrote at the time dated the 22d November, 1838,
but it may be convenient that I should briefly recapitulate the facts
here.

Mr. Suggate’s name had been included in a list furnished by the
Admiralty of Medical officers of the Navy available for Employment
in charge of Emigrants, and he was accordingly called upon in his
turn to serve. But, even at the last moment within two or three
days of the time when he was to have proceeded to join his ship,
some occurrences took place which so strongly raised a doubt of his
fitness for the undertaking that it was deemed indispensable to
make some further Enquiries into his previous Experience and
qualifications.

It then appeared that Mr. Suggate had commenced his services
in the Navy in India in 1806, and had returned to England in 1812,
1839.
28 June.

Reasons for removal of Suggate as surgeon-superintendent.

Compensation proposed for Suggate.

Delay in report.

Knowledge of cause of non-employment.

since which time he had never been employed again, but had remained constantly on shore; and that the reason of this protracted non-employment was his having failed to pass his examination on coming back to England six and twenty years before.

Generally speaking, the nomination of the Admiralty is taken as conclusive testimony to the fitness of any surgeon of the navy, proposed from that authority as available for employment in an emigrant ship. But I apprehend that to have remained on shore for such a period as I have just mentioned, caused by such a reason, and without any service during that time in his public profession, could hardly by any one be considered otherwise than as a sufficient objection to trusting the lives of two or three hundred people to an officer, who would have not merely the medical care of them, but the whole of the arduous task of their discipline and management during a voyage half across the globe. This view was adopted by Lord Glenelg, and I was instructed, as I have already said, to send another surgeon to join the "Aliquis."

On the other hand as this result, necessary though it was, had not been produced by any dereliction of duty in Mr. Suggate, since he had been called on to hold himself in readiness to serve, he has always seemed to me entitled to some compensation or favorable consideration; and I accordingly submitted my opinion personally, when Mr. Suggate's supersession occurred, that he might be suffered to retain an advance of £70, which had been made to him in order to prepare for the voyage and which has never yet been reclaimed from him. And I have at various times apprized Mr. Suggate that I had every anticipation that he would be allowed to keep this sum; but I have no doubt from what is known of his circumstances that this must constitute a liberal compensation for any inconvenience Mr. Suggate may have been put to, and that he could not fairly maintain any further claim on the public.

I regret that, by an oversight, a much longer time has elapsed than would otherwise have been allowed to pass in reporting on Mr. Suggate's memorial; but, as its only direct object was to ask for employment which I apprehend it will scarcely be thought proper to confer on him under the circumstances above recapitulated, the delay would not appear likely to be of any practical inconvenience.

In conclusion, I would observe that it would be desirable to favor me with an official intimation, which I have not yet received on the subject, of the pleasure of the Secretary of State on the question of allowing Mr. Suggate to retain the above mentioned advance of £70.

I have, &c.,

T. FREDR. ELLIOTT.

[Enclosure No. 2.]

MR. T. F. ELLIOT TO UNDER SECRETARY STEPHEN.

Sir, 2 Middle Scotland Yard, 19th June, 1839.

I have the honor to acknowledge your letter of the 18th instant respecting Mr. Suggate; and I beg leave to state, in reference to the question on which Lord Normanby considers his right to some compensation to depend, that I have no reason to doubt that the cause of Mr. Suggate's long non-employment was known to the authority by which he was recommended at the time he was proposed for his appointment.

I have, &c.,

T. F. ELLIOTT.
GIPPS TO GLENELG.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 83, per ship Mary Anne.)

1839.
29 June.

Sir,
Downing Street, 29 June, 1839.

With reference to my dispatch No. 49 of the 17th May last, relative to the question raised by the Judges of New South Wales as to the right of the Crown over waste lands in the Colony, I have now to acquaint you that I have received the report of the Law Officers of the Crown on that point, in which they state their opinion that there is not the slightest foundation for the scruples of the Judges; That they conceive that those waste lands are clearly in the Crown with a power to grant them or to lease them or to grant a licence to depasture over any part of them on such terms and conditions as may seem reasonable or may be agreed to.

I have, &c.,
NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.
(Despatch No. 99, per ship Palestine; acknowledged by lord John Russell, 25th April, 1841.)

1839.
1 July.

My Lord,
Government House, lst July, 1839.

With reference to the various orders which have been given during the last few years for the abandonment of Moreton Bay as a Penal Station, and particularly to your Lordship’s Despatch of the 26th Decr., 1835, No. 91, and to Sir Richard Bourke’s reply to the same, dated the 5th Novr., 1837, No. 109, I am happy Reduction of to be able to report to your Lordship the further measures, which I have adopted for reducing the Establishment of that place, and for throwing the District open to Settlers.

The whole of the women, 57 in number, have been withdrawn, and the Male Convicts reduced to 94, a number which will be Female convicts barely sufficient for the custody and protection of the property of the Home Government, particularly of the Flocks and Herds, which cannot be advantageously disposed of until the Country shall be opened to Settlers.

The subjoined Memorandum, furnished by the Commissary General, will also shew to your Lordship the reduction, which has been made in the numerical strength of persons on the Establishment of Moreton Bay, and in the amount of annual salaries payable there.

I beg further to report to your Lordship that I have sent three Surveyors with competent equipment to Moreton Bay, as it is very desirable that the Survey should be well advanced before any land is offered for sale, the ill effects of a contrary system having been very severely felt not only in the older parts of the Colony but even in the recently opened District of Port Phillip.

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These Surveying Parties will be maintained by the Local Government, and the expense ultimately defrayed out of the produce of the sales of Land surveyed.

I have given directions that the Survey shall, for the first time in New South Wales, be conducted on scientific principles, and not made, as I regret to say all former surveys have been, by the Compass instead of the Theodolite. The Surveyor's Compass or Circumferentor, as it is sometimes called, is an instrument with which it is quite impossible to make an accurate survey, and is faulty in principle, inasmuch as it assumes that to be fixed, which nature has made variable, namely, the Magnetic Meridian. It would probably astonish persons, accustomed to the accuracy of the Ordnance Surveys of Great Britain or Ireland, to learn that the boundaries of Estates in New South Wales are defined only by their Magnetic Bearings.

I shall in a separate Despatch bring under your Lordship's consideration the question of how the Buildings at Moreton Bay are to be disposed of.

GEO. GIPPS.

[Enclosure.]

[A copy of this memorandum will be found in a volume in series III.]

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 100, per ship Palestine; acknowledged by lord John Russell, 6th February, 1840.)

My Lord,

Government House, 1st July, 1839.

Having in my Despatch of this day's date, No. 99, detailed to your Lordship the measures which I have adopted for the abandonment of Moreton Bay as a Penal Station, and the opening of it for Settlers, I now propose to bring under your Lordship's consideration the manner in which the Government property, and particularly the Buildings, shall be disposed of when the Country is thrown open to Settlers.

The Government possesses there about 900 horned Cattle and 4,500 sheep, all of which, as well as any other live stock, and all moveables or implements of husbandry, I would propose to sell in the usual manner under the direction of the Commissary General. Of the Buildings a List will be found subjoined; and, as the disposal of them is a question on which possibly mere difference of opinion may exist, I have in order to allow time for the discussion of it and to bring it fairly before Her Majesty's Government sought the assistance of a Board of Officers, whose Report I have now the honor to submit, with a respectful
recommendation that it may be approved and acted on. The Officers, who have unanimously agreed to this Report, are the Commissary General, who is exclusively the servant of the Home Government, the Colonial Secretary, who is the chief organ of the Local Government, and Major Barney, who in his double capacity of Commanding Engineer and Colonial Engineer is the servant of both Governments. The basis, which they have taken for their proceedings, is that the Home Government should retain the buildings, which may be hereafter required for Military purposes, and transfer the rest to the Colony.

Whether or not any charge should be made to the Colony either for the buildings or the improvements on the Land attached to them is a question, which was not referred to the Board, and on which they consequently have not touched. I would however beg to remark that on no former occasion of the sort has any charge been made; but, when any Local Burthen has been transferred from the Home Government to the Colony (as in the case of the Police and Gaols), all buildings connected with the charge have been handed over with it to the Colony. In the case of the Police and Gaols, it has been indeed matter of general complaint that they were so insufficient, and in so bad a state when handed over to the Colony, that the cost of providing new Gaols, Court houses, and Police Buildings has added greatly to the burthen of the transfer.

The last Paragraph of the Report relates to the quantity of land which is to be reserved for Military purposes; not having yet received answers to my Despatches of the 27th and 28th Sept., 1838, Nos. 151 and 152, respecting the tenure on which lands are to be held in the Colony by the Board of Ordnance, it may be sufficient for me to assure your Lordship that I shall take care to reserve all the land that may be deemed necessary, either for the purposes of defence or for the accommodation of the Military.

I have, &c.,

Geo. Gipps.

[Enclosures.]
[Copies of these papers will be found in a volume in series III.]

Marquess of Normanby to Sir George Gipps.
(Despatch No. 85, per ship Mary Anne.)

Sir,

Downing Street, 4 July, 1839.

I have received a letter from Mrs. Elizabeth Stuart of Sydney, dated the 12th March last, in which she applies for a grant of land.
1839.
4 July.

Refusal of land grant.

You will be so good as to inform Mrs. Stuart that I could not accede to her application without infringing the Regulations respecting the sale of Crown Lands, to which Her Majesty's Government are bound to adhere.

I have, &c.,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(A circular despatch per ship Barrosa.)

Sir,

Downing Street, 4th July, 1839.

As there is reason to suppose that some misunderstanding exists with regard to the authority the Governors of Colonies are competent to exercise in the appointment of Officers of the Customs Establishment, I have to request your attention to the following observations:

All Appointments in the Customs Establishments throughout the Colonies, as well as those in this Country, are vested in the Lords Commissioners of Her Majesty's Treasury, to whom Vacancies should be reported directly they occur. The Governor for the time being is authorized in case of a Vacancy to make such temporary arrangements only, as may be necessary for keeping the Department in a due state of efficiency, until their Lordships' directions can be obtained; and in those arrangements the services of Officers already in the Department should, as far as practicable, be made available; and, if the provisional appointment of additional Officers be unavoidable, those Appointments should be confined to the subordinate situations in the Department, and on all occasions the Persons thus employed should be given to understand that their employment is only temporary.

The Lords Commissioners of the Treasury also reserve to themselves the regulation of the Salaries of the Customs Establishments; and, although their Lordships are always ready to receive suggestions for the more economical performance of any branch of the Public Service which is committed to their care, and, as far as may be consistent with the efficiency of any Department, and with a due regard to the just claims of Individuals, to pay immediate attention to every proposition for that purpose, they do not consider it necessary to delegate to the Governors of Colonies the option of altering Salaries which have been assigned after due enquiry and deliberation by the Superior Authority in this Country, most capable of judging of the extent of Trust to be reposed in the Officer, or of the degree of information and ability required for the proper execution of the duties likely to devolve on him; more especially when the Office
NORMANBY TO GIPPS.

is connected with an Establishment of such general importance as that of the Customs to the Trading Interests of the Empire at large, and in which it is so very desirable that all particular and local influence should be avoided. I have, &c.,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 86, per ship Mary Anne.)

Sir, Downing Street, 5 July, 1839. 5 July.

I have received your dispatch No. 186 of the 14th Novr. Request by last, respecting an application from Mr. Ryan, 1st Clerk to the Superintendent of Convicts in New South Wales, for an increase of Salary; and I enclose for your information and guidance, the copy of a correspondence on the subject between the Board of Treasury and this Department. I have, &c.,

NORMANBY.

[Enclosure No. 1.]

UNDER SECRETARY STEPHEN TO MR. A. Y. SPEARMAN.

Sir, Downing Street, 30 May, 1839.

I am directed by the Marquis of Normanby to transmit to you for the consideration of the Lords Commrs. of the Treasury the enclosed copy of a dispatch from the Governor of New South Wales, forwarding an application from Mr. Ryan, 1st Clerk to the Principal Superintendent of Convicts, for an increase of Salary. I am to request that, in laying this application before the Lords Commissioners of the Treasury, you will observe that, however much the elevation of a pardoned Convict to a place of such trust and of so conspicuous a character in the Colony, might be deprecated, if the promotion were now to be made; yet that, having been actually made for a long course of years, and the officer having conducted himself with unexceptionable propriety, it does not appear to Lord Normanby that his former condition as a Convict ought to influence the decision of his present claim. That claim, however, is very important as an assertion of the principle that the same scale of allowance should be adopted in favour of those paid from the British Treasury, as has been adopted in favor of those who are paid from the Colonial Revenue. It does not appear to Lord Normanby easy to justify a decision less favorable to the one class of Public Officers than the other. But, on the other hand his Lordship fears that the admission of the principle must lead to a general increase of expenditure in that branch of the Public Service. Perhaps, at this moment, when a great reduction is contemplated in the number of Convicts to be annually transported, it might be injudicious to raise the scale of official Emoluments at least until it shall be ascertained whether the change will not produce some considerable reduction in the demand on the persons' in question future labour. Lord Normanby, however, conceives that this is a question, the decision of which more particularly belongs to their Lordships. I am, &c.,

J. STEPHEN.
MR. G. J. PENNINGTON TO UNDER SECRETARY STEPHEN.

Sir, Treasury Chambers, 29 June, 1839.

With reference to your letter of 30th Ultimo and its enclosures from the Governor of New South Wales on the subject of an application from Mr. Ryan, 1st Clerk to the Superintendent of Convicts, for an increase of Salary, I have it in command from the Lords Commissioners of Her Majesty's Treasury to request you will state to the Marquiss of Normanby that it appears to my Lords that, the Salary of the office held by Mr. Ryan being at the regulated rate assigned for clerks of the second class on the Colonial Establishment at New South Wales, a compliance with his application would place his appointment on the footing of the Clerks of the first Class; and, adverting to the change about to take place in all the arrangements relating to the Convicts in the Australian penal settlements, my Lords concur with Lord Normanby in opinion that it would be inexpedient to sanction any such alteration, until the effect of those changes upon the business of the Superintendent's department shall have been ascertained. I am, &c,

G. J. PENNINGTON.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 101, per ship Palestine; acknowledged by lord John Russell, 18th August, 1840.)

My Lord, Government House, 5th July, 1839

With reference to your Lordship's Despatch of the 10th March, 1838, No. 87, as well as to the previous one on the same subject dated the 16th July, 1836, No. 176, I have at length the honor to forward to your Lordship Returns of the Proceeds of the Effects of deceased Convicts, who have died either on their passage from England or after their arrival in this Colony, since the year 1824, the earliest date from which any information on the subject can be traced.

No. 1 is a Return of the Proceeds of Effects, paid into the hands of the Colonial Treasurer up to the end of the year 1837, the amount being £171 14s. 7d.

No. 2 is a similar Return for 1838, the amount of which is £23 7s. 6d.

No. 3 is a Return of all sums standing in the names of deceased Convicts at the Savings Bank on the 25th June last, the amount being £421 2s. 11d.

Similar Returns have been forwarded to Mr. Barnard by the Secretary of this Colony, with information respecting claims which have been preferred by relatives of some of the deceased.

With reference to the passage in your Lordship's Despatch of the 10th March, 1838, founded on the opinion of the Law Officers, that a distinction should be made between sums taken from
Convicts before or at their embarkation, and sums saved by Convicts after they have received Absolute or Conditional remissions of Punishments, I have the honor to state that no sums of this latter description are included, as, from the moment persons receive Absolute or Conditional Pardons, they are no longer regarded in the Colony as Convicts; also that Convicts being by the 2nd and 3rd Wm. IV, Ch. 62, absolutely incapable of holding property, all the monies included in these Returns are legally droits of the Crown; and, though this strict legal right is seldom acted on, yet it is only by favor of the Crown that Convicts, whilst under sentence (even though they hold Tickets of Leave), or the representatives of deceased Convicts, can receive any portion of the monies which may either have been taken from them on their first arrival in the Colony, or subsequently lodged for them in the Savings Bank.

I have, &c,

GEO. GIPPS.

[Enclosures.]

[Copies of these returns are not available.]

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MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 87, per ship Mary Anne.)

Sir,

Downing Street, 6 July, 1839.

I have received a letter from Mr. Richard Jones, a Member of the Legislative Council of New South Wales, dated the 26th Decr. last, on the subject of an Act lately passed by the Legislature of Van Diemen's Land, making the New South American Dollars a legal tender in that Colony at a prescribed rate.

You will be so good as to acquaint Mr. Jones that his letter has been referred to the Lords Commissioners of the Treasury, but that he must in future adhere to the regulations respecting all communications on the public affairs of the Colony passing thro' the Governor's hands.

I have, &c,

NORMANBY.

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MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 88, per ship Mary Anne.)

Sir,

Downing Street, 6 July, 1839.

I have received your dispatch No. 10 of the 10th January last, enclosing an appeal from Mr. Catterall against the imposition of a Fine by Mr. Justice Burton for a contempt of Court, and I have to refer you to my dispatch No. 68 of the 14th Ulto. as having already disposed of this question.

I have, &c,

NORMANBY.
MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 89, per ship Mary Anne.)

Sir,

Downing Street, 8 July, 1839.

I have received your Dispatch No. 5 of the 5th of January last, enclosing the copy of a further letter from Mr. Busby, British Resident at New Zealand, respecting the Trial and Execution of a Native of that Island for the murder of a British Subject; and I have to refer you to my Dispatch No. 6 of the 3rd of March last as having disposed of this case.

I have, &c.,
NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.
(Despatch No. 102, per ship Palestine; acknowledged by lord John Russell, 13th May, 1840.)

My Lord,

Government House, 8th July, 1839.

I have the honor herewith to forward an Estimate amounting to £4,078 14s. 1½d. for Works in the Engineer Department (of Convict services), which I have found myself under the necessity of sanctioning, and with respect to which I beg leave to offer the following explanations:—

The first item is for the erection of a New Stockade for 500 men at Cook's River.

The order, contained in your Lordship's Despatch of the 6th July, 1838, No. 147, for detaining under the control of Government all newly arrived Convicts for a certain period before they are allowed to go into private service or assignment, has caused a demand for greater accommodation than our existing Establishments could supply; and it being thus absolutely necessary to place the men somewhere, and to lodge them at the expense of the Home Government, I considered the opportunity a good one to commence a work, which promises to be of great use to the Colony, namely, the construction of a Dam across Cook's River a little above the spot where it falls into Botany Bay, about five miles from Sydney. It is the first operation of the sort upon a large scale, which has been attempted in this Country, and the importance of it may be well understood, when I say that it will preserve an inexhaustible supply of fresh water through a course of nearly twenty miles of country, where there is at present no water at all, or only that which, being brought by the Tide, is Salt; also that it will effectually secure the Town of Sydney against any recurrence of the apprehension of a scarcity of water, which was felt during the drought of the early part of this year, in consequence of its being well ascertained that the Swamp, from which the Town is now supplied, is gradually drying up.

* Note 42.
The whole expense of the Dam, with the exception of the lodging and feeding of the Convicts, will be defrayed by the Colony.

The distance of the proposed Dam from Sydney is a very convenient one, being not too great to allow the men to come under my own frequent inspection, and yet far enough away to keep them from evil intercourse with the Town.

Your Lordship is aware that the only place, or at least the principal place in which Convicts are lodged in Sydney, is the Prison called "Hyde Park Barracks,"* a place which is the common receptacle for men of all classes, and especially for those, who for their offences are withdrawn from Private service. To place newly arrived Convicts in immediate contact with these old and hardened offenders would seem (even if there were room for them, which there is not) contrary to the spirit which dictated the order contained in your Lordship's Despatch above alluded to.

The Second Item, which I have authorised, is an Establishment somewhat of a similar nature on the Island called "Cockatoo," which is about four miles from Sydney in an opposite direction, and situated in that branch of the Harbour which leads to Parramatta. I have caused an Establishment to be formed here for the reception of Prisoners withdrawn from Norfolk Island, under the Act passed in the last Session of the Legislature of the Colony (2 Vict., No. 1) which I had the honor to bring under your Lordship's notice in my Despatch of the 26th Jany., 1839, No. 22.

The expence of erecting shelter on Cockatoo Island for these men will not be greater than it would have been necessary to incur at Norfolk Island, if they had not been removed; for Norfolk Island was so full, that we could not in March last send another man there, so crowded was every building. By bringing them from Norfolk Island to Cockatoo, the duration of their sentences is reduced by more than one half, and they are moreover brought under the immediate eye of the Governor. All the Penal stations of this Colony, that is to say, stations for doubly convicted men, seem to me to have been erroneously placed at great distances from the seat of Government; Port Macquarie, Wellington Valley, Moreton Bay and Norfolk Island vary in distance from 200 to 800 miles; in consequence of which, they have rarely, if ever, been visited by the Governor of the Colony, or by any person high in authority, and it has been found expedient successively to abandon them all except the latter.

Should it be desired to try the effect of any new system of management, as for instance that which has been proposed by Captain Maconochie, no place in New South Wales would be so well calculated for it as Cockatoo Island, surrounded as it is by

* Note 44.
1839.
8 July.

Proposed withdrawal of convicts from Goat island.

Building stone at Cockatoo island.

deep water, and yet under the very eye of Authority. It is only a mile and a half beyond Goat Island, where the best conducted establishment in the Colony has been fixed for the last three or four years, but which we are now on the point of breaking up, as, by the completion of the Powder Magazine on it, it is no longer a desirable place for a large body of Convicts, and is also too small conveniently to accommodate them.

Cockatoo Island affords very excellent Building Stone, and it may be ultimately made to supply this material to Sydney in the same way that the Penitentiary at Sing Sing supplies Building Stone to New York.

I have, &c,

Geo. Gipps.

[Enclosure.]

[A copy of this estimate has been omitted.]

10 July.

Transmission of letter from E. Macarthur.

Importance of steam navigation on east coast of Australia.

Maintenance of steam vessels.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 90, per ship Barrosa; acknowledged by Sir George Gipps, 4th May, 1840.)

Sir, Downing Street, 10 July, 1839.

I transmit to you the copy of a letter from Mr. Edward Macarthur enclosing a statement shewing the importance to this Country, as well as to the Colonists, of an efficient system of Steam-Boat Communication on the Eastern Coast of Australia; and I have to request that you will take Mr. McArthur's suggestions into your consideration, and report to me your opinion on the subject.

I have, &c,

NORMANBY.

MR. E. MACARTHUR TO RIGHT HON. H. LABOUCHERE.

Sir, 16 Carlton House, 3 July, 1839.

Let me beg to transmit the accompanying statement, shewing the very great importance to this Country of a well sustained and efficient system of Steam Boat Communication on the Eastern Coast of Australia.

The Marquis of Normanby honoured me with an Interview on this subject some days since, and I now venture to bring it under the consideration of H.M. Govt. in a shape that will admit of its being more fully discussed.

The object of the proposition is to supersede the present expensive and insufficient mode of coasting communication by a regular system of conveyance by Steam Vessels, the power of whose Engines may enable them at short and determined intervals to visit the widely separated Bays, Inlets and Harbours on the Coast of New South Wales.

It is proposed that these Vessels shd. in the first instance be provided and equipped by Govt. and afterwards maintained by a regular rate upon Passengers, goods. and various descriptions of produce, leaving the subordinate and collateral lines of Communication to be established and kept up by individual enterprise.