HISTORICAL RECORDS
OF
AUSTRALIA.
COMMONWEALTH OF AUSTRALIA.

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OF

AUSTRALIA.

SERIES I.

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 £38,000 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 £38,000. 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 \( \frac{3}{4} \) 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 shewn 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
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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
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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 with­
out 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 mar­
kets"; 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 pfand­
briefes 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 con­
fidence and to provide for and regulate the issuing and lending
of Land-board notes and pledge Certificates, and for other pur­
poses 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 Mortgageee." 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.
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,
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 biased 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
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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
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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.
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 seconds 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.
2 HISTORICAL RECORDS OF AUSTRALIA.

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 whieh,
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 Colonels 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.
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.

[Enclosure No. 2.]

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

Sir, .

Downing Street, 8th Feby., 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.

LORD GLENELG TO SIR GEORGE GIPPS.

(Despatch No. 24, per ship Calcutta; acknowledged by
Sir George Gipps, 30th September, 1839.)

Sir,

Downing Street, 8th February, 1839.

I beg to acquaint you that Mr. Bellew Graves will shortly
proceed to New South Wales with a view of obtaining some small
appointment in one of the Government Departments; and I trust
that you may find an early opportunity after his arrival of em­
ploying him in that capacity.
I have, &c.,

GLENELG.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 27, per ship Hope.)

My Lord,

Government House, 12th Feb'y., 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
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.

(My Lord,

Government House, 15th Feb'y., 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.  12 Feb.  Request for shipment of iron railway.

Appointments of Mr. H. N. Carrington as clerk of peace at Port Phillip.

Qualifications of H. N. Carrington.
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 "Ves 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.
NORMANBY TO GIPPS.

“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, vizt., “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.

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.,

Nornanby

[Enclosure No. 1.]

THE Memorial of James Fraser, late Brevet Major, 34th Foot, 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, etca., also sick certificates enclosed.
SIR GEORGE GREY TO MAJOR FRASER.

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.

GEO. GREY,

[Enclosure No. 3.]

MAJOR FRASER TO LORD GLENELG.

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

I have the honor to acknowledge the receipt of your Lordship's Letter of the 8th 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.

JAMES FRASER, late Major, 34th Regt.

[Enclosure No. 4.]

UNDER SECRETARY STEPHEN TO MAJOR FRASER.

Downing Street, 22 Feby., 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.

J. STEPHEN.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 33, per ship Alfred.)

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

In obedience to the instructions contained in your Lordship's Despatch of the 28th Augt. last, No. 200, I have enquired into the circumstances under which a charge was made in the
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.
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 Feb., 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.
1839.
23 Feb.

Correspondence re requisition for medicines, etc.

[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.
[Enclosure No. 1.]

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.

[Enclosure No. 2.]

MR. W. TOWNSEND TO SIR JOHN BARROW.

Sir,

Doctors’ Commons, 16th February, 1839.

I had the honor to receive your Letter, dated Sth 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.

[Enclosure No. 3.]

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

Sir,

Wellesley in Tookoo Bay, 17th August, 1838.

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.
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 depositional 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.

1839. 23 Feb.

Criticism of depositions.
DECLARATION BY W. MARSHALL.

WARREN 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'n. 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'n. 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 "Leach" by some men who were paid by him. The reason, he gave, was that the Ship "Falcon" of London, Capt'n. Hinckson, had been wrecked there and Capt'n. H. and 4 of his men killed by the natives. It is generally said that Capt'n. 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'n. 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 Nuttic, 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 Tortoise-shell, 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 to Ascension; one of them was delivered of a child either on board the cutter or as she came there, the one Capt'n. Hart, brought over he presented to the Chief Narnikin's daughter "the Child" 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'n. H.'s return from Nuttic, 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 be 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 Canoers full of the Ascension Natives set off at all risks to gain their native 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 Canoers 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'n. 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, Beute 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'n. Hart except any Ship should call there, and they were actually in want of necessities. I made a copy of them and rec'd each of their signatures; we then
proceeded to Manila. The number slain at Nuttic is differently stated, the Natives say 80; I heard Paddy say 84 with the one he shot afterwards. It is however doubtful.

WM. MARSHALL.

Ir 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 Maquhawee, 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.

Maquhawee 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 Transmission, 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 "Yanawah," 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.

(Appendices.)

EXAMINATIONS.

Personally came and appeared before me, JAMES SINDREY, aged about 22 years, is Deposition by 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 depoent 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 in the Canoe, but the surf was so high that they were obliged to put back that evening; 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 around 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 five white men in the rear; whilst they were conversing on the subject, a Canoe came aboard with five boats and about forty Armed Europeans in them; there might be about five hundred in all; this vessel was going in the Cutter's boat with Mr. Hart; there were four or 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. They were also laying there two Schooners both under the colors 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 Kingston 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 Kingston threatened to plunder 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 their 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'n 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 they have about five 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 lay 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's" tribe. 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 was a consultation held by the three Captains upon the subject of this execution; heard also that the two Super cargoes assisted at the consultation, but no one else; does not know what "Nanawah" was hung for, but supposed it was for giving orders for the death of Capt'n. Kingston and the other people of the "Falcon." There were none of the "Falcon's" people in the hands 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'n. 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.
principally deserters from Whalers, Sick People, etc.; Deponent was never molested during the whole time he remained at Ascension; considers the "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 two 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 has seen 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 considers the "Lambton" to be good People; supposed she killed Capt. Hindekston and four or five others of her Crew had been killed by the Natives; "Nanawah" one of the Chiefs was brought on board by "Jim the Cooper"; cannot say under what circumstances his person was secured; Believes that there was a consultation held upon his disposal by the three Captains and some other persons there; Deponent saw "Nanawah" hung at the yard Arm of the Cutter "Lambton"; cannot say by whose precise orders it was done; Captain Hart of the "Lambton" and Captain Hart of the "Unity" were present at the execution on board the Cutter, as well as most of the Crew of the "Falcon"; cannot say whether Captn. Duarte of the "Avon" was present; Deponent was on deck at the time; believes that the execution took place in the month of August, 1836; cannot remember the exact date; Deponent does not remember to have heard "Nanawah" declare that he was innocent or beg for mercy; Deponent supposes that "Nanawah" was the executioner of the "Falcon" and believes that he was present at the execution; cannot say how many Natives were killed; Deponent does not know of any violence committed on the women of the Nuttie; about six of them came up in her, but Deponent believes that they came of their own free will to Ascension in the Cutter; They were asked if they would go, and they consented, and Deponent has heard Captain Hart say that he would not let them be taken against their will; the Cutter and knows nothing else about the proceedings; Deponent can solemnly swear that he was not present when "Nanawah" was hung.

Sworn 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.
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. Hinekston 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 " 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 Nuttie; 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.

CAPTAIN ELLIOT TO SIR F. L. MAITLAND.
Sir, Macao, 9th August, 1838.

Having reference to the conferences and correspondence I have recently had the honour to have with your Excellency upon the subject of the piracies charged against Mr. Hart, Master of the British Cutter " Lambton " in the Pacific Ocean. I now beg leave to acquaint you that, upon the most attentive consideration of the powers entrusted to me, I find great difficulty in issuing a Warrant for his apprehension, upon the ground that the crimes in question are alleged to have been committed beyond the limits of my jurisdiction, in other words, beyond one hundred miles of the coasts of this Empire.

At the same time, if I am mistaken in the opinion that the apprehension of British Subjects charged with Piracies 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.

I beg to acquaint you that I should not feel myself justified in apprehending Mr. Hart, in the presence of a Civil Magistrate, but that, in the event of his
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.

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 Crewe 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, 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 Mariannes, 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 Mariannes to this City, where he received as freight different Articles and Gun Powder, partly belonging to the "Religiosos 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 ("tornaqia"), which exists in the hands of the Commisary 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 26th 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
In this City) upon the case; And moreover upon his general conduct during the
time that he is acquainted with your Petitioner; and of all the particulars which
may be deemed necessary, concerning the wild state of all the Islands near the
Mariannes delivering him a certified Instrument of all. And this upon he will
gratefully receive the favor he implores from your Excellency.

C. H. HART.

Manila, 19th June, 1838.

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

In the town of St. Michael “ extra Manos ” of Manila on the twenty second day of
June, in the year Eighteen hundred and thirty eight, appeared, by virtue of a com­
petent 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 foregoing, and Captain of the mentioned
body.

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

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.

APOLINARIO HERNANDEZ.

It appears on examination that to day, the twenty fifth of June in the year Eighteen
hundred and Thirty eight, was received from the office of the Commander in Chief
of Marine the communication and proceedings requested from the Government as
declared in the foregoing proceeding; a Copy of which will be here adjoined And to

ACHA.

APOLINARIO HERNANDEZ.

GOVERNMENT AND COMMAND OF MARINE AT MARIANNES.

Most excellent Senor,

I have the honor to acquaint your Excellency for what may concern the
Trade of the Archipelago, with the following particulars.

In the beginning of this year, Mr. William Linzon, a Whaler Captain, died on the
Island of Timor by a shot discharged by one of its Caciques against another Captain
Mr. Gil of the same employment, regarding a dispute among the two last ones. On
the end of the last month, arrived at this Island a Cutter sailed from New Holland,
and a Schooner from Sandwich, “ Balateias,” conveying fifteen individuals whom they
saved, belonging to the Crew of the English Whaler ship “ Falcon,” wrecked upon
the Banks of the Ascension on the 7th July Ultimo (Latitude N. 6° 18’ Long. E. of
Greenwich 158° 26’). Her Captain, Mr. John Hingston, and four persons of the
Crew were murdered by the Natives of this Island on the 12th August, because the
Captain attempted to defend from robbery the Articles they succeeded in saving
from the ship wreck. And every one would have had the same fate, had not there
arrived some hours afterwards the said small vessels, whose Crews and the remaining
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 remaining in that one, where the Murders

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 enclosed paper, which I herewith beg to transmit for the information of your Excellency, etc., etc., etc.

Note.—The remainder of the Spanish Paper having no direct relation to the proceedings of the Cutter "Lambton" has not been translated.

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

[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

ready for Sea, her value was estimated at £14,000 or £16,000. I am not certain transactions which we sailed from London on the 24th May, 1834, well provided with necess-

saries 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, 1835, bore up for the Island of Salebaboo 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 ex-

ceedingly 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 Hington 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 stowed 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 Stones. 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 appearance 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 immediately 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 eldest son of Hesshipow (the King of the tribe) to the other Chiefs to make an attempt to take the Vessel.
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 by stratagem, what he could not 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 bore the anchor up, and commenced towing with our four boats; and, when near the entrance of the passage, a breeze sprang 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 as friendly as possible with the Natives by continually 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 over to the Main, 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 Woahoo 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 Warri 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 windward of the place where we had been lying), having heard the Schooner Avos of Woahoo was lying there, to acquaint Captain Deudoit 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, Captin. 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 wildly, were very daring, kept slingling 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 bows; 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 nearly 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 man 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 Conch Shells, and used other means to endeavor to get them out to fight, 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 Avos'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 purposely 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 Nassalley 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. One day, a Native brought intelligence to us to say that the body of the Captain had been found and buried; and that the natives had burned the houses.
1839. 
23 Feb. 
Statement by J. Plumb re transactions at Ascension island.

of where they were encamped 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 laying waste 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 they were within 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 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 7 shots to one; 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 Hesshipow 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. Hesshipow 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 Manusd, 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 met 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 along with him to 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 my fate; I 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 Deutorit'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 who are 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 rope 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 Manila rope yarn, 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 13 o’Clock when he was cut down. The Natives fowled 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.]
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 loose 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 as such by the Government Authorities.

After the transactions above described, I understand that the "Avon" and "Unity" returned to the Sandwich Islands, and the "Lambton" proceeded here from the Marianne Islands, and then returned there freighted with stores, etc., by this 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.

SIR GEORGE GIPPS TO LORD GLENELG.
(Despatch No. 35, per ship Alfred.)

My Lord,

My Lord, Government House, 23d Feb'y, 1839.

I have the honor to report to your Lordship that the following payments have been made into the Military Chest of this Colony, in consequence of directions received from your Lordship:

<table>
<thead>
<tr>
<th>Date of Despatch directing the payment</th>
<th>No.</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>14th April 1838</td>
<td>101</td>
<td>£15,243</td>
</tr>
<tr>
<td>8th June 1838</td>
<td>117</td>
<td>5,000</td>
</tr>
<tr>
<td>21st August 1838</td>
<td>134</td>
<td>10,000</td>
</tr>
<tr>
<td>1st August 1839</td>
<td>171</td>
<td>10,000</td>
</tr>
<tr>
<td>31st August 1839</td>
<td>203</td>
<td>8,000</td>
</tr>
</tbody>
</table>

£48,243

Date of Warrant issued on the Local Treasurer in favor of the Commissary General.

15th Sept., 1838. 13th Novr. 8th Decr. 1st Feb'y, 1839. 1st Feb'y, 1830.

I have, &c,

GEORGE GIPPS.
NORMANBY TO GIPPS.

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.

Sir,

London, 15th January, 1839.

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.) 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 imputed 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 insisted 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 basis for claims to compensation, 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 1s. in full of all claims whatever on Government for the property in question, appealed to the Law, though

* Note 3.
HISTORICAL RECORDS OF AUSTRALIA.


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 1839 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 comprised 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 22 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 of the part of Government of a determination to resume the Land."
SOLR. GENERAL'S Report, dated 16th May, 1835.

[Sub-enclosure No. 3.]

forbearance or neglect of Government, in regard to dealing with it as their own, 25 Feb. leave it virtually for all the purposes of the present enquiry in the hands 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. despatch from

Sir R. Bourke.

the Home Government did not think it right or worth while to confirm the

referred the matter to the Secretary of State, and it appears no answer was

righth of possession, with any subject, in the face of a fairly inferential admission
by the Court itself, that he had an equitable title to the property in dispute, and

the universal sufferage of the Colony in his favour upon the question?

Extract.—"It appears that Governor Macquarie actually resumed the one half of
the premises on which the Govt. Stables were since built, but consented to pay £513,
the value set on some buildings erected thereon. And he gave notice that he would
insist on getting possession of the whole on the 31st of March, 1815, thereby giving
time to remove the materials of the Windmill, which still stands there. He afterwards
referred the matter to the Secretary of State, and it appears no answer was
returned during the Administration of General Macquarie."

Governor Macquarie resumed not "one half" as here stated, but only
a small corner of the premises, as can be verified by Memorialist's former Agent,
Mr. Wilm. Walker, now at home. The £513, which the Govt. offered to pay (why
should anything be offered but from a sense of Justice of making compensation?),
was for the supposed value of a small Windmill and Bakehouse erected on the pre­
mises. The larger windmill, "which still stands there," was a far more costly erec­
tion. 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 was and can be con­
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 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 recalc to 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 1829 or 1828, 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 Intrusion 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 sufficient shown above. It should be made appear in what way the Crown obtained the Possession. 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 he represented having given equivalent value, from their 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 fact? It 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 recalc to 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 1829 or 1828, 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 Intrusion 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.—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 no 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.—"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 tenue 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 no 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 said 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 these Lands are now treated as property in the simple, it can hardly be in the mind of any one, that 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. to eject him also.

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 property for so many years as has been done in the present case, should 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, vizt., a 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 Ist 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 the subject, 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 Ist, 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 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
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?

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 dealt with 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, 1823, 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."

Extract.—"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."

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 respectfully signed by Members of the Legislative Council, by Clergymen, Magistrates, Barristers, Merchants and Bankers, so as undeniable 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.

-- Remarks on Remarks on Remarks on Remarks on Remarks on

Although the Government were not "specifically pledged to give Grants of all lands leased," they have virtually done so by the Proclamation* of 1829, 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.]


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."

Remarks.—"If the circumstances of the King v. Steele were fully known to the general majoritv 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 In-habitants' 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. 37

NORMANBY TO GIPPS. 1839.

25 Feb.

Remarks to remarks made in office of colonial secretary.
1839.
25 Feb.

Inability to give decision without reference to governor.

<table>
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<tr>
<th>Enclosure No. 2</th>
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<tr>
<td>SIR GEORGE GREY TO MESSRS. FAIRLIE, CLARKE, INNES AND Co.</td>
</tr>
<tr>
<td>Gentlemen. Downing Street, 1st February, 1839.</td>
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<tr>
<td>I have laid before Lord Glenelg your Letter of the 15th Ultimo.</td>
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<tr>
<td>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.</td>
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<tr>
<td>I am, &amp;c.</td>
</tr>
<tr>
<td>GEO. GREY.</td>
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<th>Enclosure No. 3</th>
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<tbody>
<tr>
<td>MESSRS. FAIRLIE, CLARK, INNES AND Co. TO SIR GEORGE GREY.</td>
</tr>
<tr>
<td>Sir, London, 8 Febry., 1839.</td>
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<tr>
<td>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 &quot;very inconvenient.&quot;</td>
</tr>
<tr>
<td>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.</td>
</tr>
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</table>
| Had the Appeal to Her Majesty's Minister against the decision of the Colonial Government been made thus in the first instance,
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 observations, 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 investigation 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 permit 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.

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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 September 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 Government of the assistance, which you have rendered to that Expedition.

I have, &c.,

NORMANBY.

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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
that 4 more were detained upon the same charge, I have the honor to inform your Lordship that the Attorney General finding he had hardly sufficient evidence to put these men on their trial, moved on the 14th instant with my full approbation and concurrence that they should be discharged, and that accordingly two of them, who were free by servitude, were discharged on Bail, and the other two, who were Convicts already under sentence of the Law, were returned into the service of Government.

I think it right to explain to your Lordship that, in assenting to the course proposed by the Attorney General with respect to these four men, I was not so much moved by any doubt of their guilt, as by the hope that the law might be considered as sufficiently vindicated by the executions which had already taken place.

I have, &c.,

GEO. GIPPS.

27 Feb.


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.
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 possess no means of ascertaining the degree of caution exercised by the home Agents in their selection. With respect to those Surgeons 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 intimate 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 certainly 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 Excellency'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 occupations, 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.
In twenty-three Ships sent out by Government there were on board:

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

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

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

and in four by the London Immigration Committee:

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

which in both instances will give 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 Palyrya) 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:

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<tr>
<th></th>
<th>Adults</th>
<th>Children</th>
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<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>
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</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 Surgeon 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 Surgeon Superintendent of ships, fitted out under the Bounty System, possess no greater power of control than that assumed power exercised by the Surgeon 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 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
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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 £80 for each ship, there will still remain on the score of allowance for surplus provisions alone a sum of £1,600, average about £83 to each captain. In two ships (the Parland and Mandarin), the respective sums paid under that head, taking the foregoing data of £80 necessary money for our calculation, were to the former £273, and to the latter £240, being nearly equal to the Balance of a month's 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 superseding 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.

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27 Feb.

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one for the Surgeon Superintendent who would of course be ap­ pointed by the Government) might be appropriated to his emolu­ ment, 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 recom­ mendations 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.

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 Feb., 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 re­ luctantly to represent to your Lordship that there will in all
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 Augst. 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.

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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.
NORMANBY TO GIPPS.

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.,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 6, per ship Fergusson.)

Sir,
Downing Street, 3 March, 1839.

I have received your Dispatches 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.,

NORMANBY.

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.,

NORMANBY.
1839.
3 March.

Despatch acknowledged.

Regret at sectarian quarrels.

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.

4 March.

Approval of appointment of T. Bell and wife.

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.
MR. C. D. Riddell to Colonial Secretary Thomson.

Colonial Treasury, Sydney, 23rd January, 1839.

I have the honor to request that you will convey to His Excellency Sir George Gipps my desire to obtain leave of absence to proceed to England.

I have been now nearly ten years absent from home on service, in as much as I sailed from England in May, 1829, and proceeded to Ceylon as a "Commissioner of Eastern Enquiry."

Having in the month of August of that year been appointed to the more permanent situation of Treasurer in this Colony, I gave up my Commissionership to my successor in March, 1830, and arrived here in the month of August following. Since that period, I have constantly and unremittingly applied myself to the duties of my Office, having been very seldom absent for a single day except upon two occasions of extreme indisposition, the last of which occurred last August, on which account I feel it necessary to repair to England for the benefit of my health.

I have also private business of an urgent nature, which renders my presence in Scotland of the utmost importance.

It is of course my desire in providing for the due discharge of my duties during my absence to consult His Excellency's wishes as to a "locum tenens." I regret that I cannot in this communication name someone for His Excellency's approval. But, as the Ship in which I purpose to take my passage, provided I obtain the Governor's sanction, will not sail till the middle of March, I shall take care long before that time arrives to lay before him the name of some unexceptionable person who will be prepared to act for me in my absence.

Sir George Gipps will confer on me a great favor by allowing me leave of absence; and a still greater by recommending to the Secretary of State that my leave may be prolonged six months beyond the usual period granted by Governors of this Colony.

I have, &c,

C. D. Riddell.
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 on the Claim by Messrs. Codd on F. W. Small.
Proposed alteration of law for recovery of debts.

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.

SIR GEORGE GIPPS TO LORD GLENCOLG.
(Despatch No. 42, per ship Alfred; acknowledged by marquess of Normandy, 24th August, 1839.)

My Lord,

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 Capt'n. 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.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS. (Despatch No. 14, per ship Fergusson.)

Sir,
Downing Street, 6 March, 1839. 6 March.
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.

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.

7 March.

MEMORIALS ACKNOWLEDGED FROM J. 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.
Marquess of Normanby to Sir George Gipps.

(Despatch No. 18, per ship Fergusson; acknowledged by Sir George Gipps, 11th November, 1839.)

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:—

In the ship, of Scurvy . . . . . . . . 8

Do other diseases . . . . . . . . . 11

After landing, of Scurvy . . . . . . . 20

Total . . . . . . . . . 39

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 dispatch No. 154 of the 1st October last with a report on the
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 Philip, 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 Dispatch 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, adverting 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. I have, &c.,

Normanby.

Sir George Gipps to Lord Glenelg.

(Despatch No. 48, per ship Alfred; acknowledged by lord John Russell, 27th December, 1839.)

My Lord,

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 Lieut. Colon. 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.)

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.)

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 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

* Note 9.
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.
GIPPS TO GLENELG.

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 Novr., 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.

I have, &c,

GEO. GIPPS.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 27, per ship Fergusson.)

Sir, Downing Street, 18 March, 1839.

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,

Government House, 21st March, 1839.

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.

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 Feby., 1836, No. 106.
1839.  
23 March.  

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.)

25 March.  

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 Feby. 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.
1839.
26 March.

Arrangements for deposit of money with agent general for purchase of land at Port Phillip.

Inquiries re land at Port Phillip.

Proposed deposit of money in London.

System for disposal of land at Port Phillip.

HISTORICAL RECORDS OF AUSTRALIA.

M. A. C. E. E.:

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 28, per ship Calcutta; acknowledged by Sir George Gipps, 28th August, 1839.)

SIR GEORGE GREY TO MR. J. PYM.

Downing Street, 26 March, 1839.

Sir,

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.

Downing Street, 15th February, 1839.

Sir,

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 Feb., 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.
HISTORICAL RECORDS OF AUSTRALIA.

[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.

Recommendation of C. 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.)

Downing Street, 27 March, 1839.

Sir,

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.

Jerusalem Coffee House.

My Lord Marquess,

London, 14 March, 1839.

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 Honorable 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 FIRIE, Ald. JNO. SHEPHERD, Ind. Dir.

THOS. KELLY, Alderman.

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.

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., &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.

1839.
29 March.

Despatch acknowledged.

HISTORICAL RECORDS OF AUSTRALIA.

Sir George Gipps to Lord Glenelg.

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

My Lord,

Government House, 29th March, 1839.

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

* Note 14. † Note 15.
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 Departmt., 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 controul 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.
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. McGREGOR.

[Sub-enclosure.]

SIR JAMES McGREGOR TO DEP. INSPECTOR-GENERAL THOMPSON.

Sir,

Instructions to J.V. Thompson.

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.
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 shew 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.

I have, &c.,
J. M'Grigor.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 62, per ship Caroline; acknowledged by lord John Russell, 28th October, 1839.)

My Lord,

Government House, 1st April, 1839.

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 Feby. 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 adver­
tisement, 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 Feby., the other on the
13th March. Abstracting from each sale the land, which on
account of its superior situation or fertility would have com­
manded a high price under any circumstances, I find that, on the
13th Feby., 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. 3¼d. per
acre; and that, on the 13th March, 54,348 acres sold for £14,118,
or at the rate of only 5s. 2¼d. 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 Feb'y 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 Sept.'mber 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, Appointment No. 42, 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
1839.
3 April.
Appointment of P. P. King as commissioner for A.A. company.
Conditional tenure of seat in council by P. P. King.

J. Macarthur and W. C. Wentworth suggested as members of council.

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 Dumasresq.

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.
NORMANBY TO 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

[Transmit the copy of the despatch on the subject between the Board of Treasury and this Department, by which you will perceive that Her Majesty's Government still consider it desirable to exercise a certain degree of preliminary control over the proceedings of the Colonial Government in the prosecution of Public Works of any magnitude, unless it can be clearly shewn in any instance that the delay of a reference to this Country on the subject would be injurious to the interests of the Colony. But any discretion, which you may exercise in the latter case, must only apply to Works of which the expense is defrayed from Colonial Funds.

I have, &c.,

NORMANBY.
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 assent.
NORMANBY TO GIPPS. 85

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Previous reference to England.

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 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., Letter 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 for instance as the erection of a Government House, wherein Works of magnitude are contemplated and will bear
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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.

Treasur 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 Normandy 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.

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 precedence in this Colony;
and His Excellency having been pleased to say that he would
transmit any farther representations which I might think it neces­
sary to make, I have the honor to avail myself of this, and beg
leave respectfully to urge the following observations for your Lord­
ship'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
Republicae, etc., Vita Justitiae to serve process and to return in­
different 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 Republicae 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 numer­
ous 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."
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Absence of county court.

Similarity of office and duties to sheriff in England.

Claim for precedence.

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., 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. Justices 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 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., ALEXK. McLEAY."
NORMANBY TO GIPPS.

hitherto has been acceded to him in it, we beg to State that we cannot venture any
decisive opinion upon Such a point, as it is one rather for the arbitration of those
whose province it is to marshal all orders and degrees of men in the Queen's do-

minions than for the Judges. The omission of any rule of guidance, in the case of
now put, in the late regulations sent to the Colony, we apprehend to be purely J. Dowling and
accidental, and that the matter, when brought under the notice of Her Majesty, will be immediately set at rest.

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 Honorable 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.
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 Febry. 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 introduced 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 improvement 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 objections, 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.

My Lord.

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, 1836, 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 Phillip, 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, vizt., 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 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.
1839.
8 April.

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 Phillip 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.
1839.
8 April.

Letter acknowledged.

Despatch submitted.

Prohibition of interference at auction sale.

HISTORICAL RECORDS OF AUSTRALIA.

[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 Phillip 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.

I duly received your communication of the 8th instant, enclosing a Copy of Lord Glenelg’s Despatch of the 10th July, 1837. 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.

Request for delay in sales of land at Port Phillip.

Sir,

On the 14th December last, I had the honor to address the Colonial Secretary of New South Wales on behalf of the Port Phillip 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 Phillip, 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 Philip) 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 shew 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 Phillip 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 Philip; 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 desir- able to encumber this part of the case with additional embarrass- ment, 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 irreconcileable 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...
Objections to purchase of land at auction sale.

Effected 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 unequivocally 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 the determination of 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.

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

Mr. C. SWANSTON to Sir George Gipps.

Sir,

Hobart Town, 22d August, 1838.

In my letter to your Excellency of the 31st Ultimo, I brought under your review the claims of the Port Philip association; but fearing, from the short interval that will elapse before the sale of the lands takes place at Sydney on the 12th Proximo, that it will be impracticable to ascertain the nature of your Excellency's views upon the subject, I have deemed it proper towards your Excellency and for the protection of the Interests of the Association to despatch Mr. Perry as its authorized Agent to Sydney with this letter to place himself in communication with your Excellency.

I have, &c.

C. SWANSTON.

Approval of compensation awarded to association.

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.
NORMANBY TO GIPPS.

I am also directed to inform you that, some progress having been made in the measurement of land at Port Phillip, 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.

E. DEAS THOMSON.

[Sub-enclosure No. 10.]

MR. C. SWANSTON TO COLONIAL SECRETARY THOMSON.

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

Sir,

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 Phillip 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 Phillip 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 Phillip, 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 entrenches 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
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. Swainston.

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

Sir,

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 remuneration 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.

[Enclosure No. 2.]
1839.
8 April.

Request for permission to purchase land without submission to 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 Phillip, "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 at the 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 Phillip, 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.
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 condition, the whole risk of the voyage and the chance (which is not inconsiderable) of the spoiling of the Cargo being on the Importer; 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 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 guaranteed 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 Honourable 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 and 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.

WM. MACPHERSON,
Council Chamber, Sydney, April, 1839. Clerk of Councils.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 37, per ship Calcutta.)

Sir,
Downing Street, 9 April, 1839.

I have received a Communication from Mr. Richard Rotton, enclosing a letter from his brother, Mr. Walter Rotton, addressed to my Predecessor, respecting a Grant of Land in New South Wales of which he has been dispossessed by the Colonial Government.

You will be so good as to call on Mr. Walter Rotton for a copy of his letter with a view of ascertaining whether the circumstances, which he has stated, would entitle him to any relief without infringing the existing Regulations on the subject of land.

I am, &c.,

NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.
(Despatch No. 68, per ship Caroline; acknowledged by lord John Russell, 4th June, 1840.)

My Lord,
Government House, 12th April, 1839.

In reply to several Despatches* which I have had the honor to receive from your Lordship, respecting the placing

* Marginal note.—21st October, 1837, No. 8; 15th December, 1837, No. 47; 28th Augt., 1838, No. 195; 20th Octr., 1838, No. 220.
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.,

GEORGE GIPPS.

SIR GEORGE GIPPS TO LORD GLENELG.

Government House, 13th April, 1839.

My Lord,

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

* Note 22.  † Note 23.
Transmission of papers re estate of D. McCallum.

1839.
13 April.

Will of D. McCallum.

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 reoomend 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, untill 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 McCALLUM.

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 1839.

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 McCullum and Jane McCallum.

J. E. MANNING,
R., S. Court.
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 desul­
tory 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,
Government House, 15th April, 1839.

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 Gov­
er 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.

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.

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.
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.]

 MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 41, per ship Parkfield.)

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.

 SIR GEORGE GIPPS TO LORD GLENELG.

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

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.
I 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.

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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
institute 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 Expence 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
to put any other Construction on the Statute constituting the Court
of King’s Bench in that Colony than that for which I was re-
moved from Office.

The Law of England is the Law of Upper Canada when not
altered by any Local Ordinance. On the 18th 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. 1833. 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 Deer., 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 Parl., Vol. 4, P. 84, 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 causes 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 admitted to be one of our most expensive Colonies) my Salary 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 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 Dispatch addressed to Gov'r. 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 concocted any fresh assault; they were dispatched on the

19th of July." In further compliance with the wishes of His Excel-

lency the Governor, and in furtherance of the desire of His Ma-

jesty'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 skillfully 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-

lency 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, Appx. No. 7.
‡ Marginal note.—British Guiana. Letter to Govr. Sir B. D'Urban of 18th Octr.,
1832, and of 16th of Ootr., 1832, transmitted by the Govr. to the Secrv. of State.
§ Marginal note.—17th of Oetr., 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., 1832.
¶ Marginal note.—British Guiana. Letter of 13th Febry., 1833, forwarded by
Sir B. D'Urban to the Secrv. of State. Note from Sir B. D'Urban of 30th March,
1833.
** Marginal note.—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 abroad on account of ill-health.


**Marginal note.**—British Guiana. See Dispatch of 14th of Oct., 1832.


**Marginal note.**—British Guiana. Dispatch of 28th of Janry., 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 £1,000 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

* Marginal note.—Letters from 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 occasion- ally 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 circum- stances, 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. I am, &c,

F. MITCHELL.

[Appendix No. 2.]

MESSRS. BLAIR AND ALLEYNE TO GOVERNMENT SECRETARY

E. F. YOUNG.

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.]

VISCOUNT GODERICH TO MAJOR-GENERAL SIR P. MAITLAND.

Sir,

Downing Street, 19th July, 1827.

This letter will be delivered to you by John Walpole Willis, Esqre., barrister at law, whom His Majesty has been pleased to appoint one of the judges of the Court of King's Bench of Upper Canada.

His Majesty's intention to make this appointment, in compliance with the Memorial of the judges of that Court, was specified to you in Lord Bathurst's Despatch of 9th April last. In the same despatch, the necessary arrangement were made respecting the Salaries to be allowed to the judges of the Court. It has been in contemplation to make provision for the administration in Upper Canada of that part of the law of England, which in this country is administered by the Court of Chancery; and it is intended to commit that jurisdiction to Mr. Willis, who has practised for several years in the courts of equity.
Necessity for equity court in Upper Canada.

Inability to erect equity court in Upper Canada.

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 interior 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.

Sir,

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, Esqre., 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, Esqre., 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 REV'D. BISHOP OF SODOR AND MAN.

My dear Lord,

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.

My dear Sir,
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:

A. a confidential letter of Lord Bathurst with 4 documents referred to in it.
B. 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.
C. an order of the Council of Ten to the Gvr., and Court of Policy, disapproving of some of their proceedings, and per se altering some and announcing the Enactment of others.
D. a correspondence between Mr. Falch and Mr. Wt. Horton.
E. (Merely for your perusal if you should desire it, for you have seen it before) Lord Goderich's Despatch upon the Maltes, 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.
138 HISTORICAL RECORDS OF AUSTRALIA.

[Appendix No. 8.]

SIR B. D'URBAN TO HIS HONOR J. W. WILLIS.

Private, Wednesday, 17th October, 1832.

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. 9.]

His HONOR J. W. WILLIS TO SIR J. C. SMYTH.

Sir, 21 March, 1836.

I have had the Honor to receive, through the Registrar of the Court of Justice, Your Excellency's communication respecting the additional Salary for discharging the Duties of Acting Chief Justice.

According to all Precedent and on every Principle of Equity, with the greatest deference and Respect, I humbly conceive that I am strictly entitled to the 4th of the Income of the absent Officer so long as I discharge his Duties. The reduced Salary of the present Chief Justice is £2,000 per annum, the fourth of which is £500 which I now receive. Your Excellency may remember, at the time you appointed me Acting Chief Justice, informing me that according to the Established Regulations I should be entitled to one 4th of Mr. Wray's Salary (£3,000 per An.), viz., £750, and the arguments you then urged, which induced me to accept merely of £500.

Mr. Bent, I have every reason to believe, is only entitled to half pay from the time of Embarkation from his present Residence for this Colony, and to full pay from the time of taking over the Office to which he has been appointed. Such, I have been informed at the Colonial Office, is the Established Rule, a Rule which was acted upon in regard to myself when I came here, notwithstanding every desire, if possible, to have relieved me from its pressure.

I trust, therefore, when your Excellency reconsiders this matter you will permit me to receive the same additional Salary as hitherto, during the very short period I shall continue to discharge the Duties of Acting Chief Justice. I have, &c.,

J.W.W.

[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.)

20 April.

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
Baron de Thierry, and who, your Lordship is aware, has been for some time past in New Zealand.

Respecting the proceedings of the Baron de Thierry, I beg to refer your Lordship to Sir Richard Bourke's Despatches of the 9th and 13th Sept., 1837, Nos. 86 and 90, also to your Lordship's own Despatch of the 26th Augt., 1836, No. 198.

I have the honor also to enclose a copy of the answer which I have caused to be returned to the Baron de Thierry by my Private Secretary, which will I hope meet your Lordship's approval.

I have, &c.,

[Enclosures.]

GEO. GIPPS.

[Copies of these papers dated 6th March and 16th April, 1839, will be found in a volume in series III.]

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 74. per ship Caroline; acknowledged by lord John Russell, 30th October, 1839.)

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 Stationery; and it has occurred to me that it would, with your Lordship's sanction, be desirable to try the experiment of getting Stationery from England.

I transmit therefore herewith two Demands, one of which I would propose to have supplied from Her Majesty's Stationery 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.]

[These requisitions have been omitted.]

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 76, per ship Caroline; acknowledged by lord John Russell, 28th October, 1839.)

My Lord,

Government House, 27th April, 1839.

In my Despatch of the 4th March last, No. 41, I reported to your Lordship that I had given Leave of Absence to Mr. Riddell, the Treasurer of this Colony, and approved of the
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.
GIPPS TO GLENELG.

[Enclosure No. 1.]

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 fulfill.

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
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,
Sydney, 32nd 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 (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.
1839. 3 May.

Transmission of report re steamer for use of government.

Expected steam navigation by private enterprise.

Report re proposed steamer for use of government.

HISTORICAL RECORDS OF AUSTRALIA.

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 Settlement 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 Philip, 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.

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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 Philip 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 Philip, 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 Philip.

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, 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, shews what these improvements were, and the circumstance of the Elevation of the buildings being submitted for the Governor's approval seems to shew 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
GIPPS TO' GLENELG.

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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 how­
ever 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 Green­
away'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 por­
tions 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 fol­
lowing up this Rule, Mr. Unwin availed himself of some expres­
sions, 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 Com­
missioners, who nevertheless not only heard the case, but re­
ported 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, viz., £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 un-settle 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.]

The Memorial of Frederic Wright Unwin of Sydney in the Colony of New South Wales, Gentleman,
To the Right Honorable Lord Glenelg, etc., etc., etc., Her Majesty's Secretary of State for the Colonial Department.
Respectfully sheweth
That, in and long prior to the year 1832, Mr. Francis Howard Greenway was in the possession and claimed to be the owner of a piece of land at the Corner of George and Argyle Streets in the Town of Sydney, which had been given to him as a remuneration for his services as Colonial Architect.
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. Greenaway'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 evi­
dence 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 pro­
duced and examined his witnesses.

That on a subsequent day the Commissioners met and gave judge­
ment in favor of your Memorialist.

That, although your Memorialist admits that by the act of Coun­
cil 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 know­
ledge 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 con­
sclusive against your Memorialist.

That Sir Richard Bourke’s reason (as your Memorialist under­
stood) 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 shewn 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 evi­
dence (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 an­
nexed 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.
[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.

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 tenantable 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 15 or 19 years such Possession; nor did he claim under the Proclamation of Governor Darling of June 8th, 1829, 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 to the Commissioners of Crown Lands under the authority of the Act in such case made and provided; subsequently to this, however, 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

* Note 28.
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 8th of June, 1829, divest the Commissioners of any jurisdiction in this case, dated this 29th day of February, 1836.

Sydney Stephen.

[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 understood 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.
Copy of Sir R. Bourke's Minute (continued).

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. Greenaway be informed in reply to his Memorial that, on a former occasion, I gave the fullest consideration to his representations 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.

[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, transmitting 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. Greenaway claimed from four different Governors in succession and whereby they all agreed in thinking he had no valid claim to. Previous 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 Jurisdiction 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 Greenaway 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 informed 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.]  
RULE OF SUPREME COURT.  

The King, and Plaintiff. 

In the Supreme Court. 

The former decision on land held by F. W. Unwin. 

May The King, Plaintiff, Rule of court 

and former 

The sixth 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 F. W. Unwin. 

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 ship Garrow. 

Contributory cause of sickness. 

Detention of ship Garrow in quarantine. 

Transmission of report re sickness on ship Garrow. 

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HISTORICAL RECORDS OF AUSTRALIA.

1839.
10 May.

Report by board of inquiry re sickness on 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 probable cause of Sickness on Board the Government Immigrant Ship “Garrow” on her passage from Belfast to this Port.

DR. GOLDFENY, Surgeon Superintendent, R.N., Examined— I was Appointed to the “Garrow” on the 5th October by Mr. Elliott, Emigration Agent, and joined the Ship at Belfast on the 8th 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 Hold1 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. What 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
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. Yes. 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 Merameche, 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, 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 Stinking 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.
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.

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. 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 to 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 kept dry in which you lived?

Answer. Yes, very, by stoves burning every day.

Question. Are you married or single?

Answer. Married; I have a wife but no children.

Question. Have you ever been on board a ship before?

Answer. No.

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 to 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. DEHAMI PINNOCK, agent for immigration.

JOHN NICHOLSON, R.N., Harbour master.

JOHN DOBE, R.N., health officer.

Immigration Office, Sydney, 8th May, 1839.
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 the Inspectors 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.
Convicts to be sent to Norfolk Island.

Increase of military guard.

General principles for management of convicts.

Detention of convicts sentenced in colony.

Superintendent at Norfolk island.

Residence and salary for superintendent.
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.

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.
Sir George Gipps to Lord Glenelg.

(Despatch No. 81, 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 Febry., 1824, at the Salary of 7s. 6d. per diem, was promoted to the rank of Surgeon on the 1st Jany., 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.
[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 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 services 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.

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 as 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, in having had a fixed residence and the advantage of an extensive private practice.

and have, &c,

JNO. V. THOMPSON, Dep. Inspector General.

MARQUESS 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.

[Enclosure No. 1.]

LORD FITZROY SOMERSET TO UNDER SECRETARY STEPHEN.

Horse Guards, 4 May, 1839.

I do myself the honor to transmit to you the copy of a letter, addressed to the Director General of the Medical Department by the Principal Medical Officer at Madras, respecting the health of soldiers undergoing solitary confinement, and the state of the cells in Sydney, New South Wales; and I am directed by the Genl. Commg. in Chief to request that you will draw the attention of the
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HISTORICAL RECORDS OF AUSTRALIA.

1839.
16 May.

Results of
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 pre­
judicial 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 rheu­
matism, 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 SOMERSET.

[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 Confine­
ment 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 immedi­
ately 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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MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 48, per ship Amelia Thompson.)

Sir, Downing Street, 16 May, 1839.

I have received your dispatch No. 176 of the 29th Octr. last enclosing a Petition from Mr. George Wyndham, praying for an additional grant of land in New South Wales.

Under the circumstances stated in your dispatch, I am of opinion that you judged with perfect accuracy in declining to comply with Mr. Wyndham's application. I have, &c.,

NORMANBY.

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MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 49, per ship Amelia Thompson.)

Sir, Downing Street, 17 May, 1839.

I have received your Dispatch No. 180 of the 7th of November last, transmitting a Copy of an Act passed by the Legislative Council of New South Wales on the 2nd of October, 1838, intituled "An Act to continue and amend an Act to restrain the unauthorized occupation of Crown Lands"; and I am to signify to you Her Majesty's gracious approval of that Act. Her Majesty's Government approve the course, which you adopted on receiving the remonstrance of two of the Judges against that Act as repugnant to the Laws of England.

On behalf of the Crown, H.M.'s Government assert in the most decided and unequivocal terms Her Majesty's right to alienate the Waste Lands of New South Wales, and to direct the appropriation of the proceeds of the Sales of such Lands to the Public Service. That is a right which it is indispensable to maintain, not merely for the benefit of the Inhabitants of the Colony, but also for the advantage of every other Class of the Queen's Subjects. The doubts raised by the Judges have been referred to the Law officers of the Crown for their consideration; and, if in the result it shall appear that there is any valid or plausible ground for such doubts, application will be made to Parliament to remove them by a declaratory Act to be passed for that purpose.

I have, &c.,

NORMANBY.
1839.  
17 May.  

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.

18 May.

Refusal of employment for C. Marshall in New Zealand.

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.

18 May.

Despatch acknowledged.

Refusal of compensation for W. Rotton.

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.
Sir,

I have received your Dispatch 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.

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Sir,

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.

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Sir,

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.

Approval of decision re claims of W. Henry.

MARQUESS 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.

Claim by T. A. Murray for land grant.

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,

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 Septr.

R.B.

[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,

Downing Street, 24 May, 1839.

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 "Enterprise," 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 Ullo. submitting the 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
1839.  
25 May.  
Treasury minute re compensation proposed for slaves liberated ex ships Comet, Encomium and Enterprise.

The Treasury minute proposed compensation for slaves liberated from ships Comet, Encomium, and Enterprise. It was stated that the owners of these slaves, who were seized by a functionary of the British Government, might not have been able to reship the slaves if there had been no interference from the English Government. Compensation would be due if the seizure was wrongful and prejudicial. The aggrieved party is to be favorably heard when he imputes the whole of his loss to the injury done to him. The Lords would be prepared to consider the amount of compensation due and to apply to Parliament for the means of discharging the same, provided they are furnished with specific information as to the value of the slaves on board the two vessels as remained at the Bahamas.

The Law Officers of the Crown stated that the owner of the 'Enterprize' vessel, which entered the Port of Hamilton in Bermuda on 11th February 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'. The Law Officers 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 apprized that the claim respecting the slaves in the 'Enterprize' was 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, being 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, in laying the same before his Lordship, Mr. F. Strangways will state 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 Intenisons 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 are 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 there, 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
Treasury minute re compensation proposed for slaves liberated by ships Comet, Encomium and Enterprise.

1839.  
25 May.  

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. 38, 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 16 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 8th 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
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, Downing Street, 30th April, 1839.

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 advertsing 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.
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 Ulto., 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
GIPPS TO GLENELG.

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).

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.

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180 HISTORICAL RECORDS OF AUSTRALIA.

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, shoe-making, 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 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.
GIPPS TO GLENELG.

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 future 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

1839.
3 June.

Previous confirmation of appropriation act.

Reference of church acts to controlling bodies.

Approval of remaining acts.

Necessity for prompt transmission of acts.

Refusal of half salary.
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.)

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.]


"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 sbd. 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 controul; 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..."
1839.
5 June.

Instructions re appointments to casual vacancies and expenditure in customs department.

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 those 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.
GIPPS TO GLENELG.

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 News paper, 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. I have, &c,

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.

[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.

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 Lieut. 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
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 farther 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.

(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 Dec., 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:—

<table>
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<tr>
<th>Description</th>
<th>£</th>
<th>s</th>
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<tr>
<td>112 Bibles at 1s.</td>
<td>5</td>
<td>12</td>
<td>0</td>
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<tr>
<td>283 Testaments at 5d.</td>
<td>5</td>
<td>17</td>
<td>11</td>
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<tr>
<td>421 Prayer Books at 4d.</td>
<td>7</td>
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<td>4</td>
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<tr>
<td>529 Psalters at 2d.</td>
<td>4</td>
<td>8</td>
<td>2</td>
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<tr>
<td>16 Primers at 1d.</td>
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£22 19 9
HISTORICAL RECORDS OF AUSTRALIA.

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. 138. I have, &c.,

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.]
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,
Memorial from directors of Australian gas company re monopoly of coal-mining by A.A. company.

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HISTORICAL RECORDS OF AUSTRALIA.

1839.
13 June.

"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 Honorale 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

* Note 39.
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 dwelling-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. Ambrose Warren.
David Chambers. Edye Manning.
A. B. Spark. Wm. Macpherson.
Charles Nicholson. Adolphus Wm. Young.

Sydney, New South Wales, 20th May, 1839.

[Appendix A, referred to in Paragraph 2.]

Sir,

In acknowledging the receipt of your letter of the 5th Instant, requesting Monopoly of 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 arrangements made by Her Majesty's Government with the Company prevent the A.A. company from giving permission to any other Society or persons to open such Mines 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.
1839. 
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.
R. MANSFIELD, Secretary.

[Appendix C, referred to in Paragraph 4.]

Transmission of agreement.

Reverend Sir,
Colonial Secretary's Office, 9 January, 1839.

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 Mines; nor is Government during that time to afford assistance in Convict Labour 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.
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 Regt., 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 endeavored 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 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.

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.)

Sir, Downing Street, 17 June, 1839.

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.

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.
MARQUESST 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.]

(Enclosures transmitted.)

(1) Despatch from Sir John Franklin 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 expence, 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.
NORMANBY TO GIPPS.

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 Ulto., 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 Paramatta 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-ENCELLOUS.

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.

M A R Q U E S S O F N O R M A N B Y TO S I R G E O R G E G I P P S.

(Despatch No. 77, per ship Mary Anne.)

Sir,

Downing Street, 22 June, 1839.

I have received your dispatch No. 195 of the 8th Dece. 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.

22 June.

REPORT RE E. DWYER.

S I R G E O R G E G I P P S TO L O R D G L E N E L G.

(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. Jevers, and making enquiry respecting the fate of Elinor Dwyer, I have the honor to acquaint your Lordship that, after some trouble,
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 Ocr., 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 arrange-
ments suggested by the Master General and Board; and that you
will further move his Lordship to apprise 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., en-
closing 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 Establish-
ment 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
Comrs. 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 ren-
dering 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 con-
sideration, had come to the following decision, namely:—That the
Vouchers for Convict Services shall continue to be made as at pre-
sent by the Ordnance Officers; That, being prepared and certified
by the Ordnance Officers, they shall next be forwarded to the Com-
missariat 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.

GEORGE GIPPS.

[Enclosures.]

[Copies of these two papers will be found in a volume in
series III.]

MARQUESSE OF NORMANY 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 of sappers and
consideration, Her Majesty's Government have come to the ™i^r
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.,

NORMANY.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 98, per ship Palestine; acknowledged by
lrod John Russell, 14th December, 1839.)

My Lord,
Govern ment 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 docu-
ments 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 impor-
tance 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.
1839.
27 June.

Objections to P. L. Campbell as member of executive council.

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 authorized Mr. Suggate to retain the sum of £70, which was advanced 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.

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 direclion 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. Fredk. Elliott.

[Enclosure No. 2.]

MR. T. F. ELLIOTT 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.
MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 83, per ship Mary Anne.)

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.)


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 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 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.
1839. 1 July.

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.

I have, &c.,

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. 98, 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.

HISTORICAL RECORDS OF AUSTRALIA.

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
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.

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 Comrns. 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 the Public Officers in the Colony 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.
Refusal of increase of salary for T. Ryan.

Mr. G. J. Pennington to Under Secretary Stephen.

Sir,

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.

Transmission of returns of proceeds of effects of deceased convicts.

Sir George Gipps to Lord Glenelg.

My Lord,

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 Eeturns of the Proceeds of 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.]

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Sdespatch 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.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Sdespatch 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.
Despatch received re\textit{ trial and execution of Maori.}

\textbf{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.

\textbf{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. 11\textshilling 1\textdollar, 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 expence 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 were 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 expence 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 Jan., 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.

1839.  
8 July.  
Proposed withdrawal of convicts from Goat island.

Building stone at Cockatoo island.

depth 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.)

10 July, 10 July, 1839.

Sir,

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.

16 Carlton House, 3 July, 1839.

Sir,

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 enterprize.
NORMANBY TO GIPPS.

Knowing how greatly every interest, both Colonial and Metropolitan, would be promoted by this great measure, I venture to propose it to the Government.

The persons, whom I have consulted on the subject, and whose local knowledge entitles their opinions to respect, do not hesitate to pronounce that an undertaking of this nature would greatly advance the system of Colonization from which the Population of some Districts in the United Kingdom are already deriving so much relief.

Sir Richard Bourke, when in N. S. Wales, felt the want of Communications by Steam, and I believe addressed the Govt. upon the subject.

At a time like the present, when some Legislative Enactment is anxiously expected by the Colonists, it would produce the best possible effect upon the public mind to be assured that a really more important measure was contemplated by Govt. for the benefit of the Colony; and that, if the demands upon the Colonial Funds were too many and too urgent to admit of their defraying the expenses of the undertaking, means wd. not be wanting in this Country for the Execution of so useful a project.

I will only add that more than 30 years since, when my late father predicted to the Government of that day that the Merino Sheep he then possessed should in his hands become a lever, by which a Penal Settlement would be raised into a Colony of great Commercial value to his Country, his declarations were received with incredulity.

Let his Son, who has reflected much upon the subject which he now proposes, assure you that consequences almost as important are involved in the present suggestion. Far from being rejected as a visionary project of the day, he ventures to hope it may be entertained as one that cannot fail to open new sources of wealth to this Country and acquire an accession of honour for the Colonial Minister by whom it may be adopted.

I am, &c,

EDWD. MACARTHUR.

[Sub-enclosure.]

PROPOSAL FOR STEAM NAVIGATION.

With the present Session of Parliament, three successive years will have passed away without the Colonists of New South Wales having received from the Imperial Legislature that new Law for their general Government, which the expiration of the old act of the 9th Geo. the 4th rendered necessary.

The renewal for another year of an act so ill suited to the present circumstances of Colonists, 16,000 miles distant, cannot but disappoint their expectations. They must naturally deem themselves neglected, and in truth aggrieved, unless the Government determine upon some measure of obvious utility, which being engrafted upon the temporary Bill, will show that their true and immediate interest has been advanced, and the development of the sources of the Colony thereby promoted.

The most cursory view of the position of this Colony, gradually extending itself along the elevated Country, which borders the Eastern and Southern Coasts of Australia, renders it evident that the Ocean must in an especial manner be its natural and great highway of communication. It seems destined to supply those means of access, which great navigable rivers afford in other regions.

* Note 46.
The difficulty of intercourse between the several parts of this Colony is very great, for at present it can be generally effected only by land. Not only is the usefulness of one part to another thereby materially decreased, but its value to the mother Country greatly diminished, for the expense of land carriage enhances the cost of every article of import and also lessens the returns upon those of Export. But, as no located part of the Colony is situated at any great distance from the Coast, comparatively with its distance from the other located Spots, a much easier and more expeditious means of communication between the several parts of the Colony might be obtained by means of Crown with the aid of Steam Vessels.

The Coast line of New South Wales, which is at least 1,500 miles in extent, is equal to that of the United States of America. The Country along the Coast abounds with Coal and iron, possesses safe and convenient harbours, communicating with districts of diversified aspect, and is in every respect, where decomposed traprocks and granite afford good soil and well watered vallies, eligible for small farmers. In addition to these advantages, it is intersected by streams, some of which would admit of navigation to a considerable extent inland.

The ocean, however, affords the readiest means of reaching these numerous, tho' at present almost isolated rich vallies, where trees and shrubs, flourishing in wild luxuriance, indicate a climate and soil most favourable for cultivation.

Great Britain possesses in Australia an almost indefinite extent of the finest arable and pasture land. Its sale is becoming of the utmost importance, for it enables her annually to provide with a passage to this colony several thousand indigent families free of all expense; and this is done with an attention to their comfort and accommodation upon the voyage, such as were wholly unknown to emigrants in former times.

For such Colonists, this Coast line affords the best agricultural prospects; but the completion of the system of roads, now in progress in the Colony, must on account of the state of its population be a long and arduous task, and considerable time must necessarily elapse before the access by land can be otherwise than difficult.

Steam Navigation along the shores of such a Country appears to be peculiarly favourable for the most essential purposes of Colonization and the promotion of agricultural industry. Points already occupied and new locations would thereby be easily reached in a few hours, which can now be only accomplished by uncertain and perilous travelling for not only days but even weeks and perhaps months.

By Steam navigation, vast tracts of Country on the sea shore still unoccupied and not remote from Sydney may at once become available. With an Italian Sun and soils, watered by the moisture induced by a continuous Mountain Range, it is impossible to say to what extent the productive powers of the Earth may there be carried.

Amongst the many advantages of this Coast are the varieties of climate from North to South, which it presents. So that in any determined degree of latitude, a choice of soil and situation would go far to insure the successful cultivation almost of any product, which it might be the wish of the Capitalists to raise.

If the natural difficulties, which now check the sale of land, and obstruct the tide of emigration were removed, there is reason to
believe that Great Britain would possess at no very distant period some millions of industrious subjects upon the Coasts of Australia, diffusing the arts of Civil Life, interchanging amongst each other the varied products of different soils and climates, and, altho' distant, pouring from their abundance into the lap of a liberal mother the wealth, which the wisdom of her measures shall have enabled them to acquire. Nor is this too sanguine a prospect, for at the commencement of the Reign of King George the third the United States, now possessing a population of sixteen millions, and importing to the value of more than forty millions of pounds Sterling, were but an infant People, scarcely numbering, had an accurate census been made of their population, one million of Persons.

With so extended a Coast line, the advantages in Australia of an efficient Steam Navigation would be immense. By its means, much greater objects may at a comparatively small outlay be attained than it is often the fortune of the states to acquire by expensive armaments and Missions. For Commercial men well know that 10,000 persons of British origin and habits constitute a more valuable connexion for Great Britain than 50,000 Foreigners. And her exports to the Australian Colonies are already equal to one eighth of her exports to her whole Colonial Empire.

Independently of these prospective advantages, Steam navigation would at once give a vastly augmented energy to the Central Government at Sydney; the Laws would be better and more equally administered by the facilities afforded of establishing circuits for the Judges; Religion would be more effectually maintained by increased opportunities of intercourse between all orders of the clergy and their Flocks; the aboriginal Inhabitants be better protected by rendering no district so remote as not to be almost as fully within the influence of the Supreme Authority, as if Under its immediate view.

But available Funds in the colony there are none; and, as Sir Thomas Mitchell truly observes in his Expeditions into Eastern Australia, these great objects are not possible excepting by such means as England alone can supply.

The prospect of returns upon the necessary outlay of Capital would, altho' sufficient for a Government, be inadequate for some years to attract the Capital, and recompense the enterprise of individuals, to whom in ordinary cases such undertakings are best committed. It must not however be forgotten that, with respect to New South Wales, England is both Sovereign and Proprietor, extending her Sovereignty by the acquisition of new subjects, in proportion as her Proprietorship is diminished by the sale of land. She ought not therefore to seek to release herself from such prudent outlays as every intelligent proprietor incurs when he gives the readiest possible access to his estates.

An efficient Steam Coasting Communication for Australia might require a first outlay of £100,000, in providing and equipping four steam Vessels of 500 Tons each with powerful and sufficient Engines, and perhaps a subsequent outlay of £100,000 more to complete the system.

The proceeds of these Vessels, in the conveyance of passengers, sheep, cattle, horses, grain, wool and other Colonial produce, together with such articles of supply, as the increasing demands of the Colonists would require, must be very great; and it can scarcely be doubted, but that they would, if vested in Colonial Securities,
Proposal by E. Macarthur for steam navigation on east coast of Australia.

But the people and Government of England are actuated by loftier considerations than a mere, altho' just and prudent regard to expenditure. The much greater facility, which these Steam Vessels would afford in being ready to land, at once at their future homes, the small capitalists and farmers arriving at those remote shores, might well be a subject of interest with the philanthropists and every true friend of his country. The difficulties, which now beset the newly arrived emigrant and his family, worn down by confinement incidental to a long voyage, and oppressed with the sense of being amongst strangers, ought to weigh with those who could mitigate them, in so great a degree, by the encouragement of a communication between the different places on the Coasts of New South Wales by Steam Vessels. Nor is this all; it concerns her fair fame amongst the nations of the Earth, that England, still continuing to send forth the refuse of her population upon the shores of Australia, should also by every means facilitate such an accession of another and more pure class, as vastly to outnumber and to reduce to no account such a tainted altho' not useless portion.

An Approximation of Distance in Geographical miles, and of time by Steam Vessels.

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<tr>
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Southward.

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Eastward.

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<th></th>
<th>Miles</th>
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<tr>
<td>New Zealand</td>
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<td>100</td>
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</table>
A Comparative statement of the Freight and carriage of goods.

£ s. d.

1839. 10 July.

Comparative statement of the Freight and carriage of goods.

The carriage of goods per Waggon from London to Portsmouth and back being 144 miles is 6 0 0 per ton.

From Sydney to Goulburn, 140 miles .............. 14 0 0 " " or equal to the Freight of a Ton of wool at 1d. per lb. from Sydney to London.

Its effect may thus be illustrated that, when salt is selling at Sydney at £4 per ton, its price at Goulburn is £20.

The mean Freight of Wool, Oil, Timber, and Flax from Sydney to London and Liverpool is .................. 7 0 0 per ton.

From Sydney to Hobart Town ........................... 1 10 0 " "

To that Freight from Sydney to Launceston at a distance of 600 miles is not 5 times less than it is to England, which being 16,000 distant is more than 26 times more remote.

From Sydney to New Zealand at a distance of 1,000 miles, Freight is £2 to £2 10s. per ton.

Marquess of Normanby to Sir George Gipps.

(Despatch No. 91, per ship Mary Anne; acknowledged by Sir George Gipps, 4th February, 1840.)

Sir, Downing Street, 11 July, 1839.

I transmit to you Copies of two letters, which have been addressed to this Department by Mr. Mudie respecting his claim to a grant of Land in New South Wales, and I have to request that you will send home a Report on the subject of this application.

I have, &c.,

NORMANBY.

[Enclosure No. 1.]

Mr. J. Mudie to Marquess of Normanby.


I have the honor of submitting for your Lordship's consideration the following statement:—During a period of 15 years, I was a Settler on a very extensive scale in the Colony of New South Wales. On my arrival in the Colony in the year 1822, I received a Grant of Land as a first class Settler of 2,000 Acres. Some time after this, the first class Settlers had their grants made up to four sections, viz., 640 Acres in each section, making a grant of 2,560 acres; and I received an order for the 560 additional acres. But, in consequence of my being then in debt to the Govt. for the land purchased, the Order for the additional 560 acres was refused to be confirmed until the debt due to the Govt. was paid. I was unable to discharge this debt until a few days before I left the Colony, which was then done; and, as I am now on the point of returning there, I am desirous to obtain an order from your Lordship to enable me to have the additional 560 acres confirmed, and
that I should be allowed to take out with me a certain number of Shepherds, Agricultural Servants and Mechanics agreeable to the present emigration system, so as to enable me to receive the bounty on their arrival in the Colony.

I have, &c.

J. Mudie.

[Enclosure No. 2.]

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

Sir,

Nevenden Hall, 5 July, 1839.

Evidence in favour of claim. I beg you will be pleased to lay before the Marquis of Normandy the inclosed letter from Sir Ralph Darling, late Governor of N. S. Wales, which I trust will be sufficient to establish my claim to the grant of 560 acres of Land, which was withheld on account of my being then in debt to the Govt. (for land) which debt I afterwards discharged.

I have, &c.

J. Mudie.

[Sub-enclosure.]

SIR RALPH DARLING TO MR. J. MUDIE.

Sir,

Cheltenham, 3 July, 1839.

Statement by Sir R. Darling re claim. I have been favored with your letter of the 28th of last month on the subject of the additional Grant of land of 560 Acres, stated to have been made to you during my Administration of the Govt. of N. S. Wales, and stating that my testimony of the correctness of your representation to the Colonial Office wd. facilitate your obtaining the confirmation of the Grant in question. You must be aware that it wd. be difficult for me, not being in possession of any documents relating to the grants of Land, to speak positively to every individual case; but I can have no hesitation in expressing my belief, from the nature of circumstances, that what you have represented is correct, as there could be no doubt of your claim to a grant of Land as a first class Settler.

I have, &c.

R. Darling.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 103, per ship Palestine; acknowledged by lord John Russell, 21st January, 1840.)

My Lord,

Government House, 11th July, 1839.

Demand for refund of money received as interest by collectors of revenue. I had the honor to receive, on the 16th Jany. last, your Lordship's Despatch, No. 202 of the 30th Augt., 1838, directing me to call on the several collectors of Revenue in New South Wales to pay into the Colonial Treasury the amount, which they had severally received on account of Interest on Public Monies deposited by them in any of the Banks of the Colony, and I lost no time in causing a copy of the same to be sent to each of the undermentioned officers:

The Collector and Comptroller of Customs;
The Post Master General;
The Treasurer, who is now also the Collector of Internal Revenue;
The Gentleman who acted as Collector of Internal Revenue up to the 31st Decr., 1836.
I have now the honor to report to your Lordship that the Officers of Customs have paid into the Colonial Treasury the sum of £536 5s. 10d. being, according to their joint declarations of the 27th March, 1839, herewith enclosed, the amount of interest credited to them at the Banks; and that the Post Master General has paid into the Treasury the sum of 12s. being, according to his declaration dated the 18th April, 1839, also enclosed, the full amount received by him on the same account. The Treasurer (Mr. Riddell) has made no payment into the Public Treasury; and it was not until after he had left the Colony on Leave of Absence, as reported to Your Lordship in my Despatch No. 41 of the 4th March last, that I became aware he had received any Interest on Public Monies deposited by him in any one of the Banks. I have the honor however to submit to your Lordship a copy of a letter from Mr. Campbell, the Gentleman who acts for Mr. Riddell in his absence, by which it appears that some small sums have been credited to Mr. Riddell at one of the Banks, on a Contingent Account kept by him at that Bank, distinct from his general account. The nature of this Contingent account is explained by Mr. Campbell’s letter and by the remarks on it written at my desire by the Auditor General; and I feel it my duty to express to your Lordship my opinion that this account does come within the class of accounts on which, according to your Lordship’s Despatch of the 30th August, 1838, the Interest (if any be allowed) is to be credited to the Public; the true meaning of that Despatch being, as I read it, that no officer of Government is to derive emolument from the passing of Public money through his hands. As Mr. Riddell is however in England, it is not in my power to take any further steps in this matter at present.

From the former Collector of Internal Revenue, Mr. Macpherson, I have received a letter, containing a protest against being called upon to make the payment in question, but at the same time expressing himself ready to do so, should your Lordship on reconsideration of his case still require it of him. Of this letter I have the honor to enclose a Copy, and shall wait the further instructions of your Lordship upon it.

I have, &c.,
Geo. Gipps.

[Enclosure No. 1.]

Messrs. Gibbes and Cooper to Colonial Secretary Thomson.

Sir,

Customs, Sydney, 27th March, 1839.

We have the honor to acknowledge receipt of your letter of the 5th Ultimo, enclosing copy of a Dispatch from the Secretary of State, dated the 30th August, 1838, No. 202, and to acquaint you...
1839.
11 July.
Repayment by J. Gibbes and G. Cooper.

that, in compliance with the directions contained therein, we have handed over the Colonial Treasurer £536 3s. 10d., the amount of Interest allowed by the Bankers on our Deposits of the receipt of Customs from the 10th October, 1836, to the 10th October, 1838, the whole period from and to which payment has been made to us.

We have, &c.,
J. GIBBES, Collector.
GEO. COOPER, Controller.

[Enclosure No. 2.]

MR. J. RAYMOND TO COLONIAL SECRETARY THOMSON.

Sir,
18th April, 1839.
I do myself the honor herewith to transmit a Certified Copy of the Certificate of the Cashier of the Bank of New South Wales (lodged with the Colonial Treasurer) in corroboration of my former statement and declaration, that (12s.) twelve shillings is the only item of Interest to my credit on deposits in that Bank; and, from the date of my appointment to the 1st Instant, I have not deposited public money in any other Bank.

I enclose the Treasurer's receipt for the above Sum.

I have, &c.,
JAS. RAYMOND.

[Enclosure No. 3.]

MR. P. L. CAMPBELL TO COLONIAL SECRETARY THOMSON.

Sir,
30th April, 1839.
I have the honor to acknowledge the receipt of your letter of the 26th Instant. I beg to say that your letter of the 16th instant, requiring me to report whether any payment on account of Interest on Government monies was made to the Colonial Treasury by Mr. Riddell before he sailed for England was fully answered by my letter in reply of the 20th Instant.

There being no record whatever, either in my Office or in the Bank Books, of any other interest than that I have mentioned having been carried to the Public Account by Mr. Riddell before his departure.

The Contingent Account was formed many years ago by an arrangement with the Auditor General to facilitate the settlement of certain amounts made payable on the Warrant to the Heads of several Departments, and who, when they received the money for the purpose of paying the claimants, neglected to obtain the subsidiary Vouchers properly signed, some objected to undertaking these payments at all. The Head of the Department therefore gave the Treasurer a receipt for the gross amount; the sum was charged in the Public Account as paid to that person for Sundry Expenses of his Department; and, the amount being in the Treasurer's name, he paid the various items on demand, and took the proper receipts, which were his vouchers for the due payment of the monies from the so called "contingent account," but which in fact is a private account for which the Treasurer is personally responsible, it being at his option whether it shall be kept in specie in the Chest, or in a Bank, should he think proper to take the risk of placing it there.

At the same time, the duty of the Clerk, who managed this account, was considerably increased, and the Books, required to be
kept for it, rendered it necessary for him to devote his private
time, to what properly belonged to the Departments of the Colonial
Secretary, Surveyor General, Immigration, Coroner, Port Phillip.
Another item also of the C.A. Account arises from the Sales of
Pounded Cattle, the proceeds of which are lodged with the Trea-
surer for two years, during which time, should he place them in
the Bank, he does so at his own personal risk.
The only other Account in the Treasurer's name at the Bank is
that of the Savings Bank, which duty was imposed on Mr. Riddell
by the Secretary of State.
I have, &c.,
P. L. CAMPBELL.
"Request the Auditor General to explain more fully the nature
of this Contingent Account, it being said that the management re-
specting it was made by him, or with his concurrence."
3d May. G.G.
THE Treasury Instructions as to Colonial Accounts assume that
those for "Fixed Contingencies" are paid by the Head of each
Department, and periodically included in Abstracts, the entire
amount of which is re-imbursed by the Treasurer on a Warrant
for the same being granted.
This regulation implies the imprest of monies to enable the officers
in charge to make such payments in detail. As it was found desir-
able, however, to avoid making advances as much as possible from
the difficulty and delay experienced in some instances of procuring
their adjustment, it was considered advisable the Heads of Depart-
ments should bring forward their Accounts in Abstract, previously
to payment of order, that the amount of each Abstract might at
once be included in the Warrant to enable such Officers to liquidate
the several Accounts posted in the Abstracts, and take the receipts
of the Parties to whom the sums were due.
This course, however, was still found to be attended with incon-
venience; as it rendered it necessary to return the Voucher to the
Officer in charge, thereby exposing them to be mislaid, and as the
acquittances taken were sometimes found to be informal and in-
complete; in addition to which several of the Heads of Depart-
ments were averse to the trouble and responsibility of making such
payments.
To remedy the inconvenience, the Treasurer adopted the arrange-
ment of taking the receipt of the Officers in charge for the amount
of the Abstract, and making the several payments on his Account
to each claimant direct from the Treasury; in which arrangement,
for the reasons assigned, I fully concurred.
On obtaining the receipt of the Head of the Department for the
entire amount of the Abstract to the Treasurer, he, it appears, trans-
ferred the same to an account in one of the Banks named in his
contingent account, and, on application, paid the several Parties
whose Accounts were included in the Abstract by drawing on this
Account, till the whole were liquidated and the Vouchers completed.
At the time the arrangement was first adopted, there was no
question of interest, as none of the Banks allowed any on deposits.
The foregoing remarks may be sufficient to explain the origin
and nature of the account alluded to.
On inspecting this Account as kept in the Books of the Treasury
for the last year, besides monies above referred to, there appear
to me items, though few and unimportant, of sums paid to the
Treasurer as Revenue lodged in the Bank and placed to this account for a short time, awaiting, as explained by the Chief Clerk, the receipt of a few vouchers, before being posted in the charge side of the Treasurer's final account current. I doubt the expediency of any delay in posting all Public Monies received to the credit of the Public in his final Account; though I think it very probable the Treasurer can satisfactorily explain the reason of the Entries in his Contingent account advertised to.

It may be proper to remark that the described contingent account has been rendered unnecessary, as, on the authority granted in the case of the Fixed contingent accounts of the Colonial Engineer, the warrants with few exceptions, both the Fixed and Unfixed contingencies, are now drawn in favor of the actual claimants.

7 May, 1839.
WM. Lithgow.

[Enclosure No. 4.]

MR. W. MACPHERSON TO COLONIAL SECRETARY THOMSON.

Sir,
Council Office, Sydney, 10th June, 1839.

I had the honor duly to receive your letter of 5th February last, in reference to my letter of 16th February, 1837, relative to Interest credited to me by the Bank of New South Wales and the Commercial Bank on Public monies, deposited by me in their hands between the 5th of February, 1836, when they commenced allowing Interest on Deposits, and the 31st of December of the same year, and transmitting to me a copy of a Despatch from The Right Honorable The Secretary of State, dated 30th August, 1838, No. 202; and I have likewise had the honor to receive your subsequent letters of 13th and 26th April on the same subject, by which, you, in pursuance of the instructions contained in the Despatch referred to, direct me to pay into the Colonial Treasury, the sum of eighty eight pounds, four shillings and sixpence, being the amount of Interest received by me from the Banks above mentioned on my collections between the 5th of February and the 31st of December, 1836 (amounting to upwards of one hundred and forty thousand pounds) and likewise any other Sums which may since have been credited to me by the Banks as Interest on account of Public Monies.

In respect to the amount of sums so received, I beg leave to say that, during the year 1837, no Public monies were collected by me; and, during the year 1838, the amount of the sums collected by me as Agent for the Estates of the late Church and School Corporation (£5,964 2s. 6d.), was comparatively so small, and remained so short a time in my hands, that the amount of Interest credited to me during the whole year by the Commercial Bank, in which all my Collections were deposited, was only Five pounds, nineteen shillings and sixpence.

With great deference to the High Authority from whom the instructions to require me to make the above mentioned payments proceed, may I be permitted to offer some observations in regard to the demand made on me for payment of those sums, both as respecting the equity of the claim itself, and as to the imputation of blame conveyed by the terms of the Despatch instructing that claim to be made.

I believe my remarks will be more clearly understood by considering the latter point first; the words, to which I allude, are, "that any future attempt to retain Interest or derive Profit from
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their respective Public Balances will be visited," etc. Leaving other Public Officers to answer for themselves, I beg leave to say, in respect to myself, that I had not the slightest suspicion of any blame being attachable to my conduct on the occasion under consideration.

The great profits, derived by the Bank of England from the large Balances of Public Money in their hands, is made mention of in every Publication on the subject of the Public Revenue of Great Britain.

Officers charged with the collection of Public Monies in Great Britain are, or at least used to be (as I have been formerly told) required to pay over such Monies at stated periods only, usually either Half yearly, or Quarterly; the general practice of Collectors in Scotland was, I believe, to pay such monies into the Banks with which they were respectively connected, and such Banks allowed Interest thereon in like manner as on other Deposits; but, so far as my enquiries extended, I never heard of any instance of the Government calling upon such Collectors to account for Interest so received.

My enquiries upon such subjects originated in my endeavours to obtain some such appointment in Great Britain previous to my coming out to the Colony; and, having had some prospects of being appointed to the "Collectorship of the Cess" in the County of Perth in Scotland, I was led to believe that the emoluments derived from the Interest on the Balances were larger than the Salary.

On being nominated in December, 1828, to my first appointment in this Colony, the Collectorship of Internal Revenue, I was informed by Mr. Short of the Colonial Office that I must give security to the amount of Twenty thousand pounds, as the Revenue was expected very soon to amount to about Forty thousand pounds per annum, although it was not at that time near so much; and he believed I would be required to pay my Collections into the Colonial Treasurer only Half yearly or Quarterly.

Upon my representations of the unreasonableness of being required to give security to so heavy an amount upon appointment to an Office, of which the established Salary was only Five hundred pounds per annum, the amount of security required from me was reduced to Ten thousand Pounds.

Upon my arrival here, and finding that I was required to pay over my Collections at first daily as received, and afterwards half monthly, and that the Banks allowed no Interest on deposits, I made no secret of my disappointment, as I think Mr. McLeay, then Colonial Secretary, and Mr. Harington, Assistant Colonial Secretary, to both of whom I communicated my sentiments, will remember.

At the beginning of 1836, my Salary was increased to Six hundred pounds per annum, and, in the latter part of that year, when I was appointed to the Clerkship of the Councils and was congratulated by many persons on the promotion as it was generally deemed, my usual reply was that in a pecuniary point of view it was a loss, as, if I had remained Collector of Internal Revenue, the Interest on my deposits would probably amount to about a hundred pounds per annum, making my Income Seven hundred pounds instead of Six hundred pounds a year, the Salary of my new appointment.

I trust I have said enough to give credence to my assertion that, feeling confident that no person could charge me with having at
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Interest claimed by W. Macpherson.

Injustice of retrospective demand for interest.

Legal opinion re claim to interest.

Decision to be accepted.

Insecurity of treasury office and chest.

Services of W. Macpherson as magistrate at Hyde park.

any time failed to pay over the full amounts of my Collections regularly on the days appointed by the then and still existing regulations, I firmly believed that the Interest accruing on those deposits, during the very short time they remained in my hands (never exceeding fifteen days, and of course a large proportion much less) belonged as justly to me as my Salary itself, and that no concealment was necessary; and I can without fear of contradiction assert that none was ever attempted.

In reference to the Justice of the claim made upon me, may I be permitted to say that it being quite notorious that Government Officers, in receipt of Public Monies and paying over the same at the times appointed, did not use, either at Home or here or anywhere else, so far as I have ever heard or read, to be called upon to pay Interest for the periods during which, in accordance with regulation or customary usage, such Monies remained in their hands, would it not have been equitable, upon a change being intended, that notice of such change should have been given to Parties interested and that such new regulation should have only a prospective and not a retrospective effect.

As tending to confirm the justice of my arguments, may I be permitted to say that it is the opinion of some of my Law friends that, as the Government held securities for my intromissions which they could, and there is no reason to suppose they would not have put in force, if any loss had been the consequence of my making those temporary deposits in the Banks, I am entitled in a legal point of view to retain the Interest accruing thereon as a compensation for the risk I thus incurred.

Although I mention these opinions as supporting my arguments, it is neither my intention, nor my wish to resist the final decision of the Government, which I shall readily submit to whatever it may be.

I should not however, I respectfully submit, be blamed for acting as I have done, because I made no speculative use of the Public Money, but lodged it in the very same Banks in which the Government, reposing full confidence in their stability, kept deposits to a greatly larger amount.

In addition to which it may be urged that, for a previous period of five years and upwards, such temporary deposits were made by me without deriving any benefit therefrom, but for the greater safety of the Government money only, which would not have been secure in the Office and Chest appointed for the keeping thereof, attempts having been made to force the Chest; which, although reported to the Government, and a Sentry was allowed for a few months, yet he was then taken away, and no effective and permanent arrangement for its security made.

I may yet state further reasons why, I think, I should not have been made one of the first and, I suppose, the heaviest sufferer by the retrospective effect which has been given to the new regulation.

It is not unknown to the Government. I believe, or it might by reference to Records in your Office, I think, be ascertained, that, during Five years and upwards. I regularly and unremittingly performed the gratuitous extra duty of serving as one of the Hyde Park Barrack Magistrates, which occupied me from three to five or six hours weekly. While, out of thirteen Civil Officers appointed to that duty, only two or three, besides myself, continued to discharge
GIPPS TO GLENELG.

it with any regularity, thus making the duty fall heavier on those who did so.

In proof of the weight of the duties of the Internal Revenue Office during that period, I may mention a circumstance, known at least to Sir Ralph Darling and to Mr. McLeay, and which I am sure they will not hesitate to confirm, that, when in 1831 His Excellency nominated me one of the Members of the Assignment Board, informing me at the same time that I was not to receive any remuneration for my extra services, I submitted without complaint; but when His Excellency afterwards told me that he could not find Members who would act gratuitously, and he had resolved on allowing One hundred pounds per annum to each of the Members, I requested that my services as a Member might be dispensed with, as I could not discharge them without prejudice to my duties as Collector of Internal Revenue, by my frequent absence from the latter Office, and attendance at the former.

In the latter end of 1833, I was appointed a Commissioner under the Act of the Governor and Council, 4 William IV, No. 11, and likewise Arbitrator for the Government in cases not referrible to the Commissioners; the duties of those Appointments were considerably onerous upon me as I was required to prepare detailed reports of all the cases, etc., while at the same time I was not allowed any remuneration, although the other two Commissioners under the Act, who were not Government Officers, were allowed a Sovereign each for every day of their attendance.

During the whole of the year 1837, and the first six months of the year 1838, the duties, imposed on me as the Member of the Immigration Board, who was charged with the preparation of the Reports, and (with the exception of boarding ships on arrival, in which all the Members took part) with the performance of all the other duties now performed by Mr. Pinnock, were exceedingly onerous, and no remuneration was allowed to me; the number of Emigrants, deriving aid from the Government arrived during those eighteen months, was above four thousand five hundred.

The Additional Appointment of Agent for the Estates of the late Church and School Corporation, with which Sir Richard Bourke was pleased to honor me just before his departure from this Colony, was I believe intended as an acknowledgement of his sense of the Services performed by me during His Excellency’s administration.

The duties of that Appointment, to be properly performed, require considerable knowledge of Rural Affairs, firm, and steady management, vigilant attention, to prevent neglect of payments as they become due, and to guard the Estate from encroachments, and a sufficient acquaintance with the usual forms and purport of Leases, Contracts, etc.; but the Manual labour consists almost wholly of Clerk-work, and, during my holding the Office, has been performed by a Clerk paid by me out of the emoluments of the Appointment.

It has never occupied any part of my Government time beyond what has been occasionally necessary for superintending Sales of Leases, giving directions, or communicating personally with the Lessees of Church Lands, or other Debtors to the Estate calling at my Office; and has never interfered with my duties as Clerk of the Councils; but I have lately learned that I am now to be deprived of that Appointment.
I have now only to apologise for the great length of this letter, and to request that you will have the Goodness to convey to His Excellency the Governor my solicitation that His Excellency will be pleased again to submit my case to The Right Honorable The Secretary of State; if that Minister, after perusal of the foregoing statement, shall still think that I ought to pay the Money, I shall be quite ready immediately to do so.

I have, &c.,

WM. MACPHERSON,
late Collr., Int. Revenue, etc., etc.

12 July.
Despatch acknowledged.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 92, per ship Mary Anne.)

Sir,
Downing Street, 12 July, 1839.

I have received your Despatch, No. 12 of the 12th of January last, relative to two Petitions, which you had received from Mr. N. Lipscomb Kentish, addressed to Her Majesty and to both Houses of Parliament, but which you had returned to Mr. Kentish on account of the informal manner in which they had been prepared.

I have to request that you will acquaint Mr. Kentish that I have received Printed copies of the two Petitions with various manuscript interlineations; but that for the same reason, which led you to return them to him, I have felt it impossible to present them.

I have, &c.,
NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 93, per ship Barrosa.)

Sir,
Downing Street, 13th July, 1839.

With reference to my Dispatch No. 61 of the 3rd Ultimo, I transmit to you the Copy of a Correspondence between the Board of Ordnance and this Department on the subject of the Act No. 1 of 1837, passed by the Legislative Council of New South Wales, intituled, “An Act 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 Surveyor and Assistant Surveyors of Roads in the said Colony.”

I am commanded by the Queen to signify to you Her Majesty’s disallowance of this Act for the reasons stated in that correspondence.

I have, &c.,
NORMANBY.
Sir, Downing Street, 25th May, 1839.

I am directed by the Marquess of Normanby to transmit to you, for the consideration of the Master General and Board of Ordnance, an Act No. 1 of 1837, passed by the legislative Council of New South Wales, entitled, "An Act 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 Surveyor of Roads in the said Colony"; and I am to request that you will move the Master General and Board to state for the information of Lord Normanby whether they see any objection to the 4th Clause of the Act, which transfers certain duties to the Officer Commanding the Royal Engineers in New South Wales and to his assistants.

This Act was not received at this Department until the 6th Instant.

I am, &c,

JAS. STEPHEN.

Sir, Office of Ordnance, 12th June, 1839.

Having submitted to The Master General and Board of Ordnance your letter dated 25th Ultimo, transmitting by command of the Marquess of Normanby an Act No. 1 of 1837, passed by the Legislative Council of New South Wales, entitled, an "Act 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," and requesting to be informed whether The Master General and Board see any objection to the 4th Clause of the Act, which transfers certain duties to the Officer Commanding the Royal Engineers in New South Wales, and to his Assistants.

I have the honour to acquaint you for the information of his Lordship that The Master General and Board cannot recommend the Commanding Royal Engineer or the Department being made officially subject to the duties, powers and indemnities, intended to be imposed or conferred by this Act. They appear to The Master General and Board to be entirely a Civil Colonial duty, and they beg to suggest that the words "The Officer Commanding the Royal Engineers in New South Wales and his Assistants or upon," may be expunged. But The Master General and Board direct me at the same time to state that there will be no objection to the Officer Commanding the Royal Engineers being appointed by the Governor to the Colonial duty, referred to, provided the Office is kept distinct from that under the Ordnance.

I have, &c,

R. BYHAM.

Sir, Downing Street, 22nd June, 1839.

I have received and laid before the Marquess of Normanby Letter your Letter of the 12th Instant, respecting an Act No. 1 of 1837, passed by the Legislative Council of New South Wales, by which

* Note 46.
Inability to amend act.

Act to be allowed or disallowed.

Letter acknowledged.

Recommendation for disallowance of act.

1839. 13 July.

15 July. Correspondence re minimum price of land.

Price to be fixed at Port Phillip.

In 1839, on 13 July, it was noted that there was an inability to amend a particular act. The act was to be either allowed or disallowed as a whole. The letter acknowledging the recommendation for disallowance of the act was acknowledged.

I am directed by Lord Normanby to acquaint you in reply, for the information of the Master General and Board, that there is no authority in this Country for making any alteration in this Act. It must be either allowed or disallowed as a whole, and his Lordship would wish to receive the opinion of the Board of Ordnance, which of those two courses would be most conducive to the interests of that branch of the Public Service which is under their superintendence.

I have, &c,

JAMES STEPHEN.

[Enclosure No. 4.]

MR. R. BYHAM TO UNDER SECRETARY STEPHEN.

Sir, Office of Ordnance, 5 July, 1839.

Having laid before the Board of Ordnance your letter dated 22 Ultimo, stating, in reply to their Communication of the 12th, respecting an Act, No. 1 of 1837, passed by the Legislative Council of New South Wales, for transferring certain powers hitherto vested in the Surveyor General of that Colony to the Commanding Royal Engineer, that there is no authority in this Country for making an amendment therein, as suggested by the Board; but that it must be either allowed or disallowed as a whole.

I have the honor by the Board's commands to acquaint you, for the information of the Marquis of Normanby, that they have no alternative but to recommend to his Lordship that the Act in question should be disallowed; there being great objection to the appointment of the Commanding Engineer and his Assistants to the specific duties, under an Act of Colonial Parliament.

I have, &c,

R. BYHAM.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 94, per ship Barrosa.)

Sir, Downing Street, 15 July, 1839.

I transmit to you herewith Copies of a Correspondence with the Lieutenant Governor of Van Diemen’s Land relative to the measure of raising the Minimum upset price of Land in that Colony.

In Lord Glenelg's dispatch No. 176 of the 9th of August, 1838, you were directed to watch the effect of the enhanced price of the Land, with a view to ascertain whether it might not be necessary to carry it still higher. I have not yet received from you any Report on this subject; but, in the mean time, it appears to me to be desirable, as Port Phillip is so attractive to Settlers, to place the highest minimum price on Land there which may be compatible with the objects contemplated in my Predecessor's Dispatch.

I have, &c,

NORMANBY.
[Enclosure No. 1.]

SIR JOHN FRANKLIN TO LORD GLENELG.

Van Diemen's Land,

My Lord,

Government House, 12th February, 1839.

I have the honor to acknowledge the receipt of your Lordship's Despatch No. 340 of the 13th August last, directing that the minimum price of the waste Lands of the Crown in this Colony shall henceforth be twelve shillings per acre, and not five shillings as heretofore.

Soon after the receipt of this communication, I brought the subject under consideration in the Executive Council, and the accompanying document is a Minute of the opinion and advice which was then given by the Members. I also beg to forward a Copy of the Government Notice, which was published in the Gazette in accordance with Your Lordship's Instruction.

Having thus given effect to the decision of Her Majesty's Government upon this subject, I feel it to be incumbent upon me to submit for Your Lordship's consideration the accompanying return by the Collector of Internal Revenue from which may be inferred the reduced value in the market of the Crown Lands still remaining in Tasmania to be sold in this Colony, arising from their inferior quality and undesirable situation, and also from the strong inducements which encourage capitalists to purchase Lands at Port Phillip rather than here.

Your Lordship will perceive that the Lands, to which the return now submitted refers, were sold at prices much below 12s. an acre. And there is every reason to believe that there does not remain any considerable portion of Land in the Territory of a higher value than 6s. or 7s. per acre, when estimated upon data which would give twice or thrice that value to the more fertile and useful lands at Port Phillip.

After the promised lands alluded to in the return have been sold, the operation of the change in the upset price must evidently be to prevent any future sales taking place in this Colony except under particular circumstances until the immense extent of superior lands in New South Wales has been sold and the remaining sections are of no higher value than those of this Colony.

Another view of the case may be taken; thus the new regulation will not prevent the sale of Lands in New South Wales, wherever the value is above or equal to the upset price of 12s., but it will prevent such sales here because the upset price is about twice the marketable value of the soil to which it refers.

Your Lordship will therefore perceive that this Instruction is in effect an Instruction virtually abolishing sales of Land in Van Diemen's Land, and must accordingly put an end to the already declining Land Revenue and also promote the dispersion of the Inhabitants by inducing them to emigrate to Port Phillip and South Australia; and, at the latter of these places, the formation of a Class of expirees where there cannot be a Police force adequate to restrain them.

I have therefore to request that your Lordship will be pleased to favor me with such instructions upon the subject as may appear most expedient, and will only further respectfully suggest...
that, as the Lands sold at Port Phillip will, under the circumstances which I have described, be purchased in a large proportion by the capital of Settlers belonging to Van Diemen's Land, a moiety of the proceeds of such sales might perhaps be justly paid over to the Treasurer of this Colony.

I have, &c.,

JOHN FRANKLIN.

[Sub-enclosure No. 1.]

GOVERNMENT NOTICE.

(No. 17).

Colonial Secretary Office, 17th January, 1839.

THE Lieutenant Governor directs it to be notified that he has been honored with a Despatch, dated 13th August, 1838, from the Right Honorable the Secretary of State, instructing him to raise the minimum price of Crown Lands in this Colony from five shillings to twelve shillings per acre, and that effect will be given to this instruction for the future.

His Excellency at the same time desires it may be understood that this notification will not apply to land which have already been proclaimed for sale or to cases in which officers in the army or navy or common soldiers have already retired or taken measures to retire from the Queen's service, in order to obtain lands under the five shillings valuation, or to cases in which a remission in the purchase of Crown Lands has been promised or agreed to under any circumstances prior to the date of this notice, or to cases in which the Government are specially pledged that particular lands will be put up for sale at five shillings.

By His Excellency's Command,

JOHN MONTAGU.

[Sub-enclosure No. 2.]

MR. J. H. MOORE TO COLONIAL SECRETARY.

Sir,

Revenue Office, 30th January, 1839.

I have the honor to transmit for His Excellency's consideration an abridged classified statement of the operations of this Department from the date of its being instituted to the 31st December last.

During this period a sum of £343,692 Os. 11d. has been collected and paid over to the Treasury.

You will perceive that I have framed two statements, one showing the gross amount of the annual collections which includes the amount collected of Lands sold. The other omitting that amount.

This second statement shews a result, which induces me to come to the conclusion that no further increase in the amount collected under the several heads of Internal Revenue can in future be anticipated, Quit Rents excepted.

Permit me to draw your attention to the state of the Quit Rents.

Never having been able to procure from the Survey Department any Statement whatever of the probable total quantity of Land alienated by "Grant," I am not prepared to form any satisfactory conclusion on this point; the assumed probable amount of Quit Rents, which I have heretofore used, being founded on an unauthenticated rough estimate made in the year 1834; therefore the true amount of Revenue deriveable under Quit Rents can be ascertained only by the progressive operations of the Commissioners for Grants.
The Commissioners in their returns of Deeds executed and issued under their decisions report the amount of Quit Rent due under two heads, vizt.:

1st. Total amount of arrears to and for 31st December, 1835, which amount is not payable but acknowledged by the Grantee giving a promissory note for that amount.

The 2nd. The annual amount of Quit Rent, which is payable in Money and which is computed from 1st January, 1836, to the period the Grantee applies for the Deed to be delivered to him.

As no authority has as yet been exercised to compel Grantees, in whose favour deeds have been executed, to take up their deeds by payment of the Quit Rent and Fees payable thereon, many satisfied that a valid Title has passed to them by the Title Deed being omitted to be executed and issued to the proper officer for delivery omit taking them up. This system will of course create a new class of arrears, which requires being obviated by the adoption of some measure to compel the Grantees to take out their Title Deeds when ready for delivery.

Another point which I beg to bring under the especial notice of the Government is the collection of annual Quit Rents due and arising under Grants, for which Deeds have been delivered to the Grantee, and on which the Quit rent only, which became due to and for the period when so delivered to the Grantee had been paid.

Of this last class, Quit Rents are now due for periods varying from one to three years, according to the period at which the deeds were taken out.

With respect to this last class, a doubt being entertained as to the propriety of collecting any further Quit Rent under those Deeds until the question of the arrears due prior to 1835 had been decided by the Secretary of State and promulgated lest such might be construed into a virtual abandonment of such arrears by the Government, No collection since the delivery of the Deeds has been made thereon.

It would be most advisable therefore that some conclusive decision as to whether the arrears due in 1835 would be abandoned by the Government or not, in order to remove the existing doubt as to the expediency of deferring any longer the collection of the Quit Rents, which are now due and collectable under Deeds actually delivered since January, 1836.

As an opinion is too prevalent with many Land holders that the collection of the Quit rents will not be persevered in because of a remission, which some old settlers claim to enjoy in consequence of having maintained Crown Prisoners and therefore neglect paying any, It might be advisable to enforce the payment in a few cases upon Allotments as well as large grants in order to establish the right and then renew the proposition held out in 1834, allowing the settlers to redeem their Quit Rents at 10 years' purchase. They first paying all arrears due from 1st January, 1836, to the period when the Grantee so proposes to redeem.

I advocate this last proposition chiefly on the ground that, as no more crown land will be alienated by Grants, such a measure would not only tend to assist the present state of the Colonial finances but
1839.  
15 July.  
Proposal for redemption of quit rents.

Approximate estimate of amount of annual quit rents.

<table>
<thead>
<tr>
<th>Class</th>
<th>Rate</th>
<th>Title</th>
<th>Annual Rent</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>2/- per 100 Acres</td>
<td>Under Grants issued</td>
<td>£ 595 16 6</td>
</tr>
<tr>
<td>2d</td>
<td>15/- do</td>
<td>Location Order</td>
<td>2.550 14 1</td>
</tr>
<tr>
<td>3d</td>
<td>2/- do</td>
<td>do</td>
<td>7.107 0 4</td>
</tr>
<tr>
<td>4th</td>
<td>do</td>
<td>Allotments</td>
<td>5.153 17 10</td>
</tr>
<tr>
<td>Total</td>
<td>1.209,274</td>
<td>acres</td>
<td>15.067 8 9</td>
</tr>
</tbody>
</table>

The Collector never having been able to obtain from the Survey department any authentic or certified report of quantity of Lands Granted, The above is but conjectural and founded on uncertified data.

Lands Granted.

<table>
<thead>
<tr>
<th>Acres. R. P.</th>
<th>£</th>
<th>s.</th>
<th>d.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Old Grants</td>
<td>571,997</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>New Grants prior to October, 1834</td>
<td>15,327</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>From October, 1834, to December, 1838</td>
<td>364,221</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Total acres</td>
<td>951,546</td>
<td>0</td>
<td>2</td>
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</table>

Deeds actually issued.

Internal Revenue Office, January, 1839.


Internal Revenue Office instituted July, 1828.

Statement.

<table>
<thead>
<tr>
<th>Year</th>
<th>Quit rent</th>
<th>Sale of Crown Land</th>
<th>Rent of Crown Land</th>
<th>Distillation duty</th>
<th>Publicans' Licences</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>£ s. d.</td>
<td>£ s. d.</td>
<td>£ s. d.</td>
<td>£ s. d.</td>
<td>£ s. d.</td>
</tr>
<tr>
<td>1825</td>
<td>4 6 0</td>
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<td>1,164 16 0</td>
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<td>2,550 14 1</td>
</tr>
<tr>
<td>1828</td>
<td>26 13 6</td>
<td>1,409 11 4</td>
<td>1,365 12 6</td>
<td>7.107 0 4</td>
<td>7.107 0 4</td>
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<tr>
<td>1831</td>
<td>2 12 0</td>
<td>3,100 8 3</td>
<td>464 13 5</td>
<td>12 3 7</td>
<td>12 3 7</td>
</tr>
<tr>
<td>1834</td>
<td>3 6 8</td>
<td>3,230 8 3</td>
<td>936 3 9</td>
<td>1,115 11 4</td>
<td>1,115 11 4</td>
</tr>
<tr>
<td>1833</td>
<td>277 13 0</td>
<td>6,395 10 11</td>
<td>502 15 10</td>
<td>3,440 19 4</td>
<td>3,440 19 4</td>
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<tr>
<td>1834</td>
<td>905 10 4</td>
<td>3,556 14 0</td>
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<td>12,810 2 1</td>
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<tr>
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<td>26,176 1 6</td>
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<td>6,100 0 0</td>
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<tr>
<td>1837</td>
<td>589 0 11</td>
<td>20,745 1 5</td>
<td>568 15 0</td>
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<tr>
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<td>1,178 11 0</td>
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<td>5,520 13 3</td>
<td>5,520 13 3</td>
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<tr>
<td>Totals</td>
<td>5,146 1 8</td>
<td>115,343 14 11</td>
<td>5,886 13 11</td>
<td>14,027 7 11</td>
<td>52,202 14 4</td>
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# NORMANBY TO GIPPS.

**STATEMENT showing amount received each year, etc.—continued.**

<table>
<thead>
<tr>
<th>Year</th>
<th>Wholesale Licences</th>
<th>Wholesale Licences</th>
<th>Licences to Distil</th>
<th>Licences Keep dogs</th>
<th>Rent of Lime Kilns</th>
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<td>884 3 9</td>
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<td>4 0 0</td>
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<td>420 0 0</td>
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<td>25 0 0</td>
<td>950 19 9</td>
</tr>
<tr>
<td>1830</td>
<td>310 0 0</td>
<td>7,169 0 4</td>
<td>50 0 0</td>
<td>25 0 0</td>
<td>234 2 5</td>
</tr>
<tr>
<td>1831</td>
<td>440 0 0</td>
<td>10,112 14 10</td>
<td>50 0 0</td>
<td>25 0 0</td>
<td>143 0 0</td>
</tr>
<tr>
<td>1832</td>
<td>400 0 0</td>
<td>8,253 6 9</td>
<td>25 0 0</td>
<td>25 0 0</td>
<td>244 2 5</td>
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<td>1833</td>
<td>430 0 0</td>
<td>8,022 15 11</td>
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<td>25 0 0</td>
<td>932 0 3</td>
</tr>
<tr>
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<td>310 0 0</td>
<td>9,407 9 10</td>
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<td>45 10 6</td>
<td>200 0 6</td>
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<td>9,723 3 8</td>
<td>200 0 0</td>
<td>45 10 6</td>
<td>297 10 0</td>
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<td>1836</td>
<td>370 0 0</td>
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<td>100 0 0</td>
<td>45 10 6</td>
<td>200 0 6</td>
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<td>77,927 9 5</td>
<td>775 0 0</td>
<td>43 10 6</td>
<td>4,208 15 9</td>
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<th></th>
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<td>1828</td>
<td>76 18 7</td>
<td>9 5 8</td>
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<tr>
<td>1829</td>
<td>252 18 3</td>
<td></td>
<td></td>
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<tr>
<td>1830</td>
<td>253 14 4</td>
<td></td>
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</tr>
<tr>
<td>1831</td>
<td>169 5 8</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>1832</td>
<td>245 14 10</td>
<td>10 10</td>
<td>238 11 11</td>
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<td>1833</td>
<td>14 4 0</td>
<td>7 0</td>
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<td>7 0</td>
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<td>7 0</td>
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<tr>
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<td>7 0</td>
<td></td>
<td>3,387 18 5</td>
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<tr>
<td>1837</td>
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<td>7 0</td>
<td></td>
<td>4,990 13 8</td>
</tr>
<tr>
<td>1838</td>
<td>420 0 0</td>
<td>7 0</td>
<td></td>
<td>1,833 16 5</td>
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<table>
<thead>
<tr>
<th>Year</th>
<th>Canteen Rent, &amp;c.</th>
<th>Impounding Money</th>
<th>Fines on Grants</th>
<th>Fees on Grants</th>
</tr>
</thead>
<tbody>
<tr>
<td>1828</td>
<td>53 11 7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1829</td>
<td>600 8 2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1830</td>
<td>268 8 6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1831</td>
<td>500 0 0</td>
<td>7 13 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1832</td>
<td>540 0 0</td>
<td>4 9 4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1833</td>
<td>396 10 0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1834</td>
<td>502 1 0</td>
<td>36 9 11</td>
<td>186 10 3</td>
<td>286 5 0</td>
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<tr>
<td>1835</td>
<td>322 10 0</td>
<td>5 18 3</td>
<td>198 15 6</td>
<td>370 5 0</td>
</tr>
<tr>
<td>1836</td>
<td>145 0 0</td>
<td>103 7 3</td>
<td>490 18 11</td>
<td>459 5 0</td>
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<tr>
<td>1837</td>
<td>5 0 0</td>
<td>21 18 5</td>
<td>954 16 9</td>
<td>736 10 0</td>
</tr>
<tr>
<td>1838</td>
<td>0 0 0</td>
<td>10 5 2</td>
<td>638 16 1</td>
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<table>
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<th>427 0 10</th>
<th>21,139 4 8</th>
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<tbody>
<tr>
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<td>45 10 0</td>
<td>427 0 10</td>
<td>21,139 4 8</td>
<td></td>
</tr>
<tr>
<td>1829</td>
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<td>199 1 5</td>
<td>2,564 4 0</td>
<td>2,654 5 0</td>
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</table>

Statement of revenue collected in Tasmania.

15 July.
### HISTORICAL RECORDS OF AUSTRALIA.

**Statement showing amount received each year, etc.—continued.**

<table>
<thead>
<tr>
<th>Year</th>
<th>Rent of Punts and Ferries</th>
<th>Toll of Stone Quarry, Government, Domain.</th>
<th>Market dues</th>
<th>Public Subscriptions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£  s.  d.</td>
<td>£  s.  d.</td>
<td>£  s.  d.</td>
<td>£  s.  d.</td>
</tr>
<tr>
<td>1838</td>
<td>487 2 4</td>
<td>453 0 1</td>
<td>281 13 2</td>
<td>330 19 0</td>
</tr>
<tr>
<td>1839</td>
<td>620 0 0</td>
<td>211 19 8</td>
<td>452 13 2</td>
<td>350 0 0</td>
</tr>
<tr>
<td>1840</td>
<td>437 10 0</td>
<td>654 18 5</td>
<td>293 9 6</td>
<td>300 0 0</td>
</tr>
<tr>
<td>1841</td>
<td>77 10 0</td>
<td>122 10 2</td>
<td>269 15 0</td>
<td>300 0 0</td>
</tr>
<tr>
<td>1842</td>
<td>350 0 0</td>
<td>242 10 5</td>
<td>1,029 6 10</td>
<td>300 0 0</td>
</tr>
<tr>
<td>1843</td>
<td>300 0 0</td>
<td>393 15 0</td>
<td>231 13 2</td>
<td>300 0 0</td>
</tr>
<tr>
<td>1844</td>
<td>330 19 0</td>
<td>281 15 0</td>
<td>452 13 2</td>
<td>300 0 0</td>
</tr>
<tr>
<td>1845</td>
<td>442 18 0</td>
<td>225 0 0</td>
<td>1,029 6 10</td>
<td>300 0 0</td>
</tr>
<tr>
<td>1846</td>
<td>418 3 0</td>
<td>112 10 0</td>
<td>242 10 5</td>
<td>350 0 0</td>
</tr>
<tr>
<td>1847</td>
<td>5,145 14 11</td>
<td>259 10 0</td>
<td>68 13 0</td>
<td>462 0 0</td>
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<tr>
<td>1848</td>
<td>3,477 10 0</td>
<td>1,012 10 0</td>
<td>281 15 0</td>
<td>300 0 0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
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<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>£  s.  d.</td>
<td>£  s.  d.</td>
<td>£  s.  d.</td>
<td>£  s.  d.</td>
</tr>
<tr>
<td>1848</td>
<td>1,387 9 4</td>
<td>9 3 5</td>
<td>546 3 3</td>
<td>875 2 1</td>
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<table>
<thead>
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<tbody>
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<td></td>
<td>£  s.  d.</td>
<td>£  s.  d.</td>
<td>£  s.  d.</td>
<td>£  s.  d.</td>
</tr>
<tr>
<td>1848</td>
<td>3,477 10 0</td>
<td>1,012 10 0</td>
<td>5,145 14 11</td>
<td>259 10 0</td>
</tr>
<tr>
<td>Year</td>
<td>Fees or Fines</td>
<td>Money taken from Prisoners</td>
<td>Repayment of Loans to Immigrants</td>
<td>Totals</td>
</tr>
<tr>
<td>------</td>
<td>---------------</td>
<td>----------------------------</td>
<td>---------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>1828</td>
<td>£ 4,360 18 6</td>
<td>£ 18,200 3 0</td>
<td></td>
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<td>1829</td>
<td>£ 15,901 18 5</td>
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<td></td>
<td>£20,881 18 5</td>
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<td>£ 17,965 8 3</td>
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<td>£25,940 18 3</td>
</tr>
<tr>
<td>1831</td>
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<td>£33,482 2 3</td>
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<td>£34,008 10 11</td>
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<tr>
<td>1833</td>
<td>£ 27,622 15 7</td>
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<td>£35,264 15 7</td>
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<tr>
<td>1834</td>
<td>£ 46,131 10 7</td>
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<td></td>
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<td>1837</td>
<td>£ 42,402 11 10</td>
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<td>1838</td>
<td>£ 42,402 11 10</td>
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<td>£42,402 11 10</td>
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<td><strong>3,344 10 3</strong></td>
<td><strong>241 16 2</strong></td>
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<td><strong>116 0 0</strong></td>
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</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Totals Collected in each year</th>
<th>£ s. d.</th>
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</thead>
<tbody>
<tr>
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<td>4,360 18 6</td>
</tr>
<tr>
<td>1829</td>
<td></td>
<td>18,200 3 0</td>
</tr>
<tr>
<td>1830</td>
<td></td>
<td>15,901 18 5</td>
</tr>
<tr>
<td>1831</td>
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<td>17,965 8 3</td>
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<td>42,402 11 10</td>
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<table>
<thead>
<tr>
<th>Year</th>
<th>Totals collected to the 31st Dec, 1838</th>
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<tr>
<th>Year</th>
<th>Collections during the year</th>
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<td>42,402 11 10</td>
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<table>
<thead>
<tr>
<th>Year</th>
<th>Land sold in the year</th>
<th>Acres. R. P.</th>
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**NORMANBY TO GIPPS.**

**STATEMENT** showing amount received each year, etc.—continued.

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1839.

**15 July.**

**Statement of revenue collected in Tasmania.**
1839.
15 July.

Statement showing amount received each year, etc.—continued.

<table>
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<tr>
<th>Township allotments sold in the year</th>
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<th>R. P.</th>
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£ 14,385 15 1

[Enclosure No. 2.]

MARQUESS OF NORMANBY TO SIR JOHN FRANKLIN.

Sir, Downing Street, 13th July, 1839.

I have received your Despatch No. 26 of the 12th of February last, enclosing a copy of the Government Notice, which you had issued in pursuance of the Instructions of Her Majesty's Government to raise the minimum price of Land in the Colony under your Government from 5s. to 12s. per acre.

After a full consideration of all the arguments urged in your Despatch, Her Majesty's Government perceive no conclusive evidence, which would appear to them to justify a revocation of the Instruction, at least until some actual experience has been acquired of the practical working of the system in the Colony. It would be quite impracticable to direct as you suggest the payment of any portion of the produce of the Land Revenue of New South Wales into the Treasury of Van Diemen's Land; But Sir George Gipps will be instructed to place the highest minimum price on Land at Port Phillip, which may be compatible with the objects expressed in the general instruction to him on that subject, which was communicated to you with my Predecessor's Despatch No. 340 of the 13th of August last.

I have, &c.,

NORMANBY.

17 July.
Despatches acknowledged.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 95, per ship Barrosa.)

Sir, Downing Street, 17 July, 1839.

I have received your Dispatches Nos. 200 and 201 of the 19th and 20th of December last, the former reporting the Conviction and subsequent execution of Seven Men concerned in the Murder of Aborigines; the latter, in connection with the same subject, reporting the removal of Mr. R. Scott's name from the Commission of the Peace.

The whole of these proceedings point out strongly the necessity of pursuing in the most firm and decided manner such measures as may be best calculated to check that system, which has unfortunately arisen, of atrocities committed both by the Settlers and by the Aborigines against each other. The measures, which you have adopted with a view to that end, have met the unqualified approbation of Her Majesty's Government; and I trust
that the fate of those men, who have recently suffered the extreme penalty of the Law for the Murder of Natives, will serve to check that feeling of recklessness in sacrificing the lives of the Natives, which has shewn itself to a lamentable extent on this occasion.

Under the Circumstances which you have reported, you would have failed in your duty, had you permitted the name of Mr. Scott to remain in the Commission of the Peace. The station, which he held in Society, made it the more necessary to mark the disapprobation of the Government of his conduct.

The attention of H.M.'s Government has been recently called to the necessity of making provision for receiving the evidence of Aboriginal Natives in Courts of Justice. This, however, is a question which I consider it better to leave to you to bring before the local Legislature, convinced that it will receive that consideration, which so important a question demands.

I have, &c.,
NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 96, per ship Barrosa.)

Sir, Downing Street, 18th July, 1839.

I have received your Dispatch No. 28 of the 15th February last, recommending for confirmation the appointment of Mr. Henry Nelson Carrington as Clerk of the Crown at Port Phillip. In reply I beg to refer you to my Predecessor's Despatch, No. 19 of the 27th of January last, reporting the appointment of Mr. Croke to that Office.

I have, &c.,
NORMANBY.

SIR GEORGE GIPPS TO LORD GLENELG.

(Despatch No. 106, per ship Palestine; acknowledged by Lord John Russell, 21st December, 1839.)

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

With reference to the correspondence noted in the margin on the subject of an encounter in Jany., 1838, between a party of the Mounted Police under Major Nunn and a Tribe of the Aborigines of this Country, as well as to other matters connected with the treatment of the Aborigines, I have now the honor to forward to your Lordship Extracts from the Minutes of the Proceedings of the Executive Council on the 7th ulto., and 9th inst., whereby the nature of the enquiry, which has been instituted.

1839.
22 July.

Inability to hold early inquiry.

Delay in publication of notice re aborigines.

Measures for protection of aborigines.

Impolicy of further proceedings.

Into Major Nunn's case, will be explained to your Lordship, as well as the reasons which have induced the Council to consider that no further proceedings in it are necessary. The cause of the long delay, which has occurred in the disposal of this case, is also I hope sufficiently explained in the Minutes now forwarded; but I beg leave further to add that it was scarcely desirable for the investigation at Merton to have taken place earlier, even if it had been possible, on account of the excitement produced in the Colony by the proceedings which terminated in the execution in Decr. last of seven men for a massacre of the Aborigines, as reported in my Despatch of the 19th of that month, No. 200.

I beg further to report to your Lordship that the same causes, which prevented the earlier disposal of Major Nunn's case, prevented also my publishing, until the 21st May last, the long contemplated notice* on the subject of the Aborigines, which was first mentioned in my Despatch, No. 68 of the 27th April, 1838. No fitting opportunity for the publication of this notice presented itself, until after the act (2 Vict. No. 27) for the establishment of a Border Police had passed the Legislative Council; indeed I am so fully persuaded that it would have been illtimed, had it appeared earlier, that I should scarcely think any explanation on the subject necessary, were it not for an expression in respect to it, in your Lordship's Despatch of the 16th Novr., 1838, No. 244, replying to mine of the 27th April, 1838, already referred to.

I trust that the proceedings, which ended in the execution of the seven men in Decr. last, and the subsequent exertions made to establish a Border Police, will have satisfied your Lordship that this Government has been in no way neglectful of its duty to the Aborigines, or of the respectful obedience which it at all times ought to pay to the expressed wishes of your Lordship and of Her Majesty's Government, in regard to the treatment of them.

In the immediate case under consideration (that of Major Nunn), I trust also your Lordship will agree with myself and the Executive Council in thinking that no further proceedings could with propriety be adopted; and that, if any of the parties were placed on their trial, the result would inevitably be an acquittal.

It appears to me that the worst feature in the case was the renewal of the pursuit of the Blacks and of the firing, after a pause of about two hours (see Mr. Cobban's evidence, Page 50 of the enclosed paper); when however it is borne in mind that Major Nunn was a Military man, acting under Military orders, and that he knew there was still assembled before him a large

* Note 47.
body of the People, whose aggressions he had been sent 300 miles to repel, it may not be deemed extraordinary that he should have considered it his duty to disperse them, or that he should have thought, if he had failed to do so, that the object of his expedition would not have been accomplished.

I further enclose for your Lordship's information a copy of the Notice which I issued on the 21st May last, and also a Copy of the Standing Orders, which I have desired may be read once a month at least by each Crown Commissioner to the men of the Border Police under his orders.

I have, &c.,

GEO. GIPPS.

[Enclosure No. 1.]

EXTRACTS from Minutes No. 20 and No. 22 of the year 1839 of the Proceedings of the Executive Council, dated 7 June and 9th July respectively, relative to Depositions taken before the Magistrates of the Bench at Merton, in reference to a Collision which took place in January, 1838, between a Party of Mounted Police under Major Nunn and a Tribe of Aboriginal Natives.

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.

His Excellency the Governor, with reference to the proceedings of the Council on the 27th of March, 1838, and 6th April and 22d May following, on the subject of the measures which were to be adopted in consequence of a collision which took place in January, 1838, between a party of the Mounted Police under the command of Major Nunn and a Tribe of Aboriginal Natives, now laid before the Council certain Depositions which had been taken in this Case by the Magistrates of the Bench at Merton, and also a letter from the Attorney General to the Colonial Secretary commenting on the same.

His Excellency stated that this Investigation had been made in pursuance of the recommendation of the Council by their Minute of 27th March, 1838, above referred to; and, in laying the Papers in question before them, His Excellency was anxious to make known to them the causes which had prevented that Investigation from taking place at an earlier period.

Two Officers and twenty two non-commissioned Officers and Privates of the Mounted Police having been engaged in the Affair to be inquired into, it was deemed proper that a considerable portion, if not all, of those Individuals should attend the Investigation; Scarcely however were the orders given for the Party to proceed to Merton, when, in consequence of an outrageous attack by the Blacks on a Convoy of Sheep and Cattle, the property of Mr. William Pitt Faithfull, proceeding towards Port Phillip, the services of every man, who could be spared of the Mounted Police, were called for in that direction, being the directly opposite one to that in which Merton is situated.

As soon as this service terminated, an order was again given (on the 20th of June, 1838) for Major Nunn to repair to Merton;
and a letter was written to the Magistrates instructing them to commence the Investigation.

On the 9th of July, however, and before anything could be done, it was necessary to send the Police Magistrate of Merton (Mr. Day) with as many of the Police as could be collected, in search of the Parties who were then reported to have massacred between twenty and thirty helpless and unoffending Blacks in the neighbourhood of the River Bogy; the events, which followed, are sufficiently known to the Council and to the whole Colony.

Mr. Day, after an absence of fifty three days, returned with eleven out of the twelve men, who had been concerned in this atrociouss deed; and of them, seven, after a protracted course of Legal investigation, paid the forfeit of their lives upon the Scaffold.

During the whole of these proceedings, which did not terminate until the middle of December last, the Inquiry could not be proceeded with; for not only was it deemed inexpedient to hold it while the Public Mind remained in a very excited state in respect to the Blacks, but the Police Magistrate of the District, where the Investigation was to be held, was occupied during almost the whole of the time in the pursuit, capture, and subsequent trials of the Offenders on the River Bogy.

On the 7th of February last, an order was again given for Major Nunn and as many of his Party as could be collected to proceed to Merton.

It was only however on the fourth of April that he, accompanied by Sergeant John Lee and Corporal Patrick Hannan out of the whole Party arrived there, and were examined by the Bench; and the attendance of Mr. Cobban could not be procured before the seventeenth of the following month.

The whole of the Evidence then taken has since been laid before the Attorney General; and it is now submitted to the Council, with the Attorney General's Report.

The further consideration of the subject was then deferred.

Extract from Minute No. 22 of the year 1839, dated 9th July.

Present:—As on last occasion.

The Council resumed the consideration of the Papers submitted to them by His Excellency the Governor, relating to the encounter between the Aborigines and the Mounted Police under command of Major Nunn at the River Bogy in January, 1838.

The Council having attentively considered the Depositions taken in this important Case, together with the letter of the Attorney General in reference to the same, and having also carefully reviewed their own proceedings in connexion with this Inquiry on the 27th of March, 6th of April, and 22d of May, 1838, they are of opinion that no object either of Justice or Humanity could be attained by making the transaction in question the subject of further Judicial inquiry.

In coming to this conclusion, the Council are anxious to record the grounds upon which it rests, and to show that they have not failed to bestow the most earnest consideration upon the difficult and trying nature of the service upon which the Military were employed, as well as upon the acknowledged claims of the Native Tribes to the utmost degree of forbearance and protection which can be extended to them, compatibly with the general safety.
GIPPS TO GLENELG.

It does appear that whatever compassionate allowance may be made for the ignorance of the Savage Tribes, or for provocations which it is possible they may on other occasions have received, they were unquestionably the Aggressors in the present instance.

The Council are compelled to admit that their acts of violence, rapine, and murder, reported to this Government in December, 1837, were such as to authorise and require the employment of an Armed force to repress them, and to secure the lives and properties of the Settlers occupying Stations beyond the limits of Location, and having Servants necessarily in a state of much exposure employed in charge of the same.

The first act of bloodshed, attendant on the employment of the Military in these transactions, arose from the attempted escape of a Black Native who had been identified as having been a leading accomplice in the murder of a White man, and who was shot in endeavouring to escape from what must be regarded as Legal Custody; the Officers, by whose directions he was arrested and under whose charge he was detained, being also Magistrates of the Territory.

In the main encounter in the month of January, 1838, the Council find the strongest reason to deplore the numbers of the Native Tribe, who, even according to the lowest estimate, fell under the fire of the Police. They have most assiduously sought to arrive at an accurate view of these transactions, derived from the Depositions of Major Nunn, Lieutenant Cobban, and the other Parties who were examined before the Bench of Magistrates at Merton. These statements appear to be sufficiently candid and consistent, and, from them, the Council believe they may safely deduce the conclusion that the firing on the part of the Soldiery commenced under a persuasion that it was necessary in self-defence.

Having given the most attentive and impartial consideration to the entire question under every aspect in which they conceive it can possibly be regarded, The Council are now enabled to advise His Excellency that there are not sufficient grounds for preferring a charge of wilful misconduct against any of the Parties engaged against the Natives in this lamentable casualty; and that accordingly all proceedings connected with it should now be allowed to terminate.

The Council, however in justice to themselves and to the Government, can not forbear annexing the following observations upon a few collateral points.

First, they are persuaded that no imputation can justly lie against the Executive Government of insensibility to the protection of the Native Tribes, or of dis-inclination to avenge their injuries, when it is considered, how marked and severe an example of Justice has been recently executed upon Offenders convicted of a barbarous outrage against them. At the same time, the Council are sensible of a duty incumbent on them to draw the widest distinction between the case of those murderers of men, women, and children, without personal provocation and in cold blood, and that of Officers and Men repelling an attack made upon them, while acting under orders in execution of their duty.

Secondly, The Council can not but advert to that paragraph in the Letter of the Attorney General relating to these transactions, in which surprise is apparently expressed that no Inquiry in the nature of an Inquest was held upon the bodies of the Natives, who
fell in the skirmish with the Military, the Officers who commanded on the occasion both holding the Commission of the Peace. Entirely as the Council approve of the practice of holding an Inquest in every case, wherein it may be practicable, of violent death befalling any of the Aborigines, they are unable in the present instance to discover any mode in which such an Investigation could have been entered into with consistency, the Officers, by whom it is presumed the Inquest might have been held, being themselves the principals in the transaction upon which they would have had to sit in Judgment. The Military, having been the only persons present and therefore alone capable of being examined as Witnesses, were all either principals or accessories; and it appears to be admitted by the Attorney General that any evidence, they might thus have furnished against themselves, would have had no Legal effect as a means of self-exculpation; it is plain that their own testimony could have availed but little.

With reference to the opinion, expressed or implied by the Attorney General, that a different result might have ensued, if the Investigation had been, as it ought, undertaken in January, 1839, the Council can not but observe that the transaction itself occurred only in that month beyond the borders of Location; and that official intelligence of it was not received until the 6th of March next ensuing. Subsequently to this, the question as to what measures were proper to be taken was brought before the Council by His Excellency the Governor on as early a day within the same month, as the due order of the Public business permitted; and their advice was at once given that precisely the same steps should be taken for the attainment of Justice, if it should appear that aggression had been committed against the Natives, as would according to Law have been directed, upon the supposition that a similar injury had been sustained by persons of European Origin. The Council therefore are of opinion that the great distance of the scenes of operation and investigation, coupled with the wide dispersion of the Mounted Police on duty, and the consequent difficulty of assembling at one point those whose depositions were to be taken, sufficiently account for the length of time which has been occupied in the Inquiry; and that no blame, so far as they are aware, can justly be imputed to any individual on this account.

William MacPherson, Clerk of Councils.
Sydney, 27th July, 1839.

[Enclosure A 1 to Minute No. 20 of 1839.]

Sir, Police Office, Muswell Brook, 24th January, 1839.

Delay by E. D. Day in holding inquiry.

In reference to your letter of the 9th of this Month, directing me to proceed with the enquiry ordered in June last into the circumstances attending the death of certain Aboriginal Natives, I beg leave to inform you that I have to attend the Supreme Court in Sydney on the 11th of next month, being subpoenaed as a Witness, and, as I consider that the investigation cannot be brought to a close before that time, it may perhaps be advisable to inform Major Nunn that it will not be necessary for him to proceed to Invermein until my return to the District.

It would perhaps save much unnecessary delay if Major Nunn were directed to send me a list of the Witnesses he may require, at least of such of them as are in this neighbourhood, who can then be collected by a certain day of which he can be apprised.

I have, &c.,


The Honourable The Colonial Secretary, etc., etc.
GIPPS TO GLENELG. 249

[Enclosure A 2 to Minute No. 20 of 1839.]

Sir, Colonial Secretary's Office, Sydney, 1st February, 1839.

Referring to my letter of the 9th Ultimo, relative to the inquiry ordered to be instituted into the circumstances attending the death of certain Aboriginal Natives, I am directed by His Excellency the Governor to request that you will send in a list of the Witnesses, whose attendance will be required, with a statement of where they are to be found.

I am also instructed by His Excellency to inform you that Mr. Day, the Police Magistrate of Muswell Brook, to whom the Inquiry is to take place, will be in Sydney by the 11th Instant to attend the Supreme Court; and that the inquiry may take place here, if the witnesses can be collected.

I am, &c.,
The Commandant of the Mounted Police.

[Unsigned.]

[Enclosure A 3 to Minute No. 20 of 1839.]

Sir, Colonial Secretary's Office, Sydney, 1st February, 1839.

In acknowledging the receipt of your letter of the 24th Ultimo, I do myself the honor to inform you the Commandant of the Mounted Police has been called on for a list of the Witnesses who will be required on the investigation, ordered to be made into the circumstances attending the death of certain Aboriginal Natives, with a statement of where the Witnesses are to be found.

I am at the same time instructed by His Excellency to inform you that, as you are required to attend the Supreme Court on the 11th Instant, the Inquiry may take place in Sydney, if the Witnesses can be collected, of which Major Nunn has been apprised.

I have, &c.,
The Police Magistrate, Muswell Brook.

[Unsigned.]

[Enclosure A 4 to Minute No. 20 of 1839.]

Sir, Police Office, Muswell Brook, 28th February, 1839.

In reference to your letter of the 7th Instant, I beg to inform you that I have received from Major Nunn a list of the Witnesses required by him to attend at the proposed Inquiry ordered to be made into the circumstances attending the death of certain Aboriginal Natives near the Gwyder. Four of those Witnesses belong to the Mounted Police, and are at present attached to Mr. Mayne's party at the Big river; two more are Stockmen residing in the same neighbourhood: I therefore wrote yesterday to Mr. Mayne to request him to order these people to attend here with the least possible delay; but, as many days must elapse before they can possibly reach this, and as His Excellency the Governor is most anxious that the investigation should commence at once, and is also of opinion that it is not necessary that Major Nunn's examination should be postponed until all the Witnesses can be assembled, I wrote to Major Nunn by this post to request that he may attend at Merton, as soon as may be convenient to him, for the purpose of being examined.

Doctor Little is the only Magistrate at present in the Invermain District, and he has, I am informed, declined to act until he shall have taken the necessary Oaths under the new Commission. I therefore suggest that it would be advisable that the investigation should take place at Merton, and that Messrs. Ogilvie and Bettington and Captain Pike, the proposed Magistrate of that District, should be requested by letter to assist in it.

I have, &c.,
EDW. D. DAY, Police Magistrate.

The Honourable The Colonial Secretary, etc., etc., etc.

[Enclosure A 5 to Minute No. 20 of 1839.]

Sir, Court House, Merton, 9th April, 1839.

In compliance with the desire of His Excellency the Governor, communicated to us in the letters we had the honor to receive from you, that we should inquire into the circumstances relative to the collision between the Mounted Police under the command of Major Nunn and the Black Natives on the Namoi and Gwyder rivers, wherein some of the latter were unfortunately killed in the Month of January, 1838. We attended at the Court House for that purpose on Thursday, the 4th Instant, and took depositions and examinations of all the parties presented to us for that purpose, namely, Major Nunn, Sergeant Lee, and Corporal Hannon of the Mounted Police and "Major Fitton," a Stockman of Mr. Hall's, Copies of which we have now the honor to enclose.

We have, &c.,
EDW. D. DAY, J.P.,
Police Magistrate.

W. OGILVIE, J.P.

J. PIKE, J.P.

The Honble. The Colonial Secretary.
1839.
22 July.

DEPOSITIONS taken before Edward Denny Day, Police Magistrate, and William Ogilvie and John Pike, Esquires, of the District of Merton, in an investigation ordered to be instituted into the circumstances attending the death of certain Aboriginal Natives in a collision with the Mounted Police under the command of Major Nunn.

Major J. W. Nunn, Commandant of the Mounted Police, being duly sworn, deposes:

About the 19th of December, 1837, Colonel Snodgrass, the Acting Governor, sent for me to go to Government House. On arriving there I found Mr. Thomson, the Colonial Secretary, with Colonel Snodgrass. The substance of a report made by Mr. Paterson, the Commissioner of Crown Lands in the Liverpool Plains District, was communicated to me. A Copy of this report, which I afterwards, I now produce. It contains a statement of murders and other outrages committed by the Blacks on the Namoi, Gwyder and Big Rivers. Colonel Snodgrass ordered me to proceed in consequence of that report, to some of the places mentioned with a party of Mounted Police. I asked Colonel Snodgrass, if he had any orders or instructions to give me. He said, "You must lose no time in proceeding; you are to act according to your own judgment, and use the utmost rigor to put a stop to these outrages.

In consequence of these instructions, I gave immediate orders to assemble a party at Jerry's Plains, from which place I proceeded on or about the 29th of the same Month (December) with a detachment, consisting of one Subaltern, two Sergeants and twenty troopers. I marched direct for the Namoi. On my arrival there, I heard very distressing accounts from the Stockmen in the neighbourhood of the outrages committed by the Blacks. On the evening of my arrival, I sent Sergeant McNally to Mr. Baldwin's Station to ascertain of the people there if these reports were correct. He returned shortly after in a great hurry and informed me that the reports were quite correct; and that the Blacks were at that time assembled in great numbers at a place lower down the River Namoi. I immediately ordered the party to mount and, guided by Mr. Baldwin's Stockman, proceeded at once towards the place mentioned. After marching all night, we came upon a tribe of Blacks on the river bank. After disposing of my men so as to prevent the escape of the Blacks, and giving them orders not to fire at all, but, if necessary, to defend themselves with their swords, I succeeded in capturing the whole tribe without any violence. With the assistance of a black boy who went with us, I communicated to the tribe that they were charged with murder, spearing Cattle, and all manner of outrages, and demanded that the actual perpetrators of these acts of violence should be delivered up to me. On this, fifteen men of the tribe were given to me or their comrades as the guilty parties; these were taken into custody, and the rest of the tribe, amounting to about a hundred persons, were set at large, and treated kindly by me, so much as to retain with them so much respect as to seize of the fifteen prisoners, two were pointed out to me by the tribe as the murderers of Mr. Hall's man some time before. About two hours before sunset, I returned to my former camp with the fifteen prisoners, the two men charged with murder were secured by handcuffs and placed in charge of two sentries; it was my intention to leave these two men under a guard until Mr. Hall could see them and identify them; but I received a message from him that they had escaped. They had succeeded in slipping their handcuffs after nightfall, and attempted to escape, in which one succeeded, but the other was shot by the sentry while in the act of running away; it is however satisfactory to know, that that remaining one who was shot was the actual murderer of Mr. Hall's Servant; the other thirteen prisoners were subsequently liberated, all except one, who I retained with me as a guide; from this camp I proceeded to Mr. Bell's station on the Gwyder; Mr. Bell was at the station, and begged of me to remain a few days at the station for their protection, and was in a state of great alarm from the depredations the blacks had been committing. I remained there two days and then proceeded to Mr. Cobb's station, where I was very anxious to arrive in consequence of the reports I had received of the outrages of the black natives in that direction; on arriving there, I found every thing in the greatest confusion, the Shepherds and people all afraid to leave the vicinity of their huts, and the sheep all crowded round about, and not a man could be induced to take them out to pasture. I therefore sent parties out to scour the country and ascertain that the Blacks were not in the neighbourhood. I stationed a party under the Command of Mr. Lamb, the superintendent of the station, and inquired of the particulars of the murder of the two men by the blacks at this station, and told me that after the murder the blacks had taken off eight and twenty sheep and some articles from the station. On hearing this information, I considered it to be my duty to pursue the tribe, who had committed these outrages, and, having provisioned the party for fifteen days, I began my march. On the fourth day after leaving Marshall's station, which was then the lowest station on the Big river, I came upon a native black asleep under a tree, against which I saw four spears leaning. The black man got up the tree but we succeeded in getting him down.
when the second firing took place. The troopers were very much exasperated when quite impossible to restrain the firing. I do not think that a shot would have been fired but for that circumstance. I am certain the men would not have fired without Hannan was speared; they scattered as soon as it was done, and after that it was a body; every man had in fact to act for himself; the men had spread out so great and the scrub so thick, that I had enough to do to take care of myself and my horse. I could not see all that was done. It was impossible for the party to act in a body; every man had in fact to act for himself; the men had spread out so much that it was impossible for any one person to put a stop to the firing at once. From what I saw myself, I should say that from forty to fifty blacks were killed, when the second firing took place. The troopers were very much exasperated when Hannan was speared; they scattered as soon as it was done, and after that it was quite impossible to restrain the firing. I do not think that a shot would have been fired but for that circumstance. I am certain the men would not have fired without
orders, had it not taken place. In all our previous communications with the blacks, Major Nunn had been extremely kind to them. I was senior sergeant of the party and the orders I received from Major Nunn and gave to the detachment, were that they were not in any case to fire upon the blacks, unless it was necessary for their own defence. This was a standing order with the party. There was no remission of the pursuit from the time the firing began until it ceased altogether. We followed them about a mile and a half from where it began. Two iron bolts and a tin dish were found in the blacks' camp, which I heard Lamb say were taken from Mr. Cobb's station when the men were murdered. The black boy Jacky our interpreter told me the Guides, who were with us, undertook to lead us to the tribe that murdered Mr. Cobb's men.

Major Fitton.

Sworn before us at Merton, this fourth day of April, 1839.—EDWD. D. DAY, J.P.; WILLM. OGLIVIE, J.P.; J. PIKE, J.P.

Corporal Patrick Hannah of the Mounted Police, being duly sworn, deposes:—

I belonged to the party that went out with Major Nunn to the Gwyder and Namoi Rivers in the beginning of last year. After leaving Mr. Marshall's station, we met with four blacks, who undertook to lead us to the tribe that murdered Mr. Cobb's men; about two days after we came upon them near a Creek; I rode through the scrub and attempted to apprehend the first black man I saw; when I came near, before I could take hold of him, he turned suddenly round and thrust a spear through the calf of my leg; I was quite close to him at the time. I turned round and saw Sergeant Lowther, who came up to help me. I called to him that I was speared; I was sure to be speared immediately after, but the pain of my wound was so great that I could not speak of any thing that occurred. My horse sprang on one side when I received the wound, and the spear was hanging from my leg; it must have been seen by the other men; I saw that the black who wounded me had another spear. I could easily have shot him before he wounded me, but I wanted to capture him as our orders from Major Nunn were to take prisoners, but not to fire unless in self defence. I saw Major Nunn very soon after I was speared; he assisted me in getting the spear out of the wound. I heard firing after, which appeared retreating from me, as if the men were in pursuit. I am certain no shot was fired before I was speared.

Patrick Hannah.

Sworn before us at Merton, this fourth day of April, 1839.—EDWD. D. DAY, J.P.; WILLM. OGLIVIE, J.P.; J. PIKE, J.P.

Major Fitton, being duly sworn, deposes:—

I am a Stockman in Mr. Hall's service. I have been employed at the Big River. I accompanied Major Nunn last January twelve month in pursuit of a tribe of blacks, who were stated to have murdered two men at Mr. Cobb's station. I was with the pack horses, when the troopers went after the blacks; after Hannah had been wounded; up to that time the blacks in that part of the Country had been very troublesome. Five stockmen and shepherds had been murdered by them about the same time, and a great many cattle had been killed and speared, and sheep also. These outrages caused a very hostile feeling against them, in fact no one considered it safe to go about, spears and boomerings were constantly thrown at us. The black guides promised to take us to the tribe who had murdered Mr. Cobb's men, and I heard Major Nunn order the Police to take the tribe prisoners, but they were not to fire upon them. Some articles, taken from Mr. Cobb's station by the tribe that murdered Mr. Cobb's men, were found in the blacks' camp; among these was a tin dish and a Tomahawk and a knife, also pieces of shirts and half a blanket, and a bullock's tail was also found in their camp.

Major Fitton.

Sworn before us at Merton, this fourth day of April, 1839.—EDWD. D. DAY, J.P.; WILLM. OGLIVIE, J.P.; J. PIKE, J.P.
the Blacks are so numerous and daring that the men have all quitted the station from fear, and left the Cattle to their fate.

It was when on this River that I heard of the Blacks murdering two men belonging to Mr. Bowman, and two of Mr. Cobb's men. Mr. Bowman's station is situate on a Creek about 60 Miles from the Namoi, called Bowman's Creek, and Mr. Cobb's station 60 Miles from it, on a River called the Big River, into which the Gwydir empties itself.

Although this part does not belong to my District, still I thought that information, that could be depended on respecting these outrages and their probable cause, would be acceptable to His Excellency the Governor. I therefore proceeded there across the country and arrived at Bowman's at 10 o'Clock at night of the day of the second day after leaving the Namoi. The whole of this Country is of the richest description, almost free from timber of any sort, abounding with wild carrot and thistle; in short, if it was better watered, it would be the finest grazing land in the world. It is however sadly deficient in this necessary article, as we travelled from 6 in the morning till 10 at night before we fell in with it, all the Creeks in the intermediate space being dry.

At Bowman's station, two out of the three men that were there had newly arrived, so they could give no account of the Natives. The other man stated that, previous to the Murder, the Natives had not been there for four Months, but before then they were frequently in the habit of coming to the hut, and that the men were always kind to them. The same account was given by Cobb's men, and they were seemingly on such friendly terms that they apprehended no danger even after the murder of Bowman's men.

When at Mr. Cobb's hut and while I was making these enquiries, and at the time one of the men was shewing me boomerings and spears he had picked up where the men were murdered, another man took up a musket saying "this is the sort of spear" and shot the other man through the breast. The ball entered the left breast and lodged in the back close to the backbone near the surface.

The harassing and killing of Cattle is even greater here than on the Namoi, and seems getting worse every day. The remains of six bullocks have been found at one of their encampments used at one feast. On another occasion when a party went in pursuit of them after they had murdered Mr. Cobb's men, they found the remains of 28 sheep at the place where they had encamped the first night after the murder. It was a black boy belonging to the tribe that traced them. They found 250 fires and the boy said there might be four at each fire.

There is little doubt that it is most imprudent in the men to harbour and encourage the natives about the stations, and I have no doubt part of the present evils existing can be attributed to this cause.

The main cause, however, I imagine to arise from white men being with them urging them on to these outrages. The Black boy, who traced them, says that there are three white men with them painted like the Blacks, and this statement is corroborated by his taking the party to a hut in the mountains constructed evidently by white men. The wall plates were morticed and pegged down, the bark put on with green hide, the door hung with hide hinges, and berths for sleeping in put up.

If Government mean to take any steps to suppress these outrages it would be a material point to secure the black boy above alluded to. He is staying at a Mr. Fleming's station, the lowest but one on the Big River; he is intelligent and can make himself understood, and says he has no wish to join his tribe again as they would kill him.

I have, &c.

ALEXR. PATERSON.

[Enclosure A 7 to Minute No. 20 of 1839.]

Sir,

We had the honor to receive your letter of the 4th Inst, communicating to us the desire of His Excellency the Governor that the examination of Lieutenant G. G. Cobban should be taken relative to the circumstances attending the death of certain aboriginal natives in collision with the Mounted Police.

We beg to state that Mr. Cobban attended at this Court House on the 17th Inst., when he made before us the deposition of which a Copy is enclosed.

We have, &c.,

EDWD. D. DAY, J.P.
W. OGDEN, J.P.
J. PINE, J.P.

The Honble. The Colonial Secretary.

[Enclosure A 8 to Minute No. 20 of 1839.]

LIEUTENANT GEORGE GEDDES MCKENZIE COBBAN of the 50th Regt., attached to the Mounted Police, being duly sworn, deposes:—In the Month of December, 1837, I was commanding the Mounted Police in this district and stationed at Jerry's Plains; on the 29th of that Month, I left the station with a party of Mounted Police for the Big River under the command of Major Nunn. I understood that the object of our police under

Report by A. Paterson re outrages by aborigines on Namoi, Gwydir and Big rivers.

1839. 22 July.
1839.
22 July.

Deposition by G. G. McK. Cobban.

A collision between mounted police under J. W. Nunn and aborigines.

expedition was to drive away certain tribes of Blacks who were murdering some white people and committing outrages on their runs, Spear ing the Cattle and driving away Sheep in that part of the Country. On reaching the Namoi, we encamped there at a Station called Green hatches, where several Stockmen came riding in and reported to Major Nunn in my presence that some wild blacks had the day before crossed their runs, and Speared several Cattle, I think they said eight or nine head. They further said that they were the same blacks who had some time before murdered a man of Mr. Hall's and attacked the hut. Mr. Hall's Stockman, who had himself been wounded in that attack by the blacks, stated this information to Major Nunn before that given orders to the party on no account to use fire arms, but if necessary in self defense to use their swords. The impression on my mind is that the men were to use fire arms, if absolutely necessary for the protection of their lives, and also for the purpose of securing any prisoners they may be sent to arrest, and for preventing the escape of any persons who may have been captured.

This is the principle on which the Mounted Police have always acted as far as I am aware, when sent on duty; the greater part of the blacks were surrounded and taken, but some few got into the water who were afterwards taken too. They came out by a great deal of persuasion and some were dragged out by one of the men who swam his horse in. There were one or two shots fired on this occasion but no life was lost, nor was any person wounded. The shots were fired to intimidate the blacks, who had got into the River and to frighten them out of it; after we got all the blacks together, one of the tame ones, who had been at Mr. Hall's station when the man was murdered there, pointed out one man who had been concerned in the murder. He also said that all the other blacks had been guilty of spearing Cattle, as the Stockmen had represented to us at Green hatches; we took all those who were pointed out to us by the tame blacks as having committed depredations on the whites back to encamp at Green hatches the next night. The man, who was said to have murdered Mr. Hall's man, showed great fear and uneasiness and made several attempts to escape on the way; after the blacks were given over in charge to the sentries at the camp, they made an attempt to escape. The murderer was the first to rush: he ran past me towards the bed of the river, which was full of swamp oaks. I started after him, but, while pursuing him, two other prisoners, who were handcuffed together, ran nearer to me, and I turned after them; they fell in the flight and it being nearly dark I tumbled over them; one of them immediately fastened his teeth in one of my arms; the other clung with all his force to one of my legs and caught my boot with his teeth. I kept hold of them however by their hair, until they were secured again. Major Nunn and myself first became aware of this attempt of escape by hearing the Sentries fire. After the two blacks, whom I caught, were secured, one of the men stumbled on the body of the man who was accused of Murder. He was lying dead in the bed of the river with a wound in his back, which he must have received in the act of running away. The Black boy, who was with us barracks of the Big River who had been committing the murders in that neighbourhood and their Country; and I suggested to Major Nunn that it would be desirable to take one of them with us as a guide and let the others go, as the death of the man who had been shot may deter them from committing further outrages on the Whites. A guide was accordingly kept, and the others having first received some food and presents were let go.

We then proceeded towards the Big River; on making Mr. Bell's Cattle station, we received further complaints against the blacks; we were told that they were continually spearing the Cattle and intimidating the Shepherds; one of the shepherds then told us that he had met the blacks the day before in his way from an out Station; That they stopped him and would have killed him if he had not told them that the Soldiers (as the blacks call the Mounted Police) were on their way up. They branded their Tomahawks and speared about his head, and searched all his pockets. When they let him go, they said they did not care for the Soldiers, that they were not afraid of them. I was ordered out by Major Nunn to look for these blacks, and I searched all that night for their fires and all the next day, when I got upon their tracks and traced them to a Gully, where I found them perched upon ledges and rocks quite inaccessible to us. They shouted out defiance at us, as I understood; but we could not get near them at all; when all our efforts to take
these people failed, I followed Major Nunn and the rest of the party according to his orders to Mr. Cobb's station on the Big River; on arriving there I found all the people at the station in the greatest alarm from the blacks. The shepherds were afraid to move out of sight of the hut, and the sheep were in a wretched state for want of food. We refreshed our horses here for one or two days, and were made acquainted with all the particulars of the brutal murder of Mr. Cobb's two men at that station some time before. The direction the blacks took after committing the murder was pointed out; and we found that the story of our black Guide was correct in this respect; we proceeded in the direction, and, after two or three days' Journey, we came on old traces where they had been. We followed up these marks for four or five days.

The marks were permanent from the nature of the Country and from some rain having fallen when the blacks passed over it; by this time, we came on fresh marks made a day or two before. I kept in front of the party with the black boy (our interpreter) and the Guide we brought from Green hatches. We followed up these marks until they led to a spot where the Guide pointed out some spears leaning against a tree. A black fellow had been lying asleep under the same tree; he ran up the tree on our coming up in great alarm; he was got down with great difficulty. This man was one of a small party of three or four, for whom I was ordered to search by Major Nunn; we found a black man, who had been found with the Spears, and the black boy went with me, while looking out he told me through the interpreter that he could guide us to the rest of his party who were out getting honey. We got them one by one with much trouble. I took the four to Major Nunn, the same night; we questioned them about the tribe who committed the murder and asked them where they were. They pointed to a Creek at some distance, for which we started early the next morning and reached it the same night. There we found marks of the blacks having been lately encamped. These marks were quite fresh; the blacks were not found that night. We started next morning at day break and followed the tracks of a very numerous tribe for some distance until we saw smoke ahead. I was then in front and passed the word to the men that we were close upon them, and ordered them to prepare. On reaching the smoke nearer, we found it to be from a burning log, and concluded from it that the blacks were still a day's Journey ahead of us. We were consequently thrown off our guard; but, on proceeding a few Hundred yards further and in turning an angle of the Creek, we came suddenly on a great number of blacks apparently encamped on opposite side from us, with a large body of water in between us and them, and a thick scrub close behind them, for which they made instantly on observing us. The five or six men who were in front with me were the best mounted in the party, and I ordered them to return a little distance with me to a crossing place, where we crossed; on crossing we opened out and drew our Swords and Galloped into the scrub. We entered the Scrub in a direction to cut off the retreat of the blacks, and drive them back on the water, where they would be placed between my men and those on the opposite side who had not crossed. The scrub was extremely thick; at this place we encountered the blacks face to face; before we saw each other we were quite close. They had each two spears. I made an attempt to ride down one who was immediately in front of me; he stopped so low that I went over him and turned short to the right into a thick bush; while I was wheeling my horse round, I heard the next man, who was a little on my right, say "take care, sir, he is spearing you"; he fired a pistol shot; at the same moment I heard a cry to my left from our men. I heard the men say, D—n them, they have speared Hannan (one of the troopers), and others said, they have also speared the Officer. The scrub was so thick there that I could not see what was going on; each man was acting for himself; The firing then became general. I am quite positive that no shot was fired before I heard the caution from the man, who was near me on my right and Hannan was said to have been speared; from which, at the time, I understood that he had been killed; and I heard from the men around me afterwards that this was the impression on their minds at the time. This shewed me that our swords were no protection against spears; after this I heard some more shots fired, but did not see any more blacks in the scrub and only one of the troopers, who kept close to me; about the same time and a little after I heard firing on the left. I suppose from the rest of the party who were in the rear. I rode about the scrub for some time, but did not see any more blacks; the firing at this time lasted but a very short time, not many minutes. Major Nunn and myself rode round the scrub to see what number had been killed. I certainly did not see more than four or five, if so many; after this some black gins were found in various hiding places; on questioning them through our interpreter, we found the party, we had fallen in with, was only a small detachment of the tribe, and they told us that the rest of the tribe, which was very numerous, were at a short distance from us in various hiding places; on questioning them under our interpreter seemed in great alarm from the formidable account of the tribe, their great number and the manner in which they were armed; after refreshing our Horses for an hour or two, we proceeded down the Creek; after we had gone a short distance, I proposed to Major Nunn to send a...
small party on the opposite side of the Creek to cut off their retreat on that side, which was done; and they were ordered to proceed in a direction parallel to the Creek, but at some distance from it, and to fire a shot as the signal, if they saw the blacks; after this, we had proceeded but a short distance when we heard a shot from the opposite side. I immediately galloped down the Creek accompanied by one man, expecting the Blacks would retreat from the party on the other side, and to cover as much ground as possible, in hope of surrounding the Blacks, the rest of the party following. After galloping some distance, two Blacks sprung up in front of us and we tried to take them, but they jumped into the Creek, which was deep with steep banks; myself and the Trooper who was with me fired at them, but did not hit them; while we were reloading, some of the other troopers came up and commenced firing, but I desired them to stop and ride into the scrub to drive the Blacks into the Creek, as I considered that, if we got them there, we could secure them. The two blacks who got into the Creek, I cannot say whether they were shot or not. The chief part of the party rode in a direction parallel to the Creek, but at some distance on the opposite side, and attempted to escape through the Creek. I afterwards understood that the party on the opposite side of the Creek did not fall in with any of the blacks, except when they fired the shot which gave us warning. The firing was very desultory, the party being very much scattered; there being a shot fired now and then, there was nothing like a regular firing; I cannot say what precise time occurred between the first and last shot. I cannot say positively how many were killed and wounded. I only saw three or four bodies, although I rode over a great deal of ground. I considered that, when we first met the Blacks, we were placed between them and the camp where their arms were, which I consider the chief cause of the firing, and I am satisfied, if we had not been fortunate enough to secure their arms, a number of our people would have been killed. It was nearly dark when this affray terminated, and I considered the Blacks so formidable that it was necessary to look for a secure position, and to take precaution for the safety of the people during the night, which was done; the appearance of the Blacks' camp indicated a much larger number of men than I had ever seen together before.

G. G. McK. Cobban,


Sworn before us at Merton, 17th May, 1839.—EDWD. DAY, J.P.; W. O'GILVIE, J.P.; J. PIKE, J.P.

(A true Copy):—EDWD. DAY, Police Magistrate.

[Enclosure A 9 to Minute No. 20 of 1839.]

Sir, I have the honor to acknowledge the receipt of your Letter 39/345, transmitting certain Papers "relative to the circumstances attending the death of some Aboriginal Natives in a collision with the Mounted Police on the rivers Namoi and Gwydir, and requesting my opinion whether any further proceedings are necessary in the case, and at the same time offering such remarks on the whole subject as I might deem proper; also stating you were directed to Explain to me that, the Inquiry in the case having been held by the express orders of the Government, the proceedings were forwarded by the Magistrates to you, but that, as a Notice has been issued in the Govt. Gazette of the 29th Inst. that, in every case in which an Aboriginal Native may meet with a violent death in consequence of a collision with white men, an Inquest or Inquiry is to be held in the same way as if the Deceased had been of European origin, the proceedings in similar cases will in future be forwarded to me by the Magistrates themselves."

Before I allude to the particular case now before me, I beg leave to observe that, from the last paragraph in your letter, I infer that you cannot be aware that the practice has always been, since I have had the honor to hold office, in accordance with the terms of the Notice, where you state has been issued on the 29th Inst., and, in whatever part of the Colony within reach of a Magistrate, an Aboriginal Native met with a violent death, the same Inquiry was caused as if the Deceased were of European origin; and I have invariably in my official communications with the Magistrates in different parts of the Colony insisted on the necessity of acting in all such cases without any distinction between Black and White; and, as far as I had an opportunity of judging, the Magistrates have invariably done so.
Although there is but too much reason to apprehend that many of the Aboriginal Natives have met with death from violent means, such instances I believe have only occurred beyond the Located limits of the Colony where no Magistrate was within reach.

In the present case, it is much to be regretted that this practice was not followed by Major Nunn and Lieut. Cobban, who were both Magistrates of the Territory, and were I presume, at least ought to have been aware of it. If they had discharged that duty at the time, the proceedings would have come in the usual course to this proper office for them; and whatever other proceedings might have become necessary would have been taken without delay.

At this distance of time (it being according to the papers sent to me One year and nearly five months since the unfortunate collision took place), I see the whole case surrounded with so many Embarrassing circumstances that it is difficult for me to determine what course should now be taken.

None of the documents transmitted to me are such as I could act upon as public Prosecutor; there are no Original Depositions among them; there are only Copies of Depositions purporting to have been made before the Bench of Magistrates at Invermein by Major Nunn on the 4 April, 1839; Serjeant Lee on the same day; Corporal Hannon ditto; Fellon (Mr. Hall's Stockman) ditto; Lieut. Cobban on the 17 May, 1839.

It appears from the Copy of Major Nunn's Deposition (which I presume to be a correct Copy) that his party consisted of 1 Subaltern, 2 Serjeants and 20 Troopers, making in the whole (including Major Nunn himself!) 24, besides some Stockmen that accompanied them.

There being so many other persons to give an account of the transaction, if these Depositions had been taken in due time and forwarded to this office regularly, I would have immediately returned them to the Magistrate, in order that the greater number, if not the entire of the party should be examined.

The Depositions taken could not be given in Evidence against the parties making them, and the law does not allow an admission made under the sanction of an oath in this way to be legal Evidence, neither do they mention the names of the others of the party.

Before a correct legal opinion can be formed on the case, it would be necessary to Examine the rest of the party, and then the Bench of Magistrates should, as in all other cases, Exercise their discretion in it, and after that the whole proceedings should be forwarded to me; until then, it would be premature in me to form an opinion on the case.

As however His Excellency is desirous that I should offer such remarks on the whole subject as I might deem proper, I think it right to suggest that, in the present state of the case, it belongs rather to the Executive Council to advise His Excellency as to the policy and Expediency of instituting at this late period such an inquiry as that which in my opinion ought to have taken place in January, 1838. The Council taking into its consideration the great excitement, which would undoubtedly be created by it in all parts of the Colony, and balancing against each other the evils which must obviously exist, whatever course may now be determined on.

JOHN H. PLUNKETT, Attorney General.

[Enclosure No. 2.]

[This was a copy* of the "Government Gazette," dated 22nd May, 1839.]

[Enclosure No. 3.]

STANDING ORDERS FOR THE BORDER POLICE.

1. Every individual employed in the Border Police is expected to pay implicit obedience to the orders of the Commissioner, in the same way as troopers of the Mounted Police or soldiers in any Regiment of the Line are bound to obey the orders of their Commanding Officer.

2. Non-commissioned Officers and troopers of the Mounted Police are in an equal degree bound to pay implicit obedience to the Crown Commissioner during the time they are placed under his orders.

3. The Commissioner of each District will keep a very accurate register of the conduct of every man, who is attached to him, and will report monthly the behaviour of each individual for the Governor's information.

1839.
22 July.

Opinion by J. H. Plunkett on papers re collision be. tween mounted police under J. W. Nunn and aborigines.

* Note 47.
4. The Governor will consider good conduct in the Border Police to constitute the greatest recommendation, which any man can have in this country to His favorable notice; and He will be happy to grant the highest rewards which it is in His power to bestow, and at the earliest periods which He is by law or regulation empowered to grant them.

5. On the other hand, the Governor desires it to be distinctly understood that He will instantly remove from the Border Police any man of whom He may receive an unfavorable report; and that any person removed for his misconduct will be retained in Hyde Park Barracks, or in Government employment at some other station, for the whole of the time he may have to serve in the Colony.

6. The means, by which every Border Policeman will have it most in his power to obtain the approval and favorable consideration of the Governor, will be by behaving in a kind and humane manner to the natives, and by endeavouring to gain their confidence and esteem, as well as to civilise and improve them.

7. The offences, on the other hand, which the Governor will never overlook or forgive, are any harsh or unkind treatment or ill usage of the natives, any attempt to teach them bad language, or to lead them into vicious practices, or to mock or laugh at them.

8. Any person whatsoever giving or offering to give spirits to a native, or encouraging in any way a native to drink spirits, will be immediately dismissed.

9. Any person whatsoever having improper intercourse, or attempting to have improper intercourse with a female native even with her own consent or the consent of her friends, will in like manner be immediately dismissed, and otherwise punished to the extent of the Governor's power.

10. The troopers of the Mounted Police attached to the Border Police will for the first three months act as non-commissioned officers.

11. The Commissioners will subsequently recommend the best behaved men to succeed them, and, should there be none whom they can recommend, they will report the circumstance in order that deserving men from other districts may be sent to them.

12. These orders are to be read at least once a month to every man in the Border Police by the Commissioner of the District.

With a view to have a mark by which each man and horse belonging to the Border Police may be easily distinguishable, it is proposed to assign particular letters to each District, viz.:

- Port Macquarie, P.M.; New England, N.E.; Liverpool Plains, L.P.; Bligh, B.; Wellington, W.; Lachlan, L.; Murumbidgee, M.E.; Monaroo, M.O.; Port Phillip, P.P.

Each man and horse is also to be numbered, commencing with a new arithmetical series for each District. Each man is to have sown into his cap in legible characters the letter of his division and his own number, and also on the right arm of the coat. Every article of dress and equipment is also to be similarly marked, but not in such a manner as to be apparent except on examination.

The horses are each to be named and branded with a crown on the right shoulder, and the letters of the District with its own number on the left shoulder. Horses bought to replace others are to be numbered with a continuation of the arithmetical series after the last branded.
A return is to be sent in half yearly of the state of the horses, with columns shewing the name, date of purchase, from whom purchased, members of the Board who approved the purchase, color, age, description, old brand, Government brand, peculiar marks, and present state.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 98, per H.M. ship Druid; acknowledged by Sir George Gipps, 8th February, 1840.)

Sir, Downing Street, 23 July, 1839.

I transmit to you, herewith, a Copy of a letter from Major Macarthur, in which he represents that, in consequence of a misconception of the terms of the local Regulations, he is liable to forfeit a considerable portion of the Bounties on persons whom he has sent out to the Colony; and he requests that his representation may be referred to the local Government to be acted on in a spirit of equity and consideration proportioned to the good which he may be deemed to have rendered to the general cause of Emigration. Major Macarthur has been informed that his representation would be referred to the local Government, from which the Regulations in question emanated, for such fair and equitable consideration as the justice of the case may appear to sanction.

I have, &c.,

NORMANBY.

[Enclosure.]

MAJOR MACARTHUR TO RIGHT HON. H. LABOUCHERE.

Sir, 16 Carlton House Terrace, 15 July, 1839.

Let me beg to bring under your consideration the Regulations in New South Wales, affecting individual Proprietors, who import Farm servants into that Colony, and to express my apprehension that, unless some little abatement, as respects them, take place in the strictness with which these Regulations appear to be carried into effect, this branch of Emigration will be altogether paralyzed.

I have been induced to trouble you on this subject, in consequence of a Representation made to me by Mr. Hart Davis, that his correspondent, Captain Dumaresq in New South Wales, had sustained considerable loss by the disallowance of Bounties for a man aged 34, his wife 32, and a youth a useful artizan, who fell short by a few months of the prescribed age of Eighteen.

The above Persons were included in a Party, selected for him by me in 1838 at the request of Mr. Hart Davis, when sending Agricultural Servants to Sydney for myself and Brothers.

I have, therefore, reason to fear that a loss of several hundred Pounds will be incurred by me, should the authorities at Sydney rigidly have enforced their Regulations in respect to age, without having regard to the efficiency of the Families imported.

With the exception of those embarked previous to 1838 (as shewn in the accompanying Lists), these people were selected under a Persuasion that the Local Government, in conformity with a Recommendation of a Committee of Emigration, dated August 25th,
1839.
23 July.
Request by E. Macarthur for relaxation of regulations re ages of immigrants.

1837, had so modified a former Regulation that the Limitation in respect to age was extended to 40 years, in cases of married men, without reference to the age of their wives, and that half Bounties were granted to efficient men above that age, who should be accompanied by Children of an age capable of supporting them in the Colony.

The Persons, for whom I had considered Bounties to be due, were from amongst the most industrious and respectable Farm Servants in Kent and Dorsetshire, and let me observe that, perhaps, the Government would have conveyed to Sydney these very People, had there not been many children amongst them, of an age so young, as greatly to increase the Risk of Life at Sea, as well as the Difficulty of finding Proprietors in the Colony willing to encumber themselves with the maintenance of such large Families.

Let it also be considered that, had every head of a Family been rejected, whose age exceeded 30 years, Emigration would have been opposed by influential Persons in England from a feeling that none but the very best and most able men were taken out of the Country.

I venture to think that Emigration to New South Wales has been promoted in no small degree by my personal superintendence and exertions; that I have done much to overcome the reluctance of the English Peasantry to embark upon a very distant Voyage, by taking measures for their comfort and accommodation on Shipboard; and so effectually that, of 238 souls embarked in 5 different vessels for Sydney, there is reason to believe that not an Infant has perished on the way.

Upon these public Grounds, therefore, I hope Her Majesty's Government may be induced to recommend that this Representation may be received and acted upon by the Local Government in a spirit of Equity and consideration proportioned to the good I may be deemed to have rendered to the general cause of Emigration, and not to suffer me to incur a heavy loss from the error, into which I had fallen with respect to its regulations, and of which Error I have only recently been made aware.

I have, &c,
 EDWARD MACARTHUR.

[Sub-enclosures Nos. 1 to 5.]

[These papers detailed the names and families of the immigrants.]

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MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 99, per H.M. ship Druid; acknowledged by Sir George Gipps, 4th February, 1840.)

Sir,
Downing Street, 24th July, 1839.

With reference to my Dispatch No. 91 of the 11th Instant, I transmit to you herewith, for your information and guidance, copies of a further correspondence between my Under Secretary of State and Mr. J. Mudie relative to his claim to a Grant of Land in New South Wales.

I have, &c,
NORMANBY.
[Enclosure No. 1.]

MR. J. MUDIE TO MR. EIGHT HON. H. LABOUCHERE.

Sir, Nevendon Hall, Wickford, Essex, 14th July, 1839.

In reply to your letter of the 11th Instant, I take the liberty of observing that I explained to you, when I had the honor of an interview, that I intended leaving England for New South Wales about the end of September, and my request was that I might obtain an order on my leaving England from Her Majesty's Secretary of State that would enable me to receive the 560 acres of Land, provided the statement made by me was borne out by the records of the Colonial Office in Sydney.

I also solicited permission to take out with me a certain number of Shepherds, Agricultural Servants and Mechanics agreeable to the present emigration system; but you have not done me the honor to notice this part of my application.

I have, &c.,

J. MUDIE.

[Enclosure No. 2.]

EIGHT HON. H. LABOUCHERE TO MR. J. MUDIE.

Sir, Downing Street, 26th July, 1839.

Having laid before the Marquis of Normanby your letter of the 14th instant, I am directed to acquaint you in reply that it is not possible to direct the Governor of New South Wales to make to you the Grant of Land for which you apply.

All that Lord Normanby can undertake to do is to direct the Governor to enquire into the circumstances of the case, and to take such measures as the justice of it and the established Regulations respecting Crown Lands may warrant.

Your proposal of receiving a bounty in New South Wales on the introduction of Ensign Laborers to be taken from this Country could not be entertained without a departure from the principles on which the Funds appropriated for the Emigration service are at present managed.

I am, &c.,

HY. LABOUCHERE.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despach No. 107, per ship Palestine; acknowledged by Lord John Russell, 25th May, 1840.) Government House, 25th July, 1839.

My Lord,

I have the honor herewith to forward a Memorial which has been addressed to your Lordship by the President and Committee of the Sydney Dispensary,* praying that the South Wing† of the General Hospital may be granted to them for the use of the Public; and I shall endeavour to explain to your Lordship the circumstances under which the application is made, as well as the considerations which induce me respectfully to recommend a compliance with the prayer of it.

* Note 48. † Note 49.
The General Hospital alluded to consists of three large and commodious buildings (a centre and two detached Wings) in an elevated and airy part of Sydney. It was built in the time of General Macquarie, and, having been paid for out of the profits on the sale of Rum, is familiarly known by the name of the Rum Hospital. Until very recently, the whole expence of maintaining Patients in it was borne by the Home Government; but nevertheless it is not exclusively a Convict Establishment, free Paupers having, ever since it was opened, been admitted into it as well as Convicts; and it is still the only place in Sydney, where Free Paupers can obtain Medical treatment in severe cases, the Dispensary being only, as its name implies, a place for the distribution of Medicines, and whereat advice may be had gratis.

According to instructions contained in Lord Glenelg's Despatch of the 29th Sept., 1837, No. 377, a charge of 1s. 9d. per diem has been made since the 1st April, 1838, by the Commissary General against the Colonial Government, for every Free Pauper admitted to the Hospital; but their right to admission on these terms is still acknowledged, and, at the moment I now write, there are no less than 31 Free Paupers receiving Medical treatment there.

It was in order partly to relieve the Local Government from the heavy charge of paying for these Paupers, that I invited (as stated in the Memorial to your Lordship) the People of Sydney to establish a Hospital on the principle of those, which are to be found in most Towns of any consideration in the United Kingdom; and I am happy to say that I have found every disposition to comply with my desire, provided the present prayer of the Petitioners be granted by Your Lordship.

I think it right, however, to state to your Lordship that some opposition may probably be offered to this arrangement by the Board of Ordnance, without whose concurrence it would not be proper to adopt it, as the Commanding Engineer, Major Barney, has I understand sent home a proposal for converting the same Wing of the Building into a Military Hospital. This proposal I must consider as having been rather hastily made, and not founded on the principles which have hitherto been acted on, whenever any charge has been transferred from the Home to the Local Government. The buildings in question are not Military ones, neither are they properly speaking Convict ones; they were erected for general purposes, and paid for by money raised in the Colony; according to all precedent therefore, they should be considered Colonial, or at least as the joint property of the Home and the Colonial Governments; and, if this be conceded, the
present proposition may merely be looked upon as one for dividing between two joint owners a property which has hitherto been an undivided one.

I am informed by Major Barney that he transmitted, on the 1st Sept., 1836, to the Inspector General of Fortifications, Plans of the Hospitals, together with a full explanation of his own proposal; any further information therefore, which your Lordship may require, will doubtless be easily obtained by an application to the Board of Ordnance.

I have, &c.,

Geo. Gipps.

[Enclosure.]

[A copy of this memorial is not available.]

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Marquess of Normanby to Sir George Gipps.

(Despatch No. 102, per H.M. ship Druid.)

Sir, Downing Street, 26 July, 1839.

With reference to your Dispatch No. 198 of the 14th of December last, I transmit to you herewith, for your information and guidance, the copy of a further letter from the Board of Treasury on the subject of the expense of printing a Narrative of the Voyage of the Colonial Schooner “Isabella” in search of the Survivors of the Crew of the “Charles Eaton.”

I have, &c.,

Normanby.

[Enclosure.]

Mr. G. J. Pennington to Under Secretary Stephen.

Sir, Treasury Chambers, 24th July, 1839.

Having laid before the Lords Commissioners of Her Majesty’s Treasury your Letter, dated 18th Ultimo, transmitting the copy of a Despatch and its enclosure from the Governor of New South Wales, furnishing additional information respecting the expense of printing a narrative of the voyage of the Colonial Schooner “Isabella” in search of the Survivors of the Crew of the “Charles Eaton,” I am commanded by their Lordships, with reference to the previous correspondence regarding the publication of the narrative in question, to request that you will observe to Lord Normanby that the Report forwarded by Governor Sir Geo. Gipps, as well as the result of the intended sale of the copies of the work consigned to the Agent General for New South Wales in this Country have tended to confirm my Lords in the opinion that the expenditure for this publication was improperly and unnecessarily incurred, and that you will move Lord Normanby to instruct Sir Geo. Gipps to

*Note 50.*
cause the amount due from Mr. Evans to be called for, and paid
into the Military Chest, and likewise to cause the remaining copies
of the Chart to be disposed of by Public Sale, or otherwise in such
manner as he may think most advisable.
I am, &c,
G. J. PENNINGTON, pro. Sec.

27 JUIY.
Arrival of
Sir J. J. G.
Bremer.

Outbreak of
scurvy on
H.M. ship
Alligator.

Reports re
settlement at
Port Essington.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 108, per ship Palestine.)
My Lord,
Government House, 27th July, 1839.

I have the honor to report to your Lordship that Captain
Sir J. Gordon Bremer in Her Majesty's Ship "Alligator" arrived
in Port Jackson on the 8th inst., having left all well at the Settle­
ment at Port Essington on the 3rd June last.

The object of Sir Gordon Bremer's visit to Sydney is to
obtain supplies of which he stands in need both for his own ship
and the Settlement.

The Scurvy, I am sorry to say, manifested itself on board the
"Alligator," and 25 Patients, laboring under that disease, have
been sent ashore to the Military Hospital, where they are now
doing well. The People on shore at Port Essington were not
affected by it when the "Alligator" came away.

Sir Gordon Bremer having officially communicated to me
Copies of the letters he has addressed to the Secretary of the
Admiralty detailing his operations since he left this Port in the
month of Sept. last, I have the honor to forward the same here­
with to your Lordship; and, in so doing, I cannot refrain from
congratulating your Lordship on the success, which has attained
Sir Gordon Bremer's operations, and on the prospects which are
opened to us by the establishment of this Post on the Northern
Shore of Australia.

I have, &c,
GEO. GIPPS.

[Enclosures.]
[Copies of these letters will be found in a volume in series III.]

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 103, per ship Barrosa.)
Sir,
Downing Street, 29 July, 1839.

I have the honor to acquaint you that, under the circum­
stances stated to me by Mr. Ewing, late Lieutenant 91st Foot,
I have granted to that gentleman an extension for six months
from the 1st of January next of the period for his arrival in
New South Wales as a retired Military Settler.

I have, &c,
NORMANBY.
Sir George Gipps to Marquess of Normanby.

(Despatch No. 109, per ship Palestine; acknowledged by Lord John Russell, 17th December, 1839.)

My Lord,

Government House, 29th July, 1839.

In the performance of a painful duty, I forward to your Lordship copies of two letters, which have been addressed to me respectively by the Lord Bishop of Australia and the Right Reverend Dr. Polding, on the subject of the appearance of the latter, in what were supposed by the Bishop of Australia to be the Pontifical habiliments of a Bishop of the Church of Rome, at the Levee which I held at Government House on Her Majesty's last Birthday.

The letters themselves so fully explain the case that I am fortunately relieved from the necessity of entering upon it at any length. I feel it indeed only necessary to say that I am informed Dr. Polding did, on the first occasion complained of, namely, that of Sir Richard Bourke's Levee in 1837, appear, though not in full Pontificals, yet in a Purple Soutane, which is I believe an appropriate vestment of a Bishop of the Church of Rome; but that, on the latter occasion or my own Levee in the present year, Dr. Polding only wore what is called the "Mantilla," which is not a vestment exclusively appropriate to a Bishop, and one which a Bishop of the Church of Rome does not wear when Pontifically attired.

Your Lordship is doubtless aware that Dr. Polding came to status in colony New South Wales under the authority of a Despatch from Lord Aberdeen, dated the 20th Feb., 1835, No. 26, with permission to exercise in the Colony Episcopal authority, and that consequently, though addressed officially by the Government only as the Right Reverend Dr. Polding, he is recognised both by the Government and the Public as the Head and Official Organ of the Roman Catholic Church.

Your Lordship is doubtless aware that Dr. Polding came to status in colony New South Wales under the authority of a Despatch from Lord Aberdeen, dated the 20th Feb., 1835, No. 26, with permission to exercise in the Colony Episcopal authority, and that consequently, though addressed officially by the Government only as the Right Reverend Dr. Polding, he is recognised both by the Government and the Public as the Head and Official Organ of the Roman Catholic Church.

I have, &c,

GEO. GIPPS.

[Enclosure No. 1.]

Bishop of Australia to Sir George Gipps.

Sir,

Sydney, 25 May, 1839.

Having yesterday had the honor of attending your Excellency's Levee at Government House for the purpose of paying my respects to your Excellency on the occasion of Her Most Gracious Majesty's Birthday, I witnessed the public admission and reception of the Right Reverend Dr. J. B. Polding, wearing those habiliments which are appropriate to a Bishop of the Church of Rome.

On a similar celebration in the year 1837, a corresponding occurrence took place; and I then addressed to Governor Sir Richard Bourke a letter expressive of my sentiments, a Copy whereof I have now the honor to enclose. This letter, I at that time withdrew, upon receiving from Sir Richard Bourke an assurance that
such appearance of Dr. Polding at the Levee was unforeseen by him, and that it would not be repeated, unless the practice in that respect at London or Dublin should be altered. It appears to me, however, that no discretion now remains to me; but that, having witnessed the renewed endeavour now made to obtain from Your Excellency a recognition of Dr. Polding as a Bishop within the dominions of Her Majesty, and thereby of the jurisdiction of the Bishop of Rome within this Realm, I should be guilty of a neglect of duty, approaching perhaps to a high crime and misdemeanour, if I forbore to notice and oppose it. I have the honor therefore to request that the letter now enclosed, and which was originally addressed to Sir Richard Bourke, may be considered as expressing my present views. I have further to request that the same may be transmitted by Your Excellency to Her Majesty’s Principal Secretary of State for the Colonies, with an application for a legal decision of the question, how far such a public reception of a Roman Catholic Bishop, avowedly and visibly in that capacity, is reconcilable with the Statute Law of England, and with the Oath of Supremacy especially, which civil and ecclesiastical functionaries in general within Her Majesty’s dominions are required to take.

In addition to the above statement, I will with submission intrude upon Your Excellency with the expression of my hope that, in making such a representation and remonstrance, I am acting wholly upon public grounds, and not with a design, which indeed I expressly disclaim, of manifesting any personal disrespect towards Dr. Polding.

I have, &c.,

W. G. AUSTRALIA.

[Sub-enclosure.]

BISHOP OF AUSTRALIA TO SIR RICHARD BOURKE.

Sir,

Sydney, 30th May, 1837.

In the discharge of my duty of presiding over this vast Diocese, which, with the sanction of His Majesty’s Prerogative, has been entrusted to me by the Church, I trust I shall never lose sight of the necessity which exists for my exercising a cautious and solid judgment in discriminating the extent to which I may assert the claims of the Church of England. In particular, it is my anxious desire, in every proceeding having reference to those claims, to avoid infringing upon the privileges of your Excellency as the Head of the Civil Government; which with me, as with every true Churchman, it is and must be a matter of conscience to hold sacred. I am willing also to hope that my anxiety on all occasions to maintain that line of conduct inviolate has been sufficiently evinced to exempt me from the suspicion of designing in the present instance to offer an unnecessary or unbecoming representation to your Excellency.

It has been stated to me that, subsequently to my leaving your Excellency’s Levee yesterday, after having had the honor of offering my respects to your Excellency on the occasion appointed for celebrating the Birthday of His Majesty King William the IV. the Right Reverend Dr. Polding attended and was received by your Excellency in the appropriate vestments and pontifical ornaments of a Bishop of the Church of Rome. Dr. Polding, I have been informed and have reason to believe, has been consecrated to the Bishoprick of Hiero Cosarea in ancient Lydia, now forming a part of the Turkish dominions. Your Excellency will be aware that I do not introduce the question under a theological or ecclesiastical
aspect, but exclusively as a legal and constitutional subject of con-
sideration, how far it may be permissible to receive Dr. Polding
in a capacity not acknowledged by the State of England; and thus
to admit by implication that the Bishop of Rome has jurisdiction
within the King's dominions to constitute Bishops, who may be
solemnly recognised as such by the King's Representative. It is
not the right to consecrate Bishops to such foreign Sees which I
am at present concerned to question; But I submit to Your Excel-
leney that the reception by Your Excellency, avowedly in his
episcopal character, of a Bishop so consecrated, does in effect re-
cognise an authority which we have sworn no foreign prelate either
has by right or ought to have in fact. It appears to me to be also
in derogation of the King's Supremacy, and contrary to the spirit
at least of the Act of Settlement.

I am not unaware that the circumstance of Dr. Polding's so
attending the Levee, as has been represented to me, may have been
unforeseen by Your Excellency, or that the occurrence may be
regarded by your Excellency in the same point of view in which I
have presented it. If it be Your Excellency's pleasure, I shall be
most happy, upon that understanding, to apologise for this intrusion
upon your Excellency's attention, and shall solicit permission to
withdraw this letter. But, in the absence of any such assurance,
the anxiety impressed upon my own mind, and widely diffused
among the Protestant portion of this community, is too great to
allow me to decline the duty of humbly soliciting to be informed
whether His Majesty's sanction has been signified for the reception
and acknowledgment of the Bishop of Hiero Cosarea, as such,
within the Diocese to the spiritual charge of which I have been
canonically and legitimately consecrated. I have, &c.,

W. G. AUSTRALIA.

[Enclosure No. 2.]

RIGHT REV. J. B. POLDING TO SIR GEORGE GIPPS.

Sir,

Sydney, 2d July, 1839.

I have the honor to acknowledge the receipt of two letters, one dated the 29th May, 1837, the other dated May 25, 1839, but bearing date of transmission to your Excellency June 11th, each having reference to the Levees of the respective years, and to my appearance at them. Since the Right Reverend Writer of the letters has expressed an earnest wish that the legal and constitutional question, arising from the view His Lordship has been pleased to take of the occurrences, should be submitted to the proper authority for decision, as regards the Statute Law and the Oath of Supremacy and the Act of Settlement, I am happy to dismiss from my pen the consideration of the case "de jure," and to pro-
cceed to the premises or facts on which this question has been raised.

Previously, however, I may be permitted to remark that, with
respectful submission to the judgment of Your Excellency, the
argument of Dr. Broughton on the case overreaches its point, and
frustrates the conclusion His Lordship has drawn. The Right
Reverend Prelate asserts that I am a Foreign Bishop, Bishop of
Hierog-Cosarea. In virtue of my title as Bishop, I cannot claim,
according to the discipline of the Church, authority, preeminence,
etc., beyond the limits of my diocese, and no assumption of dress
can give me that authority. In the supposition therefore that I
have appeared, as Dr. Broughton States I did appear, at Your

GIPPS TO NORMANBY.
State by right revd. J. B. Polding re robes worn at levees.

Excellency’s Levee in Pontifical Vestments, it would not have been because as Bishop I claimed preeminence and authority, nor could your Excellency’s reception of me be deemed an acknowledgment of Spiritual power, which was not even claimed. In the case as stated by Dr. Broughton, my appearance at the Levee and Your Excellency’s reception of me could only be construed as a testimony of respect, paid by a Foreign Prelate, an Alien, to the Representative of Her Gracious Majesty, in the manner deemed by him most fit to testify respect; and your reception of him, nothing more than the courtesy a Stranger, bearing his character, would assuredly receive from your Excellency. It is not easy to discern, how in this transaction the Statute Law or the Oath of Supremacy or the Act of Settlement has been infringed.

I proceed to the facts of the case.

In the letter to Sir Richard Bourke, His Excellency has been informed that it has been stated to the Right Reverend Writer that, subsequently to His Lordship’s leaving the Levee, on the occasion appointed for celebrating the Birthday of His Majesty King William the Fourth, I attended and was received by His Excellency in the appropriate vestments and pontifical ornaments of a Bishop of the Church of Rome. I did attend on the occasion alluded to, as became the Head of one of the recognised religious denominations in the Colony, and was received by His Excellency; but I did not attend, and of course was not received by His Excellency, in the appropriate vestments of a Bishop of the Church of Rome. I have never attended (I should deem the exhibition unseemly and indecent) any secular solemnity in the appropriate vestments of the episcopal order. If by pontifical ornaments be meant the Cross, I wore on my breast and my Ring, these I received on the day of my consecration to remind me of my vocation and its obligations; these I have worn ever since, in every place, at every time, in the Dining and Drawing Room, as in the Church and Condemned Prisoner’s Cell; and, never 'till now, were they made matter of offence; with what propriety, by one bearing the character of a Christian Prelate, I leave your Excellency to judge.

So far as regards the Levee of 1837.

With feelings of extreme pain, I proceed to notice the second allegation, because it rests on the personal testimony of the Right Reverend Dr. Broughton. The Right Reverend Prelate declares that he witnessed the public admission and reception of myself, wearing the habiliments appropriate to a Bishop of the Church of Rome. Truth compels me to place my solemn denial of the assertion, resting on the personal testimony of His Lordship, in contraposition to that assertion and that testimony. I deliberately deny the correctness of the statement offered to Your Excellency; at the same time, aware how easily an error in judgment may be formed on this subject, I do not ascribe to the Right Reverend Prelate an intentional misstatement of fact.

But when the Right Reverend Dr. Broughton proceeds from erroneous judgment on fact to gratuitous imputation of intention; when he ventures to take the range of my mind, and to assert that I thus appeared for the purpose of obtaining a recognition as a Bishop from Your Excellency, I feel that a liberty is assumed in

* Marginal note.—“Having witnessed the renewed endeavour now made to obtain from your Excellency a recognition of Dr. Polding as a Bishop,” etc. (2d Paragraph in same letter, 25th May, 1839).
my regard, which I can find no palliating circumstances to excuse. Such intentions never entered my thought. It is not by an appearance at a Levee, in a dress tolerated or not censured, that I would accept a recognition of my Sacred character by the Government your Excellency represents. That there is a recognised Roman Catholic Bishop in the Colony, the Legislative enactments of the constituted authorities bear witness, the Church Act in its Regulations, the Church Act in its Clauses, the Legislative Council in its Regulations and decisions; and does not the entire body of your Excellency's Official Correspondence in reference to the Roman Catholic Church in the Colony, that of your Excellency's Predecessor from the month of October, 1835, give testimony that I am the individual honored in the recognition of that name? Permit me to mention that, before I acquiesced in my nomination, foreseeing the difficulties that might arise, I required that the Government at Home should be consulted. The Right Reverend Dr. Bramston, who usually transacted business with the Colonial Office in reference to the Roman Catholic Church in the Colonies, applied to the Secretary of State to ascertain the feeling of the Government. Not only was consent given, but the extreme propriety of appointing a Bishop to govern the Roman Catholic Community in this Colony was distinctly expressed. It was with the formal approbation of the Government at Home that I departed from England. To support my episcopal character and dignity, the Honourable Legislative Council made a provision after my arrival. Not Sir, I did not attend the Levee of Your Excellency in pontifical vestments or habiliments or ornaments to endeavour to obtain from your Excellency a recognition of myself as a Bishop of the Church of Rome. I repudiate the charge, and deem myself aggrieved that an act and intention, unworthy of my Station, should be groundlessly imputed to me by the Right Reverend Dr. Broughton; for no one in the Colony ought more accurately to appreciate the pure and exalted motives which should influence a Bishop in all the transactions of life.

Having thus noticed the case de jure, and the facts on which that case has been raised, I might close this letter. Certain observations* of the Right Reverend Prelate, however, will justify me in a further trespass on your Excellency's time and patience. His Lordship States that he withheld his first letter to Sir Richard Bourke on an assurance given by His Excellency that no such appearance of mine would be repeated. Sir Richard Bourke certainly did speak to me on the subject, and mentioned that some person had taken offence, not specifying the name or station of the individual. He did not inform me that the Right Reverend Dr. Broughton had interfered and remonstrated, considering that appearance of mine as an inroad on his jurisdiction. Had I been in possession of this information, I assure your Excellency that, before your arrival in the Colony, with the permission of your Predecessor, the letter of the Right Reverend Prelate with my reply would have been laid before the Authorities at Home.

His Excellency Sir Richard Bourke is moreover informed that the anxiety, impressed on the mind of the Right Reverend Prelate

* Marginal note.—"This letter I at that time withdrew, upon receiving from Sir Richard Bourke an assurance that such appearance of Dr. Polding at the Levee was unforeseen by him, and that it would not be repeated," etc. (2d paragraph. letter 25 May, 1839).
on the subject of his letter, was widely diffused among the Protestant portion of the Community. Of the existence of this widely diffused anxiety, 'till I received the communication from your Excellency, I was entirely ignorant. I am honored by a not inextensive acquaintance in that Community, many particularly valued friends holding influential rank are in it. A word, expressive of offence taken by themselves or by others, was never conveyed to me; and I rely so firmly on their interest in my welfare as to be certain that, if they had heard that anxiety expressed, they would not have permitted me to remain in ignorance of it. The Public Papers, some of which were incessant in their attacks on the Roman Catholic Community, and habitually using every plausible pretext for censuring the Acts of the late Governor, passed over this cause of widely diffused anxiety without a remark. Had not the Right Reverend Prelate, to whose more intimate knowledge of the feelings of the Members of the Church of England I humbly defer, given testimony to its existence, I should not have surmised that so much uneasiness could have existed, without occasioning some ruffling on the surface of our Colonial Society.

Your Excellency kindly intimates that the Copy of these letters is sent to me that I may offer any explanation I may think fit to make of the circumstances about to be brought under the notice of the Home Government. I have no explanation to make; I have none to offer. Even if the allegation were founded in fact, I should be unconscious of offence. Being in every respect groundless, I know not that I am called upon to trouble your Excellency with further observations. I leave the case in the hands of the Right Honble. the Secretary of State for the Colonies. I cannot refrain from adding my conviction that, considering the import and context of the two letters of the Right Reverend Dr. Broughton, the question at issue regards not vestments and habiliments, crosses and rings, but something of infinitely higher importance; whether each religious denomination is to enjoy freedom of conscience on the footing of perfect equality, or whether a hateful exclusiveness is to be introduced and established; whether one, whom the Right Honorable Lord Glenelg had distinguished* as the Bishop of the Church of England in Australia,” is to be the only recognised Spiritual Head in the Colony, or whether each religious denomination recognized by the Government in its Head and in its Members, looking up to Her Gracious Majesty as a common Protector and friend, free from all unseemly jealousy and contentious bickering for exclusive favor and domination, shall be recommended on the distinctly avowed basis of perfect equality, to cultivate peace and social love.

I have, &c,

J. B. POLDING.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 104, per ship Barrosa.)

Sir,

Downing Street, 30 July, 1839.

In reply to your dispatch No. 41 of the 4th of March last, I have the honor to signify to you my approval of the Leave of Absence, which you have granted to Mr. Campbell Drummond

* Marginal note.—Letter in reply to the thanks of the Presbytery after passing of the Church Act.
Riddell, the Colonial Treasurer of New South Wales, and of the arrangements which have been made for the execution of the duties of that Office during Mr. Riddell’s absence.

I have communicated with the Lords Commissioners of the Treasury on the subject of the New Bond, which has been entered into by Mr. Riddell for the due performance of the duties of his Office.

I have, &c.,

NORMANBY.

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(Sir George Gipps to Marquess of Normanby.

(Despatch No. 110, per ship Palestine; acknowledged by lord John Russell, 16th December, 1839.)

My Lord,

Government House, 30th July, 1839.

On the receipt of Lord Glenelg’s Despatch No. 188 of the Transmission of letter from 25th Augt., 1838, I lost no time in calling upon Mr. John Batman for a copy of the Memorial, which he addressed to Lord Glenelg on the 21st March, 1837, as well as for any further observations he might wish to offer on the same subject; and I enclose a copy of the answer which was received from Mr. Batman.

I further enclose for your Lordship’s information a copy of certain Queries, which were subsequently addressed by me to the Police Magistrate of Port Phillip, as also of the answers returned to these Queries; and lastly, I enclose to your Lordship a Copy of a Minute made by the Executive Council, when all the documents relating to this subject and quoted in the margin of the minute were laid by me before the Council.

Your Lordship will perceive that the Council were of opinion that Mr. Batman had no right whatever to have his case considered apart from that of the Association, of which he was a Member; and that therefore the prayer of his Memorial is considered altogether inadmissible.

I beg to add that this decision has been communicated to the representatives of Mr. Batman, who I regret to say died on the 5th May last.

I think it right to inform your Lordship that I have as an indulgence consented to allow the materials of the houses, and everything else that is moveable, to be taken away for the benefit of Mr. Batman’s family before the land is given up.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[Copies of these papers will be found in a volume in series III.]

* Note 51.
1839.
31 July.

Approval of act re temporal affairs of church of England.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 105, per H.M. ship Druid.)

Sir,

Downing Street, 31 July, 1839.

With reference to your Predecessor's Dispatch No. 108 of the 4th November, 1837, submitting the copy of a Bill which passed in that year for regulating the temporal Affairs of the Churches and Chapels of the United Kingdom of England and Ireland in New South Wales, I have the honour to acquaint you that Her Majesty has been graciously pleased to confirm and allow that Ordinance.

I have, &c,

NORMANBY.

J. R. Brennan to refund over-payment of salary.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 106, per H.M. ship Druid; acknowledged by Sir George Gipps, 21st June, 1841.)

Sir,

Downing Street, 31 July, 1839.

I have received your Dispatch No. 197 of the 12th of December last, in which you report that Mr. R. Brennan has demurred to refund the over-issue of Pay made to him whilst acting as Principal Superintendent of Convicts.

Mr. Maclean was clearly entitled under the general Regulations of the Colonial Service to Half Salary from the date of his embarkation; and, as Mr. Brennan's continuance in the office to which he had been nominated by Sir R. Bourke was contingent on the confirmation of the Secretary of State, so was the amount of his Emolument.

I cannot recommend to the Lords Commissioners of the Treasury to sanction any additional charge on that account; and, if Mr. Brennan still hesitates to make the payment, it will be your duty to recover the amount by a corresponding deduction from the Salary of his present Office. 

I have, &c,

NORMANBY.

REPORT RE EVENTS IN CHINA.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 111, per ship Palestine; acknowledged by lord John Russell, 24th December, 1839.)

My Lord,


On the 22nd inst., intelligence was received at Sydney, via Singapore and Java, of the events* which occurred in China towards the end of the month of March last, at which time it appears that Capt. Elliot, Her Majesty's Principal Superintendent of Trade, was under constraint and threatened with immediate death by the Chinese Authorities.

* Note 52.
There happening to be, when this news arrived, three ships of War in the Harbour of Sydney, namely, the "Alligator," the "Herald," and the "Pelorus," I lost no time in inviting Capt'n Sir J. Gordon Bremer either to proceed with the whole of them to China or to despatch thither as large a portion of the Force under his command, as he in his own discretion might think fit, informing him that in my opinion there was nothing immediately connected with the duties of this Government or with British Interests in the neighbouring seas that should stand in the way of such a proceeding.

I have consequently further to report to your Lordship that the "Herald" sailed for China on the 27th inst., the "Pelorus" on the 29th and that the Alligator will follow, as soon as she can be made ready for sea.

The "Pelorus" and "Alligator" will touch at Port Essington, but the "Herald" will call only at Singapore.

In consequence of the Crew of the "Alligator" being somewhat weakened by sickness (Scurvy) as mentioned in my Despatch of the 27th inst., No. 108, and Sir Gordon Bremer being under the necessity of leaving a portion of his Marines at Port Essington, I have, in conjunction with Major General Sir Maurice O'Connell, arranged that a party of the 50th Regt., consisting of a Subaltern and 30 men, shall be embarked on board the "Alligator." This arrangement will be attended with no inconvenience, as orders for the embarkation of the 50th Regt. for India are daily expected.

I trust that your Lordship and Her Majesty's Government will approve of what has been done on this emergency.

I have, &c,
Geo. Gipps.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 107, per H.M. ship Druid.)

Sir,
Downing Street, 1 August, 1839.

I have received your Dispatch No. 6 of the 6th of January last, reporting the appointment of Mr. Dobie, Surgeon, R.N., to the situation of Health Officer for the Port of Sydney, New South Wales, with a Salary of £300 per Annum; and I have the honor to convey to you my approval of this Appointment, the Lords Commissioners of the Admiralty having stated that they see no objection to Mr. Dobie holding that appointment until his services are required in the Navy.

I am, &c,
Normanby.
SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 112, per ship Palestine; acknowledged by lord John Russell, 27th December, 1839.)

My Lord,

Goverment House, 1st August, 1839.

With reference to my Despatch of the 11th March last, No. 48, requesting further instructions as to the method in which a remission in the purchase of land is to be granted to officers of the East India Company's late Mercantile Marine, I have the honor to submit to your Lordship the particulars of a claim lately advanced, which seem to me to exhibit in a stronger point of view the want of some further regulation on the subject.

Mr. William McKenzie entered as Midshipman on board the "General Kyd" in 1820; he performed one voyage on board the same vessel as Sixth officer, one on board the "Atlas" as Fifth officer, and his last voyage on board the "General Kyd" as Fourth Officer terminated on the 7th April, 1828, now more than eleven years ago.

This gentleman claims a remission in the purchase of land, equal to what is allowed to a Captain in the Army; and he claims it after the lapse of eleven years, whilst a Captain in the Army is required to become an Actual Settler in the Colony, within a year from the time he quitted the service.

Several other applications have been received from persons formerly employed in the East India Company's Merchant Ships, and among them one from a Surgeon, who performed only three voyages, including one in which he was Surgeon's Mate.

I trust I may be permitted respectfully to say to your Lordship that to make to all these gentlemen a remission in the purchase of land will occasion a considerable loss of our Land fund.

I have, &c,

GEO. GIPPS.

3 Aug.

TRANSMISSION OF REPORT FROM D. BOYTER.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 109, per H.M. ship Druid.)

Sir,

Downing Street, 3 August, 1839.

With reference to your dispatch No. 15 of the 15th of January last, relative to the admission of a man named "John Macdonald" into the Government Emigrant ship "St. George," I have the honor to transmit to you, for your information, the Copy of a letter from the Agent General for Emigration, inclosing a Report from Dr. Boyter on the subject.

I have, &c,

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

Sir,

2 Middle Scotland Yard, 27th July, 1839.

In reference to your Letter of the 2nd Instant, respecting the admission of a man named John Macdonald into the Government Emigrant ship "St. George," I beg leave to return Sir Geo. Gipps' Despatch of the 15th January therein enclosed, and to transmit the copy of a Report on the subject, for which I called upon Dr. Boyter, in pursuance of Lord Normanby's directions.

I have, &c.

T. FREDK. ELLIOT.

[Sub-enclosure.]

DR. DAVID BOYTER TO MR. T. F. ELLIOT.

Sir,

20th July, 1839.

I have the honour to acknowledge your letter of the 9th Instant, enclosing a Despatch from Sir George Gipps the Governor of New South Wales, and requiring from me a report on the case of John Macdonald, said to be an improper person to have been selected as an Emigrant and sent on board the "St. George" Government vessel for passage to New South Wales. It appears to me that only one point is necessary to be explained, that is, whether Macdonald ought to have been considered ineligible from being possessed of considerable property. In the first place, I must inform you that at the time I was sent to the Highlands to select Emigrants, I was instructed by the Right Honble. The Secretary of State for the Colonies to consult with certain influential individuals on the best means of conducting that important service. At Edinburgh, I had the advice of the Gentlemen composing a Committee sitting then on the distressed state of the Highlands; at Glasgow, I consulted with the Revd. D. Macleod, whose influence over all the Highlands and particularly over that District, I was recommended to go to, was probably greater than any other individuals. This Gentleman translated into Gaelic all my advertisements, introduced my name and object among his Countrymen, and brought all the Northern Clergymen into his views on Emigration, and I may with justice say that the support of Dr. Macleod was looked on by the people as the only security they had for realizing the advantages held out to them. The individual "Macdonald" I had given several decided refusals to, and stated my objections as they appeared to me; he persisted in addressing me by promising to remove every objection I had stated; I then admitted that I was informed of his being possessed of money sufficient to pay for all their passages to New South Wales, and forbade him intruding on me again by Letter or otherwise. On this I received a Letter from the Revd. Dr. Macleod, in which he said, "that, if people so highly deserving as the Macdonalds were to be excluded from the benefit held out by Government of a free passage, that Emigration so conducted must prove a curse on the country instead of a benefit." From Mr. Macdonald, a Writer to the Signet in Edinburgh, a most influential Highland Gentleman, I received a Letter of a similar Stamp enclosing one from John Macdonald, denying in the strongest language being possessed of more money than would clothe and fit out his poor relations and pay ration money for his Father and Money; he also expressed his deep regret at my being misled in supposing he had money. Under the force of all these representations,
1839.
3 Aug.

Report by
D. Boyter re
admission of
J. Macdonald as
emigrant on
ship St. George.

and thinking I had acted rather harshly to the man than otherwise, fearing also the injury it might do the cause by being too obstinate, I at last yielded; and, from his intelligent manner and cleanly habits as also his attachment to his poor relations, I was led to believe he would prove an example of order and obedience. When it is considered that I was a perfect stranger to the language and habits of Highlanders, and, depending on the information and suggestions of others, it became my duty occasionally to give way to circumstances. The Regulations, by which I am guided in selecting Emigrants, is complained of generally and was made the subject of remonstrance to Government by the Gentlemen of the Highland Destitute Committee at Edinburgh, who stated that my selection was confined entirely to the best and most useful classes of people. In explanation of the Letter annexed, I beg to say that it was no uncommon practice of mine to give the use of an outside Cabin to one or two of the most deserving Passengers, who would undertake the duty of some useful Department among their fellow passengers; and, from Macdonald having been in the Army, and so strongly recommended, I meant to have indulged him and wife in that way, provided the Master was agreeable, and no Government passengers going out; but it never in these cases was contemplated admitting such People into the Mess of the Master. In order to stop as much as possible the desire of old people emigrating with their Relations, they were obliged to arrange with the Master for their Rations, the Government giving them ship-room. There does not appear much in Mr. Macdonald's letter worthy of notice excepting that it conveys an incorrect view of my sentiments by insinuating that I was inviting the party to a saving of £200 by going in the "St. George"; as there were ten of them, I presume my opinion was given that it would at least require £200 to pay steerage passage in a private ship, which I understood they were unable to command. In conclusion I have to remark that I am not in the habit of addressing Emigrants as Esqres. and I believe that part of my letter a forgery.

I have, &c,

DAVID BOYTEE.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(A circular despatch, per H.M. ship Druid.)

Sir, Downing Street, 3 August, 1839.

I beg to transmit to you the enclosed Order of the House of Commons, bearing date the 7th of May last, and to request that you will furnish the information called for as far as the records of your Government may enable you to supply it.

I am, &c,

NORMANBY.

Resolved,

ORDER BY HOUSE OF COMMONS.

Martis, 7° die Mai, 1839.

That an humble Address be presented to Her Majesty, that She will be graciously pleased to give directions that there be laid before this House Official Abstracts of the Revenues of New South Wales and Van Diemen's Land from 1824 to 1837, both included; Returns of the expenditure of each of those years under the proper heads; The Estimates of the year 1838; Abstracts of the quantities

Transmission
of order of
house of
commons.

Returns
required by
house of
commons.
and value of Imports and Exports in each of the foregoing years; Number and Tonnage of Vessels entered and cleared; Returns of the number of Free Emigrants; and that of Convicts arrived in each year; Of the quantity of Public Lands sold, or granted without sale in each year; Of sales of Public Lands in the Australasian Colonies since the introduction of the system of sale by Lord Ripon's regulations, showing the number of acres sold, the purchase money received, and the average price per acre, distinguishing the several Colonies of New South Wales, Van Diemen's Land, South Australia, and Western Australia; and a similar Return for the British North American Colonies of Lower and Upper Canada, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland.

Ordered, That the said Address be presented to Her Majesty by such Members of this House as are of Her Majesty's most honorable Privy Council.


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SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 113, per ship Palestine; acknowledged by lord John Russell, 17th December, 1839.)

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

I have the honor to enclose herewith a letter which has been addressed to your Lordship by the Right Reverend Dr. Polding, and with it certain Resolutions lately adopted at a Meeting of the Roman Catholics of Sydney.

Your Lordship will gather from these Resolutions, and especially from the second of them that the Meeting was held in consequence of a knowledge having got abroad of the purport of certain letters, which were transmitted to your Lordship with my Despatch of the 29th ulto., No. 109.

I beg to assure your Lordship that I deeply deplore the revival of anything like religious controversy amongst us; and that the utmost influence I possess in the community will be exercised to check its progress, though at the same time I am fully impressed with the persuasion that I shall best attain this object by giving to questions of this nature the smallest possible degree of prominence or importance.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[A copy of this letter with the resolutions is not available.]

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 115, per ship Palestine; acknowledged by lord John Russell, 21st February, 1840.)

My Lord, Government House, 7th August, 1839.

Although I am unable to transmit by the present opportunity copies of any documents on the subject, I do not think it right to let a vessel leave the harbour without informing your
Lordship that a claim* has been advanced by Sir Maurice O'Connell, on the part of the Heirs of the late Governor Bligh, to a considerable portion of the Town of Parramatta, and that notices of Ejectment were on the 31st ulto. served by his Attorney on all the persons actually in possession of the property claimed, including the Keeper of the Female Factory.

A Despatch, which was addressed by Lord Bathurst to Governor Darling on the 18th Jany., 1827, will (with its several enclosures) explain to your Lordship the grounds on which this claim is made, Sir Maurice O'Connell having married one of the Daughters (Coheiresses) of Governor Bligh.

The claim rests, I believe, on the admitted facts that a Grant of the Land in question was made by Governor King to Governor Bligh on the 10th Augt., 1806, and that, irregular (to use no harsher term) as that Grant unquestionably was, it has never been set aside by any sufficient legal proceeding, the Proclamation or General Order* of Governor Macquarie annulling it, issued on the 5th August, 1819, not being maintainable in Law. That this Proclamation was deficient in legal form, Lord Bathurst seems to have been aware; but still his Lordship did not in his Despatch above alluded to direct any further steps to be taken to cancel the Grant, relying as it would seem on the good faith of the parties not to revive a claim, which they had through their agent (Mr. Richard Bligh) abandoned.

The Land, claimed by Sir Maurice O'Connell, is 105 acres in the Town of Parramatta, and the present value of it cannot I should think be less than £40,000, whilst it is not in any way pretended that a single shilling has ever been expended on it either by Governor Bligh or his Heirs. It includes the Female Factory, the property of the Home Government, on which large sums of money have been spent since 1820, the Gaol and the King's School, the property of the Colonial Government, the Roman Catholic Chapel and School, and a great number of houses, the property of private individuals, who have acquired Titles from the Crown since the Land was resumed by Governor Macquarie in 1819.

I have called upon my Law Officers to defend to the very utmost the rights of the Crown and the interests of the People of the Colony in this matter; but, at the same time, I must candidly confess to your Lordship that, if the cause be suffered to go to a Jury in any Court of the Colony, I cannot but feel doubtful of the result. The intention of the Law officers is to apply for an injunction to stop proceedings, until proof can be obtained from England of the validity of the Original Deed to Governor Bligh; and the object of this hurried Despatch is to request that your

* Note 53.
Lordship may be pleased to give directions for the immediate collection of all the information that can possibly be procured on the subject, and especially on the following points:—

1. The alleged want of power in Governor King to make the Grant, and the incompetency of Governor Bligh to receive it (as stated in Mr. Hay's letter* to Mr. Richard Bligh of the 16th Septt., 1825).

2. The nature of the Instructions* of 1786 and 1789, under which Grants of Land were issued in the early days of the Colony; also, the Commissions* of Governors Bligh and King.

3. The agency of Mr. Richard Bligh in 1825, and how far he was authorised to act for the Heirs of Governor Bligh, not being himself one of them.

Notwithstanding the strong objections, which may be urged against such a proceeding, I cannot but feel disposed to think that the extraordinary nature of this case may be better met by a Legislative Enactment than by a defence in a Court of Law. Very few of the acts of the early Governors of New South Wales were performed strictly according to Law or legal forms. In a Convict Colony, the commands of the Governor were absolute, and these commands, even in matters of Civil Government, were frequently issued in the Military Order Book. The General Order, by which the Grant to Governor Bligh was cancelled, was issued strictly in conformity with the practice of the times, and was not much more wanting in form than the Grant, which it revoked; the informality in the latter case has been remedied by a Local Ordinance (6 Gul. IV, Ch. 16) passed by direction of your Lordship's Predecessor; why then should not the informality in the former case be remedied in a similar manner? All that is wanting is to give to the General order of Governor Macquarie, issued on the 5th of Augt., 1819, the validity, which doubtless would have been given to it at the time, if the requisite machinery of the Law had existed in the Colony to accomplish it.

Your Lordship will not fail to perceive the extreme delicacy of the position, in which this business has placed me in respect to Sir Maurice O'Connell, who is, by virtue of his Commission, the Senior Member of my Executive Council, and would, if I were to die, succeed to the Government. I hope however that your Lordship will believe that, whilst on the one hand I feel bound to defend to the utmost the rights of the Crown and the interests of the People of the Colony, I am fully sensible on the other how desirable it is that a good understanding should prevail between myself and the General Commanding Her Majesty's Troops within the limits of my Government.

I have, &c.,

Geo. Gipps.

*Note 54.
1839.
10 Aug.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 110, per H.M. ship Druid.)

Sir, Downing Street, 10 August, 1839.

I have received your Dispatch No. 22 of the 26th January last, inclosing Printed Copies of the Acts passed by the Legislative Council of New South Wales in the year 1838, with an explanation of the object of each of them. I annex a Schedule of the Acts with their Numbers and Titles, which I have submitted to the Queen and which Her Majesty has been graciously pleased to approve and confirm.

The Act No. 1 (2 Victoria) for the conditional remission of Sentences of certain Convicts has been forwarded to Lord John Russell for his consideration, and the Act No. 17 respecting Postage of Letters has been sent to the Post Master General.

The Act No. 19 to "continue and amend an Act intituled, An Act to restrain the unauthorized occupation of Crown Lands," has already been confirmed.

The Acts No. 15 for appropriating the Revenue for the present year, No. 16 to authorize the payment of Monies for the year 1839 to certain Presbyterians in New South Wales, etc., and No. 24 to regulate the distillation of Spirits, etc., are reserved for further consideration.

I have, &c.,
NORMANBY.

[Enclosure.]

[This schedule enumerated the acts of council, 1 Vict., Nos. 1 to 4, 2 Vict., Nos. 2 to 14, 20 to 23, and 25, and the Union assurance company's act.]

12 Aug.
Despatch acknowledged.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 111, per ship Lord Eldon.)

Sir, Downing Street, 12 August, 1839.

I have received your dispatch No. 24 of the 1st Febry. last, enclosing a statement from four families who had arrived at Sydney, alleging that they had emigrated from Ireland on a representation from Colonel Wyndham that they would be conveyed to South Australia.

I enclose, for your information, the copy of a letter which was addressed to Colonel Wyndham on the subject and of his reply.

I have, &c.,
NORMANBY.
EIGHT HON. H. LABOUCHERE TO COLONEL WYNDHAM.

Sir, Downing Street, 20 July, 1839.

I am directed by the Marquis of Normanby to transmit to you the copy of a despatch and its enclosure from the Governor of New South Wales, respecting four families who represent that they emigrated from Ireland under an expectation, which you had held out to them, of their being conveyed to South Australia.

As Lord Normanby has received the complaints of these parties from the Governor of New South Wales, his Lordship has felt himself bound to communicate them to you, although, even if they could be supposed to be well founded, in point of fact they are not such as it is in his Lordship's power to investigate or redress.

I am, &c,

H. LABOUCHERE.

MR. J. W. BRYDONES TO RIGHT HON. H. LABOUCHERE.

Sir, Petworth House, 4th August, 1839.

I am directed by Colonel Windham to acknowledge the receipt of the representation of the four families made at Sydney in reply to and forwarded by the Governor to my Lord Normanby, and to state to you, for the information of His Lordship, that the parties mentioned, having refused to accept the offer of Coll. Windham to send them to Canada, were simply recommended to the Government Emigrant Agent Lieutenant Lynch at Limerick for a passage to Australia; and, in the event of their being approved as fit subjects, Colonel Windham's Agent Mr. Crowe at Ennis was instructed to furnish the means of fitting them out in clothing according to the Government regulations.

It is probable these poor people knew not the difference between Swan River, South Australia, Port Jackson, or any other Port in Australia, and may have deceived themselves; but it is not less probable that their story is the result of the cunning of these people in order to enlist the sympathies of the local authorities of Sydney in their behalf by stating what might appear a hardship.

I have, &c,

J. W. BRYDONES.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 112, per H.M. ship Druid; acknowledged by Sir George Gipps, 13th April, 1840.)

Sir, Downing Street, 13 August, 1839.

In consequence of a renewed application from Mrs. Mary and Jane Callum* respecting some property stated to have been left to them at New South Wales, I have to request your attention to Lord Glenelg's dispatch No. 317 of the 15th May, 1837, on the subject, to which no reply appears to have been received at this Department.

I have, &c,

NORMANBY.

* Note 55.
1839.
13 Aug.

Marquess of Normanby to Sir George Gipps.
(Despatch No. 113, per H.M. ship Druid.)

Sir,
Downing Street, 13 August, 1839.

In reply to your Dispatch No. 16 of the 16th of January last, in which you report the provisional appointment of a Land- and Tide Surveyor at Port Phillip, I have the honor to convey to you my approval of that Appointment. I have, &c.,

Normanby.

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Marquess of Normanby to Sir George Gipps.
(Despatch No. 124, per ship Mangles.)

Sir,
Downing Street, 13 August, 1839.

With reference to your dispatch No. 177 of the 31st October last enclosing the Report of a Committee of Council on Emigration, I transmit, for your information, the copy of a Report which I have received from the Agent General for Emigration containing his observations on the various topics connected with his duties embraced in that document.

The important questions involved in these papers will not fail to receive every consideration and to be decided upon before the time when it will be proper to prepare for the opening of the next Season for Emigration.

I have, &c.,

Normanby.

[Enclosure.]

[This was a parliamentary paper, printed by order of the house of commons on the 15th of August, 1839, entitled, "Reports and Correspondence respecting Emigration to the Colonies."]

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Marquess of Normanby to Sir George Gipps.
(Despatch No. 114, per H.M. ship Druid.)

Sir,
Downing Street, 14 August, 1839.

I have received your Dispatches Nos. 46 and 47 of the 9th of March last, reporting that Mr Justice Burton was proceeding to England on the Leave of Absence granted to him, and that you had nominated Mr. Alfred Stephen to fill the Seat on the Bench during Mr. Burton's absence; and I have to express my approval of that arrangement.

I have, &c.,

Normanby.
NORMANBY TO GIPPS.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 115, per H.M. ship Druid.)

Sir,

Downing Street, 14 August, 1839.

I have received your dispatch No. 34 of the 22d Feb'y, last, and I have to convey to you the sanction of Her Majesty's Government to the arrangement, which has been made for the separation of the charge of keeping the House of Correction and the Debtors' Prison in the Colony under your Government.

I have, &c.,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 116, per ship Lord Eldon.)

Sir,

Downing Street, 14 August, 1839.

I have received your dispatch No. 53 of the 16th March last, reporting the arrival at New South Wales and the placing in Quarantine of the Emigrant Ship "Garrow," and I enclose, for your information, the copy of a letter from the Agent General for Emigration, with a communication from Dr. Hall, the selecting Officer in Ireland, relative to the sickness on board that Vessel.

I have, &c.,

NORMANBY.

[Enclosure.]

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

Sir, Middle Scotland Yard, 8th August, 1839.

In reference to your Letter of the 31st instant, transmitting to me for my information a copy of a Despatch from Sir George Gipps relative to the placing in Quarantine of the "Garrow," Emigrant Ship, I beg leave to transmit to you a copy of a communication from Dr. Hall, the selecting Officer in Ireland, which I received this morning in answer to a Letter I addressed to him on the subject, and I have the honor to request that you will lay the same before Lord Normanby for his information.

I have, &c.,

T. FREDK. ELLIOT.

[Sub-enclosure.]

MR. JAMES HALL TO MR. T. F. ELLIOT.

Sir, Dublin, 6th August, 1839.

With much regret, I have learned that the ship "Garrow" from Belfast had been put into Quarantine at Sydney, in consequence of fever prevailing among the Emigrants on board her.

In obedience to the wishes contained your letter of the 2nd Instant, I have the honor to offer the following remarks on the Report of the Surgeon of the said Ship to the Governor, respecting that unfortunate occurrence.

It is stated that Measles and Hooping Cough arose soon after the "Garrow" sailed; such diseases are the inseparable attendants
on Childhood; and no human means can prevent their manifesting themselves in constitutions disposed by nature to generate them, when common causes cooperate to their production. When such diseases arise among subjects highly favorable to them, and especially where children are congregated as on board a ship, an occasion is given for the active employment of medical knowledge, an exertion to overcome the power of the diseases that prudence could not have prevented, and to counteract the consequences that experience has taught so often to follow them.

I cannot admit that there was any clear connexion between the above occurrence of infantine disorders on board, after the ship had sailed, and similar ones that existed on shore; the predisposition to them was given by nature, and therefore my duty was evidently to avoid accepting any children actually suffering; and this point was duly observed, according to the testimony of the surgeon himself, whose report states that the disease in question arose after the sailing of the vessel.

On the subject of the fever that appeared, I would beg leave to crave your attention to the words of the report again, as they state that the fever appeared “during the latter part of the voyage.” On which I have the honor to remark that my much experience suggests to my mind the probability that the causes of the said fever were generated on board, and can be sufficiently accounted for by the Surgeon himself, and the testimony of his Journal without any reference to the prevalence of Typhus Fever in Ireland, when the people left this Country months preceding, themselves having no evident sign of its presence among them.

But I am fully sensible of the fact that fevers of the kind, which arise on board crowded vessels, when the presence of stormy weather forbids the uncovering of the Hatchways and prevents the ventilation between Decks, will make their appearance in defiance of the best endeavours to prevent them.

Whilst the proofs of these preceding remarks are respectfully left for your future investigation, I do not wish to shrink from admitting the fact that much of the successful progress and termination of the voyage, as far as relates to the health of the Emigrants, does and always will deserve its character from the state of the people at the time of their Embarkation. It unfortunately too often happens that at such time the weather is very very inauspicious to the poor people, who join the ship after a harrassing journey under incessant rain. Such was the condition of the people, who were embarked on board the Garrow.

Whilst I lament that occasion has been given to the “Report” of the want of success of that ship, I do not hesitate to express my unbiassed opinion that, owing to the superior manner in which the ships are now fitted, and the Code of Instructions, which have been furnished to the Surgeon Superintendent, together with my own experience of the character of the peasantry of this Country being now more extensive than it was during the past year, every succeeding Emigrant ship will give a report more and more satisfactory of her Passage.

I have, &c,

JAMES HALL.
MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 117, per ship Lord Eldon.)

Sir,

Downing Street, 14 August, 1839.

I have the honor to transmit to you the copy of a letter from the Secretary to the Admiralty, notifying the appointment of Mr. Nathaniel Barnaby to be a 2nd Purveyor of Timber at New Zealand, and requesting that you may be authorized to afford him any assistance which he may require in the performance of his duty; and I have to request that you will give effect to the wishes of the Lords Commissioners of the Admiralty on this subject.

I have, &c,

NORMANBY.

[Enclosure.]

MR. C. WOOD TO UNDER SECRETARY STEPHEN.

Sir, Admiralty, 30th July, 1839.

My Lords Commissioners of the Admiralty having appointed Mr. Nathaniel Barnaby, 2nd Purveyor of Timber in New Zealand, with instructions similar to those given to Mr. Thomas Laslett* who proceeded on a service of the same nature in March, 1837, I am commanded by their Lordships to request that you will move the Marquis of Normanby to issue similar instructions to the Colonial Government at Sydney to those given in compliance with their Lordships' letter of the 3rd March, 1837, both as to the assistance to be rendered to Mr. Barnaby, as well as advance of pay, should the Buffalo not have arrived.

I am, &c,

C. Wood.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch per ship Mangles.)

Sir,

Downing Street, 14 August, 1839.

I have received your Dispatch No. 37 of the 27th of February last, enclosing the Report of a Board of Officers appointed to enquire into the causes of the Sickness, which has occurred on board vessels chartered during the last year by Government to convey Emigrants to New South Wales.

Having referred this Dispatch and its Enclosure to the Agent General for Emigration, I enclose for your information a copy of a communication which I have received in reply.

In that letter, the Agent General has entered in detail on the various points to which the local Board have adverted, and it is, therefore, unnecessary for me to trouble you with any observations on the subject.

I have, &c,

NORMANBY.

[Enclosure.]

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

* Note 56.  † Note 57.
Marquess of Normanby to Sir George Gipps.
(Despatch No. 125, per ship Lord Eldon.)

Sir,

Downing Street, 14th August, 1839.

I have received your Dispatch No. 51 of the 14th March, enclosing a Return of the number of Immigrants introduced into New South Wales on the Bounty system during the year 1838, by which it appears that the proportion of Children, as compared with adults, was much smaller than the corresponding number in ships fitted out by Governmt.

I enclose, for your information, the copy of a letter from the Agent General for Emigration on this subject, by which you will perceive that, in the four last ships dispatched by the Governmt., the relative number of Children and adults corresponds with those conveyed under the Bounty System.

I have, &c.

Normanby.

[Enclosure.]

Mr. T. F. Elliot to Under Secretary Stephen.

Sir,

2 Middle Scotland Yard, 14th August, 1839.

I do myself the honor to return herewith a dispatch from Sir George Gipps, dated 14th March, 1839, enclosing a return of the persons, who have been introduced into that Colony on the Bounty System during the year 1838.

Sir George Gipps remarks in this Despatch that 557 men, 567 women, and 468 Children have been thus brought into the Colony at the total cost of £22,071, and that, for every 100 Adults, 41 Children only have been introduced whereas, by referring to some former returns, it would be seen that, in ships fitted out by Government, the corresponding numbers had been 101 Children to every 100 Adults.

I am happy to perceive that the above mentioned number of persons was introduced for £22,071, which seems very moderate.

With regard to the proportion of Children to Adults, it will doubtless be satisfactory to the Governor to learn that, in the four last ships which have sailed for the Colony with Emigrants under the superintendence of the Government, the proportion was identical with that which he mentions in the Vessels conveying people on bounty. The particulars of the four Ships alluded to are annexed, and it will be seen that for every 41 children embarked there were 100 adults.

I have, &c.

T. F. Elliot.

[Sub-enclosure.]

Return of Emigrants.

<table>
<thead>
<tr>
<th>Ship</th>
<th>Adults</th>
<th>Children over 7 years</th>
<th>Children under 7</th>
<th>Total</th>
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</thead>
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<tr>
<td>David Clarke</td>
<td>166</td>
<td>45</td>
<td>18</td>
<td>229</td>
</tr>
<tr>
<td>Florist</td>
<td>148</td>
<td>30</td>
<td>30</td>
<td>208</td>
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<tr>
<td>China</td>
<td>188</td>
<td>43</td>
<td>35</td>
<td>259</td>
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<tr>
<td>North Britain</td>
<td>101</td>
<td>54</td>
<td>39</td>
<td>244</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td>698</td>
<td><strong>172</strong></td>
<td><strong>115</strong></td>
<td><strong>980</strong></td>
</tr>
</tbody>
</table>
NORMANBY TO GIPPS.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 118, per H.M. ship Druid.)

Sir,

Downing Street, 15th Augt., 1839.

I transmit for your information and guidance the copy of Instructions, which I have addressed to Captain Hobson, of Her Majesty's Navy, on his embarkation to assume the Government of the British Settlements in progress in New Zealand. Those Instructions leave me nothing to add in addressing yourself on the same occasion, beyond the expression of my confident belief that you will afford to Captain Hobson, and to Her Majesty's Government on this occasion, the full benefit of all the knowledge and experience, which you have gained during your long course of public service, and that you and the Members of the Legislative Council of New South Wales will cheerfully undertake those additional duties* which Her Majesty has thus been pleased to commit to you, and to them.

I have, &c.,

NORMANBY.

[Enclosures.]

[Copies of these papers will be found in a volume in series III.]

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 119, per H.M. ship Druid; acknowledged by Sir George Gipps, 28th October, 1840.)

Sir,

Downing Street, 16 August, 1839.

The Lords Commissioners of the Treasury have directed an advance of £12,274 to be made to the Agent General for New South Wales on account of the Current Services of the Colony; I have therefore to desire that the necessary steps may be taken for the repayment of that amount to the Military Chest on the Station.

I have, &c.,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 126, per ship Lord Eldon.)

Sir,

Downing Street, 16th August, 1839.

I have the honor to transmit to you for your information the enclosed copies of some Statistical Returns, which have been prepared for the House of Commons, exhibiting every particular respecting the Size and expense of the Government Emigrant.

* Note 58.
1839.
16 Aug.
Transmission of statistics re emigration.

Ships sent to New South Wales, as well as the numbers embarked, and the mortality in each, and also the cost of the establishment in this Country engaged in the discharge of the service in question. I have, &c.,

NORMANBY.

[Enclosure.]

[This was a paper printed by order of the house of commons on the 27th of August, 1839, entitled “Returns respecting Emigration Ships and Emigrants.”]

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 120, per ship Lord Eldon.)

20 Aug. Sir, Downing Street, 20 August, 1839.

Approval of act for remission of sentences of certain convicts.

With reference to my Dispatch No. 110 of the 10th Instant, I have now the honour to acquaint you that Her Majesty has been graciously pleased to confirm the act passed by the Legislative Council of New South Wales for the conditional remission of the sentences of Convicts transported to Norfolk Island and Moreton Bay. I have, &c.,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 121, per ship Lord Eldon.)

21 Aug. Sir, Downing Street, 21 August, 1839.

Referring to your Dispatches of the numbers and dates specified in the Margin* relative to the Lands required by the Ordnance for the purpose of Defence in New South Wales, I now transmit to you for your information and guidance Copies of a Correspondence on this subject between this Department and the Board of Ordnance, and the Board of Treasury.

I am, &c,

NORMANBY.

[Enclosure No. 1.]

UNDER SECRETARY STEPHEN TO MR. E. BYHAM.

Sir, Downing Street, 16th March, 1839.

I am directed by the Marquess of Normanby to transmit to you, for the consideration of the Master General and Board of Ordnance, the enclosed copies of three Despatches from the Governor of New South Wales of the numbers and dates specified in the margin,* No. 150, reporting the reasons which had induced him to withdraw the Bill, which he had proposed to the Legislative

* Marginal note.—No. 150, 26 Sept., 1838; No. 151, 27 Sept., 1838; No. 152, 28 Sept., 1838.
NORMANBY TO GIPPS.

Council in pursuance of the instructions of Her Majesty's Government for the purpose of vesting in the principal officers of Ordnance all Lands occupied for Military purposes within the Colony.

No. 151 and 152 respecting the purchase of Lands required for Military purposes, and the sale of Land no longer required for such purposes.

With reference to the question raised in the Despatch No. 151, as to the propriety of consulting, as far as may be practicable, the general feelings and wishes of the Inhabitants of Sydney in arranging the Sites of Military Buildings and the disposal of Ordnance Lands, Lord Normanby would beg to observe that political considerations of great weight and urgency appear to his Lordship to render it indispensable that every concession should be made on this subject, to the opinion or even to the prejudices of the Colonists, which can be made without serious injury to the Military Defences of Sydney. I am directed to add that, as the views of the Master General and Board of Ordnance must of course be limited to that single object, Lord Normanby trusts that every possible facility will be given which may be compatible with it, both to the embellishment of the Town and the improvement of the Local Revenue.

I have, &c.,

JAS. STEPHEN.

[Enclosure No. 2.]

MR. E. BYHAM TO UNDER SECRETARY STEPHEN.

Sir, Office of Ordnance, 31 May, 1839.

I have the honor, by command of the Master General and Board of Ordnance, to acknowledge the receipt of your letter dated 16th March last, inclosing Copies of Three Dispatches (Nos. 150, 1 and 2) from the Governor of New South Wales, respecting the Lands required by this Department for the purpose of defence in that Colony.

The Master General and Board beg to express their concurrence in the measure which, under the circumstances described in the Dispatch No. 150, the Governor thought it advisable to adopt in withdrawing during that Session the Ordnance vesting for New South Wales.

The Master General and Board are however of opinion that it is indispensable that the Ordnance Department, having been required to undertake the charge and expense of the Military Works and Buildings, should be vested with the actual property on which those Establishments have been placed, and they therefore request you will have the goodness to refer the Marquis of Normanby to the principle described in Their Communication of the 2nd September, 1835, respecting the Military Reserves in Canada, and move His Lordship to cause such explanation and instructions to be given to the Governor of New South Wales, as will (it is hoped) enable him to satisfy the opponents of a measure, which the Law Officers of the Crown consider as beneficial for the Colonies as it has been proved to be in the United Kingdom.

3. In respect to Dispatch No. 151, I am to state that The Master General and Board assent in the present instance to take each Locality, on its own merits, instead of looking to reimbursing the expenditure on New Barracks at Newcastle by Surplus Proceeds from the Sale of the Old Barracks at Sydney, since the former station is not intended as a substitute for the latter; and They

1839. 21 Aug.
therefore concur in the Governor’s proposition to “give over the present Barracks (at Sydney) and the Land they stand on to the Colony, on condition of being put in legal possession of the Land (stated to be 15 acres), on which the New Ones are to be built, and a sum of money to pay for the new Barracks.” upon an equivalent scale of accommodation.

4. The Master General and Board beg that it may be distinctly understood the whole of the expense of building the New Barracks at Sydney and placing them in a complete state to receive the Troops therein to be stationed is to be defrayed out of the proceeds of the sale, if sold, of the Old Barracks; and if the latter be not sold, but merely given over to the Colony, in order that a square or other Buildings may be erected so as to ornament and beautify the Town, then the authorities in the Colony, to whom they are delivered over, shall engage to pay the Ordnance Department the money from time to time required in the progress of the Work. The whole amount of expense incurred in providing the New Barracks being defrayed eventually by the Colony.

5. With reference to Dispatch No. 152, respecting the difference of £1,467 between the proceeds of the sale of certain allotments of building Ground and the expense of their re-purchase on account of this Department, I am to add that the Master General and Board are of opinion that the difference above mentioned should be defrayed in consideration of the very great value of the spot on which the old Barracks stands, and of which the Colony, under the present arrangement, is to derive the benefit.

I am, &c.,
R. BYHAM.

[Enclosure No. 3.]

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

Sir,
Downing Street, 26th July, 1839.

I am directed by the Marquis of Normanby to transmit to you for the consideration of the Lords Commissioners of the Treasury the enclosed copies of a Correspondence between this Department and the Board of Ordnance relative to a question, which has been submitted by the Governor of New South Wales as to the purchase of certain Lands required for Military purposes, and the sale of some Land no longer required for such purposes. The points for consideration will be found fully detailed in the Dispatches Nos. 151 and 152, which accompany this correspondence.

On a review of all the circumstances, Lord Normanby would beg to recommend for their Lordships’ sanction the arrangement proposed, by which the expense of the New Barracks will be charged on the Land Revenue, in consideration of the old Barracks on the land belonging to them being given up by the Ordnance Department to the local Government to be disposed of as Town allotments.

With regard, however, to the charge proposed by the Board of Ordnance of £1,467 for the repurchase of the Land sold in 1835, Lord Normanby is of opinion that it would be unreasonable to subject the Funds of the Colony to that charge, which would be incurred merely to retrieve an error committed by the Officers employed by the Ordnance by whom the Land, which has been repurchased, was improvidently sold.

I am, &c.,
JAS. STEPHEN.

* Marginal note.—Mr. Stephen, 16 March, 1839; Mr. Byham, 31 May, 1839.
Mr. G. J. Pennington to Under Secretary Stephen.

Sir,  
Treasury Chambers, 1st August, 1839.

The Lords Commissioners of Her Majesty’s Treasury having had under consideration your Letter of 26th Ultimo, with the correspondence with the Board of Ordnance therein enclosed, relative to the purchase of certain Lands in New South Wales required for Military purposes, and the sale of some Land no longer required for such purposes. I have it in command to request you will state to the Marquess of Normanby that my Lords concur in opinion with His Lordship that the arrangements, relating to the expense of Sites for the Barracks at Sydney, should be made without reference to Expenditure or appropriation of Lands for other Barracks or Military Works unconnected with that object; and that the present Barrack Land should be placed at the disposal of the Local Government for such purposes as may be considered most conducive to the Interests of the Town and the Colony.

I am to request you will at the same time state to Lord Normanby as regards the Land referred to in the dispatch of 28th September (No. 152) that, as the Sale had in fact not been effected by the Ordnance Department, but probably by the Orders of the Civil Government, and as the proceeds had been carried out to the credit of the Land Fund, My Lords would wish to be apprized of the grounds, which may have appeared to Sir George Gipps to render it advisable that the arrangements for the repurchase made by the late Acting Governor, with the concurrence of the Colonial Council, should be disturbed; and that you will further observe to His Lordship that, assuming the repurchase of this land is not in any manner connected with the Site or other arrangements for the construction of the proposed Barracks, it does not appear to my Lords that the Ordnance Department ought, under any circumstances, to be chargeable on account of the repurchase with more than the difference between the proceeds when sold and the present purchase money.

I am, &c,

G. J. Pennington.

Under Secretary Stephen to Mr. R. Byham.

Sir,  
Downing Street, 27th August, 1839.

With reference to your letter of the 31st of May last relative to the proceedings of the local Govt. of New South Wales in respect to certain lands required by the Ordnance Department for the purposes of defence in that Colony, I am directed by the Marquess of Normanby to transmit to you for the information of the Master General and Board of Ordnance the enclosed copies of a correspondence on the subject between this Department and the Board of Treasury; and to acquaint you that the whole of this correspondence has been transmitted to the Governor of New South Wales for his information and guidance.

I have, &c,

Jas. Stephen.
1839.
22 Aug.

Transmission of letter from F. W. Small.

My Lord,

Government House, 22nd Augt., 1839.

On the receipt of your Lordship's Despatch No. 12 of the 5th March, 1839, I communicated to Mr. F. W. Small a copy of the letter transmitted with it from Messrs. Codd, of No. 15 Fludyer Street, respecting a debt of £191 9s. 8d., due to them from that gentleman; and I have now the honor to forward to your Lordship a copy of the reply which has been received from Mr. Small.

The office now held by Mr. Small is that of Clerk to the Magistrates in the District of Paterson, in the County of Northumberland, and his salary is, as stated by himself, only £100 per annum.

I have, &c,

GEO. GIPPS.

[Enclosure.]

MR. F. W. SMALL TO COLONIAL SECRETARY THOMSON.

Police Office, Paterson, N. S. Wales, 21 August, 1839.

I have the honor to acknowledge receipt of your letter, dated 8th Instant covering copy of one from Messrs. Codd and Co. of London, dated 26th February, 1839, addressed to the Under Secretary of State.

In reply, I have to state that, a little previous to my departure from England in 1832, I received an Account Current from those Gentlemen, wherein to the best of my recollection their claim amounted only to about Sixty pounds, for which they kindly consented to give me time. Since when I have not received anything from them nor have I drawn upon them for one Shilling; it appears however by an Account Current forwarded to me that they claim a sum from me more than treble that stated, which appears to be in consequence of their having insured my life for about £200, for which they hold the Policy no doubt in their own favor; in this account I am charged annual premium upon premium and Interest upon Interest; and, although however anxious I ought and do feel to render unto them Justice, yet I see with pain that there was no use whatever in my replying to their communication, not having the means to meet any part of the call, my Salary here being barely £100 per annum and my half pay £82 2s. 6d., a Sum altogether but inadequate to the Support of a Single Gentleman in this expensive Colony, whereas I have a Wife, three Daughters, myself and a Servant to maintain upon it, which I am enabled to do only by adhering to the closest economy and by enduring privations; however as His Excellency the Governor has been recently kindly pleased to express his anxiety to provide for me a better Clerkship and which I am now in expectation of, my Situation will therefore become somewhat improved; but I more than doubt whether even that will enable me to do anything beyond the support of my Family; notwithstanding if His Excellency the Governor shall then be of a contrary opinion, I will with pleasure submit myself to his decision and comply with the Wishes of Messrs. Codd and Co. in so far as Sir George Gipps may deem reasonable.
It ought to be considered that, had I died before this, those Gentlemen would have been gainers, as they would have received the Amount Insured.

I was unfortunately induced to come to the Colony in consequence of Lord Goderich's having noted my name for employment on the 21st January, 1831, at the request of Sir Herbert Taylor; but up to this period I have not derived any benefit from it. I met with sad disasters on my passage out, having been eight months getting to the Cape from Liverpool, six weeks of which my family were subsisted solely on a short allowance of Biscuit and water, my only Son (then Sixteen years of age) with many other passengers cruelly abandoned on the Western Coast of Africa by a Brutal Commander. where they perished, a full account of the tragical scenes that occurred on board the "Jane and Henry" having been transmitted by Colonel Nicholls, R.M., from Fernando Po to the Secretary of State in January, 1833.

for the Situation I fill, however small the income and great the labour, yet I cannot but feel grateful to Sir Richard Bourke for it, as otherwise my family might have Starved, my half pay being in Ireland fully equal to both Incomes here. I have, &c.,

FRAS. W. SMALL.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 122, per ship Lord Eldon.)

Sir,

Downing Street, 24 August, 1839.

I have received and laid before the Queen your Despatch No. 42 of the 5th of March last, reporting your nomination of Captain Philip Parker King as a Member of the Legislative Council of your Government, and I have to transmit to you a Warrant under the Royal Sign Manual confirming that appointment.

I have directed the Colonial Agent to pay to the Chief Clerk of Fees due in this office the Fees chargeable on the Instrument, amounting to Nine Pounds 15s. 6d. and which you will recover from Captain King.

I am, &c.,

NORMANBY.

[Enclosure.]

[A copy of this warrant is not available.]

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 123, per ship Lord Eldon.)

Sir,

Downing Street, 26 August, 1839.

With reference to my dispatch No. 110 of the 10th Instant, I have now the honour to acquaint you that Her Majesty has been graciously pleased to confirm the act passed by the Legislative Council of New South Wales intituled "An act to provide for the conveyance and postage of Letters." I have, &c.,

NORMANBY.
1839. 26 Aug.   

HISTORICAL RECORDS OF AUSTRALIA.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 127, per ship Lord Eldon.)

Downing Street, 26th August, 1839.

Sir,  I transmit for your information and guidance the Copy of a letter, which has been addressed by my direction to the Secretary of the Society for the Propagation of the Gospel, sanctioning the Appointment of additional Chaplains for New South Wales and Van Diemen's Land, and stating the views of H.M. Government on this subject, with reference to the present state of the Revenues of those Colonies.

I have, &c.,

NORMANBY.

[Enclosure.]

RIGHT HON. H. LABOUCHERE TO REVD. E. HAWKINS.

Sir,  Downing Street, 26th August, 1839.  

I have received and laid before the Marquis of Normanby your letter of the 12th instant, and I am directed to acquaint you in reply, for the information of the Society for the propagation of the Gospel, that his Lordship approves of the appointment of the Revd. E. G. Pryce to the Ecclesiastical Establishment of New South Wales and of the Revd. G. Bateman as Chaplain in Van Diemen's Land, and that he has authorized the Agent General for those Colonies to issue to the them the usual allowance of £150 for outfit and passage on their producing to him a certificate of their passages being engaged.

I am also to acquaint you that Lord Normanby will be prepared to sanction the appointment of Mr. Thomas Spurr and of Mr. W. Simpson as Chaplains, the former in New South Wales and the latter in Van Diemen's Land, on their receiving Ordination for that purpose from the Bishop of London.

His Lordship has no objection to the transfer of the Revd. W. H. Walsh and the Revd. G. E. Turner, who were originally appointed to Van Diemen's Land, to the Ecclesiastical Establishment of New South Wales, and to the nomination of the Revd. W. L. Gibbon to a Chaplaincy in the former Colony.

But with reference to the representation of the Bishop of Australia that two of these Gentlemen had sailed for Sydney under a misapprehension, I am directed to observe that it appears from the correspondence in this office to have been the wish of the Society for the propagation of the Gospel that all Clergymen appointed to Van Diemen's Land should in the first instance proceed to Sydney.

His Lordship would be glad therefore to be informed whether it is the opinion of the Society that this arrangement should be discontinued.

The appointments now sanctioned by Lord Normanby will complete the number of Clergymen for whom application was made to the Society in Sir George Grey's letter of the 19th June, 1838.

His Lordship requests that you will inform the Society that the Governor of New South Wales has stated in a dispatch, dated in November last, that "there is now no want in the Colony of Clergymen of any denomination."
Lord Normanby is glad to have received this assurance, since the demands made on the revenues of the Australian Colonies for the maintenance of their Religious Establishments are now so great that there is reason to apprehend a serious deficiency, and so long as those Revenues shall continue in their present state it will not be in the power of Her Majesty's Government to augment the Existing Establishment nor can they pledge themselves to maintain it in its present strength by supplying all such vacancies as may hereafter occur.

It is not, however, his Lordship's intention to apply these observations to the demand recently made from Van Diemen's Land for the appointment of a certain number of Clergymen in conformity with the Act passed by the Legislature of the Colony for providing religious instruction as communicated in my Letter to the Society of the 10th June last.

I have, &c,

H. LABOUCHERE.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 128, per ship Lord Eldon.)

Sir,

Downing Street, 27th August, 1839.

With reference to my Dispatch No. 109 of the 3d Inst., I transmit, for your information, the copy of a letter from the Agent General for Emigration enclosing further communications respecting the complaint made against Dr. Boyter for the admission of John McDonald into the “St. George” Emigrant Ship.

I have, &c,

NORMANBY.

[Enclosure.]

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

Sir,

2 Middle Scotland Yard, 26th August, 1839.

In reference to my Letter of the 27th Ultimo, on the complaint against Dr. Boyter for the admission of John McDonald into the “St. George” Emigrant Ship, I ought perhaps to add that, having heard from the Cape of Good Hope of the misconduct of John McDonald on board and his unfitness for a free passage, I expressed to Dr. Boyter my regret at this Report, and my hope that pains would be taken to avoid the recurrence of similar circumstances; and that, having subsequently received a private Letter from Sir George Gipps, noticing this case upon the ship's reaching Sydney, I again communicated with Dr. Boyter; and that some time afterwards, finding the case to have been once more raised at Sydney, and an official representation upon it made to the Secy. of State by the Governor, I forwarded the Despatch to Dr. Boyter for him to offer such explanations as he might think proper; to which he replied by the Letter, I have already transmitted to you for the information of the Marquess of Normanby. As this case has been so repeatedly brought forward, it is perhaps no more than justice to Dr. Boyter to forward the enclosed copies of two Letters which he has since received, and transmitted to me from the Gentlemen by whom John McDonald was first recommended to him.
[Sub-enclosure No. 1.]

MR. M. W. MCDONALD TO DR. BOYTER.

Dear Sir,

Edinburgh, 29th July, 1839.

I don't know that I ever felt more annoyed than I have been since the receipt of your Letter of the 22nd Instant from Broadford, stating that the man John McDonald, late Serjt. in the 26th Regiment, whom I had last year recommended to you for a passage to New South Wales, had misconducted himself since he arrived in the Colony; and that he had practiced deception with you in regard to his means.

In my own vindication for recommending him, I beg to explain that the first I heard of him was in a Letter he wrote to me from India, several years ago, remitting rent for his father, who had a small piece of land on the property of my brother, Sir John McDonald in the Isle of Skye. I was so well pleased with his Letter (and indeed all the Letters, I had from him, were such as would have done credit to any man in any rank of Society) that I sent up to the Adjutant General at the time, requesting him to recommend the man to the Colonel of the Regiment, which he promised to do; I have that letter now before me with my Brother's Mem. upon it, expressive of his satisfaction with it; and, were it not for the expense of Postage, I would send them to you, that you might see that it was not without grounds that I expressed the opinion I did of his merits.

When he returned from India, having got his discharge, he called upon me, and told me that his sole object in coming to Britain was to carry his aged parents and the rest of his family to New South Wales, where he himself intended to settle. He asked me to recommend him to you for a passage in one of the Government ships, and I think he said his plan then was, to pay for himself, but to get his relations out free. I had not then even the pleasure of being known to you, but I took the liberty of writing to you on McDonald's behalf; and I confess that the interest, I had previously felt in him, was greatly increased, from the fact of his having come all the way from India, in order to convey his poor old parents and their family to the Colony where he intended to settle. I also applied to Dr. McLeod (who knew nothing of the man but from me) to recommend him to you, and he (McDonald) wrote me afterwards that he had seen you more than once, and was much dissatisfied with your reluctance to grant his request.

I do not of course know what representations he may have made to you about his circumstances; but I can truly say that I was not the least aware of there being any irregularity in the request I made for him, otherwise I should have been sorry to press it, and I do feel very much that I should unintentionally have led you into any mistake, for if blame attaches to any one, it is to myself alone, and not to you.

I was quite aware that MacDonald had property; but I was not aware that that was an insuperable bar to his being taken with
the rest of his family, provided he submitted to go in the same Mess with them; and I remember perfectly urging his case very strongly with you, on the score of his being an old soldier, who had served his King and his Country creditably for the best years of his life, and who I thought was on that account well entitled to the favourable consideration of the Servants of the Government.

I can only in conclusion repeat the expression of my deep regret that you should have incurred any blame in the case from having yielded to my solicitation; or your having trusted to McDonald's own representations of his circumstances, which, however, you were well entitled to do, from the strong recommendation I gave him; and I must say that, if I have been deceived in him, I shall never know when to trust hereafter. At any rate, I promise you that, as this was the first instance, so it shall be the last, in which I shall venture to recommend any one for a passage to New South Wales in a Government Ship.

I am, &c,
M. W. McDonald.

[Sub-enclosure No. 2.]

DR. N. MCLEOD TO DR. BOYTER.

Dear Sir,

Ardrossan, 6th August, 1839.

Your Letter of the 21st of July was forwarded to me from Glasgow to Arran, from thence to this place, where I have been for some weeks past with my family.

In regard to the man McDonald, I have no recollection whatever of him, further than that he came to me recommended by several respectable persons, who seemed much interested in him, and asking me to introduce him to you as a fit man to Emigrate to New South Wales. Mr. McDonald, W.S. Edinburgh, recommended him so warmly, and, having entire confidence in his statements, I had no reluctance in granting him the Letter I gave him for you.

I can most solemnly declare that I never was aware of his having a shilling; he was the only person to whom I gave a certificate with whom I was not personally acquainted. I regret deeply having been the means of misleading you; I was most careful as to the characters of those men whom I recommended, for I well know how strict you were. What I did, was in entire ignorance; he was a sly, knowing fellow, and he did succeed in deceiving me. I was aware that you had much confidence in my recommendation, and that made me the more cautious.

I have only to cast myself on your indulgence, and to say that I deeply regret having in any way been the means of misleading in regard to the case in question.

I am, &c,
N. McLeod.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 121, per ship Lady Fitzherbert.)

My Lord,

Government House, 28th August, 1839.

I have had the honor to receive your Lordship's Despatch No. 28 of the 26th March last, transmitting to me copies of a correspondence between the Under Secretary of State and

1839.
27 Aug.

GIPPS TO NORMANBY.

Explanations by M. W. McDonald re recommendation of J. McDonald.
Arrangement for deposit of money in London for purchase of land in colony.

Mr. John Pym, relative to an arrangement under which Mr. Pym is to be allowed to lodge money in the hands of the Colonial Agent in London, and receive credit for the same at the Land Sales in this Colony.

If this arrangement be intended solely as a means of remitting Capital to the Colony, I consider it to be wholly unobjectionable; but, if the parties to it expect or seek to gain any advantage whatsoever over other purchasers of Crown Lands in the Colony, I would respectfully beg leave to represent to your Lordship that extreme inconvenience and dissatisfaction would in my opinion be likely to be engendered by it.

I was happy to perceive, by Mr. Labouchere's answer to Mr. Pym of the 24th March, 1839, that a negative was put upon Mr. Pym's proposal to have a large tract of Country sold in one lot, a measure which, if allowed, would, as remarked by Mr. Labouchere, have had the effect of preventing all competition, or in other words of giving Land to Mr. Pym at the minimum price.

I cannot resist this opportunity of expressing to Your Lordship my firm conviction of the necessity of adhering most rigorously to the established regulations for the sale of Land, and of varying them as little and as seldom as possible.

I have, &c.,

GEO. GIPPS.

MR. JOHN PYM RELATIVE TO AN ARRANGEMENT UNDER WHICH MR. PYM IS TO BE ALLOWED TO LODGE MONEY IN THE HANDS OF THE COLONIAL AGENT IN LONDON, AND RECEIVE CREDIT FOR THE SAME AT THE LAND SALES IN THIS COLONY.

1839.
25 Aug.
Arrangement for deposit of money in London for purchase of land in colony.

Sir,

I transmit to you an Act, passed on the 24th Instant, 2 and 3 Victoria, Cap. 70, for the Amendment* and continuance for a year of the New South Wales Act 9 Geo. 4, Cap. 83.

The simple continuance of the New South Wales Act of 1828 for another year would have been the single object of the Act, which I now transmit to you, had I not found, on advertting to the various Dispatches from yourself and your Predecessor, that there were some Amendments of that Statute, which could not be delayed without extreme inconvenience. They are all such as relate to the Administration of Justice.

The plan of the Act of 1828, following in this respect that of the Act of 1823, was to withdraw from the cognizance of the local Legislature the constitution and jurisdiction of the Supreme Court, which derived its authority directly from a Royal Charter issued under the express sanction of Parliament. The policy which suggested this entire independence of the Judicial on the Legislative power of the Colony, was probably wise at the time

* Note 60.
of its adoption, but subsequent changes in the state of the local Society have forbidden the further adherence to it, and have pointed out in the clearest manner the inconvenience of thus limiting the exercise of the functions of the local Legislature on a subject of the highest interest to the Colonists at large. The last eleven years have so increased the Population, and so widely extended the Settlements of New South Wales, that the existing Supreme Court has clearly become inadequate to the prompt and effectual discharge of the whole judicial business, of which the Act of 1828 and the Royal Charter gave it the exclusive cognizance. In the South, Port Philip is rising rapidly in wealth and numbers. To the North, Captain Bremer will probably ere now have established a new Station at a still greater distance from the Seat of Government, while Norfolk Island and the New Sovereignty, which will probably be acquired in New Zealand, are each for different reasons likely to demand the introduction of a Judicial System totally distinct from that which is administered at Sydney. The Act, which I transmit, will enable you, with the advice and consent of the Legislative Council, to provide for all these various exigencies.

Sir Richard Bourke's Despatch of the 13th June, 1837, No. 43, proposes the creation of a fourth Judgeship, in order that Assizes may be held twice in each year at Port Philip, and recommends that the new Judge should receive the same Official Salary as is assigned to the other Puisne Judges of the Courts. It is with the concurrence of the Lords of the Treasury in the financial part of this scheme, that I now authorize you to propose it for the sanction of the Legislative Council, leaving you however at liberty to substitute for it any other, which, on more mature reflection, may appear to you better calculated to promote the effective, prompt, and economical administration of Justice at Port Philip, or throughout the Colony at large.

With regard to the Settlements in New Zealand, at Norfolk Island, and at the Northern extremity of New South Wales, I am unable to assist you by any suggestion; but must refer to your own judgment the question, in what manner provision could be best made for the Despatch of Judicial business at each of those Dependencies. You will of course bear in mind the urgent need for husbanding the public resources, as far as that object may be compatible with the still higher obligation of affording adequate protection to the persons and property of Her Majesty's Subjects inhabiting those places.

In your Despatches of the 1st and 7th of January of the present year, Nos. 1 and 7, you have suggested various amendments of the Statute, 9 Geo. 4, Cap. 83, Clauses 1, 5, 8, 10, 11, 13, 17.
and 18. In the voluminous annexures to your Despatch of the 7th January, No. 7, I find many valuable suggestions from the Judges and the Law Officers of the Government, as to the improvement of the Judicial and legal Institutions of the Colony. The result of those Documents is to establish in the clearest manner the necessity for many alterations, while at the same time the conflicting opinions of the persons, best qualified to estimate the probable effect of the contemplated changes, convince me that it would be utterly vain to propose them for the consideration of Parliament. In fact, the rapid growth and continued extension of the Colony are such as to render it impossible that the Judicial Institutions of New South Wales should ever be maintained in a state of progressive adaptation to the wants of the People at large by any other power than that of a local Legislature, intimately conversant with their wants, habits, and opinions. I therefore do not undertake a task at once so arduous and so unprofitable, as would be that of following the Judges and the Law Officers of the Crown at New South Wales through the various elaborate proposals and arguments, which they have adduced respecting improvements in the Supreme Court, the erection of Courts of Petty Sessions, of Courts of Request, of Courts to be holden by the Magistrates, and respecting the Office and Functions of the Attorney General, the Crown Solicitor and the Clerk of the Peace, and respecting the manner in which prosecutions should be instituted and conducted. The accompanying Act will enable you to bring all these questions under the consideration of the local Legislature and to obtain the advantage of their deliberate reflection on them, guided or assisted by public opinion throughout the Colony. It appears to me that in this view great advantage may arise from the temporary postponement of the contemplated Law for improving the Legislative Constitution of New South Wales, because, whenever that change may occur, it will find the Courts of Justice, and the whole Judicial System established on such a footing as to ensure a more cordial cooperation between the Tribunals and the Legislature than could have been reasonably anticipated if the Courts had been permitted to remain in their present defective state. By diminishing the inducements to hazard any rash experiments on this subject, the alterations, which may hereafter take place in the character of the Legislature itself, may thus be exempted from some of the dangers which are more or less inseparable from every change of that nature. The whole subject will therefore demand your early and most serious attention.

It remains for me to observe that the Act, which I transmit, expressly authorizes the local Legislature to define the Constitution
of Juries. You will not hence infer that Her Majesty's Government contemplate any innovation respecting them, and especially in what relates to Petit Juries. I wish carefully to guard myself against being supposed to have formed any opinion hostile to the continued exercise of this franchise by those to whom the Law has hitherto confided it. But I apprehend that serious doubts might, in the absence of such Words, have been entertained whether the power of Legislation respecting Juries would have been given by the Act, and they were introduced merely to obviate that doubt. You will avail yourself of this statement in order to correct any error as to the views with which this Enactment was recommended to Parliament.

I have, &c,

NORMANBY.

[Enclosure.]

[This was a copy of the statute, 2-8 Vict., c. lxx.]

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 132, per ship Lord Eldon; acknowledged by Sir George Gipps, 28th March, 1840.)

Sir,

Downing Street, 30th August, 1839.

I have received a Memorial from Mr. Henry Incledon Application by Pilcher of New South Wales, praying for an additional Grant of Land in the Colony.

You will be so good as to call upon Mr. Pilcher for a Copy of this Memorial, in order that you may adopt such measures as, on an investigation into the facts, the Justice of the case may require, and as the established Regulations may admit.

I have to request that you will report the result to this Department.

I have, &c,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

(Despatch No. 133, per ship Lord Eldon.)

Sir,

Downing Street, 30th August, 1839.

With reference to my Despatch No. 71 of the 18th of June last, I have now to acquaint you that, having called the attention of the General Commanding in Chief, and of the Lords Commissioners of the Admiralty to the circumstance adverted to in your Despatch No. 183 of the 9th of November, 1838, that there was no army Chaplain for the Troops serving in the Colony and no Naval Chaplain in any of the ships of War on the Station, I have received a Communication in reply
from the General commanding in Chief with a Copy of one from the Secretary at War, in which it is observed that the Regiments in New South Wales are so exceedingly scattered, that a Military Chaplain would not, if appointed, be of any real service to more than a very small proportion of the whole Force; and that it would, therefore, appear better that the religious instruction of the Troops should be attended to, as heretofore by the clergymen who have charge of the general population, than that a Chaplain should be appointed for their exclusive use; any duties performed for the Troops by the Clergymen of the Colony being paid for in the ordinary manner, on proper application being made by the Commanding Officer to the Secretary at War.

It has been further explained by the Board of Admiralty that the fact of there being no Chaplains in the Ships of War visiting New South Wales is attributable to the circumstance, that the ships employed on that station are seldom of the rate to which chaplains are allowed.

I have, &c.,

NORMANBY.

MARCHES OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 134, per ship Lord Eldon.)

Sir, Downing Street, 31st August, 1839.

With reference to the concluding paragraph of my Despatch No. 95 of the 17th Ultimo, I transmit to you herewith Copies of a Correspondence between my Under Secretary and Mr. Justice Burton relative to the question of admitting the evidence of the Aborigines in the Courts of Justice in New South Wales.

It appears that Mr. Burton has already brought this subject under your consideration, and it seems to me desirable that you should submit to the Legislative Council some well digested plan for obviating such impediments as prevent the admission of the testimony of the Aborigines in Judicial proceedings.

So far as that obstacle arises from the inability of the Court to understand their language or ascertain their meaning through an Interpreter, it is of course irremediable by Legislation, and can be overcome only by instructing them in the English Language, or by engaging some competent person to study theirs. But so far as the rejection of their testimony is founded on their want of religious knowledge, and of the sanctions by which Religion forbids the violation of truth in Judicial testimony, as this is at present the inevitable result of that barbarous ignorance in which they have lived from their birth, the absolute rejection
of the testimony on such grounds would appear to be injurious to the interests of Justice. But the ultimate remedy must at the same time be unceasingly sought in an improved system of moral and religious instruction.

I have, &c.,

NORMANBY.

[Enclosure No. 1.]

MR. JUSTICE BURTON TO RIGHT HON. H. LABOUCHERE.

Mr. Justice Burton presents his Compliments to Mr. Labouchere; the letter, which Mr. Labouchere informed him had been written to him respecting the aborigines of New South Wales, did not reach him. He has however as he promised sent Mr. Labouchere the rough Draft of a Bill, which he drew respecting this unfortunate race of people which Mr. Labouchere will excuse receiving in its rough form; it has some marginal notes in pencil upon it, which are the thoughts of a Gentleman of the Colony well acquainted with the Blacks, and to whose perusal it was submitted; but in his sentiments respecting them Mr. Justice Burton did not agree. There are also in ink some some marginal notes of his own.

Mr. Justice Burton will thank Mr. Labouchere to preserve this draft and return it to him when he has done with it. There also is now transmitted a copy of a letter addressed by Mr. Justice Burton to His Excellency the Governor Sir Geo. Gipps in June, 1838, accompanying the draft Bill and explanatory of its objects, which contains Mr. Justice Burton's views respecting the aborigines, and may perhaps lead Mr. Labouchere to require further information in Mr. Justice Burton's possession, which will be readily given if the subject of their amelioration be now under the consideration of the Colonial Department. Mr. Justice Burton will be in waiting at Downing Street at 12 o'clock or one tomorrow (Saturday, the 17th), and, if Mr. Labouchere requires him, will wait upon him.

Friday, 16th Augst., 1839.

[Enclosure No. 2.]

RIGHT HON. H. LABOUCHERE TO MR. JUSTICE BURTON.

Sir,

Downing Street, 17th August, 1839.

I am directed by the Marquis of Normanby to transmit to you Proposal for the Copy of a Communication from the Committee of the Aborigines Protection Society urging that the Natives in the Australian Colonies should be admitted to give Evidence in the Courts of Law; and I am to request that you will state for his Lordship's information whether in point of fact any objection has ever been made to admit the Evidence of the Aborigines in the Courts of New South Wales, and if so in what manner you conceive that defect in the administration of Justice could be most properly remedied.

I have, &c.

H. LABOUCHERE.

[Sub-enclosure.]

STATEMENT FROM ABORIGINES' PROTECTION SOCIETY.

Amongst various points which have engaged the attention of the Aborigines Protection Society as necessary to ensure the safety and elevation of the uncivilized Natives of those parts of the Globe on which British Colonies or Settlements are formed, the subject...
31 Aug.

Appeal by aborigines' protection society for admission of evidence of aborigines.

of their admission to give Evidence in Our Courts of Law has repeatedly excited particular interest.

It is evident that the rejection of the Evidence of these Natives renders them virtually outlaws in their Native Land which they have never alienated or forfeited. It seems to be a moral impossibility that their existence can be maintained when in the state of weakness and degradation, which their want of civilization necessarily implies; they have to cope with some of the most cruel and atrocious of our species, who carry on their system of oppression with almost perfect impunity so long as the Evidence of Native Witnesses is excluded from Our Courts.

The attention of the Committee of the Aborigines' Protection Society has been again called to this subject by a Letter from Barton Hack, Esquire, one of their corresponding Members, at Adelaide, a Settlement which stands preeminent amongst Our Colonies for the better feeling which it has fostered towards the Native population. That letter contains the particulars of a case in which the practical difficulty has been exhibited, accompanied with the expression of urgent desire that the remedy might be applied by the admission of Native Evidence.

For the purpose of obtaining the removal of this very serious inability from the Native population of Our Australian Colonies and of thereby securing at least one step towards their elevation, the Aborigines' Protection Society have had a Bill prepared which they hoped would be passed with the concurrence and support of Her Majesty's Government.

Intimation however having reached the Committee that the course which it was prepared to take did not meet the approbation of the Colonial office, it has determined to suspend the further prosecution of the Bill and again address the Colonial Office in the hope that the appeal, which they now offer, limited as it is to the subject of Evidence and confined to the Aborigines of Australia or to the Australians and the Islands of the Pacific, will not be made in vain. The Committee cannot but anticipate that the effectual carrying out of measures, calculated to secure the object which the Bill in question was destined to obtain, will prove so real a boon to the Native population and so important to the respectable Class of British Emigrants, so decided a check to evil doers, and so satisfactory to the friends of humanity in this Country, that it may be speedily followed up by similar measures applicable to all the Courts in Our Colonies and Dependencies.

On behalf of the Committee, John H. Tredgold.

4 Bloomfield Street, 30 July, 1839.

Objections to admission of evidence of aborigines.

MR. JUSTICE BURTON TO RIGHT HON. H. LABOUCHERE.


In answer to your letter of this date, requesting me to state for the information of the Marquess of Normanby whether any objection has ever been made to admit the evidence of the Aborigines in the Courts of New South Wales, and if so in what manner I conceive that defect in the administration of Justice could be most properly remedied. I have the honor to state that objections have certainly been made and sustained by the Supreme Courts of New South Wales to the admission of such evidence, but only on the two following grounds, First, where it has been impossible to
communicate with a proposed witness on account of his ignorance of the English Language, and where no Interpreter could be procured to interpret between him and the Court; Secondly, where a proposed witness has been found to be ignorant of a Supreme Being and a future State.

The defect arising from these causes, it is obvious can only be remedied by religious instruction.

Whether it is expedient to introduce into the Australian Colonies any modification of the English Law of Evidence now existing there is however involved in His Lordship's Enquiry, and I conceive that, in certain cases where the matter at issue is of minor consideration, the statements of the Aborigines might be received as evidence; and I had the honor of preparing a Bill for their Protection in New South Wales, in which that principle is recognized and acted upon; it was transmitted by me to His Excellency the Governor, Sir Geo. Gipps, together with a letter explanatory of its intention in the Month of June, 1838, but was not laid as I hoped it would be by His Excellency before the Legislative Council in consequence, as I presumed, of a recommendation of the Committee of the House of Commons, that no measure of that kind should be of Colonial Origin.

My rough Draft of the Bill referred to and a copy of my Letter to Sir Geo. Gipps have been already transmitted by me to you. I conceive that it is a measure, which would give satisfaction to the Friends of the Aborigines both in England and in the Colony, if it were adopted.

Respecting cases which are of a degree of importance higher than those contemplated in that Bill, I am of opinion that no alteration in the Law should be made. I have, &c.,

W. W. BURTON,
One of the Judges of the Supreme Court of N. S. Wales.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 122, per ship Lady Fitzherbert; acknowledged by lord John Russell, 21st April, 1840.)

My Lord,
Government House, 31 Augt., 1839.

I have had the honor to receive your Lordship's Despatch No. 38 of the 15th April last, transmitting for my information and guidance a copy of a letter from the Secretary to the Board of Ordnance, in answer to representations, addressed to the Admiralty by Rear Admiral Sir F. Maitland and Captain Bethune of the Royal Navy, relative to the defenceless state of the Harbours of Sydney and Hobart Town; and I beg leave to report to your Lordship that representations of a similar nature have been addressed to me by several of the most respectable inhabitants of Sydney; also that the subject has been mentioned in the debates of the Legislative Council. In answer to these representations, I have replied nearly in the terms of Mr. Byham's letter of the 5th April, 1839, that, looking at the Military Force stationed in the Colony, and relying on the good disposition of
the inhabitants, I should not fear even in our present state the result of any conflict to which there is a probability of our being exposed; at the same time, I must take the liberty of saying that I cannot imagine why the Guns are not sent out, which have been asked for and promised several years ago; especially as facilities now exist for sending them free of cost on board either of Convict or Emigrant Ships, which may not exist a few years hence.

I have, &c.,

GEO. GIPPS.

3 Sept. Appointment of lord John Russell as secretary of state.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(A circular despatch per ship Lord Eldon.)

Downing Street, 3rd September, 1839.

Sir, Her Majesty having been pleased to direct that, as one of Her Majesty's Principal Secretaries of State, I should take charge of the Colonial Department, it is my duty to desire that your future dispatches may be addressed to me, and to assure you that you will receive from me the most cordial assistance and support in carrying on the administration of the Colonies under your Government for the Service of the Queen.

I have, &c.,

J. RUSSELL.

4 Sept. Approval of policy re crown prosecutor.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 125, per ship Lady Fitzherbert; acknowledged by lord John Russell, 30th January, 1840.)

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

I beg leave to report to your Lordship that, in the course of the present Session of the Legislative Council, and especially on the occasion of my passing through it Bills to extend the Courts of Requests and to abolish Military Juries, a very anxious desire has been manifested for the establishment of Circuit Courts, and that I have been particularly requested by the Council...
to invite your Lordship's attention to the subject; the expense of bringing all Prisoners, Witnesses, etc., to Sydney in the present extended state of the Colony being enormous, and the consequences of delay in the administration of Justice very often highly injurious both to Individuals and the Public.

Your Lordship is aware that the establishment of Circuit Courts, though long acknowledged to be necessary, cannot in consequence of the wording of the 13th Section* of the 9th Geo. IV, Ch. 83, be accomplished without the previous issue of an order in Council, and that the issue of such an order has been delayed from year to year in the expectation that it would be rendered unnecessary by the Legislative Enactment, which is to give to the Colony a New Constitution.

Should any act of the Imperial Parliament have been passed for this purpose before the present despatch reaches your Lordship, I trust the necessary powers will have been conveyed by it to the Local Legislature to establish Circuit Courts; but, should this not have been the case, or should no such Act have been passed, I hope I may be pardoned for earnestly requesting that the necessary Order in Council may be issued.

The places, where Circuit Courts are to be held, may I presume be left to the decision of the Governor and Council, but, should it be necessary to mention them in the Order in Council, I would suggest that the following be inserted:—

Bathurst, Maitland, Goulburn, Melbourne (Port Phillip), Port Macquarie.

I have, &c.,

GEO. GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(A circular despatch per ship Lord Eldon.)

Sir,

Downing Street, 5th September, 1839.

Instances having recently occurred in which issues for Military Services made from the Military Chest have been designated as for "Secret Service," I have to acquaint you that the proper term to be used for any Military Expenditure coming under this character would be "Special" and not "Secret Service," in order that by such distinction the charge may not, as would otherwise be the case, be connected with the sum voted by Parliament for "Foreign and Secret Service," but may be provided for, if approved, out of the Army Extraordinaries, to which it is properly chargeable; I have, therefore, to instruct you to observe this distinction in any instance in which you may be called upon to sanction payments from the Military Chest of this nature.

I have, &c.,

J. RUSSELL.
Payment for passage money for bishop of Australia.

1839.
6 Sept.

I transmit to you, herewith, for your information and guidance, the enclosed copies of a correspondence with the Board of Admiralty and the Board of Treasury, explaining the circumstances under which the Agent General for New South Wales has been authorised to pay to the Agent of Captain Harding, R.N., the sum of One Hundred and twenty Pounds on account of a passage provided on board H.M. Ship Pelorus to the Bishop of Australia, when visiting Norfolk Island and New Zealand.

I have, &c.,

J. RUSSELL.

[Enclosure No. 1.]

MR. C. WOOD TO UNDER SECRETARY STEPHEN.

H.M.'s Sloop Pelorus having afforded a Passage to the Bishop of Australia between the 13th December, 1838, and the 28th January last, to enable his Lordship to visit New Zealand and Norfolk Island.

I am commanded by My Lords Commissioners of the Admiralty to request that the Marquess of Normanby will cause My Lords to be informed whether the expence of this passage is to be paid by the Public.

I have, &c.,

C. Wood.

[Enclosure No. 2.]

UNDER SECRETARY STEPHEN TO MR. F. BARING, M.P.

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 Letter from the Secretary to the Admiralty, relative to the expence of a passage afforded to the Bishop of Australia to enable his Lordship to visit New Zealand and Norfolk Island.

On a former occasion, the Agent General for New South Wales and Van Diemen's Land was directed, in pursuance of your Letter of the 20th December, 1838, to defray the charge of a visitation of the Bishop to the different Districts within his Diocese from the Revenues of those Colonies. The enclosed Letter contains the only intelligence, which has reached Lord Normanby of the Bishop's proceedings on this occasion. His Lordship would, however, observe that the present case differs materially from that to which I have referred. The Islands of New Zealand are not within the Diocese of Australia; and, although Norfolk Island is within that Diocese, there is not at present, as far as Lord Normanby is informed, a single clergyman subject to the Bishop's authority.

The deplorable state of ignorance and vice, in which the Inhabitants of Norfolk Island are, would, however, render the Bishop's presence there peculiarly useful, if he went in the capacity of an ordinary Minister of Religion, and the zeal, which induced his
Russell to Gipps. 309

Lordship to undertake such a Mission, must command the respect and gratitude of Her Majesty's Government. The same remark is in a great measure applicable to the Bishop's visit to New Zealand.

Under the peculiar circumstances of the case, Lord Normanby would propose, with their Lordships' concurrence, to instruct the Agent General for New South Wales to defray this charge on the Bishop's account, holding him responsible for it, until a satisfactory report shall have been received from him of the motives which may have induced him to undertake these voyages. Lord Normanby further proposes that application should be made to the Board of Admiralty to distinguish between the charge for the passage to New Zealand, and that to Norfolk Island, in order that an adjustment may be made between the amount to be charged on the future Revenues of New Zealand, and that to be defrayed from the Military Chest on account of Norfolk Island.

Jas. Stephen.

[Enclosure No. 3.]

Mr. G. J. Pennington to Under Secretary Stephen.

Sir, Treasury Chambers, 19 August, 1839.

With reference to your Letter of 10th instant, inclosing Copy of a letter from the Secretary of the Admiralty on the subject of providing for the expense of the Bishop of Australia on his visitation to New Zealand and Norfolk Island, I have it in command from the Lords Commissioners of Her Majesty's Treasury to acquaint you, for the information of the Marquis of Normanby, that My Lords see no reason to object to the instruction, which his Lordship proposes to convey to the Agent General for New South Wales, in regard to the provisional payment of the expense to which the Letter from the Secretary of the Admiralty of the 15th Ulto refers, or to the distinction, which his Lordship contemplates to make between the expense chargeable to convict services in respect of the visit to Norfolk Island, and to the Funds of the intended Settlement at New Zealand in respect to the visit in that Quarter, provided it shall be found, on the receipt of the requisite information from the Bishop of Australia, that these visits were connected with the Public duties of the Diocese.

G. J. Pennington, Pro. Sec.

[Enclosure No. 4.]

Under Secretary Stephen to Mr. C. Wood.

Sir, Colonial Office, 27th August, 1839.

I have received and laid before the Marquis of Normanby your letter of the 15th Ulto., and I am directed by his Lordship to acquaint you in reply, for the information of the Lords Commissioners of the Admiralty, that Her Majesty's Government are of opinion that, under the circumstances of the case, the expense of the Passage of the Bishop of Australia on board Her Majesty's ship "Pelorus" on his visitation to New Zealand and Norfolk Island should be defrayed by the public; holding, however, the Bishop responsible for it, until a satisfactory report shall have been received from him of the motives which may have induced him to undertake the voyage.

I am therefore to request that you will move the Lords Commissioners to acquaint Lord Normanby with the amount of the
expense incurred in this service, with the name of the party to whom it is to be repaid; and that a distinction may be made between the charge for the passage to New Zealand, and that to Norfolk Island, in order that an adjustment may be made between the amount to be charged on the future revenues of New Zealand and that to be defrayed from the Military Chest on account of Norfolk Island.

I have, &c.,

JAS. STEPHEN.

[Enclosure No. 5.]

SIR JOHN BARROW TO UNDER SECRETARY STEPHEN

Sir, Admiralty, 28th August, 1839.

With reference to your Letter of the 27th Instant, respecting the Passage of the Bishop of Australia on board Her Majesty's Sloop Pelorus from Sydney, on a visit to New Zealand and Norfolk Island, between the 13th of Decr., 1838, and 28th of January last, I am commanded by my Lords Commissioners of the Admiralty to acquaint you, for the information of the Marquess of Normanby, that the amount due to Commander Francis Harding of the Pelorus for this service is One hundred and twenty Pounds, and that the same should be paid to his agent, Samuel Steward, Esqre., 6 Montagu Place, Montagu Square, London, on that Officer's Accounts; and, with reference to the request that a distinction may be made between the charge for the passage to New Zealand and that to Norfolk Island, My Lords direct me to observe that from Sydney to New Zealand and thence to Norfolk Island on the return to Sydney appears to have been one voyage and not much out of the way on the Bishop's Return.

I have, &c.,

JNO. BARROW.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 4, per ship Woodbridge.)

Sir, Downing Street, 7th September, 1839.

I transmit, for your information, copies of a correspondence between Dr. Lang and this Department on the subject of the proposed disallowance of the Presbyterian Church Act* of New South Wales of the year 1837.

As the questions controverted between the Presbyterian Ministers in the Colony are still under discussion between Dr. Lang and the Commission of the General Assembly of the Church of Scotland on Colonial Churches, I cannot at present address to you any definite instructions for your guidance.

Referring you however to the assurance conveyed by my direction to Dr. Lang that I would direct you to pursue the course best adapted to conciliate the conflicting parties, I now recommend that object to your careful attention. I have, &c.,

J. RUSSELL.

* Note 62.
RUSSELL TO GIPPS.

[Enclosure No. 1.]

REVD. J. D. LANG TO MARQUESS OF NORMANBY.

2 Cecil Street, Strand.

My Lord,

London, 14th June, 1839.

I have the honor to notify to Your Lordship my arrival in England for the fifth time from the Colony of New South Wales.

My voyage on this occasion, as Your Lordship will perceive from the accompanying documents, has been undertaken at the urgent request of the Synod of New South Wales and of a large majority of the Presbyterian inhabitants of that Colony in consequence of certain precipitate and unwarrantable proceedings of the Committee and Commission of the General Assembly of the Church of Scotland, of which your Lordship has already been apprised.

In explanation of these documents, I have the honor to represent to Your Lordship that the recent troubles of the Presbyterian Church in New South Wales had their origin in the year 1836, the era of the General Church Act of that Colony, which professed to place all regularly organized religious denominations in the Colonial Territory on the same footing as to Government support. Up to that period, the Presbyterian Church in New South Wales had, under God, been indebted for its existence, its Government establishment and the prospect of its general extension, entirely to my own individual exertions; the General Assembly of the Church of Scotland having uniformly treated the numerous Presbyterians of that Colony, till the year 1837, or for nearly fifty years from its first settlement, with cold indifference and heartless neglect. A state of things, My Lord, which rendered it necessary for myself (as the Senior Presbyterian Minister of the Colony, and the only Presbyterian Clergyman either at home or abroad who felt himself called on to make any sacrifices for the children of his people in that important portion of Her Majesty's dominions) to undertake four successive voyages to England on their behalf, and to expend a considerable fortune of my own (consisting chiefly of property which has fallen to me through the death of a relative) of upwards of Ten Thousand Pounds. Through these sacrifices and exertions, to which I am confident, My Lord, the annals of the Church of Scotland present no parallel for a Century past, a College had been established in the town of Sydney at the period referred to, in which there are now upwards of ninety pupils or students and in which the business of education is at present conducted by three licentiates of the Church of Scotland, Clergymen licensed to preach but not to dispense the Sacraments, nor having cure of souls under the patronage of the Synod of New South Wales; while notwithstanding the recent death of one excellent minister and the dismissal of another of very different character for intemperance, the Colonial Presbyterian Church comprised in the year 1836 five regularly ordained Ministers of the Church of Scotland, with a field of boundless extent for its future increase through the beneficent arrangements established under the sanction of Her Majesty's Government in the General Church Act of the Colony.

Of these five ministers, however, I am sorry to inform your Lordship that I was under the necessity of preferring charges of gross intemperance, on the affidavit of reputable persons, first against the Revd. John Garven, A.M., Minister of Maitland, and afterwards against the Revd. John Cleland, A.M., Minister of Portland Head.

* Note 62.  † Note 64.
Reasons for fourth visit of Revd. J. D. Lang to England.

1839. 7 Sept.

then Moderator of the Presbytery of New South Wales. And, as the Revd. John McGarvie, A.M., of the second Presbyterian Church in Sydney, who had himself been living for years before in the wilful neglect of his own bounden duty in a very important particular as a Presbyterian Minister, having lived in the neglect of family worship in the Colony for ten years, had leagued himself with these individuals to prevent them from being brought to justice, while the only other minister of the Presbytery, the Revd. K. D. Smythe, A.M., of Bathurst was in bad health and at too great a distance from Sydney to be able to attend the meetings of the Presbytery, I deemed it my duty, in concurrence with the deliberate opinion of the elders and other members of my own congregation, to proceed to England for the fourth time to procure a supply of Presbyterian Ministers of the requisite character and standing, to reestablish the Colonial Presbyterian Church, which had thus been unexpectedly reduced, through an unprecedented extent of clerical delinquency, to a state of extreme desolation. I accordingly represented the case to His Excellency Sir Richard Bourke, then Governor of New South Wales, who accordingly granted me leave of absence for fifteen months to proceed to England, leaving it to the right Honorable the Secretary of State to allow me the half salary usually granted in such cases, or to withhold the allowance according as His Lordship should approve or disapprove of the object of my voyage.

Results of visit. My Lord Glenelg was pleased to grant me that allowance and thereby to approve of the object of my voyage; and, agreeably to my own request preferred through Sir Richard Bourke previous to my leaving the Colony, the General Assembly's Committee and the Committee of the Synod of Ulster were successively authorized by his Lordship to select such Presbyterian Ministers as were required for the Australian Colonies; to each of whom His Lordship guaranteed an allowance of £150 from the Colonial Revenue for outfit and passage money. In all other cases in which Presbyterian Ministers have been required in the Colonies, it has hitherto been customary for the particular Colonial congregation requiring a Minister to authorize certain clergymen or laymen in the mother country to select a suitable minister for them; and, if the Presbyterian Church of New South Wales had not been in a state of entire abeyance at the time, it would have been the duty of that body to have been the Medium of all such Communications and to have made all the requisite arrangements. But the Presbytery being virtually ab agendo, and the state of the Colony, which was passing under a new politico-ecclesiastical system at the time, requiring that a number of Ministers should be sent forth at once into its waste places before new congregations could be formed at all, it appeared to myself and to my friends in the Colony that the best mode of procuring such ministers was to apply to a Committee for Correspondence with Colonial Churches, then recently appointed by the General Assembly of the Church of Scotland, and to a similar Committee of the Synod of Ulster, the Presbyterians of New South Wales being partly from Scotland and partly from the North of Ireland.

I beg, however, distinctly to state to your Lordship that, as the sole object of my voyage to England, on the occasion I refer to, had been to procure suitable Ministers of the Presbyterian Church for the Australian Colonies, I pursued that object as I best could
through the two Committees in Scotland and Ireland, without in
any way compromising the rights and privileges of the Colonial
Presbyterian Church, fallen and degraded though that church then
was. For, when my Lord Glenelg, knowing that a portion of the
Presbyterians of Ireland had become Socinians, and desiring that
such Presbyterians should be encouraged to proceed to the Colonies,
referred a communication from the Synod of Ulster, whose doc-
trines are still accordant with those of the Scottish National
Church, soliciting the usual allowance for passage and outfit for cer-
tain of the Ministers of that body about to proceed to the Australian
Colonies to the General Assembly's Committee, which the Convener
or Chairman of that Committee subsequently referred to the general
Assembly, on the implied understanding that the Assembly had a
right of jurisdiction in the case. I immediately addressed a letter
to My Lord Glenelg, protesting against the principle that either
the Assembly's Committee or the Assembly itself had any right to
decide who the Presbyterians of New South Wales should have for
their Ministers; the assumption of such a right in the case in
question being equally opposed to the fundamental principles of
the Church of Scotland and to the rights and privileges of the
Presbyterian Church and people in New South Wales. The Presby-
terian Ministers, who accordingly went out to that Colony both
from Scotland and the North of Ireland, went consequently entirely
unfettered. They knew merely that a Presbyterian Church Court
had been regularly constituted in New South Wales in the year
1832, before the General Assembly's Committee had any existence
and before the Assembly had ever even condescended to think of the
Colonies at all. They knew also that that Church Court had fallen
into a state of abeyance and disgrace through the gross delinquency
of certain of its members; but they were left in these difficult cir-
cumstances to act on behalf of their beloved Church agreeably to
the word of God, the dictates of their own consciences, the acknow-
ledged principles of Presbyterian Church Government and the well
known practice of their venerated forefathers. At all events, My
Lord, they were justified in believing that whatever they might
think it necessary to do, in accordance with their own views of
duty, for the reestablishment of the Presbyterian Church within
the Colony, there was no transmarine ecclesiastical authority that
could rightfully constrain them to follow a particular course.

Leaving the Colony as I did, My Lord, in the year 1836, after
having lodged a solemn protest with His Excellency Sir Richard
Bourke against the Presbytery of New South Wales, declaring
that body hopelessly corrupt and incapable of effecting its own
purification; and well aware, as His Excellency was, from an
address which was presented to me on the eve of my leaving the
Colony, signed by Two hundred and Sixty two Members, chiefly
heads of families of my own congregation (which at that time was
considerably more numerous than all the other Presbyterian Congre-
gations of the Colony united), approving of my conduct in the
strongest terms; leaving the Colony in such circumstances, I appeal
Protest against
Your Lordship whether I had not a right to expect that no new
laws would be enacted by the Colonial Government for the Colonial
Presbyterian Church in addition to the General Church Act of 1836,
which had been expressly sanctioned by my Lord Glenelg, till my
return to the Colony, or till the arrival of those additional Ministers
who should be sent out from the Mother Country in consequence
of my visit to England. But I beg to inform Your Lordship that the period of my absence from the Colony, a period in which the Colonial Presbytery was reduced to four members, of whom two were under charges of the grossest intemperance (for which one of them has since been expelled, and the other dismissed with the ignominious Scottish Verdict of not proven and an admonition not to frequent public houses), while the third was publicly accused of a long continued and wilful neglect of duty, such a period, my Lord, was chosen for concocting an Act,* professing to serve as the Magna Charta of the Presbyterian Church in New South Wales, but virtu­ ally constituting these four individuals a close and exclusive Cor­ poration with power to shut their doors against whatever Ministers from the Mother Country should not implicitly submit to their direction, or comply with whatever regulations they might think proper in the mean time to make for their guidance. The Act I allude to is the Presbyterian Church Temporalities Act of 1837.

The Member of the Legislative Council of New South Wales, at whose instance and through whose direct personal influence this virtual outrage upon the common sense of the Colonial public, and especially upon the Christian feelings of the Presbyterians of the Colony, was committed by the Colonial Government, was the Honorable Colonel Snodgrass, Commander of the Forces, and afterwards Acting Governor of New South Wales during the period intervening between the departure of Sir Richard Bourke and the arrival of the present Governor. I should be sorry to insinuate, My Lord, that Colonel Snodgrass was at all aware either of the nature of the Act in question or of the purpose which it was in­ tended to serve. But in a case in which the spiritual and eternal interests of the whole Presbyterian inhabitants of New South Wales are deeply concerned, I feel myself called on to represent to Your Lordship that that officer had previously evinced an obtuseness of moral feeling in the Colony, which, while it rendered the circum­ stance of his patronizing the Presbytery in the state of extreme degradation less unaccountable, compelled the reputable Presby­ terians of the Colony to regard any interference on his part with their ecclesiastical concerns with extreme suspicion.

In the year 1829 or 1830, a person of some education, of the name of Howard, opened an Office in London and advertised to procure valuable situations or appointments, principally under Government, for any persons, who would agree to pay him beforehand certain amounts for his influence proportioned to the value of the appoint­ ments they were thus to obtain. A respectable person, who had been deceived with this advertisement and had entered into negocia­ tion with Howard for obtaining a valuable appointment under Government, for which he was to pay him a large amount on receiving the necessary documents, attended on a day fixed for the purpose at Howard's office with the money. While the stranger, however, was off his guard, Howard seized a hatchet or other lethal weapon and aimed a violent blow with it at his head, evidently in­ tending to murder him outright, and to escape with the money. Providentially the blow was not fatal, and in the desperate struggle that ensued, the neighbourhood being alarmed by the cries of Howard's intended victim, the culprit was secured, and being forth­ with tried and convicted, was eventually transported for life. The case having made much noise in England was not unknown even in New South Wales; but no sooner had Howard arrived in that

* Note 62.
RUSSELL TO GIPPS.

Colony as a Convict for life, than Colonel Snodgrass applied for him as an Assigned Servant, and, on his being assigned to him in that capacity, placed him forthwith in the important and highly responsible situation of Domestic Tutor to his children, to teach them English and Classical learning, morals and religion, and to dine with them daily as their companion and instructor, at the same table. With the knowledge of such a fact. I appeal to Your Lordship whether the Presbyterians of New South Wales were not justified in supposing that the same obtuseness of moral feeling, which had thus been so lamentably conspicuous on the part of the Honorable Colonel Snodgrass in the Government of his own family, had also been evinced by that officer in the Protection he affords to the Presbytery of New South Wales in using his influence, as a highly influential Member of the Local Government, in procuring an Act of Incorporation for that body during its state of extreme degradation. And as Your Lordship will perceive from the sequel that it was chiefly, if not exclusively, through the influence of that officer, as the President, and the only Presbyterian Member of the Honorable the Executive Council, during the short period in which he held the high office of Representative of Her Majesty, as Acting Governor of New South Wales, that twelve Ministers* of the Church of Scotland were deprived of the Salaries, which had been guaranteed to them by Her Majesty's liberal and enlightened Government in the general church Act of that Colony, and that I have been compelled myself to leave my family and congregation for the fifth time in a convict Colony and again to circumnavigate the globe. I submit to Your Lordship whether it is not an outrage upon the Common sense of mankind to suppose that the spiritual and eternal interests of the Presbyterians of New South Wales could possibly be safe in the hands of a Man, however exalted his station for the moment, who had spontaneously delivered over his own children to the guardianship of an assassin? My Lord, the Presbyterians of New South Wales, who are now rapidly increasing in number, in wealth and in importance, as an integral part of the Colonial population, are already sufficiently numerous to require and to be able to support, under the General Church Act of the Colony, upwards of thirty ministers; and, in regard to their general character, Your Lordship will be able to form some idea from the fact that, while it was recently found necessary to appoint Episcopalian and Roman Catholic Chaplains for the Gaols and Penal Settlements of the Colony, it was allowed on all hands that there was no necessity for the appointment of Presbyterian Chaplains for these establishments, the number of criminals of that communion in the Colony being quite insignificant. I can assure Your Lordship, however, that the most effectual means of lowering the general character of the members of the Presbyterian Communion in New South Wales, and of depriving the Colony of the great benefit it derives from the superior moral influence they diffuse around them, is to subject their clergy to the guidance and caprice of Legislators and Acting Governors of the moral sensibilities of Colonel Snodgrass.

Of the Presbyterian Ministers, licentiates and ecclesiastical Students or Candidates for the ministry, who emigrated to New South Wales under the sanction of Her Majesty's Government in the year 1837, four arrived in the Colony before my return; all of whom, notwithstanding my own personal entreaty in regard to two

* Note 65.
of them in Scotland, and that of the elders of my congregation in Sydney in regard to the other two, that they should take no steps till the arrival of their brethren, immediately placed themselves under the orders of the Presbytery. They were doubtless induced to that course, partly from their ignorance of the real character and condition of that body, and partly from a misconception of their own duty in a case of peculiar difficulty, but principally from the fear of losing their salaries in consequence of the Presbyterian Church Temporalities Act of 1837, which had just been passed. The rest, with the exception of those who arrived subsequently and joined the Synod of New South Wales, arrived to the number of thirteen in all, per the ship “Portland” in the month of December of that year.

It had been determined by these Ministers and licentiates that no step should be taken in regard to their future course, till they should ascertain the state of things in the Colonial Presbytery. It was immediately ascertained, therefore, that, while the immorality of the Ministers, against whom I had vainly exhibited charges before leaving the Colony, had in the mean time become more outrageously flagrant and the secularity and chicanery, that distinguished the whole procedure of the Presbytery as a Church Court, more disgraceful than ever; the Presbyterian Church Act, then recently passed, had by confirming unprincipled and worthless individuals in the possession of an authority they were evidently predetermined to abuse, and by transforming the various obnoxious Regulations they had made in the mean time for their own security into laws binding upon all their brethren, rendered the speedy reformation of that body and the prospect of meeting the spiritual destitution of the Colony under its guidance and direction utterly hopeless; For

1st. It had been enacted by the Presbytery that not one of the ordained Ministers, who had arrived in the Colony with myself, should be received into that body in any other capacity than as mere probationers; in which capacity they could have no voice in its proceedings for an indefinite period, although some of them had been the ordained ministers of congregations in the Mother Country for years before they left it. I am well aware, My Lord, that there is such a law in the Church of Scotland; but Your Lordship will at once perceive that the circumstances of a Church, which has enjoyed an exclusive civil establishment in an old Country for centuries past, must be altogether different from those of the same Church in a new Country, in which it is placed on precisely the same footing as to Government support with every other denomination, and in which, if it is to be of any service to that country at all, it must necessarily be a Missionary Institution. This distinction, My Lord, has already been recognized in the Presbyterian Church in India, where regularly ordained Presbyterian Missionaries, who may not have a single Convert from amongst the Heathen, are nevertheless admitted as constituent members of the Presbyteries of Calcutta and Bombay, on precisely the same footing as the Ministers of the Scots Churches in these Presidencies. It is also recognized in the civil polity of New South Wales, where even the laws of England are not admissible, unless pronounced by a competent authority applicable to the peculiar circumstances of the Colony. The effect, however, of the regulation established by the Presbytery of New South Wales, in the circumstances of the
Presbyterian Church in that Colony in the year 1837, was to destroy all hope of the speedy reformation of that Presbytery.

2d. A new ecclesiastical division of the Territory had been made by the Presbytery during my absence in England, agreeably to which the actual members of that body had each allotted to himself an extensive and comparatively thickly peopled district, into which no other Presbyterian Minister could enter without their permission; for, although these ministers had no means of dispensing the ordinances of religion to the inhabitants of these districts generally, they were allowed a certain additional amount by the Government, as often as they went more than twelve miles from their regular stations, as travelling expences. The effect of this regulation, in the existing circumstances of the Colony, would have been to prevent the settlement of the ministers, who went out to the Colony in consequence of my visit to England, in those parts of the Territory in which their services were principally required, and to send them to those remote and thinly peopled districts, in which it would have been problematical at the time whether they would have obtained congregations at all.

3d. The Committee of the Presbytery, appointed for distributing these ministers over the Territory, and assigning them the stations to which they were severally to be sent, consisted of the Revd. Messrs. McGarvie, Cleland and Garven, all of whom were themselves under charges at the time, and the last two of whom actually got intoxicated together in a public house at Windsor, where they attended a meeting for that purpose. Mr. Garven was the individual, who was shortly afterwards expelled from the Colonial Presbyterian Church for being drunk in the public cabin of a Steamboat, and Mr. Cleland the one who after a trial of six days, in the course of which Mr. McGarvie used the most unworthy means to prevent witnesses from appearing on the trial, was dismissed with the verdict of not proven, and the admonition not to frequent public houses. Such, My Lord, in a Convict Colony, in which drunkenness prevails to an alarming extent, were the disreputable individuals to whose exclusive authority the Presbyterian Church Act of Colonel Snodgrass subjected the various ministers and licentiates, who emigrated to New South Wales in consequence of my late visit to England, on their arrival in the Colonial Territory.

4th. The moral worthlessness of these individuals has been enhanced in the Estimation of the Presbyterians of the Colony by their rapacity in adopting and reducing to a system the antiprotestant and disgraceful practice of selling the ordinances of religion for money; for as the Clergymen, who had officiated in the Scots Church in Sydney during my absence in England, the Revd. Messrs. Wylde, McKenzie, and Aitken, A.M., all Professors in the Australian College, were only licentiates and not ordained Ministers of the Church of Scotland, and consequently incompetent to solemnize baptisms and marriages, the Revd. John McGarvie, who was himself receiving a sufficient salary at the time, as the minister of the second Presbyterian Church in Sydney, applied for a portion of the half salary allowed by the Government to these gentlemen during my absence, because he had thereby certain additional baptisms and marriages to solemnize; and, the Presbytery certifying that the application was just, the sum applied for, to the amount of £60 and upwards, was paid him accordingly; a transaction to which I am confident, My Lord, no parallel can be found in the annals of the…
Presbyterian Church, either in Scotland or Ireland, and which is sufficient of itself, agreeably to the Law and Practice of that Church, to cover every Presbyterian Minister in any way connected with it with disgrace.

In the circumstances I have described, a public meeting of the following Ministers, licentiates and candidates for the Ministry, who had arrived in the Colony per the ship "Portland," all of whom are now ordained ministers of the Presbyterian Church in New South Wales, was held in Sydney on the 11th of December, 1837, eight days after their arrival; at which, after prayer to Almighty God and solemn deliberation, it was resolved, with only three dissentients, as the only safe or reputable course which remained to be pursued under these circumstances, to constitute a Synod or Court of Superior Ecclesiastical Jurisdiction under the designation of the Synod of New South Wales. It has wisely been left undetermined, My Lord, as well in the constitution of the Presbyterian Church as in the British Constitution, what are the circumstances and events that warrant a departure from the common course of procedure in more settled times. Whether the circumstances and events I have detailed were not of this description, I shall leave Your Lordship to determine. At the same time, I am happy to inform Your Lordship that the Presbyterians of New South Wales, the party most deeply concerned, have determined in favor of my esteemed brethren and myself that they were. A Synod was accordingly constituted in due form on the occasion referred to, and that Synod has since been enabled, as Your Lordship will perceive from the accompanying documents, to resolve itself into four constituent Presbyteries or subordinate Church Courts, agreeably to the practice of the Church of Scotland.

List of the Ministers, Licentiates, and Candidates for the Ministry, who attended the meeting on the 11th December, 1837.

Revd. J. D. Lang, D.D., an ordained Minister of the Church of Scotland of fifteen years standing.

Revd. Thomas Dugall, an ordained minister of the Synod of Ulster of nine years standing.

Revd. George Macfie, an ordained minister of the Church of Scotland of eight years standing.

Revd. Cunningham Atchison, an ordained minister of five years standing.

Revd. George Anderson, an ordained minister of the Church of Scotland of four years standing.

Revd. James Fullerton, an ordained Minister of the Synod of Ulster of three years standing.

Revd. Hugh Gilchrist, an ordained minister of the Synod of Ulster of two years standing.


Revd. Robert Blain, a Licentiate of the Synod of Ulster, who had organized and had charge of a congregation in the North of Ireland for twelve months, but was not ordained till his arrival in Sydney, merely from convenience.

Revd. Robert Stewart, a licentiate of the Church of Scotland, and one of the ministers recommended by the General Assembly's Committee.
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Mr. Malcolm Colquhoun and Mr. Matthew Adam, Candidates for the Ministry who had both completed their Academical studies in Scotland, and had arrived in the Colony as Schoolmasters, recommended by the Assembly's Committee.

The three dissentients were the Revd. Messrs. Macfie, Gregor and Forbes; and it was in consequence of these Ministers having, notwithstanding the agreement on board-ship, placed themselves immediately on their arrival in the Colony under the orders of the Committee of the Presbytery, that the meeting for deliberation on the steps to be taken by the whole body of Ministers and licentiates was held so soon after their arrival; one reason for their procedure, which was openly and repeatedly urged by Messrs. Macfie and Gregor, being that there was no security for their Government salaries in the event of their joining the Synod.Shortly after the formation of that body, the three following Ministers arrived in the Colony, the first as an ordained Minister of the Church of Scotland, speaking the Gaelic language, and the second and third as Missionaries to the Aborigines at Moreton Bay, all of whom had come out under the sanction of the Right Honourable Lord Glenelg, viz.:

Revd. William McIntyre, Gaelic Minister; Revd. Karl Wilhelm Schmidt and Revd. Christopher Eipper, The former of the University of Hallé and Berlin; and both regularly ordained ministers of the German reformed or Presbyterian Church.

These Ministers, having all expressed their desire to be received as members of the Synod, and the two foreigners, after submitting the most ample academical testimonial, having also expressed their unqualified approbation of the doctrines and disciplines of the Church of Scotland, were received accordingly.

As it was represented, however, to the Colonial Government that the Synod ought not to have been constituted until after the several subordinate Presbyteries had been formed, I beg to represent to Your Lordship that in every case in which there is no possibility of appeal to a higher tribunal, as I shall shew in the sequel is the case of any Presbyterian Church established beyond seas, it is the theory and practice of the Presbyterian System of Church Government to constitute at once a supreme Ecclesiastical tribunal, by whatever name it may be designated; for, when the reformed churches of Scotland and France were originally constituted, the ministers, who formed these churches, and who had themselves embraced the doctrines and discipline of the Reformation as taught by the Reformers of Switzerland, constituted themselves at once Supreme ecclesiastical tribunals in both cases, a General Assembly in the one, and a General Synod in the other; the number of Ministers in the one case being only seven and in the other eleven. And whereas there were ministers in the Colony who still adhered to the Presbytery of New South Wales, corrupt and degraded as that body had long been in the estimation of the great majority of the Presbyterians of the Colony, and incapable, as it has since proved, of effecting its own reformation, I beg further to represent to Your Lordship that the members of the Synod, in constituting themselves a Supreme ecclesiastical judicatory, without regard to the adherents of that body, merely followed the example of the General Assembly of Glasgow in the year 1638; appealing for approval and support to the Presbyterian inhabitants of the Colony, as the members of that Assembly virtually did to the whole Scottish nation, in
opposition to the adherents and supporters of the Assembly at Perth, which had been held under the influence of Archbishop Laud during the tyranny of Charles the First, and setting themselves, after the example of these christian and apostolic men, to reorganize and re-establish, in purity and efficiency, the Colonial Presbyterian Church, on the model and in accordance with the standards of the Church of Scotland.

And, if the Colonial Government, My Lord, had not interfered in direct opposition to its own bounden duty, as well as to those equitable principles that characterize the General Church Act of 1836, every reputable member of the Presbytery of New South Wales would very speedily have felt himself compelled by the voice of his people to join his brethren of the Synod, and to leave those disreputable individuals with whom he was associated either to stand their trial before a free and unfettered tribunal, or to sink down into harmless insignificance. On applying, however, to the Colonial Government as Moderator of the Synod of New South Wales, in the month of February, 1838, for the payment of the salaries and allowances guaranteed to the ministers of every organized church in the Colony by the General Church Act (the Honourable Colonel Snodgrass being acting Governor at the time), I was given to understand that these Salaries would not be paid unless the said Ministers should make their application through the Moderator of the Presbytery, the Colonial Executive thereby setting itself up in direct opposition to the principles of that Act, as a judge and arbiter and oppressor in matters of Religion. Besides Colonel Snodgrass, the President of the Executive Council and the only Presbyterian Member of that body, the other members, at the time in question, were the Colonial Secretary, the Colonial Treasurer, and the Protestant Bishop, all Episcopalians, and consequently little, if at all, acquainted with the principles of Presbyterian Church government.

After the arrival of His Excellency Sir George Gipps, the present Governor of New South Wales, His Excellency referred the application of the Synod a second time to the Honorable the Executive Council, the members of which, however, adhered firmly to their former decision; thereby doing all that in them lay, under a Constitution that professed to grant equal rights and privileges to all religious denominations, to reduce a whole body of ministers of religion in a convict Colony to poverty and starvation, merely because, in a matter of ecclesiastical discipline, of which the members of the said Council could have no knowledge, and with which they had no concern, these ministers would not do what their consciences and their own views of propriety forbade them at the mandate of the civil power.

But the countenance and support which the Synod unexpectedly received from a large majority of the Presbyterian Inhabitants of the Colony, the general acceptableness of the Ministers of that body, and their zealous and successful exertions, not only in forming congregations, but in establishing schools throughout the Territory, and in planting missions among the Heathen, having at length convinced the Government and the public that it was not to be put down by a mere exercise of power, and that like Israel in Egypt, its members would only multiply the faster, the more it was oppressed, a special Act* was at length passed by the Legislative

* Note 66.
Council during the past year, granting the usual Salaries and allowances to the Members of the Synod for the years 1838 and 1839.

Some time after the passing of that Act, proposals were made by certain members of the Presbytery for a Coalition of the two bodies into which the Colonial Presbyterian Church had thus been unhappily divided, on such terms as would not have compromised any reputable Presbyterian Minister in the Colony; and, as the great object of the formation of the Synod, viz., the purity and efficiency of the Colonial Presbyterian Church, had in the meantime been in a great measure secured, these proposals, I am happy to inform Your Lordship, were favorably entertained; insomuch that the desired coalition, under one General Synod, would in due season have been effected, but for an Act of interference* with the rights and privileges of the Colonial Presbyterian Church on the part of the Committee and Commission of the General Assembly of the Church of Scotland, unwarranted by the constitution of that Church, and intolerable to the Presbyterian Inhabitants of New South Wales. In the month of February, 1838, during the short period in which the government of New South Wales was administered by Colonel Snodgrass, the Revd. John MacGarvie, Moderator of the Presbytery of New South Wales, addressed a letter or memorial to His Excellency the Acting Governor, purporting to be a Memorial from the said Presbytery, misrepresenting in the grossest manner the facts connected with the formation of the Synod, as well as the motives and objects of its members, and praying that the Government might withhold from the Ministers of that body the salaries guaranteed to them by the General Church Act. As this document was intended for transmission to the Right Honourable the Secretary of State for the Colonies, it was immediately forwarded by Colonel Snodgrass to my Lord Glenelg, by whom it was transmitted for their opinion to the Committee of the General Assembly of the Church of Scotland. That Committee accordingly passed certain Resolutions* on the subject, condemnatory of the Synod and amounting to a sentence of excommunication against that body; and these Resolutions, having been subsequently transmitted to the Commission of the General Assembly, were by that Commission forthwith ratified and confirmed; both the Committee and Commission assuming throughout the whole the transaction a despotic authority over the Presbyterian Church of New South Wales; arrogating a right to prescribe laws and regulations to the Ministers of that Church in all matters connected with their own internal government and discipline as an ecclesiastical body, usurping an appellate jurisdiction over all ecclesiastical persons and cases connected with the Presbyterian communion in New South Wales; and issuing their imperative mandate accordingly to the Ministers of the Synod to join the Presbytery under the penalty of being visited, in case of disobedience, with the highest punishment which it is possible for a Presbyterian Church Court to inflict for the grossest moral delinquency, viz., expulsion from the communion of the Church of Scotland, or excommunication.

It was natural for My Lord Glenelg, on being apprised of such Resolutions and Proceedings, unacquainted as His Lordship must necessarily have been with the fundamental principles of Presbyterian Church Government as applicable to the case of Presbyterian Churches established beyond seas, and belied, as these principles

1839.
7 Sept.

Proposals for union of presbytery and synod.

Failure of union due to action of committee of general assembly of Church of Scotland.

Instructions by lord Glenelg for refusal of salaries.
1839.
7 Sept.

Decision by Synod on refusal of salaries.

were, by those who ought to have been better informed, to direct the Governor* of New South Wales, as His Lordship accordingly did, to carry into effect the mandate of the Committee and Commission of the General Assembly by withholding the customary salaries from the Ministers of the Synod till they should dissolve their body and enter the Presbytery.

In these circumstances, a meeting of the Synod having been held in Sydney on the 27th of December last, it was resolved unanimously that all negotiations for an union with the Presbytery should be immediately discontinued, and that I should proceed forthwith to England to submit the whole case to Your Lordship, and to solicit for the members of the Synod that justice which, in entire ignorance of its real nature and merits, had thus been denied them by Her Majesty's truly liberal and enlightened Government; the wounds of the Colonial Presbyterian Church, which would otherwise have been speedily healed, being in the mean time left, through the unwise and unwarrantable interference of the General Assembly's Committee and Commission, to bleed afresh. In these sentiments, My Lord, a large majority of the Presbyterian Inhabitants of New South Wales, of whom a public meeting for those residing in Sydney and its vicinity was held on the Evening of the 27th of December, concurred, as your Lordship will perceive from the accompanying Documents, the Presbyterian Inhabitants of that Colony being firmly resolved, in a matter involving their liberty of conscience and those equal rights and privileges which had been secured to all classes of the Colonists by My Lord Glenelg's General Church Act of 1836, not to be dragged either by the Civil government of the Colony, as had been attempted by the Honorable the Executive Council, or by transmarine ecclesiastical authority.

Principle for establishment of independent ecclesiastical judicatories.

In the name, therefore, and on behalf of the Synod of New South Wales, I protest, My Lord, against the deliverance of the Committee and Commission of the General Assembly, in the case in question, as being directly opposed to the fundamental principles of Presbyterian Church Government. Of that beautiful and truly scriptural system of Ecclesiastical polity, the theory unquestionably is that jurisdiction and representation are co-extensive and coordinate, and that consequently, wherever the latter neither does nor can exist, the former necessarily terminates. Agreeably to this principle, when the first Scots Presbyterian Ministers, who had been trained up in the bosom of regularly organized Presbyterian Churches on the Continent, arrived in Scotland, they constituted themselves forthwith a supreme and independent ecclesiastical judicatory; maintaining union and communion with these Churches, but acknowledging no subjection to their tribunals. In accordance with the same principle, the Presbyterian Ministers of the Church of Scotland, who emigrated from their native country during the seventeenth century to the North of Ireland, also constituted themselves a supreme and independent ecclesiastical judicatory. Your Lordship is doubtless well aware of the fact that, while that Judicatory or the Synod of Ulster is at this moment in strict union and communion with the Church of Scotland, it is altogether independent of the General Assembly or Supreme Tribunal of that Church, just because its members are not represented in that Assembly, but in a separate Judicatory. In like manner when certain Ministers of the Church of Scotland and Synod of Ulster emigrated to the North American Colonies (now the United States), towards

* Note 67.
the commencement of the last century, they constituted themselves at once a supreme and independent ecclesiastical judicatory for all members of the Presbyterian Communion of these Colonies. On the same principle, the Presbyterian Clergy, who had at different times emigrated on my own invitation to the Colony of New South Wales, constituted themselves a Presbytery or Ecclesiastical judiciary in the year 1832, acting, in so doing, on their inherent right to do so as regularly ordained Ministers of the church of Scotland, agreeably to the fundamental principles of Presbyterian Church Government applicable to their case. And, as that Presbytery could not possibly be represented, either directly or indirectly, in the General Assembly of the Church of Scotland, which I beg to remind Your Lordship is merely an assembly of delegates from particular Presbyteries, exercising not an inherent but a delegated authority, it necessarily became, from the moment of its institution, a supreme and independent ecclesiastical judicatory for the Presbyterian communion in the Colonial Territory, bearing the same relation to the Church of Scotland as the Synod of Ulster.

It is true, My Lord, the Presbytery of New South Wales had, through an unheard of amount of clerical delinquency, fallen into a state of extreme degradation; just as the Church of Scotland itself had, under the influence of Archbishop Laud during the tyranny of Charles the First, when the principles of Presbyterian Church Government were basely sacrificed, at the command of the civil power, by the General Assembly at Perth. But, in going in person to the Mother Country for a large supply of reputable Presbyterian Ministers to remedy so enormous an evil, and in constituting along with these Ministers a Synod of Superior ecclesiastical Judicatory, which the extent of the Colony had in the mean time rendered necessary on other grounds, my esteemed brethren and myself merely acted, in reference to the adherents of the Presbytery, on the precedent afforded by the General Assembly at Glasgow in the year 1638, in reference to the adherents of the previous Assembly at Perth; appealing to the Presbyterians of the Colony, as our forefathers had done on that memorable occasion to the whole people of Scotland.

At the same time, I beg to inform Your Lordship that during the past year the Synod were repeatedly informed on the part of the Honorable the Executive Council by His Excellency the present Governor of New South Wales, that the salaries of the Ministers of that body would be paid by the Council, if they would only apply for them as Seceders or Dissenters from the Church of Scotland. But the Ministers of the Synod could not consent to receive their salaries on such a ground, as it was contrary to the fact that they had either seceded or wished to secede from the Church of Scotland. Sincerely attached to the doctrine, discipline and worship of that Church, whose foundations they believed had been laid by apostolic men, and whose walls had been cemented with the blood of a thousand martyrs, they were still earnestly desirous of maintaining all that Union and Communion with the Church of Scotland, which their circumstances in so remote a Colony rendered practicable, the same union and communion, My Lord, that subsists between that Church and the Synod of Ulster; an union and communion, which Your Lordship is well aware is based upon the principle of entire freedom and mutual independence. As that principle, My Lord, lies at the very foundation of the Presbyterian
Objections to jurisdiction without representation.

Protest against claim of committee of general assembly to legislate for colonial clergy.

Protest against appellate jurisdiction claimed by committee of general assembly.

1839.
7 Sept.

III. I protest against the deliverance of the Committee and Commission of the General Assembly, and the right of appellate jurisdiction they have therein assumed over the Colonial Presbyterian Church, as being calculated, in the highest degree, to compromise...
RUSSELL TO GIPPS.

the purity and efficiency of that Church, to destroy its union and harmony for the future, and even to endanger its existence. If this assumed right, My Lord, is recognized and submitted to for one instant, it will be impossible in future to bring to justice any delinquent member of the Colonial Presbyterian Church or to compel him to discharge his duty. The accused party will in such cases only require, in order to set Justice at defiance, to appeal to the General Assembly's Committee, and that body will in all likelihood decide, as it has done, my Lord, in the present instance, on the \textit{ex parte} and forged statement of an individual. For I beg to inform Your Lordship that the Memorial of the Presbytery of New South Wales, addressed to the late Acting Governor, transmitted to My Lord Glenelg, and forwarded to the General Assembly's Committee, was ascertained, in the month of January last, about ten days after the meetings of the Synod and the Presbyterian Inhabitants of Sydney, at which the accompanying documents were adopted, to have been the exclusive and unauthorized production of the Revd. John McGarvie, having never been heard of by the reputable Members of the Presbytery till the tidings of the proceedings of the Committee and Commission of the General Assembly of the Church of Scotland, to which it had given rise, had arrived in the Colony. Mr. McGarvie was publicly accused of the fact at a meeting of the Presbytery, a few days before I left the Colony, by the Revd. William Hamilton, of Goulburn, one of the two ministers, who unfortunately neglected the advice I gave them in Scotland, and entered the Presbytery previous to my return to the Colony in 1837, before they were aware of the character and principles of their associates. Yes, My Lord, however inconceivable it may be, it is nevertheless the fact that not merely the General Assembly's Committee and Commission, but the Representative of Her Majesty in New South Wales, and Your Lordship's predecessor My Lord Glenelg, were made the dupes of the artifice and fraud of an unprincipled individual. But I am sorry to add, My Lord, that the Presbytery of New South Wales has exhibited little else than a series of exhibitions of similar chicanery to the utter disgrace of religion for the last three years.

About one half only of the Presbyterians of New South Wales consist of persons who were actually members of the Church of Scotland before leaving their native land; the rest being Scots Presbyterian dissenters and Presbyterians from the North of Ireland. I am happy to inform Your Lordship, however, that all these classes of Presbyterians will most willingly unite in the Communion of a Colonial Presbyterian Church, in Union and Communion with the Church of Scotland, provided only that the General Assembly of that Church has no appellate jurisdiction, no legislative or judicial authority within the Colonial Territory; and provided the same relations subsist between the Colonial Presbyterian Church and the Church of Scotland, as between that Church and the Synod of Ulster. But, if the right assumed by the Committee and Commission of the General Assembly is in any way recognized by Your Lordship, the Presbyterians of New South Wales will infallibly be broken up into separate and conflicting communions, and their moral influence on the Colony, which it is decidedly the interest of Her Majesty's Government to strengthen, will be proportionably weakened.
To provide for the spiritual destitution of its own Members in that vast and thinly peopled but rapidly extending and flourishing Colony, it is absolutely necessary, My Lord, that the Colonial Presbyterian Church should have its own internal Government entirely in its own hands, and be subject to no ecclesiastical dictation from beyond seas. Possessing, through the liberality of Her Majesty's beneficient Government, the means of planting Churches wherever they are required in the Colonial Territory, the Colonial Presbyterian Church, if left to itself, be both able and willing to make vigorous and extensive efforts for the moral advancement of the Colony, and the choicest of the Colonial Youth, who, I am most happy to inform Your Lordship, are a highly promising race, will immediately offer themselves as candidates for the ministry in its communion. But, if placed under the guidance and dictation of an irresponsible Committee in Scotland, its energies will at once be paralysed, and it will in all likelihood become, as it has done in some measure already through the labours of the General Assembly's Committee, a mere receptacle for the lame and the halt and the blind of the Church of Scotland. The very reform, which has recently taken place in that Church, is a source of calamity, My Lord, to the Presbyterians of New South Wales; for, as the Scottish people have at length obtained a veto on the appointment of their ministers, young men of piety and talent are now in great request at home, and have little inducement to emigrate to the Colonies, where men of the first character, both as to piety and talent, are so imperatively required. Your Lordship has only to glance at the subjoined List of certain of the Ministers already recommended by the General Assembly's Committee for New South Wales to be convinced that apprehensions of this kind, and they are now general in that Colony, are not unfounded.

Nay, as a proof, My Lord, of the danger of having a Presbyterian Church in the Colonies dependent on Committees or ecclesiastical bodies of any kind at home, I beg to apprise Your Lordship of the following fact:—Before the war of American independence, the American Presbyterian Church, which had itself emanated from the Church of Scotland and the Synod of Ulster, and in which they are now upwards of two thousand ministers, had a vigorous branch in the Island of Jamaica, under the superintendence of the Synod of Virginia and New York. But when, in consequence of that war, the West Indian branch of the American Presbyterian Church was necessarily transferred to the superintendence of the Church of Scotland, it immediately languished and speedily became extinct, a condition, My Lord, in which it continued for upwards of forty years thereafter, although perhaps not fewer than three fourths of the white Inhabitants of Jamaica consisted, during the whole period, of Scotsmen and Presbyterians.

IV. Finally, My Lord, I protest against the deliverance of the Committee and Commission of the General Assembly of the Church of Scotland, as implying not merely a gross violation of the fundamental principles of Presbyterian Church Government, but an act of monstrous and intolerable injustice towards a whole body of unoffending and conscientious ministers of that Church. Agreeably to the equitable and scriptural principles that distinguish the Presbyterian System throughout, no Presbyterian Church Court, whether Presbytery, Synod or General Assembly, can either directly or indirectly do any thing to affect the character or standing of
any Minister, Licentiate, or lay Member of that Church, unless a specific charge is preferred against him, unless he is furnished with a copy of that Church, and unless he is cited to appear before a competent Court and there subjected to a fair and open trial, and finally pronounced guilty by a majority of his brethren. And even, My Lord, after all this apparatus of justice has been duly complied with, the highest punishment, which a Presbyterian Church Court can award for the grossest moral delinquency, is expulsion from the communion of the Church or excommunication. But, in the instance in question, a mere Committee, a body unknown to the Constitution of the Church of Scotland, has not hesitated, on the mere ex parte and, as it has since proved, fabricated and false statement of an individual, without even sending the accused a copy of that statement and without affording them even the semblance of a trial, to pass Resolutions amounting virtually to a sentence of excommunication against a whole body of Ministers. My Lord, as a Minister of the Church of Scotland, for whose attachment to which my own forefathers suffered exile in Holland during the tyranny of the Stuarts, and in the service of which I had not only risked my own life again and again, on an element in which my own father and grandfather had both perished, but given to the winds a comparatively large fortune of my own, while the General Assembly and its Committees were regarding the Presbyterians of all the Colonies of all the Empire with heartless neglect, I desire exceedingly to know through Your Lordship, as the successor of My Lord Glenelg (who was pleased to act upon the unheard of decision, in the face of His Lordship's own Act of 1836, which all classes of the Colonists of New South Wales regard as a precious boon), by what law or authority any body of ministers in Scotland have either directly or indirectly dared to pronounce me and my brethren of the Synod of that Colony no longer members of the Church of Scotland; and, till such law or authority is produced, I shall feel myself compelled to regard the deliverance of the General Assembly's Committee and Commission with all the deference and respect it deserves. Having thus, My Lord, discharged to the best of my humble ability the duty with which I have the honor to be entrusted by the Synod and a large majority of the Presbyterian Inhabitants of New South Wales, I now beg leave most respectfully to suggest to Your Lordship what appears to me for union in to be indispensably requisite, and what I am happy to add Your church-Lordship can most easily accomplish, in order to heal the wounds of the Presbyterian Church in New South Wales, and not only to restore that Church to a state of unity and peace, but to render it most powerfully efficient for the moral renovation of that most interesting and important portion of Her Majesty's dominions.

I. To recommend to Her Majesty to disallow the Presbyterian Church Temporalities Act* of 1837; as the period of two years from its enactment, within which the Colonial Charter permits such disallowance, has not yet expired. In the name and on behalf of my numerous constituents, both clerical and laic, I beg most respectfully to solicit this preliminary measure on the following grounds, viz.:

1st. Because the Act of 1837 was altogether unnecessary, as a supplementary enactment to the General Church Act of 1836; the Roman Catholics of the Colony, who were placed on the same footing as all other denominations by that Act, and who are never

* Note 62.
neglectful of their civil rights, having applied for no such supplementary enactment.

2nd. Because that Act of 1837 was directly contrary to the principles of the General Church Act, as well as to the uniform practice of Her Majesty's Government in regard to the Presbyterians of Ireland.

3. Because the said Act was passed at the instance of a few disreputable individuals at whose instance it was unworthy of any Government to have passed an Act of such serious moment, especially when it was well known in the Colony that there were upwards of four times the number of all the Presbyterian Ministers then in the Territory actually on their way to the Colony, under the sanction of the Right Honorable the Secretary of State; these Ministers being thereby legislated for in their absence, and behind their backs, by the very individuals whom it would otherwise have been their first duty to have placed upon their trial.

4. Because the Act in question is the principal if not the only obstacle that stands in the way of the union of the Presbyterian Clergy of the Colony into one body.

II. To direct the Governor and Executive Council of the Colony to authorize the payment of the salaries of the Ministers of the Synod, on the certificate of their Moderator, agreeably to the provisions of the General Church Act of 1836.

III. To direct the Governor, within one month after my return to the Colony, to take the requisite steps for ascertaining which of the two ministers, in the districts of Parramatta and Maitland respectively, has the largest number of free adult Presbyterian adherents, both male and female, residing within seven miles of those localities; and to recognize the only ministers of these districts respectively the Ministers having a clear majority of the Presbyterian population in each. In these districts, there are at present Ministers supported both by the Synod and Presbytery.

IV. To direct the Governor, within three months after my return to the Colony, to summon a General Synod, to consist of every ordained Presbyterian Minister then residing within the territory as the pastor of a congregation, and of one elder for every such congregation, to meet in Sydney on a certain fixed day, not less than three months after a notice to that effect shall have been inserted in the Government Gazette; 1st. To frame a general system of Internal Government for the Presbyterian Church in New South Wales, agreeably to the standards of the Church of Scotland; and 2nd. To prepare a code of discipline for the members of that church suited to the civil establishment and peculiar circumstances of the Colony.

By the Westminster Confession of faith, to which every Presbyterian Minister in the Colony professes to adhere, the right of the civil authority to call such synods in cases of emergency is explicitly recognized; and I am happy to be able to inform Your Lordship that all the Members of the Synod of New South Wales, as well as all the reputable members of the Presbytery, are already virtually pledged to concur in such a course. In the event of the assembling of such a Synod, I beg to submit to Your Lordship whether, for the honor of Her Majesty's Government as well as for the future protection of Her Majesty's loyal and unoffending subjects in New South Wales, it should not be directed to enquire "whether the Revd. John McGarvie had been duly authorized by
Russell to Gipps.

The Presbytery of New South Wales, agreeably to the law and practice of the Church of Scotland in similar cases, to write the letter or memorial which that clergyman addressed to the late acting Governor, which Colonel Snodgrass transmitted to My Lord Glenelg, and which was afterwards forwarded by His Lordship to the General Assembly's Committee; or whether the said letter or memorial was an unauthorized or scandalous fabrication; and to report to Your Lordship the result of that inquiry."

I beg leave to subjoin a List of the documents I have the honour to present herewith to Your Lordship, as illustrative of the nature of this case as well as of the sentiments of a large majority of the Presbyterian inhabitants of New South Wales.

I have, &c,

John Dunmore Lang.

List of Documents herewith transmitted.

No. 1. Extract Minute, containing Resolutions passed at a Meeting of the Synod of New South Wales, held in the Scots Church, Sydney, 27th December, 1838.

2. Minute of the Proceedings of a Public Meeting of the Presbyterians of Sydney and its vicinity, held in the Scots Church, Sydney, on the Evening of Thursday, 27th December, 1838.

No. 3. Memorial to the Right Honorable Lord Glenelg, Her Majesty's principal Secretary of State for the Colonies, adopted at the said meeting and signed by (1,265) Twelve hundred and sixty five of the Presbyterian inhabitants, chiefly heads of families of Sydney and its vicinity.

No. 4. Letter addressed to myself by the Chairman of the said Meeting, the Treasurer of the Presbyterian Committee formed in pursuance of the Resolutions thereof, and one of the original Trustees of the Scots church; inclosing a Draft for £420 4s., sterling, contributed by the Presbyterians of the Colony to defray the expenses of my voyage to England to submit this case to the Right Honorable the Secretary of State.

No. 5. Memorial to My Lord Glenelg from the Synod of New South Wales, adopted on the occasion of the refusal of the salaries for the Ministers of the Synod, and exhibiting a statement of the reasons for the formation of that body, of date 5 July, 1838.

No. 6. Address presented to me by Presbyterians under the pastoral superintendence of the Synod, chiefly residing in Sydney, on the occasion of the refusal of the salaries; signed by (659) six hundred and fifty nine persons, chiefly heads of families, of date, Sydney 14 June, 1838.

No. 7. Address presented to me on the same occasion by the Congregation of Presbyterians from the North of Ireland forming in Sydney under the pastoral Charge of the Revd. Thomas Dugall, of date Sydney, 1st July, 1838: signed by (251) two hundred and fifty one persons, chiefly heads of families.

No. 8. Address to the Revd. the Synod of New South Wales on the same occasion, from the Presbyterians at Maitland under the pastoral charge of the Revd. Robert Blain, of date Maitland, 12 June, 1838; signed by (293) Two hundred and ninety three persons, chiefly heads of families.

No. 9. Address on the same occasion to the Moderator of the Synod of New South Wales from the Presbyterians of Parramatta and Penrroit Hills, of date Parramatta, 15 June, 1838; signed by (162) one hundred and sixty two persons, chiefly heads of families.

No. 10. Address on the same occasion to myself as Moderator of the Synod of New South Wales from the Presbyterians of Windsor and Richmond, of date Windsor, 15 June, 1838; signed by (65) sixty five heads of families.

No. 11. Address on the same occasion to the Moderator of the Synod of New South Wales, from the Presbyterians of Liverpool and Campbelltown, of date 1st July, 1838; signed by (95) ninety five persons, chiefly heads of families.

No. 12. Requisition addressed to the Synod of New South Wales by a Provisional Committee of Presbyterians residing at Berima, requesting that body to procure them a minister, of date Berima, 16 June, 1838, signed by eleven members.

No. 13. Similar Requisition from George Harper, Esq., and two other proprietors of land in the district of Stonequarry, of date Abbotsford, Stone-quarry, 28th June, 1838.
1839.
7 Sept.

List of documents transmitted.

No. 14. Similar Requisition from the Gaelic speaking inhabitants of the district of Patterson's River, of date, Dunmore, Hunter's River, 26th June, 1838; signed by
(90) highlanders and seventeen Scotch lowlanders.

No. 15. Similar Requisition from a Provisional Committee of the Presbyterian Inhabitants of Penrith, 31 August, 1838; signed by ten Members.

No. 16. Letter to myself, enclosing the preceding Requisition, from Thomas Black, Esq., one of the Requisitionists.

N.B.—Three other requisitions of a similar kind have been addressed to the Synod from other parts of the Interior, which it was deemed unnecessary to forward to England.

J.D.L.

[Enclosure No. 2.]

REVD. J. D. LANG TO UNDER SECRETARY STEPHEN.

2 Cecil Street. Strand. 18th June, 1839.

THE Revd. Dr. Lang from New South Wales presents his respectful compliments to Mr. Stephen, and begs to enclose the "List of certain Ministers," etc., referred to in his Letter to the Right Honorable the Marquis of Normanby, of the 14th instant, which he had omitted to append to that Letter.

As His Lordship will perceive that the case detailed in that letter and the accompanying documents is not now the case of a mere difference of opinion between different bodies of Presbyterian Ministers in the Australian Colonies, but one involving the Question whether the General Assembly of the Church of Scotland and its Committee can, consistently with the fundamental principles of the Presbyterian system, have any jurisdiction at all over our Presbyterian Churches in these Colonies or beyond Seas generally, Dr. Lang His Lordship will also perceive that it does not admit of a reference to the General Assembly or its committee, these bodies being merely a party in the case and not a competent Judge.

Dr. Lang begs also to inform Mr. Stephen that he left Sydney on the 20th of January last, by the first vessel after the Meetings at which the principal Documents accompanying his letter to Lord Normanby were adopted, in the expectation of reaching England previous to the recent meeting of the General Assembly, which he was commissioned by His Brethren to apprise of their unabated attachment to the Church of Scotland; but, in consequence of having touched unexpectedly at New Zealand and Pernambuco, the annual Meeting of the Assembly had taken place previous to his arrival.

As the annual Meeting however of the Synod of Ulster takes place about the 27th of this month, and as that Body is necessarily a competent, unprejudiced and impartial arbiter in regard to the ecclesiastical Questions involved in the case, Dr. Lang would feel extremely obliged to Mr. Stephen if he would do him the favour to bring the political Questions it involves in regard to the disallowance of the Act of 1836, the recognition of the Synod by the payment of the Salaries of its Ministers, etc., under the notice of Lord Normanby as speedily as possible; as, in the event of His Lordship's favourable answer on these points, he would immediately proceed to Belfast to refer the ecclesiastical questions to that Synod, whose opinion in favor of the Colonial Presbyterian Churches, which he is confident he would at once obtain, would in all likelihood induce the General Assembly's Committee and Commission to renounce the unconstitutional claim to ecclesiastical
jurisdiction over these Churches which they have recently preferred, and thus put an end at once and for the future to all uncertainty on the point, in which event the peace and harmony of the Colonial Churches would be immediately secured.

[Sub-enclosure.]

List of certain of the Ministers recommended by the General Assembly’s Committee for appointments in New South Wales, during the years 1837 and 1838.

1st. Revd. James Allan.
This Minister, having been the first recommended to Her Majesty’s Government by the Assembly’s Committee, was the first who arrived in the Colony under the new Ecclesiastical System; and the principal station then vacant, the town of Paramatta, was consequently assigned him.

The extreme inattention, however, to the spiritual welfare of the Colonists with which the selection had been made, was unfortunately but too speedily apparent. At the time of his appointment, Mr. Allan had been twenty-two years a parish Schoolmaster in Scotland, and consequently an unsuccessful Candidate for every Church or Chapel that had been vacant in his neighbourhood during that long period. He was a person of a choleric and hypochondriac disposition, of rude and boisterous manners, and had been living for a long time on the worst of terms with his parish minister. I have even been credibly informed that it was rather the desire of the latter to get rid of him on any terms than either the knowledge or belief of his fitness that led to his appointment.

His extreme indolence, his inattention to the duties of his Office, his open and avowed worldly mindedness, and his openly associating with disreputable persons, soon entirely alienated from him the affections and respect of his people; insomuch that, in the second town of the Colony, his congregation was speedily reduced to six persons, including his Landlord and two Children.

In the month of January, 1838, a public meeting of the Presbyterian inhabitants of Maitland, at which the police Magistrate of the district (Patrick Grant, Esq.) presided, passed a vote of censure upon Mr. Allan for the entire want of moral feeling he had exhibited in spontaneously taking up his lodging in the house of the Revd. John Garven, the former Presbyterian Minister of that district when sent to preach his church vacant, after he had been expelled for drunkenness.

This Minister, who in other respects has proved extremely inefficient, has been prosecuted for a breach of promise of Marriage some time before his appointment to New South Wales; and the Damages and Costs of the Action, which Mr. Anderson had to pay, had amounted to upwards of £300. As the whole case has been published in the Scotch Newspapers, it could not be unknown to various Members of the Assembly’s Committee; and the knowledge of it in New South Wales tended materially, especially in conjunction with Mr. Allan’s case, to shake the confidence of the Presbyterians of the Colony in that Body.

This Minister had been settled for eight years in the North of England, a station from which Ministers of the Church of Scotland regularly make their escape whenever they find an opportunity of returning to Scotland. But Mr. Macfie, having had no such opportunity, was appointed at his own desire to New South Wales. In the first station to which he proceeded, that of Windsor, he was rejected by the people, partly because he had joined the Presbytery, but chiefly because he was an unacceptable preacher. At Penrith, where the Presbyterian Inhabitants have since applied for a minister from the Synod of Ulster, he resided six months, but could find no adherents from the same cause; and he was eventually obliged to accept of a situation as private tutor in a family at Bateman’s Bay, to form a congregation in that neighbourhood as he best could. But so entirely different were Mr. Macfie’s views and pursuits from those of a Minister of the Gospel, professing to have gone forth on a Missionary enterprise, that he had only been three months in the Colony when he attended a public Cattle Sale in Sydney, and purchased a flock of sheep to send to the interior, as a Colonial Grazier.

This Minister, having been rejected by the Presbyterians of Liverpool and Campbelltown because he had joined the Presbytery, went subsequently at his own desire, and with letters of introduction with which I furnished him notwithstanding his refusal to join the Synod, to Williams River where he met with a cordial reception and had an extensive field of usefulness.
Finding, however, that Maitland, where an acceptable Minister was already settled by the Synod, was a better situation and obtaining the signatures of a small number of the Presbyterian Inhabitants of that district, he was appointed Minister by the Presbytery, thereby sowing dissension in one district, and leaving another that of Williams River entirely destitute of a Minister. But no sooner was Mr. Gregor settled in this manner at Maitland, than neglecting the spiritual interests of the widely scattered Presbyterian Population of the district, and regarding his clerical appointment as of secondary moment, he opened a public boarding school at Maitland, an occupation to which no clergyman who desires to do his duty can possibly give the requisite attention in the interior of New South Wales.


As this minister, who arrived in the Colony towards the close of the year 1838, speaks the Gaelic language, he proceeded shortly after his arrival to that part of the territory in which the only Gaelic speaking congregation in the Colony, out of Sydney, is to be found, the district of Patterson's River. But so unfavourable an opinion did the Highlanders of that district form both of his piety and talents that they refused to receive him as their minister, and petitioned the Synod to find them one; the General Church Act of the Colony rendering the settlement of a minister dependent in every case on the concurrence of the people.

[Enclosure No. 3.]

RIGHT HON. H. LABOUCHERE TO REVD. J. D. LANG.

Sir,

Downing Street, 28th June, 1839.

I am directed by the Marquis of Normanby to acquaint you that he has had under his consideration your Letter of the 14th Instant, together with the Note which you addressed to Mr. Stephen on the 18th Inst., on the state of the Presbytery of New South Wales.

Without entering on the Question, whether the General Assembly of the Church of Scotland or the Committee on Colonial Churches is a competent Judge of the Questions into which you enter, and without at present enquiring whether Her Majesty's Government are themselves competent to the decision of that question, Lord Normanby has thought it right to communicate to the Committee the whole of these papers.

His Lordship cannot acknowledge the Synod of Ulster as a Body, to the judgement or advice of which the Queen could with propriety be advised to defer, on an occasion when a right asserted by the General Assembly is denied by one of the Ministers of the Scotch Church.

I am, &c.,

H. LABOUCHERE.

[Enclosure No. 4.]

REVD. J. D. LANG TO MARQUESS OF NORMANBY.

My Lord,

2 Cecil Street, Strand, 18 July, 1839.

Having been informed that the Committee of the General Assembly have forwarded to Your Lordship a communication declaratory of their opinion in the case of the Presbyterian Church in New South Wales, I do myself the honor to request, on behalf of the numerous Presbyterians, both Ministers and people of that Colony, whose Messenger and representative and Messenger I have the honor to be in this matter, that, before Your Lordship decides definitely in the case, Your Lordship will do me the favour to order me a Copy of that Communication.

I have, &c.,

JOHN DUNMORE LANG.
[Enclosure No. 5.]

RIGHT HON. H. LABOUCHERE TO REV. J. D. LANG.

Sir,
Downing Street, 27 July, 1839.

I am directed by the Marquis of Normanby to transmit to you the enclosed copies of the two reports of the Committee of the General Assembly of the Church of Scotland referred to in your Letter of the 18th Instant.

I have, &c.,
H. LABOUCHERE.

[Enclosure No. 6.]

REVD. J. D. LANG TO RIGHT HON. H. LABOUCHERE.

Sir,
2 Cecil Street, Strand, 31st July, 1839.

I have the honour to acknowledge the receipt of your Letter of the 27th Instant, enclosing a copy of the Report of the General Assembly's Committee on the subject of my Letter of the 14th ultimo to the Right Honble. The Marquess of Normanby, in reference to the case of the Presbyterian Church in New South Wales; and I beg to express my grateful acknowledgements for the opportunity they thus afforded me of replying to the observations and objections of that Committee, previous to his Lordship's decision in the case at issue.

I beg therefore to submit that it is with feelings of extreme regret I have observed, throughout the Document referred to, the implied charges, manifestation of an overweening desire, on the part of the Committee, to represent me to my Lord Normanby not merely as guilty of extreme duplicity, but as being a setter forth of unfounded statements, implying wilful and deliberate falsehood. I am equally grieved and ashamed to perceive that the Committee should have deemed it at all necessary, for the establishment of their case, to pursue so unchristian and unmanly a course and to pursue that course moreover on such frivolous grounds. If indeed there were the slightest foundation for the charges which the Committee have thus virtually preferred against me, and to which, I am sorry to add, they recur again and again with manifest satisfaction, I should be utterly unworthy of any reply from his Lordship. I trust therefore, you will permit me, before noticing the main points of the Committee's Report, to advert to the circumstances on which they have grounded the serious charges I refer to.

In regard, therefore, to the charge of duplicity, the Committee insinuate that, after I had formed the deliberate design of establishing a synod in New South Wales during my visit to this country in the year 1837, I not only concealed that design from the Committee, but concurred with two other Presbyterian Ministers in a written pledge to join the existing Presbytery on our arrival in the Colony. That I had any such design, however, at the period in question, I deny. The idea of constituting a Synod in New South Wales never suggested itself to my own mind till the ship "Portland" had reached Bass Straits on her voyage to that Colony; when at length it became absolutely necessary for the Ministers on board to deliberate as to what course it would be proper for them to pursue on their arrival in the Colonial Territory. But, although the formation of a Synod then appeared to a large majority of these Ministers the best and safest course to ensure the purity and efficiency of the Colonial Presbyterian Church, it was only after
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the state of things in the Colony in reference to that Church had been fully ascertained (which it was easy to do in the course of eight days, not four as the Committee assert) and the matter made the subject of Public and Solemn deliberation, that that course was actually adopted; no other course being deemed, under all the circumstances of the case, either safe or advisable. It is quite irrelevant to the question at issue for the Assembly's Committee, who cannot possibly be acquainted with these circumstances, to point out minute particulars that would apparently go to establish a different conclusion, as to the state of things in the Colony at the period in question. The simple facts, with which Her Majesty's Government are at all concerned in the matter, are that in the Month of December last there were twelve regularly educated and ordained Presbyterian Ministers in New South Wales adhering to the Synod and testifying their sincerity in that adherence by submitting patiently to the deprivation of their Government salaries for so doing; that these Ministers had, during the preceding twelve months, applied themselves vigorously and with eminent success to the supplying of the Spiritual Destitution of the Colony, setting up the regular dispensation of the ordinances of Religion in places where the sound of the Sabbath Bell had never before been heard, establishing schools to the number of fourteen in one twelvemonth, and supporting a Mission to the Black natives of New Holland more extensive than the whole Church of Scotland's Mission to India; and that in these efforts the said Ministers had experienced, to a degree unexampled in New South Wales, the countenance and support of the Christian People of that Colony; while the Ministers who had rushed headlong into the existing Presbytery in all its acknowledged inefficiency, and in all its pollution, did so, by their own confession, "that they might eat a piece of bread." In such circumstances, I apprehend it is not so much with the question de jure as with the question de facto that the Government have to do.

To establish a Mission to the Aborigines of New South Wales was one of the objects of my last visit to this Country. I had twice before endeavoured to procure Missionaries from Scotland, but had failed on both occasions. I therefore betook myself the third time to the continent of Europe, and, after a long journey of upwards of twelve hundred miles in the depth of winter in France, Germany and Holland, I succeeded in engaging a corps of not fewer than twenty Missionaries, both Male and Female, in Berlin. These Missionaries I brought over to this Country at my own charges as yet, and found them all a free passage to New South Wales. Three of the number being men of superior education, while the rest were zealous, though humble laymen, intended to act under them as catechists, my Lord Glenelg was graciously pleased to grant the three educated Missionaries the usual allowance to Clergymen for passage and outfit. As it was necessary, beforehand, however, to procure the recommendation of a Public Body in applying for that allowance, I requested both the Scottish and the Glasgow Missionary Societies to take the proposed Mission to the Aborigines of New South Wales under their nominal protection for that special purpose, guaranteeing these Societies against all future responsibility for its support; but the Glasgow Society refusing to grant such a recommendation, because they were voluntaries and could not sanction the principle of receiving anything from the Government for the promotion of a Religious object, and the Scottish Society refusing...
for some other reason equally frivolous, it occurred to me to ask certain of my newly appointed brethren to recommend the Mission to Her Majesty's Government, and to solicit the allowance for the three educated Missionaries, on behalf of the Presbyterian Church in New South Wales; and this, being accordingly done, was done successfully. While therefore the document referred to proves incontrovertibly that at the time, when it was drawn up, I could have had no such insidious and concealed design of establishing a Synod, as I am most undeservedly charged with by the Assembly's Committee, it is most unwarrantable to construe the document into a pledge to join the existing Presbytery in opposition to the Synod now established, which, indeed, is as much a Presbytery as that Presbytery itself, a Synod being merely an extended Presbytery; the only pledge of any kind, which that Document contained, being a pledge to support the German Mission to the Aborigines as Missionaries of the Presbyterian Church in New South Wales, a pledge, I am sorry to say, which neither of the other Ministers, who signed it with myself, has yet redeemed. In submitting the Document in question, however, to My Lord Normanby for my special condemnation in the case at issue, the General Assembly's Committee ought in prudence to have entreated his Lordship not to contrast my own humble efforts in the cause of Missions in the case in question, with the recent pitiful and paltry efforts of the General Assembly in the same Christian Cause.

The Committee have been equally imprudent, as far as they are themselves concerned, in charging me with studied concealment of important facts, which I ought to have divulged, as the recent troubles of the Presbyterian Church in New South Wales are traceable in no small degree to their own peccadilloes in that particular. In the years 1834, 1835, and 1836, I was induced, at the instance of the Christian People of the Presbyterian Communion in New South Wales and Van Diemen's Land, to take a very prominent part in endeavouring to rid the Presbyterian Church in these Colonies of Disreputable and drunken Ministers. In two cases I was successful, the delinquent Ministers being induced, solely through my own direct personal influence with themselves, to resign their charges and leave the Colonies, both of them being now in London. As I was unsuccessful, however, in the other two, I attempted, simply because I was left alone, and had no other Minister to support me, I returned to England to procure a large supply of reputable Ministers for both Colonies. With a view to neutralize my efforts, however, for this purpose, the Revd. John McGarvie of Sydney, who had successfully endeavoured to screen the two delinquents (one of whom is since dead from intemperance and the other deposed) from Justice, wrote to the Revd. Principal Macfarlane, Convener of the Assembly's Committee, for the information of that Committee, and to the Revd. Dr. Edgar of Belfast, for the information of the Committee of the Synod of Ulster, cautioning Presbyterian Ministers against emigrating to New South Wales on my representations, and stating that "every such Minister, who had previously gone to that Colony, had been duped, deluded and deceived by me." On presenting myself to the Committee of the Synod of Ulster, who, I am happy to say, consist of honourable and christian men, Mr. McGarvie's letter was immediately placed in my hands, and I was required to explain the circumstances to which it referred. I did so accordingly, and I am happy to add that
confident was immediately restored. But I am sorry to state that
I had no such act of common justice done me in my own country by
the General Assembly's Committee, on whom indeed I had much
higher claims than on the Committee in Ulster. On the contrary,
the charges, that had been clandestinely transmitted against me
from New South Wales, were privately circulated, not only to my
own personal injury, but to that of the cause in which I was en-
gaged, among the members of that Committee, and were permitted
to my own certain knowledge to deter certain young men of superior
merit from Emigrating to the Australian Colonies on my representa-
tions, and to exert a most unfavourable influence on those who actu-
ally emigrated to these Colonies as Presbyterian Ministers.

I am well aware that a statement, implying procedure so utterly
unworthy of christian men and christian Ministers (especially in
the circumstances in which I stood towards the Assembly's Com-
mittee, as the Individual at whose request they were actually
sending Ministers to New South Wales), might be regarded as a
specimen of that "exaggeration" and "falsehood," with which
the Assembly's Committee have done me the honour to charge me,
if I were unable to advance anything in proof of it. I beg to add,
however, in confirmation of my statement, that at a Public Meeting
of the Assembly's Committee, which I attended in the Presbytery
House at Edinburgh in the year 1837 to press the case of the
Australian Colonies on the attention of the Members, I accidentally
overheard the Revd. Dr. Brunton, one of the Ministers of Edin-
burgh, discussing with Alexander Dunlop, Esqe., Advocate, both
Members of the Committee, the propriety of informing me of the
charges that had been transmitted against me from New South
Wales. As I was not favoured however with such information, and
as I have reminded Mr. Dunlop of the circumstance within the last
few days, although I could not properly take notice of it in any
way at the moment of its occurrence, the fact is as unquestionable
as it is difficult to account for, especially when the Committee
wrongfully accuse me to My Lord Normanby of concealing from
them important facts, of which I ought to have informed them.

It was in these circumstances, knowing that the Assembly's Com-
mittee had suffered me to be traduced as a Minister of the Gospel,
while they denied me every opportunity of explanation, nay, know-
ing that I had thus been traduced, even to the young men who
were to be my fellow labourers in New South Wales, it was in
these circumstances that I entreated Messrs. Hamilton and Tait
not to join the Presbytery, but to proceed to certain eligible stations
in the interior on their arrival in the Colony, and to take no steps
whatever in committing themselves to anything, till the rest of
their brethren should arrive. I had formed no plan of procedure
at the time for the future; but, knowing well that the Presbytery
was as corrupt as it could possibly be, and that it was dangerous
for a young man to have anything to do with it, I was only desir-
ous that whatever step should be taken to remedy a state of things
so unprecedented in the Presbyterian Church, should, if possible,
have the whole moral weight and influence of the whole Body of
Ministers, who were then proceeding to the Colony. But Messrs.
Hamilton and Tait had unfortunately been taught by the General
Assembly's Committee to regard me with distrust and suspicion,
and they consequently disregarded my advice.
As to the statement in the Synod's declaration, quoted by the Committee, that the Ministers, constituting the Synod, had been "sent forth by the Churches to which they respectively belonged, under the sanction of Her Majesty's Government, to assist in reconstructing and reorganizing the Presbyterian Church in New South Wales," a statement which the Committee characterize as "in direct opposition to the truth," I beg to state that in describing to the Committees of the Church of Scotland and Synod of Ulster, as well as to the Christian people of this country generally, the moral desolations of that Colony and the dilapidated and degraded condition of the Colonial Presbyterian Church, when I left the Colony for England in the year 1836, I was in the habit of using the beautiful and figurative language of the Holy Scriptures, "the walls of Jerusalem are broken down and the gates thereof burnt with fire"; and, as the reformation and extension of the Christian Church are almost every where described in the Scripture under the figure of the reconstruction of a Building which has fallen into ruins, it was obviously quite natural for me in the declaration in question, which I drew up, to express myself (in relation to the general prospect of the reformation and extension of the Colonial Presbyterian Church, and the duties of its newly arrived Ministers) in conformity to this language and these ideas. The idea of representing the statement in question, as an assertion that the Assembly's Committee had authorized my brethren and myself to constitute a Synod in New South Wales, is entirely a gratuitous and unfounded idea of the Committee's own; for, as I have uniformly maintained that Presbyterian Ministers beyond seas have an inherent right, in virtue of their office, to constitute themselves Presbyteries, Synods or General Assemblies as they think fit, and that it would consequently be preposterous for the general Assembly to pretend to confer such a right, it is obvious that no such idea could possibly have been entertained by me.

In regard to the case of the Revd. John Cleland, the Presbyterian Minister, who was tried on a charge of drunkenness by the Presbytery of New South Wales, as that unhappy individual has died since I left the Colony in delirium tremens, a disease which is uniformly occasioned by habitual intemperance, and as the verdict of "not proven," which was given in his case, was accompanied with "an admonition not to frequent public-houses," it would obviously be of no service to inquire whether his character was at all affected by that verdict; as he had now gone to his place, where the advocacy of his case by the Assembly Committee can no longer avail him.

In regard, however, to the case of the Revd. Malcolm Colquhoun, who went out to the Colony as a schoolmaster, and who was afterwards licensed and ordained by the Synod of New South Wales, but who, as the Committee state, had been refused license in Scotland, a fact which I have no wish to dispute, I have only to observe that Mr. Colquhoun had not only been recommended to my Lord Glenelg as a fit person for the important office of a schoolmaster in that Colony by the Assembly's Committee, but had actually carried out with him a regular Presbyterial Certificate, signed by the Moderator of the Presbytery of Dunoon, one of the Constituent Presbyteries of the Church of Scotland, certifying that he had passed through a certain portion of his trials for license for the Ministry before that Presbytery with acceptance. On that Certificate, the Synod were
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Disavowal by committee of right of jurisdiction over colonial church.

Mandates issued by committee notwithstanding disavowal.

Determination of Presbyterians in colony to secure independence.

HISTORICAL RECORDS OF AUSTRALIA.

fully warranted to proceed with Mr. C.'s trials for license, especially as nothing to his disadvantage was known in the Colony; but, if he should eventually prove unworthy of the Clerical Office, the blame will not be attachable to the Synod of New South Wales, but to the Church of Scotland, whose office-bearers, the Assembly's Committee and the Presbytery of Dunoon, gave him a certificate of character and qualifications, which by their own showing they were conscious he did not deserve.

In regard to the main point of the Committee's Report (for I deemed it unnecessary to lengthen out this Letter by enlarging on merely subordinate points of minor importance) as the Committee solemnly and repeatedly disclaim all right or desire, on the part of the General Assembly, to exercise jurisdiction of any kind over the Presbyterian Church in New South Wales, I conceive that the simple question for decision, which the case now presents, is whether that disclaimer is to have any meaning or not. If it is, then the state of the Presbyterian Church in New South Wales, in regard to the Church of Scotland, is precisely that of the Kingdom of Spain at this moment in regard to the Governments of Great Britain and France; these Governments being bound, in conformity to their own avowed principles, not to interfere in the affairs of that Kingdom with any demonstration of physical force, and it being quite certain moreover that they will both recognize the authority which the Spanish Nation universally recognizes. But the Assembly's Committee are evidently determined that their solemn disavowal of a right of Jurisdiction in the case in question shall have no meaning whatever; for, at the very moment in which they are making that disavowal, they are issuing their mandates to the Members of the Synod as imperiously as ever, and prescribing the course which these Members are to pursue under pain of deprivation. In short, like the Dominicans in the dark ages, they openly disclaim all desire to interfere with the rights and consciences of individuals, and endeavour thereby to throw the whole odium and responsibility of persecuting them on the Civil Power, merely pronouncing an authoritative opinion as to their actual condition in reference to their state of mind, and then delivering them over to the secular arm, the only difference being that the Dominicans consigned their victims to the flames, while the Assembly's Committee would consign theirs, if they could, to famine or starvation.

But the Presbyterians of New South Wales, whether Clergy or Laity, are people of plain common sense and of sufficient decision of character not to be put off with such pitiful distinctions where they cannot possibly perceive any real difference. They are determined to have the important question of jurisdiction set at rest for the future, and to obtain the entire management of their own ecclesiastical affairs without interference or dictation of any kind from beyond seas. Nay, sincerely attached as many of them are to the Church of Scotland, and zealous, as all of them are, for the doctrine, discipline and worship of that Church, I am authorised by my brethren, acting on their behalf in the event of failing to obtain complete satisfaction on these points, to declare their connection with the Church of Scotland at an end, and to solicit salaries for their Ministers as a separate Church on the principles of the General Church Act of 1836; the the authorised expounders of which, I trust, are not the General Assembly's Committee,
although they have volunteered to undertake the office gratuitously.

In short, much of the reasoning of the General Assembly’s Committee proceeds upon the fallacy, so utterly opposed to the principles of that Act, that an imaginary entity, called the Church, can possess rights and privileges and hold possessions independently of the Christian people, who alone constitute the Church under any Communion. And to prove that these sentiments are not confined to the humbler classes of the Presbyterians of New South Wales, as the Committee insinuate, but are entertained by men of the most respectable standing, both as to wealth and character in the Country, nay by the very office bearers of the Churches still in connection with the Presbytery, I beg to refer to the accompanying autograph Letter, addressed to the Revd. James Fullerton, one of the Ministers of the Synod, by Peter Macarthur, Esq., of Bathurst, one of the most respectable proprietors in that flourishing district, and a highly influential elder of the Church of Scotland under the Presbytery of New South Wales.

In regard to my esteemed brethren, the Members of the Synod, I am authorized to inform the Right Honourable the Secretary of State for the Colonies that they will on no account adopt the course, which the Assembly’s Committee have prescribed, Satisfied in their own consciences that the course they adopted in constituting the Synod of New South Wales was a right course, under all the circumstances of the case, one which they were fully warranted to take, and in which they have already been eminently blessed; they will never be guilty of the meanness of passing a vote of censure upon themselves, for a fault of which they are not conscious, by dissolving their body and entering the Presbytery. Nay, as they are convinced that, in prescribing to them the course they are to pursue, the General Assembly and its Committee are endeavouring, notwithstanding their own disclaimer, to exercise an unwarrantable jurisdiction, destructive alike of the peace and efficiency, as well as of the freedom and independence of the Colonial Presbyterian Church, it is a sufficient reason for them not to pursue that course that the General Assembly command them to do so.

I am most willing to admit that the General Assembly have a right, as the Committee observe, to pass whatever laws they may think proper for their own Ministers and licentiates, and even to proceed in certain cases to deprivation and deposition. But, as it is a fundamental principle of Presbyterian Church Government that no minister can either be tried or condemned unheard, while it is also acknowledged now that the Assembly have no ecclesiastical jurisdiction beyond seas, it follows as a necessary consequence that no act of the General Assembly, affecting the character or standing of any Presbyterian Minister beyond seas, can have the slightest force or effect till it has been approved of and confirmed by the Colonial Church Courts, or till such Minister has had a fair and open trial. The Assembly have drawn largely already on the indignation of the Presbyterians of New South Wales in neglecting them for fifty years in succession, in afterwards sending them so many inefficient Ministers, and finally in endeavouring to rule them with a rod of iron; it would be prudent therefore for the Assembly to hesitate before giving them any additional cause of offence in any such future proceedings, as are threatened in reference to their Ministers lest they should be tempted to honour the draft. Men, whose religious principles have already stood the
test of the deprivation of their salaries in a Convict Colony at the extremity of the Globe, are not likely to be alarmed at the menaces of those whom they conscientiously believe to be exercising an unwarrantable and unrighteous domination over a Church, which they neither planted or watered, but to which God, in his infinite goodness, through the beneficence of Her Majesty's Government and my own humble exertions, has given so abundant an encrease.

I beg leave to repeat, however, what I have already stated in my Letter to My Lord Normanby, that neither my brethren nor myself have the slightest wish to renounce the Communion of the Church of Scotland, notwithstanding the exceedingly unwise procedure of the Assembly's Committee, and the entire want of everything like a spirit of conciliation in their Report. From the accompanying copy of extracts of the Minutes of the Presbytery and Synod of New South Wales respectively, as well as from the Letter of Dr. Macarthur already referred to, it will be evident to my Lord Normanby that, in the month of October last, mutual pledges were given and received by these Bodies for effecting an incorporating union on principles mutually agreeable, and that the only obstacle at that time to the accomplishment of so desirable an object was the existence of the Presbyterian Church Act of 1837, which even the Presbytery, in whose favour it was enacted, were desirous should be set aside by another Legislative Enactment suited to the New form which the Colonial Presbyterian Church was thenceforth to take. But for the Act of 1837, which it was deemed necessary to set aside in the first instance, the union of the two Bodies would have been effected in October last; and it was only deferred till that arrangement should be effected, the Governor having pledged himself to do every thing in his power to effect the object. But, when the tidings of the proceedings of the General Assembly's Committee and Commission in August last reached the Colony in the Month of December following, all these negociations were immediately terminated; the Presbyterians of the Colony being determined to resist the establishment of that transmarine Jurisdiction, which, however it is now disclaimed in words, is still attempted to be exercised in reality. It was therefore in entire ignorance of the facts of the case on which they pronounced so authoritatively, as well as with an entire disregard of those courtesies that ought ever to distinguish the intercourse of Christians and Gentlemen, that the Committee allege "If this" (that is the alleged usurpation of jurisdiction) "be the only obstacle to union, it is one having no existence in reality, but only in his" (Dr. Lang's) "own invention, for which he must have been aware that there was not the slightest foundation in fact." There was surely some foundation for the view which was universally taken in the Colony of the proceedings in question, when a mere authoritative opinion of the Assembly's Committee could consign twelve unoffending Ministers to the deprivation of their Salaries; neither could it be supposed for a moment that the Members of the Synod would ever consent to a union to be effected under so high a pressure.

In these circumstances, as there is not the slightest prospect of a termination of the present unhappy schism in the Colonial Presbyterian Church on the terms prescribed by the Assembly's Committee, while the only obstacle to an immediate and incorporating union of the Synod and Presbytery of New South Wales is the existence of
the Presbyterian Church Act of 1837, an Act which even the Presbyterian have declared to be no longer suited to the circumstances of the Colonial Presbyterian Church. I trust my Lord Normanby will be graciously pleased to recommend to Her Majesty to disallow that Act, for the various reasons I have enumerated both in this and in my former Letter, and to order the Ministers of the Synod to be paid their Salaries from the 3rd of December last, under the General Church Act of 1836. Such a measure will save the Colonial Government much unnecessary trouble in the way of legislation to repeal the Act of 1837; and while it will remove the only obstacle that now exists in the Colony to the union of the two divisions of the Presbyterian Church, it will prevent evil disposed individuals from making a handle of the Committee's Report to protract disunion. The other measures, I have taken the liberty to recommend with a view to the Settlement of the cases of Maitland and Parramatta and the Assembling of a General Synod of the Presbyterian Ministers of the Colony for the arrangement of their union into one body, would doubtless facilitate the accomplishment of the object which it is so desirable to realize; but they are by no means of indispensable necessity, as I am confident that a restoration of peace and unity could be effected without them, although perhaps not so speedily.

Trusting you will do me the favour to excuse the length of this communication, and to permit me to express my grateful sense of the attention I have already experienced.

I have, &c.,

JOHN DUNMORE LANG.

[Sub-enclosure A.]

MR. P. MACARTHUR TO REV'D, JAMES FULLERTON.

Rev'd Sir,

Walmer, Bathurst, 25th December, 1838.

I had the honor of duly receiving your most interesting letter of the 11th Regret at Walmer, and can with truth assure you that the anxiety I feel for the union of our drawals from Presbyterian Church is not exceeded by that of any of its Members. I feel disappointed and grieved, after all that has taken place, and a vote of virtual union of church. mutually passed, that it should be possible for any person or party to draw back. Of this I am well convinced, from the experience of my life now extended over many years, that what an individual or party shall in any ways wilfully frustrate the progress already effected in the good work, shall are long have great cause to regret such conduct. There are in the Presbyterian Individuals with whom it is a happiness and a privilege to be associated in establishing the good Government and efficiency of our Church. Others that nothing but peculiar circumstances could have made of consequence, and whose consequence terminates the day the Union is legalized.

I believe it is, since your letter was written, that the Proceedings of the General Proposals re Assembly's Committee have appeared. I think them provoking and insulting decision of enough, and feel no surprize that Dr. Lang should feel indignant On such an occasion. I shall be sorry, however, if he goes home to fight these old Tory time ser- of general assembly. On such a occasion, and insulting decision of enough, and feel no surprize that Dr. Lang should feel indignant On such an occasion. I shall be sorry, however, if he goes home to fight these old Tory time ser- of general assembly. What appears to me is, without delay, to get the Virtual assembly. Union legalized by the requisite Act of Council, and the Presbyterian Church will then take such steps, as shall in the proper way vindicate the Members of the Synod, in utter disregard of Principal McFarlane or other such persons. I believe it is not for our advantage as a Church or Community to have close connexion with the General Assembly, or its incurable Toryisms, as a whole, unsuited to a community called into existence in a civilized form and unfettered with feudalism. To approach a Secretary of State as Suppliants through Pl. McFarlane and the Members of his Committee, instead of our claiming our Just Rights at the Hands of the Local Government, is altogether in the wrong way, and what would estrange many Presbyterians, myself among the number, from a Community wilfully degrading itself. We are quite strong enough (if united) to secure us justice at the hands of the Local Government, be their private feelings for or against us.

The advantages evidently to be obtained to this rising Country by the Presbyterian Church being united, and cleared of the Pestilent spot of Patronage which

* Note 62.
1839. 7 Sept.

has all but destroyed its usefulness for the People of Scotland, are great indeed; and, great is its claims as an orthodox Protestant Church to the love and support of all. It is undoubted that its free and almost republican Discipline must to a Country like this be, in a Civil point of view, of a value that would require more time and Leisure and Talent than I possess, to point to all who take an interest in the well being of the human Family for time and for Eternity.

Dr. Busby is the Ruling Elder of this Parish for the current year.

I am, &c.,

P. MACARTHUR.

[Sub-enclosure B.]

Extracts from minutes re proposed union in Presbyterian church.

EXTRACT MINUTE NO. I.

Presbytery of New South Wales, Sydney, 8th October, 1838.

(Copied from "the Colonist" of October 17th, 1838.)

THE Presbytery agree to take up the subject of union with Presbyterian Ministers of this Colony, not connected with the Presbytery of New South Wales, on the ground of the appeal of the Revd. Mr. Hamilton, Mr. Hetherington, and Mr. Tait, taken on the 5th May, 1838, and on the resolutions laid on the table by Dr. McArthur on Saturday last.

It was moved by Mr. Hamilton, seconded by Mr. Smyth, that the following Resolutions be adopted as the decision of this Presbytery in reference to union with Presbyterian Ministers not in connexion with the Presbytery, vizt.:

I. That duty and a regard to the interests of the Community call upon this Presbytery to seek union with the other Presbyterian Ministers in the Colony, and require the Presbytery, in order to the attainment of such Union, to make any concession which can be made consistently with an adherence to the principles and laws derived from the Church of Scotland according to which it is governed, and consistently with its safety as an Established Church.

II. That, for the purpose of effecting such union in a manner which the ministers unconnected with the Presbytery deem consistent with their honour, and in order to provide for the proper government of the Church in the event of union, it is expedient a Synod be formed comprehending the Ministers of the Presbytery, and all other Presbyterian Ministers of the Colony, who are settled over congregations, and bearing the name of "the Synod of Australia in connection with the established Church of Scotland," and expedient that the Presbytery apply to His Excellency the Governor and the Legislative Council to pass, as soon as possible, a Bill by which it shall be made lawful, from the time of the formation of the Synod of Australia aforesaid, for His Excellency the Governor and the Legislative Council to pass, as soon as possible, a Bill by which it shall be made lawful, from the time of the formation of the Synod of Australia aforesaid, for His Excellency with the advice of the Executive Council to cause to be issued from the Colonial Treasury salaries to ministers agreeably to the provisions of the Act 7 William 4, No. 3, upon application of the Moderator of the said Synod of Australia, and to grant lands and money for the erection of churches, according to the provisions of the aforesaid act, and those of the act 8 Willm. 4, No. 7; but, upon application by the Moderator of the Synod of Australia in connection with the Established Church of Scotland, this Bill shall also secure that all the property, now held by Trustees in behalf of the Presbytery of New South Wales, shall be held by these Trustees after the formation of the said Synod in its behalf, but for the good of the particular congregations to which it was granted and now belongs, and for the good of their officiating ministers, so that the Presbytery may expand itself into a Synod established by law, and become united with the other Presbyterian Ministers referred to at one and the same time, and the Act, 8 William 4, No. 7, shall become thereupon a dead letter.

III. That, for the purpose of completing the more minute arrangements requisite to the formation of this projected Synod of Australia, together with its subordinate Presbyteries, and for the purpose of preparing a bond of union to be signed by all the Members of the New Court before they take their seats in it, a Committee of Presbytery, consisting of the Revd. H. D. Smythe and the Revd. W. Hamilton, be appointed, with instructions to hold conference with an equal number of the other body of ministers, and to resolve on arrangements such as they shall judge most prudent, and on the form of a bond of union, and to submit the same to the adoption of the Presbytery, it being understood that a similar submission shall be made by those with whom they confer to the body of ministers they represent.

IV. That the expansion of the Presbytery and Union contemplated shall take place at a meeting, to which all the settled Presbyterian Ministers of the Colony shall be summoned, and which shall be held when the arrangements of the Synod and the bond of Union abovementioned shall have been completed to the mutual satisfaction of the parties, and when the new bill proposed shall have passed into a law.

The motion was unanimously agreed to and the Committee were enjoined to transact the business committed to them with all convenient speed, and report.

James Allan, Moderator.
EXTRACT MINUTE NO. II.

Synod, New South Wales, Scotch Church, Sydney, 12th October, 1838.

The Moderator having laid before the Synod the Copy of a series of Resolutions, which had been transmitted to him by the Moderator of the Presbytery of New South Wales relative to the Union of the two bodies into which the Presbyterian Church in this Colony is at present unhappily divided, and the Revd. Messrs. Dugall in Presbyterian and McIntyre having also reported the result of a conference on the subject which they had had with the Revd. Messrs. Smythe and Hamilton on the part of the Presbytery, and submitted the copy of a bond to be entered into by the Ministers of both bodies previous to their union, it was resolved unanimously,

1. That the Synod, being still earnestly desirous that an incorporating union should be effected forthwith on the part of the Synod and Presbytery respectively, do approve of the said bond of union.

JOHN DUNMORE LANG, D.D., Moderator.

EXTRACT MINUTE NO. III.

Presbytery of New South Wales, 12th October, 1838.

Resolved: that it is impossible for the Presbytery, in accordance with a former unanimous Resolution, to unite at present in a formal manner; but they agree to act on the bond of union: and in the meantime they instruct their Committee to facilitate the subordinate arrangements and report their proceedings at next ordinary meeting; and that the Presbytery print the proceedings on both sides up till this time.

JAMES ALLAN, Moderator.

EXTRACT MINUTE NO. IV.

Synod of New South Wales, 13th October, 1838.

The Moderator having laid before the Synod a letter he had received from the Moderator of the Presbytery of New South Wales, with an Extract Minute of the proceedings of that body relative to a union with the Synod, it was resolved unanimously:

That, although the Resolution of the Presbytery is by no means satisfactory, yet as that resolution, which was carried by the mere casting voice of the Moderator, nevertheless contains a distinct pledge in favor of a Union on the terms already proposed and acceded to; it would be inexpedient for the Synod to take any immediate steps in reference to their former Resolution authorizing Dr. Lang to proceed forthwith to England; especially as they feel assured that a union will shortly be effected, and as no permanent inconvenience is likely to accrue from the separate existence of the two bodies till a modification can be procured in the existing Colonial laws affecting the Presbyterian Church.

JOHN DUNMORE LANG, Moderator.

[Enclosure No. 7.]

H. LABOUCHERE TO REV. J. D. LANG.

Sir,

Having laid before the Marquis of Normanby your Letter referred to committee of the General Assembly of the Church of Scotland on Colonial Churches, I am, &c.

H. LABOUCHERE.

[Enclosure No. 8.]

REV. J. D. LANG TO H. LABOUCHERE.

Sir,

I do myself the honor to request that the Colonial Agent General may be authorised to pay me the half salary allowed to me by Revd. officers connected with the Civil Department of the Colony of New South Wales on leave of absence from that Colony, the last payment in the Colony, of which I beg to annex a Certificate from...

* Footnote on original.—As an amendment on another Resolution still more favourable.
1839. the Honorable the Colonial Treasurer, having been made up to the 18th day of January last, and my leave of absence granted for fifteen months or thereby by His Excellency Sir George Gipps having commenced on the 20th of that month.

I have, &c.,

JOHN DUNMORE LANG.

[Sub-enclosure.]

I HEREBY certify that the Reverend Dr. Lang has received his Salary up to the 15th day of January inclusive and for no later period.

Given under my hand at Sydney, New South Wales, This 19th day of January, 1839.

C. D. RIDDLE.

[Enclosure No. 9.]

REV. J. D. LANG TO COLONEL YORKE, PRIVATE SECRETARY.

Sir, 2 Cecil Street, Strand, 22nd August, 1839.

I beg leave to solicit the honour of a personal interview with The Right Honorable the Marquess of Normanby as early as it may be convenient for His Lordship. As I have no wish however to obtrude myself unnecessarily upon His Lordship or to occupy his precious time, I beg to state the circumstances under which I solicit the honour I have requested that, if His Lordship, on looking into the case in which I am interested, should render it unnecessary by granting what I have already solicited in another way, I may not subject him to the interruption.

In the year 1836, I solicited and obtained leave of absence from His Excellency Sir Richard Bourke, the late Governor of New South Wales, to proceed from that Colony to England for certain additional Presbyterian Ministers on the ground that the Presbyterian Church in that Colony, of which I was the Senior Minister and had been the sole founder at the cost of four voyages round the Globe and the sacrifice of personal property of my own to the amount of upwards of ten thousand Pounds, had through an unprecedented amount of clerical delinquency fallen into a state of entire abeyance and hopeless degradation, two of the only four Ministers, whom I left in the Colony, being under charges of Intemperance for which, although protected at the time by a third of the number, one of them has since been degraded from his ministry, while the other has recently died from his vicious indulgencies.

At the time I left the Colony, the General Church Act of 1836, which placed all religious denominations on the same footing as to Government support, was the law of the land and considering that the avowed object of my voyage to England was to obtain additional ministers under that Act for the Colonial Presbyterian Church in its low and abject condition, I had surely a right to expect that no change would be made in the Colonial Law as affecting the Presbyterian Communion till my return; at all events, I had a right to expect that I should not be punished for my important services in again circumnavigating the Globe and procuring a large supply of additional Ministers of religion for the Colony at great personal risk and expense in being subjected to the pressure of underhand clandestine and iniquitous legislation. But, during my absence or rather when myself and most of the other ministers, who had been appointed for the Colony in England by my Lord Glenelg at my special request, were actually almost within sight of the Australian
land, an Act was passed by the Legislative Council of the Colony on
the 9th of September, 1839, at the instance of the four ministers
referred to, commonly called The Presbyterian Church Act, virtual-
ly setting aside the General Church Act and constituting these
Ministers a close corporation for their own communion and em-
powering them to make regulations for all ministers of that com-
munion, who should thereafter arrive in the Colony.

From the steps which certain of my brethren and myself, amount-
ing altogether in December last to twelve ordained ministers, de-
deemed it necessary to take in these unprecedented circumstances
for the moral welfare and reformation of our communion, a tem-
porary schism has arisen in the Colonial Presbyterian Church, and
from the ill advised and injudicious interference of the Committee
and Commission of the General Assembly of the Church of Scot-
land, when that schism would otherwise have been healed spontane-
ously in the Colony, the breach has unfortunately been widened
and a large majority of the Presbyterians of the Colony have been
brought into collision with these bodies on a variety of ecclesias-
tical questions (and especially on the point of ecclesiastical Juris-
diction, which has been virtually claimed although disavowed by
the General Assembly) for the settlement of which I have again
been sent to England.

I beg to state, however, in regard to the bearings of the case as
one requiring interference on the part of Her Majesty’s Government,
that the original political grievance, of which my brethren have to
complain in the passing of the Supplementary Act in question under
the circumstances I have stated, is altogether distinct from the
mere ecclesiastical questions to which it has given rise; and, till
that grievance is redressed, I am apprehensive, from the result of
repeated references to the Committee and Commission of the
General Assembly, there is little hope that these questions can be
satisfactorily settled. But, as Her Majesty can disallow any Act
of the Colonial Council within two years after it has passed in the
Colony, and as that period in regard to the act referred to will have
elapsed on the 9th of September next or in seventeen days hence,
I have already solicited My Lord Normanby in my public letters
on the subject to recommend to Her Majesty the disallowance of
that act, and pledged myself that, in the event of His Lordship’s
acceding to this request, the ecclesiastical questions in the case will
be immediately and satisfactorily settled, and peace and harmony
restored to the Colonial Presbyterian Church.

A Committee of the General Assembly has doubtless recommended
that the act in question shall not be disallowed; but, in my letter
to Mr. Labouchere of the 31st July, I have shewn that they had
done so in entire ignorance of the state of things in the Colony, and
that in the month of October last the whole of the Presbyterian
Ministers of the Territory without exception had joined in repre-
senting that act as no longer suited to the circumstances of the
Colonial Presbyterian Church and as requiring for that reason to
be repealed. The Commission of the General Assembly have since
taken the matter out of the hands of that Committee and appointed
another and special committee, consisting of ten of the most
eminent ministers and laymembers of the Church of Scotland, to
confer with me as the Representative of the Colonial Presbyterians
on the ecclesiastical questions of the case; but, as my instructions
from my Colonial constituents are precise and definite, and such as
may possibly lead to a permanent schism in the Colonial Presbyterian Church, if the ecclesiastical difficulties in the way are not removed by the previous redress of the political grievance. I am most anxious before proceeding to Scotland to meet that Committee to have the matter brought before my Lord Normanby, lest the two years from the passing of the objectionable act should elapse during my absence and the possibility of disallowing and thereby restoring harmony to the Colonial Presbyterian Communion be no longer practicable.

Should His Lordship be graciously pleased to look into the case and to recommend to Her Majesty the disallowance of the Act I have referred to, previous to my leaving town for Scotland, it would be quite unnecessary for me to trouble His Lordship with a personal interview; but, as you will doubtless perceive that the present moment is of the utmost importance to the interests I have the honor to represent, and on behalf of which I have already sacrificed and suffered so much, I trust His Lordship will excuse my apparent importunity.

I have, &c.,

JOHN DUNMORE LANG, D.D.,
Senior Minister of the Church of Scotland
in New South Wales.

[Enclosure No. 10.]

REVD. J. D. LANG TO COLONEL YORKE.

Sir,
2 Cecil Street, Strand, 28th August, 1839.

I am extremely sorry to be obliged to trouble you again, but, having just learned at the Colonial Office that, in consequence of the changes that are taking place in that Office, it is extremely improbable that the question for the decision of which I have been waiting nearly three months in London can be decided before the expiration of the period, during which its decision is practicable, I have the honour to request that you will do me the favour to solicit an interview on my behalf with the Right Honorable the Marquis of Normanby at his earliest convenience.

The disallowance of a Colonial Enactment, which was surreptitiously obtained in the first instance in the absence and without the consent of those whom it principally concerned, which has since been rendered an instrument of injustice and oppression to a number of inoffending and meritorious individuals, and which has been pronounced by the very parties concerned in procuring it no longer applicable to the circumstances of the Colony, would put an end to much dissension and restore harmony and peace among a highly influential portion of the population of that Colony. But, if a very few days more are suffered to elapse, the period for the disallowance of that enactment will have expired, and a permanent schism be in all likelihood organized in what would otherwise continue a united as it is unquestionably a highly virtuous and loyal community. This is the subject, on which I beg to trouble His Lordship, as it is one in which immediate interference is of absolute necessity for the restoration of peace in a highly excited but most peacefully disposed people.

I have, &c.,

JOHN DUNMORE LANG, D.D.,
Senior Minister of the Church of Scotland
in New South Wales.
Russell to Gipps.

[Enclosure No. 11.]

Under Secretary Stephen to Revd. J. D. Lang.

Sir, 31st August, 1839.

I am directed by the Marquis of Normanby to acknowledge the receipt of your letters enumerated in this margin.*

Lord Normanby has carefully weighed your proposal, that the act of the Legislature of New South Wales of the 9th Sept., 1837, commonly called the Presbyterian Church Act, should be disallowed.

To this proposal his Lordship cannot accede.

Lord Normanby apprehends that the Presbyterian Church Act was the affirmation and establishment, on the part of the local Legislature, of the principle asserted by the General Assembly of the Church of Scotland, and denied by yourself, and the other Presbyterian Ministers with whom you are associated.

The disallowance of the act would therefore involve the denial of that principle, and would go far to decide the question controverted between yourself and the General Assembly or their Commissioners.

But, until that controversy shall have reached its close, Lord Normanby thinks that it would be premature and improper that Her Majesty's Government should commit themselves to any course by which the question in debate would be either determined or affected.

On the part of Her Majesty's Government Lord Normanby must disclaim any responsibility for the inconvenience which may follow on the final confirmation of the act by the lapse of time.

Your earliest communication on the subject to this Department is dated on the 31st of July last.

Since then no delay has occurred here in the adoption of such measures as could be taken for bringing the discussion to a close.

The intervening period has been consumed in a correspondence between yourself and the Committee of the General Assembly, which has not yet terminated.

Lord Normanby could not, as he apprehends, have undertaken with any propriety to arbitrate, or to interpose on such a question, until the most ample opportunity had been afforded to the General Assembly and the Committee, acting under their authority, for explaining the grounds on which they rest the title of the Presbyterian Ministers in connection with them in New South Wales to those temporal advantages which you claim for the Presbyterian Ministers who reject that connection.

The delay has therefore been inevitable, so far at least as Her Majesty's Government are concerned.

Adverting to the nature of the subject in debate between yourself and the Committee of the General Assembly, to the impossibility of conducting such a discussion to a successful issue by any other Method than that of a written correspondence, and to the importance of avoiding all misapprehension on matters of so much delicacy.

Lord Normanby would wish to decline the personal interview which you propose, requesting you at the same time to understand that this decision implies no failure in the respect due to your personal or your public character.

I have, &c.,

J. Stephen.

* Marginal note.—Mr. Labouchere, 19th August; Col. York, 22nd; Col. York, 28th.
1839.
7 Sept.

[Enclosure No. 12.]

REVD. J. D. LANG TO LORD JOHN RUSSELL.
11 George Street, Adelphi,
2nd September, 1839.

My Lord,

I beg most respectfully and at the same time most earnestly to solicit your Lordship's attention to the case detailed in the accompanying Precis. I left the Colony of New South Wales, on the subject to which it refers, on the 20th of January last.

I have been waiting in London for its decision nearly three months since my arrival, and unless it is definitely settled this week (by the disallowance of a Colonial enactment, which it will be impracticable to set aside after Saturday next), it will no longer be capable of settlement in a way that would offend no party, and give satisfaction to all; whilst in all likelihood a permanent schism will take place among a large, virtuous and loyal portion of the Colonists of New South Wales, who would otherwise (in the event of the disallowance of the Act I refer to during the present week) would remain harmonious and united.

It is merely because the matter will brook of no longer delay, that I presume thus early, after Your Lordship's entrance* on the duties of the Department, to trouble your Lordship.

I have, &c,

JOHN DUNMORE LANG, D.D.,
Senior Minister of Church of Scotland in New South Wales.

[Sub-enclosure.]

PRECIS of the case of the Presbyterian Church in New South Wales.
11 George Street, Adelphi, 2nd Sept., 1839.

In the year 1836, I solicited and obtained leave of absence from Sir Richard Bourke, then Governor of New South Wales, to proceed to England to procure a large supply of additional Presbyterian Ministers for that Colony, on the ground that the Colonial Presbyterian Church, of which I was the senior Minister and had been the sole founder at the cost of four voyages round the globe, and the expenditure of upwards of ten thousand pounds of my own, had through an unprecedented amount of clerical delinquency fallen into a state of utter inefficiency, and (without a large infusion of healthful material from the Mother Country) of hopeless degradation, two Ministers having been expelled for immorality during the preceding twelve months, while two of the remaining four, whom I left in the Colony, were under charges of intemperance, and a third doing everything in his power to protect them in their delinquency.

My Congregation, which at that time exceeded in number that of all the other Presbyterian congregations in the Colony united, entirely concurred in the step I was thus led to take, an address, strongly approving of my procedure, having been presented to me on the eve of my departure, signed by 262 Heads of families (V. Letter to Lord Normanby of 14th June, first part).

At the time I left the Colony on that occasion, the General Church Act of 1836 had just become the law of the Land, a law which placed all religious denominations on the same footing as to Government support; and, considering that the avowed object of my voyage to England was to procure a large additional number of Presbyterian Ministers for the Colony under that Act, I had a right to expect that no change would be made in the Colonial Law as referring to the Presbyterian Communion till my return. I had a right to expect that I should not be punished for the personal hardships and sacrifices, I had voluntarily undergone by going to England for additional Ministers of religion for the Colony, in being subjected to the pressure of underhand and clandestine legislation.

But, during my absence, or rather, when myself and fifteen other Ministers, who had been appointed for the Colony in England by Lord Glenelg at my special request, were actually almost within sight of the Australian Land, a supplementary Act, called the Presbyterian Church Temporalities Act, was passed on the 9th September, 1837, at the instance of the Minister who had signalised himself in protecting the delinquents of 1836, and his associates, which, however innocuous in appearance,

* Note 65.
virtually constituted these ministers a close corporation, with power to frame whatever regulations they pleased for all other ministers of their communion who should thereafter arrive in the Colony.

As certain of these regulations were calculated to defeat the great object of my voyage to England, viz., the purity and efficiency of the Colonial Presbyterian Church, and the settlement of suitable men in important localities, it appeared to a majority of the brethren and myself, in the extraordinary circumstances in which we were thus placed, expedient and necessary to constitute a Synod or Superior Church Court, which the extent of the Colony had then rendered necessary on other grounds, without regard to the existing Presbytery; appealing for our justification to the people of our communion, and pleading the example set us in somewhat similar circumstances by the Church of Scotland in the year 1688.

That appeal was most cordially responded to by a large majority of the Presbyterians of the Colony; for, altho' the Local Government at first refused the legal salaries (guaranteed by the General Church Act of 1836) to the Synod, on the ground of the supplementary enactment of 1837, they were constrained by the voice of the public subsequently to grant these salaries for the past and present years, by a special enactment in 1838 (vide Letter to Lord Normanby passim).

As the object of the establishment of the Synod, the purity and efficiency of the Colonial Presbyterian Church, and the settlement of suitable men in proper places, was thus accomplished, the Synod and Presbytery, being both desirous of union and harmony, mutually gave and received solemn pledges in the month of October last to merge both of these bodies into one General Synod, as soon as the Supplementary Act of 1837, which was the only obstacle to the immediate accomplishment of the union, could be repealed; the Governor, Sir George Gipps, pledging himself at the same time to do every thing in his power to effect so desirable an object.

It is thus evident that, although there had been temporary schism in the Colonial Presbyterian Church (which was allowed on all hands to have been indirectly productive of much benefit to the Colony), the Colonial clergy of that communion required no interference from without for the healing of that division and the restoration of harmony and peace. (Vide letter to Mr. Labouchere, 31st July, appendix B.)

As the minister however, the Revd. John McGarvie of Sydney, who had protected the delinquents of 1836 and obtained, with the help of these delinquents, the supplementary Act of 1837, had in the meantime transmitted to England, through the local Government, a document purporting to be a Memorial from the Presbytery of New South Wales, but in reality an unauthorized and forged document, misrepresenting the facts connected with the formation of the Synod and the objects of its Members, the Committee and Commission of the general Assembly of the Church of Scotland were guilty of the monstrous injustice of trying and condemning my Brethren and myself, twelve regularly ordained Ministers, unheard and in our absence, on the evidence of that notoriously false, clandestine and forged document alone, virtually excommunicating us and delivering us over to the secular arm to be deprived of our Salaries. (Vide Letter to Lord Normanby passim.)

This unheard of procedure, and especially the unwarrantable claim to ecclesiastical jurisdiction over the Colonial Presbyterian Church on the part of the Church of Scotland which it implied, not only put an end immediately to all arrangements for the union of the Synod and Presbytery, as soon as the tidings reached the Colony in December last, but produced the strongest excitement among the Presbyterians of the Colony, by whom public Meetings were immediately held, a Memorial to Lord Glenelg, protesting against the claim of jurisdiction assumed in Scotland, and soliciting Salaries for the Ministers of the Synod under the General Church Act, extensively signed and upwards of £400 raised to enable me to proceed to England to present that Memorial in person and to support it.

This Memorial, with a variety of other documents illustrative of the attachment of a large majority of the Presbyterians of the Colony to the Synod, is appended to my letter to Lord Normanby, in which the assumption of ecclesiastical jurisdiction by the general Assembly over the Colonial Presbyterian Church is also shewn to be contrary to the principles and practice of that System, jurisdiction and representation being coextensive and coordinate under the Presbyterian System, and the General Assembly being a mere assembly of Delegates who can exercise no ecclesiastical authority, except over the bodies by whom they are themselves appointed.

My Letter to Lord Normanby being transmitted, with its enclosures, to the General Assembly's Committee, that body forwarded a long report on the subject to the Government by which they formally disclaimed, on the part of the General Assembly, all jurisdiction over Presbyterian Churches beyond seas, but maintained the right of pronouncing authoritative opinions in certain cases on the Members of these Churches amounting virtually to a sentence of excommunication, and implying the deprivation of their civil and political rights.

On the subject of that report, I addressed a Letter to Mr. Labouchere of the 31st July, in which, after repelling certain charges of duplicity and falsehood,
which the Committee had condescended to prefer against myself, and shewing that they were utterly destitute of foundation, I shewed that the distinction, which the Committee had attempted to establish between the exercise of Jurisdiction and the pronouncing of Authoritative opinions, bravmg pains and penalties, could neither be understood nor recognized by the Colonial Presbyterians; by whom such authoritative opinions, with their practical consequences of deprivation of salary, could only be regarded as the law of the Star Chamber and the practice of the Inquisition, to which they would never submit, the Presbyterians of the Colony being determined to admit of no authoritative interference whatever in their ecclesiastical concerns on the part of the General Assembly and its Committees, and to renounce their connection with the Church of Scotland altogether rather than allow it.

In short, the Committee reiterate the authoritative opinion, originally pronounced on the evidence of the forged Memorial, that the formation of the Synod was unnecessary and unwarrantable, and require that Body to be dissolved and its members to enter the Presbytery under pain of excommunication; to which, on the part of the Synod and Presbyterians of the Colony, I reply that the formation of the Synod was justifiable and necessary in the unprecedented circumstances of the case; that it was warranted by the practice of the Church of Scotland in 1638; and that its continued existence and unparalleled prosperity, under circumstances of peculiar honours, demonstra.te the fact of its enjoying the confidence and attachment of the Presbyterian Colonists to a very great degree.

In such circumstances, although the Members of the Synod will at once merge that Body in a General Synod along with the existing Presbytery agreeably to their mutual pledge in October last, they will nevertheless, in order to gratify the caprice of Committees beyond seas, who are utterly ignorant of their affairs, and have no right whatever to interfere in them to dissolve that Body, to re-enter the Presbytery.

My Letter to Mr. Labouchere having been forwarded to the Assembly’s Committee, that body, instead of forwarding to the Government a second report on the subject, have referred the whole matter to the Assembly’s Commission; by whom, at the special request of the Committee, a special committee has been appointed to confer with me and to report to the Commission in November next “that that body may determine what further steps they shall take with me as a Minister of the Gospel,” or in other words whether they shall excommunicate me or not.

In short the committee and commission are determined, notwithstanding their own solemn disclaimer, to exercise ecclesiastical jurisdiction over the Colonial Presbyterian Church in the most obnoxious form; and the appointment of this special Committee, whose summons I cannot possibly attend without surrendering the very point in question, is a mere ruse de guerre to obtain by force of authority what cannot be obtained by force of argument.

In these circumstances, unless Her Majesty’s Government interfere in the matter, a large majority of the Presbyterians of the Colony will be under the necessity of separating altogether from the Church of Scotland, which they have not the least desire to do, and of thereby causing a permanent schism in the Colonial Presbyterian Church.

As the period of two years, however, from the passing of the Presbyterian Church Act of 1837 will not have elapsed till the 9th of this month, and as Her Majesty can, at anytime previous to the expiration of that period, disallow the Act in Question, I earnestly entreat, in conformity to all my three letters on the subject, that the right Honorable the Secretary of State will be graciously pleased to recommend to Her Majesty, any time during the present week, to disallow that Act, as that single measure would at once obviate all the difficulties above mentioned, settle all the ecclesiastical questions involved in the case, and restore harmony and peace to the Colonial Presbyterian Church.

The Act of 1837 has uniformly been regarded by my brethren and myself as a great political grievance, having been surreptitiously obtained, in the absence of those whom it more especially concerned, at the instance of disreputable individuals, of whom one has since been degraded from the Christian Ministry, while another has died of intemperance. Its disallowance would in no way affect the penurious emoluments of the Ministers, who at present hold salaries under it, as these salaries would still be payable under the General Church Act of 1836, while it would entitle the Ministers, who have been unjustly deprived of salaries in consequence of its provisions, to the benefit of that liberal enactment.

By the disallowance of the Act of 1837, the prayer of the Presbyterians of the Colony in their Memorial to Lord Glenelg would be virtually granted, while the Government would merely be removing a Political grievance without interfering in any ecclesiastical question; the obstacle to the union of the Presbytery and Synod would be at once removed, and the necessity for separation from the Church of Scotland, on the part of the latter, entirely obviated.

I beg only to add that as it was unanimously allowed by the Presbyterian Ministers of the Colony, in October last, that the Act of 1837 was no longer suited to
GIPPS TO NORMANBY.

the circumstances of the Colonial Presbyterian Church, its disallowance cannot possibly affect any party injuriously.

In these circumstances, I beg most respectfully to solicit that, as this is the last week during which the Act in Question can be disallowed by Her Majesty, it may not be suffered to pass without the accomplishment of an object of such deep importance to the peace and prosperity of a large, virtuous and loyal portion of the Colonists of New South Wales, or rather of the Church to which they are attached in that flourishing Colony.

I am, &c.,

JOHN DUNMORE LANG, D.D.

Senior Minister of the Church of Scotland in New South Wales.

[Enclosure No. 13.]

UNDER SECRETARY STEPHEN TO REV'D. J. D. LANG.

Sir,

Downing Street, 7th Sept., 1839.

I am directed by Lord John Russell to acknowledge the receipt of your Letter of the 2nd Instant, on the subject of the disallowance of the Presbyterian Church Act of New South Wales of the year 1837.

Lord John Russell directs me to refer you to the Letter, which, on the 31st Ultimo, I addressed to you on this subject by the direction of the Marquess of Normanby, as explanatory of the intentions of Her Majesty's Government with regard to the Act in question.

Lord John Russell will direct the Governor of New South Wales to pursue the course best adapted to conciliate the conflicting parties, between whom this discussion has arisen.

I have, &c.,

JAMES STEPHEN.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 126, per ship Lady Fitzherbert; acknowledged by Lord John Russell, 27th January, 1840.)

My Lord,

Government House, 12th Sept., 1839.

In my Despatch of the 8th of April last, No. 66, I had the honor to report to Lord Glenelg the measures, which I had adopted in order to ensure a supply of food for the constantly increasing population of this Colony, and to make good the deficiency caused in our late harvest by the long continuance of a most oppressive drought. I have now the pleasure to inform your Lordship that the first cargo of Rice, imported under the guarantee of Government, arrived in the Colony most opportunely on the 21st July, being a few days only after the price of flour had suddenly risen to nine pence per pound, and that of the quarter loaf to two shillings and eight pence.

The whole of the Rice, alluded to in my Despatch of the 8th April, is since arrived, as well as some considerable quantities imported on private speculation; and consequently, though the price of Wheat and Flour still continues very high, there is no distress in the Colony; nor indeed has real distress ever existed except in the remote parts of the country, or perhaps for a few days in Sydney prior to the arrival of the Rice on the 21st of July.
Rice has been substituted for Bread to a considerable extent in the rations of Convicts, whether in the employment of Government or private service; and, by the exertions of a voluntary association formed in Sydney for the relief of the Poor, bread of a wholesome quality is now sold at one shilling the quartern loaf, and Rice at one penny per pound, to persons considered by the Association entitled to relief; the price of Meat has never risen in proportion to that of bread, not having I think ever exceeded eight pence per pound.

No Wheat has yet been received from India, except one very small cargo on private account; and it seems very doubtful whether the ships sent thither from this port, in April last, will obtain cargoes. Our own Harvest however is now approaching, and, though from the high price of Wheat less seed was probably put into the ground than is usual in ordinary years, the abundant rains, which have fallen within the last few months, afford a promise of an ample and an early return.

I have, &c.,
GEO. GIPPS.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 127, per ship Lady Fitzherbert; acknowledged by Lord John Russell, 29th January, 1840.)

My Lord,

Government House, 14th Sept., 1839.

It is with very great regret I have to report to your Lordship that information reached me on the 5th inst. of serious insubordination having manifested itself, or indeed, to speak more properly, mutiny among the Soldiers of the 80th Regt. at Norfolk Island in the beginning of the month of July last.

As the report made by the Commandant of the Island (Major Bunbury) to the Major General Commanding is more full than the one, which I have received from the same officer, I enclose a copy of it for your Lordship’s information, and I will as briefly as possible bring under your Lordship’s notice such other facts as may be necessary to a complete understanding of the case.

In order to afford employment and amusement to the Soldiers when off duty, it has long been the custom at Norfolk Island to allow them to cultivate small gardens for their own advantage; and it appears that, when the detachment of the 50th Regt. was recalled in January last, preparatory to the embarkation of the Regt. for India, nearly every man of the detachment was in possession of a small separate garden, varying in size from a sixteenth to an eighth of an acre. In many of these gardens,
small huts had been erected; and for these, as well as for the growing crops, payment was in some cases made by men of the 80th Regt. to those of the 50th, whom they succeeded, notwithstanding that it had been explained to the men of both detachments that they could have no right of property whatever either in the huts or the gardens.

Major Anderson of the 50th Regt., who had been for nearly five years in Command at Norfolk Island, was relieved soon after the detachment of his Regt. left the Island, and Major Bunbury of the 80th Regt. succeeded him.

Major Bunbury, after he had been about three months in the command, thinking these huts to be the cause of many improper practices among the soldiers, ordered them to be taken down; and it was in resistance of this order that a large number of the soldiers armed themselves on the 1st July last, and joined in the Mutiny described by Major Bunbury.

On receipt of the intelligence of these events, I lost no time in consulting with the Major General Commanding (Sir Maurice O’Connell) respecting the course which should be pursued; and, as the Major General and myself entirely concurred in the propriety of at once relieving the whole detachment, I have to report to your Lordship that a vessel, the “Cornwall,” was immediately hired for this purpose, and that a detachment of 180 men of the 50th Regt. sailed in her this morning under command of Major Ryan, and accompanied by Sir Gordon Bremer in Her Majesty’s ship “Alligator.”

I considered the circumstances of the case to be such as fully to warrant my calling for the assistance of Sir Gordon Bremer, notwithstanding that he was preparing to sail for Port Essington, in pursuance of the arrangements reported to your Lordship in my Despatch No. 111 of the 31st July last.

I have the honor to enclose to your Lordship a Copy of the letter which I caused to be written to Sir Gordon Bremer on this occasion.

There being at Norfolk Island about 1,200 doubly convicted and desperate Felons, kept in order only by a detachment of 180 soldiers, it is impossible, without some degree of alarm, to know that these soldiers are themselves in a state of Mutiny; but nevertheless it is important to remark that the discontent among the Soldiers is wholly unconnected with anything relating to the custody or management of the convicts; and I am happy to say that the latest accounts from the Island lead me to conclude that there never was a time, in which fewer feelings of sympathy existed between the soldiers and the Convicts.
1339.  
14 Sept.  
Order for destruction of huts to be executed.

The orders sent by Sir Maurice O'Connell are for Major Bunbury to enforce the execution of the one given by himself on the 1st July last, and, having done this (that is to say, having destroyed the huts) immediately to embark his whole detachment.

This order has been considered necessary for the support and vindication of Military Authority; but, at the same time, both Major Ryan and Sir Gordon Bremer have been cautioned not, for a mere point of Military Etiquette, to risk the safety of the Island.

Trusting that the measures, which have been adopted in this case, will meet your Lordship's approval, I have, &c.,

GEO. GIPPS.

[Enclosures.]

[Copies of these papers will be found in a volume in series III.]

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LORD JOHN RUSSELL TO SIR GEORGE GIPPS.  
(Despatch No. 6, per ship Woodbridge; acknowledged by Sir George Gipps, 18th July, 1840.)

Sir, Downing Street, 16th September, 1839.

With reference to Sir R. Bourke's Dispatch No. 123 of the 26th of Novr., 1837, relative to the proceedings for the recovery of an over issue of £2,000, which had been made to Mr. Robert Campbell in the year 1825, I now transmit to you a copy of a Letter from the Secretary to the Board of Treasury, to which that Dispatch was referred, with a copy of one from their Lordships' Solicitor, and various documents therein alluded to; and I have to request that you will place these documents* in the hands of the Attorney General to your Government, with a view to the further prosecution of the claims against Mr. Campbell.

I have, &c.,

J. RUSSELL.

[Enclosure.]

MR. G. J. PENNINGTON TO UNDER SECRETARY STEPHEN.  
Sir, Treasury Chambers, 11th September, 1839.

With reference to your Letter of the 5th June, 1838, and to the Despatch therein enclosed from the Governor of New South Wales, relating to proceedings for the recovery of an overissue of £2,000, which had been made to Mr. Robert Campbell of that Colony in the year 1825, I have it in command from the Lords Commissioners of Her Majesty's Treasury to transmit copy of a letter from the Solicitor to this Board of 28th Ultimo, with the Documents therein referred to, in order that they may be forwarded to the Governor of New South Wales to be placed in the hands of the Attorney General of the Colony, with a view to the further prosecution of the claims against Mr. Campbell.

I am, &c.,

G. J. PENNINGTON, Pro. Sec.

* Note 57.
MR. C. BOUCHIER TO MR. G. J. PENNINGTON.

Sir, Treasury, 28th August, 1839.

With reference to Mr. Spearman's Letter of 26th July, 1838, transmitting one from Mr. Stephen, and the several Papers here-with returned on the subject of an over payment of £2,000, made to Mr. Robert Campbell of New South Wales in 1825, and desiring my report whether the Documents specified in the report of the Attorney General of New South Wales will afford sufficient evidence for the prosecution of this claim. I beg leave to acquaint you, for my Lord's information, that I conceive that the Documents will be sufficient for that purpose.

Indeed the receipt of two sums of Money of £2,000 each is not denied by Mr. Campbell.

I have discovered a witness (Mr. Steer) capable of proving Messrs. Pielie and Boaham's receipt for the £2,000 paid to them, and which was transmitted to me in your letter of the 12th March last, and I have obtained his declaration made before the Lord Mayor with the receipt annexed authenticated under the City Seal.

A declaration has also been made in like manner by a Clerk in this Office to prove the Treasury Minute of 16th Jany., 1821, and they are both herewith inclosed for the purpose of being transmitted to the Colony.

I send also Sir T. Brisbane's warrant of 21 May, 1825, for the issue of £2,000 to Mr. Campbell and his receipt endorsed upon it for the amount and four of the Bills delivered to him, and endorsed by him amounting to £1,500.

These documents I have obtained from the Audit Office, but I am informed there that the fifth Bill (No. 520), which was for £500, cannot be found.

Such of the original Letters from Mr. Campbell as are required by the Attorney General and which he says can be proved in the Colony, I have separated from the other papers, and I think that with them should be sent the original Letter from Mr. Campbell to the Secretary of State of the 18th September, 1839, which is annexed to Sir Richard Bourke's despatch of 26th November, 1837.

These documents should be transmitted to the Colonial Office for the purpose of their being sent to New South Wales and placed in the hands of the Attorney General. I am, &c.

CHAS. BOUCHIER.
1839. 17 Sept.

Commission of inquiry re charges against W. Y. Gray by H. F. White.

Unreasonable request by H. F. White for witnesses.

The Despatch above mentioned from Lord Glenelg having been received by me on the 16th Jany. last, I lost no time in causing a copy of it to be sent to Mr. White, and Mr. White, having on the receipt thereof, expressed a desire to avail himself of the opportunity afforded him by Lord Glenelg of substantiating his charges against Mr. Gray, I appointed two gentlemen to act as Commissioners for enquiring into those charges on the spot, as it would have been extremely inconvenient, as well as expensive, to have called all the parties from Port Macquarie to appear before the Executive Council in Sydney, the only other mode of proceeding which the case seemed to admit of. The persons selected by me to act as Commissioners were Major Montgomery and Mr. North. Major Montgomery, though on full pay of the 50th Regt., was a Magistrate of the Territory and had acted as such for nearly four years; Mr. North was and still is the Police Magistrate of Windsor; both of them were gentlemen in whose discretion I could place confidence; and they were not in any way connected or acquainted with either of the parties.

Mr. White, having been made acquainted with the names of the Commissioners and informed that the enquiry would take place at Port Macquarie, was requested to give in a list of his witnesses; in reply to which request, he (being then in Sydney) sent in a letter dated the 3rd March, 1839, of which I enclose a Copy. In this letter, Mr. White, besides specifying a number of persons by their employments, named nineteen others, many of whom were living at places far distant from Port Macquarie, and whose attendance it would have been very difficult to procure; among the persons summoned was the Deputy Surveyor General, who could not, without great inconvenience, be ordered from Sydney, and who expressly declared to me that his evidence could in no way whatever be serviceable to Mr. White. Judging from the demands made by Mr. White in this letter, as well as from other facts which came under my notice that Mr. White was determined to give as much trouble and to put the Government to as much expence as possible, I caused it to be intimated to him that I could not permit the witnesses, named by him or any others to be summoned on his sole demand at the expence of Government, but that the Commissioners would be instructed to open the enquiry at Port Macquarie with such witnesses as might be on the spot, and that the attendance of such others only, as they (the Commissioners) might think necessary, would be procured at the expence of the Public.

Your Lordship will perceive by the Report of the Commissioners (a copy of which is herewith enclosed) that, on the opening of their sittings, although fifteen witnesses were ready on
the spot, Mr. White refused to go into his case, unless the whole 35 whom he had named should be assembled; on this being re- 85 ported to me by the Commissioners, I directed them to proceed in the investigation of such of the charges as impugned the inte- 39-95 grity or the ability of Mr. Gray in the discharge of his Magis- terial duties, but not to enter upon anything connected with the personal misunderstanding between Mr. White and Mr. Gray, unless Mr. White should attend to substantiate his charges. The Inquiry was accordingly conducted upon this principle, and the result is shewn in the Report of the Commissioners.

I should not feel that I was doing public justice in this case, if I did not explicitly state to your Lordship that the exculpation of Mr. Gray is, in my opinion, complete; for, though in some trifling instances the Commissioners express an opinion that he acted beyond his legitimate powers, they entirely acquit him of any corrupt or improper motives; and it is to be remembered that Mr. Gray is and has been for some time placed in a situation of great difficulty, and one in which he requires the whole support of the Executive Government, Port Macquarie being the place at which Convicts of the class called Specials, or familiarly Gentlemen Convicts, are stationed, a class of persons which for obvious reasons it is more difficult to manage than any others, and who have constantly given a great deal of trouble to this Government. Should anything further be required in exculpation of Mr. Gray, I think it will be afforded by the Paper, marked No. 44 in the Appendix to the Report of the Commis- sioners, which shews the estimation in which Mr. Gray is held by the persons best qualified to judge of his merits as a Magis- trate. This document is signed by a very large majority of the respectable inhabitants of Port Macquarie, and was not got up on the occasion of the misunderstanding between Mr. Gray and Mr. White.

I do not think it right to close this Despatch without stating to your Lordship that Mr. White appears to me to have been greatly misled throughout the enquiry by a Mr. John Dillon, who about the same time himself brought charges against Mr. Gray, which he entirely failed to substantiate.

In reviewing the whole of Mr. White's case (which the former correspondence will shew to have had its origin in events which happened before I assumed the Government of the Colony), I am led to conclude that the only plausible defence, which he has been able to set up is, that he was not aware of the danger to which he exposed himself, when he applied to his own use or advantage the labor of the men and oxen placed at his disposal for public purposes. I am very unwilling to suppose that a

1839. 17 Sept.

Refusal of H. F. White to continue inquiry.

Modification of scope of inquiry.

Complete exculpation of W. N. Gray.

Testimony in favour of W. N. Gray.

Influence of J. Dillon on H. F. White.

Possible defence of H. F. White.
practice of this nature could have existed to the extent stated by Mr. White on the part of any other persons employed in the Department of the Surveyor General; nevertheless, had Mr. White made a timely submission and thrown himself on the clemency of the Government, I should have felt disposed to recommend him to the most favorable consideration which could properly be extended to him; but his conduct has been, I regret to say, marked throughout with such an opposite spirit, that I could not feel myself justified, were I to interfere in any way in his behalf.

I feel it right also to correct an error into which Lord Glenelg appears to have fallen in his Lordship’s Despatch of the 15th Decr., 1838, No. 262, from the similarity of names between Mr. William Nairne Gray, the Police Magistrate of Port Macquarie, and Mr. C. G. Gray, late a Lieutt. Colonel in the Army, but now a Settler at Port Macquarie and a Magistrate of the Territory. The latter gentleman is the person, who signed the document alluded to in Lord Glenelg’s Despatch; he was also examined in the course of this Inquiry, and his evidence will be found at Page 70 of the documents furnished by the Commissioners.

In conclusion, I think it right to inform your Lordship that this Inquiry has cost the Colony the sum of £204 12s. 2d.

I have, &c,

GEO. GIPPS.

[Enclosures.]

[Copies of these two papers are not available.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 7, per ship Woodbridge; acknowledged by Sir George Gipps, 5th April, 1840.)

Sir,

Downing Street, 26th September, 1839.

On referring to the correspondence which took place with Captain Hobson before he left this Country, I perceive that he urged on the attention of the Government the difficulties, to which he might be exposed from the want of a sufficient Force to uphold his authority. Lord Normanby, adverting to the difficulty of detaching any of Her Majesty’s Troops to New Zealand, could only refer Captn. Hobson to such measures as he might be able to adopt in consultation with you in order to establish some system of internal protection.

My attention has since been drawn to this subject by the large Bodies of Emigrants proceeding from this Country to New Zealand, in connection with those persons styling themselves the
“New Zealand Land Company”; and I am desirous to impress
upon you how essential it will be for you to give Captain Hobson
every practicable support, without too greatly weakening your
own force.

I have, &c.,
J. RUSSELL.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 131, per ship Regulus.)

My Lord,

I have had the honor to receive your Lordship’s Circular
Despatch of the 27th Febly. last, and with it a Copy of Mr. Mont-
gomery Martin’s Statistical Account* of the British Colonies.

Having looked over that part of Mr. Martin’s Work which
Applies to this Colony, I beg to state to your Lordship that it
appears to me to be generally correct, though some of the errors
are repeated in it, which pervade other Works relating to New
South Wales.

I have, &c.,
GEO. GIPPS.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 132, per ship Regulus.)

My Lord,
Government House, 30th Sept., 1839.

With reference to Lord Glenelg’s Despatch of the 8th
Febry., 1839, No. 24, I beg leave to report to your Lordship that,
on the arrival of Mr. Bellew Graves, or as soon afterwards as
circumstances would permit, I offered him employment as an
Extra Clerk in the Post Office, with the promise of placing him
on the Establishment as a Colonial Clerk, either in that or some
other office, as soon as I might be enabled to do so by the occur-
rence of vacancies.

Mr. Bellew Graves, having however, about the same time,
had an offer of employment in the Bank of Australia, has pre-
ferred entering the service of that Establishment.

I have, &c.,
GEO. GIPPS.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 133, per ship Regulus; acknowledged by
lord John Russell, 28th April, 1840.)

My Lord,

Herewith I have the honor to forward to your Lordship a
Copy on Parchment of an Act, passed in the Legislative Council
of this Colony on the 13th Augt. last, for the establishment of
Courts of Requests at the Towns of Melbourne and Port Mac-
quarie. I also forward to your Lordship a Copy of a Remon-
strance, which was made against this act by the three Judges of

* Note 5.
1839.
3 Oct.
Resolution of adherence.

Power to erect courts of requests.

Want of power to appoint commissioners for courts of requests.

Effect of want of power.

Interpretation of clause re appointment of commissioners.

the Supreme Court, as well as a copy of a Resolution of the Council adhering to the act, adopted on the 29th August, the day on which the Remonstrance of the Judges was brought under review of the Council, in conformity with the provisions of the 9th Geo. IV, Ch. 83, S. 22.

On the subject of this Act of Council, I feel it necessary to trouble your Lordship with the following explanations:

The 18th Section of the New South Wales Act (9 Geo. IV, Ch. 83) empowers the Governor and Council to erect Courts of Civil Jurisdiction, to be called Courts of Requests; but the same Clause requires that the Courts, so created, shall be held by a Commissioner appointed by Her Majesty. This Clause has, until lately, been interpreted to mean that no person, unless he actually hold an appointment from Her Majesty, can preside over a Court of Requests, and that consequently, though the Governor has the power under the 1st Clause of the New South Wales act to appoint a Judge of the Supreme Court, he cannot (even though it be to supply a vacancy caused by death or resignation) make a temporary appointment of a Commissioner of the Court of Requests; from which it of necessity follows that, if the Commissioner appointed by Her Majesty (Mr. Roger Therry) should die or resign, the Courts of Requests throughout the Colony must remain closed until the appointment of a successor could be approved by Her Majesty. This supposed state of the Law, notwithstanding its manifest inconvenience, has not produced until lately any remonstrance, as the hope has been constantly indulged in that the act, which is to give to the Colony a New Constitution, will apply a remedy. The evil however is one, which from the rapid increase in the Colony is felt more and more every year; and not only is the want of more Commissioners complained of, but the impossibility also of establishing Courts of Requests in those parts of the Colony, which Mr. Commissioner Therry cannot visit on account of their great distance from the scene of his other duties. It is scarcely indeed too much to say that the want of additional Courts of Requests, added to the want of Circuit Courts, has amounted within the Colony of New South Wales during the last eighteen months almost to a denial of Justice.

My attention having under these circumstances been forcibly drawn to the words of the 18th Clause of the 9th Geo. IV, Ch. 83, it appeared to me that the true object of the Clause was not to prevent the appointment by the Governor of a Commissioner, for and on behalf of Her Majesty, in the same way as he makes by virtue of his office other appointments in Her Majesty's name, but to prevent the nomination of a Commissioner in any Act of
Council that might be passed for the establishment of the Courts, the distinction being that, though for the creation of the Courts an Act of the Legislature be necessary, the appointment of a person to preside over such Courts should rest with the Executive Power alone. The Attorney General having acquiesced with me in this view of the subject (though he had formerly I believe entertained a different opinion), the present Act was introduced in the Council.

Without in any way attempting to put my opinion on a point of Law in competition with that of the learned Judges, I would ventures to submit to your Lordship whether the words, quoted by the learned Judges from a Despatch* of the late Mr. Huskisson to the Governor of Upper Canada, do not point to the distinction between the Executive and Legislative Authorities, rather than to a distinction between an appointment made by the Queen, and one by the Governor of a Colony for and on behalf of Her Majesty and subject to Her Majesty's approval.

I beg however to explain very distinctly to your Lordship that it was not on this ground that I ventured to invite the Legislative Council to adhere to the Act; it was on the urgency of the case alone, and particularly with respect to Melbourne, that I did so; and it was on the same ground also, and on that alone, that, in a full attendance of the Council, the Act was unanimously adhered to, the Chief Justice voting for such adhesion, though he had as a Judge felt it his duty to remonstrate against the Act.

The Act, having been adhered to by the Council, is valid until Her Majesty's pleasure shall be known; and the Courts established under it will also be valid. Should it therefore be deemed necessary to disallow the Act, no evil consequence will arise in the Colony, provided only that, at the same time that Her Majesty's disallowance of the Act be notified, the appointment (prospectively) be made of additional Commissioners by Her Majesty, as requested in my Despatch of this day's date, No. 134.

In conclusion, I beg respectfully to refer to what I have said on this subject in my Despatch of the 1st January in the present year, No. 1, when commenting on the 18th Clause of the present New South Wales act; and I would again venture to suggest that, in any future act for the regulation of the Government of this Colony, the constitution of the Courts of Request should be placed entirely within the power of the Local Legislature.

I have, &c.,
GEO. GIPPS.

[Enclosure No. 1.]

[This was a copy of the act of council, 3 Vict., No. 6.]

*Marginal note.—The Despatch alluded to is dated the 25th Novr., 1827.
1839. 3 Oct.

Remonstrance by judges re act of council for courts of requests at Melbourne and Port Macquarie.

The Judges to Sir George Gipps.

Sir, New South Wales, 15th August, 1839.

An Act of the Governor and Legislative Council of this Colony, intituled, "An Act to establish Courts of Requests at the Towns of Melbourne and Port Macquarie in the Colony of New South Wales," 3 Victoria, No. 6, having been passed on the 13th day of August, 1839, and transmitted by your Excellency on the fourteenth day of August, 1839, to be enrolled and recorded in the Supreme Court in pursuance of the Statute, 9 Geo. IV, Cap. 83, Sec. 22, and it appearing to us that the Second Section of the said recited Act is repugnant to the 18th Section of the Statute last referred to, We have the honor, according to the directions of the Statute (Sec. 22), respectfully to represent the same to your Excellency for the following reasons:

It appears to us that, however expedient and necessary it may be to establish Courts of Requests to be holden in the Towns of Melbourne and Port Macquarie respectively, for the reasons recited in the first Section of the Said Local Act, yet that the enactment in the Second Section thereof, "That the said Courts of Requests Shall be holden by a Commissioner to be duly appointed by the Governor of the Said Colony for and on behalf of Her Majesty," is contrary to the express terms of the 9 Geo. 4, Cap. 83, Sect. 8, which, after giving power to the Governors of New South Wales with the advice of the Legislative Council thereof, by Laws or Ordinances to be from time to time for that purpose made and enacted, to institute Courts of Requests in different parts of the Colony and the Dependences thereof, proceeds to enact, "That each of the Said Courts of Requests respectively Shall be holden by a Commissioner to be appointed by His Majesty, with Such Salary as His Majesty Shall think proper to appoint, which Salary Shall be in lieu of all Fees, Profits, or Emoluments whatever in respect of the Office of Such Commissioner as aforesaid"; We are therefore of opinion that a Commissioner appointed by Her Majesty would alone have competent jurisdiction to hold Courts of Requests in the Said Towns respectively; "For the principle that all Courts are the Courts of the Queen, and that Justice is to be disposed only by Officers Commissioned by the Queen for that purpose, cannot, we believe, be too fully recognised, or too Strictly enforced"; And we feel it to be our duty respectfully to represent this apparent repugnance of the Local Law in question to the Act of Parliament, An Act expressly for the administration of Justice, An Act under which the Supreme Court as at present constituted derives its Authority and by which alone the Legislative Council of this Colony exists. Wherefore we feel it the more incumbent on us, with all deference, to Submit the Same to your Excellency's Consideration.

We have, &c.,

JAMES DOWLING, C.J.
JOHN WALPOLE WILLIS, J.
ALFRED STEPHEN, J.

Sydney, 14th October, 1839.

A True Copy:—WM. MACPHERSON, Clerk of Councils.
Exd. 14 Oct., '39.—R. O'C.

[Enclosure No. 2.]

[This was a copy of the "Votes and Proceedings" of the legislative council for the 29th of August, 1839.]
RUSSELL TO GIPPS.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 134, per ship Regulus; acknowledged by Lord John Russell, 12th May, 1840.)

My Lord,

Government House, 3rd Octr., 1839.

In my Despatch of this day's date, No. 133, I have reported to your Lordship the establishment of Courts of Requests at the Towns of Melbourne and Port Macquarie; and I have further to report to your Lordship that Courts of Quarter Sessions have been already established at Melbourne, and will shortly be established at Port Macquarie, under the Act of Council passed last year, 2nd Vict., No. 5.

On account of the great distance of these places from Sydney (which may be stated respectively at 550 and 350 Miles), it is quite impossible that either the Chairman of Quarter Sessions, who acts for the rest of the Colony, or the Commissioner for the Courts of Requests, can preside at the Courts to be held at either of them.

I have therefore appointed, on the recommendation of the Attorney General and subject to Her Majesty's pleasure, Mr. Edward Brewster, a gentleman of the Irish Bar, to be Chairman of Quarter Sessions, and Commissioner of the Court of Requests at Melbourne, at a salary for the two offices of £350 per annum; and I have respectfully to request Her Majesty's confirmation of this appointment.

Mr. Brewster arrived in New South Wales in the month of Jany., 1839.

I am not yet able to submit the name of any gentleman as Chairman of Quarter Sessions at Port Macquarie. I have however appointed the Police Magistrate, William Nairne Gray, Esqr., to act as Commissioner of the Court of Requests, with an additional allowance of £50 a year for the duty.

Mr. Gray is, I believe, well qualified for the appointment, and an application in his favor, which I received from the Inhabitants of Port Macquarie, was submitted with my Despatch No. 128 of 17th Septt. last.

I have, &c.,

GEO. GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 8, per ship Woodbridge; acknowledged by Sir George Gipps, 28th October, 1840.)

Sir,

Downing Street, 5 October, 1839.

The Lords Commissioners of the Treasury have intimated to me that they have directed the PayMaster General to issue to the Agent General for New South Wales the sum of £10,000,
in part of a Warrant for £21,000 to be issued to him on account of the Colony under your Government; and I have to request that you will cause that amount to be repaid into the Military Chest.

I have, &c,

J. RUSSELL.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 135, per ship Regulus.)

My Lord,

Government House, 7th Oct., 1839.

I have the honor to forward herewith a copy of a letter, which was addressed on the 3rd Sept. last to the Secretary of this Colony by Mr. Bushy, British Resident at New Zealand, containing an account of the demolition by a party of Americans of a house, the property of a British subject residing at Kororareka; as also a statement of the circumstances attending the destruction of the house, drawn up by Mr. Busby jointly with Mr. Jas. K. Clendon, the Consul of the United States resident in New Zealand.

I have, &c,

GEO. GIPPS.

[Enclosures.]

[Copies of these papers will be found in a volume in series III.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 10, per ship Mangles.)

9 Oct.

Sir,

Downing Street, 9 October, 1839.

I have to acquaint you that the Revd. Joseph Piatt having been selected by the Revd. Thos. Heptonstall, and having produced satisfactory Testimonials, I have authorized the issue to him of the usual allowance of £150 for his outfit and passage as one of the Six Roman Catholic Clergymen for whom provision was made in the Estimates for the present year.

I have, &c,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 11, per ship Mangles.)

11 Oct.

Sir,

Downing Street, 11 October, 1839.

Your Despatch, No. 38 of the 27th of February last, having been referred to the Agent General for Emigration, I transmit to you a copy of the report of Mr. Elliot on the subject of that Despatch, together with a copy of a Letter which has been addressed to him in reply, expressing my concurrence in his
suggestion that, with the Ships which have already gone out, and those in preparation to go to New South Wales, as enumerated in the Return which accompanies his Report, the Emigration of the year under his management should cease.

I take this opportunity of acquainting you that the Despatch, No. 38, to which I have alluded, is under the consideration of the Lords Commissioners of the Treasury, to whom it was submitted together with your other recent reports on the Financial affairs of New South Wales.

I have, &c.,

J. RUSSELL.

[Enclosure No. 1.]

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

Sir, 2 Middle Scotland Yard, 28 September, 1839.

In reference to your letter of the 3rd Ultimo, I do myself the honor to return, herewith, Sir George Gipps' despatch No. 38 of the 27th February, 1839, which was referred to me for report.

In this despatch, the Governor reiterates the objections, so often mentioned in recent communications from him, to the Emigration effected in Ships chartered by the Government. He also dwells on the falling off of the Revenue, and at the same time with these representations I have received from the Officers of this Department, both in Scotland and in England, numerous intimations of the difficulty at this moment of procuring eligible people, and of a marked re-action in some of those places from which there used to be the most certain supply of desirable Emigrants. With so many reasons for keeping the Emigration in Government ships within somewhat narrower limits than its unprecedented extent of last year, my only doubt was how far the importation of Labourers, through the medium of the Bounty, might be expected to be more or less than before; that a Report of the Agent for Emigrants at Sydney has now reached me, by which it appears that Licenses for the introduction of Emigrants on Bounty have been given to the amount of Six thousand, a far greater number than granted at any previous time. Under these circumstances, therefore, I can no longer hesitate to forward, for the purpose of being laid before Lord John Russell, the enclosed Return of the Government Emigrant Ships, which either have gone, or are in course of preparation to go, this season; and to submit my opinion that with this proposed number the Government Emigration of the year should cease.

In reference to the concluding passage of the Governor's despatch, I need not perhaps do more than repeat the explanation, I have already offered on another occasion, that it has not been the system for the rule to resort to those districts which are specially pressed by want or distress; but simply to choose those from which it seemed at the time most feasible to obtain a sufficient number of People of the required description in regard to age, and to readiness to earn their living by manual labour. It would doubtless be of advantage if it could be done, without causing an inferior kind of Emigrants to be forced on the public, to collect some aid towards the cost of conveyance, from persons of property in the tracts of country from which the Emigrants are taken. But it must be observed that, even with the grant of a free passage, much always remains to be
1839.  
11 Oct.  

Problem of contributions for cost of emigration.

supplied to discharge the Rents or small debts of the people to be removed, and to furnish them with the necessary outfit; to which is to be added the expense of bringing them to the place fixed for embarkation. These charges must at any rate, in a majority of cases, fall upon the wealthier neighbours of the Emigrants. And, so far from their being disposed to go beyond this to pay part of the cost of passage besides, I receive repeated intimations, to which I have had occasion to allude above, of less and less disposition both in those parts of England and of Scotland, from which Emigrants have been chiefly drawn, to encourage and assist the withdrawal of that class of persons, whom alone it is desirable to send out to the Colony. Advantageous therefore as it would be in a pecuniary point of view, though I fear it could not but impair the quality of the selections, to obtain some contribution from Proprietors and others towards the removal of the People carried out by Government to New South Wales, I apprehend that such a measure would at present be quite impracticable.

T. FRED. ELLIOT.

Return re emigrant ships in 1839.

RETURN of ships which have sailed and of those expected to sail 1839.

<table>
<thead>
<tr>
<th>Name of Ship</th>
<th>Place of Departure</th>
<th>Place where the passengers chiefly come from</th>
<th>Destination</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bussorah Merchant</td>
<td>Bristol</td>
<td>Gloucestershire</td>
<td>Sydney</td>
<td>15th April</td>
</tr>
<tr>
<td>Hero</td>
<td>Leith</td>
<td>Roxburgh, Aberdeen and Edinburgh.</td>
<td>do</td>
<td>7th May</td>
</tr>
<tr>
<td>Navarino</td>
<td>Cork</td>
<td>Cornwall</td>
<td>do</td>
<td>11th</td>
</tr>
<tr>
<td>Cornwall</td>
<td>Gravesend</td>
<td>Kent and Sussex</td>
<td>do</td>
<td>11th</td>
</tr>
<tr>
<td>Neptune</td>
<td>do</td>
<td>Neptune and Tipperary</td>
<td>do</td>
<td>1st June</td>
</tr>
<tr>
<td>David Clarke</td>
<td>Greenock</td>
<td>Perth, Dumfries Ayr and Argyle.</td>
<td>Port Philip</td>
<td>19th</td>
</tr>
<tr>
<td>Florist</td>
<td>Gravesend</td>
<td>Kent and Sussex</td>
<td>do</td>
<td>30th Aug</td>
</tr>
<tr>
<td>China</td>
<td>Waterford</td>
<td>Waterford and Tipperary</td>
<td>do</td>
<td>25th</td>
</tr>
<tr>
<td>North Britain</td>
<td>Kingston</td>
<td>Kildare</td>
<td>do</td>
<td>12th Aug</td>
</tr>
<tr>
<td>Greates</td>
<td>Bristol</td>
<td>Gloucestershire</td>
<td>do</td>
<td>13th</td>
</tr>
<tr>
<td>Crusader</td>
<td>Kingstown</td>
<td>Central Part of Ireland</td>
<td>do</td>
<td>23rd</td>
</tr>
<tr>
<td>George Fyle</td>
<td>Tobermory</td>
<td>Western Highlands</td>
<td>do</td>
<td>15th</td>
</tr>
<tr>
<td>Crescent</td>
<td>Kingston</td>
<td>Londonderry</td>
<td>do</td>
<td>Expected</td>
</tr>
<tr>
<td>Henry Porcher</td>
<td>Isle of Skye</td>
<td>Western Highlands</td>
<td>do</td>
<td>to sail about the end of Sept.</td>
</tr>
<tr>
<td>Adam Lodge</td>
<td>Cork</td>
<td>County of Limerick</td>
<td>do</td>
<td>End.</td>
</tr>
<tr>
<td>James Patterson</td>
<td>Gravesend</td>
<td>Home Counties</td>
<td>Sydney</td>
<td>Middle.</td>
</tr>
</tbody>
</table>

[Enclosure No. 2.]

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

Sir,

I have laid before Lord John Russell your letter of the 28th Ultimo, enclosing a return of the Government Emigrants ships, which either have gone, or are in course of preparation to go this season to New South Wales under your agency; and reporting your opinion, with reference to the statements contained in Sir
George Gipps' despatch, No. 38 of the 27th of February, 1839. That with the number of ships contained in that return the Government Emigration of the year to that Colony should close; and I am to acquaint you that Lord John Russell approves of this suggestion and authorizes you to act on it accordingly.

I am directed to add that Lord John Russell agrees with Sir George Gipps that, in the case of distressed districts, there should be some contribution from Land Lords, Parishes, or voluntary associations, and is of opinion that those, who offer half the passage money, should in all cases be preferred to those who pay nothing.

I have, &c.,
J. STEPHEN.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 136, per ship Regulus.)

My Lord,

Government House, 11th Octr., 1839.

With reference to my despatch of the 7th Augt. last, No. 115, respecting a claim advanced by Sir Maurice O'Connell to a considerable portion of the Town of Parramatta, I have the honor to report to your Lordship that the proceedings in the Supreme Court of this Colony, in relation to this claim, have been stopped by a decision of the Judges, though it is still, I believe, the intention of Sir Maurice O'Connell to bring his case either before your Lordship or before the Privy Council, by a proceeding which is, I understand, termed a "Petition of Right."

I hoped to have been able to forward by the vessel, which carries this Despatch, a report from the Attorney General on the course of proceeding which has been followed in this case by the Law Officers of the Crown; but I regret to say that, as it is not yet ready, it must be deferred 'till the next opportunity.

I have, &c.,
GEO. GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 12, per ship Mangles.)

Sir,

Downing Street, 12 October, 1839.

I have had the honor to receive your Dispatch No. 56 of the 21st of March last, in reply to which I need only observe that the arrangements recently made with regard to New Zealand will be found to have provided for the immediate object of your Dispatch, namely, the discontinuance of Mr. Busby's salary of £500 per annum as British Resident at New Zealand.

I have, &c.,
J. RUSSELL.
1839.
14 Oct.

Act of council re evidence of aborigines.

Suspending clause in act.

Desire of J. H. Plunkett for act.

Reasons for suspending clause.

Sir George Gipps to Marquess of Normanby.
(Despatch No. 137, per ship Regulus.)

My Lord,

Government House, 14th Oct., 1839.

Herewith I have the honor to transmit to your Lordship an Act, passed in the present session of the Legislative Council to allow the Aboriginal Natives of New South Wales to be received as competent witnesses in Criminal cases, notwithstanding that they have not at present any distinct idea of Religion or any fixed belief in a future state of Rewards and Punishments.

This Act is transmitted separately to your Lordship, in consequence of a clause having been added to it by the Council, preventing its taking effect in the Colony until it shall have been approved by Her Majesty.

The measure was introduced at the desire of the Attorney General, in consequence of the difficulty in obtaining convictions, which he experienced in several cases wherein Native Blacks have been concerned, either as the accused or the injured party, and the dissatisfaction which has been expressed in the Colony when a Criminal has escaped.

The clause preventing the act from coming into operation, until Her Majesty’s pleasure shall be known, was added at the request of the Chief Justice, who, though friendly to the measure, would otherwise have felt himself, as probably would also his brother Judges, compelled to remonstrate against the act as repugnant to the Laws of England.

I have, &c,

Geo. Gipps.

[Enclosure.]

This was a copy of the act of council, 3 Vict., No. 16.

Lord John Russell to Sir George Gipps.
(Despatch No. 14, per ship Mangles.)

16 Oct.

Despatch acknowledged re C. de Thierry.

Sir,

Downing Street, 16 October, 1839.

I have the honor to acknowledge the receipt of your Despatch No. 73 of the 20th of April last, enclosing the copy of a letter which you had received from a person resident in New Zealand who styles himself the Baron de Thierry; and I beg to convey to you my approval of the answer which you returned to that communication.

I have, &c,

J. Russell.
LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 12, per ship Mangles; acknowledged by Sir George Gipps, 25th June, 1840.)

Sir,
Downing Street, 17 October, 1839.

I transmit to you the Copy of a letter from John McCarron applying for information respecting the fate of Henry Stokes, who is supposed to be residing in New South Wales or Van Diemen's Land; 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.,

J. RUSSELL.

[Enclosure.]

MR. JOHN McCARRON TO SECRETARY OF STATE.

Honored Sir,

I most humbly request that your honor will be so good as to inquiry the fate let me know the fate of Henry Stokes, who went off with female Convicts as a seaman in the Ship Lady Roana from Cork to the year 1824 or thereabouts, and was discharged from said ship in Van Diemen’s Land or New South Wales in or about the year 1825, and has since resided in the above Colonies as an Inhabitant or a resident of the Country; we have got an account by a letter that he was living there about 2 or 3 years ago; the letter was not from him, but from another man in the same Country; we have not seen the letter, but got that account from the Man’s brother. The said Henry Stokes is now heir of a property of land near Clones in the County Monaghan, Ireland, if he is living, but we do not know whether he is living or dead; and if it be in your honor’s power to let me know whether he is living or dead, you will much oblige your humble servant, and I will ever remain in duty bound to pray for your honor’s great success and happiness.

JOHN MCCARRON.

Clones (post town), County Monaghan, Ireland, 14 Octt., 1839.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 138, per ship Regulus; acknowledged by Lord John Russell, 24th April, 1840.)

My Lord,
Government House, 17th Octr., 1839.

I have the honor herewith to forward to your Lordship a transmission of resolutions of the Legislative Council of this Colony respecting the establishment of Circuit Courts, which, having been moved by Mr. Jones, were adopted by the Council unanimously on the 25th Septt. last.

Having in my Despatch of the 9th Septt. last, No. 125, had occasion to bring this subject under your Lordship’s consideration, I feel it unnecessary now to do more than respectfully to refer to that communication.

I have, &c.,

GEO. GIPPS.
MR. JONES'S proposed Resolutions on the Subject of the establishment of Circuit Courts considered in Committee; and the following Resolutions severally moved and adopted:—

Resolved, That, in the opinion of this Council, the establishment of Circuit Courts to be holden periodically in different parts of the Colony is essential to the peace and welfare of New South Wales, and the Dependencies thereof.

Resolved, That, by the establishment of such Courts, much greater facilities will be afforded in the prosecution of Offenders to Conviction than now exist by reason of the Supreme Court being holden only in the Town of Sydney.

Resolved, That, in the now wide extent of the Colony, it is to be feared that crimes of the deepest magnitude, sometimes go unpunished from the unwillingness of Parties and their Witnesses to incur the heavy expense and the loss of their valuable time, consequent on a tedious journey to the Capital, and the long and injurious absence from their usual occupations occasioned thereby.

Resolved, That the certainty of conviction is the great preventative of crimes; and it may be safely assumed that they will be committed or repressed in the exact ratio in which the Criminals calculate the chances of escape.

Resolved, That it is notorious that, in almost all the cases brought to Sydney for prosecution at a serious public and private expense, the act of tampering with witnesses in order to defeat the ends of public justice had taken place in the said town, which could not generally happen, if the Offenders were brought to trial as near as possible to the scene of their offences; and on this ground the institution of Circuit Courts has been obviously necessary.

Resolved, That Punishment, awarded in the neighbourhood where offences have been committed, must necessarily produce a more salutary effect than when inflicted at a distance; and it is desirable that Offenders should be practically convinced that the execution of the laws can be firmly and rigorously enforced, in the remotest districts, by which means it is obvious that a more just estimate will be formed of the consequences attending a breach of them.

Resolved, That believing the lives and properties of Her Majesty's Subjects are not sufficiently protected in the southern parts of this Colony for want of Circuit Courts, this Council respectfully request that His Excellency the Governor will cause the opinion thus expressed to be forthwith communicated to Her Majesty's Government, in order that adequate provision may be made in the premises.

25th Sept., 1839.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 16, per ship Mangles.)

Sir,

Downing Street, 18 October, 1839.

I have to acquaint you that, the Revd. Messrs. Ryan, Keaveny and Walsh having been selected by the Revd. Thomas Heptonstall, and having produced satisfactory Testimonials, I
Russell to Gipps. 371

have authorized the issue to them of the usual allowance of £150 each for their outfit and passage as part of the Six Roman Catholic Clergymen for whom provision was made in the Estimates for the present year.

I have, &c.,

J. Russell.

Sir George Gipps to Marquess of Normanby.

(Despatch No. 130. per ship Regulus; acknowledged by Lord John Russell, 30th April, 1840.)

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

With reference to your Lordship's Despatch of the 27th March, 1839, No. 29, I have the honor to report to your Lordship that I have appointed Mr. C. M. Lewis to the situation of Harbour Master at Port Phillip, with a Salary of £200 per annum.

I take this opportunity of informing your Lordship that, having on the 5th Sept. last, agreeably to the directions contained in your Lordship's Despatch of the 6th April, 1839, No. 35, brought Mr. Lewis' claims for a gratuity of £300 before the Legislative Council, the grant was very generally objected to, and, on a division, the Colonial Secretary stood alone in support of it.

I have, &c.,

Geo. Gipps.

Lord John Russell to Sir George Gipps.

(Despatch No. 17. per ship Mangles.)

Sir, Downing Street, 22 October, 1839.

I have the honor to acquaint you that the Revd. W. West Simpson, 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.,

J. Russell.

Lord John Russell to Sir George Gipps.

(Despatch No. 18, per ship Mangles.)

Sir, Downing Street, 23d October, 1839.

I have the honor to acknowledge the receipt of your Despatch No. 60 of the 29th of March last, reporting the extent to which you had been able to carry into effect the Instructions conveyed to you in Lord Glenelg's Dispatch, No. 147 of the 6th of July, 1838, on the subject of the Improvement of Convict Discipline.
I beg to express to you my thanks for the detailed observations on this subject, contained in your Dispatch, and to apprize you that you will shortly receive further Instructions from me on the subject of Convict Management.

J. BUSSELL.

24 Oct.

Despatch acknowledged.
Resignation of P. P. King from Council.

Appointment of J. Macarthur.

Fees due on warrant.

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Lord John Russell to Sir George Gipps.
(Despatch No. 19, per ship Mangles.)

Sir, Downing Street, 24 October, 1839.

I have received your Dispatch No. 63 of the 3rd of April last.

Under all the circumstances I have felt it my duty to advise Her Majesty to accept Captain King's tender of his Seat in the Legislative Council, in consequence of his having received from England the appointment of Resident Commissioner to the Australian Agricultural Company.

I have submitted to the Queen the Name of Mr. James MacArthur as a proper person to fill the vacant Seat in the Council; and I enclose a Warrant appointing him a Member of that Board accordingly.

I have, &c,

J. BUSSELL.

P.S.—I have directed the Colonial Agent to pay to the Chief Clerk of this Office the Fees chargeable on the Instrument, amounting to Nine Pounds 15s. 6d., and which you will recover from Mr. McArthur.

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Sir George Gipps to Marquess of Normanby.
(Despatch No. 140, per ship Regulus; acknowledged by lord John Russell, 27th April, 1840.)


With reference to my Despatch No. 127 of the 14th Sept. last, in which I reported the occurrence of a Mutiny at Norfolk Island, and the measures which had been taken to relieve the Detachment of the 80th Regt., in which it had occurred, I have now the satisfaction to report to your Lordship that the "Alligator" and the "Cornwall" returned from Norfolk Island on the 14th inst., with the whole of the Detachment, the relief of it having been effected in a perfectly quiet and soldierlike manner. The Huts, which had given rise to the Mutiny, were destroyed by the men of the 80th Regiment, previous to their embarkation. I enclose a copy of the Order which was issued by Major Bunbury calling on them so to do.

I have, &c,

Geo. Gipps.
[Enclosure.]

GARRISON ORDER.

25th Septr., 1839.

His Excellency the Major General Commanding the Troops in New South Wales, having deemed it inexpedient under the peculiar circumstances of Norfolk Island to confine the safety of the Settlement to Men capable of such gross Mutiny as that Committed by the Detachment of the 80th Regiment doing duty here on the 1st July last, has ordered Major Bunbury, previous to giving over the Command to Major Ryan of the 50th Regt., to get the huts still standing at the rear of the Old Military Bk. in order to mark his Excellency's displeasure and vindicate the authority of the Major-Commandant. Major Bunbury is fully aware that the Detachment Regretted immediately after the occurrence aluded to having opposed his orders, and he therefore did not conceive it necessary to revert to the Subject until he had Communicated with the Major General his plans for the prevention of a Similar Act of folly; and now that His Excellency's pleasure is made known, he feels he has only to Communicate his wishes on this head to have them immediately complied with. that this Evening not one of the huts will remain Standing: the whole of the Detachment of the 80th Regt. with the exception of Assistant Surgn. Gammice will be prepared to embark and return to Sydney on being relieved by the Detachment of the 50th Regt. now in the Offing.

T. BUMBURY, Major and Commandant.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS,

(Despatch No. 20, per ship Mangles.)

Sir,

Downing Street, 25 October, 1839.

I have received your Despatch No. 64 of the 5th of April last, transmitting a further representation from Mr. Macquoid, Sheriff of New South Wales, on the subject of his Precedency.

I beg you will acquaint Mr. Macquoid in reply to his letter that, as it appears Lord Glenelg decided the question of Precedency with a full knowledge of all the facts of the case, I must consider that decision as binding on myself and conclusive.

I have, &c,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS,

(Despatch No. 22, per ship Mangles.)

Sir,

Downing Street, 26 October, 1839.

I have received your Despatch No. 58 of the 25th of March last, enclosing an application from Mr. Roger Therry, on behalf of the Subscribers for the erection of a Statue* of Sir Richard Bourke in the Town of Sydney, that the Statue may when finished

* Note 10.
1839.
26 Oct.
Statue of Sir R. Bourke to be shipped in government vessel.

be sent out to New South Wales in a Government Vessel free of expense; and I beg you will acquaint Mr. Therry, for the information of the Subscribers to the Statue, that I have much pleasure in complying with their wishes on this subject; and that I will instruct the Board of Admiralty to provide the necessary freightage whenever the Sculptor shall have reported the completion of the Work.

I have, &c.,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 23, per ship Mangles.)

Sir,
Downing Street, 26 October, 1839.

I have received your Despatch No. 65 of the 6th of April last, enclosing an Act passed by the Legislative Council of your Government on the 22nd of March, 1839, No. 27, entitled, "An Act further to restrain the unauthorised occupation of Crown Lands, and to provide the means of defraying the expense of a Border Police."

And I am to signify to you Her Majesty's Gracious approval of that Act.

I have, &c.,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 24. per ship Mangles.)

28 Oct.
Sir,
Downing Street, 28th October, 1839.

I have received your Despatch No. 72 of the 19th of April last, enclosing a copy of one from Mr. Justice Willis, in which he states the probability of his being soon compelled from ill health to relinquish his seat on the Bench, and solicits a retiring Pension.

I much regret the circumstance which this Despatch announces, and the more so, because, from the comparatively short period of Mr. Willis' Service and that in different Colonies, there is no fund from which a Pension could be granted to him.

I have, &c.,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 25, per ship Mangles.)

Sir,
Downing Street, 28 October, 1839.

I have received your Despatch No. 76 of the 27th of April last, on the subject of the claim asserted by Mr. P. L. Campbell, the nominee of the Colonial Treasurer to perform his duties during his absence, to sit in the Executive Council.
RUSSELL TO GIPPS. 375

I fully approve of your decision to reject Mr. Campbell's claim. Setting aside the question of his unfitness to be admitted to your Counsels, the distinction is so obvious in this case between the person invested with the office of Acting Treasurer, and the mere nominee of the Treasurer, that I have no hesitation in confirming your decision.

I have, &c.,
J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS. (Despatch No. 26, per ship Mangles.)

Sir, Downing Street, 28 October, 1839.

I have received your Dispatch No. 62 of the 1st of April last, reporting the measures which you had taken on receiving the Instruction of my Predecessor to raise the Minimum price of Land to 12s. an Acre.

Under the circumstances which you represent, I approve of the resolution you adopted with the advice of the Executive Council to sell at the former rate such Land as had already been advertised at the minimum price of 5s. per Acre. It is an unfortunate error that so large a quantity as 300,000 Acres was advertised at that rate; And I trust that the regulations, which you have newly adopted, will have the effect of preventing at any future time a recurrence of the same inconvenience. I also approve of the mode in which you propose to arrange the claims of Military Settlers having made their arrangements and left this Country ignorant of the change in the minimum price of Land.

I have, &c.,
J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS. (Despatch No. 27, per ship Mangles.)

Sir, Downing Street, 29 October, 1839.

I have received your Despatch No. 9, of the 9th of January last, with a copy of a representation addressed to you by the Bishop of Australia, in consequence of the decision of Her Majesty's Government to sell a portion of the Lands granted to the late Church and School Corporation.

In consequence of that representation, I thought right to refer the whole case to the Law Officers of the Crown for their opinion, whether it is competent to the Government, as assumed by Lord Glenelg in his Despatch of the 30th of November, 1835, to
1839.
29 Oct.

Legal opinion re disposal of clergy and school estates.

Sale of estates to be effected.

consider in what way the produce of the Lands formerly held by the Corporation may be rendered most conducive to the maintenance and promotion of Religion and Education of Youth in the Colony without reference to any particular Church, and whether the measures adopted give sufficient authority to enable the Government to appropriate the property in question.

The Attorney and Solicitor General have reported their opinion that it is competent to the Government to consider in what way the produce of the Lands in question may be rendered most conducive to the maintenance and promotion of Religion and Education of Youth in the Colony without reference to any particular Church, and that the measures adopted to give sufficient authority to enable the Government so to appropriate the property in question.

They further state that they entirely concur with the Colonial Judges in their opinion that, by the dissolution of the Corporation, the Lands revert to the Crown not "in as full and ample manner as if the Charter had never existed," but for the purposes of the Trust declared by the Charter in the event of the dissolution of the Corporation, namely, "to be held, applied, and disposed of in such manner as to Us, Our Heirs and Successors, shall appear most conducive to the maintenance and promotion of Religion and the Education of Youth in the said Colony."

And that the Corporation, while it existed and held the Lands, had the power under the 15th Section of the Charter of selling one third of the Lands, and, if it now appears to the Crown to be most conducive to the objects of the present trust, namely, the promotion of Religion and Education generally, that the whole instead of a part only should be sold, they think there is nothing whatever to prevent such an exercise of discretion.

As you state that there is no record in the office of the Colonial Secretary of the opinion of the Judges alluded to, I beg to refer you to Page 42 of the enclosed Parliamentary Papers, where a copy of that Report is to be found.

With the decided opinion expressed by the Law Officers, I have no hesitation in directing you to proceed under the former Instructions which you received on this subject.

I have, &c,

J. RUSSELL.

[Enclosure.]

[This parliamentary paper was numbered 254 of 1839.]
RUSSELL TO GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS. (Despatch No. 28, per ship Mangles.)

29 Oct. 1839.

Sir, Downing Street, 29 October, 1839.

I have the honor to transmit to you, for your information and guidance, the copy of a Letter, which has been addressed to this Department by desire of the Lords Commissioners of the Treasury on the subject of an Order issued by the late Governor of New South Wales in the year 1835 "that Rewards to the Police for the capture of Prisoners, and pecuniary Rewards for the apprehension of Criminals, were still to be paid from the Military Chest."

And I have to request that you will take care that the Order in question does not extend to Rewards in respect of Offences committed by Free Settlers, or other Parties unconnected with the Convicts.

I have, &c,

J. RUSSELL.

[Enclosure.]

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

Sir, Treasury Chambers, 22d Octr., 1839.

I have it in command from the Lords Commissioners of Her Majesty's Treasury to request you will state to Lord John Russell that my Lords have had under consideration a correspondence between the Officer in charge of the Commissariat in New South Wales, and the Secretary of the Colonial Government, on the subject of an Order issued by the late Governor in the year 1835 "that Rewards to the Police for the Capture of Prisoners and Pecuniary Rewards of all kinds for the Apprehension of Criminals were still to be paid from the Military Chest"; and, as it would seem that under this Order rewards in respect of offences committed by Free Settlers or other parties quite unconnected with the Convicts might be charged on the Military Chest, I have to request you will observe to His Lordship that, altho' my Lords do not object to the payment from the Funds of the Chest of all Rewards for the apprehension of Convicts, who may have absconded or committed other offences, they cannot consider rewards in other cases to be in any respect chargeable on those Funds, and they have therefore to suggest that a communication to this effect should be made to His Excellency Sir George Gipps, provided no particular objection thereto occurs to Lord John Russell.

I have, &c,

G. J. PENNINGTON.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS. (Despatch No. 29, per ship Mangles.)

30 Oct. 1839.

Sir, Downing Street, 30 October, 1839.

I have received your Despatch No. 74 of the 22nd of April last, transmitting two Requisitions for Stationery for the Service of your Government, and suggesting that one demand

Instructions re payment of rewards from military chest.
Method for supply of stationery.

I do not feel myself at liberty to depart from the usual course pursued with regard to similar Requisitions from other Colonies, and I have therefore instructed the Colonial Agent to procure from Her Majesty's Stationery Office, and to forward to New South Wales, the Articles enumerated in the two Lists you have transmitted.

I have, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 141, per ship Regulus.)


With reference to Lord Glenelg's Despatch of the 27th Jany. last, No. 19, informing me of the appointment of Mr. James Croke to the situation of Clerk of the Crown at Port Phillip, I have the honor to report to your Lordship that Mr. Croke arrived in Sydney on the 25th July last and reembarked for Port Phillip on the 29th inst.

Until Assize or Circuit Courts can be held at Port Phillip, there will, as I am informed by the Attorney General, be no duties on which Mr. Croke can be employed as Clerk of the Crown; in the mean time, however, I have desired him to act as Crown Prosecutor at Quarter Sessions, and Legal adviser to the Government at Port Phillip.

The Law Officers at Port Phillip consist of a Chairman of Quarter Sessions, Mr. Brewster, who acts also as Commissioner of the Court of Requests at a salary for both offices of £350 per annum; and a Clerk of the Peace, Mr. Carrington, who acts also as Clerk to the Petty Sessions, and who has hitherto also acted as Crown Prosecutor at Quarter Sessions, receiving for the whole £250 per annum.

Mr. Brewster's appointment was reported in my Despatch of the 3rd inst., No. 134, and Mr. Carrington's in that of the 15th Feby. last, No. 28.

Mr. Croke will supersede Mr. Carrington in his duty as Crown Prosecutor, but, being a Barrister, he cannot, according to the etiquette of the Profession, act either as Clerk of the Peace or Clerk to the Petty Sessions.

Mr. Croke's appointment has therefore, I must respectfully submit, rendered still more apparent the necessity for the institution at Port Phillip of an Assize or Circuit Court, on which
RUSSELL TO GIPPS.

I have recently had the honor to address two Despatches to your Lordship, one on the 9th Sept. last, No. 125, the other on the 17th inst., No. 138.

On the subject of the Courts at Port Phillip, I would also beg leave to refer to Sir Richard Bourke's Despatch of the 14th June, 1837, No. 43.

I have, &c.,

GEO. GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 30, per ship Mangles.)

Sir, Downing Street, 31 October, 1839.

In my Despatch No. 11 of the 11th instant, I transmitted to you copies of a letter from the Agent General for Emigration, and of the reply which I directed to be returned to it, expressing my concurrence in his suggestion that, with the ships which have already gone out, and those in preparation to proceed to New South Wales, the Emigration of the Year under his management should cease.

With reference to that subject, I now enclose, for your information and guidance, a copy of a further communication from Mr. Elliot representing the difficulties which at this moment attend the filling the Emigrant ship, "James Pattison," now ready for her voyage.

I have, &c.,

J. RUSSELL.

[Enclosure No. 1.]

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

Sir, 2 Middle Scotland Yard, 21st Octr., 1839.

Although I am not aware that it will raise any practical question for the decision of the Secretary of State, I would request leave to bring before you, for the information of Lord John Russell, the enclosed copy of a Letter which I have received from Dr. Inches, descriptive of the difficulties he has at this moment to encounter in filling an Emigrant ship which has been engaged to sail from the River. Similar obstacles have also presented themselves in filling two ships now about to leave the Western Highlands, but, by active exertions, they have been overcome, and I hope to attain the same result, without much delay, in filling the Ship which is waiting in the Thames.

In further illustration of the difficulties at present experienced, I may enclose another Letter received to day from a private Broker at Glasgow, mentioning the desertion of a number of Passengers who had intended to proceed by some of his Vessels.

I merely transmit these Papers for the sake of the light they throw on the working at this moment of Emigration to New South Wales. But I am sorry to receive so soon such strong confirmation of the doubts I expressed in my recent Letter of the 28th Ulto.
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HISTORICAL RECORDS OF AUSTRALIA.

1839.
31 Oct.

Report by C. Inches re difficulty in procuring emigrants for ship James Pattison.

whether in addition to the expenses of outfit and of travelling to the Port of Embarkation, part of the Passage money could be expected to be received of Emigrants, belonging to the humblest classes, such as are required for the Government vessels.

I have, &c.,
T. Fredk. Elliot.

[Sub-enclosure No. 1.]

DR. C. INCHES TO MR. T. F. ELLIOT.

Sir,
2 Middle Scotland Yard, 18th October, 1839.

In doing myself the honor to acknowledge the receipt of your letter of the 11th Instant, containing an Extract from a General Report made to the Colonial Government by the Resident Agent for Emigrants at Sydney; I beg leave to call your attention to some points connected therewith, which appear to me deserving of notice.

The Report seems to be founded on the assumption that a desire for emigrating to New South Wales is generally prevalent among the working classes in England, and that it is merely required to give notice in any particular district that an opportunity will be afforded to the Working people of good character to be sent out gratuitously, for a number of Candidates to appear sufficiently great to enable the Selecting Surgeon to make his Choice from among the most eligible portion.

I do not pretend to be sufficiently acquainted with the state of these matters in either Scotland or Ireland, to enable me to form an opinion upon this subject; but I have no hesitation in declaring that in England I have found the case to be the very reverse.

At times assuredly, there has been in different places, which I have visited, an abundance of applicants for Emigration, and as Agricultural Laborers, many of them men of unexceptionable character. Generally however these were persons encumbered with large Families, and numerous young Children, for it is a common occurrence for the elder portion of the Family, after they reach the age of Adults, to decline accompanying their Parents.

Of the young married Couples too, who have made application, are approved and accepted for a passage, it is often found on the day for embarking that these parties fail to appear, having in the interim changed their mind or got into employment which they do not feel disposed to quit.

In fact when it is considered that the class of People, who are most wanted and desirable for the Colony, are the very same who are in greatest request at home as well as every where else; when the length of the voyage, the dread of the Sea, the parting with Friends and Connexions, and the breaking up of so many ties and associations are looked to, it is not matter for surprise that such failures should occur in the best of characters, but rather that so many are found willing to encounter all these trials in the bare hope of Employment in a strange land.

I would also beg to observe that after all the pecuniary remuneration for labor in New South Wales is not so greatly superior to what it is in England for good workmen or servants, as to hold out any very strong inducements to quit this Country. My own observation leads me to believe that a very small proportion of the labouring classes are disposed to emigrate, until driven to this resource by the pressure of want and misery, produced by the lack
RUSSELL TO GIPPS. 381

of employment. Now steady, active and good workmen of all sorts free from the encumbrance of children are seldom reduced to this predicament.

When however they come to have a young family to support and provide for, they fall into a condition which makes them less desirable to their employers, and in this situation they are willing to emigrate, though no longer by report deemed eligible as Emigrants.

These remarks I have felt myself called upon to lay before you, Sir, from the very great difficulty I have experienced in procuring a duly qualified set of Emigrants for the ship "James Pattison" now prepared for her voyage.

So early as the month of July last, circular notices were sent by your order to the different districts from which we have hitherto procured the more eligible sort of People. Letters were also written to several Gentlemen of influence in the Country who had been most active in promoting this service.

After allowing a considerable time to elapse for obtaining information, it was reported that the desire to emigrate had suddenly declined, and that very few persons of a desirable stamp had offered themselves. It was at the same time recommended by those Gentlemen to defer my visit to the Country for some time, to allow the people leisure to consider their position, and that the present, being the time for general employment in the Country, it was probable, as the Season advanced, that more applicants would appear. In consequence my visit was deferred until the 9th September, when, having given previous notice of the places and dates for meeting candidates, I left London on a tour through those parts of Sussex and Kent, in which I had before met the greatest encouragement.

At most of these places very few Families presented, at some not one. By far the greater proportion of those who appeared were disqualified by age, number of young children, or other causes of objection. After a fortnight's travelling, I returned to town with only 63 Persons on my list considered eligible.

It may be remarked also that with two exceptions none of the Gentlemen of the country nor of the Board of Guardians attended these meetings to give encouragement to the service by their presence as usual. In one instance, I was told by the clerk of the Union that the Board had objected to my examining the applicants at the Union House.

On my return, it was deemed requisite to apply to several Gentlemen in other parts of the country, who had on previous occasions made enquiry on this subject, and thought that there were people in their Neighbourhood desirous to go out. The reply to all these letters was such as to hold no inducement to visit them.

At one place, Battele, from which a particular application was made, and where I had previously seen and approved 72 Persons for a subsequent opportunity, being now called on, 22 only were willing to go.

It was now considered necessary in the want of applicants in the Country to advertise in London, which hitherto had been avoided. The Success attending this measure has as yet been very limited. The persons who present themselves being mostly of a character utterly unfit for being granted a free passage, and consisting chiefly of broken down Artisans or general Labourers, unaccustomed to any regular work and out of present employ, reduced to distress by misconduct, incapacity or unwillingness to continue labour.
1839.
31 Oct.

Report by
C. Inches re
difficulty in
procuring
emigrants for
ship James
Pattison.

I have no doubt that in the country generally the present decline of desire to emigrate to New South Wales has arisen from a concurrence of several events, which have had a pernicious effect on the people's minds, more especially the late reports very probably exaggerated, with which the Newspapers have teemed respecting the severe and long continued drought in the Colony, the consequent high price of provisions, with a corresponding unwillingness on the part of the Colonists to employ more working hands than absolutely required by their necessities; also the active advertising System of various new associations in favour of emigration and other Settlements such as South Australia, New Zealand, Texas and other places, all of which present an outlet for surplus labour, and produce an effect which was not perhaps altogether anticipated, and occasion I doubt not the present delay and difficulty in completing our ship.

With regard to the report of the resident Agent for Emigrants in Sydney. It appears to me exact a combination of requisites for duly qualified Emigrants, which in my opinion cannot be looked to for being realized or accomplished by any one who has seen and become practically conversant with the condition and state of feeling of the working people.

I have... CHARLES INCHES, M.D.
Selecting Surgeon of Emigrants.

[Sub-enclosure No. 2.]

MR. D. FORREST TO MR. T. F. ELLIOT.

Sir. 40 Union Street, Glasgow, 18th Oct., 1839.

Having lately sustained a very considerable loss by the withdrawing of a number of Passengers, who entered with me to proceed to Sydney under a Grant from the Colonial Government, after fitting out a large Vessel at a great expense for their conveyance; and as I have every reason to think their change of mind has arisen from the very unfavorable accounts of the Colony (so far as regards a Drought said to have taken place), which have for some months past found their way into the Newspapers, some of which I have every reason to believe are exaggerated, if not without foundation; I should therefore feel highly obliged, if you have lately received any Official Despatches from the Colony, that you would permit me to publish them, as, unless something of that kind is resorted to to restore confidence to the working classes, and even to Capitalists, Emigration will in a great measure cease.

I remain... DAVID FORREST.

[Enclosure No. 2.]

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


I have laid before Lord John Russell your Letter of the 21st Inst. representing the difficulty which Dr. Inches experiences in filling the Emigrant ship "James Pattison," now ready for her voyage to New South Wales. You also inclose a Letter from Mr. Forrest, of Glasgow, containing a similar complaint. It appears that both these Gentlemen attribute the decline of the desire to emigrate, which has arisen among the labouring population, to the Reports which have recently appeared in the Newspapers of a severe and long continued Drought in the Colony.
GIPPS TO NORMANBY.

I am directed by Lord John Russell to transmit to you a Copy of a Despatch from Sir George Gipps on this subject for publication, should you consider that such a step would be calculated to restore confidence to the working Classes.

I am, &c.,

JAS. STEPHEN.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY. 
(Despatch No. 142, per ship Regulus.)

My Lord,

Government House, 1st Novr., 1839.

In the concluding part of my Despatch, No. 62 of the 1st April last, I stated to your Lordship the course, which I had then adopted with respect to the remission allowed in the purchase of Land to Military and Naval Officers settling in the Colony; and that, under the advice of the Executive Council, it had been determined that all officers, who might bona fide have left England on the faith of the Regulations of the 15th Augt., 1834, should be considered Settlers under those Regulations, and have the full benefit of them.

I have now to report to your Lordship that, difficulties having arisen in deciding upon the claims of officers to be considered Settlers under the Old Regulations, I felt the necessity of laying down some definite Rule upon the subject, and that consequently it was fixed, with the advice of the Executive Council, that all Officers, who left the United Kingdom before the 1st Jan., 1839, should have the full benefit of the Regulations of the 15th Augt., 1834; whilst those, who might leave England on or after the same day, should be considered settlers under the Regulations of the 1st Augt., 1838.

As I have reason to believe that some officers, who feel themselves aggrieved under this decision, have made representations on the subject to the Lords of the Admiralty or to the General Commanding in Chief, I feel it right to address your Lordship more at length upon the subject, and particularly to explain the way in which Officers are affected by the change in the regulations.

The Regulations of 1838 differ from those of 1834, solely by the omission of the 8th Clause, or the clause by which officers were allowed to take the amount of their remission money in Land at the upset price, and without competition, provided such land had been previously exposed to sale at Public Auction, and not bought.

Under the Old Regulations, as under the New, the advantages held out to officers were estimated in money and not in Land; and the price, at which officers were allowed by the 8th Clause of the old Regulations to obtain Land which had been exposed...
to auction, was not the fixed price of 5s., but the upset price, which could never be less than 5s. per acre though it might very much exceed it. Whatever might be the price at which a certain piece of land had been put up, at that price an officer could obtain it; such at least was (I apprehend) the meaning of the Regulations; in practice, however, all Land was with little exception put up, until very recently, at 5s. per acre, whatever might be its value; and as, at every sale a good deal remained unsold, the aggregate quantity of land which had been put up at 5s. but not sold, came to be very considerable. Out of this Land, it was not difficult for an officer, having good means of information and allowing himself sufficient time for enquiry, to select portions worth considerably more than 5s., and by a local regulation he was not confined to the exact quantity sufficient to absorb his remission money, but was allowed to take, at the same price of 5s., the excess that there might be in the lot or lots, selected by him, over what his remission money would cover. For example, a Captain in the Army, entitled to a remission of £200, might select two Sections of 640 acres each (one section not being sufficient to absorb his remission money); the price of these two sections of land at 5s. per acre would be £320; he would therefore, in addition to his remission money, have to pay £120 out of his pocket; the real value of the land however, or what it would fetch if again put up at auction, might be, and perhaps generally was, about 7s. per acre; it is therefore evident that, in addition to his remission money, he must gain an advantage of 2s. per acre on the whole 1,280 acres of £128, making his real remission £328 in lieu of £200. In proportion to the rise in the value of land, this advantage would of course be increased; and, if it were so to rise as to make the value of the land 12s. per acre, the additional advantage obtained would be 7s. on each of the 1,280 acres, or £428 and the real remission would be of course £628 in lieu of £200.

This statement will sufficiently explain to your Lordship the dissatisfaction, with which the New Regulations have been received by Officers recently arrived in the Colony. Many of those officers have complained that they were not made aware of the change before they left England by any public notice, either from the Horse Guards or the Admiralty; but this omission (allowing it to have been such) is one, for which I respectfully submit that this Government can be in no way responsible. It seems to me extremely probable that the altered position, in which officers are placed by the New Regulations, is not even known at the Horse Guards, as Certificates are still given to officers, in which the General Orders, issued to the Army on the 25th August,
1834, are quoted, although those officers come clearly under the Regulations of the 1st Augt., 1838. A Copy of one of these Certificates I enclose, in which the officer is stated to be about to proceed to New South Wales as a Settler, under the General order of the 25th August, 1834, although he obtained his first Commission in the Army subsequent to the New Regulations of 1838.

I beg to assure your Lordship that I am always happy to see officers of the Army or Navy settle in the Colony, and am anxious to secure to them all the advantages intended for them by Her Majesty's Government; at the same time I think it my duty to say that, although they certainly are now in a less favorable position than they were, the real difference is that they henceforth will get only what was intended for them, whilst heretofore they got more.

I have, &c.,

GEO. GIPPS.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despitch No. 143, per ship Bardaster; acknowledged by lord John Russell, 4th August, 1840.)

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

With reference to Lord Glenelg's Despatch of the 29th Jany., 1839, No. 21, informing me of the appointment of Mr. C. J. La Trobe as Superintendent of Port Phillip, I have the honor to report to your Lordship that Mr. La Trobe arrived at Sydney on the 26th July last; and that, after remaining a sufficient time at the Seat of this Government to make himself acquainted with our general method of conducting business, Mr. La Trobe embarked for Port Phillip; and, by a report from him recently received, I learn that he arrived at Melbourne and entered on his duties on the 1st Octr. last.

By the advice of my Executive Council I issued on this occasion a Commission to Mr. La Trobe, of which I enclose a copy appended to which are copies of the Instructions with which I furnished Mr. La Trobe for his guidance.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[ Copies of these papers, dated 9th and 10th September, 1839, will be found in a volume in series III.]

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despitch No. 144, per ship Bardaster.)

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

With my Despatch of this day's date, No. 143, I have submitted to your Lordship Copies of the Instructions, which I issued to Mr. La Trobe on his assumption of the office of...
Limits assigned to district of Port Phillip.

Superintendent of Port Phillip; there is one point however in these Instructions, to which I think it right to ask your Lordship's attention in a particular manner, namely, the Limits which I have prescribed for the District of Port Phillip, as it is possible that circumstances may at some future period arise to make those limits of importance.

The features of the Country not being sufficiently known to enable me to define the District by natural boundaries, I have directed it to be considered as consisting of that part of the Territory of New South Wales, which lies to the South of the Thirty sixth degree of South Latitude, and between the One hundred and forty first, and One hundred and forty sixth degrees of East Longitude.

The Territory included within this boundary will be easily ascertained by the Inspection of any Map of Australia.

I have, &c,

GEO. GIPPS.

7 Nov.

Gratuities withheld from surgeons on immigrant ships.

Appeal by J. Smith.

Gratuity granted to J. Smith.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 34, per ship Mangies.)

Sir,

Downing Street, 7 November, 1839.

I have received your dispatch No. 19 of the 20th January last, reporting the Circumstances under which you had withheld from Mr. J. Smith (C.), Surgeon, R.N., and from Mr. Reid, as Surgeons Superintendent of the "Maitland" and "William Roger" Emigrant Ships, the Gratuity usually granted to Officers so employed.

In consequence of an Appeal from Mr. Smith against your decision, I applied to the Physician General of the Navy, in whose Department the Medical Journals are deposited, to report his opinion how far Mr. Smith's Journal appeared to shew that he displayed proper skill and assiduity in the discharge of his duties, so as reasonably to entitle him to the ordinary Gratuity.

I enclose a Copy of the Report, which has been furnished by Sir William Burnett, And, without questioning the propriety of your having withheld the gratuity from Mr. Smith, I shall now cause the usual payment to be made to that Officer.

I have, &c,

J. RUSSELL.

[Enclosure.]

SIR JOHN BARROW TO UNDER SECRETARY STEPHEN.

Sir,

Admiralty, 30th October, 1839.

Having laid before the Lords Commissioners of the Admiralty your Letter of the 21st Instant, stating that the usual gratuity has been withheld from Mr. J. Smith (C.) Surgeon, R.N., as Surgeon Superintendent of the "Maitland" Emigrant ship by the

* Note 69.
Governor of New South Wales on account of the mortality in his ship, and requesting the opinion of Sir Wilm. Burnett, Physician General of the Navy, how far Mr. Smith's Journal in the general view of the case appears to shew that he displayed proper skill and assiduity in the discharge of his duties so as reasonably to entitle him to the ordinary fraternity. I am commanded by my Lords to transmit to you for the information of Lord John Russell the enclosed copy of the Report from the Physician General, and to acquaint you that my Lords do not see any reason to withhold the usual gratuity from Mr. Smith.

I am, &c,

JOHN BARROW.

[Sub-enclosure.]

REPORT.

28 October.

I have carefully examined the Journal and Reports of Mr. Smith, while Surgeon of the "Maitland" Emigrant Ship, and it is but justice to that Gentleman to say that he has not only evinced proper skill in the treatment of the sick, but has also shewn in my opinion unwearied attention and assiduity in the performance of all his duties.

W.B.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 35, per ship Mangles.)

Sir,

Downing Street, 8 November, 1839.

I have the honor to acquaint you that, under the circumstances stated to me by Mr. J. Reid, late Captain, 45th Regt., I have granted to that Gentleman an extension for two months from the 19th of June next, of the period of his arrival in New South Wales as a Retired Military Settler.

I have, &c,

J. RUSSELL.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 146, per ship Bardaster; acknowledged by Lord John Russell, 22nd June, 1840.)

My Lord,

Government House, 8th Novr., 1839.

With reference to Lord Glenelg's Despatches of the 31st Octr., 1837, No. 18, and the 26th Jany., 1838, No. 67, respecting the maintenance of Free Paupers in the Convict Hospitals and Lunatic Asylum of New South Wales, I have now the honor to report the arrangements, which, subject to your Lordship's approval, have been made in this respect.

For the maintenance of Free Paupers in Convict Hospitals, the sum of one shilling and nine pence per diem is fixed as the proper sum to be paid by the Local Government for each Pauper; and this arrangement has been made to take effect from the 1st April, 1838.
With respect to the Lunatic Asylum, the same sum of 1s. 9d. per diem will be paid by the Local Government into the Military Chest for each Pauper maintained in it from the 1st April, 1838, to the 31st Decr., 1839; but, as the New Lunatic Asylum is now occupied, which has been built by the Colony, it is proposed that, from the 1st Jany., 1840, this establishment shall be made purely a Colonial one, and the whole expence of maintaining it defrayed out of Local funds; and that the sum of 1s. 9d. per diem shall be paid into the Colonial Treasury by the Deputy Commissary General for each Convict maintained in it.

The arrangement will therefore be prospectively a reciprocal one; the Hospitals will remain Convict Establishments, and the sum of 1s. 9d. per diem will be charged against the Local Government for every free Pauper admitted to them; the Lunatic Asylum will be a Colonial Establishment, supported entirely out of Local funds, the like sum of 1s. 9d. per diem being paid to the Local Government by the Commissary General, for each Convict maintained in it.

Respecting these arrangements, I have the honor to enclose three Reports made by the undermentioned officers, who were by my direction assembled as a Board to enquire into the subject.

The Deputy Inspector of Hospitals; The Deputy Commissary General; The Colonial Treasurer; The Colonial Auditor.

I have only further to explain that I have delayed making this communication to your Lordship, until all the papers connected with it have been laid before the Legislative Council, and the arrangements sanctioned by their voting the necessary sums for carrying them into effect.

I have, &c,

[Enclosure.]

GEO. GIPPS.

PROCEEDINGS OF BOARD.

Sydney, 9th January, 1839.

In consequence of the directions of His Excellency the Governor contained in a letter of the Colonial Secretary, dated 31st ultimo, we the undersigned this day assembled as a Board to examine and report on the rate to be paid from the Colonial Funds for the treatment of Free Persons, being paupers, in the Convict Hospitals.

By the information furnished by the Deputy Commissary General from the accounts of the year 1837, it appears that the total annual expenditure defrayed from the Military Chest for these Establishments amounts to about £18,000, exclusive of Medicines, and that the number of free paupers treated therein, compared with the number of Convict patients, is as 50 to 600, or about 2/15. It occurred to some of the members of the Board that, supposing the comparative Statement of the numbers of free paupers and convicts is correct, still that the Colony was not bound to pay its proportion of the whole expense of the Convict Hospitals, but of such part only as was increased by the admission of free paupers; but, upon
Calculating the difference and ascertaining likewise that no charge was made for Medicines in the total of £15,000 above alluded to (these being always sent from England and paid for there), the Board after considerable discussion resolved that the sum of one shilling and nine pence per diem was a fair and equitable remuneration to be paid from the Colonial Funds to the Military Chest for the Treatment of Free Paupers in the several Convict Hospitals and recommend that sum to be fixed for the purpose.

It appears to the Board desirable for the protection of the Public Funds of the Colony that some rule should be established, by which Paupers applying for admission should be obliged to afford proof that they are in circumstances to claim such indulgence, and probably a certificate from the Clergyman of the Parish may be found to afford the best Security and to impose the least difficulty or delay on the Parties required to produce it.

C. D. RIDDELL. WM. LITHGOW, Audr.
WM. MILLER, D.C.G. JNO. V. THOMPSON,
Depy. Inspector Genl.

Sydney, 9th January, 1839.

In consequence of the directions of His Excellency the Governor contained in a letter of the Colonial Secretary, dated 31st ultimo, we the undersigned assembled as a Board to consider and report on the means of separating the charges for the maintenance of Free persons and Convicts in the Lunatic Asylum.

Having in our report of this date recommended the sum of one shilling and nine pence per diem as the rate of charge for Free paupers in the Convict Hospitals, we find that, on the same grounds, the same rate of charge should be adopted for Patients in the Lunatic Asylum.

The Board on enquiry, find that the new building for the Lunatic Asylum as been erected at the charge of the Colony, and that the expenses of supporting it are defrayed from the Military Chest. They also find that, of the Patients treated therein, there is generally an equal number of Convicts and of Free Persons, but of late rather a small excess of the latter, which, from the present prospects as to the population of the Colony, may naturally be expected to increase, considering also that Convicts in a certain state of Lunacy are provided for at the Invalid Station of Port Macquarie.

The Board conceive that the most expeditious course would be to defray from the Colonial Treasury the expense of the Lunatic Asylum and to charge the Military Chest for the treatment of such Convicts as it might be found necessary to place in it.

C. D. RIDDELL. WM. MILLER, D.C.G.
WM. LITHGOW, Audr. JNO. V. THOMPSON,
Depy. Inspector Genl.

Sydney, 23rd April, 1839.

We the undersigned, having by direction of His Excellency the Governor, contained in a letter of the Colonial Secretary dated the twenty eighth of January last, reassembled as a Board to state whether we are satisfied that the Lunatic Asylum can under any circumstances be conducted as economically as an Hospital, and whether in our previous Report we took into consideration the expense of erecting the New Building at Tarban Creek.

With respect to the first point, having examined several statements of the Expenses incurred for the Lunatic Asylum and also for...
1839.
8 Nov.

Report re costs of maintenance in lunatic asylum.

Cost of buildings not included.

the Hospitals. We are Satisfied that the former is at present conducted as economically as the latter.

Should circumstances, however, render it necessary to incur a heavier expense for the maintenance of each Patient in the Lunatic Asylum than in the Hospital, the inequality would admit of being equitably remedied by augmenting the daily Charge for the former description of Patients.

We have not taken into consideration the heavy expense of erecting the new Building* at Tarban Creek, conceiving it to be one of the indispensable Establishments for the general good of the Colony; and, as in calculating the charge of the daily expense of each Patient in Hospital, the expense of erecting the Buildings was not taken into consideration, we considered that it would be inconsistent to adopt a different basis in proposing the rate to be charged for maintenance in the Lunatic Asylum.

WM. MILLER, D.C.G.
JNO. V. THOMPSON.
WM. LITHGOW, A.G. Depy. Inspector Genl.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 147, per ship Bardaster.)

My Lord,

Government House, 8th Novr., 1839.

With reference to my Despatch of this day's date, No. 146, on the subject of the division of the expenses of the Lunatic Asylum between the Military Chest and the Colony, I have the honor to report to your Lordship that, on the abandonment of the Old Lunatic Asylum* at Liverpool, and the removal of the Patients to the New Asylum built by the Colony at Tarban Creek, I found myself under the necessity of appointing to it a Resident Medical Officer, there being no Medical practitioner of any sort within ten miles of the building; and that I selected for this purpose, subject to your Lordship's approval, Dr. McLean, late a Staff Surgeon in the Army, who recently settled in this Colony, and was the bearer to me of recommendations from Lord Glenelg and the Director General of Hospitals, Sir James McGregor.

The Pay, which I have allowed to Dr. McLean, is that of an Assistant Surgeon on the Establishment or 7s. 6d. per diem, with apartments in the Building and the usual allowance of Rations and Fuel. As however £100 per annum will be saved, which was paid for the Medical attendance of the Lunatics at the former Asylum, the increased expence will only be about £75 a year.

According to the arrangements reported in my Despatch of this day's date, No. 146, this expence will be a charge on the funds provided for Convict services up to the 31st Decr., 1839, after which it will be transferred to the Colony.

I have, &c.,

GEO. GIPPS.

* Note 70.
GIPPS TO NORMANBY.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 36, per ship Mangles.)

Sir,

Downing Street, 9 November, 1839.

I have the honor to acknowledge the receipt of your Despatch No. 91 of the 12th of June last, inclosing a Copy of the Address with which you opened the Session of the Legislative Council of New South Wales on the 11th of June last.

I have, &c.,
J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 38, per ship Mangles.)

Sir,

Downing Street, 11 November, 1839.

I transmit to you, herewith, a Seal* which has been prepared for the use of the Territory of New South Wales, together with a Warrant under the Royal Sign Manual authorizing and directing the use of the same.

I have, &c.,
J. RUSSELL.

[Enclosure.]

[A copy of the warrant is not available.]

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 149, per ship Bardaster.)

My Lord,

Government House, 11th Novr., 1839.

I have the honor to report to your Lordship that, since the date of my last Report (23rd Feby., 1839), the following payments have been made into the Military Chest, in liquidation of the advances on account of the Colony, made by the Lords of the Treasury.

<table>
<thead>
<tr>
<th>Date of Despatch notifying the advance.</th>
<th>Sums advanced.</th>
<th>Date of repayment into the Military Chest.</th>
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<tr>
<td>Nos. 1838 9th Oct. 216 ......... 20,200 22nd March, 1839.</td>
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<td>12th Novr. 242 ......... 8,000</td>
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<td>1839 22d Jany. 13 ......... 5,805 29th August</td>
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<td>8th March 18 ......... 11,542</td>
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<td>24th May 57 ......... 26,950 17th October,</td>
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<td>£72,497</td>
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I have, &c.,
GEO. GIPPS.

* Note 71.
Lord John Russell to Sir George Gipps.
(Despatch No. 39, per ship Mangles; acknowledged by Sir George Gipps, 27th January, 1841.)

Sir,

Downing Street, 12 November, 1839.

I beg to call your attention to the “Circular” Dispatch, which was addressed to you on the 12th of July, 1838, desiring that you would transmit to this Office, with as little delay as possible, for the information of the Secretary at War, a Return of all the allowances for Civil Services granted to Military Medical Officers in the Colony under your Government, prepared according to the form annexed to the Circular Dispatch.

I have to desire that you will furnish that Return by the earliest opportunity.

I have, &c.,

J. Russell.

13 Nov.

Approval of relief measures on account of drought.

14 Nov.

Despatch acknowledged.

Withdrawal of complaint by H. Donnison.

Lord John Russell to Sir George Gipps.
(Despatch No. 40, per ship Mangles.)

Sir,

Downing Street, 13th November, 1839.

I have received your Despatch No. 66 of the 8th of April last, reporting the measures which you had taken, with the advice of the Executive Council of New South Wales, for the importation from India of a quantity of Grain, in consequence of the long-continued Drought in the Colony; and I have to convey to you the approval by Her Majesty’s Government of the arrangements you adopted under the circumstances detailed in your Despatch.

I have, &c.,

J. Russell.

Lord John Russell to Sir George Gipps.
(Despatch No. 41, per ship Mangles.)

Sir,

Downing Street, 14 November, 1839.

I have received your Despatch No. 85 of the 27th of May last, on the subject of a communication addressed to my Predecessor by Mr. Henry Donnison, a Magistrate in New South Wales.

As you state that Mr. Donnison has expressed a wish that no further notice may be taken of his representation, and that the whole matter may be dropped, it is only necessary for me to express my gratification at the satisfactory termination of the dispute.

I have, &c.,

J. Russell.
RUSSELL TO GIPPS.

LOD JOHN RUSSELL TO SIR GEORGE GIPPS. (Despatch No. 44, per ship Marmion.)

Sir,

Downing Street, 14 November, 1839.

I enclose, for your information, the Extract of a letter, which I have received from the Earl of Sefton on the subject of a Highland Family, who have lately emigrated to Port Phillip. You will have the goodness to forward the Inclosure to Mr. Latrobe, and to inform him that I shall be happy if he can render any service to the family in question, Understanding, however, that in this and in other cases it is not my intention to fetter the discretion of the Local Government as to the employment in the Public Service of such persons as may appear to them to have the best claims to be so employed.

J. RUSSELL.

[Enclosure.]


“While I am troubling you with this Letter, I cannot resist mentioning another subject in which however I do not imagine you can do anything for me. I have had a place in the Highlands for some Years, and from the Glen in which I live the people emigrate to Canada, New South Wales, etc. Last June the greatest part of a family quitted the Glen and sailed for Port Phillip in Australia in a ship called the David Clark. They are innocent honest people, and I should be glad if any notice of their names, if such a thing is ever done, could be sent out by which they could be known as such, and by which their Character might avail them in their future struggle for a livelihood. I fear my proposition is a vague one, and perhaps impossible, but if any such recommendations are ever sent out, these people are deserving of it. Their Names are Alexander Menzies, Menzies, and their Sister Mrs. Macgibbon, a Widow with one Child.”

LOD JOHN RUSSELL TO SIR GEORGE GIPPS. (Despatch No. 42, per ship Mangles.)

Sir,

Downing Street, 15 November, 1839.

I have to acknowledge the receipt of your Despatch No. 92 of the 13th of June last, transmitting the Memorial of the Directors of the Australian Gas Light Company in New South Wales, complaining of the monopoly of Coal supposed to be held by the Australian Agricultural Company.

In reply, it is only necessary for me to refer you to the decision on this subject, communicated to you in my Predecessor’s despatch, No. 84 of the 3rd of July last.

J. RUSSELL.
Sir George Gipps to Marquess of Normanby.
(Despatch No. 151, per ship Bardaster; acknowledged by Lord John Russell, 8th June, 1840.)

My Lord,

Government House, 15th Novr., 1839.

With reference to your Lordship's Despatch of the 27th May, 1839, No. 58, and the Correspondence which has taken place in consequence of a complaint made by Surgeon Lewis of the 4th Regt., of the state of the Solitary Cells in this Colony, I beg leave to report to your Lordship that I have ascertained the Cells, complained of, to be those which are situated within the precincts of the Military Barracks, and under the charge of the Officers of Ordnance. Your Lordship will consequently perceive that the Local Government is in no way chargeable with neglect in consequence of their having been either badly constructed or out of repair.

I have, &c.,

GEO. GIPPS.

16 Nov.

Despatch acknowledged.

Refusal of land grant for J. Du Moulin.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 152, per ship Bardaster; acknowledged by Lord John Russell, 8th June, 1840.)

My Lord,

Government House, 16th Novr., 1839.

I have the honor to forward herewith to your Lordship a Memorial from Messrs. Ralph and James Scott Hindmarsh, requesting Grants of Land, in consideration of their having been incapacitated from getting Grants in the years 1828 and 1829, by reason of their employment in the service of Government.

I have explained to these gentlemen that the final decision of Lord Glenelg, in cases precisely analogous to their own, was conveyed to me by His Lordship's Despatch of the 16th July.

I have, &c.,

GEO. GIPPS.
1839. No. 157; but, as they still have very anxiously requested me to forward their Memorial, I do so, though without being able to support it by any recommendation from myself.

I have, &c,

GEO. GIPPS.

[Enclosure.]

[A copy of this memorial is not available.]

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LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 45, per ship Marmion.)

Sir,
Downing Street, 18 November, 1839.

I have received your Dispatch No. 71 of the 17th of April last, transmitting a Copy of a Letter which had been addressed to you by the Chief Justice of New South Wales 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 Section of the Charter of Justice of the Colony.

Having referred this question for the opinion of the Attorney and Solicitor General, I transmit to you, herewith, a Copy of their Report on the subject, stating their opinion that the Office of Judge of the Vice Admiralty Court in New South Wales is incident to the Office of Chief Justice of the Colony, and is not "another Office of Profit or Emolument" within the meaning of the 7th Section of the New South Wales Charter of Justice.

I have, &c,

J. RUSSELL.

[Enclosure.]

REPORT BY ATTORNEY AND SOLICITOR GENERAL.

My Lord,
Temple, 9th Novr., 1839.

We have the honor to acknowledge the receipt of your Lordship's letter of the 6th Instant, transmitting to us the copy of a Despatch from the Govt. of New South Wales, relative to a question raised by Mr. Justice Willis as to the power of the Chief Justice of the Colony to act as Judge of the Vice Admiralty Court, without coming within the perils of the 7th Section* of the New South Wales Charter of Justice, and requesting us to report to your Lordship our opinion whether the objection raised by Mr. Willis is valid.

Having duly considered the subject we have now to report to your Lordship that in our opinion the objection is unfounded. We think that, under the circumstances, the office of Judge of the Vice Admiralty Court in New South Wales is incident to the Office of Chief Justice of the Colony, and is not "another Office of Profit or Emolument" within the meaning of the 7th Section of the New South Wales Charter of Justice.

We have, &c,

J. CAMPBELL.
R. M. ROLFE.

* Note 24.
1839.

19 Nov.

Despatch acknowledged.

Approval of A. Stephen as acting judge.

HISTORICAL RECORDS OF AUSTRALIA.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 46, per ship Mangles.)

Sir,

Downing Street, 19 November, 1839.

I have received your Dispatch No. 89 of the 7th of June last reporting the arrival of Mr. Alfred Stephen from Van Diemen's Land, and his appointment as Acting Judge of the Supreme Court of New South Wales.

I entirely approve of Mr. Stephen's appointment, more particularly as it appears to be viewed with so much satisfaction in the Colony. And I shall have much pleasure in confirming him in the Office of Judge whenever a Vacancy may occur on the Colonial Bench, either by the resignation of Mr. Justice Burton, which I have no grounds for anticipating, or by the appointment of an additional Judge in the Supreme Court of the Colony.

I have, &c.,

J. RUSSELL.

20 Nov.

Departure of Sir G. Bremer.

Conditions for occupation of lands at Port Essington.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 155, per ship Bardaster.)

My Lord,

Government House, 20th Novr., 1839.

With reference to my former Despatches* respecting the Settlement at Port Essington and the employment of Her Majesty's ship "Alligator," I have the honor further to report to your Lordship that Sir Gordon Bremer sailed in the "Alligator" from Sydney for Port Essington on the 8th inst.

I take this opportunity of enclosing to your Lordship a Copy of a letter, which was addressed to me by Sir Gordon Bremer, respecting the terms on which persons should be allowed to occupy Land at Port Essington, also a copy of the answer, which I caused to be returned to the same, and a copy of a Notice which was in consequence issued by Sir Gordon Bremer.

Your Lordship will perceive by this notice that it is proposed to allow occupation on seven years' leases of allotments not exceeding half an acre each within the proposed Town of "Victoria," and of five acres each at any distance not exceeding five miles from the same.

Trusting that your Lordship will approve of what has been done.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[Copies of these papers will be found in a volume in series III.]
SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 156, per ship Bardaster.)

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

Having in my Despatch of this day's date, No. 155, reported the sailing of Her Majesty's ship "Alligator" for Port Essington, I think it right, with reference to my Despatch of the 31st July last, No. 111, to inform your Lordship that the arrangement therein mentioned of embarking a Party of the 50th Regt. on board the "Alligator" has not been carried into effect.

A delay having occurred in the sailing of the "Alligator" so much greater than I anticipated, when I wrote my Despatch of the 31st July last, and subsequent accounts of a less alarming nature having been received from China, I did not think it necessary to press either on Sir Gordon Bremer or Sir Maurice O'Connell the carrying out of the proposed arrangement.

It is perhaps only right for me to add that the delay in the sailing of the "Alligator" was principally occasioned by her visiting Norfolk Island under the circumstances reported in my Despatch of the 14th Sept. last, No. 127.

I have, &c.,
GEO. GIPPS.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 157, per ship Bardaster.)

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

I have the honor herewith to forward to your Lordship a Copy of a Resolution, adopted on the 19th inst. by the Legislative Council of this Colony, in which the raising of money by way of Loan* is recommended for the purpose of defraying the expenses of Immigration.

On this subject, I beg leave to refer to my Despatch of the 31st Octr., 1838, No. 177, and to the Despatches named in the margin,† respecting the state of the finances of the Colony; also to your Lordship's Despatch of the 28th May, 1839, No. 59, and the letter from the Secretary of the Treasury to Mr. Stephen of the 21st May in the same year.

I beg to assure your Lordship that it is with the greatest possible reluctance I can bring myself to concur in the project of a Loan; but a continued supply of Immigrants is so essential to the welfare of the Colony, that every other consideration must be made to yield to the necessity of procuring them.

Your Lordship will perceive that the Council have expressed their readiness to give, if necessary, the additional guarantee

* Note 72. † Marginal note.—12th Oct., 1838, Nos. 160 and 161.
of the ordinary revenues of the Colony for the due payment of the Interest and eventual redemption of the Capital borrowed. The funds however primarily to be pledged, namely, the Land Fund, being the property of the Home Government, and the object, namely Immigration, for which the Loan is to be raised, being one in which the interests of the Mother Country are concerned no less than those of the Colony, I venture to hope that any additional guarantee, which may be required, will be given by the British Government, as such a guarantee will naturally be more effectual in the English Money Market than any that can possibly be afforded by the Local Authorities of the Colony.

With respect to the time and manner of negotiating the Loan, I beg to submit to your Lordship the following considerations:—

We have at present a sum of about one hundred and eighty thousand pounds in the Treasury; and our gross revenue (including the Land Fund) may be considered as near upon £400,000 a year.

The sum in the Treasury is indeed barely sufficient to meet all our engagements to the end of 1839, but still the demands upon us, in fulfilment of these engagements, come in only progressively, so that we shall not probably actually exhaust the Treasury for a year or possibly even for two years to come. In order therefore to defer to the latest possible day the actual raising of the Loan, and to take the chance of such a turn in our affairs, as may enable us to reduce the amount of it or even dispense with it altogether, I venture very earnestly to express my hope that the Lords of the Treasury will continue to make advances as heretofore for such of the expenses of Emigration, as are to be provided for in England, without pressing for immediate repayment into the Military Chest of the Colony; and further that I may, in case of necessity, be authorised to receive advances in the Colony from the Military Chest to any amount not exceeding £10,000 at one time, or £100,000 in a year. Such an arrangement would in effect be the same, as if the Lords of the Treasury were to advance to us the first Instalment of the Loan, and not bring us into the Money Market, until after such instalment should be exhausted.

The whole Loan, as recommended by the Committee, is £1,000,000, and each instalment £125,000; under the arrangement proposed, no part of the Loan would therefore be negotiated, until the Lords of the Treasury had made advances to the amount of £125,000; but, so soon as their advances amounted to this sum, the first portion of the Loan would be raised, and the amount applied in liquidation of those advances.
RUSSELL TO GIPPS.

Another arrangement might be for Colonial Debentures (executed in any manner approved by the Lords of the Treasury), to be lodged in the proper office in England, and issued as they may be wanted to repay advances made either to the Agent of the Colony in England or to the Local Government out of the Military Chest on the spot, interest on them being of course chargeable only from the day on which they are issued. By either of these plans, the Local Government would be relieved from the inconvenience on the one hand of keeping a large sum of money in the Treasury Vault or in the Sydney Banks, and from the apprehension on the other hand of seeing their funds exhausted, and of being unable to meet their current expenses.

I have, &c,

[Enclosure.]

RESOLUTION of the Legislative Council of New South Wales, adopted on the 19th Nov., 1839.

THAT this Council, having had under consideration the Report presented to them on the 12th inst. by the Committee appointed to enquire into and report on the subject of Immigration, concur in and adopt the opinions expressed by their Committee, as to the necessity of continuing Immigration on an extensive scale; and the Council further concur in the recommendation of the Committee that, in the event of the funds now applicable to Immigration being found insufficient, measures should be taken for raising money in England by way of Loan on the Security of the Land Revenue of the Colony (with the additional security, if necessary, of the ordinary Revenue of the Colony) to any extent not exceeding £125,000 in each of the next eight succeeding years; and that the assent of Her Most Gracious Majesty be solicited for the secure and unalterable appropriation of such a portion of the Land Revenue as may be required for the payment of the interest on such Loan; and also for providing a Sinking Fund, at the rate of Five per Cent. per annum upon all Sums so borrowed, to accumulate for the extinguishment of the entire Debt within fifteen years from the date of the first Loan.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 48, per ship Marmion; acknowledged by Sir George Gipps, 3rd October, 1840.)

Sir,

Downing Street, 23 November, 1839.

I have to acknowledge the receipt of your despatch No. 88 of the 4th of June last, reporting the refusal of Colonel Snodgrass to refund half of the Salary received by him as Acting Governor during the interval, which elapsed between Sir Richard Bourke's departure from the Colony, and your assumption of the Government.

I should be very unwilling to have recourse to any legal measures for enforcing the repayment of the Sum to which you lay
Method for repayment of half salary issued to K. Snodgrass.

J. RUSSELL.

Despatch acknowledged.

SIR GEORGE GIPPS TO MARQUES OF NORMANBY.

(Despatch marked "Separate," per ship Bardaster; acknowledged by lord John Russell, 6th July, 1840.)

My Lord,

Government House, 23rd Novr., 1839.

I had the honor to receive on the 28th Sept. last your Lordship's Despatch of the 11th May, 1839, No. 46, announcing to me the important measures which had been decided on by Her Majesty's Government in respect to the discontinuance of Transportation to New South Wales, and the increase of the Establishment at Norfolk Island for the purpose of trying an entire new system* of Convict management; at the same time, I received also your Lordship's Confidential Despatch, respecting the appointment of Captain Maconochie to the office of Superintendent of the New Establishment.

The arrangements required to carry these orders into effect are not yet sufficiently advanced to enable me to report fully on them to your Lordship; but, as I consider your Lordship may be anxious to know what progress we are making, and also the impression produced in the Colony by the announcement of these changes, I crave permission to address your Lordship without reserve on the subject of them.

The Legislative Council being in Session when I received your Lordship's Despatch, I first announced in person to the Council the important fact that Transportation to the Colony had ceased; and I published an official notice to the same effect in the next Government Gazette. The Settlers in general were so well prepared for the event that but little excitement was produced by the announcement of it; the Public Press affected for the most part to rejoice at it; and the discontent of those, who have always been the advocates of Transportation, was manifested principally in reproaches against the Government for having made the support of the Police and Gaol a charge upon the Land Fund, instead of appropriating against the Government for the importation of Free Laborers, who will now more than ever be required in the Colony.

That part of the proposed plan however was very loudly denounced, both in the Council and out of doors, which seems

* Note 73.
GIPPS TO NORMANBY.

1839.

22 Nov.

Objections to introduction into the Colony of Convicts from Norfolk Island when their sentences shall have expired; by which it was objected (and I must candidly say I think with reason) that New South Wales will still remain the receptacle of Convicts, and therefore will in no way be freed from the stain, which Transportation has impressed on it, though it will be deprived of all the benefit, which it has hitherto derived from the forced labor of the Convicts.

I now pass to the subject of Capt. Maconochie's appointment. Judging that the discretion, given to me by your Lordship respecting it, was intended to relieve me from the necessity of making an appointment, which might be offensive to Sir John Franklin, I thought it best to put the whole matter into his hands, which I did by sending to him Copies of your Lordship's Despatches, and leaving it to him to offer or not the appointment to Capt. Maconochie. I am happy to report to your Lordship that this course of proceeding has had the effect not only of securing to the Government the services of Capt. Maconochie, but also of putting an end to the estrangement, which had for above a year existed between him and Sir John Franklin.

Capt. Maconochie lost no time in coming from Van Diemen's Land, and is now in Sydney, though he will return to Hobart Town for his family before he proceeds to Norfolk Island.

I have now to inform your Lordship that Capt. Maconochie, immediately on his arrival in Sydney, expressed to me personally, and has since repeated by letter, that, though ready to proceed to Norfolk Island and enter on the duties which are to be confided to him, he does not consider Norfolk Island a favorable spot for the first trial of his system of Convict Management; and he very earnestly requested that a preference might be given to Tasman’s Peninsula in Van Diemen’s Land or to Maria Island, which is near to it, or even to King’s Island in Bass’ Straits; or, if I did not feel authorised to make any of those localities, rather than Norfolk Island, the scene of his labors, that I would postpone the execution of your Lordship's orders for a year, and employ him in the meantime in the Superintendence within the Colony of New South Wales of the Convicts intended by your Lordship for Norfolk Island.

After a very mature and anxious consideration of Captn. Maconochie’s objections to Norfolk Island, I have to report to your Lordship that I have not thought it right to yield to them, and that consequently the arrangements for carrying out your Lordship's instructions will go on.

On comparing together Captn. Maconochie's letter and your Lordship's Instructions, I found that the principal arguments,
Arguments by A. Maconochie against Norfolk Island.

Reasons for testing new system at Norfolk island.

Objections to King island.

Wooden buildings to be erected at Norfolk island.

1839.

23 Nov.

Arguments by A. Maconochie against Norfolk Island, were founded on the very circumstances which had led Her Majesty's Government to select it as a fit place of confinement for Convicts, namely, its insular character, its inaccessible nature and its fertility of soil, and its nature of its Climate. The only other important objection urged against it by Captain Maconochie is the present occupation of a portion of the Island by doubly convicted Felons from New South Wales; this however appeared to me to be one which was undoubtedly known to Her Majesty's Government when Norfolk Island was selected by them; and one moreover which applies also to Tasman's Peninsula, though not, as Captn. Maconochie says, in an equal degree.

On a full view of all Capt'n. Maconochie's arguments, though I may allow that Tasman's Peninsula offers some advantages, which Norfolk Island does not possess, and especially those of a good Harbour and more varied employment for the Convicts, I did not feel these advantages to be sufficiently marked to justify me in departing so widely from my instructions, as I must have done in order to fall in with Capt'n. Maconochie's views; and I became more fixed in this conclusion, when I bore in mind that those instructions came to me as the result of the long consideration, which Her Majesty's Government had given to the subject of Transportation, aided by a Parliamentary Enquiry, and possessing all the information respecting our Penal Colonies which could possibly be collected.

With respect to King's Island or any other Island in Bass Straights, I am disposed to think that the facility of escape from them would form an almost insuperable objection, these Straits being more frequented with shipping than any other part of the neighbouring seas.

I beg to state to your Lordship that I only finally decided against Captain Maconochie's proposal yesterday, having waited for the return from Norfolk Island of an Officer of Engineers (Lieut. Sugard), whom I had called up expressly to give me information respecting it, and especially of the facilities which it affords for accommodating an increased number of Convicts. I trust your Lordship will accept this as an excuse for the hurried way in which this Despatch is written, as well as for its being unaccompanied by any official document, except Captn. Maconochie's letter to me of the 13th instant.

The arrangements, which I have made on the report of Mr. Lugard, are that temporary accommodation in wooden buildings shall be forthwith provided at Longridge, which is the principal agricultural station on the Island, and distant about a mile and a half from the spot where the doubly convicted Prisoners are
GIPPS TO NORMANBY.

confined; there is also a Barn at Longridge, which will be fitted up for two hundred men.

From the reports which I have received from various officers of the capabilities of Norfolk Island, I am disposed to think that the Convicts confined on it may be increased to between four and five thousand, but not beyond that number, without greatly increasing the expense of their maintenance. Lieutt. Lugard reports that, by a recent survey, he has ascertained the whole superficial content of the Island not to exceed nine thousand acres, though it has usually been reckoned at fourteen thousand.

I fear that the expense of maintaining Convicts on it will be greater than your Lordship appears to contemplate, though not greater probably than it would be in any other situation that could be chosen for them in the Southern Hemisphere. At the same time I do not see that the discontinuance of Transportation to New South Wales will enable me materially to reduce the expense of our Convict Establishment in this Colony for at least two or three years.

I cannot conclude this Despatch without expressing my hope that nothing contained in it may lead your Lordship to consider that I am in any way indisposed to see Capt'n. Maconochie make trial of his system under the most favorable circumstances, and such as he may himself entirely approve. I beg to assure your Lordship that such is very far from being the case, and that I am on the contrary very anxious to see his system fairly tried under his own superintendence; and, though I may have doubts of any great results being produced by it, or rather results upon a great scale, I have great faith in the principles on which his experiments are to be founded.

I have, &c,

GEO. GIPPS.

[Enclosure.]

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

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

My Lord,

(Despatch No. 158, per ship Bardaster; acknowledged by lord John Russell, 6th June, 1840.)

I have the honor herewith to forward a letter, which has been addressed to your Lordship by Sir James Dowling,† Chief Justice of this Colony, apparently with the intention only of preventing any unfavorable impression respecting his Judicial conduct being produced in your Lordship's mind by an incorrect representation of what occurred on a recent trial before him in the Supreme Court, and subsequently in the Legislative Council of this Colony in consequence of that trial.

* Note 73. † Note 74.
I was present myself (occupying, as usual, the Chair in the Council) when allusion was made by Mr. McArthur to reports then current in the Colony respecting this trial, to the effect that the Prisoners had been acquitted only in consequence of the way in which the Judge summed up, and that, in summing up, he had declared that drunkenness might extenuate crime. The Chief Justice not being then present, I requested Mr. McArthur to postpone his observations, until Sir James Dowling should be in his place, with which request Mr. McArthur complied.

At the next meeting of the Council, Sir James Dowling, being present, denied that there was any foundation for such reports, with which Mr. McArthur expressed himself satisfied. Captain King stated that he had been in Court during the trial, and had certainly received an impression that the Chief Justice had summed up in the way stated; but Captn. King also expressed himself satisfied with the explanation of the Chief Justice.

I beg to explain to your Lordship that, although I regret circumstances of this unpleasant nature should have occurred in the Council, I do not see how the occurrence of them can be altogether prevented in a Body in which freedom of discussion is allowed. Had any intemperate attack been made upon a Judge, I should certainly have thought it my duty to interfere for the preservation of order.

I have, &c., Geo. Gipps.

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28 Nov.
Transmission of private acts of council.

Sydney Alliance marine and fire and life assurance company's act.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 159, per ship Royal Admiral; acknowledged by Lord John Russell, 10th July, 1840.)

My Lord,
Government House, 28th Novr., 1839.

In a Box which is consigned to the Agent of the Colony, and shipped in the same vessel that conveys this Despatch, I have the honor to forward to your Lordship Four Private Acts passed by the Legislative Council of this Colony in the Session which terminated on the 15th inst., trusting that the same may on your Lordship's recommendation be graciously allowed by Her Majesty.

The following is a description of the Acts:

1. "An Act for facilitating proceedings by and against the Sydney Alliance Marine and Fire and Life Assurance Company." This Act was passed to enable the Company to sue and be sued in the name of the Chairman; but your Lordship will
perceive, by the 5th Clause of it, that the Members of the Company are individually answerable for the debts of the whole; and by the 9th Clause that the Company is not incorporated. The privileges therefore conferred on the Company are not greater than those which the Crown can in the United Kingdom confer under the 4th and 5th Wm. IV, Ch. 94.

2. "An Act to enable the Proprietors of a certain Banking Company, carried on in the Town of Bathurst, in the Colony of New South Wales, under the name, style, and firm of 'The Bathurst Bank' to sue and be sued in the name of the President of the said Company for the time being, and for other purposes therein mentioned."

This is a similar Act to enable the Shareholders in a Bank, which has been established in Bathurst, to sue and be sued in the name of their Chairman.

3. "An Act for facilitating proceedings by and against a certain Banking Company, called 'The Union Bank of Australia,' and for other purposes therein mentioned."

This is an Act for the establishment of a New Bank (being the 5th in Sydney).

The expediency of establishing an additional Bank in Sydney might have been questioned, if either it or any of the existing Banks were incorporated as Joint Stock Companies; but, as this is not the case, and on the contrary the shareholders in all the Banks (with the exception of the Bank of Australasia which has an English Charter) are responsible for the debts of the Company to the whole amount of their separate properties, it does not appear to me that any evil can result to the Public, especially at a time when there is no Bank, which will discount the very best paper at less than ten per cent. per annum.

4. "An Act to amend an Act intitled '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.'"

This Act was passed to amend an Act passed in the 8th Wm. IV (1837), the allowance of which by Her Majesty was notified to me in your Lordship's Despatch of the 3rd June, 1839, No. 61.

After making some small amendments, in respect to the election of Chairman, and in a few other minor particulars, the present Act proceeds in the 13th Clause to repeal the enactment in the 68th Clause of the former Act, which prevented the erection of a Gasometer or any Gas Works within the Town of Sydney. This being the principal and indeed only important

* Note 75. † Note 76.
1839. 29 Nov.

object of the Bill, the matter was specifically referred to a Committee of the Council, whose Report* I have the honor to enclose.

I take this opportunity of stating to Your Lordship that the Public Acts of the Session will be forwarded by me, in the usual manner, as soon as they are printed.

As the Private Acts now forwarded cannot come into force until they have been allowed by Her Majesty, I beg respectfully to solicit an early decision on them. I have, &c.

GEO. GIPPS.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 160, per ship Royal Admiral.)

29 Nov. My Lord, Government House, 29th Novr., 1839.

In my Despatch of the 31st July last, No. 111, I reported to your Lordship that H.M.S. “Herald” had sailed for China on the 27th of that month, the “Pelorus” on the 29th, and that the “Alligator” would follow as soon as she could be got ready for sea.

Return of H.M. ship Herald from China.

I have now to report to your Lordship that the “Herald” returned to Sydney on the 27th inst., Capt. Nias having received information at Singapore, which induced him to think the presence of any additional Naval Force in China† unnecessary.

Visit of H.M. ship Pelorus to Port Essington.

Of the “Pelorus” I have heard nothing official, but from private accounts I learn that she was at Port Essington in the latter end of Octt. last.

The movements of the “Alligator” were reported by me to your Lordship in my Despatches of the 14th Sept. last, No. 127, the 24th Octt., No. 140, and the 20th Novr., No. 155.

The most recent information, which we have received from China (up to the end of Septt.) being of an unfavorable nature, I think it right to put your Lordship in possession of these facts respecting the distribution of H.M. Naval Force in these Seas.

I have, &c.

GEO. GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 51, per ship Marmion; acknowledged by Sir George Gipps, 20th May, 1840.)

30 Nov.

Sir, Downing Street, 30th November, 1839.

The King of the French having appointed Mr. Faramond to be his Consul for New South Wales and other British Possessions in Australia, to reside at Sydney, I have to request that you will report to me whether any objection exists to the grant of the Royal Exequatur to that Officer.

I have, &c.

J. RUSSELL.

* Note 77.  † Note 52.
GIPPS TO NORMANBY.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 162, per ship Royal Admiral; acknowledged by lord John Russell, 28th June, 1840.)

My Lord,

Government House, 2 Decr., 1839.

Herewith I have the honor to transmit to your Lordship the Financial Papers for the year 1839-40, in the complete form in which it has been usual to forward them from this Colony, an Index of their contents being prefixed to them.

Having had such frequent occasion to draw your Lordship's attention to the state of the Finances of the Colony, I am relieved from the necessity, under which I should otherwise feel myself, of entering into a lengthened explanation of the important documents which I transmit. I must beg leave however in a particular manner to ask your Lordship's attention to the Financial Minute, which I addressed to the Council in laying before them the Estimates for the year 1840, and which paper is No. 1 in the accompanying collection.

It is further my duty to request your Lordship's attention to the Protests* of two Members of the Council, Mr. Blaxland and Sir John Jamieson, which are respectively to be found at Pages 247 and 248 of the accompanying Papers, also to the Resolution* of the Council adopted on the motion of Mr. Blaxland on the 19th Novr., Page 245.

The Estimates underwent considerable alteration in their passage through the Council, as will be seen by the manuscript corrections made in them. With one exception, namely, that of the Item for Public Education, on which I shall have occasion to address your Lordship in a separate Despatch, the alterations were such as I saw no reason to object to. The sum of £150 per annum was added to the Salary of the Post Master General, making it £650 in lieu of £500; and the sum of £1,000 was inserted as an allowance to Soldiers of the Line employed in the superintendence of Ironed Gangs.

The subject of Police and Gaols having been referred to a Committee of the Council, the Estimates prepared by the Committee were substituted for those which I had myself caused to be laid before the Council. Your Lordship will however perceive, by the general abstract at Page 13, that the Estimate of the Committee exceeded my own estimate by the sum of £2,513 12s. 2d. The large sums of £94,823 15s. 9d. for Police and Gaols in the old parts of the Colony and of £10,043 7s. 1d. for the same at Port Phillip were voted by the Council with the

* Note 78.
1839.
2 Dec.
Opposition to estimates for police and gaols.

Vote for pensions and agent general.

Increase in estimates.

Appropriation act.

Opposition to estimates for police and gaols.

utmost possible reluctance, as will be seen by the Resolution in Council, passed on the motion of Mr. Blaxland already referred to; and nothing I am convinced induced the Council to vote them, but my declaration that, as I had no other funds to which I could resort, I should reduce the Police exactly in proportion as their vote might be reduced. The sums voted however I should say include £13,000 for the Border Police recently established beyond the limits of location, which will be defrayed nearly, if not entirely, by the payment made for Licences to depasture Cattle beyond the Boundaries of location and the produce of an assessment on Cattle, authorised by the 2nd Vict., No. 27, transmitted with my Despatch of the 6th April, 1839, No. 65.

The Item of Pensions was voted this year without opposition, as also was the salary to the Agent of the Colony (Mr. Barnard) which had heretofore been objected to.

Your Lordship will not, I hope, fail to observe that, notwithstanding the anxious desire manifested by the Council to reduce the expences of the Colony, the whole amount of the Estimates, instead of being reduced, was increased during their passage through the Council by the sum of £2,198 12s. 2d.

The Appropriation Act is the last document but one in the accompanying collection, Page 231. I have respectfully to request that it may, on your Lordship’s recommendation, be gracially allowed by Her Majesty, the usual Copy on Parchment will be forwarded in a few days by another opportunity.

I have, &c.,
GEO. GIPPS.

[Enclosures.]

[These papers will be found in the “Votes and Proceedings” of the legislative council.]

3 Dec.
Estimates for church establishments.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 163, per ship Royal Admiral; acknowledged by lord John Russell, 20th June, 1840.)

My Lord,

Government House, 3rd Decr., 1839.

In the Estimates which I had the honor to forward with my Despatch of yesterday’s date, No. 162, your Lordship may observe that the charge for the Church Establishments of this Colony is set down for the year 1840 at the large sum of £34,066 15s.
It is with considerable reluctance that I have to ask your Lordship's attention to the very rapid increase in this charge, which was:

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<th>Year</th>
<th>£</th>
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<tr>
<td>1834</td>
<td>13,242</td>
<td>10</td>
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<tr>
<td>1835</td>
<td>13,409</td>
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<td>1836</td>
<td>17,420</td>
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<td>1837</td>
<td>19,167</td>
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<td>1838</td>
<td>17,447</td>
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<td>1839</td>
<td>28,843</td>
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<tr>
<td>1840</td>
<td>34,066</td>
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Your Lordship is aware that, under the Church Act of this Colony (7 Wm. IV, No. 3), the Government is pledged to provide for as many Clergymen as may come to the Colony with your Lordship's sanction; and that therefore the only way, in which I can set bounds to this rapidly increasing charge, is by requesting your Lordship not to sanction, for the present, the embarkation of any further number of Clergymen of any denomination.

Your Lordship will, I hope, believe that I am driven to make this request by the consideration alone of the state of our Finances; at the same time, when I say that provision is already made for 89 Clergymen for a population of only 100,000 Souls, it cannot I think be asserted of me that I am in any way indifferent to the progress of religious instruction in the Colony.

I have, &c.,
Geo. Gipps.
instructions, from which he cannot depart without reference to
this Country.

I therefore authorise you to set Captain Hobson at liberty with
respect to certain parts of his instructions, which he may feel
impracticable or highly inexpedient to execute.

In particular with regard to the Sale of Land, it may be found
impossible to realize the price of 12s. an acre, while that price
is not demanded either at Sydney, or in Western Australia, or in
Van Diemen's Land. He may therefore reduce the price to 5s.,
until the higher price is the usual upset price in the Australian
Settlements.

With respect to the administration of Justice, still greater
difficulty may occur. The correspondence on that subject with
the "New Zealand Land Company" has ended by a withdrawal
of their Instructions, and an injunction to aid and assist Captain
Hobson.

Under these circumstances, one of Captain Hobson's first duties
will be to establish a Tribunal for the trial of Crimes and the
redress of civil injuries.

In reference to Capt. Hobson's letter to Mr. Labouchere of the
— of August last, I perceive he speaks in the following terms with
respect to the need of Force to support his Authority.

"There are one or two subjects that have not been noticed,
which I hope may still engage the attention of the Secretary of
State. No allusion has been made to a Military Force, nor has
any instruction issued for the arming and equipping of Militia.
The presence of a few Soldiers would check any disposition to
revolt, and would enable me to forbid in a firmer tone those in­
human practices I have been ordered to restrain. The absence of
such support on the other hand will encourage the disaffected to
resist my authority, and may be the means of entailing on us
eventually difficulties that I am unwilling to contemplate."

I have proposed to Lord Hill to send a Force of 100 men to
New Zealand; but, as I saw there might be objections to such a
measure, I have not done so officially.

Lord Hill, however, has allowed me to send you a copy of his
private letter to me on this subject.

The first difficulty stated by Lord Hill, namely the want of any
Settlement in New Zealand in which The Queen's Authority is
established, will be obviated by my giving authority to you to
take that Step, if necessary, when you shall have received intelli-
gence that Captain Hobson has obtained a grant or cession of
territory from the New Zealand Chiefs in the Northern Island,
or that he has established the Queen's Authority in the Southern
Island.
The precautions stated as necessary by Lord Hill deserve careful attention. It appears to me that a framework of barracks or blockhouse would be quite necessary. Perhaps field pieces might not be required, but cheveux de frise and intrenching tools should not be omitted. Likewise a surgeon and some person qualified to act for commissariat duties.

I am informed by Lord Minto that a sloop of war will constantly be at the service of Captain Hobson, and I trust the Marines employed may be found useful in preparing the means of defence for the detachment.

With these cautions, I authorise you, if necessary, to detach 100 men to aid Captain Hobson, when he shall have assumed the title of Lieut. Governor of New Zealand. I have, &c.,

J. RUSSELL.

[Enclosures.]

These were copies of the following printed papers:

No. 1. Marquis of Normanby to Captain Hobson, 14 Aug., 1839, with two enclosures Marquess of Normanby to Attorney-General, 30 May, 1839, and Attorney-General to Marquess of Normanby, 4 June, 1839.

No. 2. Captain Hobson to Under Secretary, — Aug., 1839.

No. 3. Marquess of Normanby to Captain Hobson, 15 Aug., 1839.

No. 4. Marquess of Normanby to Sir George Gipps, 15 Aug., 1839.

No. 5. J. Stephen to G. F. Young, 19 Sept., 1839.

Extract from Morning Chronicle, 16 Sept., 1839, re N. Z. co.

No. 6. G. F. Young to J. Stephen, 19 Sept., 1839.


No. 8. R. V. Smith to G. F. Young, 27 Sept., 1839.

No. 9. G. F. Young to R. V. Smith, 28 Sept., 1839.

No. 10. R. V. Smith to G. F. Young, 5 Oct., 1839.

No. 11. R. V. Smith to G. F. Young, 31 Oct., 1839.

No. 12. G. F. Young to R. V. Smith, 7 Nov., 1839, with inclosure G. F. Young to Lord J. Russell, 7 Nov., 1839.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 164, per ship Royal Admiral; acknowledged by Lord John Russell, 7th October, 1840.)

My Lord,

Government House, 4th Decr., 1839.

I have the honor herewith to forward to your Lordship a copy of the report made to the Legislative Council of this colony by the committee appointed during the session of 1839 to consider the subject of immigration.

Your Lordship, on comparing this report with that of the year 1838, transmitted with my despatch of the 31st Octr. of that year, No. 177, will find little or no alteration in the views of the committee, or in the wants, as represented by them, of the inhabitants of the colony; and I regret to say I am in no way
able to dispute the correctness of the conclusions of the Committee in respect to the superiority of the Bounty system over that which is carried on by the immediate agency of Government. The Bounty system is found to be £4 per head, or about 21 per cent. cheaper than the Government system, reckoning men, women, and children all alike, and making no difference for the quality of the Emigrants; but, if this difference be taken into consideration, and especially the smaller proportion of children introduced by the Bounty system, the advantage of that system must be estimated considerably higher; and I am inclined to think with the Committee that 200 Government Emigrants cost as much as 300 Bounty ones of equal value to the Colony.

The only doubt, I therefore have as to the expediency of immediately abandoning the Government system, arises from the consideration that it may be expected to become cheaper every year, whilst the Bounty system will probably become dearer from the necessity of raising the Bounties, so as to ensure a sufficient number of Immigrants. At present too, the Bounty system is in the hands of a few individuals, who have devoted great time and attention to it; and it may be doubtful whether it will be found to work equally well, when, by a rise in the Bounties, new adventurers are attracted to the trade.

The Committee recommend an immediate increase in Bounties and gratuities to the extent of about £1 10s. for each Emigrant, by which the present advantage of £4 per head in favor of the Bounty system will be reduced to £2 10s. If this advantage could be further reduced by improvements in the Government system, so as to make the difference between the two systems not more than about £1 per head, and the quality of the Emigrants could be improved by some alteration in the mode of selecting them, I should be disposed to recommend the continuance of the Government System as a check upon further demands for an increase in the Bounties. But, unless the Government Emigration of 1839 prove considerably less expensive than that of 1838, I fear no good arguments can be adduced in favor of the continuance of it.

With respect to the proposal of the Committee to procure Money by way of Loan for the purpose of carrying on Immigration, I had the honor to address your Lordship in my Despatch of the 22nd Novr. last, No. 157.

I have, &c.,

Geo. Gipps.

[Enclosures.]

[This report was printed in the “Votes and Proceedings” of the legislative council.]
RUSSELL TO GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 54, per ship Marmion.)

Sir,

Downing Street, 5 December, 1839.

I transmit to you, herewith, the copy of a letter which I have received from the Bishop of Australia, stating that doubts have been raised in South Australia whether that Province forms a part of the See of which his Lordship is the Head, and requesting the decision of Her Majesty's Government as to the proper limits of his Diocese.

Having referred the question for the opinion of the Queen's Advocate, I have to request that you will acquaint the Bishop of South Australia that I have received from that Officer his opinion that his Lordship has taken a correct view of the question respecting the limits of his Diocese, and that the Province of South Australia is to be considered as comprised therein.

I have, &c,

J. RUSSELL.

[Enclosure.]

BISHOP OF AUSTRALIA TO LORD GLENELG.

My Lord,

Sydney, 9th May, 1839.

With a view to avert the evil consequences, which may arise from the exercise of an uncertain and disputed authority, I have deemed it expedient to appeal to your Lordship for a decision as to the proper limits of the Diocese of Australia as constituted by His late Majesty's letters Patent of 18th January, 1836.

From communications addressed to me by the Revd. C. B. Howard, the Clergyman resident at Adelaide in South Australia, it appears that doubts have been raised whether that Province forms a part of the See, which I now occupy; and Mr. Howard accordingly declines acting under my Instructions. I have therefore no resource but that of addressing to him a formal assertion of my lawful authority over him, and in the mean time submitting to your Lordship's consideration what appears to me the true intent of the Letters Patent in question.

By these, His late Majesty King William the Fourth was pleased to constitute the Bishopric of Australia, to consist of all the Territories comprised “within or dependent upon the Colonies of New South Wales, Van Diemen's Land, and Western Australia.” It is requisite therefore to determine what are the proper limits of New South Wales, and whether South Australia be Geographically comprised within them or not.

Of the affirmative opinion, it appears scarcely possible to entertain a doubt, since, according to the Instructions issued by Her most Gracious Majesty to the Governor of this Colony, a definition is given of New South Wales as “Our Territory extending from the Northern Cape or extremity of the Coast called Cape York, in Lat. of 10 d. 37 S., to the Southern extremity of New South Wales or Wilson's Promontory in the Lat. of 39 d. 12 South, and all the Country Inland to the Westward as far as the 129th degree of E. Long. reckoning from the meridian of Greenwich.” The Governor of New South Wales is then declared to have authority over this
whole Territory, "Save and except that part of Our said Territory, hereinbefore described, which is called and known by the name of the Province of South Australia, and which lies between the Meridians of the 32nd and 141st degrees of E. Long, and between the Southern Ocean and the 26th degree of South Lat." The Commission of the Governor therefore extending over New South Wales comprised within the limits so described, save and except the Province of South Australia, which is however recognised as a part of New South Wales, while the jurisdiction of the Bishop is made to extend over all the Territories comprised within New South Wales, without any similar exception, it appears to me beyond a question that South Australia must be within his jurisdiction.

In this persuasion, I am further confirmed by having known from personal communications with your Lordship that such was the intention of Her Majesty's Government in the erection of this See; and further still by a letter addressed to me by Under Secretary Sir George Grey, on 12th May, 1836, containing the following paragraph:—"With respect to the extension of the Diocese of Australia beyond the limits of the late Archdeaconry, I am to remind Your Lordship that the only settlement comprised within the Bishoprick, which was not included within the Archdeaconry, is that of Western Australia." There was, I believe, no question that the Archdeaconry, as defined in the Letters Patent issued on the 2nd day of October, 1824, comprised New South Wales extending to the 129th degree of East Longitude (the Province of South Australia not then existing) together with Van Diemen's Land; and I have always considered there was little doubt that, according to the understanding entertained by Sir George Grey, the Bishoprick was to include that same portion of Territory with the addition of Western Australia.

The only ground, upon which I can suppose a different view to have been founded, is that afforded by a provision of the Act of Parliament 5 Will. 4, c. 95, erecting the Province of South Australia, which declares that the inhabitants within the same "shall not be subject to or bound by any Laws, Orders, Statutes or Constitutions, which have been heretofore made or shall be made hereafter, for or as the Laws, Orders, States or Constitutions of any other part of Australia"; and it is hence inferred that the Bishop of Australia's jurisdiction cannot extend to that Province. But I take the liberty of observing to your Lordship that there is in this conclusion more than one error. The design of that enactment appears to have been to exempt the Inhabitants of South Australia from the operation of Laws passed by the Local Legislature of any other part of Australia; but the Letters Patent, upon which the claim of the Bishops of Australia is founded, are not as Orders or Statutes for any part of Australia but for the whole; and there is nothing in the wording of them which makes them more applicable to this part of the Territory in which I am now resident, than to South Australia or any other part of the same Territory. I may also observe that the Bishop neither has, nor claims control over the Inhabitants, properly so called, but solely over the Clergymen in Holy Orders of the Church of England resident within the limits of his Patent. I have to regret the occasion, which has compelled me at so much length to trespass on the attention of your Lordship; but the evils attendant on leaving a portion of the
Church exempt from the control of the Diocesan, to whom I am aware it was intended that it should be subject, would be so serious that I trust to this consideration as my apology for bringing the question under your Lordship's attention and requesting a legal determination of it.

I have, &c,

W. G. AUSTRALIA.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 165, per ship Royal Admiral; acknowledged by Lord John Russell, 22nd July, 1840.)

My Lord,

Government House, 5th Decr., 1839.

Herewith I forward Copies of the Proceedings of the Executive Council of this Colony on the occasion of an investigation into the conduct of the First Police Magistrate of the Town and District of Sydney, and I have the honor to report to your Lordship that, on the recommendation of the Council, I have suspended that officer, Henry Croasdaile Wilson, Esqr., from the performance of his duties, until Her Most Gracious Majesty's pleasure shall be made known to me.

Your Lordship will perceive that these proceedings against Mr. Wilson (who, from having held a Commission in the service of one of the States of South America is commonly called H. C. Wilson) originated in certain charges preferred against him by Mr. Thomas Ryan, Chief Clerk in the office of the Principal Superintendent of Convicts; and I should explain to your Lordship that the well known existence of a very rancorous quarrel of long standing between the two parties was the reason why the subject was approached both by myself and the Council with the great caution, which will appear to your Lordship to be exhibited in the early part of our proceedings. Mr. Ryan was admitted not as a Prosecutor but only as a Witness, and the evidence he gave was quite immaterial. I should also perhaps further state the Mr. Ryan is the person respecting whom, on the occasion of his applying for an increase of salary, my Despatches of the 14th Novr. and 10th Decr., 1838, No. 186 and 196, were addressed to Lord Glenelg.

The charges preferred against Colonel Wilson were the following:—

1. For drawing pay as a Policeman for a Carpenter, who was employed by him at a House which he was building on his private account.

This charge was, in the opinion of the Council, completely proved.

2. With allowing Bread drawn for Prisoners in the Watch-house to be taken from the Police Office to feed his Dogs and Poultry.
The fact of bread being so taken and applied was proved beyond a doubt; the actual quantity taken could not be correctly ascertained, but probably amounted on the average to about 14 lbs. per diem during the course of the last three or four years.

3. With employing Policemen in his private service, and frequently in Livery.

This was proved also to a considerable extent, though, from the mass of contradictory evidence adduced, the exact truth could scarcely be got at.

4. With detaining in his private service Convicts, who had been assigned to other persons, the same being contrary to the Regulations of Government.

This charge was not enquired into, as it did not immediately affect him in his Magisterial capacity.

5. With allowing a Convict servant, legally assigned to him, to work at his trade in Sydney, contrary to the Regulations of Government.

This was not enquired into for the same reason.

6. With employing men of the Sydney Police in collecting shells to burn into Lime, and using the same at a house that he was building on his private account.

This charge was fully proved.

7. With permitting one of his private servants to live in a Watchhouse.

This charge was not enquired into.

8. With using at his private dwelling Coals issued for the use of the Police Office.

This charge was not proved.

9. With employing for his private advantage a Cart belonging to the Police.

This charge was not enquired into.

Upon each of the charges which were, in the opinion of the Council, proved, namely, the 1st, 2nd, 3rd and 6th, I think it my duty to offer a few observations.

The 1st Charge: It was distinctly proved that Coll. Wilson in the month of March last, hired a Carpenter, named James Batten, then recently arrived in the Colony by a Government Emigrant Ship, on the following terms:—Coll. Wilson was to pay him £1 2s. per week, and his wages were to be made up to the ordinary rate of Carpenters’ wages in the Colony by bearing him on the Lists of the Sydney Police as a Constable. The man remained for seven months, that is to say from March last to the time of the investigation, on these terms with Coll. Wilson, and
was employed at a house, which Colonel Wilson was then building opposite the Town of Sydney, on what is called the North Shore.

Coll. Wilson fully admitted these facts, but attempted to justify himself by saying that a Policeman was wanted on the North Shore, and that Batten was always ready to perform any duty which might be required of him; also that the pay allowed to Policemen is so small that it is impossible to get respectable men to enter the Force without holding out to them some additional advantage; and Coll. Wilson even claimed to himself the merit of having secured for the Police the services of a good man by means of the arrangement, which he had made with Batten. Coll. Wilson however failed to show that Batten had ever been employed in any way except as a Carpenter, nor did he produce Batten to the Council, although still in his employment, and Batten, when summoned, had failed to attend.

The Council did not admit that Coll. Wilson had in the slightest degree justified himself in respect to this charge; and, with regard to what Coll. Wilson alleged respecting the pay of Policemen, I should observe that, though it is certainly much below even that of Laborers in the Colony, the difference is in a great degree compensated for by the chance which a Policeman has, if tolerably active, of sharing in the rewards paid by Government for the apprehension of offenders, or of fines paid by the offenders themselves on conviction, a chance however from which Batten was shut out by being employed as a Carpenter. There was something also in the deliberate way in which Batten was hired, which seems to make the abuse in this case more glaring than in any other.

The 2nd Charge or that of allowing Bread to be taken from the Police office to his own house.

To explain this charge and the extent to which it was proved, it is necessary for me to state that the Prisoners from the different Watchhouses in the Town of Sydney are brought every morning by eight o’Clock to the Police office, and then lodged in the General Watchhouse; and that, at this hour in the morning, bread is drawn for them in the proportion of one pound and a half for each Prisoner; the bread however is not issued until twelve o’Clock, and, as the Magistrates take their seats on the Bench at ten o’Clock, it usually happens that many of the Prisoners are either discharged or otherwise disposed of before the hour for issuing the bread arrives; and there is consequently a considerable surplus, which surplus, instead of being kept for the issue of the next day, has for the last two or three years been usually carried to the private residence of Coll. Wilson. It was

Bread drawn for prisoners and used to feed dogs and poultry of H. C. Wilson.
distinctly proved that as much as from 20 to 30 pounds of bread has been carried on some occasions, and the average daily quantity was estimated at about 14 pounds. Since the removal of Coll. Wilson from office, the daily issues of bread have been considerably reduced; but sufficient time has not yet elapsed to enable me to report accurately on the average reduction per diem.

Coll. Wilson's defence upon this point was that the bread was not carried to his house by his order, and that he knew in fact nothing about it; it seems however impossible to suppose that a practice of this sort could have existed for some years (as was proved to have been the case) without his knowledge; and, even if this were possible, the charge of gross negligence would still remain against him, he being, as First Police Magistrate, expressly charged with the general superintendence of the Constabulary, and of all of what are called the out of doors duties, the duties of the other Magistrates being confined to presiding in the Police Courts, from which Coll. Wilson was on ordinary occasions exempt. It was therefore Coll. Wilson's duty to see that no more bread was drawn from the Contractor than was absolutely required, and this more especially as the Contractor's bills for the bread were not paid without his approval. The gross abuse, suffered by Coll. Wilson to prevail in this respect, was also, I must observe, aggravated by the fact, that bread has been, during a considerable part of the present year, almost at a famine price; and that, whilst quantities of bread were thus daily taken from the Police office to feed Coll. Wilson's Dogs and Poultry, the most respectable families in Sydney (and my own among the rest) were placed on an allowance of eight ounces per diem for each individual.

The 3rd Charge or that of improper employment of Police- men, and particularly as servants in livery.

Great abuses were proved to prevail in this respect. Under the denomination of House Constables, it appears that Coll. Wilson has for years had three Policemen at his private dwelling, whose principal, if not sole employment was that of domestic servants. The excuse alleged was that they were necessary for the protection of his person, his family and property; but this can hardly be admitted, as it appears that he had in addition four Constables at least in constant employ, under the name of Orderlies, of whom two were on his premises at every hour by day and by night; and, if to these be added the Serjeant, whose duty it was to wait upon him, it will be seen that he had at least eight Constables or Policemen constantly in attendance on his person, of whom several wore his Livery.
In addition to these, it appeared that one man (a Convict), allowed as a Messenger for the Police Office, was employed entirely at his house; that a Constable, named Williams, belonging to the Police Boat, worked for him pretty generally as a Quarryman; that another, named Tallentyne, was employed for some weeks in superintending his workmen; that a third, named Toomey, was sent to Pitt Water, distant from 15 to 20 miles from Sydney, to cut shingles for him and remained there some weeks; and that a fourth, named Moran, was exempted from his duty as a Constable whilst making shoes for him. All these circumstances occurred within the last two years, beyond which the enquiry was not made retrospective, and they were all distinct from the charge which is next to be mentioned.

6th Charge, or the employment of men in the collection of shells to burn into Lime.

It was proved that Coll. Wilson, having about 18 or 20 months previous to the Enquiry borrowed from the Harbour Master a boat (called the “Pelican”) of about 8 tons burthen, put four Policemen into her, and employed her for several weeks in the collection of shells, which shells were burnt into Lime, and used in building his house on the North Shore; and it was proved that the boat, which had been borrowed for the removal of his furniture on the occasion of his change of residence, was not returned, until repeatedly and very urgently demanded by the Harbour Master. I should here perhaps observe that large natural deposits of shells are found in different parts of the Harbour of Sydney, and that no other material is used for the making of Lime.

Having thus explained the four principal charges which led to the suspension of Coll. Wilson, I think it my duty still to report to your Lordship that the recent investigation is not the only one on which I have had occasion to enter; but that, during the eighteen months which had previously elapsed, I had had to institute three other formal enquiries into his conduct.

The first Inquiry took place in May, 1838, very shortly after my arrival in the Colony, and related to charges brought against Coll. Wilson by the same Mr. Ryan, in respect to an alleged improper intimacy with a Female Convict, who had been brought before him in his Magisterial capacity. The woman’s statement was met by a direct and solemn denial by Coll. Wilson, on which, by advice of the Executive Council, I proceeded no further in the matter.

I had previously refused to interfere in a case of assault between Coll. Wilson and Mr. Ryan, as the latter would not pledge
himself to abide by my decision, but had recourse to a Court of Law, in which he obtained a verdict, though with only one Farthing Damages.

The next Inquiry, which I had to enter on, was one arising out of a complaint made by Capt'n O'Connell, the Assistant Military Secretary, and son of Sir Maurice O'Connell, the Major General Commanding in the Colony, that Colonel Wilson had improperly punished one of his servants, the offence of the servant being that he had failed to take off his hat when Coll. Wilson passed. Nothing was proved in reference to the man's punishment beyond what might be considered hastiness of temper or haughtiness of demeanour, and some degree of severity on the part of Coll. Wilson; but, in the course of the Inquiry, it having come to my knowledge that Coll. Wilson was in the habit of putting Policemen in Livery, I caused a letter to be addressed to him by the Colonial Secretary, of which I enclose a copy. I regretted very much to find, during the last investigation before the Executive Council, that this letter had not had the effect of entirely putting an end to the practice of employing Policemen in Livery. Coll. Wilson defended it on the ground that it is occasionally necessary for him to have Policemen about him in disguise; but even if such be the case, neither I nor the Council could allow that a Livery should be used for the purpose.

The remaining charge, which I had to enquire into, was on the occurrence of a misunderstanding between Coll. Wilson and a colleague in the Magistracy, Mr. R. Brenan. As the disputes between these gentlemen were principally of a personal nature, I referred them to the arbitration of two friends of the parties; but, as I have as yet received no report from these gentlemen, I can say nothing further on the subject.

The minor complaints, which have been preferred to me against Coll. Wilson, are far too numerous to mention.

On the other hand, it is alleged by Coll. Wilson that his situation is one which exposes him to great jealousies, and that he has drawn enmity upon himself by the strict way in which he has performed his duty. He recriminates also upon Mr. Ryan, and is, I believe, now engaged in preferring charges of malversation against him and the Department in which he serves.

That Mr. Ryan was animated by feelings of personal hostility in bringing forward his charges may be conceded; but the evidence, by which those charges were proved (proved, that is to say, to the extent above stated) was entirely independent of any testimony from Mr. Ryan, or from any person over whom he could have influence or control. Much of the evidence undoubtedly came either from Convicts or discharged Policemen,
GIPPS TO NORMANBY. 421

the latter of whom, on account of their having been dismissed by Coll. Wilson, might be supposed to bear him illwill; but, even if the evidence of such persons were entirely set aside, the charges would still remain proved to the extent which I have reported, and indeed the greater part of them rest upon the admission of Coll. Wilson himself.

That the Sydney Police (which is formed somewhat on the model of the New Police of London) has been improved under the direction of Coll. Wilson is, I believe, very generally admitted; but, on the other hand, the expense of it has increased enormously also. Coll. Wilson received his appointment from Sir Richard Bourke on the 1st Octt., 1833. He made scarcely any defence before the Council, though every opportunity was afforded him of so doing; it is now, I believe, his intention to proceed to England for the purpose of laying his case before your Lordship.

I have, &c,

GEO. GIPPS.

[Enclosures.]

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

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 166. per ship Royal Admiral; acknowledged by lord John Russell, 22nd July, 1840.)

My Lord, Government House, 6th Decr., 1839.

With reference to my Despatch of yesterday, No. 165, in which I reported to your Lordship the suspension of Coll. Wilson from the office of First Police Magistrate of the Town and District of Sydney on the recommendation of the Executive Council of this Colony, I have now the honor to enclose a further Minute of the Council, by which your Lordship will perceive that an issue of £350 (being half a year's salary) has been made to Coll. Wilson to enable him to procure a passage for himself and family to England.

As the issue of any pay to a suspended officer is I believe unusual, I feel that the justification of the measure, which I have adopted on the recommendation of the Council, must rest on the peculiar circumstances of the case, and the hardship of keeping a person altogether without the means of subsistence during the long period, which must elapse before Her Majesty's pleasure on his case can be known in this distant Colony.

I have, &c,

GEO. GIPPS.

[Enclosure.]

[A copy of this minute will be found in a volume in series II.]
LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 55, per ship Marmion.)

Sir, Downing Street, 7 December, 1839.

I transmit to you, herewith, the copy of a letter and its enclosures, which I have received from Mr. H. C. Butler, of St. Heliers, New South Wales, submitting a claim to a Grant of 2,560 acres of Land in the Colony.

I beg you will have the goodness to acquaint Mr. Butler that, for the reasons stated in the Letter which was addressed to him by your direction on the 7th of May last, it is not in my power to accede to his application.

I have, &c,

J. RUSSELL.

[Enclosure No. 1.]

MR. H. C. BUTLER TO SECRETARY OF STATE.

My Lord,

St. Heliers, N. S. Wales, 15 June, 1839.

I do myself the honor to submit for your Lordship's consideration my claim to a Grant of 2,560 Acres of Land in N. S. Wales. The Grounds upon which I rest my claim are contained in the following statement:—

In the year 1829, I left England for this Colony holding an Appointment as Asst. Surveyor, and entertaining an impression that on my arrival here I should be entitled to a Grant of Land in common with other Emigrants. In this I was disappointed, as on my arrival I was informed that, in consequence of a recent order from the Secretary of State for the Colonies, persons holding Govt. situations, on whom prior to that order such Grants had been bestowed, were by it precluded from obtaining them; but that, on my retiring from the service of Governt., my claim would be sustained. I therefore postponed urging it so long as I remained in the Surveyor General's Department.

In the year 1838, after nine years' service, I determined to turn my attention to settling, and resigned my appointment on the 30th June.

I then addressed a letter to His Ex. Sir George Gipps, setting forth my claim to a Grant of Land, and requesting his favorable consideration of my case.

To this I received an answer from His Ex., stating that "he had not the power to accede to my request." I do myself the honor to attach a copy of that letter, as by it your Lordship will be enabled to judge of the basis upon which I found my pretentions; but to satisfy your Lordship that the favor I now ask is only such as has been granted to others in the same situation as myself, I beg to inform your Lordship that three Gentlemen, viz., Messrs. Hoddle, Richards, and G. B. White, while Officers in the survey Department have received Grants of Land since the promulgation of the order in question. Two of the Gentlemen alluded to are still in Her Majesty's service, and one, viz., Mr. White, received the Grant he claimed so lately as 1837.

The following circumstances will, I trust, be considered by your Lordship as giving me a still further claim on your favorable notice. I have already mentioned my having left the service of Government for the purpose of becoming a settler. As time was to me a matter
of the utmost importance, and I could hardly hope to receive an answer from your Lordship with regard to my application for a Grant of Land; under twelve months, I made application to the Colonial Government on the 1st Dec., 1838, to purchase a section of Land; a measure necessary to enable me to obtain convict servants, they only being assigned to persons actually possessed of Landed property, and from the immense expense of Free labor, essentially necessary to the success of a moderate capitalist. At that time land under the Regulations of the 1st August, 1831, could be purchased at 5s. per acre; and I as a new settler was entitled to have my land surveyed and sold, within one month from the date of the application, which would have made me a proprietor on the 1st Janry., 1839. This was not done, and my intention to purchase was not even advertised in the Gazette on the 17th Janry., 1839, on which day His Excellency the Governor published an order from the Colonial Office by which the minimum price of Crown Lands was raised to 12s. per Acre. I do not find myself in a position to meet this increased demand upon a limited capital, and consequently my prospects of success in the pursuits, I have now undertaken, present themselves under a very different aspect to that which they exhibited when I first entered on a measure in furtherance of my original intentions on leaving England, viz., eventually to become a resident settler. I also beg to represent to your Lordship that up to the period of my resignation, I was actively employed. My last duty (performed in March and April, 1838) was conducting an Expedition overland from Sydney to Port Phillip, and making a detailed survey of the route and intermediate Country.

As however I am not asking your Lordship to confer on me an indulgence to which I do not consider myself in justice Entitled, and I am aware that your Lordship can hardly command time strictly to investigate the claims of parties so distant, I shall be content if your Lordship will empower His Ex. Sir George Gipps to examine into the accuracy of my statement, and decide upon its merits; and, in the event of my claim proving just, to authorize him to bestow upon me a Grant of 2,560 acres of Land, to which I should have been entitled, had I thrown up my Appointment nine years since.

I have, &c.,

H. C. BUTLER.

[Sub-enclosure No. 1.]

MR. H. C. BUTLER TO COLONIAL SECRETARY.

Sir,

St. Heliers, N. S. Wales, 18 July, 1838.

I beg you will forward to His Excellency the Governor for his consideration this my application for a Grant of Land, which I claim on the following Grounds:—

1st. That, on my embarking for this colony in 1829, I did so under the impression that my holding a Government appointment would not interfere with my becoming a Settler; and it was not until my arrival here that I was informed I could not obtain land so long as I remained in the Service of Government.

2nd. Had I then resigned my situation as Assistant Surveyor, I should of course have been in the same condition as other Emigrants, and entitled to the same indulgences as they then received.

3rd. Nine years have since elapsed, and I am aware the Land Regulations have been remodelled; but it must be born in mind
1839.
7 Dec.

Transmission of memorial.

I do myself the honor to transmit the accompanying memorial, addressed to the Right Honorable the Secretary of State for the Colonies, and I beg you will lay it before His Excellency the Governor, with my request that he will be pleased to forward it.

I have, &c.,
H. C. BUTLER.

[Sub-enclosure No. 2.]

MR. H. C. BUTLER TO COLONIAL SECRETARY.

Sir, St. Heliers, N. S. Wales, 2nd May, 1839.

I have, &c.,
H. C. BUTLER.

[Sub-enclosure No. 3.]

COLONIAL SECRETARY THOMSON TO MR. H. C. BUTLER.

Sir, Colonial Secretary's Office, Sydney, 7 May, 1839.

The cases of Messrs. Hindmarsh and others, though supported by the recommendation of Colonel Snodgrass when administering the Government, in a despatch dated 6 February, 1838, forwarded to the Secretary of State, were negatived; and precisely on the same principle the case of Mr. Duguid was decided in the negative, though brought favorably before Lord Glenelg in a Despatch dated 27th February, 1838.

The principle, which is fatal to your claim, is that you never were in a position to receive a Grant of Land whilst Grants were given gratuitously; you might and in all probability would have received a Grant of Land in the year 1829 or 1830, if you had not held a situation under Government; but, holding such a situation, you could not receive it; and you did not become qualified to receive a Grant by the resignation of your appointment, until Grants had ceased to be given gratuitously.

This principle is so fully established, and has been acted upon in so many instances, that it would be altogether useless to address the Secretary of State upon the subject.

You can however do so yourself if you think fit, provided you send with your Memorial a copy of this letter, but unless you do so, your Memorial will in all probability not be attended to, or will be referred to his Excellency for his Report.

I have, &c.,
E. DEAS THOMSON.
MR. H. C. BUTLER TO SECRETARY OF STATE.

My Lord,

St. Heliers, N. S. Wales, 15 June, 1839.

The foregoing letter is a reply I received from His Excellency the Governor to a request I made that he would forward my Appn. to your Lordship.

His Excellency is pleased to assign as a reason for not doing so, that cases similar to mine, altho' supported by the recommendation of Colonel Snodgrass, were negatived by Lord Glenelg. I am unacquainted with the particulars of the cases alluded to, and I must therefore adopt the alternative hinted at in the conclusion of His Excellency's letter, and forward my application for your Lordship's consideration unsupported except by its own merits.

His Excellency is also pleased to state that I never was in a position to receive a Grant of Land, while Grants were given gratuitously.

To this, I reply that the only obstacle that I am acquainted with, which prevented my obtaining one, was my being in the service of Government. That Grants have been disposed of gratuitously since the 1st August, 1831, when claims for such indulgences were established, the Records of the Surveyor General's Office will afford ample proof, and the instance of Mr. G. B. White, before alluded to, shews that the circumstance of an Individual holding Office has not always been considered an insuperable objection to his obtaining what I now seek, as a private Individual, who it is admitted would in all probability have obtained a Grant in 1829 or 1830, had I not been a servant of the Government.

I have, &c,

H. C. BUTLER.
were those of the superintendence of the Constabulary and all the out of doors business of the Police. When however Coll. Wilson sat on the Bench, which he occasionally did, he took precedence of the other Magistrates; and he also conducted all the correspondence, which took place with the Government on the subject of the Sydney Police, even though it related to matters which had been settled by the other Magistrates. These arrangements have not, in my opinion, been found to work well, but on the contrary have produced jealousies without, as far as I can judge, possessing any corresponding advantages.

In appointing Captn. Innes therefore to the duties formerly done by Coll. Wilson, I have given him no precedence over the other Police Magistrates; but, being the last appointed, he will, whenever he has occasion to take his seat on the Bench, be naturally junior to the three. Letters from the Government will be addressed either to the Bench collectively, or to the individual Magistrate concerned, and replied to in the same manner; and I am consequently disposed to think that, unless Coll. Wilson be restored by Her Majesty to his former situation, the appointment of a First Police Magistrate will be unnecessary.

I have, &c.,
Geo. Gipps.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 168, per ship Royal Admiral; acknowledged by lord John Russell, 25th June, 1840.)

My Lord,

Government House, 9th Dec., 1839.

In the Financial Minute which I addressed to the Legislative Council of this Colony on the 23rd July last, and of which a Copy was transmitted with my Despatch of the 2nd inst., No. 162, your Lordship may have observed that allusion was made to a separate Minute on Education, laid at the same time before the Council; of this Minute, I have now the honor to forward a copy, and, in so doing, I beg leave to address your Lordship on the general subject of Education in the Colony.

Your Lordship will recollect that, in the year 1836, it was proposed by Sir Richard Bourke to introduce the Irish System, and that, though the proposal was violently opposed, the sum of £3,000 was voted by the Council for the purpose. But, though this money was granted in 1836, the only steps taken by Sir Richard Bourke towards carrying out his views were the entering into a contract for the erection of a School house at Wollongong, a place 60 miles to the South of Sydney, and the application contained in his Despatch No. 47 of the 17th June, 1837, to
Lord Glenelg, for persons to be sent out to the Colony, who might be capable of conducting a Normal School for the instruction of Teachers. At the time when I arrived in the Colony (Feb'y., 1838), the plans of Sir Richard Bourke were considered to be virtually abandoned; and, had I attempted to revive them, my difficulties would have been much increased by the fact that, instead of the persons asked for by Sir Richard Bourke to introduce the Irish System, others trained in the System of the British and Foreign School Society were sent out to Sydney by Her Majesty's Government, as announced to me in Lord Glenelg's Despatch of the 14th July, 1838, No. 154. In the mean time, moreover, or between 1836 and 1838, the practice had grown up of affording assistance from the Government for the formation and support of Schools to the extent equal to that which the parties, interested for any School, might obtain from private sources, a mode of affording assistance which in principal may not be considered objectionable, inasmuch as it is rendered equally to persons of all religious persuasions, but which in practice is found to be both expensive and inefficient, the obvious tendency of it being to create a far greater number of Schools than are required, or which in our thinly scattered population can be maintained in efficiency.

Seeing the great actual mischief of this system, and dreading that it must every year increase, I determined to attempt the establishment of Schools on the British and Foreign principle, to comprehend all descriptions of Protestants and at the same time to give some corresponding advantages to the Schools of Roman Catholics, though I still proposed to allow Separate Schools to be continued on the principle above stated (familiarly called in the Colony the half and half principle); in doing which I am now disposed to think I committed an error which was fatal to my plan.

I was encouraged to attempt the establishment of the British and Foreign System in the Colony by the following considerations:

1. That in 1836, when Protestants of all denominations laid aside their differences in order to oppose the establishment of Schools on the Irish System, a Sub Committee, expressly appointed to consider the subject, had recommended the British and Foreign System.

2. That Lord Glenelg had frequently expressed his approbation of the principles of the British and Foreign School Society, and had sent to the Colony persons capable of introducing their system, as I have stated above.
3. That Mr. James MacArthur, who was generally supposed to represent in England the Party most opposed to the Irish System, had stated in his examination before the Transportation Committee of the House of Commons that he thought little or no objection existed to the British and Foreign System on the part of the Protestants in the Colony (see answer* to question 2672); and, in his answer* to question 2677, that he recommended the very thing which I proposed in respect to the Catholics.

My Minute, however, had hardly been published in the Colony, when the old opposition was revived; and, though neither the Presbyterians nor the Dissenters joined actively in it, neither did they give to my proposal any support, their altered view on the subject being attributable, I believe, to the fact of their having since 1836 had the prospect opened to them of obtaining separate Schools for themselves.

Several Petitions against my proposal were got up under the influence of Clergymen of the Church of England, and in the Council the Bishop of Australia strenuously opposed it. The discussion in the Council was taken on the 27th Augst. last on Four Resolutions, in which I had embodied the substance of my plan; Copies of these Resolutions I enclose.

In the Council, I must candidly confess to your Lordship that, except from two Members (The Attorney General and Sir John Jamison), I met with no effectual support. The other friends of Sir Richard Bourke, though they with one exception promised me their votes, did so with some reluctance, as they would probably have preferred that Sir Richard Bourke's plan had not been abandoned. Under these circumstances, though I could have carried my Resolutions, I thought it more prudent not to press them, lest I should find myself only in the same position in which Sir Richard Bourke was placed in 1836, that is to say, unable to carry my measures advantageously into effect in the Colony, after having carried them in the Council.

My proposal being withdrawn, we of course shall continue, for another year at least, to follow the system, which has tacitly grown up since 1836, and which I will further explain as follows:

The Protestant Orphan Schools, Male and Female, are conducted exclusively on the principles of the Church of England at the expense to the Colony of somewhat more than £6,000 per annum.

The Roman Catholic Orphan School is a separate establishment, and the cost of it for 1840 will be £1,500.

Towards the support of Parochial Schools of the Church of England, established prior to 1836, the fixed sum of £2,950 is

* Note 79.
given; and, towards the support of Roman Catholic Schools of the same description, the sum of £720.

All other Schools, of what denomination soever they may be, are placed on what I have described as the half and half principle, that is to say, the sum given by Government is equal to that raised for the School, either by private subscriptions or by payments from the Parents or friends of the children. The sums, required to meet payments of this sort, are estimated for all denominations during the year 1840 at £3,150, making a grand total of £14,700 for the purposes of Education.

The objections against this system are, that it is, as has been already stated, expensive and inefficient; that, the assistance from Government being measured by the amount of private contributions, the poorer denominations or those, which stand most in need of assistance from the State, obtain the smallest share of it; that more Schools will be established than are necessary or than can in our thinly scattered population be properly supported; and that, being founded in religious opposition to each other, the Education afforded in them will be essentially a sectarian one. Objectionable however as this system is, I am of opinion that we ought to bear with it, at least for the present; for I entirely submit to the principle, laid down in Lord Glenelg's Despatch of the 26th Feby., 1837, No. 21, that the Government can have no object in forcing upon the People of this Colony a system of Education which is opposed to the general wishes of the Inhabitants; and that it would be matter of the deepest regret that an attempt to diffuse among the rapidly increasing population of New South Wales the blessings of Education should become the source of discord and division among those who ought to be united in the bonds of Christian Charity. Unless therefore driven to it by any necessity arising out of the state of our Finances, or directed by your Lordship, I do not propose to bring forward any new projects on the subject, though I shall stand ready to introduce a better system, when called for (as I think I soon shall be) by the voice of the Public.

I think it however right to state to your Lordship that a mature and anxious consideration of this very important question has led me to conclude that the only way, in which Education can be extensively advanced in this Colony, will be by having Government Schools conducted upon principles, which shall not exclude from them any persons whatsoever on account of their religious tenets; and that these Schools alone shall receive support from the State with the exception, that is to say, of the Orphan Schools, in which I would not propose to make any alterations.
1839.

9 Dec.

Failure of plan for introduction of Irish system.

Necessity for comprehensive system of education.

The failure of Sir Richard Bourke’s plans may, I think, be traced to his having allowed other Schools to receive, in almost an equal degree with his own, the assistance of the State; and, though this was done with the hope that it might mitigate the hostility of his opponents, it undoubtedly failed to have that effect.

I would in conclusion beg leave to draw your Lordship’s attention to some peculiarities in the Population of this Country, which render a comprehensive system of Education in it more necessary than in perhaps any other in the whole world; it is a population all speaking one language; but not only is it more scattered than any other civilized population in the world, but individuals of different religious denominations are more separated and dispersed amongst each other than they are perhaps anywhere else. In other Countries and especially in our own, Roman Catholics and different denominations of Protestants are found generally in masses, Catholics principally in Ireland, Presbyterians in Scotland, Members of the Established Church in England and Dissenters in all our great Towns; but, throughout New South Wales, the Members of these different communions are dispersed and disseminated over all parts of the Country, nearly in equal proportions, and consequently a system of Education, that shall be as comprehensive as possible, is more urgently required for them than for the People perhaps of any other portion of the Globe.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[Copies of these papers will be found in the “Votes and Proceedings” of the legislative council.]

Sir George Gipps to Marquess of Normanby.

(Despatch No. 169, per ship Royal Admiral.)

My Lord,

Government House, 10th Decr., 1839.

Agreeably to the desire expressed in Lord Glenelg’s Despatch of the 10th Novr., 1838, No. 236, I have the honor to forward herewith a Return of all the Land sold at Port Phillip, since the Settlement was first opened in June, 1837.

Your Lordship will perceive by this Return that the gross quantity of Land sold is 86,208 acres, and the total sum produced £117,477 4s. 3d., consequently that the Land has realised on the whole the average price of 27s. 3d. per acre, including both Town and Country. If we deduct 117 acres within the Town of Melbourne, which sold at nearly £209 per acre, and 2,469 acres...
within five miles of the Town, which produced about £10 9s. per acre, we shall still find that the agricultural or pastoral Land, sold in lots of 640 acres each, realised 16s. 1d. per acre; the upset price having been at the first sales only 5s. and at the latter 12s. per acre.

I would beg however your Lordship's attention to the fact that this Land has been sold continuously according as the Survey advanced, with such reserve only as it is prudent to make for the future advantage of the People; and that consequently good land and bad has been sold together.

In South Australia, the practice is, I believe, for a Purchaser to demand what is called a Special Survey of 15,000 acres, out of which he is only obliged to take 4,000; and, as he may select these 4,000 wherever he chooses, he of course takes all the good land and leaves the bad. At what rate, we might have been able to sell our best Land at Port Phillip, if we had adopted this system, I am not prepared to say; but I feel confident that Land would have been demanded of us much faster than our Surveyors could have measured it, whilst the sums brought into our treasury would probably have been much less than what we have received.

As the plan of selling Land at a fixed price, instead of by auction, appears recently to have been much advocated in England, I trust I may (and especially with reference to the concluding part of my Despatch of the 2nd June, 1838, No. 82) be permitted to offer a few observations on the probable effects, which such a method of selling land would have, if introduced into New South Wales.

We have been, and even still are in the habit of selling Land at any price which it will fetch from 5s. per acre to £10,000, the order for raising the Minimum price to 12s. not being yet in full operation.

In Sydney, the Government will perhaps have 20 or 30 acres of Land to sell, within the next five years, which will be worth on an average £5,000 per acre. As I do not however wish to argue on an extreme case, I will not affect to suppose that it would be intended to sell this at the fixed price of £1 per acre, or at any fixed price; but, excluding even Sydney and some other principal Towns, Land is throughout the wide extent of this Territory to be found of such varied quality and value, that I feel perfectly persuaded a complete scramble would ensue, if any price whatsoever were fixed, at which the first claimant might be entitled to take such portion of it as he chose. Every acre of good land would immediately be bought up by our great Capitalists, at whose mercy all newly arrived Emigrants would
Effect of sale of land at fixed price.

Infallibly be placed. In a New Settlement like South Australia, where there are few great Capitalists, and where Government has the power to throw open small portions only of the Territory successively to location, perhaps such a way of disposing of Land may answer, especially if the quality of the Land be pretty uniform; but, in an older Colony like New South Wales, where the limits of location are very extended, the quality of the land extremely varied, and moreover where men of very large capital are engaged in Land speculations, I feel perfectly satisfied that such a measure would lead to what I think I can only properly designate as a scramble. I cannot indeed imagine anything that would throw this Government and the whole Colony into more complete confusion, than the arrival of an order from your Lordship to put a fixed price on Land, and allow the first claimant to take as much or as little as he liked in any part within the limits of our 22 Counties. If extended beyond those limits, the confusion would of course, if possible, be greater.

I have, &c.,
GEO. GIPPS.

[Enclosure.]

[SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 170, per ship Royal Admiral.)]

My Lord,
Government House, 11th Decr., 1839.

I have the honor to report to your Lordship that a Return or General Muster of Convicts in New South Wales, on the 31st Decr., 1837, is forwarded to your Lordship by the Vessel which conveys this Despatch, the Box which contains the Returns (4 folio Volumes) being consigned to Mr. Barnard, the Agent of the Colony.

This General Muster has been prepared agreeably to the directions which were conveyed to me by Lord Glenelg (before I left England) on the 5th Octt., 1837, in consequence of a letter from the Home Office to Mr. Stephen, dated the 14th Augt., 1837. I regret that it has not been in my power to forward this General Muster earlier, but the orders for the preparation of it were given in March, 1838, very shortly after my arrival in the Colony.

The Annual Return of Casualties, as called for by the same Despatch, was forwarded for 1838 on the 13th March, 1839, with my Despatch No. 50.

I have, &c.,
GEO. GIPPS.
SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 172, per ship Royal Admiral; acknowledged by lord John Russell, 24th April, 1841.)

My Lord,

Government House, 13th Dec., 1839.

I have the honor to report to your Lordship, that a Frenchman, named Francois Rougier, arrived in this Colony on the 18th Septt. last, having been sent hither from New Zealand by Mr. Busby, the British Resident, as a Lunatic; and I enclose a copy of the letter which was forwarded with him by Mr. Busby.

On the first arrival of Rougier, I caused him, on the report of Mr. Dobie (the Health Officer of Sydney) to be set at liberty, some doubt existing as to his insanity; I regret to say however that his subsequent conduct was such as entirely to remove all doubt upon the subject. Under these circumstances, I have thought it best to provide him with the means of returning to his own Country; and I have accordingly to report that he was embarked on board the "Bardaster," which sailed from Sydney on the 2nd inst.

I enclose a certified statement of the expense which has been incurred on account of Rougier, and I have respectfully to request that means may be taken for obtaining repayment of the same from the French Government.

GEO. GIPPS.

[Enclosures.]

[Copies of these papers will be found in a volume in series III.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 56, per ship Marmion.)

Sir,

Downing Street, 14th December, 1839.

I have received your Dispatch No. 98 of the 27th of June last, transmitting a Memorial from Mr. P. L. Campbell, Acting Colonial Treasurer in New South Wales, claiming to sit in the Executive Council.

This question has already been decided in my Despatch No. 25 of the 28th of October last. I observe with much regret that Mr. Campbell has thought himself at liberty to publish an Official Correspondence, without the sanction of his superior Officer, and still more, that in that publication he has omitted so material a letter as that which was addressed to him by your direction on the 11th of May last.

It will be your duty to animadvert in the most decided terms on the Conduct of Mr. Campbell in so acting, and I shall be ready to concur in his dismissal, if you shall think that step necessary.

J. RUSSELL.
SIR GEORGE GIPPS TO MARQUESS OF NORMANY.
(Despatch No. 173, per ship Royal Admiral; acknowledged by lord John Russell, 12th September, 1840.)

My Lord,

Government House, 14th Decr., 1839.

I have the honor to forward herewith, according to Regulations, a Demand for the quantity of Clothing which will probably be required for Convicts in this Colony and in Norfolk Island during the year ending the 31st March, 1842.

I beg to explain to your Lordship that, in the absence of any data on which to make a correct calculation, this demand has been framed on the assumption, that the recent orders conveyed in your Lordship's Despatch of the 11th May last, No. 46, for the discontinuance of Assignment and the formation of a New Establishment at Norfolk Island, will occasion an increase in the total number of men to be fed and clothed by Government of 1,000 in the year ending the 31st March, 1840, a further increase of 3,000 in the year ending the 31st March, 1841; and a still further increase of 2,000 in the year ending the 31st March, 1842.

I have, &c.,

Geo. Gipps.

[Enclosure.]

[This requisition has been omitted.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 57, per ship Marmion.)

Sir,

Downing Street, 16th December, 1839.

I have received your despatch, No. 110 of the 30th of July last, in which you report on the Memorial addressed to Lord Glenelg on the 21st of March, 1837, by Mr. John Batman, soliciting permission to purchase at the minimum price the Land on which his House and other Buildings were erected in New South Wales.

You also enclose a Minute of the Executive Council, declaring the application of Mr. Batman to be inadmissible.

I approve of your adoption of the advice of the Executive Council on Mr. Batman's claims, and of your having allowed the materials of the House and other moveables* to be taken away for the benefit of the family of Mr. Batman (whose death it appears took place in May last) before the Land is given up to the Colonial Government.

I have, &c.,

J. Russell.

* Note 51.
LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 58, per ship Marmion.)

Sir,

Downing Street, 16th December, 1839.

I have received your despatch No. 3 of the 3rd of January, reporting the retirement of Mr. Garling from the Office of Clerk of the Peace at New South Wales.

Having conferred on this subject with the Lords Commissioners of the Treasury, I have to convey to you the sanction of Her Majesty's Government of a retired allowance of £300 per annum, under the peculiar circumstances of his appointment to that office. And, as it appears that his age and infirmities must wholly incapacitate him for reemployment in any Public Department in the Colony or elsewhere, Her Majesty's Government are prepared to sanction your further proposition respecting the Commutation of such retiring allowance for one equivalent payment in ready Money.

I have much pleasure in confirming the Appointment which you have made of Mr. Rogers to succeed Mr. Garling in the Office of Clerk of the Peace.

The very peculiar circumstances under which the claim of Mr. Garling to his retiring allowance is admitted are such as to prevent this case from being regarded as a precedent, and of course will not apply to that of Mr. Rogers or to any future appointment.

I have, &c,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 59, per ship Marmion.)

Sir,

Downing Street, 17th December, 1839.

I have received your despatch No. 109 of the 29th of July last, transmitting copies of two letters, which had been addressed to you respectively by the Bishop of Australia and the Right Revd. Dr. Polding, on the subject of the appearance of the latter in what were supposed by the Bishop of Australia to be the Pontifical Habiments of a Bishop of the Church of Rome, at the Levee which you held on Her Majesty's last Birthday.

As Dr. Polding, in his letter to you of the 2nd of July, distinctly denies having appeared on that or on any other occasion in the Dress appropriate to a Bishop of the Church of Rome, there is no fact upon which a question could be submitted for the opinion of the Law Officers of the Crown, and I have to instruct you to take no further notice of so frivolous a complaint.

I have, &c,

J. RUSSELL.
HISTORICAL RECORDS OF AUSTRALIA.

1839.
17 Dec.
Despatch acknowledged.

Despatch acknowledged.
Refusal to remove bishop of Australia from councils.

15 Dec.
Despatches re difficulties in law business of government.
Reforms in department of crown solicitor.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 60, per ship Marmion.)

Sir,

Downing Street, 17th December, 1839.

I have received your despatch No. 113 of the 3rd of August last, transmitting a letter from the Right Revd. Dr. Polding, together with certain Resolutions adopted at a Meeting of the Roman Catholics of Sydney. The third Resolution embodies a Memorial addressed to my Predecessor by the Catholic Inhabitants of New South Wales, praying the removal of the Bishop of Australia from a Seat in the Legislative and Executive Council of the Colony.

I have to request that you will acquaint Dr. Polding that I cannot accede to the Prayer of that Memorial, though at the same time I deeply regret the dissension which has been caused between himself and the Bishop of Australia, by the precipitate conduct of the Bishop on the occasion alluded to in the Memorial.

I have, &c,

J. RUSSELL.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 176, per ship Royal Admiral; acknowledged by lord John Russell, 2nd July, 1840.)

My Lord,

Government House, 18th Decr., 1839.

In various Despatches addressed to Lord Glenelg, towards the end of last year or the beginning of the present, I had occasion to allude to the great difficulties experienced in this Colony in conducting the Law business of the Government; and in the first of the Despatches named in the margin,* I stated that, though the appointment of Dr. Kinchela as Advising Counsel to the Government would relieve the Attorney General from some portion of his labour, it would afford but little assistance in the Department of the Crown Solicitor, in which the evils of delay had been most felt.

I propose in the present Despatch to bring under your Lordship's notice the measures subsequently adopted in respect to the Department of the Crown Solicitor, which have eventually led to the resignation of Mr. Fisher, and the division of the office held by him into two branches, namely, the Civil and the Criminal, and the appointment, subject to your Lordship's pleasure, of an Officer to each of them.

The enclosed Printed Minute, laid before the Legislative Council on the 23rd July last, will suffice I hope to explain to your

* Marginal note.—1838, 13th Oct., No. 164; 27th Decr., 263. 1839, 2nd Jan., No. 2; 3rd Jan., No. 3; 15th Feb'y., No. 25; 9th March, No. 46.
Lordship the reason why I appointed a second or Criminal Crown Solicitor with a salary of £500 in the beginning of the present year. Your Lordship will observe in this Minute that, though previous to this appointment Mr. Fisher, the then sole Crown Solicitor, had tendered to me his resignation, and that his situation with a salary attached to it of £800 was known for several months to be vacant, no application for it was made to me by any person competent to perform the whole duties of the office, a sufficient proof I think I may venture to say of the lucrative nature of the business of an Attorney in New South Wales, there being at that time 48 on the Rolls of the Supreme Court; and your Lordship will further observe that, even when I had resolved to separate the Civil from the Criminal business of the Crown Solicitor, no person could be found willing to take the Civil business alone at £400; and that it was not without considerable difficulty I was able to procure a gentleman, Mr. Moore Dillon, to take the Criminal Business at £500 a year. On Mr. Dillon’s appointment, however, Mr. Fisher expressed his readiness to resume the Civil business, if allowed to retain the whole of his former salary, £800 a year, and to this arrangement I was compelled to accede, though in doing so I made it a stipulation that all the arrears of the Civil business should be brought up in six months; it was this stipulation, which led to the second resignation of Mr. Fisher, the six months having expired in November without any progress whatsoever being made in the arrears; and I upon this occasion accepted Mr. Fisher’s resignation finally and unconditionally.

In the course of these six months, several new practitioners having arrived from England, I have been able, though not without some difficulty, to find a gentleman, Mr. George Cooper Turner, willing to take the Civil duties; and I have accordingly appointed him Civil Crown Solicitor with a salary of £400 a year, and such additional emoluments as he may derive from costs in cases wherein it is not unusual for the Crown to receive them, as stated in the Attorney General’s letter of the 25th March last, appended to my Printed Minute, Mr. Turner’s competency for the situation being proved to the satisfaction of the Attorney General. Mr. Turner has however stipulated that he shall for the present, and until his appointment is confirmed, be allowed to practise privately in cases wherein his so doing will not clash with his public duties; and also that the office shall be handed over to him in proper order, and the arrears of business in it disposed of, as far as possible, before he enters in it. The whole of the papers in Mr. Fisher’s office have consequently been placed
in the hands of Dr. Kinchela for the purpose of being arranged; and I enclose for your Lordship's information a copy of the first report, which I have received from Dr. Kinchela on the subject of them.

In asking your Lordship to confirm the respective appointments of Mr. Moore Dillon and Mr. G. Cooper Turner, the former as Criminal and the latter as Civil Crown Solicitor, I beg leave to point out that the increase of charge is only £100 a year, the salary of Mr. Fisher having been £800 a year, and the two salaries of Mr. Dillon and Mr. Turner being together only £900; and that, as the labour of one Clerk at least will be saved, the measure must be regarded as one rather of economy than of increased expense; whilst the business of the Department will, I hope, in future be conducted with proper regularity and dispatch.

I have, &c,

GEO. GIPPS.

[Enclosures.]

[The minute was printed in the "Votes and Proceedings" of the legislative council; a copy of the letter is not available.]

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 177, per ship Royal Admiral; acknowledged by lord John Russell, 15th June, 1840.)

My Lord, Government House, 19th Decr., 1839.

With reference to Lord Glenelg's Despatch, No. 118 of the 9th June, 1838, wherein I was informed that His Lordship did not consider that an officer, who received a competent salary for the performance of one duty, should be charged with and receive salary for the performance of another, and in which I was consequently directed not to leave Mr. Macpherson in possession of the two offices of Clerk of the Councils and Agent for the Estates of the late Church and School Corporation, I beg to inform your Lordship that I separated these offices on the 12th Augt. last, and appointed to the latter Mr. Oswald Bloxsome, who had been specially recommended to me by Lord Glenelg in a letter dated the 28th March, 1838.

I have therefore now to request your Lordship's confirmation of the appointment, and at the same time I beg to apologise for the accidental delay which has occurred in reporting it.

I have, &c.,

GEO. GIPPS.
SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 178, per ship Royal Admiral; acknowledged by Lord John Russell, 1st July, 1840.)

My Lord,

Government House, 20th Decr., 1839.

I beg leave to report to your Lordship that, on the arrival at Sydney on the 26th Octt. last of the Emigrant ship "Florist" (which left Gravesend on the 18th June), a report was made to me by Dr. Hampton, R.N., Surgeon Superintendent, of such gross misconduct on the part of the Master of that vessel, Mr. Saml. Andrews, that I considered it my duty to cause enquiry to be made into the circumstances.

I have now the honor to enclose a Copy of the Report, which was made to me on the subject by the officers whom I appointed to enquire into it, namely,

Mr. Pinnock, the Agent for Immigration; Captain Nicholson, the Harbour Master; Dr. Dobie, R.N., the Health Officer of the Port.

I also enclose a copy of a letter, addressed to the Colonial Secretary on the subject by Mr. Andrews in exculpation of himself.

Considering the conduct of Mr. Andrews to have been highly disgraceful, such as to endanger the lives of the parties embarked in the "Florist" and contrary to the Charter Party, I have refused to allow him the gratuity of £30 usually paid to Masters of Emigrant ships, and I have further thought it my duty to withhold, until the pleasure of your Lordship shall be known, the sum of £200 out of the freight of the vessel by way of mulct, in pursuance of the authority vested in me by the terms of the Charter Party.

I have, &c,

GEO. GIPPS.

[Enclosures.]

[Copies of these papers are not available.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 62, per ship William Woolley.)

Sir,

Downing Street, 21 Decemr., 1839.

I have received your dispatch of the 18 of July No. 106, enclosing your final Report of the collision which took place between the mounted Police of New South Wales under Major Nunn, and a party of the Aborigines of that Colony.

After an attentive consideration of all the Documents which you have transmitted to me, I cannot but avow my concurrence in the opinion, which you adopted on the advice of the Executive Council, that there was no adequate motive for prolonging the investigation of this occurrence, or for instituting at a period
so distant from the event as one year and five months any judicial
enquiry into the causes which led to the death of the Abori-
gines. In this case, it may have been impossible to have sum-
moned an impartial Jury. I agree however with the Attorney
General that it is much to be regretted that the practice of hold-
ing an Inquest in every case, in which an Aboriginal Native
meets with a violent death in consequence of a Collision with
White men in the same way as if the deceased had been of Euro-
pean origin, is not constantly observed.

The worst feature in the case was, as you most properly state,
the renewal of the pursuit of the Blacks, and of the firing after
a pause of about two hours; and, though you add some reasons
in mitigation of this conduct on the part of Major Nunn, I wish
without giving you any positive instructions upon the subject
to draw your attention to the question how far it is necessary that
the Force employed upon similar service should be always en-
trusted with the use of Fire Arms. In the case now before me,
the object of capturing Offenders was entirely lost sight of, and
shots were fired at men, who were apparently only guilty of
jumping into the water to escape from an armed pursuit.

I am however happy to acknowledge that you appear to have
made every practicable exertion for the prevention of similar
calamities in future, and I approve of the measure adopted by
you for that purpose.

You cannot over-rate the solicitude of H.M. Government on
the subject of the Aborigines of New Holland. It is impossible
to contemplate the condition and the prospects of that unfor-
tunate race without the deepest commiseration. I am well aware
of the many difficulties which oppose themselves to the effectual
protection of these people, and especially of those which must
originate from the exasperation of the Settlers on account of
aggressions on their property, which are not the less irritating,
because they are nothing else than the natural results of the
pernicious examples held out to the aborigines, and of the many
wrongs of which they have been the victims. Still it is impos-
sible that the Government should forget that the original aggres-
sion was our own, and that we have never yet performed the
sacred duty of making any systematic or considerable attempt to
impart to the former occupiers of New South Wales the blessings
of Christianity, or the knowledge of the Arts and advantages of
civilised life. It is, I know, superfluous to stimulate your zeal
in this service; yet I cannot be satisfied to quit the subject with-
out commending it to your renewed attention. I am convinced
that you may confidently reckon on the advice and cooperation
of the Ministers of Religion of every Christian denomination,
GIPPS TO NORMANBY.

and you may calculate with the utmost confidence on the cordial support of the Crown in every well directed effort, for securing to the Aboriginal Race of New Holland protection against injustice, and the enjoyment of every social advantage which our superior wealth and knowledge at once confer on us the power and impose on us the duty of imparting to them. For this purpose, you will use every effort to afford instruction to their children and young men; you will seek out persons whose humanity leads them to be kind to the native races; and you will take means to reward the Missionaries who may engage in the good work.

I have, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 180, per ship Royal Admiral; acknowledged by lord John Russell, 10th August, 1840.)

My Lord,

Government House, 23rd Decr., 1839.

In pursuance of the Instructions contained in your Lordship's Despatch of the 25th Febry. last, No. 4, I have the honor to forward herewith a Report on the claims of Messrs. Fairlie and Innes against this Government.

I beg further to acquaint your Lordship that I have thought it right to give a copy of this Report to Mr. Thos. Walker, who is now the Agent of Messrs. Fairlie and Co. at Sydney.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

REPORT on the claim of Messrs. Fairlie and Co. against the Government of New South Wales.

Messrs. Fairlie and Co. claim as the representatives of Mr. Jno. Palmer, and consequently can pretend to nothing more than Palmer might claim if he had never parted with his interest in the property in dispute. I shall shortly proceed to shew what that interest was; but, before I do so, some few preliminary observations may be necessary.

In the year 1792, four years only after the foundation of the Colony, a considerable extent of land in the immediate neighbourhood of the intended town of Sydney was set apart by the first Governor of the Colony as a Government Domain, and, this proceeding having been approved by the Home Government, due notice was given that, within the limit allotted for the domain, no land would be granted to or allowed to be permanently occupied by any individual whatsoever.

It is very essential that the distinction thus early established between the domain and the town should be constantly borne in mind, because it is only by overlooking it or, to speak more properly, by purposely putting it out of sight that any attempt can be supported to impugn the good faith of the Government.

Within the town of Sydney, it has always been the endeavour of Government to induce the public to build; allotments of land were
given in the early days of the Colony on the easiest terms; and in latter days, with few exceptions, all leasehold tenures have been converted into freehold; but, with respect to the land laid out for a domain, the very opposite principles have uniformly been acted on, and not a single acre, or even a foot of the land laid out for the domain in the year 1792 has ever been alienated. These facts alone are sufficient to overturn the arguments advanced by Messrs. Fairlie and Co. and supported by the opinion of Mr. W. Walker, as well as by the declaration of the jury of 1834, all of which proceed on the assumption that the land leased to Palmer was situate in the town of Sydney, or (which is nearly the same) that there was no difference between the domain and the town. Even had this been the case, the Government would have been in no way bound to convert the leasehold interest of Mr. Palmer or his assignees into a perpetuity; the Government would even then have been free to exercise the same discretion that it did in other cases; but, as the land was situated in the domain and not in the town, any attempt to apply to it a rule deduced from the practice of the Government in respect to the town is clearly fallacious.

The order first given, as above stated, in the year 1792 was repeated in a more formal manner in 1801 by the express desire of the Home Government; on which occasion it was distinctly ordered that no land reserved for Government purposes should be leased for more than five years. The order thus issued in 1801 was enforced in a remarkable manner in 1807 by Governor Bligh, who removed several buildings which had been erected by private individuals within the limits of the domain, and who refused also to renew the very lease which forms the subject of Messrs. Fairlie's claim.

Having made these preliminary observations, I now pass to the particular facts of this case.

In the year 1802, Mr. John Palmer was in possession of a piece of land within the town of Sydney, in which he had an unexpired leasehold interest of about six years; the extent of it was 3 roods and 15 perches, or rather more than three quarters of an acre. Governor King, wanting this land for a particular purpose, instead of waiting until the interest of Palmer would have ceased in it, obtained immediate possession of it by giving in exchange a lease for a portion of 3½ acres, not in the town, but in the domain. As the order of 1801, above alluded to, had then been published less than a year in the Colony, it is impossible that either Governor King or Mr. Palmer could have supposed that any lease of land in the domain, given or taken for more than five years, would be valid; but, if any doubt could exist on this point, the terms of the lease itself would remove it, the lease being for five years, with a promise only that it should be renewed so as to extend over twenty-one years. That Governor King, had he remained long enough in the Government, would have fulfilled his own promise, may be conceded as extremely probable; but that either Governor King or Mr. Palmer could have expected that so palpable an evasion of the orders of the Home Government would be binding on succeeding Governors seems altogether beyond belief.

The only explanation, which I can discover, either of Governor King's conduct in making such a promise or of Mr. Palmer's imprudence in relying on it, is that an intention seems about that time to have existed in Governor King's mind to remove the
Government House to a different situation, and of course to abandon the domain, which had been laid out by Governor Phillip, a project which was never carried into effect.*

This same project of removing the Government House to another locality may perhaps have operated on Governor King in granting, equally in violation of his instructions, some other leases for the period of fourteen years. A list of these leases, as well as of some others granted by preceding Governors, is given in the margin.† I need scarcely repeat that not one of these leases has ever been converted into a perpetuity, but that the land so leased has been resumed by the Government.

The ground, on which the validity of Governor King's lease to Palmer has always been denied, was and is that Governor King had no power to lease for more than five years. The principle will never, I apprehend, be given up by Her Majesty's Government that any act done by a Governor, exceeding the powers with which he is invested, is inoperative and destitute of any legal effect: it is upon this principle alone that every succeeding Governor of New South Wales has, during a period of 34 years, invariably refused to acknowledge the validity of Governor King's lease for a longer continuance than five years, reckoned from the 31st March, 1802.

Of Governor King, I am most unwilling to speak in any other terms than those of respect; but there is abundant proof that, in many instances respecting grants, he did greatly exceed his power, and it would, I must submit, be most unjust to allow other Governors to be accused of a breach of faith for not fulfilling engagements entered into by him contrary to his instructions. If Governor King's engagement, instead of being a simple promise to renew a lease, had been a grant in fee simple, it would (having been granted contrary to his instructions) have been equally invalid, the maxim being as old as the statute, 1 Henry 4, ch. 6, that grants obtained from the Crown either by fraud or deceit are not valid. Nothing, therefore, can be in my opinion clearer than that, as Governor Bligh refused to renew the lease, all the interest, which Palmer ever held in the land, ceased and determined on the 31st March, 1807; and, although Palmer or his assigns remained for many years longer in possession of the land, it was not such a possession as could give him or them any rights against the Crown. It is true that Palmer, who appears to have been a very speculative man, and who not long afterwards became insolvent, erected two windmills and a bakehouse on the ground; this was a mere act of imprudence, and could give him no right to a longer tenure than he was entitled to by his lease; it was, nevertheless, in all probability the case why Governor Bligh and afterwards Governor Macquarie, though they refused to renew his lease, allowed him to continue in unauthorised possession of the land up to the year 1814: and that Governor Macquarie, then even with that degree of generosity or rather profusion

* Marginal note.—This I gather from a letter from Mr. W. Walker to the Colonial Secretary, dated 20th Sept., 1814, of which a copy is appended to Mr. Under Secretary Hay's despatch of 22d April, 1833.

† Marginal note.—Leases granted by Governor King within the Domain: 4th June, 1804, David Dickerson Mann, 0 a. 2 r. 39 per.; Term, 14 years. 11th Aug., 1804, Nathaniel Lucas, 1 a. 0 r. 0 per.; Term, 14 do. 1st Jan., 1806, Thomas Alford, 1 a. 0 r. 30 per.; Term, 14 do. Leases granted by preceding governors: 3rd Dec., 1794, Nicholas Divine, 1 a. 0 r. 0 per.; Term, 14 yrs. 5th Dec., 1797, Nathaniel Franklin, 2 a. 2 r. 35 per.; Term, 14 do. 1st Jan., 1798, Alex. McDonald, 11 a. 0 r. 0 p.; Term, 14 yrs.

which was characteristic of the times, offered to Palmer's assignees another piece of ground in the immediate vicinity of Sydney, to which they might remove the mills; and further offered them a grant of land in the interior to compensate them for their trouble. This liberal offer was probably made by Governor Macquarie in order to render a reference to England unnecessary; but it was no sooner refused than Governor Macquarie adopted the resolution of standing on the rights of the Crown. He accordingly took possession of as much of the land as was then immediately wanted, and pulled down two of the buildings, viz., a windmill and a bakehouse, leaving, however, the second windmill standing. In doing this he acted with abundant caution, for he caused a valuation to be made of the buildings, which he was about to remove, and agreed that, if the validity of Governor King's lease should be admitted for 20 years instead of five, the sum of £513 should be paid to the assignees of Palmer. No objection has ever been urged against the fairness of this valuation; it comprised, however, the buildings only and not the land, the possession of the land for the unexpired part of the lease (supposing even that lease to have been for 21 years) being in the then State of the Colony too trifling to be cared for.

The value of the buildings was estimated by the assignees of Palmer at £546 6 6 and by the Government at 479 15 6. The mean being £513 1 0.

It was only in the event of the validity of Governor King's lease for 21 years being admitted by the Home Government that Governor Macquarie agreed to pay this money. The Home Government never did allow the validity of it, consequently the money was never paid. But Governor Macquarie still allowed the parties to remain in possession of a part of the land, and of one windmill; and of this they retained possession until some time in or about the year 1828, that is to say for at least five years after the expiration of Governor King's lease, construed upon the terms most unfavorable to the Government.

A curious feature in the case is that this claim for £513 1s. should have been allowed to lie dormant for so many years by the assignees of Palmer; but this probably arose from the apprehension under which they lay of being ejected from the windmill and the portion of the land of which they still had possession. Payment seems indeed to have been applied for in the year 1820, and again in 1825, but merely for the purpose of keeping up the claim, and not with any degree of earnestness until after the whole 21 years had expired reckoned from 1802, nor until after the remainder of the land, as well as the second windmill, had been resumed by the Government, and when of course the parties had no longer anything to lose.

The idea of claiming a perpetuity in the land was of much later origin, and does not appear to have occurred to the parties until after the year 1829, when, General Darling having converted into

* Marginal note.—General Macquarie, however, expressly declared that this offer was a voluntary one, and did not result from any legal claim which the opposite party could advance. (Col. Sec'y's letter to Mr. W. Walker of Sept. 26th, 1833.)

† Marginal note.—The portion of which he thus took possession was 1 a. 2 r. 7 p. and the portion of which he still let the parties in possession was 1 a. 2 r. 25 p.
perpetuities a number of leaseholds in the town of Sydney, where building had always been encouraged, the argument was advanced that he was bound to do the same in respect to the domain, where building of any sort had been expressly forbidden, and where it had been repeatedly declared that no permanent occupation would be allowed.

I am, I must confess, entirely at a loss to find words wherewith, in an official communication, to express my opinion of such a claim, especially when it is brought forward to impugn the equity and good faith of my predecessors in this Government.

The exact time when the Government took possession of the last windmill, and the land attached to it, cannot be ascertained; but it was in or about the year 1828. Of this land, and of the windmill, which was dismantled and converted into a toolhouse, the Government remained in quiet possession until the 26th October, 1833, when Mr. Steele, the agent for the assignees of Palmer, regained possession of them in a manner presently to be mentioned.

When dispossessed of the last windmill, and of the whole of the land, Messrs. Fairlie and Co., having no longer anything to lose, revived with greater earnestness their claim to the £513 1s., payment of which with interest for nearly 19 years at 8 per cent. was at length authorised by Lord Goderich, in a despatch dated the 22nd March, 1833, on the express condition, however, that the payment should be accepted by the assignees of Palmer as a full acquittal of all their claims, and that, if they still remained in possession of any part of the property, they should immediately give it up.

Against this decision of the Secretary of State the Local Government never remonstrated, notwithstanding Lord Goderich, in giving it, had evidently considered the adverse position of the parties far stronger against the Crown than it in reality was. Sir Richard Bourke, instead of remonstrating in any way against it, expressed his perfect readiness to pay to the agent of Palmer's assignees the sum of £513 1s. and interest on the same from the 19th Decr., 1814, to the 18th Novr., 1833, amounting to £772 10s., making in the whole £1,285 17s. Mr. Steele, however, on behalf of Messrs. Fairlie and Co., most unexpectedly refused to receive the money, set the Government at defiance, availed himself of the absence of the man who had charge of the dismantled windmill to get possession of it, placed a lock upon the gate of the Government Domain, and actually advertised the land for sale.

Under such circumstances, the Government, with a due regard to its own dignity and to the interests of the public, had but one course to pursue; an action of intrusion was brought against Mr. Steele; by the verdict of a jury, Mr. Steele was ejected, the Government re-entered on the land, the dismantled windmill was pulled down, and the case has always been considered by this Government there to have ended.

Mr. Steele deliberately, on the part of his constituents, refused the offer of £1,285 17s., and stood upon his (or their) legal rights, a course which he never would have hazarded if he had not reckoned on the feelings with which a jury would probably be animated in such a case, and on the known unwillingness of the Government to bring an action of the sort; but, having done so and failed, it is too late for Mr. Steele, or for his constituents, to attempt to fall back into their former position; and, I must submit that to allow
them so to do would have a very evil effect in the Colony, and especially at the present time when the Government is required to stand strictly on its legal rights in respect to other parties, whose claims equally have their origin in acts performed by Governor King beyond the limits of his legitimate authority.

The supposed analogy between Palmer's case and the cases of those persons, whose leaseholds were converted into freeholds by General Darling, has, I think, been sufficiently overturned; but still it is important to remark that there was a seeming analogy quite sufficient to account for the way in which the case was viewed by the persons whose signatures were appended to certain documents transmitted by Mr. Steele to England and commented on by Sir Richard Bourke in his despatch of the 4th of March, 1836.

The circumstances, under which Palmer's interest in this land passed successfully through the hands of Mr. Campbell and Messrs. Fairlie and Co., are not strictly speaking of any importance in the case, it being evident that no subsequent possessor can have greater rights against the Crown than Palmer himself had; but still, as Messrs. Fairlie and Co. claim only on the equity of their case, it may be essential to observe that Messrs. Ferguson and Co. in taking the land and buildings in 1813 at a valuation of £3,780 12s. 6d. must have been greatly misled as to their real value. In the following year or 1814, one of the mills and the bakehouse were (as has been above stated) valued at £513 1s.; and if the value of the other mill, as it was the more costly of the two, be taken at an equal sum of £513 1s., the value of the whole of the buildings would only amount to £1,026 2s. In these buildings, and the land upon which they stood, Messrs. Ferguson and Co., had they been rightly informed, could never have supposed that they were purchasing more than an interest for something less than ten years. taking the construction, that is to say of Governor King's lease, that was most favorable to themselves; whilst, if they had looked closely into Palmer's title or applied to the Government for information, they must have found that they were about to purchase that which had no real value at all, or only such value as they might expect to derive from the forbearance of the Government. The determination of the Government to resume the land must have been known in the year 1813 to every body in the Colony; in fact, Governor Macquarie's intention to build a new Government House on the very spot occupied by the principal windmill was in 1813 a matter of notoriety, and the resumption by Governor Bligh of lands in the same locality, in the year 1807, ought at least to have been a sufficient warning to every one that the permanent occupancy of any land in the domain would not be allowed.

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LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 63, per ship William Woolley.)

Sir,

Downing Street, 24th December, 1839.

I have received your despatch No. 111 of the 31st of July last, and having communicated it to the Lords Commissioners of the Admiralty, I have received a Letter in reply, intimating
RUSSELL TO GIPPS.

that their Lordships approve of Captain Sir J. Gordon Bremer
having acceded to your recommendation to him to proceed to
China with the Ships of War under his Command.

I have, &c,

J. RUSSELL.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 181, per ship Royal Admiral.)

My Lord,

Government House, 24th Dec., 1839.

On the receipt of your Lordship's Despatch of the 30th
March, 1839, No. 31, and of the enclosure which accompanied
it from Sir James MacGregor, dated the 5th Feby., 1839, I caused
a communication to be made (as directed by your Lordship) to
the six officers of the Medical Department therein alluded to, to
the effect that, unless they are prepared to submit themselves
to the control of the Head of their Department and to afford
him a willing cooperation, they must be prepared to give up their
appointments.

Three months have now elapsed since that communication was
made to them, and, as they have received it with due submission,
and no further complaints have been made against them by the
Head of their Department, I am induced to hope that the branch
of the service, to which they belong, will henceforth be conducted
with proper regularity.

I think it right to take this opportunity of removing an
erroneous impression under which Sir Jas. McGregor appears to
labor, as to the extent to which the Medical officers of New
South Wales are supposed to be in possession of private prop-

erty. Three of the most wealthy of these officers are no longer
in the service; and, of those that remain, I do not not think there
are more than two (or at most three), who can be considered
independent in their circumstances, or who would not severely
feel the loss of their official appointments.

I have, &c,

GEO. GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 64, per ship William Woolley; acknowledged by
Sir George Gipps, 29th July, 1840.)

Sir,

Downing Street, 26th December, 1839.

With reference to former correspondence, I transmit to
you herewith a copy of a Communication from Mr. J. H. Wedge
containing an application for further compensation for his ser-

vices* at Port Phillip, and I have to request that you will favor
me with any observations which you may have to offer on the
validity of this claim.

I have, &c,

J. RUSSELL.

* Note 80.
MR. J. H. WEDGE TO LORD JOHN RUSSELL.

Shady Camps, near Linton, 12th December, 1839.

My Lord,

Under your Lordship's instructions, I have been favored with a reply to my letter of the 7th Instant informing me that the letters I therein alluded to had not been received at the Colonial Department. I therefore do myself the honor of enclosing copies thereof, respectfully soliciting that they may meet with consideration at Your Lordship's hands.

I find upon reference that I was in error in stating that one copy had been addressed to the Right Honorable The Marquess of Normanby; they were both written whilst his predecessor was in Office.

I may perhaps be allowed to draw your Lordship's attention to the fact of many circumstances having occurred since I first addressed the accompanying letter to Lord Glenelg, which are painful confirmations of what I stated was likely to occur. In one instance the murder of a whole tribe of natives (thirty in number), for which six or seven men suffered the penalty of the Law at Sydney: on another occasion five or six men were killed in the interior of the Country whilst driving stock from New South Wales to Port Phillip; In South Australia also attacks have been made by the Natives, and the lives of Stock-keepers have been sacrificed.

It may be necessary to explain that the hostility, which I apprehend, is not a general and simultaneous movement of hostility, but occasional attacks either upon, or by the distant Stock keepers, as the parties may be acted upon by the impulse of passion, the hope of plunder, or from motives of revenge.

Besides the hostility to the whites likely to arise in the minds of the Natives by encroachments upon their haunts, is the hostility that will be caused amongst the several tribes of Natives as they are driven back upon each other's territories.

I have, &c.

JNO. H. WEDGE.

[Sub-enclosure No. 1.] MR. J. H. WEDGE TO LORD GLENELG.

Shady Camps, near Linton, 22nd April, 1839.

Since I have been in England, the correspondence of Mr. Mercer with the Colonial Department in reference to the claims of the Port Phillip association has been put into my hands; and the amount of compensation, in the shape of a remission upon the purchase of land to be bought at public sale, has been made known to me; as it falls so far short of what was expected for services rendered to the community, in developing the advantages and capabilities of that portion of New Holland, and in forming and establishing a friendly intercourse with the Aborigines, I trust I shall be allowed to appeal to Your Lordship in behalf of Mr. Batman and myself (Members of the Association) with whom the scheme of Colonizing that valuable portion of New Holland originated. It will be unnecessary to trouble your Lordship with the general
details of the proceedings, as they have already been communicated by Mr. Mercer to the Department over which Your Lordship presides. I will therefore only advert to the inadequate remuneration to Mr. Batman and myself, and respectfully refer Your Lordship to the value Sir Richard Bourke, late Gov. in Chief of New South Wales, set upon our services, To Mr. Batman for opening a friendly intercourse with the Natives, To myself for surveying and extensively examining the Country. It will be obvious that services such as these could only be performed at the most imminent personal risk, and Sir Richard Bourke, in his estimate of them, value them at One thousand and five pounds each; whereas the amount awarded us is only four hundred and eleven pounds fifteen shillings each, in the remission upon the purchase of land at public auction. This being the case. I trust Your Lordship will consider us entitled to a further remuneration by an augmentation of the quantity of Land, with the priority of selection, without having to purchase at public auction.

In my private character, I hope I may be allowed to mention that it was mainly through my exertions and recommendations during my first visit to Port Phillip in 1835, about a month after Mr. Batman's treaty with the Native tribes, that the friendly communication commenced by that gentleman was made permanent and the Natives partially brought into habits of industry; by which I was enabled to traverse the Country amongst the Natives for nearly three months, attended by only one white man. Had the plans then established by my recommendation been carried out, they would, I have but little doubt, have led to the most satisfactory results.

Through the communication I made to the Colonial Government, Mr. Stewart, Police Magistrate, was sent to investigate the circumstances connected with the outrages committed upon a Native tribe on the South Coast of New Holland by some Europeans employed in collecting the Mimosa bark; and, at the request of the Colonial Government, I attended that gentleman during his visit to Port Phillip and rendered him every assistance in my power to enable him to attain the object of his mission; besides which, I prepared and made out a statistical return for the information of the Government. On this point, I take the liberty of referring Your Lordship to Sir Richard Bourke.

Added to the foregoing, at the request of Sir George Arthur, late Lieutenant Governor of Van Diemen's Land, I drew up three separate reports on the nature, extent, and capabilities of the Country at Port Phillip, on the general habits and characters of the Natives, and relative to the runaway convict William Buckley, who was found there, and who had sojourned with the Natives for upwards of thirty two years. These reports were forwarded by Sir George Arthur for the perusal and information of Your Lordship's predecessor, the late Secretary of State for the Colonies.

These various circumstances taken into consideration will, I trust, be thought by Your Lordship to entitle me to some consideration at the hands of Her Majesty's Government beyond that which has been awarded me as a member of the Port Phillip Association.

I have, &c,

JNO. H. WEDGE.
Reports re hostility of aborigines at Port Phillip.

1839.
26 Dec.

Necessity for action to prevent extinction of aborigines.
Difficulty in preventing outrages in Tasmania.

Similar difficulty in Australia.

Principle proposed for civilization of aborigines.

HISTORICAL RECORDS OF AUSTRALIA.

[Sub-enclosure No. 2.]

MR. J. H. WEDGE TO LORD GLENELG.

Shady Camps, near Linton, 22nd April, 1839.

My Lord,

It is stated in the Newspapers of New South Wales and Van Diemen's Land that the Natives in the neighbourhood of Port Phillip have of late become very troublesome to the Europeans, who have established themselves at that place; that the tribes, dissatisfied as it is imagined that the conditions of the treaty* entered into with them by Mr. Batman, had not been observed, had congregated on several occasions and committed outrages; that the lives of some of the settlers and stock-keepers had been sacrificed.

These statements, My Lord, have been confirmed by private letters I have received, intimating also the fear that the Settlers would be obliged in self-defence to drive the natives from their stations with firearms. In consequence of the above information, I venture to address a few observations for consideration, which I hope will induce Your Lordship to adopt such measures, beyond what has hitherto been in force, as will avert the melancholy consequences that must inevitably ensue, the gradual extinction of the Aborigines, and the loss of many lives of the Settlers. In support of the necessity of this, I have only to bring under Your Lordship's notice the barbarous outrages committed by the Stock-keepers, Sealers, and others, upon the Natives of Van Diemen's Land, prior to their removal from the territory, notwithstanding the exertions of Sir George Arthur when in the Administration of that Government. Under the peculiar nature and circumstances of the country, it was beyond the means of the Government to enforce the observance of the proclamations that were repeatedly issued for the protection of the Natives; Neither was it in the power of the Masters to control, at all times, their servants, and restrain them from committing the outrages alluded to. The same difficulty, but on a more extended scale, present themselves in New Holland. I will venture to affirm, if the whole Military and Police force were applied to prevent the aggressions of the Stock keepers on the one side, and the attacks of the Natives on the other, that it would fail in attaining that object; and I hesitate not to say, from the relative situation in which the Europeans and the Aborigines now stand towards each other, opposed as their interests are, a collision must sooner or later take place. It is obviously desirable, then, that something more than proclamations, or the presence or even the application of physical force, should be devised for the attainment of a good feeling between the parties, for which purpose I venture to suggest that the civilization of the Aborigines, and the bringing them to habits of industry should be put on such a footing as will make it to the interest of the Settlers to join with the Government in bringing about and establishing a permanent friendly feeling, not only as far as the interests of the Colony are concerned, but also as an act of humanity and justice due to the Natives, upon whose territory, as Colonization advances, successive encroachments will be made. I am fully impressed with the belief that it is practicable for the Government to make such

* Marginal note.—Sir Richard Bourke relieved the Association from the fulfilment of the treaty, arranging that it should be observed by the Government.
GIPPS TO NORMANBY.

an arrangement; and, should the subject be happily entertained, I shall be happy to make suggestions as will, I am persuaded, remove all unfriendly feelings from the minds of the Settlers, and dispose them to aid in civilizing the Natives and making them useful members of society.

The consequences, that ensued from not having some measure for this purpose established in Van Diemen's Land in the early periods of that Colony, led to the most melancholy results to the Aborigines, and involved the Government in an expensive and protracted warfare against them. One expedition* alone in 1830 having cost upwards of thirty thousand pounds. They were eventually captured, and the miserable remnant of all the Tribes of the Island (not much exceeding one hundred in number) is now maintained on one of the Islands in Bass's Straits at an expense of three thousand a year at least.

I have presumed on the interest, which I doubt not Your Lordship will feel for the unfortunate aborigines when brought under consideration; and this I would offer as my excuse for troubling Your Lordship on a subject which I confess I cannot regard with indifference, involving, as it does, the well doing of the Natives, as well as the peace and prosperity of the Colony.

I have, &c.,
JNO. H. WEDGE.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 182, per ship Royal Admiral; acknowledged by lord John Russell, 8th July, 1840.)

My Lord, Government House, 26th Decr., 1839.

I have the honor herewith to forward the Duplicate of a Transmission Memorial, which has been addressed to your Lordship by Mr. Henry Bayley, in consequence of his application for a Grant of Land having been refused by me in conformity with the advice of the Executive Council.

Mr. Bayley, being a Native of the Colony, was not entitled to the benefit of the Regulations respecting grants of Land of 1826 or 1827, and his whole case consequently rests on a supposed promise, conveyed (as it is alleged) in a letter from Mr. Horace Twiss to Governor Darling, dated the 8th Octt., 1829; but it is evident from the terms of this letter that it was not the intention of the Secretary of State to give to Mr. Bayley any advantages beyond those which he would have been entitled to, without any such letter, by the Regulations then in force; and those Regulations did not admit of his receiving a Grant for two reasons: 1st. because he had already had Grants to the amount of 1,500 acres; and 2ndly, because he was in debt to the Government. General Darling therefore very properly refused to make him any further Grant; and his debt to the Government was not

* Note 81.
paid until after the Regulations prohibiting any further Grants had been promulgated in the Colony.

I enclose for your Lordship's information a copy of a Minute of the Executive Council respecting Mr. Bayley's claim, though, in doing so, I feel it right to remark that I should not have troubled the Council in so plain a case, had it not been first referred to them in Jan'y., 1838, before I arrived in the Colony.

I have, &c.,
GEO. GIPPS.

[Enclosure No. 1.]
[A copy of the memorial is not available.]

[Enclosure No. 2.]

Excerpt from Minute No. 4 of the year 1839, of the Proceedings of the Executive Council, dated 26th February, 1839, relative to Applications from Mr. Henry Bayly for Grants of Land.

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 laid before the Council a Memorial from Mr. Henry Bayly of Mudgee in the County of Phillip, addressed to Sir Richard Bourke, 18th October, 1837, applying for a Primary Grant of Two thousand five hundred and sixty acres; and also a Memorial addressed to Colonel Kenneth Snodgrass, 23d December, 1837, applying for an Additional Grant in accordance with the Regulations of the 27th of June, 1837.

Mr. Bayly states that he is a Native of this Colony, being Eldest son of the late Captain Nicholas Bayly of the 102d Regiment; that in 1822, he received from Sir Thomas Brisbane a Grant of Five hundred acres in the County of Cumberland, which he still retains; and, in 1825, he received from the same Governor an Order for One thousand acres, of which he obtained possession in June, 1828, in the County of Westmoreland, which he disposed of in the year 1833; that, in 1829, he went to England and applied for a Grant of Ten thousand acres to Sir George Murray, who referred him to Sir Ralph Darling, who, in accordance with the then existing regulations, refused any further Grant to him, because he was then indebted to the Government for Eighteen hundred bushels of wheat; which decision he considered hard, because the Agricultural interests of the Colony were then (in June, 1830) in a very depressed state, and unjust, because he had granted a Mortgage to the Government over his Five hundred acres in Cumberland in security for payment of his debt for Wheat.

Mr. Bayly, having as he states paid his debt for wheat, applied to Sir Richard Bourke for a Maximum primary Grant, founding his claim upon the order given to him in "England by the Secretary of State as an intended Emigrant."

He subsequently applied to Colonel Snodgrass for an Additional Grant, to such extent as might be accorded by the Commissioners under the Act of the Local Legislature, 5 William IV. No. 21.
founding his claim upon the Regulations of 27th June, 1837, in reference to improvements effected on his Original Grant of Five hundred acres.

The Council are of opinion that Mr. Bayly has not established any valid claim to the Grants of Land applied for by him.

A True Extract:—WM. MACPHERSON, Clerk of Councils.

Council Chamber, Sydney, 30th Decembr., 1839.

[Enclosure J 1 to Minute No. 4 of 1839.]

Sir, Bathurst Street, Sydney, 21 June, 1838.

In November and December last, I had the honor to enclose to you two Memorials addressed to His Excellency the Acting Governor praying for certain Grants of Land to which I conceived myself entitled under the authority of the Right Honorable the Principal Secretary of State for the Colonial Department; but, as I have not yet been honored with any answer to either of them, I beg most respectfully to request that you will be pleased to inform me whether and how they have been disposed of.

From my residing in a remote part of the Interior, I beg further to request that any communication relating thereto may be addressed under cover to my Agent, the Revd. R. Mansfield of Sydney.

I have, &c,

H. BAYLY.

The Honorable The Colonial Secretary.

[Enclosure J 2 to Minute No. 4 of 1839.]

The Humble Memorial of Henry Bayly of Mudgee, in the County of Philip and Colony aforesaid, a Free Settler,

To His Excellency Lieut. General Sir Richard Bourke, K.C.B., Captain General and Governor in Chief in and over the Territory of New South Wales and the Dependencies thereof and Vice Admiral of the same, etc., etc.

Sheweth,

1. That your Memorialist is a Native of the Colony, and received from His Excellency Sir Thomas Brisbane a Grant of fifteen hundred (1,500) acres of Land, namely, five hundred (500) Acres at Bayly Park in the County of Cumberland and one thousand (1,000) Acres at Bathurst.

2. That in the Year 1829 your Memorialist went to England, and whilst there, it being his intention to return to the Colony, he wrote to the Right Honorable the Secretary of State for the Colonies setting forth the extent of his Outlay in the improvement of his Land, and the amount of Capital of which he was then bona fide possessed (about £8,000) applicable to further improvements in the Colony, and praying that in consideration thereof the Secretary of State would be pleased to instruct the Governor to make to Your Memorialist a further Grant of Ten thousand (10,000) Acres.

3. That, in reply to the said Application, Your Memorialist had the honor to receive from the under Secretary of State a letter, dated Downing Street, 8 October, 1828, informing him, by direction of Secretary Sir George Murray, that he (Sir George Murray) was unable to direct a Grant of Land to be made to your Memorialist upon terms different from those described in the accompanying paper of Regulations (dated Colonial Office, Downing Street, April, 1827), but that he (Sir George Murray) would forward your Memorialist's Communication to General Darling, with instructions to allot to him (your Memorialist) such a Grant as the amount of his Capital might entitle him to under those Regulations. (Vide Appendix A.)

4. That, in the subsequent Year 1830, Your Memorialist returned to the Colony bringing with him a sealed Duplicate of the above promised instructions from the Secretary of State to Governor Darling, with which he had been furnished at Downing Street, and which he accordingly delivered to His Excellency immediately after his arrival at Sydney.

5. That, in pursuance of the said Communication from the Secretary of State, your Memorialist, by a Memorial to Governor Darling, dated the 4 June, 1830, applied for a Maximum Grant of Land, and, in reply thereto, he received a letter from the Honorable the Colonial Secretary, dated the 15th of the same month, informing him, by direction of the Governor, that His Excellency could not entertain his Application, as the Rule, which had been laid down, did not permit of Land grant.
being granted to persons in debt to the Government, and, according to the principle established by the Secretary of State, Land was granted with reference to available Capital only. (Vide Appendix B.)

6. That Your Memorialist's debt to Government, herein referred to, consisted of Eighteen hundred Bushels of Wheat for the services of a Clearing party; and, although it is notorious that at the date of the said Correspondence (1830) Colonial Agriculture was in a state of extreme depression, Wheat being scarce and dear, and Waste land almost valueless, and it being therefore unfair in the Government to press its debtors under circumstances so critical, yet your Memorialist begs particularly to solicit Your Excellency's attention to the fact that, at the very time Governor Darling made the said Debt a ground for refusing his just claim to a Grant of Land, the Colonial Government held ample security for its ultimate payment by a Mortgage on the valuable Estate of Five hundred Acres at Bayly Park.

7. That, previously to the Month of June, 1831, when the System of Free Grants was abolished, it was not in your Memorialist's power to discharge the said Debt unless by making sacrifices of his property, which he considered the Government holding the aforesaid security ought not to require; but he did at length honorably discharge the whole of the debt, but subsequently to the date of the New Land Regulations.

8. That Your memorialist regarding Governor Darling's decision aforesaid as final, until the said debt should have been paid, and then understanding, in common with his brother Colonists at large, that the Regulations of 1831 were intended by His Majesty's Government to prohibit all further alienations of Crown Land otherwise than by Sale, has not hitherto taken any further step in prosecution of his claim; but, perceiving by the Government Notice of the 27th June last that the intentions of His Majesty's Government herein have been misunderstood, their said Regulations not having been intended to prejudice claims accruing previously to their date, Your Memorialist is encouraged to appeal to Your Excellency for the justice which was denied to him by your Excellency's predecessor.

9. That Your Memorialist begs most respectfully to submit to your Excellency that he does not view the Grant he now claims in the light of an "additional Grant"; but, being founded upon an order given to him in England by the Secretary of State as an intended Emigrant, he claims it as a "Primary Maximum Grant."

Wherefore Your Memorialist humbly prays that your Excellency will be pleased to take the premises into your favorable consideration, and thereupon to cause any investigation of the facts of his case which to your Excellency may seem proper, with a view to his receiving a Primary Grant of Two thousand five hundred and Sixty Acres of Land.

And your Memorialist will ever pray, etc., etc. HENRY BAYLY,

18 October, 1837.

[Appendix A, referred to in Paragraph 3.]

Sir, Downing Street, 8 October, 1829.

Secretary Sir George Murray has directed me to acknowledge the receipt of your letter dated the 28 Ultimo, soliciting that, in consideration of the Circumstances therein mentioned, a Grant of 10,000 Acres of Land in New South Wales may be assigned to you in addition to that which you already hold. I am to acquaint you, in answer, that Sir George Murray is unable to direct a Grant of land to be made to you upon terms different from those described in the accompanying paper of Regulations; but he will forward your communication to General Darling with instructions to allot to you such a Grant as the amount of your Capital may entitle you to under those Regulations.

I have, etc.,

HORACE TWISS.

To H. Bayly, Esq., 15 Tokenhouse Yard.

(A true Copy:—R. MANSFIELD.)

[Appendix B, referred to in Paragraph 5.]

Sir, Colonial Secretary's Office, 18 June, 1830.

I am directed by His Excellency the Governor to acknowledge the receipt of your Memorial of the 4th Instant soliciting an additional Grant of Land, and to inform you that His Excellency cannot entertain your application, as the Rule which has been laid down does not permit of Land being granted to persons in debt to the Government. And, according to the principle established by the Secretary of State, Land is granted with reference to available Capital only.

I have, etc.,

ALEXR. MCLEAY.

H. Bayly, Esq., George Street.

A true Copy:—R. MANSFIELD.
GIPPS TO NORMANBY.

1839.
26 Dec.

Memorial of H. Bayly, soliciting additional land grant.

1. That your Memorialist is a native of the Colony and received from His Excellency Sir Thomas Brisbane a Grant of Fifteen hundred (1,500) Acres of Land, namely, five hundred Acres (500) situated at Bayly Park in the County of Cumberland and One Thousand Acres situated at Bathurst.

2. That, in the Year 1839, Your Memorialist went to England, and whilst there, it being his intention to return to the Colony, he wrote to the Right Honorable the Secretary of State for the Colonies, setting forth the extent of his outlay in the improvement of his Land, and the amount of Capital of which he was then bona fide possessed, amounting to about (£8,000) Eight thousand pounds applicable to further improvements in the Colony, and praying that, in consideration thereof, the Secretary of State would be pleased to instruct the Governor to make to your Memorialist a further Grant of ten thousand (10,000) Acres.

3. That, in reply to the said application, your Memorialist (as is more fully set forth in a Memorial addressed to Sir Richard Bourke dated the 18th October last) was furnished by the Secretary of State with a paper containing "The terms upon which Land is granted to Settlers in New South Wales and Van Diemen's Land," dated Downing Street, April, 1827, and was informed that the Governor would be instructed to allot to your Memorialist such a Grant as the amount of his Capital might entitle him to under those Regulations.

4. That, in the Year 1830, Your Memorialist, upon the faith of the said Regulations, and the said promise of the Secretary of State returned to the Colony under the full expectation of receiving a primary Maximum Grant of Land as a New Emigrant wholly irrespective of the Grants he had received, as aforesaid, in his capacity of a Native Australian.

5. That, immediately after your Memorialist's arrival in the Colony, he applied to Governor Darling for his Grant accordingly; and his claim thereto was recognised by His Excellency, but was postponed until your Memorialist should have discharged a debt of Eighteen hundred Bushels of Wheat, owing by him to Government, for which the Government held ample security in a Mortgage on his Valuable Estate at Bayly Park.

6. That, in the course of a Year or two, Your Memorialist discharged the whole of the said Debt, but the New Regulations of June, 1831, abolishing the system of free Grants, having previously come into operation, Your Memorialist fell into the Common error of supposing that all outstanding Claims to Free Grants were thereby barred and extinguished for ever; nor was it until his attention was called to the Government Notice of 27th June last, that he became aware that the said Regulations were not intended by His Majesty's Government to prejudice subsisting rights.

7. That, upon his becoming acquainted with the said Notice, Your Memorialist addressed an humble Memorial as above mentioned to His Excellency Sir Richard Bourke setting forth the whole circumstances of his case, accompanied by Copies of the Official Correspondence relating thereto, and praying that His Excellency would be pleased to cause any investigation thereof, which to His Excellency might seem proper, with a view to your Memorialist receiving a primary Grant of two thousand, five hundred and sixty Acres.

8. That your Memorialist, not having received any reply to his said Memorial and being apprehensive that, as he did not therein claim an additional Grant, he may be considered as not having availed himself of the benefits held out by the Government Notice of the 27th June last, ventures most respectfully to solicit Your Excellency's attention to the said Memorial, and to make hereby a further claim under the said Notice.

9. That Your Memorialist is prepared to prove the following facts, namely:

(1) That he came to the Colony on the faith of the Downing Street Regulations of 1827.

(2) That he received his aforesaid Grants of 500 Acres in the Year 1822, of which he has retained possession to the present time, and of 1,000 Acres in the Year 1825 which he alienated in the Year 1833.

(3) That, at the end of seven years from the date of possession, he had made permanent improvements on his said Grant of 500 Acres, Amounting to more than five times its value at 3s. 4d. an acre, having enclosed the whole with Fences, cleared and stumped 260 Acres, and erected a substantial dwelling house and premises to the value of at least £700 or £800.
1839.
26 Dec.

Memorial of H. Bayly soliciting additional land grant.

(4) That he has on hand a Capital equal to about £10,000 consisting of 2,300 Sheep, 600 head of horned Cattle, 23 Horses, implements of Agriculture, 1,932 Acres of Land at Mudgee purchased from the Crown, on which he has erected a large Dwelling House, and has made other extensive improvements, and his valuable Estate of Bayly Park aforesaid and any requisite proportion of this Capital is applicable to his additional Grant if obtained.

(5) That he is not aware of his being indebted to Government for Quit Rent; but, if so, he is ready to discharge the same at any moment when demanded.

Wherefore your Memorialist humbly prays that your Excellency will be pleased to take the premises into your favorable Consideration and to refer his claim herein, together with that of his previous Memorial aforesaid, to the Commissioners under the Act of Council 5 Wm. IV, No. 21.

And your Memorialist will ever pray, etc., etc., etc. HENRY BAYLY,
Pr. Proc.
23 December, 1837.
R. MANSFIELD.

[Enclosure J 4 to Minute No. 4 of 1839.]

APPLICATION of Mr. Henry Bayly for an additional Grant of Land without purchase.

Sir, Bayly Park, South Creek, 28th June, 1827.

I beg you will be pleased to submit to His Excellency the Governor my request to receive One thousand and sixty Acres of Land as an additional Grant without purchase under the Regulations contained in the Government order No. 35, dated 5 September, 1826.

I am now in possession of Land to the following extent:—

<table>
<thead>
<tr>
<th>By Grant</th>
<th>1,500 Acres.</th>
</tr>
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<tbody>
<tr>
<td>By Purchase of the Crown</td>
<td></td>
</tr>
<tr>
<td>By Reserve</td>
<td></td>
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<tr>
<td>By private purchase, Gift or Inheritance</td>
<td></td>
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</tbody>
</table>

Total 1,500 Acres.

of which 200 Acres are cleared.

I also possess live Stock as under, viz.:

- Horses 20 Head.
- Horned Cattle 200
- Sheep

And available Money Capital to the amount of.

I have erected Buildings on the Lands of the following description and value, viz., A Dwelling House consisting of Eight Rooms, kitchen, Dairy, School House, Barn, Stables and various other Offices of the value of Fifteen hundred Pounds.

I have Completed six miles of Fence, and have employed and maintained during the last Year Eight Convict and Eight Free Servants. I have, &c,

The Honorable the Colonial Secretary. H. BAYLY.

[Enclosure J 5 to Minute No. 4 of 1839.]

Sir,
Sydney, 14 February, 1828.

Having received permission to Rent Land with a view to purchase from His Excellency the Governor by Your letter of the 27th July last, I beg to be allowed to occupy on the usual terms 1,960 Acres at Murranbuteman, near Yass Plains, Argyleshire.

I have, &c.,
To Alexander McLeay, Esq., Colonial Secretary.

H. BAYLY.

[Enclosure J 6 to Minute No. 4 of 1839.]

Sir,
Sydney, 30th March, 1828.

I have the honor to inform you that I received from Sir Thomas Brisbane an order for One thousand Acres of Land, and that, in pursuance of such order, I have had measured and been put in possession of a portion of Land situated at Bathurst.

I am now about to proceed to Europe for a short period, and feel desirous of obtaining the Deeds previous to my departure. I shall therefore feel obliged by your giving the necessary directions for their completion.

I beg also to state that my Brother George, who is at present in India, received a similar Order at the same time, and that his Land adjoins mine, the same necessity therefore exists for the Deeds of his Grant being made out as early as convenient.

I have, &c.,
The Honorable Alexr. McLeay, Esq.

H. BAYLY.
GIPPS TO NORMANBY.

[Enclosure J 7 to Minute No. 4 of 1839.]

Sir,

Surveyor General’s Office, Sydney, 1st April, 1828.

I have to acknowledge your letter of 17th March No. 29/148 transmitting an application from Mr. Henry Bayly for 1,920 Nineteen hundred and twenty Acres of Land therein described, and requesting by direction of His Excellency the Governor, if I am not aware of any objection, to include it in my first half Monthly Abstract.

I have the honor to observe, for the information of His Excellency the Governor, that I am not aware of any order in the usual printed form having been received in this Office from you to the Surveyor General, or that the necessary authority to select 1,920 Nineteen hundred and twenty Acres of Land has been furnished to Mr. Bayly, and that I therefore await His Excellency’s further instructions; and as this is the second instance in which you have honored me with no regular order, such Order being essential for the established form of Half Monthly Abstracts, I beg you will inform me whether the usual form is to be adhered to.

I have, &c,

The Honorable The Colonial Secretary.


[Enclosure J 8 to Minute No. 4 of 1839.]

Sir,

Surveyor General’s Office, 6 June, 1828.

In obedience to the directions of His Excellency the Governor, conveyed in Transmission your letter No. 28/307 dated the 2d Instant, I herewith transmit descriptions of the of descriptions.

Land (2,000) Two thousand Acres, ordered by Sir Thomas Brisbane to Messrs. H. and G. Bayly.

I have, &c,

WILLIAM CORDEAUX, Commr. of Survey.

The Honble. Alexr. McLeay, Colonial Secretary, etc., etc.

DESCRIPTION OF MR. HENRY BAYLY'S GRANT.

No. 2. Name: Henry Bayly. By whom granted: Sir T. Brisbane. Date of Order: Aug. 31, 1823. Situation, Boundaries, etc.: One thousand Acres in the County of Westmoreland and Parish of Peel; Bounded on the North by Winburn Dale Rivulet; Commencing at the North East Corner of Samuel Terry’s farm; On the East by a line bearing South, Twenty two Chains; on the South by a line bearing West Eighty Chains; and on the West by a line bearing North One hundred and fifty five Chains to the North East Corner of Samuel Terry’s Farm.

In the absence of the Sur. General,

WILLIAM CORDEAUX, Commr. of Survey.

Surveyor General’s Office, 6 June, 1828.

DESCRIPTION OF MR. GEORGE BAYLY’S GRANT.

No. 1. Name: Geo. Bayly. By whom granted: Sir T. Brisbane. Date of Order: August 31, 1825. Situation, Boundaries, etc.: One thousand Acres in the County of Westmoreland and Parish of Peel. Bounded on the West by the Eastern boundary of J. Stewart’s farm bearing North Eighty five Chains. On the North by a line bearing East Eighty Chains. On the East by a line bearing South One hundred and sixty eight Chains to Winburn Dale Rivulet; and on the South by that Rivulet.

In the absence of the Sur. General,

WILLIAM CORDEAUX, Commr. of Survey.

Surveyor General’s Office, 6 June, 1828.

[Enclosure J 9 to Minute No. 4 of 1839.]

The Memorial of Henry Bayly,

To His Excellency Lieutenant-General Ralph Darling, Captain General and Governor in Chief of the Territory of New South Wales and its Dependencies, etc., etc.,

Respectfully represents,

That your Memorialist during a late Visit to England, whence he has recently returned, addressed a Memorial to Sir George Murray, His Majesty’s Secretary of State for the Colonies, under date of the 28th of September, 1826, praying “that, for the various considerations therein detailed, your Memorialist might be assigned an addition to his previous small Grant of Land of (500) Five hundred Acres.” This Memorial, in his reply to it of the 2d October, Sir George Murray engaged to forward to your Excellency with instructions to allot to your Memorialist such further Grant “as his Amount of Capital may entitle him to receive under existing Regulations.”
Your Memorialist presumes that, in accordance with this assurance, Sir George Murray has transmitted to Your Excellency your Memorialist's application; but, lest any accident should have prevented or delayed its due receipt, an exact Copy is annexed for Your Excellency's information, together with a transcript of the reply from the Secretary of State.

Your Memorialist, after the full and distinct explanation of the pretensions on which his application is based Contained in the Memorial referred to, forbears in this place to trespass on your attention with any recapitulation; referring your Excellency only to a candid perusal and consideration of the statements it conveys as illustrative of the nature of his Claims, and of the extent of Capital to which he now solicits a Commensurate allotment.

The professed disposition, which your Excellency is understood to have announced "to forward the views and to promote the interests of the Native Youth of the Colony," is a further encouragement to your Memorialist to present with confidence this appeal to your Excellency's liberal consideration; to which he ventures to flatter himself few individuals among that particular Caste of Colonists can adduce stronger pretensions founded either on family respectability and services, or on personal good Conduct, than those which your Memorialist has had the honor to state in his annexed application to His Majesty's Secretary for the Colonies.

Your Memorialist feels it necessary in this place to advert to a Mortgage held by the Colonial Government on his former Grant of (500) Five hundred Acres, situated at the South Creek, as security for the repayment of a loan of (1,800) Eighteen hundred bushels of Wheat, which your Memorialist begs to assure your Excellency shall be discharged with as little delay as the present depressed state of the Agricultural Interests of the Colony may render practicable.

Your Memorialist has only to repeat his very earnest but respectful solicitation to your Excellency that you will be graciously pleased to direct such addition to his former very limited Grant as may render it at least equimensurate with the usual allotment to a Settler of the first class, with any further extension which the amount of his Capital and the pressure of his younger brothers and sisters on his finances, for present support and future provision, may influence your Excellency's considerate munificence to confer upon your Memorialist.

Who, as bound by duty and gratitude,

Will ever pray,

Sydney, 4 June, 1830.

H. BAYLY.

To the Right Honorable Sir George Murray, G.C.B., His Majesty's Principal Secretary of State for the Colonies, etc., etc., etc.

Sir,

The undersigned most respectfully begs permission to lay before you a Statement, which he hopes will be the means of his obtaining in the Colony of New South Wales the same indulgence that has been allowed to enterprising industry and respectability in all cases that have been made to the satisfaction of the Honorable the Colonial Secretary.

The undersigned is the eldest Son of the late Nicholas Bayly, who was formerly a Captain in the 102d Regiment, when stationed in New South Wales, and is the Nephew of Lieutenant General Bayly, 8 Regiment of Foot; and, being the sole Guardian of a large family born in New South Wales, has brought his two younger brothers to England for Education where he intends leaving them for a series of years; his father retired from the Army and at an early period of the Colony became a Settler there, and expended in the improvement of his small Estate of 2,500 Acres (the only quantity granted to him from the Government) a sum ten times that which was realised by its Sale after his decease.

Memorialist most respectfully begs leave to state that he has expanded in various improvements on a small Grant of (£500) five hundred Acres upwards of (£4,000) Four thousand Pounds, and finds that the Capital, which he has thus sunk, does not realise a revenue equivalent to the Interest of such an Outlay, and, having to provide for the Support and Education of his Brothers and sisters, has formed the resolution of applying his attention to grazing operations. His present Stock of Horned Cattle consists of upwards of (400) Four hundred head, independent of Horses, Sheep, etc., The depasturing of which under his present Circumstances incurs considerable expense and inconvenience, and their rapid increase will require a large tract of Land.

Memorialist has purchased in England two valuable "Blood Horses," which he purposes taking with him on his return to N. S. Wales by one of the first Vessels proceeding to that Colony, and begs to observe that his present property is worth £8,000.
Memorialist most respectfully begs to draw the attention of the Right Honorable the Colonial Secretary to the above Statement, and humbly solicits that, in consideration of the Circumstances therein set forth, he will Cause the Governor of N. S. Wales to be instructed to locate to him a grant of 10,000 Acres in a part of N. S. Wales adapted to the purpose stated.

Memorialist can give references to many Gentlemen some of whom have held the most important offices in the Colony of New South Wales, viz., Frederick Goulburn, Esq., late Colonial Secretary, John Thomas Bigge, Esq., late Commissioner of Enquiry, and William Wemyss, Esq., late Deputy Commissary General.

15 Tokenhouse Yard, Bank, 28 September, 1829.

H. Bayly.

[This was a copy of the letter from under secretary Twiss, dated 8th October, 1829, see page 344.]

Lord John Russell to Sir George Gipps.

(Despatch No. 65, per ship William Woolley.)

Sir,

Downing Street, 27th December, 1839.

I have received your Despatches Nos. 48 and 112 of the 11th March and 1st of August last, relative to the Regulations under which Officers of the East India Company's Maritime Service are to be permitted to participate in the advantages in the purchase of Land in the Australian Colonies granted to Officers having served in the Royal Navy; and I transmit to you, for your information and guidance, a copy of a letter addressed by direction of my Predecessor to the Secretary to the Court of Directors of the East India Company, together with a copy of the reply to that letter, enclosing a copy of a Circular letter addressed by the Court to the Governors of Bengal, Madras, and Bombay upon the subject.

I have, &c.,

J. Russell.

[Enclosure No. 1.]

Under Secretary Stephen to Mr. James Melville.

Sir,

Downing Street, 23rd August, 1839.

I am directed by the Marquess of Normanby to transmit to you, for the information of the Chairman and Court of Directors of the East India Company, the Copy of a Despatch from the Governor of New South Wales, requesting to be informed whether a remission in the purchase of Land in that Colony extends to Officers of the Company's late Maritime Service; and I am to request that you will state to the Court of Directors that Her Majesty's Government, in acceding to the application of the Court for granting this indulgence to Officers of the "Indian Navy," intended it to apply only to that portion of the Navy, which might be considered as analogous to the Royal Navy and which would appear to be more properly designated as the "Bombay Marine."

Lord Normanby therefore proposes to convey instructions to this effect to the Governor of New South Wales.

With reference to the question proposed in the third paragraph of the Governor's Despatch, the Court of Directors will perceive by the 5th Section in the accompanying Regulations that Officers of the
Army of Navy, who have quitted the service for the express purpose of settling in the Colonies, are required to furnish the Governor with a Certificate to that effect within a specified time. This rule must of course apply to the Company's Officers.

I have, &c.,

Jas. Stephen.

[Enclosure No. 2.]

MR. JAMES MELVILLE TO UNDER SECRETARY STEPHEN.

Sir,

East India House, 18th December, 1839.

In reply to your letter dated the 17th Instant, I am commanded by the Court of Directors of the East India Company to transmit, for the information of Lord John Russell, Copy of a Despatch addressed by the Court to their Governments of Bengal, Madras and Bombay on the 25th Septr. last, forwarding Copy of your letter of the 19th August preceding, with its enclosures, and directing attention to the points therein noticed.

I have, &c,

Jas. Melville.

COMPANY'S Circular Letter to Bengal, Madras and Bombay, dated 25th September, 1839.

We forwarded, a Me. in the Packet, copy of a Letter with enclosures from James Stephen, Esqre., of the Colonial Office, relating to the privileges with respect to Settlement in certain Colonies of the Crown granted to Officers of the Indian Army and Navy in common with those of H.M. Service. You will observe that the advantages do not extend to the Officers of Our late Mercantile Maritime Service, and it is further requisite to notice that Officers of the Indian Army or Navy, quitting the Service for the express purpose of settling in the Colonies, must provide themselves with a Certificate granted in analogy with the provisions of Section V of the Paper, entitled, "Information for the use of Military and Naval Officers, proposing to settle in the Australian Colonies," and which must be produced to the Governor of the Colony within one year of its date.

Despatch acknowledged.

Despatch of J. R. Forrest.

Exoneration of J. R. Forrest.

Lord John Russell to Sir George Gipps.

(Despatch No. 66, per ship William Woolley.)

Sir,

Downing Street, 27th December, 1839.

I have received your Despatch No. 80 of the 10th of May last, enclosing the Report of a Board of Officers which you had appointed to enquire into the probable causes of the disease which prevailed on board the Emigrant Ship "Garrow" on the voyage to New South Wales.

Having referred that despatch to the Agent General for Emigration, I now transmit a copy of a Letter from him in reply, together with a copy of a report made to him by Lieut. Forrest, R.N., under whose superintendence the Garrow was fitted out; and I think it just to that Officer to state that I do not perceive reasons to impute intentional neglect to him in that transaction.

I have, &c.,

J. Russell.
[Enclosure.]

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

Sir, 2 Middle Scotland Yard, 16 December, 1839.

I have the honor to return herewith Sir Geo. Gipps's Despatch dated 10th May, 1839, on the subject of the appearance in the ship "Garrow" of an infectious disorder, which had been attributed in a great measure to the introduction of Salt between her Timbers for the purpose of preserving them. Immediately on receiving this despatch, I referred it to Lieut. Forrest, who had fitted up the "Garrow," for his Report which I now beg leave to enclose.

It appears that there was no stipulation in the Charterparty against the use of Salt between the Timbers, and as its presence seems not to have been unknown to Lieut. Forrest, who did not think it necessary to demand its removal throughout the Ship, I should apprehend that there would be little grounds of supporting a Claim upon the Owners for damages.

I should feel no doubt, however, that the introduction of a large Quantity of Salt amongst the timbers must be attended with considerable hazard to the health of the Passengers, and I will take care that on any future occasion no precaution is spared to prevent its employment. But I can readily conceive that, when Lieut. Forrest discovered the Salt in the Progress of fitting the ship, and after he knew that a considerable party of people were appointed to meet at a given time on the opposite Coast of Ireland to embark in her, he may have felt it very doubtful how to act; and, if it be thought that he fell into an error of Judgment, I trust that it will not, under the circumstances, be a cause of displeasure towards an officer, who during the last 3 years has hired, fitted out, and victualled a great number of ships for the Colony, with a uniform success and credit, to which ample testimony has on all occasions been borne by the Colonial Authorities.

The Number of People, who embarked in the "Garrow," was 232. I am glad to observe that the Total number of deaths did not amount to more than 5 on the voyage and 2 in Quarantine.

I have, &c,

T. FREDK. ELLIOT.

[Sub-enclosure.]

LIEUTENANT FORREST TO MR. T. F. ELLIOT.

Sir, Leith, 14 Novr., 1839.

I have the honor to acknowledge receipt of your letter of Report by the 11th Instant, with the enclosed Despatch of Sir George Gipps, relative to the Ship "Garrow," and lament that so much sickness had prevailed on her passage out.

With respect to the Salt stated to have been introduced into the frame of the Ship, and to which the sickness appears to be attributed, I beg to acquaint you that, when the Ship was in progress fitting, I discovered that there was Salt betwixt the timbers, and immediately applied to the Owners to have it removed, which was done so far as was practicable. I considered this necessary to prevent the risk of any wet coming through the Seams of the Lining into the bed places and took the precaution to have the whole lining tightly caulked fore and aft. I did not consider that any evil could ensue from the introduction of clean rock Salt betwixt the timbers below the level of the lower deck, as, instead of being
the cause of vegetable or other putridity, it was used for the express purpose of checking that evil, which would be its evident tendency.

The Ship appeared to me quite dry throughout, and my reason for ordering the Stoves to be kept going was to have the lower deck comfortable for the people on embarkation, as there had been a great deal of rainy weather for some time previous to her leaving Liverpool, and from the circumstance of the Stores having been taken on board in such weather, the deck had acquired a damp appearance which I was anxious should be remedied.

With respect to Dr. Goldney's corroborative statement relative to the damp state of his own Cabin in connexion with the "greenness of the Timber throughout the Ship," I may mention that the Cabin was built upon the deck at Liverpool subsequent to the Charter, and could have no reference to the rest of the Ship.

From Dr. Goldney's admission that there was a child taken on board with an infectious disease, and also that Typhus Fever was prevalent in the neighbourhood of Belfast, and that "several of the Emigrants had been affected with it shortly before they embarked," I humbly conceive that it was most probably introduced among the luggage; if it is considered that 43 cases of Measles took place on board, on the lower deck of a ship amongst so many passengers, it is not to be wondered at that fever should break out, especially if the people were in any way disposed from other circumstances, or that a fetid smell should be produced below.

From the mild form of the fever, only one death having occurred in 29 cases, I cannot come to the conclusion that the state of the Atmosphere between decks could have been so unwholesome as represented, in which opinion I am more confirmed by the evidence of William Cunningham, who states that the lower deck was "clean, dry, and wholesome."

I regret that the enquiry had not been more extensive by the evidence of the Officers or people belonging to the Ship, although convinced of the impartiality of the Gentlemen composing the Court, it could only be admitted as exparte evidence so far as the examination appears to have gone; in all which circumstances my humble opinion is that there does not appear to be sufficient proof that the epidemic was produced by the introduction of Salt so that a claim could with success be made upon the Shipowners.

I have, &c.,
JAMES R. FORREST.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 183, per ship Royal Admiral; acknowledged by lord John Russell, 15th June, 1840.)

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

I have the honor to report to your Lordship that the American Exploring Expedition, consisting of the Vessels of the United States Navy named in the margin,* under command of Commodore Wilks, anchored in Port Jackson on the 1st instt., and that, after having refitted their Vessels and refreshed their Crews, the Expedition sailed again yesterday morning.

* Marginal note.—" Vincennes," " Peacock," " Porpoise," " Flying Fish."
This Expedition left the United States in Augt., 1838, and passing round Cape Horn, came by way of the South Sea Islands to Sydney. The next object of Commodore Wilks is, I understand, to attempt new discoveries within the Antarctic Circle and to make as near an approach as possible to the South Pole. I am happy to be able to inform your Lordship that the most friendly intercourse prevailed between the People of this Colony and the Officers and men of the Expedition during the whole of their visit; and I have great pleasure in forwarding to your Lordship a Copy of a letter which was addressed to me by Capt'n Wilks, when on the point of leaving the harbour of Sydney.

I have, &c.,
GEO. GIPPS.

[Enclosure.]

COMMODORE WILKES TO SIR GEORGE GIPPS.
U.S. Flag Ship Vincennes,
Sydney Cove, 24th Decr., 1839.

Before leaving this Port, allow me to thank you in my own name and that of the Government of the United States for the many facilities we have received from yourself and the different Officers of Her Majesty's Government in completing our repairs and making observations on Shore; and to assure you that it will afford me the liveliest gratification to represent the same to my Government, and that I shall always entertain a grateful remembrance of them.

I must also acknowledge, on the part of the officers and myself, the great kindness and attentions we have received from you and the citizens of Australia during our stay here, and to assure you we shall always bear a grateful remembrance of them.

I have the honor to subscribe myself with great respect and Esteem Your Excellency's most obliged friend,

CHARLES WILKES,

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 184, per ship Royal Admiral.)

My Lord,
Government House, 28th Decr., 1839.

I have had the honor to receive your Lordship's Despatch of the 10th June, 1839, No. 64, enquiring, at the request of Mr. Thomas Sewell of No. 19, Castle St., Holborn, whether a person named Thomas Sims is still alive; in reply to which, I have the honor to inform your Lordship that Mr. Sims is still residing in King Street, Sydney, as will be seen by the letter which I enclose from him to Mr. Sewell.

I have, &c.,
GEO. GIPPS.

[Enclosure.]

[A copy of this letter is not available.]
SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 185, per ship Royal Admiral.)

My Lord,

Government House, 30th Dec., 1839.

I have the honor to report to your Lordship, that, the undermentioned Seamen, invalided from H.M.S. “Alligator,” and left sick at Sydney by Captain Sir J. Gordon Bremer, have been forwarded by me to England, agreeably to the terms of the 11th Geo. IV, Ch. 20, S. 82:

<table>
<thead>
<tr>
<th>Names of the Invalided Seamen.</th>
<th>Name of the ship in which they are sent to England.</th>
<th>Name of the Master.</th>
<th>Day of sailing from Sydney.</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Gardner ...</td>
<td>&quot;Bardaster&quot; ...</td>
<td>Virtue ...</td>
<td>1st Decr., 1839.</td>
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<tr>
<td>John Miller ...</td>
<td>&quot;Royal George&quot; ...</td>
<td>Richard ...</td>
<td>10th Jan., 1839.</td>
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<td>John McKenzie ...</td>
<td>&quot;Medway&quot; ...</td>
<td>Griffin ...</td>
<td>— July., 1840.</td>
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<td>James Shea ...</td>
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<td>William Hinch ...</td>
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<td>James Curtis ...</td>
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</table>

I have, &c.,

GEO. GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 67, per ship William Woolley.)

Sir,

Downing Street, 31st December, 1839.

I transmit to you herewith for your information a copy of two communications, which have been respectively addressed by my direction 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, relative to the future maintenance of the Church and School establishments in New South Wales and Van Diemen's Land.

I have, &c.,

J. RUSSELL.

[Enclosure No. 1.]

UNDER SECRETARY VERNON SMITH TO REVD. A. M. CAMPBELL.

Sir,

Downing Street, 31st December, 1839.

Referring to the Correspondence, which has from time to time taken place between this Department and the Society for the Propagation of the Gospel, relative to the appointment of Clergymen of the Church of England to the ecclesiastical establishments of the Colonies of New South Wales and Van Diemen's Land, and particularly to Mr. Labouchere's letter of the 26th August last, I am directed by Lord John Russell to transmit to you the enclosed copy of a Despatch from the Lt. Governor of Van Diemen's Land.
relative to the supply of additional Chaplains for that Colony. Lord John Russell is led to believe that the present is but a renewal of the application contained in a former Despatch, which accompanied Mr. Labouchere’s letter to you of the 10th June, 1839. His Lordship however thinks it right to take this opportunity of communicating to you that, having recently had under his consideration the annual Returns of the Revenue and Expenditure of those Colonies, has observed the very large proportion which, in each of them, the charge for the maintenance of the Church and School Establishments bears to the gross amount of that Revenue. His Lordship has not been able to contemplate without anxiety the possible effect, which, at some future and perhaps not very remote time, may result from the comparative magnitude of this charge, especially to the interests of persons who may leave this Country to undertake the charge of congregations in Australia. Deeply as Her Majesty’s Government are impressed with the unrivalled importance of the objects to which this branch of the Public Expenditure is devoted, and cordially as at present the local authorities concur in that opinion, it must yet be remembered that the Revenue, from which alone the salaries of the Ministers of Religion and the Teachers of the Public Schools can be derived, is fluctuating in amount, and is scarcely capable of encrease by any new imposts. It must further be remembered that, to the local Legislature even as now constituted, the control and appropriation of this Revenue exclusively belongs, and that the same powers must necessarily be confided to any other local Legislatures, which may hereafter be established, on any new basis more consonant with the changes so rapidly taking place in the composition of the local Societies. His Lordship considers it due to the proper consideration of the interests of those exemplary persons, who are now devoting themselves to the cause of religious Instruction in these remote Colonies, to make them aware that they will look for future maintenance of establishments. support to the Community, among whom they are preparing to spread these inestimable advantages rather than to any pledge from the Mother Country. It is, therefore, of great importance that all Clergymen and Schoolmasters at New South Wales and Van Diemen’s Land, and especially all who may hereafter resort thither, should most distinctly understand that the continuance of their stipends cannot be absolutely guaranteed to them by Her Majesty’s Government, who can be responsible only for the exercise of the legitimate authority and influence of the Crown with the local legislatures for preventing any departure from the principles already sanctioned by those Legislatures on this subject. Lord John Russell earnestly hopes that the resources of these Colonies may continue to be adequate to this charge, and that the disposition to sustain it will undergo no change. Should however the event prove unfortunately otherwise, it must be clearly understood that Her Majesty’s Government could not be responsible for making good the deficiency beyond the guarantee which existing interests might fairly ask in charging the Legislative body.

I have, &c.,

R. Vernon Smith.
Clergy appointed for Tasmania;

but permitted to remain in New South Wales.

Arrival of clergy in Tasmania.

Request for additional clergy.

1839.
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which has been received from Van Diemen's Land for the appointment of additional Clergymen of the Church of England under the provisions of the Church extension Act. That letter has been written solely with a view to convey a clear understanding with regard to the ability of the Revenues of those Colonies to maintain permanently their Church and School Establishments on their present footing.

I have, &c,

R. Vernon Smith.

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Lord John Russell to Sir George Gipps. (Despatch No. 68, per ship William Woolley; acknowledged by Sir George Gipps, 30th July, 1840.)

Sir, Downing Street, 31st December, 1839

With reference to former Correspondence, I transmit to you a Copy of a further letter from the Secretary to the Board of Treasury, with a representation from the Commissioners of Audit relative to the neglect of Mr. Lithgow, the Colonial Auditor of New South Wales, to furnish replies to the queries of the Auditors on the accounts of Mr. Riddell, the Colonial Treasurer, for the years 1834 and 1835.

You will call on Mr. Lithgow for an explanation of the cause of this delay, and take such measures as may be most effectual for ensuring a compliance with the directions of Her Majesty's Government.

I have, &c,

J. Russell.

[Enclosure.]

Mr. A. Y. Spearman to Under Secretary Stephen. (Despatch No. 68, per ship William Woolley; acknowledged by Sir George Gipps, 30th July, 1840.)

Sir, Treasury Chambers, 23rd December, '39

I have it in command from the Lords Commissioners of Her Majesty's Treasury to transmit Extract of a report of the Commissioners of Audit of 9th Instant, respecting the neglect of Mr. Lithgow, the Colonial Auditor of New South Wales, to furnish the replies required to several queries from the Auditors on the accounts of Mr. Riddell, the Colonial Treasurer, for the years 1834 and 1835; and I have to request, referring to the letters addressed to you on the subject of the apparently dilatory and negligent conduct of the Auditor General in New South Wales on 11th May, 1838, and 21 January last, that, in submitting this further representation of the Comms. of Audit to Lord John Russell, you will move his Lordship to instruct the Governor of that Colony to take some effectual steps for enforcing an immediate compliance, on the part of the Local Audit Deptmt., with the directions which have doubtless been conveyed to the Auditor General, in accordance with the recommendations conveyed to Her Majesty's Secretary of State in the communications from this Board above adverted to.

I have, &c,

A. Y. Spearman.
1839.
31 Dec.

Report by audit commissioners re neglect of W. Lithgow to reply to queries.

"We beg to refer your Lordships to our Report No. 284, dated 3d May, 1838, in which are stated that the Colonial Auditor of New South Wales, Mr. Lithgow, had not furnished any replies to sundry queries from this office on the account of E. D. Riddell, Esquire, the Colonial Treasurer, for the years 1834 and 1835, and that he had not transmitted to us any accounts of that Officer subsequent to 31st March, 1836.

"To this subject, We again adverted, towards the conclusion of Our Report, to Your Lordship's No. 24, dated 10th January last.

"In reply to our first mentioned report of 3d May, 1838, Your Lordships were pleased to inform us, by a letter from Mr. Spearman dated 11th of the same month, that Lord Glenelg had been requested to direct the Governor of New South Wales forthwith to take the necessary steps for procuring the explanations called for by your queries; and We were further apprized by Your Lordship's Minute of 18th January last (forwarded to us in Mr. Baring's letter dated 25th in reply to Our Report of the 10th of the same month) that Lord Glenelg's attention had a second time been directed to this subject, as well as to the necessity of expediting the Delivery of the accounts in arrear.

"We have not, however, received any replies to the queries before alluded to, nor indeed any accounts or communication whatever of a subsequent date from Mr. Lithgow; and, as we have been assured by Mr. Riddell, who is now in this country, that his accounts had been regularly delivered to the Colonial Auditor, and that the latter had been furnished by Mr. Riddell with answers to the queries from this office, We deem it our duty again to call your Lordships' attention to this subject."

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 69, per ship William Woolley; acknowledged by Sir George Gipps, 21st July, 1840.)

Sir,
Downing Street, 31 December, 1839.

I transmit to you, herewith, a copy of a letter from the Secretary to the Board of Treasury; and I have to request that you will adopt such measures as may be practicable for recovering from Colonel Snodgrass the sum of £231 17s., being the difference between the full salary which he drew while acting Lieut. Governor of Van Diemen's Land, and the moiety thereof to which alone he was entitled while acting in that capacity.

I have, &c.,
J. RUSSELL.

[Enclosure.]

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

Sir,
Treasury Chambers, 20th Decr., 1839.

I am commanded by the Lords Comrs. of H.M. Treasury to request, with reference to your Letter of the 16th July last, that you will move Lord John Russell to cause the necessary instructions
DESPATCHES OMITTED.

1839.

Over-payment of salary to be recovered from K. Snodgrass.

1840.

SECRETARY OF STATE TO SIR GEORGE GIPPS.

The following despatches,* written in the year 1840, have been omitted:—

<table>
<thead>
<tr>
<th>Despatch</th>
<th>dated</th>
<th>numbered</th>
<th>Transmitting</th>
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</thead>
<tbody>
<tr>
<td>4th January</td>
<td>1</td>
<td>1</td>
<td>approval of one absolute and seventeen conditional pardons.</td>
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<tr>
<td>4th January</td>
<td>2</td>
<td>2</td>
<td>approval of seven conditional pardons.</td>
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<tr>
<td>4th January</td>
<td>3</td>
<td>3</td>
<td>authority for ticket of leave for Marie Smith.</td>
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<tr>
<td>23rd January</td>
<td>8</td>
<td>8</td>
<td>instructions re disposal of Thomas Seventon under sentence of transportation.</td>
</tr>
<tr>
<td>28th January</td>
<td>12</td>
<td>12</td>
<td>commutation of death sentence on Thomas Lowe.</td>
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<tr>
<td>6th February</td>
<td>16</td>
<td>16</td>
<td>authority for free pardon for James Mawn.</td>
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<tr>
<td>14th February</td>
<td>22</td>
<td>22</td>
<td>approval of one absolute and twenty conditional pardons.</td>
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<tr>
<td>29th February</td>
<td>23</td>
<td>23</td>
<td>approval of forty conditional pardons.</td>
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<tr>
<td>26th February</td>
<td>26</td>
<td>26</td>
<td>report re £500 lodged by W. Knox Childe with land and emigration commissioners for purchase of land.</td>
</tr>
<tr>
<td>16th March</td>
<td>30</td>
<td>30</td>
<td>authority for free pardon for William Primer.</td>
</tr>
<tr>
<td>20th March</td>
<td>37</td>
<td>37</td>
<td>warrant for reduction of sentence on George Bingham, per ship Maitland.</td>
</tr>
<tr>
<td>17th May</td>
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<td>42</td>
<td>do on John Blaney.</td>
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<tr>
<td>16th June</td>
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<td>54</td>
<td>free pardon for Luke Dillon.</td>
</tr>
<tr>
<td>10th July</td>
<td>62</td>
<td>62</td>
<td>do conditional pardon for Henry Harren.</td>
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<tr>
<td>21st May</td>
<td>63</td>
<td>63</td>
<td>do do for Peter Macriven.</td>
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<td>28th May</td>
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<td>do for Ralph Pearson.</td>
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<td>17th May</td>
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<td>66</td>
<td>recommendation in favour of Richard Whiting.</td>
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<tr>
<td>16th June</td>
<td>69</td>
<td>69</td>
<td>authority for conditional pardon for Michael Connor.</td>
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<td>29th June</td>
<td>77</td>
<td>77</td>
<td>petition in favour of Edmund Nye, convict.</td>
</tr>
<tr>
<td>23rd June</td>
<td>81</td>
<td>81</td>
<td>acceptance of explanation re John MacMillan and thirteen convicts.</td>
</tr>
<tr>
<td>20th June</td>
<td>83</td>
<td>83</td>
<td>approval of commutation of death sentence on Richard Jones, alias Knight, Samuel Ellis, James Hickey and William Barnes.</td>
</tr>
<tr>
<td>30th June</td>
<td>86</td>
<td>86</td>
<td>approval of requisition for supplies for civil hospitals.</td>
</tr>
<tr>
<td>29th June</td>
<td>89</td>
<td>89</td>
<td>three absolute and sixty-five conditional pardons.</td>
</tr>
<tr>
<td>10th July</td>
<td>100</td>
<td>100</td>
<td>application in favour of Joseph Baekler.</td>
</tr>
<tr>
<td>10th July</td>
<td>102</td>
<td>102</td>
<td>instructions for report re Edward Gilden.</td>
</tr>
<tr>
<td>13th July</td>
<td>103</td>
<td>103</td>
<td>free pardon for Patrick Webb.</td>
</tr>
<tr>
<td>15th July</td>
<td>108</td>
<td>108</td>
<td>request for free pardon or ticket of leave for Edward Gilden.</td>
</tr>
<tr>
<td>18th July</td>
<td>109</td>
<td>109</td>
<td>conditional pardon for George Abbott.</td>
</tr>
<tr>
<td>27th July</td>
<td>113</td>
<td>113</td>
<td>instructions for report re William Lawler.</td>
</tr>
<tr>
<td>27th July</td>
<td>117</td>
<td>117</td>
<td>warrant for reduction of sentence on John Wood.</td>
</tr>
</tbody>
</table>

* Note 82.
HISTORICAL RECORDS OF AUSTRALIA.

1840. The following despatches, written in the year 1840, have been omitted—continued.

<table>
<thead>
<tr>
<th>Dated</th>
<th>Numbered</th>
<th>Transmitting</th>
</tr>
</thead>
<tbody>
<tr>
<td>31st July</td>
<td>119</td>
<td>free pardon for George Biddle at the end of ten years.</td>
</tr>
<tr>
<td>29th August</td>
<td>136</td>
<td>report re Mary Dolan, convict.</td>
</tr>
<tr>
<td>9th September</td>
<td>142</td>
<td>warrant for free pardon to Henry Wheeler.</td>
</tr>
<tr>
<td>9th September</td>
<td>144</td>
<td>approval of tickets of leave for thirteen convicts.</td>
</tr>
<tr>
<td>14th September</td>
<td>151</td>
<td>free pardon for Thomas Tongue.</td>
</tr>
<tr>
<td>20th September</td>
<td>—</td>
<td>assignment of two hundred and seventy convicts per ship Eden.</td>
</tr>
<tr>
<td>16th October</td>
<td>162</td>
<td>memorial from Thomas Hindes requesting unconditional pardon.</td>
</tr>
<tr>
<td>28th October</td>
<td>167</td>
<td>approval of eight absolute and seventy-four conditional pardons.</td>
</tr>
<tr>
<td>26th November</td>
<td>176</td>
<td>approval of five absolute and seventy-one conditional pardons.</td>
</tr>
<tr>
<td>28th December</td>
<td>183</td>
<td>warrant for pardon of John Bright.</td>
</tr>
</tbody>
</table>

CIRCULAR LETTERS.

During the year 1840, the following letters* were written by the secretary of state, which were similar to that dated 5th December, 1837, with the following manuscript alterations:—

Letter dated 23rd April, 1840.
Mr. Alured Tasker Faunce—a Memorial—(without date)—an application to be indemnified from the costs, arising out of certain legal proceedings instituted against him for acts performed in his character of Magistrate.

Letter dated 31st May, 1840.
Mr. Henry Bayly—a Letter—22 of November last—his claim to Land in New South Wales under the Regulations of the year 1827.

Letter dated 17th June, 1840.
Mr. Thos. M. Perrott—a Letter—25th of November last—his claims to a Grant of Land in New South Wales.

Letter dated 2nd November, 1840.
Mr. Benjamin Urch, late Serjt., 73d Regt.—a Letter—(without date)—his claim to compensation for the loss of a Home at Sydney, which was taken down for certain Improvements in that Town.

SIR GEORGE GIPPS TO SECRETARY OF STATE.

The following despatches,* written in the year 1840, have been omitted:—

<table>
<thead>
<tr>
<th>Dated</th>
<th>Numbered</th>
<th>Transmitting</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st January</td>
<td>1</td>
<td>report re John MacMillan, convict.</td>
</tr>
<tr>
<td>22nd January</td>
<td>8</td>
<td>schedule of appointments and special payments.</td>
</tr>
<tr>
<td>31st January</td>
<td>9</td>
<td>return of allowances to military medical officers for civil services.</td>
</tr>
<tr>
<td>11th February</td>
<td>10</td>
<td>requisition for arms and clothing for mounted and border police.</td>
</tr>
<tr>
<td></td>
<td>18</td>
<td>list of convicts recommended to have their families sent out to them.</td>
</tr>
</tbody>
</table>

* Note 82.
The following despatches, written in the year 1840, have been omitted—continued.

<table>
<thead>
<tr>
<th>Date</th>
<th>Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>17th February</td>
<td>23</td>
<td>Despatches omitted.</td>
</tr>
<tr>
<td>5th March</td>
<td>34</td>
<td>Report re indent of convicts per ship Minerva.</td>
</tr>
<tr>
<td>14th March</td>
<td>27</td>
<td>Report re George Gambling, convict.</td>
</tr>
<tr>
<td>18th March</td>
<td>40</td>
<td>Report re requisition for stationery and printed forms for convict services.</td>
</tr>
<tr>
<td>19th March</td>
<td>41</td>
<td>Eight absolute and seventy-four conditional pardons.</td>
</tr>
<tr>
<td>24th March</td>
<td>47</td>
<td>Annual return of the proceeds of effects of convicts deceased.</td>
</tr>
<tr>
<td>1st April</td>
<td>52</td>
<td>Return of 2,181 tickets of leave granted and 535 deaths of convicts in the year 1839.</td>
</tr>
<tr>
<td>18th May</td>
<td>62</td>
<td>Report re requisition for blank forms for &quot;blue book.&quot;</td>
</tr>
<tr>
<td>1st June</td>
<td>67</td>
<td>Five absolute and seventy-one conditional pardons.</td>
</tr>
<tr>
<td>5th June</td>
<td>69</td>
<td>List of convicts recommended to have their families sent out to them.</td>
</tr>
<tr>
<td>2nd July</td>
<td>78</td>
<td>Recommendation for commutation of death sentence on John Bright for murder.</td>
</tr>
<tr>
<td>4th July</td>
<td>79</td>
<td>Medical return.</td>
</tr>
<tr>
<td>13th July</td>
<td>82</td>
<td>Return re medical supplies.</td>
</tr>
<tr>
<td>15th July</td>
<td>85</td>
<td>Return of arrival of immigrants for half-year to 30th June, 1840.</td>
</tr>
<tr>
<td>7th August</td>
<td>103</td>
<td>Requisition for stores for convict services.</td>
</tr>
<tr>
<td>8th August</td>
<td>104</td>
<td>Do do for medical services.</td>
</tr>
<tr>
<td>11th August</td>
<td>106</td>
<td>List of convicts recommended for tickets of leave.</td>
</tr>
<tr>
<td>28th August</td>
<td>123</td>
<td>Proposal for free pardon for F. Bigg.</td>
</tr>
<tr>
<td>29th August</td>
<td>123</td>
<td>Report re Edward Smith, convict.</td>
</tr>
<tr>
<td>1st September</td>
<td>125</td>
<td>Report re George Bellon, convict.</td>
</tr>
<tr>
<td>3rd September</td>
<td>126</td>
<td>Estimates for convict works for year 1841.</td>
</tr>
<tr>
<td>4th September</td>
<td>127</td>
<td>List of convicts recommended to have their families sent out to them.</td>
</tr>
<tr>
<td>19th September</td>
<td>133</td>
<td>Recommendation for commutation of death sentence on Talboy, an aboriginal.</td>
</tr>
<tr>
<td>4th October</td>
<td>145</td>
<td>Quarterly schedules of new appointments and special payments under warrant from governor to dep. commissary-general.</td>
</tr>
<tr>
<td>5th October</td>
<td>146</td>
<td>Quarterly schedules of new appointments and special payments under warrant from governor out of colonial funds.</td>
</tr>
<tr>
<td>10th October</td>
<td>147</td>
<td>Printed copies of acts of council for the year 1839.</td>
</tr>
<tr>
<td>3rd November</td>
<td>174</td>
<td>Quarterly schedule of new appointments and special payments under warrant from governor to dep. commissary-general.</td>
</tr>
<tr>
<td>12th November</td>
<td>177</td>
<td>Four absolute and sixty-three conditional pardons for approval.</td>
</tr>
<tr>
<td>1st December</td>
<td>183</td>
<td>Annual requisition for convict clothing.</td>
</tr>
<tr>
<td>21st December</td>
<td>193</td>
<td>Recommendation for commutation of death sentence on John Walker.</td>
</tr>
<tr>
<td>22nd December</td>
<td>194</td>
<td>Recommendation for commutation of death sentence on Billy, an aboriginal.</td>
</tr>
<tr>
<td>23rd December</td>
<td>195</td>
<td>Requisition for arms, clothing, etc., for mounted and border police.</td>
</tr>
<tr>
<td>28th December</td>
<td>197</td>
<td>Report re erroneous transmission of pardon to Sydney vice Hobart town.</td>
</tr>
</tbody>
</table>

Sir George Gipps to Marquess of Normanby.
(Despatch No. 2, per ship Royal Admiral.)

My Lord,

My Lord, Government House, 3rd Jany., 1840. 8 Jan.

I have the honor to report to your Lordship that H.M.S. Druid, Captain Lord John Churchill, arrived at Sydney on ship Druid.
the 24th ulto., having on board Captain Hobson and family for New Zealand.

Agreeably to the directions of the Lords of the Admiralty, the "Druid" will proceed with as little delay as possible to China, and Her M.S. "Herald," Captn. Nias, will convey Captain Hobson to New Zealand.

I take this opportunity of informing your Lordship that I am proceeding to carry into effect, with all possible expedition, the instructions contained in your Lordship's Despatch of the 15th Augt. last, No. 118, but I am not yet in a condition to report any progress to your Lordship.

I have, &c.,

GEO. GIPPS.
At page 61 of this Publication, Mr. Labouchere is reported to have said as follows:—

"Sir George Gipps said that, with regard to the project of pledging the Land Revenue to purposes of Emigration, it should be recollected that this was the only fund which the Executive Government had to defray any charges which the Legislative Council might be disposed to reject; that it was impossible to maintain in a distant Colony a sufficient check over imprudent expenditure. He begged pardon, he was reading a wrong extract. He was not by any means sorry that he had read it, but the passage he had meant to read was: "etca., etca.

If the extract thus read by mistake was an Extract from one of my Despatches, I trust your Lordship will not consider it unreasonable that I should request to have the exact passage pointed out to me; if, on the contrary, it was an extract from any document which did not proceed from me, I would respectfully request that I may be authorised to say so. I have, &c.,

GEO. GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(A circular despatch per ship Potter.)

Sir,

Downing Street, 8th January, 1840.

The Lords Commissioners of Her Majesty's Treasury having under the authority vested in them by the Act, 2nd and 3rd Vict., Ch. 52, entitled "An Act for the further regulation of the duties on Postage until the 5th October, 1840," abolished all official franking and directed that every Letter, not strictly of an Official nature or not prepaid, should be charged with the rate of Postage laid down in the scale recently established by their Lordships, and Gazetted on the 18th Ultimo, I have the honor to inform you that, in accordance with their Lordships' request, all Letters and Parcels accompanying your Despatches, which are not bona fide relating exclusively to the business of this Office, and bearing your Signature as attesting that fact, will be sent to the Post Office to be charged and delivered.

I wish to impress upon you the propriety of strictly adhering to this regulation. I have, &c.,

J. RUSSELL.

P.S.—It is to be distinctly understood that even Letters on Her Majesty's Service, addressed to other Public Offices, are not to be sent through this Office.

* Note 85.  † Note 83.
1840.
8 Jan.

Transmission of reports in reply to despatches.

Sir George Gipps to Marquess of Normanby.
(Despatch No. 4, per ship Royal Admiral; acknowledged by lord John Russell, 8th August, 1840.)

My Lord, Government House, 8th Jany., 1840.

With reference to Lord Glenelg's Despatches of the 16th and 21st May, 1838, Nos. 108 and 111, in the latter of which I was directed to call on the Auditor of this Colony for an explanation of the delays in the transmission of accounts, complained of by the Commissioners of Audit; also with reference to Lord Glenelg's Despatch of the 28th Jany., 1839, No. 20, requiring further information respecting a Forgery on the Colonial Treasury, reported in my Despatch of the 3rd July, 1838, No. 96; I have the honor to enclose herewith a Copy of a letter to the Colonial Secretary from the gentleman, who, in the absence of Mr. Riddell, now acts as Colonial Treasurer; and also a Copy of a letter from Mr. Lithgow, the Auditor of this Colony, the latter having, as your Lordship will perceive, been only received on the 31st Decr. last. I have, &c.,

Geo. Gipps.

[Enclosures.]
[Copies of these letters are not available.]

11 Jan.


Sir George Gipps to Marquess of Normanby.
(Despatch No. 5, per ship William Carey; acknowledged by lord John Russell, 22nd July, 1840.)

My Lord, Government House, 11th Jany., 1840.

In connexion with my Despatches of the 5th and 6th Decr. last, Nos. 165 and 166, on the subject of the suspension from office of Colonel Wilson, First Police Magistrate of the Town and District of Sydney, I have now the honor to forward a letter, which has been addressed by Coll. Wilson to your Lordship.

This letter was received by me on the 9th inst., after my last Bag of Despatches (by the "Royal Admiral") was closed; but the documents referred to in it did not accompany it, nor have they ever reached me, though I have caused two letters to be written to Coll. Wilson respecting them.

Of the many extraordinary statements contained in Coll. Wilson's letter, I feel it necessary at present to refer to no more than the following:—

Coll. Wilson states, at the commencement of his letter, that the communication, which I caused to be made to him of the general nature of my Despatch to your Lordship of the 5th Decr. last, afforded him an opportunity of meeting the charges against him, which he had not before enjoyed. I regret to be forced to—
say that this assertion is altogether unsupported by fact, Colonel Wilson having had every possible facility afforded him for making his defence, when his case was before the Executive Council; and I am sure your Lordship will not believe that the Executive Council, composed as it is of Major General Sir Maurice O'Connell, the Lord Bishop of Australia, and the Colonial Secretary (Mr. E. Deas Thomson) in addition to myself, would have disposed of Colonel Wilson's case, and recommended his suspension from office, without hearing him; this decision of the Council was moreover (it may be right for me to say) a unanimous one.

Coll. Wilson asserts that I required him to pay a sum of money into the Colonial Treasury, to which I afterwards acknowledged that the Government had no claim; and that I offered to restore it to him on condition that he embarked for England by a certain day, meaning thereby, I believe, to insinuate (as he has done elsewhere) that I wished to get him out of the Colony; the following are the facts:

Coll. Wilson, on his suspension from Office, asked for an advance of six months' salary to enable him to proceed to England and lay his case before your Lordship; and this, though I believe contrary to all precedent, was granted to him by advice of the Council, as reported in my Despatch of the 6th Decr. last, No. 166. The Warrant for the payment of this advance of £350 to Coll. Wilson was actually signed and issued, when a representation was received from the Acting Treasurer that Coll. Wilson had never accounted for the sum of £100 paid to him for a particular service in the year 1834. On this, I immediately ordered payment of the Warrant to be suspended; but, before my intentions in this respect could be carried into effect, Coll. Wilson had obtained payment on the Warrant of £250, leaving voluntarily and without any order whatsoever from me the other £100 to meet the adjustment of the account for 1834. On enquiry, it appeared to me that the neglect in not accounting for the £100 in 1834 rested rather with the Law Officers of the Crown than with Coll. Wilson; but, sufficient having transpired in the mean time to convince me that Coll. Wilson had no real intention of proceeding to England, and that his expression of a wish to do so had been merely a pretence to get money from the Government for the purpose, as he has subsequently avowed, of paying his debts, I caused an intimation to be made to him that the £100 would not be paid to him, unless he actually embarked within three months from the day on which the advance of six months' salary to him was sanctioned.

I beg to assure your Lordship that the facility with which I, out of commiseration and from a knowledge of the state of
Coll. Wilson's finances, allowed this advance to be made to him, is the only point, on which I feel that I have, in regard to Coll. Wilson, acted beyond the strict line of my duty.

The only other part of Coll. Wilson's letter, to which I think it necessary to advert, is that in which he alludes to real or supposed abuses in other Departments of Government, and particularly in that of which his late Accuser is Chief Clerk; which abuses he says or rather insinuates are allowed to exist unnoticed by me. The gentleman at the Head of that Department, and alluded to as a relative of Lord Glenelg, is Captain McLean, the Principal Superintendent of Convicts. Had Coll. Wilson furnished me with a copy of the Paper (called by him Appendix F) in which charges against this gentleman seem to be contained, I should have been able to judge whether or not I ought to demand any explanation from Captn. McLean; but, not having received this Appendix, I have not thought it necessary to call on Captn. McLean to answer the vague accusations brought against him by Coll. Wilson, aware, as I am of my own knowledge, that the assertion of an Island having been given to him is positively and absolutely false; and the circumstance of Pigs being fed or fattened by the refuse food of the Convicts at Hyde Park having been inquired into by myself several months ago, and the practice put a stop to before the late charges were exhibited by Mr. Ryan against Coll. Wilson. It is now nearly a year ago that it came accidentally to my knowledge that it was the practice to give the hominy, that was frequently left by the Convicts, to Pigs belonging to different Officers of the Establishment; and, though there might have been no great abuse in this, I considered the practice to be one likely to beget injurious suspicions, and therefore caused it to be discontinued.

Hominy is a sort of gruel, made from the meal of Maize or Indian Corn, and, though a very wholesome article of food, is often disagreeable to Convicts on their first arrival, and therefore eaten only sparingly by them.

I have, &c.,

Geo. Gipps.

[Enclosure.]

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

Sir George Gipps to Marquess of Normanby.
(Despatch No. 6, per ship William Carey.)

My Lord,

Government House, 16th Jany., 1840.

Herewith I have the honor to forward to your Lordship, a copy of the Report presented to the Legislative Council of this
GIPPS TO NORMANBY.

Colony by the Committee appointed during the last Session to enquire into the subject of the Police of the Colony.

Though this Committee was appointed for the express purpose of devising means for the reduction of the expence of the Police, your Lordship will perceive, by the recapitulation given at Page 92 of the Report, that the result of their labors was the recommendation of an increased expence of £5,283 12s. 8d., being an increase from £47,052 15s. 9d., the cost of the Establishments in their present state, to £52,316 8s. 5d., the Estimate for 1840 formed by the Committee, which Estimate also exceeded my own Estimate for 1840 by the sum of £2,513 12s. 2d.

These sums, I should moreover state, are exclusive of Provisions, Forage or Equipments for the Mounted Police, which will amount to about £16,000; exclusive also of all contingent expences, and of the erection and repair of buildings; exclusive also of the District of Port Phillip, and of Gaols throughout the Colony. The total estimated expence of Police and Gaols throughout the whole Colony, as shewn by the documents transmitted with my Despatch of the 2nd Decr., 1839, No. 162, is as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>£</th>
<th>s</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td>For Police Establishments in the old parts of the Colony</td>
<td>82,771</td>
<td>7</td>
<td>11</td>
</tr>
<tr>
<td>For Do. at Port Phillip</td>
<td>10,043</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>92,814</td>
<td>15</td>
<td>0</td>
</tr>
<tr>
<td>For Gaols in the old parts of the Colony</td>
<td>12,052</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>104,867</td>
<td>2</td>
<td>10</td>
</tr>
</tbody>
</table>

and even in these sums, nothing is included for the erection or repair of Buildings.

I have, &c,

Geo. GIPPS.

[Enclosure.]

[A copy of this report, dated 29th October, 1839, will be found in the "Votes and Proceedings" of the legislative council.]

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 7, per ship William Carey.)


Herewith I have the honor to forward a letter which has been addressed to your Lordship by Mr. P. L. Campbell, requesting your Lordship to appoint him to the situation of General Superintendent of the Police of New South Wales, the creation of such an office having been recommended by a Committee of the Legislative Council of the Colony in a Report, of which I
1840, 17 Jan.
forwarded a Copy to your Lordship with my Despatch of yesterday's date, No. 6, with a salary attached to it of £1,000 a year.
Of Mr. Campbell, My Lord, I will only say that he is the gentleman respecting whose conduct my Despatches of the 27th April and 27th June, 1839, Nos. 76 and 98, were addressed to Lord Glenelg.
Though recommended by the Committee of the Council, as above stated, I beg to explain to your Lordship that I scarcely think it desirable in the present state of the Finances of the Colony to add to the expense of our Police Establishments by the creation of a new office, having a salary attached to it of £1,000 a year.
I would respectfully ask your Lordship's attention to the concluding paragraph of Mr. Campbell's letter, from which your Lordship may probably be able to form a better estimate of Mr. Campbell than from any report I can make of him. That Mr. Campbell was an active Magistrate and is a competent man of business, I stated in my Despatch to Lord Glenelg, above referred to.
I have, &c.,
Geo. Gipps.

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

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 5, per ship Maitland; acknowledged by Sir George Gipps, 22nd July, 1840.)
20 Jan. Sir, Downing Street, 20 Jan'y., 1840.
I transmit to you, herewith, Copies of a correspondence with the Chairman of the Australian Agricultural Company on certain points brought forward at a recent interview, which I had with a Deputation of the Directors of that Company; and I should be glad to receive some explanation of the circumstances under which it is alleged that Capt. Westmacott is about to open Coal Mines on his Grant with the consent of the Local Government.
I have, &c.,
J. Russell.

[Enclosure No. 1.]
MR. JOHN SMITH TO LORD JOHN RUSSELL.
Australian Agricultural Company,
My Lord 12 King's Arms Yard, 10th January, 1840.
In compliance with your Lordship's wish I have the honor to enclose a Memorandum containing the substance of the conversation, which passed at the Interview with which you favored a deputation of the Directors of the Australian Agricultural Company at the Colonial Office Yesterday.
The points to which I particularly wish to direct your Lordship's attention are the following:—

1st. With respect to the supply of Labour for the Coal Mines, is your Lordship prepared to send out Instructions to Sir George Gipps directing him to assign the requisite number of Convicts from time to time so as to enable the company to meet the increased and increasing demand for Coal?

An early reply to this question is most desirable as upon your Lordship's determination must depend the arrangements, which the Directors may be obliged to make for the supply of free labourers to be sent from this country, a course which the directors are desirous of avoiding if possible, as the necessary consequence must be a great increase in the Cost of Coal to the manifest injury of the consumers in the Colony.

2nd. With respect to the Coal Grant made to Captain Westmacott at Wollongong, of which some particulars are stated in the inclosed extract of Captain King's letter to the Court of Directors, from which it appears that the Executive Council have authorized Capt. Westmacott to open the Mines in question.

We desire to ask your Lordship whether any Instructions have been sent from the Government at home authorizing this proceeding on the part of the Executive Council at Sydney, because, without such sanction previously obtained, the Council could not, under the opinion* of the Attorney and Solicitor General as stated in Sir George Grey's letter to Mr. Brownrigg, dated 7th December, 1838, grant any such authority.

The Directors are unwilling to believe that any Instructions, so directly opposed to the terms of the agreement under which the Company undertook to work the Mines, can have been sent by the Secretary of State, without any intimation being given of the intention of Government, and an opportunity thus afforded to the Directors of supporting the privileges originally granted to the Company. I have, &c.,

JOHN SMITH, Governor.

[Sub-enclosure.]

MEMORANDUM OF INTERVIEW.
Australian Agricultural Company,
Thursday, 9th January, 1840.


Mr. Smith stated to His Lordship that he had sought the present interview with a view to impress upon His Lordship's serious attention, the difficulties likely to be experienced by the Company's Commissioner in New South Wales in supplying the increasing demand for Coals, in consequence of a deficiency in the supply of Convict Labor; that, although the number employed by the Company was rapidly decreasing, no fresh assignment to supply their place could be procured from the local Government.

Mr. Smith begged to remind His Lordship that the Company in the first instance did not wish to work the Mines; but that it was at the express desire of Government that the Company were induced to enter into a speculation, the success of which was very doubtful.

* Note 86.
Lord John Russell said he had understood such was the Case. Mr. Smith proceeded by stating that the principal object the Directors had in view was to press upon His Lordship's attention the necessity of His Lordship's transmitting such Instructions to the Governor in the Colony, as might insure to the Company assignments of sufficient Convicts for their Coal Mine operations, so that the supply may equal the demand.

To a question put by Lord John Russell whether the Laborers sent out would not work in the Mines, he was informed that such was not the case, because they could readily obtain less laborious and more agreeable occupation in Agricultural and other pursuits, whilst on the contrary the Convicts were obliged to work in the Mines, if such duties were required of them.

His Lordship's attention was then drawn to Mr. Horace Twiss' letter of the 31st July, 1828, from which the following Extract was read:

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

His Lordship was informed that the number of the Company's Convicts was fast decreasing, whilst the demand for Coal was as rapidly increasing; that, in the Month of Sept., 1837, the number at Work in the Mines was 133, that, in December, 1838, they were reduced to 109 and were still diminishing in number, no fresh assignments being made by the Local Govt.

His Lordship was reminded that the working of the Coal Mines by the Company was different from any private Speculation; that it was a public object, from which the community generally was benefited, and in which the Public were equally interested as the Company; and that upon that ground the Company had a prior claim upon the Govt. for such assistance in Convict Labor, as might enable them to meet the encreasing demand for this necessary article.

His Lordship admitted that, as the Company undertook the working of the Mines at the express desire of the Government for a public benefit, they were entitled to such support as it was in the power of the Govt. to afford them.

His Lordship was informed that, unless the Company were supplied with Convicts by the Local Government, in sufficient numbers to procure Coal equal to the demand, the Directors would be obliged to hire Free Miners in this Country, which would entail a very large expenditure, and the Company would consequently be obliged to raise the price of Coal to at least 50 pr. Ct.; that in such case the Government would themselves be considerable losers.

Lord John Russell asked if the Governor had given any particular reason for not assigning Convicts, and was answered in the negative.

The following Extract from Captain King's Despatch, No. 6, 25th May last, was read:

"I have informed Sir George Gipps of our inability to hire Getters for underground work, and he therefore knows your
dependence upon him. I trust, however, you will, by a timely reference to the Government, be enabled to prevent the impending injury, with which your property here is threatened.”

Lord John Russell then remarked “I will let you know whether I can do anything for you about it.”

His Lordship’s attention was then drawn to the subject of the Grant of Land to Capt’n Westmacott without a reservation of the Coal; and it was contended that, unless orders had been sent from the Home Government, authorising the working of Coal by Capt’n Westmacott, the Executive Council had no right to grant such a permission; the original agreement with the Company stipulating that “No Governor shall for the next 31 years grant or convey any Coal Mines or Land containing any Coal Mines without a specific exception of the Coal in such Grant or Conveyance, nor afford any assistance in Convict Labor for the working of any Coal Mine to any other Company, or to any Individual or Individuals, without the previous sanction of the Government at Home.”

Lord John Russell said he was not aware of the circumstance.

The following extract from Capt’n King’s Despatch. No. 6. 25th May last, on the subject was then read:—

“I must also request your serious attention to another subject, which materially affects the interests of the Company with reference to their Colliery Works. Lately a Coal Mine has been opened by a Captain Westmacott at Bulli in the District of Illawarrah (five Islands) about 50 Miles to the South of Sydney. A Steam Navigation Company has been formed by a party connected with Captain Westmacott; and one of the Hunter River Steam Vessels has been purchased to run between Sydney and the Township of Wollongang, which is about nine Miles from the Mine. It is intended that the Mine shall supply her with Coals, and, if the Govt, assign to it the Miners we are in want of and ought to be supplied with, your operations at Newcastle will be much interfered with.

“I shall watch this affair and communicate to you further, so soon as I shall be able to procure authentic Information; but I have no doubt that much facility will be given to the Individuals, whose assigned servants alone, whether Miners or only common Laborers, will be able to do much, for the seam is on the face of the Cliff some feet as I am informed above high water mark and at a very short distance from the Sea.

“It remains yet to be proved whether the quality of the Coal be so good as that at Newcastle.

“The Land containing the Coal is the property of Capt’n Westmacott; it became his by purchase from Mr. Cornelias O’Brien. The Deed of Grant has only lately been made out; in consequence of Capt’n Westmacott’s application to the Executive Council, it was permitted to be freed from the usual Crown reservations, whereby the right of all Mines is vested in the Crown.

“I am in hopes that you will be better able to check the evil by an application to the Secretary of State, than I could possibly do by representation to the Authorities here.”

His Lordship requested Mr. Smith to address him a letter containing the points to which the Directors were desirous of drawing his Lordship’s attention.

The Deputation then withdrew.  

SIR, I. VOL. XX—2 H

RUSSELL TO GIPPS. 481

1840.

20 Jan.

Protest re permission granted for coal-mine at Bulli.

Report by P. P. King re coal-mine at Bulli.
1840.
20 Jan.
Letter acknowledged.

Inability to supply convict labour.

Instructions transmitted re monopoly of coal-mining.

UNDER SECRETARY VERNON SMITH TO MR. JOHN SMITH.

Sir,

I am directed by Lord John Russell to acknowledge the receipt of your letter of the 10th Instant, enclosing a Memorandum containing the substance of the conversation, which passed at a recent interview, which a Deputation of the Directors of the Australian Agricultural Company had with his Lordship.

In reply, I am directed to acquaint you that the abandonment of the System of assigning Convicts will render it impossible for Lord John Russell to convey to the Governor of New South Wales instructions of the nature contemplated by the Company on that subject. It does not appear to him, however, that it will be impossible for the Governor to Frame such regulations respecting Criminals convicted in New South Wales as may give the company the benefit of their labour in the Coal Mines.

With regard to the question of Coal Monopoly, the opinion of the Law Officers of the Crown, together with copies of the whole correspondence between this Department and the Company, were communicated* to Sir George Gipps, with whom it was left to take such measures, in accordance with the opinion of the Crown Lawyers, as might appear most advisable for ensuring to the settlers at Port Phillip the benefit of the Mines discovered there. Lord John Russell has received no information from Sir George Gipps relative to the Grant of Land, which is represented to have been purchased by Captain Westmacott from Mr. O'Brien, and on which Coal mines have been opened; but his Lordship will call on the Governor for information on the circumstances of the case.

I am, &c,

R. VERNON SMITH.

21 Jan.
Despatch acknowledged.

INTERPRETATION OF INSTRUCTIONS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despacht No. 6, per ship Maitland.)

Sir,

I have received your dispatch No. 103 of the 11th of July last, reporting that, in compliance with the instructions conveyed to you in Lord Glenelg's despatch No. 202 of the 18 of Jan., 1839, you had called upon the several Collectors of Revenue in New South Wales to pay into the Colonial Treasury the amount, which they had severally received on account of Interest on Public Monies deposited by them in any of the Banks of the Colony.

I have conferred with the Lords Commissioners of the Treasury on the subject of the contingent accounts kept by the Colonial Treasurer at one of the Banks; and H.M. Government consider the opinions, expressed by yourself with respect to the responsibility of that officer for any Interests he had obtained on those accounts, and also with respect to the meaning of the Instruction conveyed by My Predecessor's dispatch of the 30th of August, 1838, to have been correctly founded.

* Note 86.
With regard to the Protest of Mr. Macpherson, the former Collector of Internal Revenue, against being called upon to make the payment in question, H.M. Government do not see any sufficient grounds for excepting that Officer from such refund. You will, therefore, take the necessary steps for procuring the payment into the Colonial Chest of the amount of the Interest due from Mr. Macpherson and from the Acting Colonial Treasurer respectively.

I have, &c.,

J. RUSSELL.

Lord John Russell to Sir George Gipps.
(A circular despatch per ship Maitland.)

Sir, Downing Street, 21st January, 1840.

I herewith transmit for your information and guidance a copy of the instructions, which have been issued by the Master General and Board of Ordnance to their respective Officers in the Colonies, directing them to inform you of any communication, which they may think it necessary to make to the Board affecting you or orders given by your authority.

I have, &c.,

J. RUSSELL.

[Enclosure.]

Circular.
Foreign Stations. Office of Ordnance.

Gentlemen,

16 December, 1839, 167/S.

The Secretary of State for the Colonies, having in a recent correspondence with this Department, expressed an opinion that it would be highly convenient, if the Governor of a Colony were to be informed by the Ordnance Officers of any communication which they may think it necessary to make to the Board affecting him, or Orders given by his authority, as otherwise much time must necessarily be lost pending a reference from the Colonial Office to the Colony of such matters as the Ordnance may have deemed it requisite to bring under the consideration of that Office; I have received the commands of the Master General and Board to desire that, in every instance of the nature specified by the Secretary of State, you will be careful to make the Governor or Officer administering the Government of the Province or Island, in which you are stationed, fully acquainted with your intention of addressing the Master General and Board thereon, so that the opinion of the Officer in command of the Colony may be exhibited in conjunction with your own, on any question in which it is requisite the views of both parties should be known.

I am, &c.,

R. BYHAM.

Lord John Russell to Sir George Gipps.
(A circular despatch per ship Maitland.)

Sir, Downing Street, 22nd January, 1840.

I herewith transmit for your information and guidance copies of a correspondence, which has passed between Lord Yarborough and myself relative to the request of the Royal Yacht
Squadron that their Vessels should be received in the Ports of Her Majesty's Colonial Possessions on the same footing as they are in England and all Foreign Ports.

I also enclose an extract of a letter, which had been since addressed to me by the Secretary to the Royal Yacht Squadron.

I have, &c.,

[Enclosure No. 1.]

J. RUSSELL.

EARL OF YARBOROUGH TO MARQUESS OF NORMANBY.

Royal Yacht Squadron House,

My Lord Marquis,

Cowes, 9th December, 1839.

At the last General Meeting of the Members of the Royal Yacht Squadron, two Letters from James Brooke, Esqre. (who is at present on a voyage round the World at his own expense in his Schooner Yacht Royalist) were read, dated from the Cape of Good Hope, complaining of the charges made there, and the security he was obliged to give for his good behaviour. And as several of our Members intend visiting different parts of the World in their Yachts, the Meeting came to a Resolution a copy of which I send on the other side.

Your Lordship will much oblige me by taking this into consideration, and if possible to grant the request prayed for.

I have, &c,

YARBOROUGH, Commodore.

[Sub-enclosure.]

"THE Earl of Yarborough and Mr. Robinson having submitted to the Meeting Letters, which they had received from James Brooke, Esqre., of the Royal Yacht Schooner Royalist, complaining of having been subjected at the Cape of Good Hope to all kind of Local Port dues as well as Customs, besides being obliged to give security for the good behaviour of himself and crew."

"Resolved.—That a Memorial be presented by the Commodore to Her Majesty's Secretary of State for the Colonies, complaining of this grievance, and requesting that Instructions may be sent out that all Vessels belonging to the Royal Yacht Squadron should be received in all the Ports under Her Majesty's Flag on the same footing as they are in England, and all Foreign Ports."

[Enclosure No. 2.]

LORD JOHN RUSSELL TO EARL OF YARBOROUGH.

My Lord,

Downing Street, 28th December, 1839.

I have had the honor to receive your letter of the 9th Inst. addressed to my Predecessor, conveying the representation of the Members of the Royal Yacht Club, upon the complaint made by the Owner of the Schooner Yacht Royalist of that Vessel having been subjected to certain local dues and customs at the Cape of Good Hope; and I have to request that your Lordship will cause me to be informed of the advantages enjoyed by the Royal Yacht Club in the Ports of this Country, in order that I may be able to judge whether it would be proper to recommend to the various Colonial Legislatures to grant to them similar indulgences, and that I may be the more able correctly to estimate the probability of the success of any such recommendation.

I am, &c,

J. RUSSELL.
EARL OF YARBOROUGH TO LORD JOHN RUSSELL.

My Lord,

Brocklesby, Limber, 5 Jan., '40

I have been favored with your Lordship's letter of 28 Decr., '39, requesting I would furnish your Lordship the advantages enjoyed by the Royal Yacht Squadn.

The Royal Yacht Squadron pay no Lights or Harbour Dues, at concessions home or in Foreign Ports.

They carry the White or St. George's Ensign by Admiralty Warrant.

Quarantine Laws the same as Men of War, not having a Cargo.

The complaint made by the Royalist of the Squadron was, that Harbour dues were demanded (very civilly) at the Cape of Good Hope and paid, being the first Yacht that had visited that Port, and the Authorities stating they had no knowledge of the Royal Yacht Squadron.

The Members in consequence would feel greatly obliged if your Lordship would have the goodness to request the Authorities to grant the same indulgence that is allowed in England and Foreign Ports.

I have desired the Secretary, Mr. Bates, to forward your Lordship a French Certificate, which is the same to other Nations except in the National language, which, with the Admiralty Warrant, are shown on entering a Foreign Port, exempts us from paying Harbour Dues.

I have, &c,

YARBOROUGH.

LORD JOHN RUSSELL TO EARL OF YARBOROUGH.

My Lord,

Downing Street, 16th January, 1840.

I have had the honour to receive your Lordship's letter of the 5th Instt. and I have to acquaint you in reply that I shall be happy to recommend the request of the Royal Yacht Squadron to the favourable consideration of the Legislative and other local authorities in the various Colonies, with whom however it must rest to adopt or to reject it.

In the mean time I would observe to your Lordship that there are very few, if any, of the British Colonies in which Port and Harbour dues are not either vested in Corporate Bodies, independent of the Crown, or appropriated by local enactments with which the Crown has no power to dispense.

I am, &c,

J. RUSSELL.

EXTRACT of a Letter from the Secretary to the Royal Yacht Squadron to the R. Honorable Lord John Russell, dated 8th January, 1840.

"I beg permission, my Lord, to state that, as the Yachts of the Squadron are not employed in carrying Cargoes or any kind of Merchandise but used for Pleasure only, employing thirteen hundred Seamen Annually and improving Naval Architecture, the Governments of this and all Foreign Countries have granted many indulgencies to the Royal Yacht Squadron, admitting them without payment of Port Dues, and in most Countries upon the same footing as Men of War."
1840.
22 Jan.

Concessions granted to royal yacht squadron in home and foreign ports.

“Each Yacht is provided with an Admiralty Warrant, authorizing her to wear the St. George Ensign, and Certificates in the different languages: on production of these documents Yachts of the Squadron are admitted into all Ports free of Port Dues; not obliged to enter and clear out at the Custom Houses in England, as Merchant Vessels are obliged to do; permitted to remove their Furniture, etc., in their own Yachts without communicating with the Customs, and many other privileges.”

[Enclosure No. 6.]

[This was a printed list of one hundred and seventy-five members of the Royal yacht squadron with the names of the vessels owned by them.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 7, per ship Maitland; acknowledged by Sir George Gipps, 30th September, 1840.)

Sir,
Downing Street, 22 Jan., 1840.

I have received your despatch No. 81 of the 13 of May last, transmitting a letter addressed to the Colonial Secretary of New South Wales by Dr. Anderson, setting forth the particulars of his claim to a retiring allowance as late Colonial Surgeon.

Having referred the subject for the consideration of the Lords Commissioners of the Treasury, their Lordships have observed that, in the letter from that Board of the 2d of August, 1838, a copy of which was transmitted to you in Lord Glenelg’s Despatch of the 10th of that month, No. 177, they intimated that they would be prepared to consider Dr. Anderson’s claim to a retired allowance in the event of “necessity arising from his Superannuation or retirement.” Their Lordships also observe that, altho. it appears that Mr. Anderson had ceased to serve in the Medical Department from the 31 Decr., 1838, and that he has stated that he retired on account of ill health, no medical certificate or other proof of any description that his health was such as to incapacitate him for the further performance of the duties of his situation is adduced.

Adverting, therefore, to Mr. Anderson’s age, and to the short period of his service in the Colony, their Lordships feel precluded from entertaining his application without the production of that indispensable document in support of it.

You will, therefore, call on Dr. Anderson to furnish you with the Medical Certificate that he was compelled to retire from the service from Ill health, and you will transmit it to me in order that it may be referred for the consideration of the Lords Commissioners of the Treasury.

I have, &c.,

J. RUSSELL.
Lord John Russell to Sir George Gipps.

(Despatch No. 9, per ship Maitland; acknowledged by
Sir George Gipps, 6th December, 1840.)

Sir,

Downing Street, 24 Jany., 1840.

I transmit to you, herewith, a Copy of a communication, which I have received from Mr. J. H. Wedge containing some suggestions in regard to the amelioration of the conditions of the Natives at Port Phillip; and I have to request that you will call on Mr. Latrobe for his opinion and report as to the practicability and the usefulness of carrying Mr. Wedge's suggestions into effect.

I have, &c.,

[J. Russell.

Enclosure.]

Mr. J. H. Wedge to Lord John Russell.

Shady Camps, Mt. Linton,

Cambridgeshire, 18th January, 1840.

Pursuant to the intimation in the letter of the 26th Ultimo addressed to me by your Lordship's instructions, I avail myself of the permission therein contained to offer suggestions, the adoption of which I am sanguine would lead to the amelioration of the aborigines at Port Phillip, and not only at that settlement, but in New Holland generally. I mention Port Phillip more particularly because I have had greater opportunities of observing the habits and condition of the Natives of that settlement than in other parts, and because it may be deemed prudent to give the plan a limited trial before it is adopted more generally in the extensive regions of Australia, for which Port Phillip and the adjacent Country offers a convenient field, without involving much trouble or expense, scarcely any beyond the arrangement and appointments already made, which by enlarged instruction may be made to carry out the system I have to propose. It unnecessary again to detail the sad and melancholy results, which I apprehend from the present condition of the Natives viewed in connection with the occupancy of their Country, as I have already alluded to them very fully in my letter addressed to the late Secretary of State of the 22nd April, 1839, a copy of which I forwarded to your Lordship, and also in my letter of the 12th Ult. to your Lordship. I may, however, be allowed to say, that the Act of taking possession of their Country, unless ample provision be made for them, cannot be looked upon with indifference by the Aborigines when they begin to feel the consequence of being dispossessed of the haunts, which have hitherto afforded them the means of subsistence. Their only alternative will be either to try to maintain their own possessions by committing depredations on the flocks, and not unfrequently I fear by the murder of the shepherds, or to fall back and encroach upon the hunting grounds of the adjoining Tribes. Under such a state of things, it is not in human nature, but that a feeling of hostility will follow from one Tribe to another as Colonization advances, in which the Colonists will be continually involved. In whatever light the subject is viewed, I conceive that it will be admitted by all that it is not only our duty, but our interest to compensate them for depriving them of the means of supporting life by supplying them with food and raiment to minister to their wants, to teach them domestic and useful habits, and to instil into their minds Religious precepts.

*Note 87.
The Aborigines and the Colonists have both of them much at stake; their interests are however under the present order of things directly opposed to each other. It is my object in the following suggestions to render the Interests of the Blacks identical with those of the whites, to make the Civilizing the Heathens make our progress as Colonists, and instead of the Black Catalogue of crimes that have hitherto stained our career, we may carry with us the olive branch of peace, and deal justly to our fellow creatures, whose territories we take unto ourselves.

I would first propose that the Colonists should be called upon to aid the Government in forwarding the Work of Civilizing the Aborigines, but is in vain to expect they will do so, unless it be made to their interest to devote their time and attention to it. As an inducement, I would suggest that the Government should offer by proclamation that for each individual native that was reclaimed and domesticated by any Colonists, he should receive a certain quantity of land as a remuneration. One advantage of this measure would be to create a friendly feeling on the part of the Colonists, and, instead of a disposition to drive the Natives from their stations, they would have a strong inducement to conciliate, befriend and bring them about their habitations. I believe under this arrangement there are but few who would not attempt to domesticate one or more of the Native families.

Before a settler could claim the reward, he ought to be called upon to prove to the satisfaction of the Government that the Native he made claim for, had been, bona fide, reclaimed and domesticated for a term of three years at least; for this purpose, and, with a view to prevent the Government being imposed upon, Notice should be required to be given to the District Police Magistrate when any Native first takes up his residence at any settler’s Establishment, in order that visits of inspection may be made by persons appointed by and at the Discretion of the Police Magistrate, to ascertain whether the object of the Government had been carried into full effect.

I would also recommend that stations should be formed in various parts of the Colony, where the natives could obtain a supply of food to consist of flour, potatoes, tea and sugar, in certain daily portions whenever they applied (the quantity to be fixed by a Committee to be appointed in the Colony), a supply of Blankets, also as well as an occasional issue of tomahawks.* At these stations to which a certain quantity of land should be attached as reserves for Townships, I would recommend that small huts should be built for the use of the Natives when they visited them, and on such occasions every inducement should be held out to encourage them to remain. Adequate quantity of land also should be enclosed for the growth of wheat and Potatoes for the use of the Natives, which would lessen the expense of the respective Establishments. I may here perhaps be allowed to mention that, on the first occasion of my going to Port Phillip, the system of Barter that I established for the purpose of inducing useful habits was attended with the best effect, as far as I was then enabled to put it in practice; and I think it would be advisable not to lose sight of it in conducting the intercourse with the natives, and that the supply of food should be made to depend as far as practicable on their bringing some

* A small hand Axe, used by the Natives for notching the trees for facilitating their climbing them.
RUSSELL TO GIPPS.

 commodity of their own produce in exchange for what they might receive. I apprehend however that it will be necessary to invest the superintendents with a discretionary power to act as circum-
stances may require. The native women make a very neat and useful Basket, which would afford them constant employment and for which a market might be found in the Colonies, and they might even be sent to England. Schools also for the instruction of the children ought not to be neglected, for it is upon their minds that religious and other instruction will make the greatest impression, if worked upon before they have acquired the habits of their parents. The male adults* might occasionally be occupied in some light employment but on no account to coerce them in permanent labour, rather let their occupation bear the appearance of Amuse-
ment. They might be induced in some situations to carry on fishing to a considerable extent for the supply of the towns, and their attention might be directed to the growth of potatoes on small plots of ground attached to their huts. I think in the present state of the Colony at Port Phillip about three or four stations of the nature I have suggested would be sufficient, and to superintend the management of them a protector might be appointed to each of them.

As self Interest is, I apprehend, the great provocative to zeal in most cases, it may perhaps be worth the consideration how far it would be desirable to offer a reward to the Protector, who should be most successful in reclaiming the native at the end of the first five or seven years. This prospective hope of gain would have the further advantage of preventing the relinquishment of their appointments, thereby securing to the Government the services of men of experience.

To meet the charges of these establishments and other incidental Expenses connected with the Natives, a portion of the money realized by the sale of Crown lands might be applied, and this would be the more equitable, as the natives have an undoubted claim upon the land, nor would it be altogether diverting it from its present application to the supply of labour.

On my first visit to Port Phillip, I met with a man† (William Buckley), who lived with the natives thirty three years, a report of which circumstance I sent to the Secretary of State through Lieutt. Governor Arthur in 1835. This man, whom I consider to be very well disposed, having travelled with him and found him very useful, is fully acquainted with the language of some of the Native tribes and might be rendered very § in being the channel of commu-
nication with them.

I have been encouraged to submit this plan to the notice of your Lordship, because, in reply to my letters on the subject, I have ascertained from experienced Colonists at Port Phillip that they concur with me in the probability of its being attended with success. I therefore earnestly recommend it to your Lordship for con-
sideration.

I have, &c.,

Jno. H. Wedge.

* The work of reformation with the adults is more likely to begin with the Women, who are made to find the greater portion of the food for the men, and, so long as they supply the food by their labour, the men would be likely to be satisfied and might by degrees be estranged from their wandering habits.
† Note 88.
‡ Note on original of enclosure.—Word omitted in the original.
1840.
25 Jan.
Transmission of letter.

27 Jan.
Despatch acknowledged.

29 Jan.
Approval of action re mutiny at Norfolk Island.

30 Jan.
Despatch acknowledged.

HISTORICAL RECORDS OF AUSTRALIA.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 10, per ship Maitland.)

Downing Street, 25 January, 1840.

Sir,

At the request of the Moderator of the General Assembly of the Church of Scotland, I transmit to you, herewith, a letter which has been addressed to you by that Gentleman.

I have, &c.,

[Enclosure.]

J. RUSSELL

[Note 57.]

[Copy of this letter is not available.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 11, per ship Maitland.)

Sir, Downing Street, 27 Jany., 1840.

I have received your dispatch No. 126 of the 12 of Septr. last, reporting the arrival at New South Wales of a quantity of Rice from India, imported under the guarantee of Government, to make good the deficiency caused in the late Harvest by the long continued Drought.

I have received with great satisfaction your report of the success, which has attended your endeavours for the relief of the People at New South Wales from the pressure of scarcity, and your account of the good prospects of the approaching Harvests in the Colony.

I have, &c.,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 13, per ship Maitland.)

Sir, Downing Street, 29 Jany., 1840.

I have received your dispatch No. 127 of the 14 Sept. last, reporting a mutiny which had occurred amongst the Soldiers of the 80th Regiment at Norfolk Island, and I approve of the course which you adopted on that occasion.

I have, &c.,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 14, per ship Maitland.)

Sir, Downing Street, 30 Jany., 1840.

I have received your dispatch, No. 125 of the 9th of Sepr. last, in which you urge the necessity of establishing Circuit Courts throughout the Colony of New South Wales; and I trust that before this time you will have received a Copy of the Act, passed in the last session of Parliament, to continue and amend the New South Wales Act, by which the necessary powers are conveyed to the Local Legislature to establish Circuit Courts within the Colony.

I have, &c.,

J. RUSSELL.
GIPPS TO NORMANBY.

Lord John Russell to Sir George Gipps.

(A circular despatch per ship Maitland.)

Downing Street, 31 January, 1840.

Her Majesty having been pleased to constitute a Board of Commissioners* for the Management of the Sales of Land in the British Colonies, and for promoting a well regulated Emigration to them, I enclose for your information a copy of the Instructions which I have addressed to them for their guidance. You will give all practicable publicity to this Document in the Colony under your Government.

The Commissioners will not correspond with you, except through my intervention; but you will have the goodness to render every assistance in your power, whether by supplying information or otherwise towards the more effectual accomplishment of the important object with a view to which this Appointment has been made.

I have, &c.,

J. Russell

[Enclosure.]

This was a paper, ordered to be printed by the house of commons on 4th of February, 1840, entitled, “Copies of Commissions, appointing T. F. Elliot and Robert Torrens, Esquires, and the Hon. Edward E. Villiers, Land and Emigration Commissioners.”

Sir George Gipps to Marquess of Normanby.

(Despatch No. 11, per ship William Carey; acknowledged by lord John Russell, 24th June, 1840.)

My Lord,

Government House, 4th Feb., 1840.

I have had the honor to receive your Lordship’s Despatches of the 11th and 24th July, 1839, Nos. 91 and 99, with copies of the correspondence which had taken place between Mr. Labouchere and Mr. James Mudie, respecting a claim preferred by the latter gentleman to an additional Grant of 560 acres of land in this Colony.

The facts stated by Mr. Mudie are substantially correct; he received from Sir Thomas Brisbane in 1822 a Grant of 2,000 acres, then the maximum quantity granted to any individual; and upon that maximum being raised to 2,560 acres, he applied for the additional 560, and would have obtained them in the year 1830, had he not been indebted to Government in the sum of £158 9s. 7d. in addition to 149 bushels of Maize. This debt was not paid until long after free Grants were discontinued; and I have only further to report that to allow Mr. Mudie now to have the additional Grant, he asks for, would be directly

* Note 89.
contrary to what has been done in every similar case, and would
revive a set of claims, which hitherto this Government and suc-
cessive Secretaries of State have refused to acknowledge.
I have, &c.,
GEO. GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 15, per ship Maitland.)

Sir, Downing Street, 6th February, 1840.
I have received your Dispatch No. 100 of the 1st of July
last, detailing the manner in which you propose to dispose of the
Government Property and particularly the Buildings at Moreton
Bay, on the abandonment of that Settlement as a Penal station,
and the opening of it for Settlers.

Having conferred on the subject with the Lords Commissioners
of the Treasury, I have to acquaint you that Her Majesty's Gov-
ernment approve of the arrangements which you propose to adopt
for the disposal of the Property in question.

You will take care, however, that such part of the Lands or
Buildings at Moreton Bay as may be likely to be hereafter re-
quired for any branch of the Public Service shall be retained by
the Colonial Government.
I have, &c.,
J. RUSSELL.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.
(Despatch No. 12, per ship William Carey.)

My Lord, Government House, 8th Feby., 1840.
I have had the honor to receive your Lordship's Despatch
of the 23rd July last, No. 98, enclosing a representation from
Major MacArthur, respecting Bounties on some Emigrants sent
by him to New South Wales in 1836; and in reply I have to in-
form your Lordship that no grounds exist for the apprehensions,
which Major MacArthur seems to entertain as to the non-pay-
ment of some portion of the Bounties claimed by him, the full
amount of them having been paid.
I have, &c.,
GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 13, per ship Grecian; acknowledged by
lord John Russell, 17th July, 1840.)

My Lord, Government House, 9th Feby., 1840.
In my Despatch of the 3rd Jany. last, No. 2, I reported to
Lord Normanby the arrival in Sydney of Captn. Hobson in
H.M.S. "Druid," commanded by Lord J. Churchill, and that
arrangements were in progress to forward him to New Zealand
in H.M.S. "Herald."

I have now the honor further to inform your Lordship that the
"Herald" sailed for the Bay of Islands on the 19th ulto., having
on board Lieutt. Governor Hobson and his Suite.
I have further to report that a vessel (the "Westminster") has been hired to carry down supplies to Capt'n Hobson, and that she will be ready to sail, as soon as I shall have received from Captain Hobson the first accounts of his proceedings.

I enclose for your Lordship's information copies of three Proclamations,* which, by the advice of my Executive Council, I issued immediately on Capt'n Hobson's departure from New South Wales.

The third Proclamation was issued in order to put an end, as far as possible, to the speculations in New Zealand Lands which were then being openly carried on in Sydney, and I should explain to your Lordship that, some few days after Capt'n Hobson's arrival, an Auction of Land in New Zealand having been advertised† to be held in Sydney, I sent an officer of this Government to warn all persons, intending to become purchasers, that they would do so at their own risk, a warning which had the immediate effect of stopping the sale.

In a separate Despatch, I shall report to your Lordship the appointments which have been made of Officers to accompany Capt'n Hobson.

I have, &c,

GEO. GIPPS.

[Enclosure.

This was a copy of the supplement to the "Government Gazette" dated 18th January, 1840.]

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SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 14, per ship Grecian; acknowledged by lord John Russell, 17th July, 1840.)

My Lord,

In connexion with the subject of my Despatch of this day's date, No. 13, I have the honor to report to your Lordship that, on the application of Capt'n Hobson, I have made the following appointments for the Government of New Zealand:

George Cooper, Esqr., formerly Comptroller at Sydney, to be Collector of Customs at New Zealand and to act as Treasurer, in which capacity he will for the present be charged with the whole pecuniary transactions of the Government. The salary of Mr. Cooper is to be £600 a year, the same that he received in Sydney.

Felton Mathew, Esqe., formerly of the Surveyor General's Department of New South Wales, and lately Town Surveyor of Sydney, to be Acting Surveyor General of New Zealand, with a salary of £400 a year, the same that he received in Sydney.

Willoughby Shortland, Esqr., to be a Police Magistrate, with a salary of £300 a year.

* Note 90. † Note 91.
Mr. James S. Freeman, a 3rd Class Clerk in the Colonial Secretary's office in New South Wales, to be a 2nd Class Clerk on the Establishment of New Zealand.

Mr. Samuel Edwd. Grimstone to be a 3rd Class Clerk.

I have respectfully to beg your Lordship's confirmation of these several appointments; and I should explain that, as the vacancies caused by the removal of the two first named officers, Mr. Cooper and Mr. Mathew, will not be filled up, there will be a saving to the amount of their salaries in the expenditure of New South Wales.

I have further to report that all the above named officers, and also a Serjeant and four Troopers of the Mounted Police of this Colony, sailed with Lieutt. Governor Hobson in Her M. Ship "Herald" on the 19th ulto.

I have, &c.,

Geo. Gipps.

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SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 15, per ship Grecian; acknowledged by lord John Russell, 17th July, 1840.)

My Lord,

Government House, 9th Feb'y., 1840.

In further connexion with the subject of my Despatch of this day's date No. 13, reporting the departure of Captn. Hobson for New Zealand, I have the honor to forward to your Lordship a Copy of a letter which I addressed to Captn. Hobson previous to his departure, and also a Copy of a further Confidential letter, which I addressed to him on the 25th ulto.

Trusting that the views developed in these letters are such as will meet the approbation of your Lordship,

I have, &c.,
Geo. Gipps.

[Enclosures.]

[Copies of these letters, dated 15th and 25th January, 1840, will be found in a volume in series III.]

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SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 16, per ship Grecian; acknowledged by lord John Russell, 11th August, 1840.)

My Lord,

Government House, 10th Feb'y., 1840.

By the vessel which conveys this Despatch, I have caused a Box to be shipped, to the address of Mr. Barnard, containing Copies on Parchment of the Acts or Ordinances which were passed by the Legislative Council of this Colony during the ordinary Session of the year 1839; and I have now the honor to submit to your Lordship a brief explanation of the purport of each Act, hoping that, on your Lordship's favorable recommendation, they may be graciously allowed by Her Majesty.
GIPPS TO RUSSELL.

The regular printed Copies, I regret to say I am not yet able to forward; but I send Copies of the Gazettes, in which the Acts were promulgated in the Colony, the discontinuance of Assignment in the Town of Sydney and a combination among the Journeyman Printers have occasioned the Government printing to be thrown much in arrear. I shall not fail however to supply the accustomed number of Copies of these Acts printed in the regular form, as soon as they are received from the Contractor.

3 Vict. No. 1.—"An Act to remove doubts concerning the validity of certain Grants of Land in New South Wales."

This Act was passed in conformity with the instructions contained in Lord Glenelg's Despatch of the 14th June, 1838, No. 123.

3 Vict. No. 2.—"An Act to enable the Society denominated Wesleyan Methodists to appoint Trustees for Chapels built before the year 1836."

This Act was passed to remedy an omission in the 2 Vict. No 7, that Act applying only to Chapels built after the passing of it, and it consequently not being possible under it legally to appoint Trustees to two Chapels which were built before it passed.

3 Vict. No. 3.—"An Act to repeal an Act relating to the revenue of Customs in New South Wales, and to provide for the general regulation thereof."

This Act was passed in order to collect into one body, and in some minor respects to amend the laws relating to the collection of the duties of Customs in the Colony.

Nothing new or contrary to the spirit of the existing laws, under which the Commerce of the Empire is regulated, was introduced into it.

3 Vict. No. 4.—"An Act to render references to Arbitration more effectual."

This Act was passed on the recommendation of the Judges and the Law Officers of the Crown, in order to adopt within the Colony certain parts of an Act of the Imperial Parliament, intitled "An Act for the further amendment of the Law, and the better administration of Justice." (3 and 4 Wm. 4, C. 42.) The parts adopted are the 39th, 40th, and 41st Clauses, respecting references to Arbitration.

3 Vict. No. 5.—"An Act for adopting a certain Act of Parliament intituled, 'An Act for the amendment of the Laws with respect to Wills,' in the administration of Justice in New South Wales, in like manner as other laws of England are applied therein."

* Note 92.
This Act adopts within the Colony the 7 Wm. 4 and 1 Vict., respecting Wills.

3 Vict. No. 6.—"An Act to establish Courts of Requests at the Towns of Melbourne and Port Macquarie in the Colony of New South Wales."

This Act was specially transmitted with my Despatch of the 3rd Oct., 1839, No. 133.

3 Vict. No. 7.—"An Act to remove doubts as to the validity of certain marriages had and solemnized within the Colony of New South Wales by Ministers of the Wesleyan Methodist Society, and to regulate the Registration of certain Marriages, Baptisms, and Burials."

The object of this Act is sufficiently explained by its Title. It may be proper however to remark that the Supreme Court has declared the English Marriage Act not to be in force in the Colony.

3 Vict. No. 8.—"An Act to amend an Act intituled 'An Act for registering Deeds and Conveyances in New South Wales,' and for other purposes, and to prevent Convicts under sentence from acting as Conveyancers."

A former local Act required that all Deeds should, prior to registration, be verified before a Judge; this, by the extension of the Colony, had become both onerous on the Judges, and inconvenient to the Public; the present Act was therefore passed to allow such verification to be made before certain other functionaries. A Clause was added to prevent Convicts from acting as Conveyancers, or in the preparation of Deeds, Wills, etc.

3 Vict. No. 9.—"An Act to consolidate and amend the Laws for the Distillation of Spirits in the Colony of New South Wales, and for the issue of Licences for Distilling, Rectifying, and Compounding Spirits therein, and for repealing certain Laws relating thereto."

On this subject, a separate Despatch is forwarded.

3 Vict. No. 10.—"An Act to alter and improve the mode of Electing a Chairman for Courts of General and Quarter Sessions in New South Wales."

The office of Chairman of Quarter Sessions is the only elective one in the Colony; and for many years the election has almost invariably excited a considerable degree of animosity and party spirit; this was partly owing to the mode of Election, which was by Benches, instead of by the individual votes of the Magistrates, by which means it might happen that the Chairman was elected by a minority of Magistrates, though by a majority of Benches. The number of Benches also being six, it frequently happened that there was no election, the Benches being
equal. The present Act changes the mode of election, and makes the result to depend on the real majority of all the Magistrates, who may choose to tender their Votes.

3 Vict. No. 11.—"An Act to make further regulation with respect to Trial by Jury in Criminal Issues in the Colony of New South Wales, and to amend the form of proceeding in Criminal Prosecutions in the said Colony."

In the Address with which I opened the Session, I announced to the Council my intention to propose the abolition of Military Juries (see address transmitted with my Despatch of the 12th June, 1839, No. 91). The present Act was consequently introduced, and passed with but little opposition, the Judges and Law Officers of the Crown supporting it both in the Council and elsewhere.

3 Vict. No. 12.—"An Act to consolidate and amend the laws relating to the Savings Bank of New South Wales."

This Act was rendered necessary by the great extension of the Savings Bank of the Colony; according to the printed statement of it, the amount of Deposits was nearly £100,000, and the interest usually paid on Deposits 10 per Cent.

8 Vict. No. 18.—"An Act to amend an Act intituled 'An Act for consolidating and amending the Laws relating to the Licencing of Public Houses,' and for further regulating the sale and consumption of fermented and spirituous liquors in New South Wales."

This Act was passed to amend in some slight particulars the Licencing Act of last year. The principal amendment is one, by which owners of Breweries in the Country may be allowed the same advantages as the Act of last year gave to the Proprietors of Breweries in Towns.

3 Vict. No. 14.—"An Act further to amend an Act passed in the 8th year of the Reign of His Late Majesty King Wm. IV, intituled 'An Act for regulating Building and Party Walls, and for preventing mischiefs by Fire in the Town of Sydney.'"

The Building Act of 1837 (8 Wm. 4, No. 6), though amended in 1838 by 2 Vict. No. 26, being still complained of as preventing the erection of small tenements, and thereby increasing the rate (already enormous) of house rent in Sydney, the present Act was passed to confine the operation of the Building Act within narrower limits than those which were first assigned to it.

3 Vict. No. 15.—"An Act for abolishing Arrest on Mesne process in Civil Actions, except in certain cases in New South Wales and the Dependencies thereof."

The Report of a Committee of the Council on the subject of this Act is transmitted herewith; I beg leave also to refer to my
3 Vict. No. 16.—"An Act to allow the Aboriginal Natives of New South Wales to be received as competent Witnesses in Criminal Cases."

This Act was transmitted with my Despatch of the 14th Octt., 1839, No. 137. Lord Normanby's Despatch of the 17th July, 1839, No. 95, in which a measure of this sort is recommended, was received on the 8th Decr. last, some weeks after this Act had been passed; and a subsequent Despatch dated the 31st Augt., No. 134, has been received on the same subject.

3 Vict. No. 17.—"An Act to provide for Trial by Jury at Courts of Quarter Sessions to be held at Berrima."

This Act is similar to that which passed for Port Macquarie and Melbourne last year (2 Vict. No. 5). The Governor of New South Wales has power to order, by Proclamation, Quarter Sessions to be held at any place he may think fit, but a special Act of Council is necessary to assemble Juries.

3 Vict. No. 18.—"An Act for extending the remedies of Creditors against the property of Debtors in New South Wales and the Dependencies thereof."

This Act was passed on the recommendation of the Chief Justice and Law Officers of the Crown. A General Insolvent Law still remains a desideratum in the Colony.

3 Vict. No. 19.—"An Act to authorise the establishment of Markets in certain Towns in the Colony of New South Wales, and for the appointment of Commissioners to manage the same."

This Act was proposed and prepared by myself, in consequence of the applications which were made to me for the erection of Market buildings in different Towns at the expence of Government, and which, in the present state of our Finances, I could not comply with. The object of the Act is to enable the Inhabitants of any Town to erect a Market house, and to take the whole management of the Markets into their own hands. I also intended it to serve as an introduction to further Municipal Institutions, some of which I propose to bring forward in the next Session.

3 Vict. No. 20.—"An Act to enable the Churchwardens of the Parish Church of St. James in the Town of Sydney to build a new side wall thereto, at a less distance from the Southern Boundary of King Street than is allowed by Law."

The object of this is quite of a local nature, and is sufficiently explained in the Title and Preamble.
3 Vict. No. 21.—"An Act to make good certain Contracts, which have been, or may be entered into by certain Banking and other Copartnerships."

This Act is formed on the model of the Act, 1 Vict. C. 10 of the Imperial Parliament, and was passed on the application of the Directors of certain Banking Companies of Sydney.

3 Vict. No. 22.—"An Act to abolish the Transportation of Female Convicts, and to provide for the more effectual punishment of Female Offenders, within the Colony of New South Wales."

The abandonment of Moreton Bay as a Penal Station, reported in my Despatch of the 1st July, 1839, No. 99, having deprived us of the usual place of Transportation for females convicted of second offences in the Colony, it became necessary to abolish by Law the punishment of Transportation, and provide some other mode of punishment within the Colony. The present Act was therefore passed, the completion of a range of 72 Cells at the Female Factory at Parramatta having afforded the means of rendering imprisonment in that Establishment a far more efficacious punishment than it had formerly been. At the same time, some trifling amendments were introduced (in the 4th and 5th Clauses) in respect to the powers of Justices to sentence women to solitary confinement in certain cases, wherein their powers had before extended only to simple imprisonment. Certain powers are also given in the 7th, 8th, and 9th Clauses, to the Matron and Visiting Justice, similar to those given to Gaolers and Visiting Justices in England, by the 4 Geo. IV, C. 64, Sect. 40, 41, 42.

3 Vict. No. 23.—"An Act for the better ensuring the Registration of Marriages, Baptisms, and Burials."

A former Act of the Governor and Council, 5 Wm. IV, No. 2, required that Baptisms, Marriages, etc., when solemnized by any other Ministers than those of the Church of England, should be registered in the Registry of the Colony; but, no penalty having been inflicted on persons not complying with this enactment, it was not sufficiently observed. The present Act was passed to authorise the infliction of a penalty.

3 Vict. No. 24.—"An Act for applying certain sums arising from the Revenue receivable in New South Wales to the service thereof for the year 1840, and for further appropriating the said Revenue."

With respect to this Act, I beg to refer to my Despatch of the 2nd Decr., 1839, No. 162.

The Private Acts of the Session were transmitted with my Despatch of the 28th Novr., 1839, No. 159. I have, &c.,

GEO. GIPPS.
10 Feb.

Sir George Gipps to Lord John Russell.

With my Despatch of the 23rd Jany., 1839, No. 20, I forwarded to Lord Glenelg an Act (2 Vict. No. 24), which had then recently been passed by the Legislative Council of this Colony to regulate the Distillation of Spirits; I have now the honor to forward to your Lordship, An Act passed in the last Session of the Council, repealing the one above mentioned, and substituting other enactments; and, as the subject of Distillation is one confessedly of a very difficult as well as important nature, I think it right distinctly to explain to your Lordship the views under which these Acts, essentially differing from each other in principle, have been passed.

The Act of 1838 (2 Vict. No. 24) was passed, as I had the honor to state to Lord Glenelg, in the full belief that the great deficiency, which had suddenly occurred in the duties on imported Spirits was to be attributed to illicit Distillation from Sugar within the Colony, and that it would be impossible to check the illicit Distillation which had thus grown up, without reducing at least for a time the high duty of 10s. 2d. per gallon, which had theretofore been by law chargeable on Spirits distilled in the Colony from Sugar, which duty however, for reasons stated in my Despatch, had never been levied. The duty on such Spirits was consequently reduced, by the act of 1838, from 10s. 2d. to 4s. 6d. per gallon, ample powers being provided for the collection of the duty at its reduced rate.

The principle, on which we then legislated, was I believe a sound one; but subsequent experience proved that the information, on which we proceeded, was in some degree erroneous. Illicit Distillation was indeed, I still believe, the principal reason of the defalcation in the revenue; but this distillation, instead of being carried on as was supposed in the Country or in Country Towns, was confined almost entirely to Sydney, and was allowed to exist by the laxity of an officer (the Superintendent of Distilleries) who has since been removed. The law, it is true, did not give to this officer sufficient power to prevent illicit Distillation; but, had he exercised due vigilance, he ought at least
GIPPS TO RUSSELL.

10 Feb.

1840.

to have been sufficiently cognizant of the proceedings of the Sydney Distillers to have given the Government correct information of what was going on. Finding therefore that illicit Distillation was not much to be dreaded except in Sydney, and that the powers, given to the Revenue officers by the Act of 1838, were sufficient to suppress it, it occurred to me that the sacrifice, which had been made in fixing the duty on spirits distilled from Sugar at 4s. 6d., whilst imported Spirits paid 7s. 9d. was an unnecessary one, and one which ought not to be allowed to continue.

The question of Distillation in New South Wales presented itself also under a somewhat altered aspect, and assumed a new degree of importance, in consequence of the passing of an Act in Van Diemen's Land, prohibiting altogether Distillation in that Colony. This Act was evidently calculated to increase Distillation in New South Wales by sending to us great part of the Sugar as well as Grain, that would otherwise have been distilled in that Colony. A demand also for an Act, similar to that which had passed in Van Diemen's Land, was made upon me by the friends of Temperance in New South Wales, which, though it proceeded upon what I could not but consider erroneous principles, was nevertheless deserving of attention from the respectability of the quarter whence it emanated.

The result of all these considerations was the present Act; by it, distillation from Sugar is permitted up to the 31st March, 1840 (see Sec. 27), but will after that day be altogether prohibited; by it also (Sect. 26) the duty on Spirits distilled from Corn is left until the same day at 3s. per gallon, and then raised to 5s. This rise would have been rendered necessary at any rate, from the measure adopted last year in Van Diemen's Land, a measure evidently calculated, as I have before observed, to drive their grain to New South Wales to be distilled into Spirits, and thereby to favor the Agriculture of Van Diemen's Land at the expense of the Revenue of New South Wales.

By the course adopted, the question of compensation to the Distillers, which has been such an embarrassing one in Van Diemen's Land, has been avoided. Compensation was claimed by the Distillers to a large amount (not less than £50,000); but, after attentively hearing all their arguments, the Council was of opinion that the advantage now secured to them of distilling from Sugar at the low duty of 4s. 6d. per gallon, up to the 31st March, 1840, was sufficient compensation for any loss they might sustain by having embarked in the distillation of Spirits, in the confidence that the Legal duty of 10s. 2½d. per gallon would never be levied, for it is to be borne in mind that the duty of 10s. 2½d.,
1840.
10 Feb.

Practical effect of new act.

through never levied for reasons stated in my Despatch of the 23rd Jany., 1839, No. 20, was by law chargeable on all Spirits distilled in the Colony from Sugar prior to the passing of the Act of 1838; and, as this duty is by all considered equivalent to a prohibition, no person would have engaged in the trade, but for the laxity of the Government in respect to the collection of the duty. Under this point of view, the present Act may be considered, in respect to Spirits distilled in the Colony, only as a return to the state of the law which existed prior to 1838, it being unimportant whether Distillation from Sugar be prohibited by a high duty or by positive enactment; the real difference however is that we have now got a law which will be operative, whereas the former one was a dead letter; and we have got rid also of the question of compensation, which would otherwise, after the example of Van Diemen's Land, have scarcely failed to prove an embarrassing one.

I have, &c,

GEO. GIPPS.

[Enclosure.]

[This was a copy of the act of council, 3 Vict., No. 9.]

11 Feb.

Despatch acknowledged.

Free port and free warehousing port to be established at Melbourne.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS. (Despatch No. 17, per ship Maitland.)

Sir, Downing Street, 11 February, 1840.

I have received your Dispatch No. 97 of the 25th of June last, reporting the circumstances under which you had taken upon yourself to declare the Port of Melbourne, in the District of Port Phillip, a Free Port of Entry, and recommending that, in consideration of the rising commerce of that Settlement and the daily increasing importance of the Town of Melbourne, an Order in Council may be passed declaring Melbourne to be a Free Warehousing Port.

Having referred the subject for the consideration of the Lords Commissioners of the Treasury, I transmit to you, herewith, the Copy of a letter from the Secretary to that Board stating that the requisite directions have been given for the establishment of a Free Port and a Free Warehousing Port at Melbourne in the District of Port Phillip, New South Wales. I have, &c.,

J. RUSSELL.

[Enclosure.]

MR. R. GORDON TO UNDER SECRETARY STEPHEN.

Sir, Treasury Chambers, 6th February, 1840.

I am commanded by the Lords Commissioners of Her Majesty's Treasury to acquaint you, for the information of Lord John Russell with reference to the communication of his Lordship's
Lord John Russell to Sir George Gipps.

(Despatch No. 18, per ship Maitland.)

Sir, Downing Street, 12 February, 1840.

I transmit to you, herewith, for your information and guidance, the Copy of a Letter from the late Agent General for T. F. Elliot, Emigration inclosing a Return of last year’s Emigration in Government Ships to New South Wales, and offering observations on the Emigration of the past three years.

I have, &c.,

J. Russell.

[Enclosure.]

Mr. T. F. Elliot to Under Secretary Stephen.

My Lord, 2 Middle Scotland Yard, 18th January, 1840.

I have the honor to transmit to your Lordship a Return of Last Year’s Emigration in Government Ships to New South Wales, by which document it will be seen that seventeen ships were sent out, and that the number of persons they contained was four thousand and ninety six. In consequence of the accounts of the continued drought and high prices of provisions accompanied by a falling off in the Land Revenue in the Colony and by a temporary diminution of candidates to Emigrate from home, it was not thought expedient to urge the numbers beyond that amount.

At the date of the latest accounts, abundance of rain had fallen and the crops were looking well; the wages of Mechanics and Domestic Servants continued as high as ever, and agricultural Laborers were receiving £25 per Annum with board and Lodging. All the Emigrants of 1838 had obtained comfortable employments.

As this is the last occasion on which I shall have to address your Lordship in any separate capacity, it may perhaps be permitted me to offer some observations on the Government Emigration of the past three years. There has been no want of strictures upon it, and it is perhaps due to the office just merged in a larger commission, not to withhold some general answers to those strictures, especially as it is happily in my power to afford them in the shape of a few decisive and undeniable facts.

First. The shipping, including under that name the hire of Vessels, the fitting up of them, and the purchase and regulation of the supplies, has been under this office from the beginning, and the shipping has been well spoken of by all.

Secondly. The care and discipline of the people on board was, during the years 1837 and 1838, confided to the surgeons of the respective ships, in pursuance of a proposal strongly recommended

* Note 94.
from the Colony. Much sickness prevailed during those years, and was very properly rendered the subject of unsparing investigation in New South Wales. The plan of making each surgeon the exclusive manager of his own ship originated in the Colony, and, whatever may have been the dissatisfaction with the results of a fair and patient trial of it, the blame cannot attach to any department at home. My own opinion is that the plan was plausible and worth trying, but that it has been proved to be unsuited to emigration on a large scale.

At the end of 1838 therefore, I resolved to take the system on board under the immediate responsibility and control of this office. The "Asia" having put into Plymouth about that time, with sickness amongst the passengers, and in a state which was described to me as one of mutiny, I took the opportunity of a personal inspection to frame a Code of Regulations, which I required every grown man in the ship to sign in my presence. From that period, their Vessel was kept in a state of cleanliness, which was admitted to do them the highest credit. I afterwards extended the regulations to all other ships accompanied by a general revision of every detail of the internal arrangements, the whole being embodied in a printed volume of Instructions to Surgeons Superintendent. To state the experience that has occurred since that measure is the duty that now remains to me.

The "Asia" was the first ship, having put into Plymouth from Scotland with the commencement of a fever amongst the people and in a condition of great disorder; this vessel completed her subsequent voyage from Plymouth to Sydney without the death of one person, Man, woman or child. The next ship that reached the Colony was the "Navarino" from Cork. Like her Predecessor, this vessel also performed the whole voyage from the United Kingdom to New South Wales without a single death amongst the persons embarked in her, the only casualty having been of an infant born on board. Ten other ships have been heard of at sea, most of them having been on their Voyage a considerable time. Five out of the Ten have not had a single death, and four out of the remaining five have not had more than two deaths. It is enough to look at the returns printed for Parliament last year (Commons paper No. 580) to see that, in 1837 and the first part of 1838, a ship might be accounted prosperous which did not lose as many as ten passengers. On the other hand out of 12 ships in all that have been heard of since the New Regulations, seven have not lost one passenger and four have lost only two. These are facts which probably the warmest advocate would not have ventured to anticipate. It would be too much to expect that so singular a prosperity should continue unmixed; but the number of 12 Vessels will perhaps be deemed sufficient to shew that the Change is not owing to chance, and that the Colony will scarcely have reason to complain of the part this Office has taken in the system on board the ships.

Thirdly. The next question I would advert to is that of selection. The Remarks made on this subject in the Colony are somewhat too apt to assume that there is an unlimited command of Emigrants in this Country. It may be natural for an officer at Sydney to point out that the persons who arrive are not the best that could be desired; but the duty, to which the officers at home must attend, is to send the best who can be procured, and it may be questioned
The substantially satisfactory fact upon this head is that, by the last annual Report of the Agent for Emigrants at Sydney, pointing out all the objections which he could state against the people in Government Vessels, it nevertheless appears that "all the Emigrants, who arrived during the past year (1838), are now comfortably settled, and at high wages throughout the Colony."

Much unnecessary argument has been expended to prove that the most eligible Emigrants would be young married Couples without Children. There is not any difference of opinion that I am aware of on that point; but experience has taught us that it is not people unburthened with families but those who are burthened, that are willing to leave their Country for a distant settlement. While for this reason it is not possible to get quit of Children altogether. The following statement may serve to shew that there has been no want of effectual and persevering endeavours to repress their numbers. The proportion of Children under 7 years of Age in the Government ships in 1837 was 34 per Cent., the proportion in 1838 was 23 per Cent., and the proportion in 1839 11\% per Cent., their numbers having been reduced, therefore, from more than a third of the whole of the passengers to much less than an eighth.

The three foregoing heads of the shipping, the discipline of the people during the Voyage, and their selection before they start, embrace the Principal duties involved in Emigration.

I am disposed to think that the employment of vessels, entirely fitted out and supplied by Government, was useful at the outset of so large an Emigration to a new point, more distant than any to which equally extensive numbers of free passengers had been sent before. They afforded an example of what responsible servants of the Public felt to be necessary, and they did serve to establish confidence in some parts of the Country, from which people were not disposed to go by other opportunities. But I have no doubt that they could not be made the most convenient mode of conveyance and should feel every disposition to prefer, as the general rule in such cases, a recourse to private competition. I think that the time is come when it would be advantageous to substitute Contracts for passengers at a certain rate per head, in lieu of fitting out and victualling the ships immediately by the Government.

It was not surprising that two Courses of proceeding, so much resembling One another as the Government Emigration and that upon Bounty, should not go on together, without exciting some party spirit especially as the latter involved in its favor a considerable commercial interest. But however strenuously may have been urged every defect, which could be found or supposed in the Government Emigration, it must always remain a satisfaction to the Officers employed at home during the last three years, and will, I doubt not, weigh duly with the reflecting part of the community in New South Wales, that those Officers found the Emigrants, assisted to proceed to Sydney, going by hundreds, and that they have sent them by Thousands; that they found the Colony still inadequately known and by no means popular; that they now see it well known (as the extent itself of the new Emigration sufficiently proves) and in many parts of the Country preferred to all other places of resort.

I have, &c.,

FREDK. ELLIOT.
### Historical Records of Australia

**Return of the ships and passengers dispatched for New South Wales by Government in the year 1840.**

<table>
<thead>
<tr>
<th>No.</th>
<th>Name of Ship</th>
<th>Places from which the Emigrants chiefly come</th>
<th>Place of departure</th>
<th>Date of Departure</th>
<th>Destination</th>
<th>Tonnage</th>
<th>Number of adult passengers</th>
<th>Number of children between 14 and 7 years</th>
<th>Number of children under 7 years</th>
<th>Total number of passengers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bussorah Merchant</td>
<td>Glostershire</td>
<td>Bristol</td>
<td>15 April</td>
<td>Sydney</td>
<td>539</td>
<td>106</td>
<td>42</td>
<td>32</td>
<td>240</td>
</tr>
<tr>
<td>2</td>
<td>Hero</td>
<td>Pooburgh, Aberdeen and Edinburgh</td>
<td>Leith</td>
<td>7 May</td>
<td>do</td>
<td>402</td>
<td>145</td>
<td>41</td>
<td>15</td>
<td>201</td>
</tr>
<tr>
<td>3</td>
<td>Navarino</td>
<td>Cork and Tipperary</td>
<td>Cork</td>
<td>11 May</td>
<td>do</td>
<td>463</td>
<td>149</td>
<td>43</td>
<td>24</td>
<td>216</td>
</tr>
<tr>
<td>4</td>
<td>Cornwall</td>
<td>Kent and Sussex</td>
<td>Gravesend</td>
<td>11 May</td>
<td>do</td>
<td>873</td>
<td>251</td>
<td>74</td>
<td>62</td>
<td>387</td>
</tr>
<tr>
<td>5</td>
<td>Neptune</td>
<td>do</td>
<td>do</td>
<td>1 June</td>
<td>do</td>
<td>643</td>
<td>183</td>
<td>57</td>
<td>48</td>
<td>288</td>
</tr>
<tr>
<td>6</td>
<td>David Clarke</td>
<td>Perth, Dumfries, Ayr and Argyle</td>
<td>Greenock</td>
<td>13 June</td>
<td>Port Phillip</td>
<td>693</td>
<td>166</td>
<td>45</td>
<td>38</td>
<td>249</td>
</tr>
<tr>
<td>7</td>
<td>Floris</td>
<td>Kent and Sussex</td>
<td>Gravesend</td>
<td>18 June</td>
<td>Sydney</td>
<td>443</td>
<td>148</td>
<td>30</td>
<td>30</td>
<td>286</td>
</tr>
<tr>
<td>8</td>
<td>China</td>
<td>Co. Waterford and Tipperary</td>
<td>Waterford</td>
<td>28 July</td>
<td>do</td>
<td>618</td>
<td>188</td>
<td>43</td>
<td>38</td>
<td>299</td>
</tr>
<tr>
<td>9</td>
<td>North Britain</td>
<td>Co. Kildare</td>
<td>Dublin</td>
<td>12 Augt.</td>
<td>do</td>
<td>625</td>
<td>191</td>
<td>54</td>
<td>20</td>
<td>284</td>
</tr>
<tr>
<td>10</td>
<td>Orestes</td>
<td>Glostershire</td>
<td>Bristol</td>
<td>13 Augt.</td>
<td>do</td>
<td>528</td>
<td>168</td>
<td>41</td>
<td>33</td>
<td>242</td>
</tr>
<tr>
<td>11</td>
<td>George Pyte</td>
<td>Wts. Highlands</td>
<td>Tobermory</td>
<td>14 Sept.</td>
<td>do</td>
<td>594</td>
<td>133</td>
<td>36</td>
<td>8</td>
<td>217</td>
</tr>
<tr>
<td>12</td>
<td>Crusader</td>
<td>Co. Roscommon, Dublin and Cavan</td>
<td>Dublin</td>
<td>14 Sept.</td>
<td>do</td>
<td>600</td>
<td>138</td>
<td>69</td>
<td>51</td>
<td>293</td>
</tr>
<tr>
<td>13</td>
<td>Crescent</td>
<td>Lounderry</td>
<td>do</td>
<td>15 October</td>
<td>do</td>
<td>524</td>
<td>155</td>
<td>56</td>
<td>24</td>
<td>285</td>
</tr>
<tr>
<td>14</td>
<td>Henry Porcher</td>
<td>W. Highlands</td>
<td>Oswesty</td>
<td>21 October</td>
<td>do</td>
<td>658</td>
<td>162</td>
<td>58</td>
<td>28</td>
<td>211</td>
</tr>
<tr>
<td>15</td>
<td>James Paton</td>
<td>Kent and Sussex</td>
<td>Gravesend</td>
<td>21 Nov.</td>
<td>do</td>
<td>518</td>
<td>141</td>
<td>25</td>
<td>19</td>
<td>185</td>
</tr>
<tr>
<td>16</td>
<td>Adam Lockie</td>
<td>Co. Linnet and Chare</td>
<td>Cork</td>
<td>11 Nov.</td>
<td>do</td>
<td>578</td>
<td>205</td>
<td>44</td>
<td>24</td>
<td>273</td>
</tr>
<tr>
<td>17</td>
<td>Glen Huntley</td>
<td>W. Highlands</td>
<td>Greenock</td>
<td>18 Decr.</td>
<td>Port Phillip</td>
<td>429</td>
<td>129</td>
<td>38</td>
<td>11</td>
<td>188</td>
</tr>
</tbody>
</table>

**Totals**: 9234 passengers with 2883 adults, 746 children between 14 and 7 years, and 487 children under 7 years, for a total of 4,906 passengers.
SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 19, per ship Grecian; acknowledged by lord John Russell, 1st October, 1840.)

My Lord, Government House, 12th Feby., 1840.

With reference to my Despatch of the 6th Jan., 1839, No. 6, reporting the appointment of Dr. Dobie to be Health officer at Sydney, and to Lord Normanby's reply of the 1st Augt., 1839, No. 107, approving and confirming the same, I have the honor now to report that Dr. Dobie to my great regret resigned health officer on the 5th Novr. last, in order to become a Sheep farmer in a remote District of the Colony.

I have appointed to succeed him, and subject to your Lordship's pleasure, Dr. Arthur Savage, a Surgeon in the Royal Navy of 1826, who has on three occasions been selected to take charge of Convicts to this Colony, and came lastly as Superintendent Surgeon of the Emigrants by the Government ship "Magistrate."

I beg respectfully to request that Dr. Savage's appointment may be confirmed.

I have, &c.,
GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 20, per ship Grecian.)

My Lord, Government House, 13th Feby., 1840.

I am sorry to have to report to your Lordship that the Quarantine of "North Britain," Government Emigration Ship, which sailed from Dublin on the 13th Augt., 1839, was on her arrival at Sydney on the 14th December following placed in Quarantine, in consequence of the sickness which had prevailed on board her.

187 Adults and 99 Children were embarked in this vessel; and of them, 15 Adults and 5 Children died before the ship reached Sydney; also 6 Adults and 4 Children died in Quarantine.

The last of the people by the "North Britain" were released on the 1st instant; the expense incurred on their account may be estimated at nearly £700; and, in consequence of the deaths of their Parents, no less than 27 Children have been thrown on the Orphan Schools of the Colony.

I have, &c.,
GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 21, per ship Grecian; acknowledged by lord John Russell, 14th July, 1840.)

My Lord, Government House, 14th Feby., 1840.

I forward herewith, a Memorial which has been addressed to your Lordship by Mr. William Hilton Hovell, a gentleman
who rendered some service to this Government in the years 1824 and 1825 by opening, in company with Mr. Hamilton Hume, a route* from the settled parts of the Colony to Port Phillip.

Mr. Hovell received for his services on that occasion two Grants of Land, one of 1,200, the other of 1,280 acres; and, as he had previously received from Governor Macquarie and Sir Thomas Brisbane Grants of 500 and 700 acres, it appears that he has altogether had no less than 3,680 acres of Land from Government; not satisfied however with this remuneration, Mr. Hovell has applied at various times for some further allowance. On one of his applications,* I find the following words, written on the 22d Augt., 1829, by General Darling, “Quite out of the question; he has been amply remunerated for any services he may have performed.” I further find a letter from Mr. Horace Twiss to Mr. Hovell, dated the 19th Decr., 1829, by which a decided negative was, by order of Sir George Murray, put upon his application; and a Despatch to the same effect from Sir George Murray himself to General Darling, dated the 18th Octt., 1829, No. 157.

Mr. Hovell seems now to revive his claim, and to ask for a remission in the purchase of land at Port Phillip, in consequence of an allowance of £7,000 having been made, but under circumstances of a very different nature to the first Settlers in that District.

I regret that I cannot in any way undertake to support the application now made by Mr. Hovell to your Lordship.

I have, &c.,
GEO. GIPPS.

[Enclosure.]

The Humble Memorial of William Hilton Hovell, of Goulburn, in the County of Argyle and Colony of New South Wales, Grazier,
To Her Majesty's Principal Secretary of State for the Colonial Department, etc., etc., etc.,
Sheweth,
1. That, in the year 1824-5, your Memorialist, accompanied by Mr. Hamilton Hume, undertook an arduous expedition into the Southern and south-western territories of the said Colony, which at that time had never been explored by Europeans.
2. That the discoveries made in the course of that expedition were laid before the local Government soon after the return of your Memorialist and his fellow traveller to Head Quarters, and were ultimately communicated to the public in the form of a printed pamphlet, copies whereof were duly transmitted to the Colonial Office in Downing Street, where they doubtless remain for reference at the present time.

* Note 95.  † Note 96.
3. That the expenses of the said expedition, which including loss of time as well as direct outlay amounted to a very considerable sum, were defrayed entirely by your Memorialist and his fellow-traveller out of their private funds.

4. That the remuneration, made to your Memorialist in waste land by the Colonial Government, was considered by himself and his friends as so far from adequate, either to the expense and toil attendant on the expedition, or to the importance of the service thereby rendered to the Government and the Public, that he made repeated appeals to your Lordship's predecessors for a more liberal consideration of his claims, but without attaining any satisfactory result.

5. That his former Memorials being still in the archives of Downing Street, and, together with his printed Journal herein-before referred to, containing a full statement of his services, your Memorialist would not deem it proper to enter largely upon the subject in his present appeal, but would humbly refer your Lordship to the aforesaid documents, in which he trusts it will appear clear to your Lordship that the honour of having first brought to light that splendid territory, now known as "Australia Felix," including Port Phillip, belongs exclusively to your Memorialist and his above named fellow traveller.

6. That your Memorialist feels the more strongly dissatisfied with the acknowledgments hitherto conferred upon him by the Government, and the more encouraged to make his present appeal to your Lordship's candid consideration, by reason of his having recently ascertained that very munificent bounties have been awarded, by authority of the Right Honorable the Secretary of State, to certain persons who first settled in the district of Port Phillip, seventeen of whom were allowed, at the public sale held on the 13th February last, a remission of purchase money on ten thousand three hundred and seventy-four (10,374) acres of Crown Land, amounting to seven thousand nine hundred and nineteen pounds (£7,919) sterling.

7. That your Memorialist respectfully submits to your Lordship that the first discoverers of the Port Phillip country, whose researches were entered upon at great personal risk and without any view to private gain, are entitled to a reward equal, at least, to that granted to the first Occupants of the soil, who could have no pretensions to the disinterested public spirit which, it is on all hands admitted, actuated your Memorialist and his fellow traveller.

Wherefore your Memorialist, for himself and Mr. Hamilton Hume aforesaid, humbly prays that your Lordship will be pleased to take the premises into your most favorable consideration, and instruct His Excellency the Governor to allow to each of them a remission in the purchase money of Crown Lands in the district of Port Phillip, to an extent not less than that allowed as aforesaid to the first settlers therein, and at the same upset price, namely, five shillings per acre.

And your Memorialist will ever pray, etc., etc., etc.

WM. H. HOVELL.

Goulburn, New South Wales, 22 December, 1839.
510  HISTORICAL RECORDS OF AUSTRALIA.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 22, per ship Grecian; acknowledged by lord John Russell, 15th July, 1840.)

My Lord,

Government House, 15th Feby., 1840.

Herewith I have the honor to forward a Memorial, which has been addressed to your Lordship by Mr. G. C. Curlewis, appealing to your Lordship against my decision on his application for an Additional Grant of Land.

Your Lordship will perceive that the very first sentence of Mr. Curlewis’ Memorial is fatal to his claim, it having been decided in numberless other cases that no person can, or ever could claim the advantages held out by the Government Notices of 1826 and 1827, who came to New South Wales before those notices were issued.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

THE Humble Memorial of George Campbell Curlewis, of Ravenswood, in the County of Argyle and Colony of New South Wales, Farmer and Grazier,

To Her Majesty’s Principal Secretary of State for the Colonial Department, etc., etc., etc.,

Sheweth,

1. That your Memorialist arrived in the said Colony from Great Britain in the month of September, 1824, for the purpose of settling therein in such pursuits as he might find most advantageous.

2. That ultimately your Memorialist commenced business as a wholesale merchant, in which business he continued for about six years.

3. That, early in the year 1831, your Memorialist, induced by the advantages held out to Emigrants of Capital by the Land Regulations of 1826-7, determined upon availing himself thereof by transferring the whole of his capital and personal attention from commercial to agricultural pursuits.

4. That for this purpose your Memorialist applied to His Excellency Sir Ralph Darling, at that time Governor of the Colony, for authority to select a Primary Maximum Grant of Land on the several terms and conditions in the said Regulations provided; and His Excellency, being satisfied that your Memorialist possessed the amount of capital requisite to entitle him thereto, was pleased to allow him all the benefits of the said Regulations, and to grant to him Two thousand Five hundred and Sixty (2,560) acres accordingly, his letter of possession being the usual printed form based upon the Downing Street instructions of 1826-7.

5. That your Memorialist took final possession of his said land in the month of October, 1831, being situated on the Shoalhaven River, in the County of Murray.

6. That, having every reason to feel confident that a due outlay of capital in the cultivation and improvement of his said land as a Primary Grant would fully entitle him to the additional Grant...
promised in the Regulations under which he received the same, your Memorialist proceeded to expend large sums of money in clearing, fencing, cultivating and building thereon; and is prepared to prove that, at the expiration of seven years from his taking possession thereof, his said expenditure considerably exceeded the sum stipulated in the Regulations.

7. That the said land is the only Grant your Memorialist ever received from the Crown, and he has held uninterrupted possession thereof from October, 1831, to the present time.

8. That your Memorialist is also prepared to prove that, in Cash, live Stock, implements of agriculture, and real estate, he is at the present time, and was at the expiration of the seven years aforesaid, possessed of a bona fide capital considerably exceeding Two thousand Pounds.

9. That, at the end of the said seven years, your Memorialist, by a Memorial to His Excellency Sir George Gipps setting forth the aforesaid circumstances, claimed the additional Grant to which he had thus become entitled.

10. That, in reply to the said application, your Memorialist had the honour to receive a letter from the Honorable the Colonial Secretary, dated the 5th November, 1838, informing him, by direction of His Excellency the Governor, that, as he (your Memorialist) arrived in the Colony in the year 1824, he of course did not emigrate on the faith of the Regulations of April, 1826, and consequently was not entitled to the benefit of the Regulations published in this Colony on the 27 June, 1837. Vide Appendix.

11. That your Memorialist, feeling dissatisfied with His Excellency's decision, immediately resolved on appealing to the Right Honorable the Secretary of State, but was advised to defer doing so until he should learn the result of certain other appeals which had been made on somewhat similar grounds.

12. That your Memorialist now most respectfully submits his case to your Lordship's liberal consideration, humbly contending that, although the actual date of his emigration was a little antecedent to that of the aforesaid Regulations of 1826-7, yet, as he received his Primary Grant under those Regulations, without any modification or reservation whatsoever either as to the conditions prescribed or the advantages promised therein, and was thereby induced to leave a flourishing mercantile Firm, and to expend a large capital in the improvement of his Primary Grant on the faith of those Regulations, and, as he fully complied with all the conditions therein stipulated, he is fairly and equitably entitled to all the benefits thereof.

13. That your Memorialist cannot but be sensible that, in petitioning at this distant period (when land is comparatively scarce and dear, and respectable emigration more copious) for the fulfilment, in their true letter and spirit, of the Regulations of 1826-7, he occupies a disadvantageous position; but he feels confident that your Lordship will do him the justice to read his Memorial, and to consider his case, not with the views and feelings of the year 1840, which would be inequitable, but with those which prevailed in your Lordship's Department at the time those Regulations were framed.

Wherefore your Memorialist humbly prays that your Lordship will be pleased to take the premises into your favorable consideration, and thereupon to instruct His Excellency the Governor of New South Wales to cause his claim herein to be investigated by
the Commissioners appointed for such purpose; and, upon the foregoing facts being proved to their satisfaction, to make to your Memorialist the additional Grant of Land to which he claims to be entitled under the aforesaid Regulations.

And your Memorialist will ever pray, etc., etc., etc.

G. C. CURLEWIS.

Ravenswood, New South Wales, 12th December, 1839.

[Appendix referred to in Paragraph 10.]

MR. T. C. HABINGTON TO MR. G. C. CURLEWIS.

Sir, Colonial Secretary's Office, Sydney, 5th November, 1838.

With reference to your application of the 27th ultimo for an additional Grant of Land, I am directed by His Excellency the Governor to inform you that, as you arrived in the Colony in the year 1824, you of course did not emigrate on the faith of the regulations of April, 1826, and consequently are not entitled to the benefit of the regulations published in this colony on the 27 June, 1837.

I have, &c,

for the Colonial Secretary,

T. C. HABINGTON.

LD. JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 19, per ship Maitland.)

Sir, Downing Street, 17 February, 1840.

I transmit to you, herewith, a Copy of a Letter from the Revd. Dr. Macfarlan, expressing the opinion of the Colonial Committee of the General Assembly of the Church of Scotland on the Local Act for regulating the affairs of the Presbyterian Churches and Chapels in New South Wales.

I have, &c,

J. RUSSELL.

[Enclosure.]

REV. DR. MACFARLAN TO RIGHT HON. H. LABOUCHERE.

Sir, College, Glasgow, 29th August, 1839.

In answer to your letter of the 25th May, requesting to be furnished with the opinion of the Committee of the General Assembly of the Church of Scotland on Colonial Churches on the provisions of the Act 1837 for regulating the temporal affairs of the Presbyterian Churches and Chapels in New South Wales in connection with the Church of Scotland, I am instructed to state that the Committee have no objection to make to those provisions in so far as they bear immediately on the status of Members of the Presbytery of New South Wales; but on the other hand consider them well adapted to promote the religious interests of Scottish Settlers in that Colony.

The Committee have further directed me to take this opportunity of representing that, by a recent communication from New South Wales, it appears that Difficulties have arisen in the Establishment of New Presbyterian Churches in that Colony, and that in one instance at least (that of the Reverend Mr. Hamilton of Goulburn) much hardship has been experienced from the restriction of his salary to £100, on account of the congregation being dispersed over so wide a space, as to place some of its members at a greater distance from the site of the Place of Worship than 21 Miles. They
RUSSELL TO GIPPS.

cannot discover any provision in the Colonial Act defining the precise distance, which may be accounted not inconvenient; and they humbly apprehend that, in a newly settled Country occupied chiefly for pasturage, such distance ought to be determined, not arbitrarily, but according to the particular circumstances of each locality.

I have, &c.,

D. MACFARLAN.

1840.

17 Feb.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 20, per ship Maitland.)

Sir,

downing Street, 18 February, 1840.

Referring to former correspondence relative to the differences existing in the Presbyterian Church in New South Wales, I now transmit to you a Copy of a letter from Mr. W. Young, Agent for the Church of Scotland and Secretary to the Assembly's Colonial Committee, enclosing a Printed Copy of the Report of the Committee of the General Assembly upon the subject of those dissensions.

You will propose to the Legislative Council the Amendment in the Act for regulating the Affairs of the Presbyterian Church suggested by the Assembly; And I trust that such a measure may tend to produce union amongst the Members of that Church. If, unfortunately, you should not be able to reconcile parties, your Authority must be thrown into the scale in favour of the Church of Scotland. In the meantime, and until the necessary arrangements for that purpose shall have been effected, it will, I think, be proper to continue the temporary allowances granted to such Ministers under the terms of the Act passed by the Legislative Council in 1838.

With regard to Dr. Lang himself, referring to your Dispatch No. — of the 14th of January, 1839, and adverting to his frequent absence from the Colony, and to the circumstances under which he has now come home, I do not feel justified in authorizing his receiving any Salary during his absence. I have, &c.,

J. RUSSELL.

[Enclosure.]

MR. W. YOUNG TO UNDER SECRETARY VERNON SMITH.

Sir,

Edinburgh, 20th January, 1840.

According to the directions of the Acting Committee of the General Assembly of the Church of Scotland, at a Meeting held on the 9th Current, I have the honor to transmit a printed Copy of the Report of a Committee of the Commission of the General Assembly, relative to the divisions in the Presbyterian Church of New South Wales with relative documents. The report of the Committee will be found from page 1st to page 9th and the deliverance of the Commission thereon on pages 9th and 10th.

Ser. 1. Vol. XX—2 K.  * Note 97.  † Note 66.
The delay in transmitting these papers has been occasioned by their requiring to be reported on the first place to the Colonial Committee, which was only done on the 9th Current, since which time they have been copied and printed.

I have at the same time to enclose some communications from the Moderator of the General Assembly to Lord John Russell, and one to Sir George Gipps, connected with this matter.

I have, &c.,

WM. YOUNG.

[Sub-enclosures.]

[Copies of these papers* are not available.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch marked “Separate,” per ship Maitland.)

Sir,

Downing Street, 18 February, 1840.

With reference to my Dispatch of this day’s date on the subject of the Presbyterian Church in New South Wales, I transmit to you herewith a Copy of a Letter from the Revd. Henry Duncan, inclosing, by direction of the Commission of the General Assembly of the Church of Scotland, certain original Documents* therein specified to be made available in any proceedings, Ecclesiastical or Criminal, which may be instituted with reference to a Forgery represented to have been Committed by Mr. Malcolm Colquhoun of a Certificate purporting to proceed from the Presbytery of Dunoon, on the presentation of which to the Synod of New South Wales he appears to have been licensed and ordained by that Body.

I have, &c.,

J. RUSSELL.

[Enclosure.]

REV. HENRY DUNCAN TO LORD JOHN RUSSELL.

Edinburgh, 20th Jany., 1840.

I have the honor, by direction of the Commission of the General Assembly of the Church of Scotland, to transmit to your Lordship the following documents connected with certain recent proceedings relative to the Presbyterian Church in New South Wales.

1. Forged Certificate purporting to be by the Presbytery of Dunoon in Scotland, and to be dated in favor of a Mr. Malcolm Colquhoun and presented by him to the Synod of New South Wales, who thereupon licensed and ordained him.

2. Extract Minutes of the Presbytery of Dunoon proceedings in regard to the trials of Malcolm Colquhoun of various dates in the years 1830-2-3-4 and 5.

3. Extract Minute of the said Presbytery of date 4th December, 1839.

4 and 5. Declarations emitted in presence of the Presbytery of Dunoon by the Revd. Messrs. Buchanan and McBride, by whom the forged Certificate above mentioned purports to be signed.

* Note 57.
GIPPS TO RUSSELL.

And I have to communicate to your Lordship the respectful request of the Commission that you will be pleased to transmit these Documents to the Governor of New South Wales to be made available to the parties entitled to use them in any proceedings, Ecclesiastical or Criminal, which may be instituted in the Colony with reference to the forgery in question. I have, &c.,

HENRY DUNCAN, Moderator.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 21, per ship Maitland; acknowledged by Sir George Gipps, 25th September, 1840.)

Sir, Downing Street, 19 February, 1840.

I transmit to you the Copy of a Letter from Mr. W. Fox Strangways, applying for information respecting the fate of Mr. W. Thomas and Family, and of a boy named James Whetham, who accompanied Mr. Thomas to 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.,

J. RUSSELL.

[Enclosure.]

MR. W. FOX STRANGWAYS TO UNDER SECRETARY STEPHEN.

My dear Sir, Foreign Office, 17th Feby., 1840.

With reference to an enquiry I made a short time since respecting a Mr. William Thomas Assistant Protection of Aborigines (whom you stated to have been last heard of at Sydney in 1838), I should feel very much obliged if you would cause enquiries to be made by the next opportunity after the said Mr. Wm. Thomas and family, and a boy James Whetham, who went out under his care.

I remain, &c.,

W. Fox STRANGWAYS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 24, per ship Grecian; acknowledged by Lord John Russell, 17th July, 1840.)

My Lord, Government House, 19th Feby., 1840.

I have the honor to forward herewith Copies of three Despatches which were yesterday received by me from Lieutt. Governor Hobson; and, in so doing, I beg leave to congratulate your Lordship on the success, which has attended Capt'n. Hobson's first negotiations* in New Zealand. I have, &c.,

GEO. GIPPS.

[Enclosures.]

[Copies of these despatches, dated 3rd, 4th and 5th February, 1840, will be found in a volume in series III.]

* Note 98.
1840.
21 Feb.

Transmission of papers re land claimed by heiresses of W. Bligh.

Instructions to be transmitted.

Submission to treasury of claim by heiresses of W. Bligh to land at Parramatta.

HISTORICAL RECORDS OF AUSTRALIA.

Lord John Russell to Sir George Gipps.
(Despatch No. 24, per ship Maitland.)

Sir, Downing Street, 21 February, 1840.

With reference to your Dispatch No. 115 of the 7th of August last, I transmit to you, herewith, for your information and guidance Copies of a Correspondence between this Department and the Board of Treasury on the subject of the claim advanced by Sir Maurice O'Connell, on the part of the Heirs of the late Governor Bligh, to a portion of the Town of Parramatta.

As soon as I shall have been furnished with the Report of the Solicitor to the Treasury on the Documents referred for their consideration, I shall convey to you the necessary Instructions for your guidance in defending the rights of the Crown and the interests of the People of the Colony in this matter.

I have, &c.

J. EUSSELL.

[Enclosure No. 1.]

Under Secretary Stephen to Mr. C. E. Trevelyan.

Sir, Downing Street, 5th Febry., 1840.

I am directed by Lord John Russell 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 reporting that a claim has been advanced by M. General Sir Maurice O'Connell, on the part of the Heirs of the late Governor Bligh, to a considerable portion of the Town of Parramatta; and that notices of ejectment had been served by his Attorney on all the persons actually in possession of the property claimed, including the Keeper of the Female Factory.

The Lords Commissioners will perceive that the Governor promises a fuller report on this subject; but that the object of his present Despatch is to obtain from this Country such documentary evidence as may be necessary to support the interests of the Crown in this Case.

The circumstances of the case will be found detailed in the enclosed Correspondence.*

It appears that the Land now claimed was originally cleared and cultivated at the public Expense, and that it continued the property of the Crown until the year 1806. At that period, Admiral Bligh arrived in the Colony with a Commission as Governor. He did not immediately enter upon the execution of his Office, his predecessor Governor King having continued for some short time to retain the Government. Accordingly, on the 10th August, 1806, four days after Admiral Bligh's arrival, Governor King executed to him a grant of the Land in question under the Public Seal of the Territory.

Many objections appeared to exist against that course of proceeding.

1st. Admiral Bligh had no right to postpone the Assumption of the Government; for, as soon as his Commission arrived in New South Wales, the Commission of his Predecessor was superseded.

* Note 57.
2d. While Admiral Bligh held the Commission of Governor, he was incompetent to accept a Grant, under the Colonial Seal, of Land situated within the Colony.

3d. It had been asserted that Governor King had resigned his office and delivered up the custody of the Public Seal Six months before the arrival of Governor Bligh. If so, at the time of executing the Grant, Governor King had not even the pretence of any authority for making it.

4. The Land in question had been cleared and improved at the expense of the Crown, and Governor King had been distinctly prohibited from granting property of that description without the special license of the Secretary of State, and no such license had been given in this case.

Governor Bligh however took possession of the Land, and continued to hold it until the year 1814. In October of that year Governor Macquarrie addressed a Despatch to Lord Bathurst, of which a Copy is enclosed, pointing out the extreme inconvenience which the Public sustained from the occupation of the Land by Governor Bligh. Governor Macquarrie also referred to the improper and suspicious circumstances under which the Grant had been made, and he suggested that measures should be taken for obtaining from Admiral Bligh a surrender of his Grant on receiving a fair compensation in Land to be taken in any part of the Colony.

On the 4th Decr., 1815, Lord Bathurst answered that Despatch by directing that measures should be taken for the resumption of the Land; but his Lordship did not advert to the Grant of any compensation, deeming it perhaps unnecessary to give any indemnity to Admiral Bligh for the loss of property to which he could not establish either a legal title or an equitable claim.

Mr. Goulburn, by Lord Bathurst's direction, communicated that decision to Admiral Bligh, enclosing for his information an Extract from Governor Macquarrie's Despatch.

A Copy of Mr. Goulburn's Letter is also enclosed. It concludes in the following terms:—" My Lord Bathurst has felt no difficulty in sanctioning its resumption by the Crown as recommended by Governor Macquarrie." As Governor Macquarrie's recommendation included the Grant of equivalent Lands in compensation for those to be resumed, and as the Despatch containing that recommendation was communicated to Governor Bligh, a doubt was raised as to Lord Bathurst's intention on that point, of which the Heirs of Governor Bligh afterwards availed themselves, as will be seen by the correspondence with Mr. Richard Bligh, which forms a portion of the enclosures to this Letter. The Language of Mr. Goulburn's letter might, however, be construed to mean that Lord Bathurst had adopted the recommendation of the Governor in both its parts, or simply to extend to the resumption of the Land.

On receiving Lord Bathurst's instruction, Governor Macquarrie published a Proclamation dated the 5th August, 1819, announcing that the Grant to Governor Bligh was null and void; and calling on His Heirs to surrender the original instrument to be Cancelled. Shortly afterwards portions of the Land were granted to other Persons in distinct Building Lots, and other portions became the site of Public Buildings.

The subject has since undergone further discussion in the Colony; it having been considered that Governor Macquarrie's Proclamation
1840.
21 Feb.
Submission to treasury of claim by heiresses of W. Bligh to land at Parramatta.

could have no legal effect in destroying the Title of Admiral Bligh's Heirs; and that it was, therefore, necessary to adopt some more formal means of annulling the Grant and resuming the Land. I enclose Copies of three Despatches* from the Governors of N. S. Wales on this subject together with a Copy of a Despatch* from Lord Bathurst in answer to the two first of those Despatches and enclosing Copies of a Correspondence,† which then took place with Mr. Richard Bligh as Representative of Admiral Bligh, wherein Mr. Bligh professed that the Family waived all claim to the Grant on the ground of right. This embraces the general correspondence on the subject, and Lord John Russell has thought it right to lay the whole case before the Lords Commissioners of the Treasury, because, if the Action now brought against the Crown in New South Wales should be successful, the Revenue would sustain a loss estimated by Sir George Gipps at £40,000. His Lordship also proposes to instruct the Governor to take care that, in the event of the Plaintiffs' success, an appeal is brought before the Queen in Council.

In the mean time, Sir George Gipps requests evidence or information on the following points:—

1st. "The alleged want of power in Governor King to make the Grant and the incompetency of Governor Bligh to receive it, as stated in Mr. Hay's letter to Mr. Richard Bligh of the 16th September, 1825."

The grounds of that opinion appear to be found chiefly in the reports from the Colony where the means of substantiating the facts alone can be found.

2. "The nature of the Instructions‡ of 1786 and 1787 under which Grants of Land were issued in the early days of the Colony; also the Commissions of Governor King and Governor Bligh."

The first instructions issued to any Governor of N. S. Wales are those to Governor Phillip and bear date in 1787.

Enclosed are Extracts of so much of Governor Phillip's Commission and Instructions as relate to the Granting of Land: Copy of certain Additional Instructions on the same subject issued to Governor Phillip on the 20th August, 1789; and Copy of the Despatch enclosing those Instructions.

Copy of the Commission of Governor King and so much of the Royal Instructions as relate to the granting of Land, also of those addressed to Governor Bligh.

Sir George Gipps further requires evidence as to:

3. "The Agency of Mr. Bligh in 1825, and how far he was authorised to act for the Heirs of Governor Bligh, not being himself one of them."

The only evidence on that point in this Office is a letter from Mr. R. Bligh, dated the 1st July, 1824, in which he professes to come forward on behalf of the Representatives of Admiral Bligh then deceased.

These are the only documents to be found amongst the records of this Office bearing on the subject; and I am to request that you will move the Lords Commissioners to obtain the advice of their Solicitors as to the proper mode of authenticating such of them as may be necessary or useful, so as to render them admissible in the Colonial Courts.

I have, &c.,

JAS. STEPHEN.

* Note 101. † Note 100. ‡ Note 54.
MR. C. E. TREVELYAN TO UNDER SECRETARY STEPHEN.

Sir,

The Lords Commissioners of H.M. Treasury having received your Letter of the 8th Instant, transmitting by desire of Lord John Russell a Copy of a Despatch from the Governor of New South Wales, reporting that a Claim has been advanced by Major General Sir Maurice O'Connell, on the part of the Heirs of the late Govr. Bligh, to a considerable portion of the Town of Parramatta, together with sundry Enclosures relating to that subject; I am commanded by Their Lordships to acquaint you, for the information of Lord John Russell, that they have directed the Documents connected with this subject to be referred to the Solicitor to this Board, with directions to Him to take any requisite steps for authenticating such of these Documents as may be useful in defending the Title of the Crown to the Property in question in any proceedings that may take place in the Courts at New South Wales; with a desire that he will report to this Board his opinion as to any further Evidence or Documents, relating either to the validity of any acts of Mr. Richard Bligh on the behalf of the Representatives of the late Governor or otherwise, which might be furnished from this Country; and likewise as to any addition to or modification of the instructions, which Lord John Russell proposes to convey to the Governor of N. S. Wales, in regard to an appeal to The Queen in Council, or any other suggestion it might be advisable to forward to the Governor respecting the course which he proposes to adopt.

I am, &c,

C. E. TREVELYAN.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 25, per ship Grecian; acknowledged by lord John Russell, 13th July, 1840.)

My Lord,

My Lord, Government House, 21st Febly., 1840.

I beg to report to your Lordship that I have received an application from a gentleman named Burchard Frerichs to be admitted to the privileges of a free Denizen in this Colony, under the Local Act of the Governor and Council of the 9th Geo. IV, No. 6.

Mr. Burchard Frerichs is a Native of Bremen, and 26 years of age; he has resided seven years in England, is quite master of the English language, and is possessed of some Capital, which he wishes to invest in the purchase of land in New South Wales; his respectability is also vouched for by Mr. Willm. H. Dutton, a gentleman much respected in this Colony, and a Magistrate of it.

As by the act of the Governor and Council, above quoted, as well as by Article 14 of my Instructions under the Sign Manual,
the consent of the Secretary of State is required before letters of Naturalization can be issued, I have respectfully to ask that I may be favored with your Lordship's permission to issue such letters to Mr. Burchard Frerichs.

I have, &c,

GEO. GIPPS.

22 Feb.

Transmission of letter from T. F. Elliot.

Criticism by T. F. Elliot on report by J. D. Pinnock re emigrants.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 25, per ship Maitland.)

Sir, Downing Street, 22 February, 1840.

I transmit to you, herewith, the Copy of a Letter addressed to my Under Secretary of State by Mr. Elliot, the late Agent General for Emigration, Containing his observations on the General Report of Mr. Pinnock, the Agent for Emigrants at Sydney, which he had received from the Colonial Secretary of New South Wales.

I have attentively considered Mr. Pinnock's Report, and I am of opinion that Mr. Elliot has satisfactorily Answered the remarks made by Mr. Pinnock on the conduct of Emigration by the Agent General.

I have, &c,

J. RUSSELL.

[Enclosure.]

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

2 Middle Scotland Yard, 17th January, 1840.

Sir,

I do myself the honor to forward, for the information of Lord John Russell, the enclosed Copies of some letters received from the Colonial Secretary in New South Wales since the last session of Parliament, containing information and returns on Emigration including a general Report from the Agent for Emigrants at Sydney on the people arrived during 1838.

This Report from Mr. Pinnock, like one which it was necessary for me to analyse last year, points out the merits of ships sent out with Passengers upon Bounty, and the defects of ships sent under the orders of Government. It would probably be improper that I should omit to advert, though as briefly as I can, to the leading topics of this Document.

Mr. Pinnock states that he thinks that too long a maintenance in Barracks at the Public expense has been allowed to Emigrants, who arrive by the Government ships. This is entirely a matter for regulation by the Colonial Authorities. The Emigrants are merely informed in starting that they will not be left destitute of accommodation and subsistence on first landing, but no specific period is named. It would appear probable from the representations in this report that a week or a fortnight would be enough to fix as the General term. But I cannot too strongly express my dissent from the idea, which Mr. Pinnock throws out, of keeping the Passengers on board during that term. To detain people on board of ship at the end of a four months' voyage looking upon the shore, but denied an opportunity of living upon it, would I apprehend not only excite just discontent, but might be attended with serious
consequences to the spirits and health of the passengers. It is at
the last moment that their health is the most tried and principally
through their Spirits.

With regard to the term to be fixed, I would only add that it
would appear desirable that it should be such a one as, without
unnecessary Expense to the public or the encouragement of idle-
ness amongst the emigrants, should yet not be so limited as to
force them into disadvantageous engagements with Private indi-
viduals. This would be an evil, of which the effects would not fail
to be soon experienced by the employers of Labour themselves, in
cutting off the supply from this Country. If there were any suit-
able Public Works on which Emigrants could be required to labour
as the Price of their maintenance, or perhaps without maintenance,
at Rates of wages rather lower than the current Colonial Rates,
this would seem undoubtedly by the best measure both of economy,
and as a test of the reasonableness of the people's continuing in
dependence on the Government.

I have communicated with the selecting Officers on such parts
of this Report as concerned their Proceedings.

Mr. Pinnock objects to persons who are only willing to make
themselves generally useful, and have not been brought up to any
distinct occupation. But the Great Bulk of the Agricultural Emi-
grants from those parts of Scotland whence most people can be
obtained, and almost all from Ireland, will consist of nothing else;
and it is upon these two Kingdoms only that the Colony can rely
for any constant supply of Agricultural labour.

It is stated that there have been two or three instances of per-
sons getting out in the Government ships, who might have paid
their own passage. One such instance amongst the 6,500 people,
who went in 1838, was detected in the Colony, and formed the
subject of repeated and urgent representations home. It would
have been better that the One or two other instances, alluded to by
Mr. Pinnock, had been also specified, that they might have been
enquired into.

In the same general and indefinite terms, it is alleged that several
persons have been sent out, especially from Ireland, who were dis-
abled by infirmity, or unsuited by their vocation to the Wants of
the Colony. I was aware that Mr. Pinnock had made some observa-
tions to this effect upon the "Calcutta," a Vessel which was filled
in Ireland, while each surgeon was responsible for his own ship,
and before there was any permanent selecting Officer in that Coun-
try under the direct control of this Office. But I have been at a
loss to find the specific Grounds for the statement in any other case;
I am left without the means therefore of offering any other than a
general Answer.

The practice has been to take young married couples, if obtain-
able, without young Children, but if not to prefer Parents of a
more advanced age when recommended by having several grown
up sons and daughters. This is a course, which I understand to
have been universally approved and adopted by persons in this
Country engaged in promoting emigration to Australia; but it has
always been required by the Government Regulations that Parents,
who were admitted for the above reasons, should not be themselves
incapable of work, and the highest age, at which a free passage
would be given, has been limited to 50, the parties being required
as above stated to be hale.

* Note 102.
In a very few cases, persons above 50 being connected with a
variety of desirable families, who from good feelings would not
abandon their aged Relatives, have been allowed to go in the same
ship, upon paying their passage. I do not think the number can
have exceeded seven or eight in the whole year, and they have cost
the Colony nothing.

One fact, to which I would particularly draw attention, is the
following, that, notwithstanding the exceptions taken in this re­
port, and unexampled as was the badness of the season in which the
people reached their destination, it is stated that "all the Emi­
grants who arrived during the past year (1838) are now comfort­
ably settled, and at high wages throughout the Colony." To any
general and indefinite allegations of unfitness, this General Answer
is perhaps the best that could have been supplied.

With regard to the measure of a Juvenile Emigration of which
Mr. Pinnock repeats a recommendation he has often offered during
the last 2 years, I would only observe that this, which cannot be
denied to be a doubtful measure for any Colony, appears to be
especially unsuited to some of the Principal objects of the Emigra­
tion to New South Wales. I have so often submitted my views
on the subject, and believe the same opinions to be now so general­
ly prevalent in this Country, that I do not think it necessary
to occupy any more time with them here.

The remainder of the observations in the Report turn chiefly
upon the repression of the number of Children.

It is remarked that, in the Bounty ships which arrived in 1838,
the proportion of Children to adults was one to three, while in
Government ships the numbers were nearly equal. The exact pro­
portion of Children in the Bounty ships was 29 per Cent. On re­
ferring to the Returns, about to be laid before Parliament, of the
Government ships which sailed last year, I find that the proportion
in them has been reduced to 30 per Cent.

The Principal Expedient contemplated in this report is to confine
the selections chiefly to single adults of Both sexes or to young
Couples without Children. Regarding it merely as an economic
Question, there could be no doubt of the correctness of this view;
but I need not say that, much to the credit of all concerned both
in the Colonies and at home, the moral objects to be accomplished
have from the first been deemed of the highest importance in the
free Emigration to all the Australian Settlements. There has been
but too much experience that those objects cannot be reconciled
with extensive selections of Women, who are willing to proceed
to the most distant parts of the world without any relative or
natural Protector; and, while this circumstance limits the numbers
of unmarried adults of the female Sex, there are other strong rea­
sons why the number of single Men should not to any extent be
carried beyond that of single women. The only remaining resource
would be young married Couples without Children.

That these would be the best description of Emigrants, if they
could be procured of proper character and qualifications, there can
scarcely be two opinions. I turned therefore with anxiety from
Mr. Pinnock's arguments on that point to the observations he had
to make on its practicability. On that question however, I found no
more than a quotation of some pages in Manuscript from a Work
published seven or eight years ago, pointing out that Marriage
is the season of enterprize, and youth the season of hope, and
consequently that young couples might be expected to be the most easily procured, as well as the most desirable class of Emigrants. It is to be regretted that experience has not confirmed this reasoning, as it appears that persons, who are unburthened with children, will not quit their country, even for an advantageous change, and that persons, who are burthened, will, and that the only resource therefore, for persons selecting Emigrants is to obtain eligible young couples without Children, when they can; but, when they cannot, to make the best arrangements instead which they find in their power.

Here I close the observations I have to submit on those parts of the present Report, which seemed to demand something from me in the nature of explanation.

The Agent for Emigrants at Sydney appears to consider it his duty to remark whether or not the Emigrants, who arrive, are the best he can think of, which is perhaps not without its use, as affording us perfection for the model to aim at. But the officers at home have believed it their duty to send out the best whom they could get. They have, in the pursuit of this course, increased the Emigration to New South Wales, and extended the knowledge of that Colony amongst the Emigrating Classes beyond all previous example; they have effected a constantly progressive reduction in the numbers of Children, which were at first complained of, and also a remarkable diminution, since the system at sea was taken under their management, in the mortality during the voyage. This has been the work of three short years. I feel no doubt that these facts will sooner or later receive their just share of attention in New South Wales; nor am I the least apprehensive that the public mind in the Colony will be led into any hasty condemnation of the Officers in this Country, without I will not merely say making allowance for their difficulties, but also giving them the credit they are entitled to claim for what they have actually accomplished.

I have, &c.,

T. FREDK. ELLIOT.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 26, per ship Grecian; acknowledged by lord John Russell, 20th July, 1840.)

My Lord,

Government House, 23rd Feb., 1840.

With reference to Lord Normanby's Despatch of the 19th June, 1839, No. 73, authorising me to grant to the Attorney General of this Colony Leave of Absence on the best terms, which it may be possible for me to make with a due regard to the public expense and the efficient discharge of the duties of his office, it is with great regret I inform your Lordship that I have been unable to make any satisfactory arrangement for the performance of the duties of Attorney General during the absence of Mr. Plunkett, and that consequently Mr. Plunkett has consented to defer his departure until the beginning of next year, in the hope that I may by that time be honored with your Lordship's commands upon the subject.
Your Lordship is aware that, about four years ago, the office of Solicitor General in this Colony was abolished; and that since that time a Barrister (Mr. Roger Therry) has been employed to assist the Attorney General in criminal prosecutions at an average expense of about £450 a year. These arrangements were explained by Sir Richard Bourke in his Despatches of the 12th April, and 9th Sept., 1836, Nos. 44 and 95. It will be seen however by the latter Despatch that Sir Richard Bourke had himself some doubts whether they would be found to work well; and I regret to say that subsequent experience has abundantly confirmed these doubts.

In a number of Despatches, marked in the margin,* I have had occasion to represent the great inconveniences to which this Government has been exposed from delays in the Law business of the Crown, which are in great part to be ascribed to the abolition of the Office of Solicitor General; and I have now to represent to your Lordship that it is principally on the same account that I am unable to find any fit person to undertake the duties of Attorney General during the absence of Mr. Plunkett. Mr. Roger Therry is, by his position at the Bar and his connexion with the Government, the person evidently pointed out as the proper locum tenens of the Attorney General; but Mr. Therry has declined the office except upon terms, which it is not in my power to offer him without your Lordship's concurrence.

What I beg leave to submit to your Lordship therefore is that the office of Solicitor General shall be reestablished with the former salary of £800 a year, and Mr. Roger Therry appointed to it. Mr. Therry will then resign his present situation of Commissioner of the Courts of Requests (of which the Salary is also £800 a year), and he will engage to act as Attorney General during the absence of Mr. Plunkett, receiving however the full emolument of Attorney General (£1,200 a year), whilst he so acts, and having the assistance of an Acting Solicitor General at £800 a year; there will be no difficulty in finding a gentleman to act in this capacity.

The expence incurred by the reestablishment of the office of Solicitor General will not be the full amount of his salary, £800 a year, but only the difference between it and the sum of £450, which, as above stated, is now paid to an occasional Barrister to assist the Attorney General; and moreover the resignation by Mr. Therry of the office of Commissioner of the Courts of Requests will probably enable me to make some new arrangement for the performance of the duties of that Office, on the principle

stated in my Despatch of the 3rd Octt., 1839, No. 133, and in that of the 1st Jany. of the same year, No. 1, when commenting on the 18th Clause of the New South Wales Act.

There is one circumstance however, of which, when recommending Mr. Therry for the appointment of Solicitor General, I feel I ought not to withhold the knowledge from your Lordship; it is that Mr. Therry is a Roman Catholic, as also (your Lordship is aware) is Mr. Plunkett. I beg to assure your Lordship that, considering Mr. Therry to be well qualified for the Office, and his position at the Bar to be such as to give him superior claims to those which any other person can advance, I do not myself think his religion ought to stand in the way of his promotion; but at the same time I cannot conceal from myself, and I ought not to conceal from your Lordship, that the accidental circumstance of both the Attorney and Solicitor General being Roman Catholics may be made by some parties in the Colony a matter of imputation on the Government.

I have, &c.,
GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 27, per ship Lady McNaghten; acknowledged by lord John Russell, 8th August, 1840.)

My Lord, Government House, 24th Feb., 1840.

With reference to my Despatch marked Separate of the 23rd Novr., 1839, I have the honor to report to your Lordship that Captn. Maconochie returned to Sydney on the 27th Jany. last from Van Diemen's Land, and that he sailed yesterday for Norfolk Island, there to enter on his duties as Superintendent.

Temporary accommodation for 300 men having been reported ready at Norfolk Island, and the "Nautilus" with Male Convicts from Dublin arriving at Sydney just at the time when Captn. Maconochie was prepared to take his departure, I caused that vessel with her Convicts at once to proceed to Norfolk Island, and Captn. Maconochie and his family to be also accommodated in her.

I have further to report to your Lordship that, on the application of Captn. Maconochie, I have made the following new appointments at Norfolk Island:
1. An Assistant Surgeon, there having been before but one Surgeon for the whole Convict Establishment, and the appointment of a second Medical officer having been often asked for, even before any new Establishments were contemplated. The Medical Department of New South Wales not being able to furnish a Medical officer, Mr. James Reid has been appointed to
HISTORICAL RECORDS OF AUSTRALIA.

24 Feb.

New appointments at Norfolk island.

Norfolk Island at the usual pay of 7s. 6d. per diem, on the joint recommendation of Captn. Maconochie and the Inspector General of Hospitals;

2. An Overseer of Works or, as Captn. Maconochie prefers that he should be called, An Overseer of Marks, at £80 a year, with a ration of provisions. Mr. John Simm has, on Captn. Maconochie's recommendation, been appointed to this office;

3. One Chief Officer and two Serjeants of Police, the former at £80, the latter at £60 each per annum, and a ration of provisions for each. The persons for these appointments were selected by Captn. Maconochie from the Police of Sydney.

The above appointments all are on account of Captn. Maconochie's New Establishment at Norfolk Island; and, in proportion as that Establishment is increased, further appointments will in all probability be required.

For the Old Establishment, which still consists of 1,200 doubly convicted Felons, I have thought it necessary to make also an Additional Appointment, for which I have separately to ask your Lordship's sanction. Your Lordship is aware that the Commandant or Superintendent of Norfolk Island has no power to punish Convicts, except by virtue of his Commission as a Magistrate of the Territory of New South Wales (see an act of the Governor and Council, 3 Wm. IV, No. 3); that consequently he is obliged in his Magisterial capacity to hear every case himself, and to have depositions taken and recorded precisely in the same way as they are taken before any Police Magistrate of the Colony. The time of the Commandant is usually occupied three or four hours every day in this business alone, and the other duties connected with the Old Establishment are, I believe, such as to fill up the remainder of any one man's time, or to leave him at least but little leisure for other employment. Captn. Maconochie's attention will however, it is only fair to suppose, be in great part if not principally directed to the New Establishment, in which his own principles* are to be tried, and in the success of which he must feel so deeply interested. Under such circumstances, I could not but feel that it was necessary to relieve him in some degree from the mere routine duties of the old or doubly convicted Establishment; and I have accordingly appointed Mr. Charles Ormsby to be Assistant Superintendent of that Establishment with a salary of £180 per annum; and I have further made him a Magistrate, in order that he may assist Captn. Maconochie in the exercise of summary jurisdiction under the Act of Council above mentioned. Mr. Ormsby, having held a situation in the Irish Constabulary, is I believe well qualified for this duty.

* Note 73.
GIPPS TO RUSSELL.

I am led to hope that by this arrangement the office of Superintendent of Convicts at Norfolk Island may be abolished, or rather that it may be merged in the office to which I have appointed Mr. Ormsby, as soon as I may have an opportunity of otherwise providing for Mr. Foster, who now holds it at a salary of £150 per annum. I have, &c,

GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(My Lord, Government House, 25th Feb., 1840.)

Having, in my Despatch of yesterday No. 27, reported to your Lordship the departure of Captn. Maconochie to Norfolk Island, I have now the honor to forward Copies of various Papers, which Captn. Maconochie has submitted to me respecting the system of management which is to be adopted there.

No. 1 of these Papers is a Memorandum of the assistance which would be desirable in order to give full development to the principles of Social Management in a large Insular Establishment.

As Captn. Maconochie does not himself consider Norfolk Island a fit place for an experiment on the large scale contemplated in this Paper, I think it only necessary to observe that the increase in the Establishment of Norfolk Island, which I have sanctioned in consequence of Captn. Maconochie's appointment, is reported in my Despatch of yesterday, No. 27.

No. 2 is a Memorandum on the exchange of Marks for present Indulgences.

The views, developed by Captn. Maconochie in this Paper, are scarcely I fear consistent with those of Her Majesty's Government, as shewn in your Lordship's Note of the 2nd Jany., 1839, inasmuch as it would seem to be the intention of Government that every transported Felon should, during the period of at least two years, receive no indulgence whatever. Deeming this to be a fundamental principle established by Her Majesty's Government, I have not considered it right to authorise Captn. Maconochie to depart from it, unless such departure should by him be found to be absolutely necessary in order to give his own system a fair trial.

No. 3, A Memorandum on remission of Punishments.

As my own opinion of the evils, which attend the present system of remitting punishments, coincides almost entirely with that of Captn. Maconochie, I have authorized him to carry into
effect the views developed in this Paper under such limitation only as is explained in my remarks on his Paper No. 2.

I may however observe that the system of Marks will not, I fear, get rid of all the inconveniences which attend the exercise of the power now vested in the Governors of Penal Colonies in respect to the remission of punishment. The power of affixing good or bad marks against the names of individuals is of itself a power, not only of remitting but also of aggravating punishment; and it is one, which in a large Establishment must come to be exercised by subordinate Agents.

No. 4, A Memorandum on the formation of a Library at Norfolk Island.

As Capt. Maconochie attaches great importance to the early formation of a Library, I have authorised him to expend £50 in the purchase of such Books as he may be able to select at Sydney. I fixed at first the sum of £20, but, at his very earnest request, I subsequently raised it to £50.

No. 5, A Memorandum on the expediency of cultivating a taste for Music in the Prisoners.

Precisely on the same ground that I authorized an expenditure of £50 for Books, I have sanctioned, on Capt. Maconochie's urgent request, an outlay of £100 for Musical Instruments; and I have further authorised payment to be made for some articles purchased by him to the amount of £43 15s., under circumstances which are stated in a letter to me dated the 19th instant, a Copy of which is appended to the Memorandum.

No. 6, a Memorandum on the expediency of sending Female and Juvenile Convicts to the same General Establishment with Male Adults.

Women have never yet been sent to Norfolk Island, and the universal impression is that it would be highly dangerous to have them there (not less on account of the Male Convicts than of the Troops who guard them). Capt. Maconochie does not even desire that women should be sent there at present.

No. 7, A Memorandum on Lord John Russell's Note on Transportation and Secondary Punishment, dated the 2nd Jan., 1839.

On this Memorandum, the following are the only observations which I think it necessary to offer:—

Whether experiments in the management of Convicts are hereafter to be tried in the Colonies, which have hitherto been Penal ones or in New Establishments, seems to me to be no longer an open question. The decision has been pronounced that Transportation to New South Wales and Van Diemen's Land is to cease; and I by no means desire to see that decision reversed.
Captn. Maconochie avows his opinion that the first object of all Convict Discipline should be the Reformation of the Criminal. This opinion, however agreeable it may be to the dictates of humanity, is not, I believe, the received one of Legislators, who rather require as the first object of Convict Discipline that it should be a terror to Evildoers.

The necessity of fixing authoritatively the end or object of Convict Discipline, and of never suffering it to depart from our view in devising means to work out that end, is so obvious that it cannot be necessary for me to enlarge on it.

Having thus brought before your Lordship the several Papers which have been placed in my hands by Captain Maconochie, I think this a fitting opportunity to remark to your Lordship that, as Her Majesty's Government have decided on allowing Captn. Maconochie an opportunity of trying his system of Convict Management, I have considered it right to give him all the support in my power and every reasonable facility for trying it in his own way. The persons, whom he takes with him (see my Despatch of the 24th instant, No. 27) are of his own selection; and, in the two instances above alluded to, I have sanctioned whatever expence he thought necessary.

Though Norfolk Island may not be, for reasons stated by Captn. Maconochie himself (and forwarded with my Despatch marked Separate of the 23rd Novr., 1839), a fit place for an extensive Penal Establishment, sufficient for all the Criminals likely to be transported from the United Kingdom, it is, I apprehend, one not badly adapted for putting to the test the principles advanced by Captn. Maconochie.

I feel persuaded that Captn. Maconochie will have far better chances of success at Norfolk Island than he could possibly have had, if his experiment had been tried, as he once expressed a wish it should be, on the roads in New South Wales. In such a position, he would have been constantly overwatched by a jealous and even a hostile Public; every failure, however trifling, would have been exposed, exaggerated, and turned into ridicule; and his own attention would have been constantly withdrawn from the object to which it ought solely to be directed, in order to defend himself against the attacks, whether well or ill founded, with which he would have been assailed. The expence too of the experiment in New South Wales would have been in all probability greater than in Norfolk Island; at Tasman's Peninsula even the expence would have been greater than at Norfolk Island, as buildings of a more expensive nature for the lodgement of the
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Memorandum re principles of social management of convicts.

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Convolts would, on account of the difference of Climate, have been required, whilst the return to be derived from their labor would, on account of the inferior productiveness of the soil, have been less.

The circumstances, which Capt. Maconochie has pointed out as unfavorable at Norfolk Island, namely, its remote situation, its insular character, its limited extent, and the want of sufficient variety in the employment which it offers, though they may render it unfit to be the sole Penal Establishment of Great Britain, or even to become one in which Capt. Maconochie's own views can fully be carried out, are not such as in my opinion will affect the issue of an experiment, by which the truth and applicability of his principles are to be tested. I have, &c,

GEO. GIPPS.

[Enclosure No. 1.]

MEMORANDUM on the Assistance that would be desirable in order to give full development to the principles of Social Management in a large Insular Establishment.

I have repeatedly expressed a conviction that, with all its other advantages, the Social Management of Prisoners will speedily be found also the most economical. The Substitution of Free for coerced Labour in it, that is to Say, of Labour Stimulated by the ordinary motives which animates industrious life in free Society instead of the mere fear of the Lash or Cells, must eventually prove economical; and besides the additional work, which it will obtain, will obtain it also with a Small amount of direct Superintendance. But, in the beginning especially, there will be a considerable demand for intelligent Superintendance, and this ought to be even liberally allowed. The object of the System is to develope the mind, not merely restrain or fetter the body; and, Superior as this object is, and peculiarly characterising what, if cordially gone into by the British Government, will be known as the English in contradistinction to both the Dutch and American Systems, it Seems even an object of National Policy not to cramp its earlier Steps by any thing which may approach the Character of false economy.

Accordingly, at an early period and before any great accumulation of Prisoners takes place, if Still retained at the head of the Establishment, I ought to have one or two intelligent Assistants of a class calculated to Succeed me, should I be removed. In the meanwhile, they would judge my results, perhaps improve on them, and at least assist materially in their attainment. They should thus be men of liberal minds, not wedded to any particular System, yet reasonably hopeful and zealous in the prospects of this one. If acquainted with the first elements of Agriculture or Mechanics, this would be an additional, but yet a Subordinate recommendation. Between them and the common overseers, there Should next be a Class of Teachers of work, men competent to direct extensive operations. The object being Education, the means of Educating must be provided. The common Overseers under them need not, as far as regards Discipline, be men of high attainments; on the
contrary, as I wish to create an innate impulse and not rely on a fictitious one, I would rather not have them very active or bustling than the reverse. Moderately good temper, Steadiness, and knowledge of work would however be indispensable. I would have no prisoner Overseers at all; there is an essential error in the principle of such. But the association into parties would produce nearly the same effect, each man being entitled to watch and Stimulate his neighbour towards producing a joint result.

The Police ought as much as possible to be Civil, and not Military; and after a time the number of the latter might thus, I am persuaded, be made relatively very Small (if judiciously posted and regulated) not only without danger but even with great advantage. The Civil Police Should Consist of a Strong Staff of Free Men, assisted in carrying out the details by parties of Prisoners (of force as required), taken in strict rotation for this duty, and only engaged on it for 24 hours at a time. The principle of a Standing Prisoner Constabulary appears to me the worst possible; but an arrangement of this kind, which would identify all in turn with the maintenance of good order and punctuality, would, I think, be even strikingly advantageous.

It is impossible at present to estimate the probable expense, per head, of management thus organized. Abstractly it must depend on the numbers brought together, and decrease as they increase; but relatively this is only a very inferior element in the computation. It is a scope of useful productive labour that will be found practically much more to the purpose; and with this I can see no reason whatever for Prisoner labour not becoming a Source of Income, rather than of expenditure at all. I am even persuaded that it never will be thoroughly well managed till this result is specifically aimed at, and moderately attained. In itself in so high an undertaking as the Management of Prisoners, it is of the least possible value; but, as a means of estimating many other quantities, it will be found in general, I believe, as true as a Barometer.

In estimating the expenses, it Should be borne in mind that, altho' it is proposed to make Marks of Approbation exchangeable like current coin, yet each Prisoner must make a large accumulation of them before he regains his liberty, which accumulation will be clear gain to the Government, besides all expended in granting him temporary Indulgences. And I have omitted to notice above the expense of Clergymen, who Should, I think, be much more numerous in a Reformatory Establishment than in one merely punitive. I would have one, of Some Denomination or other, to every hundred or hundred and twenty Prisoners in the Separate Imprisonment Stage; and as this, according to my present opinion, would be about one third of each year's arrivals (I think that four months in this Stage should be even a high average), the proportion of Clergymen to an Establishment receiving 3,000 Prisoners annually would be Ten, and, Supposing that the average detention of Prisoners was from three to four Years (which I should think also probable) and their accumulated number were thus about 10,000 men, the proportion of Clergymen to the whole community would be 1 to 1,000. If a longer period of separate Imprisonment were deemed indispensable, this proportion would require to be raised, for I do not think that a Clergyman can, in conjunction
with his other duties, do full justice to a greater number of Men under his Special Care than, as above, 100 to 120. It is at this period that the Seeds of effective penitence and good resolution are to be Sown, perhaps for life; and it would be the worst economy that would restrict the means of rooting and Starting them.

A. MACONOCHE.

[Enclosure No. 2.]

MEMORANDUM on the Exchange of Marks for present Indulgences.

The Right Honorable the Secretary of State having been pleased to authorize my appointment to the Chief Charge of the Prisoners of the Crown at Norfolk Island, it may be presumed that His Lordship has approved of my general views for their Management, as recommended Successively in Lord Howick's Minute and the Report* of the Transportation Committee. Yet I shall have a difficulty in acting on the presumption, and Shall even incur a serious pecuniary responsibility in doing So in one important point, unless Specifically authorised by my Instructions.

This point is the Sale of Indulgences to the prisoners in exchange for their Marks of Approbation, thereby, however, prolonging their stay in bondage, release from which Should only be purchaseable by a fixed accumulation of these over and above all so bartered. By this means, I hope to cultivate their powers of Self-command; and, by making a certain voluntary Saving over and above all present expenditure, indispensable to the recovery of Freedom, produce in their minds all the moral benefit, which has been found invariably to accompany accumulations in humble life in a Savings Bank. But may I adopt this System at Norfolk Island on first landing on it, or must I await further Instructions?

It is to be regretted that at Norfolk Island the Scope of productive labour is so small, that it will be difficult to Show there that this System will be found eventually economical, as well as morally improving and advantageous. Yet it is plain that the Men's labour will be thus made Free labour, instead of coerced, and must thus combine all corresponding advantages in whatsoever Sphere placed. Marks of approbation thus given for Industry, and exchangeable for Freedom or for Indulgences, will just be wages, and will equally Stimulate to care, exertion, economy and fidelity with them. And wherever these motives are placed, their results must be of the Same Character; though they must be more or less obvious in one place than another, according to collateral circumstances.

I very earnestly solicit, therefore, permission to act on this system from the beginning; so soon as I have the materials for Such a calculation, I shall endeavour to Show prospectively the degree of economy (of positive Saving of labour with increased productiveness in its results) proceeding from it, and which I shall expect to find a Sensible quantity even at Norfolk Island. But meanwhile I trust that the higher objects in view may otherwise justify the innovation.

My wish is eventually thus even to abolish Rations among the Prisoners by allowing their full value in Marks, and encouraging the men to purchase Supplies in their Stead at the Stores at their own discretion. I think the moral effect of Rations is always bad, by taking the care of a Man's maintenance out of his own hands,

* Note 103.
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and either dissatisfying him by a deficiency in quantity or quality, or making him wasteful by a Superfluity. But I do not press to begin with this till the men are otherwise brought into order and prepared for it; and the uncertainty of Supplies at Norfolk Island will always interpose an obstacle to its complete adoption. I could wish it, however, kept in view.

A. MACONOCHE.

[Enclosure No. 3.]

MEMORANDUM on Remission of Punishments.

The System, on which Punishments are at present remitted in the Penal Colonies, appears to me extremely unsatisfactory, and is, in truth, opposed to every principle on which the Mark System has been recommended to, and in all circumstances may be considered as adopted by, the Right Honorable the Secretary of State. It is by the intervention of a large discretionary authority, and has every fault peculiar, in all cases, to Such an intervention. It introduces uncertainty where there Should be the greatest Certainty; and unsettles Men’s Minds, precisely when it is desirable that they should be most composed, when they are condemned to punishment by a just Sentence, and when the duty required of them, both for their own sakes and that of the Community, is that they should evidence Submission, Sorrow and a resolution to do better another time. Instead of this, they at present Set about concocting every species of exculpatory or deprecatory misrepresentation; and the School, in which they are thus trained, being one of unblushing falsehood, is often extremely difficult to unravel its folds; and the time and patience of the Head of the Executive are occupied and distracted by applications, his decision on which, I cannot help thinking, is calculated to do almost equal harm, whatever it may be. If favorable, it furnishes another example of comparative escape from deserved punishment; and if the reverse, in nine cases out of ten it creates resentment and obduracy in the Criminal, for no man is willing to allow that his case is materially worse than that of his more fortunate Neighbour, both being probably based on falsehood or supported by it.

There is accordingly no portion of the existing System, which appears to require absolute and complete change more than this. As it is proposed to alter the word "Transportation" into "Imprisonment," in order to escape from the associations connected with the former, So the term "Remission of Sentence" should be banished, I think, altogether from the improved vocabulary. There Should, in truth, be none whatever; but the duration of Sentences being made measurable by conduct under them, and not by Time at all (or if by time at Home, that time made commutable, at fixed values, into conduct in Prison), no power Should any where even exist, in a Subordinate authority, to remit a fraction of it. But, on the other hand, there Should be not less certainty in the result of good Conduct. The fate of every man Should be placed unreservedly in his own hands; and his good conduct should Command not a recommendation for remission, but the positive advance corresponding to it towards recovered privileges or freedom. There should thus be no favor any-where. Men can be trained to deserve their recovered freedom not by favors but by justice. Indulgences gained in one way corrupt and debilitate the mind, even when
Stimulating it, while those gained in the other in all possible circumstances invigorate it.

I would propose, then, instead of any "remission of punishment" or of its accompanying disqualifications in individual cases, that its entire course should be broken uniformly into stages, to each of which, in succession, every prisoner should belong in undergoing his sentence; being in each subject to the restrictions, but at the same time, enjoying of right the immunities belonging to that particular portion of his passage through all. Thus, supposing an accumulation of 1,000 or 10,000 marks to be fixed purchase of recovered freedom, below one number might confine to separate imprisonment; above that number, but below another, to social labour through the day, with separate imprisonment at night; between other two numbers to social treatment both by day and night and so forth. These stages should, I think, be multiplied, in order to keep hope and exertion active; but I do not now enter into details, I merely explain the principle.

I would not have the transition from one to another, whether up or down, marked necessarily by any magisterial interference. On the contrary, the marks constituting a species of current coin, the amount of their accumulation should carry its own consequences with it, entirely as of course. And practically, men will probably be found to linger long about each separate line of demarcation. The novelty of the indulgences annexed to each higher step will at first seduce to extravagance, or may even in some cases betray into offence, and thus lead to fines, again placing them out of reach; and this course may be repeated even more than once. But it is thus expressly that self-command will be gradually strengthened; and, although practically punishment will be inflicted for irregularity, it will be without the moral injury arising from incessant investigations and appearances before a magisterial authority.

As the men severally attain their freedom, the same general principles should be made to apply, though modified in detail by the circumstances. It would be out of the question to reduce free men again to bondage for a trifling irregularity; but, on the other hand, the settlement, having a strong interest in maintaining a suitable check on the conduct of freedmen waiting an opportunity to depart, should be provided with the means. For this purpose then, I would propose that such, restored by the act of their emancipation to their individuality and no longer connected with each other, should yet for a given time, if they wait so long, or until they depart if within that time, have work given them, and marks bestowed according to their conduct as before, and that government should undertake, on their departure, to give them twice or three times the value in money of whatever accumulation they so make over and above what they expend. By this means a further training would be given them; their freedom would yet not be invaded. Prisoners discharged in that way would nearly all carry a little money with them, the earnings of their individual good conduct when extraordinary restraint was over; and the end of their treatment would correspond to the beginning their hope, caution and self-command being beneficially stimulated throughout.

A. Maconochie.
MEMORANDUM on the formation of a Library at Norfolk Island.

There being no Books at present accessible to the Prisoners at Norfolk Island, His Excellency the Governor has been pleased to authorize the immediate outlay of £20 towards remedying this important defect. Many Books, however, that would be of extreme value in such a situation, cannot be thought of with only this Sum; and some others could not, probably, be procured at all in these Colonies, or only at exorbitant prices. I subjoin the names of a few of these in hopes that they may be sent from England.

The respective Series of the Farmers' and Mechanics' Magazines I think would be eminently useful. I have practically known several examples of the minds of men in very humble life, and otherwise remaining illiterate, stimulated to considerable activity in their own lines by suggestions taken from these Books. And, besides the valuable abstract effect thus produced, the Scheming and Contrivance for the future encouraged by it appear to me eminently calculated to wean from vicious retrospections and fix the attention on honest methods of existence subsequent to discharge.

For the same reasons, a tolerably good Encyclopedia would be desirable with Loudon's three works of the same character on Agriculture, Gardening, and Cottage Architecture. Davey's Lectures, or some other work on Agricultural Chemistry, would be also valuable. The Industrial Series of the Useful Knowledge Society, other economical works of sorts (in particular guides in the common arts of life, as Brewing, Baking, Farriery, etc.) Cobbett's Cottage Economy, these and such like would be all valuable even though of unequal merit. It is not the absolute instruction that may be thus obtained (though that also would be an acquisition), that I have here chiefly in view. Beyond it is the interest that may be thus given to labour and contrivance by exhibiting their actual results and suggesting other probable ones. An uneducated man is newly born when his mind is thus awakened to observation and intelligence even in the homely Sphere to which his labours may be confined.

I need not specify Moral and Religious Works. They should be of various kinds, Narrative as well as Didactic; and I have no objection but rather the reverse to Books being included in them even of controversial Divinity. Polemical discussions are sometimes inconvenient; but I do not dread them, for they are nearly always, I think, improving. They open the mind to a perception of the value of minute distinctions; and fix it on its highest interests, even through the medium of error. Wherever a taste for them prevails accordingly, as in Scotland, Switzerland, etc., it is always found accompanied with other good qualities; while, on the contrary, where they are despised as in France, or crushed as in Spain, the national character seems to suffer. I would thus not encourage them; yet, where denominations are otherwise on a footing of perfect equality, I should have no fear of them even in a Prison. It is the secular arm that puts the sting into religious difference; nor is there any principle of my management to which I would attach more value than to this (though it is here expressed out of place). I would expect the cordial co-operation of all denominations in the most interesting of all tasks, the more
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interesting that it is a strictly tangible and practicable one, in which their respective Success can be measured exactly. But I would, in turn, Study to deserve personally this co-operation by treating all with unreserved cordiality. I believe that there may be Error, because there must be imperfection in the Religious Faith of the best; but that the degree of this Error is not vital in any Christian Denomination seems demonstrable by the best fruits of Faith. Good works being evidenced by all.

Narratives of a Moral tendency would be all likewise useful, especially where (as in Robinson Crusoe for example) they teach energy, helpfulness in difficulty, regard and affection for our brethren in Savage Life, etc. And a good collection of Voyages and Travels, in particular including Cook's and the modern Missionary and other Pacific Ocean Voyages, would be for the same reasons important. The mind of the whole white Race in this Hemisphere wants softening towards its Aboriginal brethren; and nothing seems to me better Calculated to Supplement a Sense of duty on this head than a familiarity with narratives in which they are placed in important and interesting Situations, without, at the Same time, pointing out, with too much affectation, the object thus in view.

English Histories, whether general or Special, as Naval, Military, etc., would all be extremely valuable; and a good Collection of the most popular National Poetry would be not less So. I would Specify, in particular, Dibdin's and Moore's Songs, Burns', Scott's and Crabbe's Poems, the Waverley Novels, Miss Edgeworth's works, Miss Austin's, Miss Mitford's, Horace Smith's, etc. I should attach even Special value to such a Collection; and I would rather make it extensive than Scrupulously Select. I think the object a very important one of thus and by every other Suitable means investing Country and Home with agreeable images and recollections. They are too much wanting in the individual experience of our lower and Criminal Classes in the present day; and they ought to be Supplemented. A love of Country and tender recollection of it are among the finest of human feelings; and, in my close observation of the Prisoners in these Colonies, I have always found them conspicuous in the best characters, and deficient in the worst. I believe them thus to be important elements in the distinction between these; and, where the Specific object is the improvement of individual Character, they deserve accordingly specific cultivation. I am more doubtful of a National Theatre; yet Shakespeare's Plays ought to be included; and I would not myself object to any, though I fear rather than hesitate to recommend many more. The English Drama is often Licentious; but substantially its tendency is moral; and I extremely doubt the value of any virtue founded on Ignorance, or the mere absence of licentious images. Besides, dramatic representation is a portion of the Natural Sequence in training the mind from complete ignorance up to knowledge, from the necessity of being read to to the power and pleasure of itself reading; and it is thus by no means an advantageous circumstance that it should be so much proscribed, in many influential quarters, as it now is. Its average quality is deteriorated by the very want of their Countenance.

These remarks and Suggestions will not, therefore, I trust, be considered out of place on this occasion. However Sanguine I may be as to my eventual Success in bringing round, and at least much
improving the vast majority of the Prisoners Confided to me (and I am very sanguine), I am yet in no degree blind to the many essential difficulties in the task. And I should be unworthy of having it confided to me, if I had not definite opinions on the subject of the best means, or, if entertaining, I refrained from expressing them. There is no one of these means, either, in my opinion more important than the providing ample Mental recreation for them, suited to all tastes, adapted to all capacities, not too exclusively instructive, therefore not to a beginner formidable, but thus calculated to give their first development, in many cases, to power which I believe to be, even in the most apparently Stupid individuals, not so generally non-existent, as un-awakened Minds that once touched will expand almost as the Tree Shoots.

It would be important that Some of the principal works came out in duplicate; and that the whole should be stoutly bound or half-bound. To give interest to their perusal, it is my intention to extend the privilege of it only to those (not in actual Imprisonment), who are willing to *Sacrifice* Marks for the advantage, and I should be glad if these Marks, taken at their Current value, were allowed to constitute a Library Fund for its maintenance and increase.

A. MACONOCHIE.

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**Memorandum on the expediency of cultivating a taste for Music in Prisoners.**

Few positions are more readily admitted in conversation than those which maintain the humanizing powers of Music; Yet in England Scarcely any practical results are founded on them. In dealing with Criminals especially, however, I am convinced that this is much to be regretted. Music is an eminently Social occupation. Including performers and listeners, it employs many Individuals together. Its acquisition is difficult, and it therefore cultivates patience and perseverance. High perfection in it, in conjunction with others, can only be obtained by means of strict order and subordination; and it cultivates, therefore, these qualities also. It is of itself elevating and ennobling, and is, besides, combined frequently with high and elevating Poetry and Sentiment. It is sometimes thought to lead to drinking; but this, where true at all, applies to rude rather than scientific music, the waste not the cultivation of good natural taste and powers. The most Musical people, as the Italians and Germans, are thus sober rather than drunken; and the effects of National and plaintive Music, in keeping up patriotic and other kindly and improving feelings, require only to be adverted to. Lastly, the development of Musical powers furnishes individuals with a large stock of future amusement and occupation not involving fatigue, but rather cheering and alleviating it; and it would be thus an eminent advantage to those, who have once Shewn Social weakness, and whom it is therefore peculiarly desirable to discharge with minds weaned from former low amusements by a capacity for other higher and less dangerous.

Accordingly I wish much to have the means placed within my reach, whether at Norfolk Island or elsewhere, of acting on these views. I should wish Seraphines at least, if not Organs, allowed for our Churches, with an assortment of the usual Band Instruments. I am quite certain that they would be important accessories.

A. MACONOCHIE.
CAPTAIN MACONOCHIE TO SIR GEORGE GIPPS.

Sydney, 19th Febry., 1840.

An essential portion of the System of management, which I am desirous of introducing into Norfolk Island, being to make money by whatsoever means, thereby setting the example and instructing in the processes of as many forms of productive labour as possible, I have the honor to report to your Excellency that I have purchased a quantity of M.S. Music and Blank Music paper, the entire Stock of Mr. Ellard, Music Seller now leaving the Colony for England, and that it is my intention under my care as can be instructed in it, and such others as may be willing to gain marks of approbation by so employing their Hours of rest from more severe labour.

I am assured and believe that, by an immediate outlay of £46, I have thus acquired the means of realizing from two or three Hundred, besides being enabled in part to Supply a want much felt in these Colonies of modern music for sale, and bestowing on many prisoners a means of profitable sedentary labour, both before and after their discharge, which they often much want and which in after life may contribute both to sober and elevate their Habits and to maintain them.

I was unable to take your Excellency’s instructions before making this purchase, because, Mr. Ellard’s Stock being Sold by auction, I was compelled to decide on it at once or lose the opportunity of making it; and my first intention was accordingly to take it on myself without troubling you at present in regard to it. On second thoughts however, the principle involved in it seems an important one, and I avail myself of the opportunity to bring it generally and officially under your Consideration.

In a reformatory System, there is no point of more importance than the multiplication of forms of productive labour. It will prevent immediate idleness in any, for those unfit for one employment may be thus set to another. And, besides the habits and example so produced of constant occupation in any circumstances, the means of honest subsistence after discharge to the Prisoners may be in this way indefinitely multiplied. Accordingly in contrasting Norfolk Island with Tasman’s Peninsula at a situation for an establishment, I have especially dwelt on the greater facility afforded by the latter of so multiplying and diversifying employments, and have adverted among other topics to the greater profit that may be thus derived from prisoner labour. But, as in the Present Case, it is impossible to enter on such a place without some first outlay. This amounts now to only a few pounds, and in Norfolk Island altogether it could not probably exceed one or two Hundreds; But at Tasman’s Peninsula or even King’s Island, it might amount to thousands, and the principle ought thus to be contemplated early.

I have little doubt that after a time another arrangement might be made which to a considerable extent would avoid this one. Private Capital might be admitted into our Penal establishments under adequate regulation, the Government finding only buildings and labour at a fixed rent; and, besides the greater simplicity that would be thus given to the public accounts, it is probable that works so conducted would be more varied, more judicious, more enterprising at the same time, and more economically, therefore more instructively prosecuted by private hands than under any public management; but in the beginning it might be extremely inconvenient thus to let in private individuals before the Details of Public Discipline under a new System were fully matured, and such a Course could not be immediately recommended.

With these observations then I have the honor to place my present venture, as it may be called, entirely in your Excellency’s hands. If you can immediately approve of the principle of it, I should wish much to extend its amount (say) to £100, the difference to be laid out in the purchase of a turning lathe, and other superior cabinet makers’ tools, to be employed at my own discretion and independent of the Tools in the Royal Engineer store, applicable to the public works on the settlement. With the power of giving Superior employment to ingenious individuals which these would give me, and the stimulus to extra exertion and ingenuity which the System otherwise places at my disposal, I think that I may be enabled extensively to develop industrious habits even among some hitherto considered infirm and nearly useless. But, if your Excellency should not be prepared at once to sanction the introduction of what may be considered so great a novelty in to the public accounts, may I at least hope that, whatever outlay I may thus make myself, may be considered a Debt against any results I may produce from it, and that I may experience no difficulty in being repaid from the first funds received from them? I suggest this latter alternative solely because I feel that I ought to have taken your Excellency’s Instructions before I made any purchases in this way; but, as I have

Principles for labour of convicts.

Proposal for employment of convicts in copying music.

Request for approval of purchases.
already explained, the occasion presented itself unexpectedly, and I could not delay the opportunity of availing myself of it. I should be happy if the general question were brought with others connected with our Establishment under the Consideration of the Right Honorable the Secretary of State.

A. MACONOCHIE.

[Enclosure No. 6.]

MEMORANDUM on the expediency of Sending Female and Juvenile Convicts to the same general Establishment with Male Adults.

The Secretary of State has not yet, I believe, expressed his intentions regarding Female Convicts under the new System; but I fear, from various Circumstances, that it may be proposed entirely to Separate them from the Men. And, as regards Boys, the Inspectors of Metropolitan Prisons in England, in p. 108 of their third Report, express an opinion that it is "impossible to combine a good Juvenile with an Adult System of Discipline." I differ, however. So entirely from any views that would dictate either separation, and the principles on which this difference is founded seems to me so important, that I feel it indispensable to advert to the Subject with some formality.

All Systems of purely coercive Discipline are to a certain extent unnatural. They interfere with the freedom of individual action which men feel instinctively to belong to them, and hence the Strong rebound against them, which makes an increasing aggravation of their disabilities imperative precisely as they become otherwise improved, and has led to the popular Modern Doctrine that Men, Women and Children can only be beneficially treated either in absolute Seclusion, or in the nearest approach to it than we can reconcile to those feelings of humanity, which, being anterior to all reasoning in the Human mind, Cannot be altogether put down by it. But, when we Start from a different point and pursue a totally different object, our results will equally differ. These being the conclusions arrived at by Systems of vindictive and exemplary punishment, they cannot be the Same with those dictated by a desire to make it individually reformatory. And the two will be found, accordingly, to vary almost throughout, and not less in the Subsidiary arrangements and apparatus than in the object proposed by them.

These observations then are of general application in this Subject, and, besides their immediate purpose here, they will account for a fact recently pointed out to me by His Excellency the Governor, viz., that the reasons, alleged by me against Norfolk Island being made the Scene of my labours, are precisely those which, under the views suggested by a different System, have recommended its Selection. The truth is that this could hardly be otherwise. Nature is uniform in all her arrangements; and if we Seek to Stem her stream, we must bend all our efforts to elude her inherent tendencies; while, if we are content to go with her, we may seek by every means to avail ourselves of them. "Separate Men" is, accordingly, the language of those who desire to find them weak, and overcome them; but "combine them" is that of Such, as desire rather to improve their Strength and guide it. Providence has placed Man in the midst of Women and children in ordinary life; and they, on the other hand, are there also beneficially made
Subject to his influence and authority. But, those who are thus joined, the docile Student and pupil of the "ways of Providence" will not hope advantageously to Separate. The object of an improving discipline will thus not be to Sequester from Temptation, but to Strengthen against it; and its apparatus will not be Ascetic but Social.

In conformity with these views, I have accordingly explained elsewhere (Book p. 128) the general principles* on which I would manage Women. They should begin, equally with the Men, with Separate Imprisonment; and work their way out of that into the other stages of their discipline by the gain and accumulation of Marks. But I would, from the very first, introduce a Species of communication between the Sexes, by placing their respective Cells along opposite sides of the same Churches, so that the Instruction given them should be so far in common. I am persuaded that a thousand Softening influences might be thus communicated, and a mutual regard and consideration be generated, the slightest spark of which, however inappreciable to external observation, would yet favorably influence their after intercourse. In the stage of Social labour through the day but Separate Imprisonment at night, they should further, under regulation, have permission to be Seen and visited, so as to have a chance of engagements in their next Stage as Wives or Servants. In passing into social probation, they should either form parties among themselves, or if married be attached to their Husbands, or be other associated at their own choice; but always on the indespensible condition that the whole rose or fell together, And they should regain their Freedom only on the general terms; arrangements being at the same time made to give full value to their party for their good Conduct, if not even rather an advantage, in order to induce the better classes of Married Prisoners Severally to take charge of and be associated with them.

And the Boys Should be treated in the Same way. Their first Cells should be also opposite to Men's, in the Churches, or all three might be combined in each Church. In their first two Stages, they should be assiduously taught Reading and Handicrafts: and their progress through should be regulated by marks especially given to order and subordination. It is more difficult to restrain the petulance of youth than to overcome all its other faults. Formed afterwards into Parties, they should be distributed into Service or apprenticeship, as occasion offered, and care Should be taken that their good conduct also should fully reward those who might take charge of them, and consent to be associated with them.

That such a System as this, where fully developed, would satisfy every reasonable expectation, I have no doubt. All would thus benefit by the presence of all; and it is Somewhat a remarkable circumstance that, almost as I write, the following passage, for a different purpose, has appeared in a Sydney Paper. With the Sentiments expressed in it, I entirely concur.

Disparity of the Sexes.

It is vain expecting improvement in the morals of this Colony, except on a basis of families and the exercise of the relative and domestic duties. On the great charities of life, that is, on the establishment of families, depends all morals. It is the law of Nature. The family, consisting of husband, wife and children, is the cradle

* Note 73.
of order and morality. A house full of unmarried men is the cradle of disorder and immorality. It is confusion. The laws of God and nature are set at defiance by such a fictitious and artificial State of Society.

[Enclosure No. 7.]

MEMORANDUM suggested by Lord John Russell's, Lord Howick's, and Sir Richard Bourke's Several Minutes on Transportation.

HAVING been favored with a perusal of the above Minutes, and observing that they rather invite further communications than express decided conclusions on the part of Her Majesty's Government, I beg to offer the following remarks on various points adverted to in them.

1. It gives me great pleasure to observe that the principle of Social Management is adopted in them, for, almost whatever the details connected with this (even those of the Hulks), I am persuaded that it will be found to operate beneficially. Yet it is very desirable that the details should also be made theoretically promising. Without this, no experiment can be quite satisfactory.

2. I have elsewhere expressed at such length my opinion of the ineligibility of Norfolk Island as a permanent Station, that it may seem unnecessary now to revert to this topic. Yet it may be worthy of remark that the superficial contents of the Island are only 9,000 acres, instead of 17,000 here specified; and that, although undoubtedly most fertile in character throughout and as yet only in part cleared and cultivated, it yet cannot in prudence (in the opinion of the Agricultural Superintendent of whose intelligence every successive Commandant speaks in the highest terms) be much further brought in. Though the Climate is generally genial, it is characterized by occasional blighting winds, against which the existing woods are required as shelter; their removal would further probably affect the annual fall of rain; in dry seasons, the cattle depend much on their leaves for food; and there is no fuel but what is supplied by their thinnings. The productiveness of the Island is thus already, probably, nearly at its maximum; it can never export anything worth consideration; it must always depend largely on importation; it has no harbour, and can have none made; no considerable Government works can ever be required or undertaken on it, as on Bermuda, for the employment and repayment of labour; and thus, after a few years when the requisite accommodation is obtained, the men must all be set to spade husbandry, the least useful and most monotonous employment that could easily be desired for them. It will not prepare them for the future by acquainting them with varied and compendious processes of labour, and, by excluding the use of machinery, it will deprive their industry of the interest, and their minds of the development and activity produced by witnessing and employing ingenious mechanical devices. Instead of enlarging their powers and increasing their future resources, such a training will cramp and fetter all.

3. By transferring the head-quarters of the System to Tasman's Peninsula, or even, though much inferior, to King's Island, this whole picture would be reversed. Both these Stations appear to me much superior, also, to a new penal Colony on the north west coast of New Holland. The distance from the other Colonies, the
Tropical climate, and indefinite extent of this latter would all, I am persuaded, operate against success in it. Yet in any case, I think that it would be found desirable to retain Norfolk Island in its present character, as a receptacle for second and third Convict cases and other extreme cases. Escape from it is nearly impossible; a very slight guard, properly posted, will give it all requisite security: and a very little labour (all that can be expected from the worst characters) will yet go far there to maintain them. As a hospital for incurables, it thus seems perfect, though quite unsuited as a place for preparing men to return to society.

4. In regarding the question of transportation comprehensively, and assuming the principle of social management to be adopted, the first point requiring decision on the part of Her Majesty's Government appears to me to be, whether it will work the training parties in the existing colonies according to my original proposal, or carry out the whole process in a separate establishment, as recommended by Lord Howick. The difference is one of great moment; and the conclusion come to on it will affect many following details.

5. The first plan would lessen the immediate loss to the penal colonies of prisoners' labour in domestic service. It would also secure to all new Australian colonies the advantages from its qualified use contemplated by Sir Richard Bourke, for each of these, as well as the old colonies, might have one or more detachments sent to it on its requisition to the head establishment, and also, as I think, on it agreeing to pay a fair price for the assistance so derived. I think that both moral and economical advantages would ensue from this portion of such an arrangement; for it would stimulate the superintendents of prisoners to make their parties efficient in order to keep up their value in the labour market; it would afford a measure of their success in this, and it would fairly contribute to their expense. On the other hand, the second plan would be simpler, less immediately expensive, if not ultimately more economical; and it would, besides, assist the men to disperse, after their sentence expires, where their crime would be unknown, by protecting them from being seen, while in their penal condition, in the neighbouring colonies. This last consideration is undoubtedly of great importance; yet, it may be worth observing that, at a distance especially, it may be over-rated. I think that a more merciful view of early crime may, and probably will, and undoubtedly ought, speedily to take place in the public mind in England and elsewhere, for many of the early criminals are much more unfortunate than vicious. And this will be strengthened by penal establishments coming to be generally recognized as successful schools of labour and reform. In these cases then, and in the Australian colonies especially, where already tolerably conducted ticket of leave men are preferred as farm servants to free immigrants from their greater knowledge and experience, the recognition in question will not operate seriously to a man's economical detriment, if, indeed, it may not prove in many cases his boast and a foundation of success. But there must always be some moral injury from it.

6. Whichever plan is followed, the department should, I think, have one considerable central establishment and one head, in order to preserve uniformity in its general processes. And this head might also, if the first plan be adopted, be directed to collect, and
as far as he can reason on, "the movements of crime" in all the Colonies in which his Men are received; very important conclusions in discipline and government may thus, I am persuaded, be obtained. If ever for a time they should only be theoretical, or be considered over-drawn, or it may be false altogether, Still the data, on which they are founded and the processes of reasoning by which they are obtained, will be valuable contributions to moral Science. This Subject is further developed in my Book (cf. p. 57-9), and in private Letters which I addressed Some months ago to Lord Howick and Mr. Crawford. I think it is important.

7. The next point in relation to Transportation, on which an Necessity for decision re transportation.

8. I do not mean, at the same time, by these remarks to oppose Principle of all consideration for example in punishment. I think that the value of this, apart from principle, is for the most part prodigiously over-rated; yet I oppose simply it being sought apart from or at the expense of individual reform. It is no light example to make of a man to carry him from his country and condemn him to work out his liberation at the extremity of the Globe by a large accumulation, proportioned to his offence, of marks, the mass of which must be gained by substantial labour and service. But this treatment, if made subservient to his reform, will not only not injure, it will even greatly benefit him; and it may, therefore, be properly inflicted on the strictest social or benevolent principles. It is not so with labour made studiously rude or irksome, or so as to be unnecessarily disagreeable to him; this is to injure, and in so far sacrifice him to the (supposed) interests of others, and seems to me therefore most objectionable. I am confident indeed that it does not serve the real interests of any, and is thus an entire mistake. It is of the nature of the Gibbet and pillory as instruments of aggravated punishment, and ought to be laid aside with them.

9. So also with the long duration still proposed for punishment. This looks back and not forward; and, for this cause alone, it may
Objections to long duration of punishment;
to measurement of punishment by time;
and to terminology used.

Proposed system of marks for purchase of indulgences.

10. I very much regret to observe that a measurement of punishment by 
Time not commutable into conduct is still adhered to 
both in Lord John Russell's and Lord Howick's Minutes. This is 
most decidedly anti-reformatory in principle, besides the objection 
that I presume to offer to the length of Time proposed. I also some­
what more than doubt the expediency of introducing three elements 
into consideration in a Man's Training, his crime, and character 
previous to conviction, as well as his conduct in prison. The first 
ought to be expiated in the previous or punishment stage; testi­
mony regarding the Second is always of very doubtful value; and 
the third alone appears to me sufficient. I further regret extremely 
to see in this place the words "mercy" and "remission of punish­
ment" introduced. As I have elsewhere argued at greater length, 
such ideas ought, as much as possible, to be banished altogether 
from our improved Code. They are injuries in disguise. Let us 
make our punishments lenient but certain, and offer our prisoners 
not favours but rights on fixed unalterable conditions. In the one 
way, we shall train up free and independent men, qualified again 
to take their place in free Society; in the other, every one 
acquainted with the existing Penal Colonies must be aware that 
only unblushing supplicants are created, eye-Servants, men who are 
constantly on the watch to obtain a recommendation for petty Ser­
vice, and who have not the least idea of the reserve with which a 
consciences man will always give one.

11. No notice is taken in these minutes of my proposal that 
Marks of approbation should be made commutable into present 
indulgences, as well as available for ulterior release; but I earnestly 
hope that this may also be favorably received. Nothing will train 
to self-command so effectually or more complete the assimilation 
of penal to real life, which I think so important; And I particu­
larly wish to be enabled thus even to sell Spirits. If the principle
be right at all, it should be carried out. If any form of temptation is with held, against that temptation our Prisoners will go forth unprepared.

12. In my private Letters to Lord Howick and Mr. Crawford, I have suggested the fixing on all Criminals under the new System a small private brand (as between the Toes or elsewhere), which shall be invisable unless specifically sought for, but yet shall identify cases of second conviction in any part of the World. And this may be worthy now of official consideration. If approved of, it should be affixed immediately on conviction, in which case it would add much to the dread of conviction; and it should not be lawful to seek for it on a man’s person until after conviction on any subsequent charge, so that it may not operate to his prejudice on trial, though it should affect his treatment afterwards, and probably also his sentence. With this reservation, I think that it would be useful and not improperly harsh. The object of detecting renewed conviction in a reformatory System is very important; and, however minute the mark were made, and the more minute the better, it yet might be so varied as to express degrees of offence, and thus not bear unnecessarily harshly on Minor Offenders.

13. With this hold over early criminals, I would abolish entirely the System of Ticket of Leave, and discharge men quite free from the Training establishments. The Ticket of Leave, however secured, must always be a very dangerous position to the criminal; and it is expensive to the State to maintain. It impedes dispersion also, and the disappearance (from the known ranks of crime altogether) often of the best men because the most ashamed of their early misconduct. Necessarily confining released Criminals, too, to certain Colonies, it will retain to these Colonies that Penal character which it is much to be desired that they should lose.

14. With the various changes then of System thus contemplated, I am far more hopeful than Lord John Russell appears to be of the moral result. His Lordship seems to fear that it will be impossible to relieve the Australian Colonies of the eventual presence of Transports without inflicting a corresponding evil on England; but I am persuaded that such relief will speedily be recognized both by themselves and others, as otherwise calculated to be the greatest possible injury to them. I certainly differ, though with great deference, yet most widely, from Sir Richard Bourke, when he considers that many Convicts are at present morally improved; for on the contrary, though some are rendered submissive, acquiescent and reasonably well conducted, and this, where a low estimate is formed of their Original disposition, may be considered reform, yet as moral Agents they are all, I am persuaded, rendered worse by it than when they came out; at best they merely fear detection, or are otherwise kept by favorable circumstances or worn out constitutions easily and passively in the right line, with scarcely effort on their own part or temptation to deviate from it. But there are far higher capabilities than this in our criminal population, if we only seek to develop them aright and will aim sufficiently high in doing so. So far from being a curse to the Australian Colonies, our discharged Prisoners may become the great source of their wealth and strength, both moral and political, and may be the means, moreover, of beneficially spreading the English name and
language over the whole vast Pacific. They have a large debt, on
this score, at present to repay; but they are equal to the effort, I
am well persuaded, if not too hastily deemed unequal. If we do
not spare the schooling, we shall not miss the reward.

15. In laying the foundations for such a result, I have omitted
to notice the necessity of sending Women, as well as Men, to the
Reformatory Stations, and Single women (unmarried or divorced)
not such as are fettered by distant ties. This portion of Apparatus
appears to me, at the same time, of extreme importance; and I
have elsewhere adverted to it at length. It is thus necessary here
only to notice it. It does not appear from these Minutes to have
engaged attention at home at all.

A. MACONOCHE.

Sydney, 7th Feby., 1840.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 29, per ship Lady McNaghten; acknowledged
by lord John Russell, 18th July, 1840.)

My Lord, Government House, 26th Feby., 1840.

With reference to my Despatch of the 24th inst., No. 27,
in which I reported the departure of Captn. Maconochie to
Norfolk Island, there to assume the duties of Superintendent, I
have now the honor to forward to your Lordship a Copy of a
letter addressed to me by Captn. Maconochie, in which he repre­
sents the heavy expences he has had to encounter in removing his
family from Van Diemen's Land, and otherwise preparing him­
sell to enter on his duties at Norfolk Island, and begging that he
may be allowed a sum as outfit of £200.

I have not deemed it right, without your Lordship's express
sanction, to make any issue to Captn. Maconochie in the way
of outfit; but the present is a fitting opportunity for me to report
that I have, subject to your Lordship's approval and confirma­
tion, caused Captn. Maconochie's salary of £800 a year (autho­
rised by Lord Normanby's Despatch of the 11th May, 1839,
No. 46) to be paid to him from the 5th Novr. last, the day on
which he arrived in Sydney on my summons from Van Diemen's
Land, as reported in my Despatch marked Separate of the
23rd Novr., 1839.

I beg respectfully to request your Lordship's sanction to the
issue of pay to Captn. Maconochie from the date above men­
tioned; and I venture further to express a hope that this may
be without prejudice to his claim for outfit, should your Lordship
consider such claim to be admissible.

I have, &c.,

Geo. GIPPS.

[Enclosure.]

[A copy of this letter is not available.]
SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

My Lord, Government House, 27th Feby., 1840.

At the request of Captn. Maconochie, I transmit to your Lordship the accompanying account of King's Island in Bass Straits, contained in a Report addressed to Coll. Arthur, Lieutt. Governor of Van Diemen's Land, in (I believe) the year 1828 or 1829.

In my Despatch of the 23rd Novr., 1839 (marked Separate), I reported to Lord Normanby that this Island had been proposed by Captn. Maconochie for a Convict Establishment on his own plan, in the event of his not being allowed to have Tasman's Peninsula.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

A copy of this report will be found on page 263 et seq., volume VI, series III.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

My Lord, Government House, 28th Feby., 1840.

In obedience to the instructions contained in that part of Lord Normanby's Despatch of the 11th May, 1839, No. 46, which relates to the erection of a Prison at Norfolk Island, I have now the honor to forward to your Lordship the following Plans and Reports, prepared under the direction of Major Barney, the Commanding Royal Engineer in this Colony:

1. A General Plan of Norfolk Island;

2. Plan, with Elevation, Section, etc., of a range of Cells, such as has recently been erected at the Female Factory at Parramatta, and is proposed for Norfolk Island on the principle approved by the Metropolitan Inspectors of Prisons, with such alterations only as are rendered advisable by difference of Climate; it will be seen however that the lower Cells, which are intended for short periods only of confinement, are as dark as they can be made, consistently with proper ventilation, and only of half the size of the upper ones.

3. Plan, with Elevation, Section, etc., of a Prison on a plan recommended by Captn. Maconochie.

4. Report and Estimate of Works (including the Prison) rendered necessary at Norfolk Island by the recent orders received from England for greatly increasing the number of Convicts maintained there.

It is according to the views of Captn. Maconochie, as developed in this Memorandum, that the Plan No. 3 has been prepared. Your Lordship will perceive by the Report of Major Barney that the expense of a Prison on either of the Plans Nos. 2 or 3 will be about the same, the expense of the increased width of the Central Gallery (or Church as it is called by Captn. Maconochie) being balanced by the smaller quantity of Iron in his building. The cost of a Prison for any number of men upon either Plan is estimated by Major Barney at £10 per Cell, exclusive of labor, which will be wholly supplied by the Convicts themselves, and of materials produced upon the Island. It is essential however to bear in mind that, as the first object of the labor of the Convicts at Norfolk Island is to be the raising of Agricultural produce for their own subsistence, nothing but the surplus labor, after providing for this object and for some other objects also of prime necessity, can be applied to the erection of a Prison; whence it will follow that the work must proceed slowly, unless indeed the men employed on it were rationed entirely from Sydney, which would increase the expense of the building in an enormous degree. Of the rate at which a building of this sort might be expected to advance, I can hardly venture to hazard an opinion; but I am inclined to think that a rate of progress of from 50 to 100 Cells per annum is as much as ought to be expected; and that consequently a Prison for 500 men would not be completed in less than from 5 to 10 years.

As Captn. Maconochie has developed his own views of what a Prison ought to be, I shall content myself with remarking that in many essential points he is at issue with the Home Inspectors; and that, whilst they consider it necessary to ensure absolute separation by strength of Masonry, Bolts, Locks and Bars, Captn. Maconochie proposes in great measure to dispense with such securities.

Bearing in mind these very opposite views and opinions, what I would respectfully recommend to your Lordship is that, if it be decided to keep Captn. Maconochie at Norfolk Island, and to allow him to make full experiment of his own system, a Prison, consisting of two Wings and a Central Building according to the Plan No. 3, and capable of accommodating 240 Prisoners, should be commenced with as little delay as possible, as I cannot help feeling anxious that, if Captn. Maconochie's system is to be tried at all, it should be tried as a whole, and not parts of it only be adopted. But if, on the other hand, Captn. Maconochie is to be removed, as he himself wishes, to Tasman's Peninsula or
any other locality, or if his system is to be departed from at Norfolk Island, I would then recommend that a radiating Prison for 500 men should be commenced, according to the Model Plan of the Inspectors in their fourth Annual Report, with such modifications only as have been adopted at the Female Factory, and which are shewn in Plan No. 2. I do not forward a General Plan of such a Prison, as it would be only a Copy of the Inspector's Plans, published with their fourth Report.

The modifications however, which I allude to, may further be explained as follows:—

1. The lower Cells in some, if not all of the Wings, to be as dark as they can be made, consistently with the free admission of air, and only half the size of the upper ones.

2. The ventilating and heating apparatus to be dispensed with, being unnecessary in a Climate where the external air may be freely admitted at all seasons of the year.

3. The Water Closet Apparatus to be dispensed with, the free admission of the external air rendering it less necessary than in a cold climate, and the expense of it being very considerable.

Your Lordship will observe that the Estimate of Major Barney provides for some other Works of Minor consideration, the two first of which I have already authorised, namely, a Defensible Guard House, or sort of stronghold for the Military, a work which has been long desired at Norfolk Island, but may now I think be considered indispensable; and secondly, the temporary accommodation ordered by Lord Normanby's Despatch of the 11th May, already referred to.

Nos. 4 and 5 in the Estimate are for Works not of immediate urgency, but which will be required as the Establishment is increased.

I have, &c.,

Geo. Gipps.

[Enclosures.]

[Copies of these papers will be found in a volume in series III.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 32, per ship Lady McNaghten.)

My Lord,

Government House, 29th Feb., 1840.

In connexion with the several Despatches which I have lately addressed to your Lordship on the subject of Norfolk Island, I do myself the honor herewith to forward a Copy of a letter, which was recently written by my order to the Deputy Commissary General, on the subject of providing food for an
increased number of Convicts at that Establishment; and also a copy of Mr. Deputy Commissary General Miller's reply to the same.

That some difficulty will be found to exist, as apprehended by Mr. Miller, in providing supplies for a large number of Convicts at Norfolk Island cannot, I think, be doubted; but at the same time there will not be, I trust, any that the rapidly increasing resources of this Colony will not enable us to overcome.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[Copies of these letters will be found in a volume in series III.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 27, per ship Maitland; acknowledged by Sir George Gipps, 26th February, 1841.)

1 March. Downing Street, 1 March, 1840.

Sir, I transmit to you the Copy of a Letter from Bridget Buckley, applying for information respecting the fate of James Irwin, who is supposed to be residing 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.,

J. RUSSELL.

[Enclosure.]

THE humble petition of Bridget Buckley of Moy in the County of Clare, Widow,

To The Right Honorable The Secretary of State for the Colonial Department, Downing Street, London, Sheweth.

May it please your Lordship, Petitioner humbly and respectfully takes leave to state that a Brother of hers, named James Irwin, a Native of Effin in the County of Limerick, was employed as a Clerk in a Military Department in the Island of Malta, which place he left in or about 16 years since, and went out to New South Wales as an Emigrant or Settler, and has not been heard from by his friends since he Emigrated. But a Man, who lately returned from that Colony, stated that the said Jas. Irwin resides convenient to Sidney. Petitioner humbly and respectfully begs leave to state that she wrote several Letters to Sydney, but has received no account of him. She respectfully states that she is a poor widow endeavouring to provide for five Orphan Daughters, and that it is the life of her Brother, the within named James Irwin, that it is of a farm she holds which is her sole and only dependence to rear her poor helpless family. Petitioner respectfully states that her Landlord has given her notice that he will dispossess her, if she does not shew satisfactorily
that the said James Irwin is living; and, as she has not re-
ceived a letter from him within the last seven years, Your Lord-
ship's sense of justice and humanity emboldens her to approach you
with an humble respect and she humbly and fervently prays that
you will be graciously pleased to take her petition and truly dis-
tressed and destitute situation into your Lordship's just, humane,
tender and charitable consideration, by causing an enquiry to be
made in the Colony respecting the said James Irwin, that Petitioner
and her poor helpless orphans may not be thrown Houseless Wan-
derers and a burthen on the public. And Petitioner and her Grate-
ful Orphans as in duty will ever pray, etc., BRIDGET BUCKLEY.
24th Feb., 1840.
P.S.—Please direct Bridget Buckley, care of Mr. Thos. W. Locke,
Miltown Malbay, Cty. of Clare, Ireland.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 33, per ship Lady McNaghten; acknowledged by
lord John Russell, 10th September, 1840.)

My Lord,
Government House, 1st March, 1840.

Having had occasion to address to your Lordship various
Despatches* on the subject of Norfolk Island, and the proceed-
ings which have been adopted in order to carry into effect the
instructions contained in Lord Normanby's Despatch of the
11th May, 1839, No. 46, I think it right to bring more particu-
larly under your Lordship's notice the points on which it
appears to me essential that I should receive with as little delay
as possible the decision of your Lordship.

These points are:

1. Whether Capttn. Maconochie is to remain at Norfolk Island
   or be removed, as he himself wishes, to Tasman's Peninsula or
   King's Island;

2. In the event of Capttn. Maconochie being continued at Nor-
   folk Island, whether he is to be allowed to carry into full effect
   his own views of Convict Management, or how far he is to be
   controlled by pecuniary or other considerations;

3. If Capttn. Maconochie be removed, whether Norfolk Island
   is to revert to its former condition of a Penal Station for the
doubly convicted only; or whether an Establishment on the prin-
ciples, laid down by Lord Normanby in the Despatch above
alluded to of the 11th May, is to be maintained there;

4. Whether a Prison is to be commenced at Norfolk Island,
   and in such case, which of the two Plans submitted with my
   Despatch of the 28th ulto., No. 31, is to be adopted.

A further question for consideration, though one which per-
haps does not press for immediate decision, is whether, in the

* Marginal note.—Separate, 23rd Novr., 1839; Nos. 27, 28, 29, 30, 31 and 32
of the 24th, 25th, 26th, 27th, 28th and 29th Feb., 1840.
event of the New Establishment being continued at Norfolk Island, the old one for the doubly convicted is to be removed. I will content myself at present with saying that, if this be decided on, the choice will, as it seems to me, lie between occupying some other Island in the South Pacific as a substitute for Norfolk Island, and establishing within the Colony a Penitentiary of the strictest kind. I have, &c.,

GEO. GIPPS.

7 March.

Transmission of letter from H. G. Douglass.

Application by H. G. Douglass for compensation for refusal of deeds of land grants.

Lord John Russell to Sir George Gipps.

7 March, 1840.

Sir George Gipps.

I transmit to you, herewith, a Copy of a representation which has been addressed to me by Dr. Henry Douglass on the subject of a Grant of Land made to him in the Year 1825, but which, it is stated, had been subsequently cancelled; And I have to request that you will furnish me with a report on the facts of the Case.

I have, &c.,

J. EUSSELL.

[Enclosure.]

Mr. H. G. Douglass to Lord John Russell.

27th February, 1840.

My Lord,

I beg to call Your Lordship's attention to one of the most extraordinary and unjust acts ever exercised against any Individual. In the year 1825, I received a Grant of Land to the extent of 2,000 acres from Sir Thomas Brisbane, then Governor of New South Wales. I selected this Land with permission at Narrigo in the County of St. Vincent, built huts, erected stockyards, and depastured several flocks of sheep and head of Cattle thereon. The Grant was made by the Governor in the same manner as hundreds of others were, namely, inserting the name of the Grantee and the number of acres granted in a Book, each page of which was signed by the Governor and sealed with the Colonial Seal; The suddenness of his departure, together with the insufficiency of the Surveyor General's Department, preventing the Boundaries of the several Grants being so clearly defined, as to allow of their exact lines being described in separate deeds for the Governor's execution to the different Grantees.

On my leaving the Colony in 1828, although some of my Cattle remained on the Land, I leased it, with 4,000 acres I had obtained permission to purchase, and on which I had paid the deposit of 10 per cent. together with a farm belonging to my son in the County of Camden to Mr. Wentworth. He occupied it as my tenant for three years, the term of his lease.

I confided the management of my property to three persons, two to act, one of them subsequently declined to act. Mr. Scott died two years after I left, and Mr. F. Stephen, the third, cruelly
Russell to Gipps. 558

neglected my affairs. I subsequently sent a power to Dr. Carlyle
to act with Mr. Stephen, but that Gentleman declined to act. I
next confided in Mr. Alexander Lindo, a Solicitor. He was un-
fortunately drowned shortly after his arrival in the Colony; lastly,
gave a power to Mr. Gaffney, who at present resides in the Colony;
and, in answer from him to my direction to take up the deed of
Grant from the Secretary's Office, he acquaints me that, on that
day August 5th, 1839, he had received a letter from the Colonial
Secretary, stating that the Grant I claim was one of those can-
celled twelve years ago in consequence of "non selection,"
pursuant to Government notice of October, 1826 and 1827, that the
Land had not been chartered to me at the Surveyor General's Office,
and that Government had since sold this very land to Colonel
Mackenzie who is now in possession of it.

It is difficult my Lord to conceive so monstrous an Act of injus-
tice in the present century; I was residing in the Colony till May,
1828, and held the appointment of Clerk to the Council. The Grant
was made to me in the manner similar Grants were made to others;
I had possession of it, had, as I have stated to Your Lordship,
erected Stockyards and Buildings, and depastured Flocks and
Herds thereon; and further, a Mr. Galbraith having encroached
upon my Land, I complained to the Governor, who ordered the Sur-
veyor General to report, and I have the honor to transmit a copy
of the report of the then Surveyor General, Mr. Oxley, marked
No. 1, dated Decr. 16th, 1826. Also a letter from the Colonial
Secretary marked No. 2, dated 19th December, 1826, to Mr. Gal-
braith, enclosing the Surveyor General's Report, and desiring that
Government "to give no room for further complaints."

Having made additional purchases of Stock, I applied in March,
1827, to the Governor for permission to Rent 5,060 acres adjoining
the Land I held already at Narrigo. A reference was again made
to the Surveyor General, the Land not having even then been laid
out in sections, owing to the very limited establishment of the Sur-
veying Department. On the 6th June following, I received such
permission (marked No. 3). Mr. Galbraith however still en-
croaching on my Land, the Surveyor General was directed to make
a special report more exact as to boundaries than heretofore, which
he did, and I have the honor to enclose a copy of the Colonial
Secretary's letter of the 19 Feby., 1828 (marked No. 4), which
describes the lines laid down by the Assistant Surveyor.

Your Lordship will be pleased to remark in this letter he says:
"There will be no objection to your renting, with a view to pur-
chase, any additional land contiguous to that you have already
selected at Narrigo, to the extent of 5,060 acres, which with 7,100,
which you now hold, will complete the quantity His Excellency is
authorized to Grant to any Individual, namely, 12,160 acres."

Of these, I held

2,000 acres, Grant by Sir Thos. Brisbane, now in question.
4,000 by purchase, one tenth deposit being paid.
1,100 Grant on the Liverpool Road by virtue of a Government
Order, having kept eleven Government men for three
years, over the number I was by the then existing
order obliged to keep.

5,060 Rent and Lease.

12,160.
1840.
7 March.

Application by
H. G. Douglass
for compensation for refusal of deeds of land grants.

I was ordered peremptorily by General Darling to leave the Colony in May, 1828; but it was over and over again declared to me that, so soon as the Surveying Department had completed the survey of the County of St. Vincent, my Deeds of Grant would be perfected and given to my Attorneys. The fault of its not being delivered rested with the insufficiency of that Department; and surely, my Lord, I am not to be visited with the consequences of their incapability or neglect.

If it should be said that My Attorneys ought to have been aware of the Land having been sold to Col. Mackenzie, I beg to recall to your notice that Mr. Scott and Mr. Stephen had died, the next, Mr. Lindo, was drowned, and, when Your Lordship takes into consideration the length of time which elapses before a reply to a letter from can be received in the Colony, it will not seem surprizing that a long period had elapsed in appointing other Attorneys in the room of those who had died; but, whatever neglect they might have shown in my affairs, it could be no reason for cancelling the Grant which had legally been made to me. And it is impossible to conceive how that granted land could be taken from me and sold on the ground of "non selection" in the face of the Colonial Secretary's letter of the 19th of February, 1828. I therefore humbly submit to your Lordship that you will be pleased to order the amount of the present value of my Grant of 2,000 Acres to be paid to me by the Colonial Government, as well as the £100 instalment paid on the purchase of the 5,000 acres of land.

I have, &c.,
HENRY G. DOUGLASS, M.D.

[Sub-enclosure No. 1.]

SURVEYOR-GENERAL OXLEY TO COLONIAL SECRETARY MACLEAY.

Sir,
Surveyor General's Office, 16th Decr., 1826.

I have the honor to acknowledge the receipt of your letter of this day's date, requesting me to point out how the boundaries between Dr. Douglass and Mr. Galbraith may be defined, in order to a communication being made to them accordingly.

There is a stream of sufficient magnitude to be a Parish boundary running through Narrago from the S.E. falling into the Shoal Haven River. This stream is a well defined natural boundary. Dr. Douglass's Establishment is on the North side of this stream, and Mr. Galbraith's on the South. On either side there is a fair proportion of Land; and, taking this stream as a Boundary, each party having the usual frontage, there can be no difficulty in each receiving the several quantities they may be entitled to without interfering with each other: the stream separating them.

I have, &c.,
J. OXLEY.

[Sub-enclosure No. 2.]

COLONIAL SECRETARY MACLEAY TO MR. G. GALBRAITH.

Sir,
Colonial Secretary's Office, 19th Dec., 1826.

I am instructed by His Excellency the Governor to transmit you the enclosed copies of a letter* from Dr. Douglass, complaining that you had taken possession of the ground lately directed by His Excellency to be given up to that Gentleman at Narrago, and a

* Marginal note.—15 and 16 Decr., 1826.
RUSSELL TO GIPPS.

1840.
March.

report upon the subject by the Surveyor General. In so doing, I am further instructed to inform you that His Excellency expects that you will consider the Stream alluded to in the latter as the Boundary between you and Dr. Douglass, and give no room for further complaint.

I have, &c.

ALEXR. MCLEAY.

[Sub-enclosure No. 3.]

COLONIAL SECRETARY MACLEAY TO MR. H. G. DOUGLASS.

Sir,

Colonial Secretary's Office, 6th June, 1827.

Having submitted to the Governor your letters of the 2nd Octr. and 17th April last, I am directed by His Excellency to inform you that there will be no objection to your renting, with a view to purchase, any additional Land contiguous to that you have already selected at Narraga to the extent of 5,000 acres, which, with 7,100 acres that you now hold, will complete the quantity His Excellency is authorized to grant to any Individual, namely, 12,100 Acres.

For the above quantity, therefore, I do myself the honor to enclose the usual form of reference to the Surveyor General for authority to select.

I have, &c.

ALEXR. MCLEAY.

[Sub-enclosure No. 4.]

COLONIAL SECRETARY MACLEAY TO MR. H. G. DOUGLASS.

Colonial Secretary's office.

Sir,

Sydney, 19th February, 1828.

I have had the honor to receive and submit to the Governor a Report by the Surveyor General, accompanied by a Chart of the Lands at Narraga in dispute between yourself and Mr. Galbraith; and I am directed to inform you that, in accordance with that Officer's suggestions, His Excellency has come to the conclusion that the following will be the most equitable division of the Lands in question, and he has been pleased to command that they shall be so divided accordingly, viz.:

The part appropriated to you is bounded on the North and North East by the Endrick River, on the West by the Tetringo Brook from its junction with the Endrick until it crosses the section Line laid down in the Surveyor General's Chart as running North and South nearest to the East side of your Huts, then by that section Line until it includes the quantity of Land to which you are entitled, and in like manner by other section Lines on the South and East sides.

Mr. Galbraith's Lands is to bounded on the North East by the Tetringo Brook from the place where it crosses the section Line running East and West, nearest to the North side of his Huts, until it crosses the section Line running North and South nearest to the East side of the Huts; then by that and other section Lines, so as to include the quantity of Land to which he is entitled.

The Surveyor General has been instructed to include your names in his next half Monthly Abstract, when you will each receive a written communication specifying the conditions on which you are respectively permitted to take possession.

I have, &c.

ALEXR. MCLEAY.
1840.
9 March.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 29, per ship Maitland.)

Downing Street, 9 March, 1840.

Sir,

I transmit to you a Copy of a Letter, which I have received from Sir Thomas Mitchell,* the Surveyor General to your Government, containing an Application for a further extension of his Leave of Absence.

I also inclose a Copy of the Answer, which has been returned by my direction to that application, from which you will perceive that, under the peculiar circumstances stated in his application, I have consented to an extension of his Leave of Absence in this Country for three months from the present time.

I have, &c, J. EUSSELL.

[Enclosure No. 1.]

SIR THOMAS MITCHELL TO LORD JOHN RUSSELL.

My Lord, 55 Hans Place, 2 March, 1840.

Not having been able to bring the publication of the Peninsular Plans* to a completion within the period of my leave of absence from New South Wales, although I have devoted all my time to the work, I am obliged to solicit an extension thereof for six months.

Being fully aware of the official objections to a compliance with my request, I have endeavoured to obtain some testimony from competent authority for Your Lordship's further information and satisfaction; and I trust that the notes herewith enclosed will be sufficient to convince Your Lordship that my application for an extension of leave of absence is made solely for the accomplishment of a Public work.

But, from my anxious desire to complete it, and being impressed with its importance not merely as a Military but as a geographical work, I may not have urged my claims on the indulgence of Her Majesty's Government for permission to complete it so explicitly as I ought. I therefore beg leave to add that, in introducing such improvements in the art of representing ground, as the recent discoveries in science afford, and in bringing the labors of the modeller-metal-founder-mechanist and chemist into new combinations, for the attainments of ends so practically important to new Colonies, I feel that my present occupations are not wholly unconnected with the duties of the Surveyor of British Colonies, more especially of one which has already derived considerable benefit from my early experience in those topographical labors, which I am now endeavouring to bring before the public.

I have, &c, T. L. MITCHELL.

[Sub-enclosure No. 1.]

SIR GEORGE MURRAY TO SIR THOMAS MITCHELL.

My Dear Mitchell, 5 Belgrave Square, 2nd March, 1840.

If any statement from me can at all contribute to satisfy the Secretary of State for the Colonies of the importance of your aid towards the completion of the national work in which you are engaged, I shall be happy to furnish it.

* Note 104.
I am indeed quite satisfied, by all I have seen of the progress of that work, that your presence here for some time longer is indispensable to its being brought out in a creditable manner, or, I should rather say, to its being ever completed.

The numerous obstacles, you have had to contend against, would have stopped the work long since, had it not been for the extraordinary perseverance which you are endowed with, in addition to the ability and the acquirements requisite for such an undertaking, and the entire disinterestedness with which you have acted in the whole matter.

I most anxiously wish, both in consideration of what I think due to yourself, and on the ground of the National character of the work, that you may not be withdrawn from it; but I am not in a position to interfere otherwise than I have above-mentioned.

I remain, &c.,

G. MURRAY.

[Sub-enclosure No. 2.]

SIR HUSSEY VIVIAN TO LORD JOHN RUSSELL.

Ordnance Office, 29 Feby., 1840.

I place in your hands an application from Sir T. Mitchell for an extension of his leave; if it can be granted, it will be of great service in forwarding a publication of some national importance, Sir G. Murray's account of the Peninsular Campaigns. I must however beg of you distinctly to understand that I say this perfectly unknown to Sir G. Murray, and I am influenced to it solely by a desire to promote the object for which he wishes to remain, and by the applications I have received from some friends to interest myself with you in Sir T. Mitchell's favor.

Ever truly, &c,

HUSSEY VIVIAN.

[Enclosure No. 2.]

UNDER SECRETARY VERNON SMITH TO SIR THOMAS MITCHELL.

Sir,

Downing Street, 7th March, 1840.

I am directed by Lord John Russell to acknowledge the receipt of your letter of the 2nd Instant, and to acquaint you in reply that, under the peculiar circumstances which you have represented, and which are attested both by Sir George Murray and Sir Hussey Vivian, his Lordship feels justified in authorizing an extension of your leave of absence in this Country for three months from the present date. But, advertirng to the circumstance that the undertaking which detains you in this Country has no connexion with your duties as an Officer of the Government of New South Wales, Lord John Russell cannot hold out to you any expectation that it will be in his power to prolong your leave of absence to a later period; and he therefore desires that you would make preparations to sail hence on or before the 15th of June.

I am, &c.,

R. VERNON SMITH.
1840.
9 March.

Transmission of report by J. H. Plunkett.

Further land grants to W. Bligh questioned.

Land granted to A. J. King.

Information by J. H. Plunkett in supreme court re claim by heiresses of W. Bligh to land at Parramatta.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

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

My Lord,

Government House, 9th March, 1840.

With reference to my Despatches of the 7th Augt. and 11th Octt., 1839, Nos. 115 and 136, I have now the honor to forward a Copy of a Report made to me by the Attorney General of the proceedings in the Supreme Court of this Colony in regard to a claim by the Heirs of the late Governor Bligh to 105 acres of Land in the Town of Parramatta.

The only point, on which it seems necessary that I should offer any further explanation to your Lordship, is the reference in the Bill in Equity, filed by the Attorney General, to two other Grants made by Governor King to Governor Bligh, namely, a Grant of 240 acres in the District of Petersham, and one of 1,000 acres in the Upper Nelson District. These Grants* were made by Governor King to Governor Bligh on the same day, and precisely under the same circumstances, as the Grant was made of the Land at Parramatta, but were never set aside or questioned until now.

As mention has frequently been made, in reference to this case, of Grants made by Governor Bligh to Governor King in return for the Grants above mentioned, it may be right for me to remark that there is no Grant recorded from Governor Bligh to Governor King; but that there is one to the Wife of Governor King, namely, a Grant* of 790 acres in the District of Evan, dated the 1st Jany., 1807.

I have, &c,

GEO. GIPPS.

[Enclosure No. 1.]

[This was a map of Parramatta, showing the land claimed by the heiresses of Governor Bligh.]

[Enclosure No. 2.]

INFORMATION.

In the Supreme Court of New South Wales.

To the Honorable Sir James Dowling, Knight, Chief Justice, John Walpole Willis, and Alfred Stephen, Justices of the Supreme Court of New South Wales.

INFORMING, Sheweth unto your Honors, John Hubert Plunkett, Esquire, Her Majesty's Attorney General for the Colony of New South Wales, on behalf of Her Majesty, that Her Majesty is seized in Her demesne as of fee in right of Her Crown of and in one hundred and five acres of land, situate and being in the district of and forming part of the Township of Parramatta, in the Colony aforesaid, and also of and in two hundred and forty other acres of land, situate and being in the district of Petersham in the Colony.

* Note 105.  † Note 106.
GIPPS TO RUSSELL.

aforesaid, and also of and in one thousand acres in the Upper Nelson District in the Colony aforesaid, and all which lands and premises are hereinafter more particularly mentioned and described. And the said Attorney General further informeth your Honors that divers edifices and buildings for public purposes of great value have been erected upon the said lands in the district of Parramatta by Her Majesty and Her ancestors, all which lands Her Majesty ought to enjoy without interruption; but now so it is that Sir Maurice Charles O'Connell and Mary, his wife, Henry Astor Barker and Harriet Maria, his wife, Elizabeth Bligh, Frances Bligh, Jane Bligh and Anne Bligh, the defendants hereinafter named, combining and confederating with divers persons at present unknown to the said Attorney General, but whose names when discovered the said Attorney General craves leave to insert herein, with apt words, to charge them as defendants hereto, in order to prejudice Her Majesty's right to the said lands and premises, have lately laid claim to the said lands and premises, under pretence of some title by grant or conveyance of the said lands and premises by some ancestor of Her Majesty to them, or to the person from whom they pretend to derive such title. And the said Attorney General further charges that the defendants, in prosecution of their said claim, have lately commenced certain actions of ejectment in this Honorable Court for the purpose of enforcing their said claim and of obtaining possession of the said lands and premises, and among others upon Thomas Bell, John Williams, and the Reverend John Troughton. And the said Attorney General further charges that the last mentioned persons are in the possession or occupation of such parts of the said lands and premises as they respectively possess or occupy only as the servants or bailiffs of Her Majesty, and neither have nor claim any right of ownership therein. And the said Attorney General further charges that the defendants have had notice of such Her Majesty's seizin in the said lands and premises aforesaid, and have been warned against further prosecuting their said proceedings at law; but they disregard such warnings and, to countenance such proceeding, they pretend some title to said lands and premises under three alleged grants thereof, which they allege to bear date on or about the tenth day of August, one thousand eight hundred and six, and to have been made by one Philip Gidley King, hereinafter mentioned, to one William Bligh, deceased, who departed this life in or about the year one thousand eight hundred and seventeen, leaving the defendants, Mary O'Connell, Harriet Maria Barker, Elizabeth Bligh, Frances Bligh, Jane Bligh and Anne Bligh, his only surviving children and co-heiresses. Whereas the said Attorney General charges that, if any such grants exist, the same were obtained by the said William Bligh by fraud and by unusual and undue means, and by collusion with the said Philip Gidley King, and that they were made contrary to law, and ought not to be binding upon Her Majesty. And the said Attorney General further charges that the only book* in the public offices of the Colony, which purports to be a registry of said alleged grants of land, contains a certain entry in the words and figures following, that is to say—By, etc., William Bligh, Esquire, one hundred and five acres in the district of Parramatta, for a private residence near Parramatta, commencing six chains to the Westward of the

* Note 107.
Information by J. H. Plunkett in supreme court re claim by heiresses of W. Bligh to land at Parramatta.

present bridge, and returning from the river North thirty chains; thence North West to Smith's Farm, along South East farm to the river, which is there to be the boundary on West and South sides, excepting the leases of Caley and Eccles for the time they be leased, and any other thout may be included, and reserving four acres for the use of the mill; bounded by the mill race and pond, and to the river, and also a road of fifty feet wide to communicate with the mill, leading to the Eastward in the most convenient situation. Quit rent two shillings after five years. To be known by the name of Mount Betham. The clause respecting the exotic timber attached to this original deed as in deed to G. Blaxcell, page 190, this register.

In testimony, etc., this 10th August, 1806.

PHILIP GIDLEY KING.

Signed and Sealed in our presence:— RICHARD HUGHES.
GEORGE HOWE.

The above is a true extract from the Surveyor's return, and abridged in formula.

as in and by the said entry, to which the said Attorney General craves leave to refer, when produced will appear. And the said Attorney General charges that the said registry contains a certain other entry in the words and figures following, that is to say, William Bligh, Esquire, two hundred and forty acres, in the district of Petersham Hill, for a private residence near Sydney, commencing from Thomas Rowley's North corner on the Sydney and Parramatta Road, thence South 30 East fifty-five chains, bounding Rowley's Farm, then East 30 North forty-five chains; thence North 24 West seventeen chains fifty links to South East corner of Foveaux's lease, along said lease West 11 North twenty-one chains; thence North 24 West thirteen chains thirty links, and West 39 North to the road, along the road on the North West side of Grose Farm to the stream, which stream to its mouth is the North East boundary; and from thence up the stream to Johnston's Bridge, on the Parramatta Road is the Western boundary, and then the road to Rowley's North corner. Quit rent five shillings after five years. To be known by the name of Camperdown.

In testimony, this 10th August, 1806. PHILIP GIDLEY KING.

The clause respecting the exotic timber attached to this original deed as in deed to G. Blaxcell, page 190, this register.

Signed and Sealed in our presence:— RICHARD HUGHES.
GEORGE HOWE.

The above is a true extract from the Surveyor's return, and abridged in formula.

as in and by the said entry to which the said Attorney General craves leave to refer, when produced, will appear. And the said Attorney General charges that the said registry contains a certain other entry in the words and figures following, that is to say, William Bligh, Esquire, one thousand acres in Upper Nelson District, for a private residence between Sydney and Hawkesbury; bounded on the East side by the chain of ponds known by the name of the Second Ponds; on the North East side by a line North 40 West one hundred and twenty-three chains twenty links; on the West side by a line South 24 one hundred and three chains fifty-
eight links to the present Hawkesbury Road; and on the South
West side by that road. Quit rent twenty shillings after five years.
To be known by the name of Copenhagen.
In testimony, etc., this 10th August, 1806.

PHILIP GIDLEY KING.

THE clause respecting the exotic timber attached to this original
 deed to G. Blaxcell, page 190, this register.
Signed and Sealed in our presence:— RICHARD HUGHES.
GEORGE HOWE.

The above is a true extract from the Surveyor's return, and
abridged in formula.
G. BLAXCELL.

as in and by the said entry, to which the said Attorney General
craves leave to refer, when produced will appear. And the said
Attorney General further charges that the several lands mentioned
and described in the said several entries are the same lands whereof
Her Majesty is seized and possessed, as hereinbefore mentioned,
and to which the defendants lay such pretended claim, as aforesaid;
And the said Attorney General further charges that the said
William Bligh was appointed in the beginning of the year one thou­
sand eight hundred and six, by the Government of His late Majesty
George the Third, to succeed the said Philip Gidley King as Gov­
ernor in the Colony of New South Wales, and that he arrived at
Sydney in the said Colony on or about the sixth day of August, one
thousand eight hundred and six, with His Majesty's Commission
by Letters Patent as Governor of the said Colony. And the said
Attorney General charges that the Commission or Letters Patent
by which the said William Bligh was nominated and appointed
such Governor as aforesaid, expressly revoked and determined the
Commission or Letters Patent by which the said Philip Gidley King
had previously been appointed, and under which he had acted as
such Governor as aforesaid. And the said Attorney General charges
that, immediately upon such arrival of the said William Bligh as
aforesaid, the power and authority of the said Philip Gidley King
to act as and to exercise the powers of Governor were absolutely
superseded and determined. And the said Attorney General charges
that, immediately after the arrival of the said William Bligh, he
and the said Philip Gidley King for the purpose of colorably
carrying into effect a scheme then or previously concerted between
them of mutually executing in favor or for the benefit of each
other, or of the family or relatives of each other, grants of land
within the said Colony, entered into an unauthorised, clandestine
and fraudulent arrangement that the said William Bligh should not
at once assume the Government of the said Colony, but should
defer doing so until after the execution of such grants by him, the
said Philip Gidley King, as should be agreed upon between them;
and, as evidence thereof, the said Attorney General charges that,
although the said William Bligh arrived in Port Jackson, in the
said Colony, on the sixth day of August, one thousand, eight hun­
dred and six, and ought without delay to have published the Letters
Patent or Commission by which he was appointed such Governor
as aforesaid, and to have taken the oaths of office thereby pre­
scribed to him, and to have assumed the Government of the said
Colony, he, without any lawful reason or excuse for delay, fraudu­
ently delayed and neglected to comply with such his duty, and did
not in fact assume the Government of the said Colony until the
HISTORICAL RECORDS OF AUSTRALIA.

1840.
9 March.

Information by J. H. Plunkett in supreme court re claim by heiresses of W. Bligh to land at Parramatta.

twelfth day of August, one thousand, eight hundred and six; And the said Attorney General charges that the said alleged grants were executed (if any such were at all executed by the said Philip Gidley King), in pursuance and under colour of such fraudulent scheme and arrangement as aforesaid. And that the said Philip Gidley King had no power or authority whatsoever upon the said tenth day of August, one thousand, eight hundred and six, or any day after the sixth day of the same month, to execute any grants of land in the said Colony belonging to the Crown to the said William Bligh or to any other person. And the said Attorney General further charges that the said William Bligh was prohibited, debarred, and disqualified by his Commission and appointment as such Governor as aforesaid, from accepting and receiving any such grants, or deriving any benefit therefrom, and that such alleged grants to him were absolutely void and of no effect. And the said Attorney General further charges that, by the Commission and instructions under which the said Philip Gidley King was invested and entrusted with the Government of the said Colony, he was expressly prohibited from granting to any person any lands in the said Colony which had been cleared and improved at the expense of the Crown, without the special license of the Secretary of State for the time being first had and obtained. And the said Attorney General charges that the said lands in the district of Parramatta were part and parcel of lands which had been cleared and improved at the expense of the Crown, and for the legal and valid granting thereof such license as aforesaid was necessary to be previously had and obtained. And the said Attorney General further charges that, at the time of the alleged grant thereof by the said Philip Gidley King to the said William Bligh, no such license of the Secretary of State had been had and obtained nor has such license ever since been obtained or given. And the said Attorney General charges that such grants, if made at all, were made in direct violation and breach of the Royal authority and instructions of the said Philip Gidley King, even before his commission as Governor of the said Colony was revoked, and were absolutely null and void. And the said Attorney General further charges that, if the said three pretended grants were executed upon the day when they are alleged to bear date, they were executed in blank, and did not contain at the time of their execution any description of the premises which they are respectively alleged to convey, and that, if any such description is contained in the said alleged grants, which the said Attorney General does not admit, the same was inserted after the pretended execution thereof by the parties thereto, and that by reason thereof, independently of other circumstances, the said alleged grants are null and void; and, as evidence of the said last mentioned matters, the said Attorney General charges that no Survey or measurement of the said several lands and premises was had or could have been made between the time of the said William Bligh's arrival in the Colony, as aforesaid, and the said tenth day of August, one thousand eight hundred and six. And the said Attorney General charges that in fact no such survey and measurement were made till long after the said Philip Gidley King had resigned, and the said William Bligh had assumed the Government of the said Colony. And, as further evidence thereof, the said Attorney General charges that the above mentioned entries of the said alleged grants in the official book before
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mentioned, which, according to the regular course of passing grants of land within the said Colony, ought to have been made previously to the execution and delivery thereof to the said William Bligh, were not in fact made for several months after the said tenth day of August, one thousand eight hundred and six. And the said Attorney General further charges that the said William Bligh never asserted any right or title during his life-time to the premises, mentioned and described in the said pretended grants, or made any attempt to obtain possession of the said lands, and that the same were appropriated to and used for public purposes by the Government of the said Colony, with the full knowledge and acquiescence of the said William Bligh, and by his agents, and without any objection or remonstrance thereto being made by him or them. And the said Attorney General charges that from the time when the said pretended grants are alleged to bear date till the final departure of the said William Bligh from the said Colony in the year one thousand eight hundred and ten, and thence down to the present time, the lands, hereinafore mentioned as situate and being in the District of Parramatta, were and have remained in the undisputed possession or power of the Crown, and such possession was not nor has been at any time parted with by the Crown to the said William Bligh, or to any person on his behalf. And the said Attorney General charges that, for some time after the final departure of the said William Bligh from the said Colony, the defendant, Maurice Charles O'Connell, conducted and managed the affairs and property of the said William Bligh as his authorised and accredited agent; but he never laid any claim on behalf of the said William Bligh to the possession of the last mentioned lands, or objected to the occupation and disposal thereof by the Government of the said Colony as aforesaid. And the said Attorney General further charges that, even if the said alleged grants were valid and legal in their execution which he does not admit, they contained certain conditions and restrictions to be performed and observed by the grantee which have never been complied with, and that the said grants have in consequence become void, and the lands and premises intended to be conveyed thereby have become forfeited to and revested in the Crown. And the said Attorney General further charges that the said several grants and the lands therein respectively have become forfeited to and revested in the Crown. And the said Attorney General further charges that some time in or about the year one thousand eight hundred and fifteen, the Principal Secretary of State for the Colonies, having received notice of the said fraudulent and pretended grant of lands in the district of Parramatta, did, on behalf of His late Majesty George the Third and for the reasons
hereinbefore mentioned, order and direct a cancellation of the
said grants and a resumption of the lands therein mentioned and
described, and that, in consequence of such order and direction, His
late Excellency Governor Macquarie caused to be inserted in the
Government Gazette of the said Colony a certain notice or order,
in the words and figures following, that is to say, "Government
House, Sydney, 5th August, 1819, Civil Department. His Excel­
lency the late Philip Gidley King, Esquire, formerly Captain
General, Governor and Commander in Chief in and over His Ma­
jesty's Territory of New South Wales and its dependencies, having
by a certain deed under his hand and the seal of the territory,
bearing date the 10th day of August, in the year of Our Lord one
thousand eight hundred and six, given and granted unto William
Bligh, Esquire, his heirs and assigns, to have aud to hold for ever
one hundred and five acres of land, lying and situate in the district
of Parramatta, for a private residence near Parramatta, commencing six chains to the Westward of the present bridge and run­ning from the river North 30 chains; thence North West to
Smith's Farm, along South East line of the said farm to the river,
which was then to be the boundary on the West and South sides,
except as therein mentioned, the said 105 acres of land to be known
by the name of Mount Betham. And the grant of land so made by
the said Governor King having been in direct contravention to his
instructions as Governor, and without any special authority from
His Majesty's Ministers, and His Excellency the Governor, having
received instructions therefor from Mr. George Canning, his Majesty's
Principal Secretary of State for the Colonies to hold the said
grant as null and void, is hereby pleased to order and direct that
the said grant of land be resumed for the use of His Majesty's Gov­
ernment, and the Surveyor General of the Territory is hereby com­
manded to cancel the registry of said grant; and the heirs and as­
signs of the said William Bligh are hereby required to bring the
aforesaid deed of grant into the office of the said Surveyor General
for cancellation, and the said deed is hereby declared to be abso­
lutely void and of no effect in law or equity. By His Excellency's
command, (Signed) J. T. Campbell, Secretary," as in the notice
or order to which the said Attorney General craves leave to refer
when produced will appear. And the said Attorney General further
charges that the said alleged grants were made in a clandestine
manner, and contrary to the regular course of directions and in­
structions with which the said William Bligh and Philip Gidley
King respectively had been furnished with regard to their duties
as such Governors, as aforesaid, and also contrary to divers Acts
of Parliament in such case made and provided. And the said At­
torney General charges that, since such Government notice as
aforesaid, grants from the Crown of certain parts thereof have
been made to several individuals, and that others have been
admitted into the possession or occupation of other parts of the
said lands under promises of grants, or otherwise. And the said
Attorney General charges that the defendants have caused declara­
tions and notices in divers actions of ejectment to be served on
some of such parties, and among others upon Samuel Arundell,
Henry Baker, William Buchan, Mrs. Margaret Cahill, James Calden,
Stephen Chandler, William Cox, Edward Drinkwater, John Dark,
Nicholas Fenwick, Henry Fisher, Walter How, Hector
Mackay, Nathaniel Payten, James Pike, Joseph Snape. Philip
Stephenson, Mrs. Janet Templeton. John Thompson, John Tingcombe,
James Watts, Thomas Bell, John Williams, the Reverend Mr. Ullathorne, George Sutter, Richard Blake, William Tuckwell, and William Yates. And the defendants threaten and intend to proceed in the said actions, and institute the like or other proceedings at law against all the persons who are or may be in possession of the said lands and premises. And the said Attorney General charges that the defendants, for the purpose of asserting their pretended rights and claims under the said alleged grants, have forcibly and illegally put one Henry John Richardson into possession of part of the said lands and premises in the district of Parramatta, pretending the same was a vacant possession, and have commenced a certain collusive action of ejectment in this Honorable Court against the said Henry John Richardson, whereas the said Attorney General charges that the possession of the said land was not vacated, but that Her Majesty was in full possession thereof. And the said Attorney General charges that, under the circumstances aforesaid, the defendants ought to be restrained by the order and injunction of this Honorable Court from further proceedings in any of the said actions which are hereinbefore mentioned to have been commenced by them, as aforesaid, and from adopting any other proceedings at law in respect of the said lands and premises, and be decreed to deliver up such alleged and pretended grants, as aforesaid, that the same be cancelled. And the said Attorney General charges that the defendants, Henry Aston Barker and Harriett Maria, his wife, Elizabeth Bligh, Frances Bligh, Jane Bligh, and Anne Bligh, are now residing in England, or elsewhere out of the jurisdiction of this Honorable Court. And the said Attorney General charges that he is unable to make full proof of the matters aforesaid without the testimony of divers persons resident in England and elsewhere out of the jurisdiction of this Honorable Court. And the said Attorney General charges that the defendants have or had lately in their possession or power, or in the possession or power of their solicitor or agent, divers alleged grants from the Crown, deeds, letters, papers and writings, relating to the matters aforesaid, and whereby the truth thereof would appear, but they refuse to deliver the same to the said Attorney General, to the end, therefore, that the defendants may appear upon their several respective corporal oaths, to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, perfect, and distinct answer make to all and singular the matters aforesaid, and that as fully as if the same were here repeated, and they and every of them distinctly interrogated thereto, and more especially that the defendants may answer and set forth in manner aforesaid Whether Her Majesty is not seized in Her demesne as of fee in right of Her Crown, or some other and what right, absolutely possessed of, and in the several lands and premises hereinbefore mentioned and described, or of some and what part thereof, or how otherwise. And whether divers, or some and what edifices and buildings of great value, for public or other and what purposes, have not been erected by Her Majesty and Her ancestors upon the said lands and premises, or upon some and what part thereof, or how otherwise. And whether the defendants, or some or one and which of them, have or hath not lately laid claim to the said lands and premises, or some and what part thereof, and whether or not under such pretence as hereinbefore in that behalf mentioned, or under some and what
other pretence or how otherwise. And whether they have not
lately commenced certain actions of ejectment in this Honorable
Court for such purpose as hereinbefore in that behalf mentioned, or
for some and what other purpose, and whether they have not
causd certain declarations and notices in such actions, or in some
and which of them, to be served upon some and which of the parties
who are in the possession or occupation of the said lands and pre­
mises, or of some and what part thereof, and whether or not upon
the several persons hereinbefore first mentioned, by name, or upon
some or one and which of them, or how otherwise. And whether
the said last mentioned persons, or some or one and which of them,
are or is not in the possession or occupuation of such part of the
said lands and premises, as they respectively possess or occupy
only as the servants or bailiffs of Her Majesty, or how otherwise.
And whether any, and which of them, have or claim any and what
right of ownership therein. And whether the defendants, or some
or one and which of them, have or hath not received such notice
and warning as hereinbefore in that behalf mentioned, or to the
like, or some, and what other purpor or effect, or how otherwise.
And whether they do not, and why, refuse to comply therewith,
and whether the defendants do not claim a title to the said lands
and premises, or some, and what part thereof, under three alleged
grants thereof. or how otherwise, and whether the said alleged
grants are not of such date and between such parties as herein­
before in that behalf mentioned, or of what other date, and between
what other parties. And whether the said William Bligh did not
depart this life at such time as hereinbefore in that behalf men­
tioned, or at what other time. And whether the said William
Bligh made a will previous to his death or not, and whether he did
not leave the defendants, Mary O'Connell, Harriett Maria Barker,
Elizabeth Bligh, Frances Bligh, Jane Bligh and Anne Bligh, his
only children and co-heiresses him surviving, or how otherwise.
And whether the said alleged grants, or some, or one, and which of
them, were or was not obtained by the said William Bligh by
fraud, and whether or not by unusual and undue means, and
whether or not by collusion with the said Philip Gidley King, and
whether they were not made contrary to law, or how otherwise.
And whether they ought to be binding upon Her Majesty, and if so
why so, and whether there is any official registry of grants of lands
within the said Colony, and if so whether the same does not con­
tain such entries as are hereinbefore in that behalf mentioned, or
some, or one, and which of them, and whether such entries or entry
are or is not in the words and figures, or to the purpor or effect
hereinbefore in that behalf respectively mentioned, or to the like,
or some, and what other purpose or effect, or how otherwise. And
whether the several lands mentioned and described in the said
several entries, or in some, or one, and which of them, are not the
same lands whereof Her Majesty is seized and possessed, as herein­
before mentioned, and to which, or to some and what part whereof
the defendants lay such pretended claim as aforesaid, or how other­
wise. And whether the said William Bligh was not appointed in
the beginning of the year one thousand eight hundred and six,
or at some and what other time by the Government of His late
Majesty George the Third to succeed the said Philip Gidley King
as Governor of the said Colony of New South Wales, or how other­
wise. And whether he did not arrive at Sydney, in the said
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Colony, on or about the sixth day of August one thousand eight hundred and six, with His said Majesty's Commission, by letters patent or otherwise, and how as Governor of the said Colony or at what other time, or how otherwise. And whether the Letters Patent or Commission, by which the said William Bligh was nominated and appointed such Governor as aforesaid, did not expressly revoke and determine the Letters Patent or commission by which the said Philip Gidley King had previously been appointed, and under which he had acted as such Governor as aforesaid, or how otherwise. And whether the power and authority of the said Philip Gidley King to act as and to exercise the power of Governor of the said Colony were not absolutely superseded and determined immediately upon such arrival of the said William Bligh, or how otherwise. And whether the said William Bligh and the said Philip Gidley King did not immediately, or soon and when after the said arrival of the said William Bligh, and whether or not for such purpose as hereinbefore in that behalf mentioned, and for what other purpose, enter into such arrangement with respect to the said lands as hereinbefore in that behalf mentioned, or into some and what other arrangement to the like or some and what other purport or effect, and whether such arrangement was not unauthorised, clandestine, and fraudulent, or how otherwise, and whether the said William Bligh ought not, immediately after his arrival at Sydney on the said sixth day of August, in the year of Our Lord one thousand eight hundred and six, to have published the Letters Patent or Commission by which he was appointed such Governor as aforesaid, and to have taken the oaths of office thereby prescribed to him, and to have assumed the Government of the said Colony. And whether he did not delay and neglect to comply with such his duty, and what was the cause of such delay, and whether such delay was not fraudulent. And whether there was any, and what reason or excuse for such delay. And whether the said William Bligh did not assume the Government of the said Colony on the twelfth day of August, in the year of Our Lord one thousand eight hundred and six, or when else. And whether the alleged grants, or some, or one, and which of them were or was not executed by the said Philip Gidley King in pursuance and under color of such fraudulent scheme and arrangement as aforesaid, or how otherwise, and when was the same signed and executed. And whether the said William Bligh, or to any other person. And whether the said William Bligh was not prohibited, debarred, and disqualified by his Commission and appointment as such Governor as aforesaid, from accepting and receiving any such grants, or deriving any benefit therefrom, and whether such alleged grants to him were not absolutely void and of no effect, or how otherwise. And whether the said Philip Gidley King was not expressly prohibited in the manner hereinbefore in that behalf mentioned, or in some, and what other manner, from granting to any person any lands in the said Colony which had been cleared and improved at the expense of the Crown without such license as hereinbefore in that behalf mentioned, or how otherwise,
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and whether such license was obtained. And whether the said lands in the district of Parramatta or some, and what part thereof, were not part and parcel of lands which had been cleared and improved at the expense of the Crown, or how otherwise. And whether at the time of the said alleged grant thereof by the said Philip Gidley King to the said William Bligh, or at any time, and when since, any such license, as hereinafter in that behalf mentioned, had or has been obtained or given. And whether the said last mentioned grant was not made in direct violation and breach of the authority and instructions of the said Philip Gidley King, and whether it was not absolutely null and void, or how otherwise. And whether the said three pretended grants, or some, or one, and which of them, were or was not executed upon the day when they are alleged to bear date, or how otherwise. And whether they, or some or one, and which of them, were or was not executed in blank, and whether they, or any, and which of them contained at the time of their execution any and what description of the premises which they are respectively alleged to convey, and whether such description was not inserted in the said grants, or some, or one, and which of them, after the pretended execution thereof, or how otherwise, and at what time was such description inserted in said grants, or any of them. And whether by reason thereof the said grants, or some, or one, and which of them, are or is not null and void, or how otherwise. And whether any survey or measurement of the said several lands and premises, or of any, and what part thereof had or could have been made between the time of the said William Bligh's arrival in the said Colony, as aforesaid, and the said tenth day of August, and whether such survey and measurement were not made long after the said Philip Gidley King had resigned, and the said William Bligh had assumed the Government of the said Colony, and by whom was such survey made. And whether such entries as are hereinafter mentioned ought not, according to the regular course of passing grants of land within the said Colony, to have been made previously to the execution and delivery thereof to the said William Bligh, or how otherwise. And whether the said entries, or some, or one, and which of them, were or was not made for several months, or for a considerable, or some, and what time after the said tenth day of August, one thousand eight hundred and six, or how otherwise. And whether the said William Bligh ever, and when, in his life time asserted any and what right or title to, or made any and what attempt to obtain possession of the lands and premises, or any and what part of the lands and premises mentioned and described in the said pretended grants, or in any and which of them. And whether the said lands and premises, or some, and what part thereof were not at all times appropriated and used by the Government of the said Colony to and for public purposes, and whether or not with the full knowledge and acquiescence of the said William Bligh and his agents, or, if not, state what part thereof was not so used, and when did the Government appropriate any part thereof. And whether any, and what objection or remonstrance thereto was ever, and when made by him or them. And whether the lands hereinafter mentioned as situate and being in the district of Parramatta have not remained in the undisputed possession or power of the Crown during the time hereinafter in that behalf mentioned, or during some and what part thereof, or how otherwise, and whether such
possession has at any time, and when, been parted with by the Crown to the said William Bligh, or to any person, and whom, on his behalf. And whether the defendant, Maurice Charles O'Connell, did not for some and what time after the final departure of the said William Bligh from the said Colony conduct and manage the affairs and property of the said William Bligh, or some, and what part thereof, as his authorised and accredited agent, or how otherwise, and when did said defendant finally leave New South Wales, and whether the said defendant ever and when laid any and what claim on behalf of the said William Bligh to the possession of the said last mentioned lands, or any and what part thereof. And whether he objected, and how, to the occupation and disposal thereof by the Government of the said Colony. And whether the said alleged grants, or some, and which of them, did not contain some and what conditions or restrictions or condition or restriction to be performed and observed by the grantee, and which have or hath not been complied with, and whether the said grants, or some, or one, and which of them, have or hath not in consequence become void. And whether the said lands and premises intended to be thereby conveyed, or some and what part thereof have not become forfeited to and reverted in the Crown, or how otherwise. And whether the said alleged grants, or some, or one, and which of them, did not purport to give and grant unto the said William Bligh, his heirs and assigns, the lands particularly mentioned and described therein respectively, to have and to hold for ever, for a private residence, or how otherwise. And whether the said William Bligh was not bound by the terms and conditions of the said alleged grants, or one, and which of them, to build a private residence upon the several lands mentioned and described in each of the said grants respectively, and to cultivate and improve the said lands, or a certain and what proportion thereof, or how otherwise. And whether the said terms and conditions, or any, and which of them, have ever, and when, and how been performed; if so, state what is the nature and extent of any improvements made thereon. And whether at or about the time hereinbefore in that behalf mentioned, or at some and what other time, the Principal Secretary of State for the Colonies did not, on behalf of His late Majesty George the Third, order and direct a cancellation of the said alleged grants, or of one, and which of them, and a resumption of the lands therein mentioned and described. And whether, in consequence of such order and direction, or otherwise, His late Excellency Governor Macquarie did not cause a certain notice to be inserted in the Government Gazette of the said Colony, and whether the said notice is not of the date, and in the words and figures hereinbefore in that behalf mentioned, or of what other date, or of or to what other purport or effect. And whether the said alleged grants, or some, or one, and which of them were or was not made in a clandestine manner, and whether or not contrary to the regular course of passing grants from the Crown of lands in the said Colony, and whether or not contrary to certain directions and instructions with which the said William Bligh and Philip Gidley King respectively had been furnished with regard to their duties as such Governors as aforesaid, and whether or not contrary to divers Acts of Parliament in such case made and provided, or how otherwise. And whether, since such resumption of the said lands, as aforesaid, grants from the Crown of certain parts thereof have
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not been made to some individuals, and whether others have not been admitted into the possession and occupation of certain other parts of the said lands, under promises of grants, or how otherwise.

And whether the defendants, or some, or one, and which of them, have or hath not caused declarations and notices in divers or some actions of ejectment to be served upon some and whom of such parties, and whether or not upon the several persons hereinbefore in that behalf particularly mentioned, or upon some, or one, and which of them, or how otherwise.

And whether the defendants, or some, or one, and which of them, did not threaten and intend to proceed in such actions, and to institute the like, or other, and what proceedings at law against all the persons who are or may be in possession of the said lands and premises, or how otherwise.

And whether the said defendants or some, or one, and which of them, have or hath not, and whether or not for such purpose as hereinbefore in that behalf mentioned, or for what other purpose, and whether or not forcibly and illegally put the said Henry John Richardson into possession of the said lands and premises in the district of Parramatta, or some, and what part thereof, or how otherwise, and whether or not commenced a certain action of ejectment in this Honorable Court against the said Henry John Richardson, and whether such action is not collusive, or how otherwise.

And whether the defendants ought not to be restrained by the order and injunction of this Honorable Court from further proceedings in any of the said actions hereinbefore mentioned, or from adopting any other proceedings in any of the said actions hereinbefore mentioned, or from adopting any other proceedings at law in respect of the matters aforesaid, and to be decreed to deliver up such alleged and pretended grants, as aforesaid, or how otherwise.

And whether the defendants, Henry Aston Barker and Harriett Maria, his wife, Elizabeth Bligh, Frances Bligh, Jane Bligh, and Anne Bligh, are not now resident in England, or elsewhere, out of the jurisdiction of this Honorable Court, or how otherwise.

And whether the defendants, or some, or one, and which of them, have or hath not now, or had not lately, and when last in their, his or her possession, custody, or power, divers, or some, and what alleged grants from the Crown, deeds, letters, papers, and writings, or grant from the Crown, deed, letter, paper or writing, relating to the matters aforesaid, and or some and which of them, or how otherwise.

And whether thereby, or by some, or one, and which of them, if the same were produced, or otherwise, and how the truth of the matters aforesaid, or some, or one, and which of them, would not appear, or how otherwise, and if not why not.

And that the defendants may answer the premises, and that it may be declared that the said alleged grants hereinbefore mentioned, if any such really exist, were obtained by the said William Bligh fraudulently and illegally, and ought to be delivered up to be cancelled, and that the defendants may be decreed to deliver up the same accordingly, and in the meantime that they and their
agents may be restrained by the order and injunction of this Honorable Court from proceeding further in the said actions so commenced by them, as aforesaid, or from instituting any other proceedings at law in respect of the said premises hereinbefore mentioned, or any part thereof. And that one or more commission or commissions may issue under the seal of this Honorable Court to examine your informant’s witnesses in England and elsewhere, as there shall be occasion. And that your Honors will be pleased to grant* your informant, on behalf of Her Majesty, such further and other relief in the premises as the circumstances of the case may require, and to your Honors may seem meet. May it please your Honors to grant your informant, on behalf of Her Majesty, not only Her Majesty’s most gracious writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said Sir Maurice Charles O’Connell and Mary, his wife, Henry Aston Barker and Harriett Maria, his wife, Elizabeth Bligh, Frances Bligh, Jane Bligh and Anne Bligh, to restrain them from prosecuting or commencing any actions or proceedings at law touching any of the matters in question, but also Her Majesty’s most gracious Writ of subpoena to be directed to the said Sir Maurice Charles O’Connell and Mary, his wife, Henry Aston Barker and Harriett Maria, his wife, Elizabeth Bligh, Frances Bligh, Jane Bligh and Anne Bligh, thereby commanding them at a certain day, and under a certain pain therein to be limited, personally to be and appear before your Honors in this Honorable Court, and then and there full, true, and perfect answer make to all and singular the premises, and further to stand, to perform, and abide such further order, direction, and decree therein, as to your Honors shall seem meet. And your informant shall ever pray, etc.

John H. Plunkett

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Lord John Russell to Sir George Gipps.

(A circular despatch per ship Maitland.)

Sir,

Downing Street, 10th March, 1840.

My attention having been recently drawn to the terms of the Acts of Parliament, 22 Geo. 3, Cap. 75, and 54 Geo. 3, Cap. 61, respecting leave of absence to Colonial Officers, I find that the Governor and Council of any Colony is empowered to grant such leave, and not the Governor only.

The general custom in the Colonial Service would seem to have been for Governors to grant leave of absence without the intervention of the Councils. I have now therefore to instruct you to conform to the Acts of Parliament on this subject in all cases, in which applications for leave of absence may be addressed to you by Officers serving under your Government.

An instruction to this effect will be inserted in the Book of Colonial Regulations, whenever that Book may be reprinted.

I have, &c.,

J. Russell.

* Note 108.
HISTORICAL RECORDS OF AUSTRALIA.

Sir George Gipps to Lord John Russell.
(Despatch No. 36, per ship Alfred.)

My Lord,

Government House, 12th March, 1840.

With reference to my Despatch of the 23rd Feby. last, No. 26, recommending the appointment of Mr. Roger Therry to the office of Solicitor General of this Colony, I have the honor to forward the accompanying letter, which has been addressed by Mr. Therry to your Lordship.

I have, &c.,

Geo. Gipps.

Mr. R. Therry to Lord John Russell.

My Lord,

Sydney, N. S. Wales, 11th March, 1840.

I have the honor to invite Your Lordship's favorable attention to the recommendation of me by His Excellency Sir Geo. Gipps for the office of Solicitor General, which His Excellency has intimated to me He has conveyed to Your Lordship.

Altho. I cannot expect or desire to propitiate YourLordship in favor of this application by any higher credential than that of the Head of the Government, yet I may be permitted to state one or two circumstances and to point to a few references which may contribute in some degree to give enforcement to His Excellency's recommendation.

I beg leave to state, for the information of Your Lordship, that I have now held the office of Commissioner of The Courts of Requests of this Colony for nearly eleven years, with the recorded approbation of three successive Governments under which I have served. To whatever claim to promotion this approbation may give me, I take the liberty of adding the testimony of Sir F. Forbes and Sir J. Dowling, who have filled the office of Chief Justice since my arrival, who had frequent opportunities of observing me; and whose certificates of my fitness for the office will, I trust, aid in vindicating my eligibility to it.

In addition to these attestations on my behalf, I will only further invite Your Lordship's attention to Sir R. Bourke's recommendation of me for the office, so far back as 1836, and finally the very strong and flattering attestation borne to my conduct by the Legislative Council of the Colony on the occasion of a new arrangement being proposed in the distribution of the duties of my office in 1838.

If I have deemed it requisite to fortify His Excellency's recommendation of me for this appointment by the references to which I have adverted, and which I have the honor herewith to transmit, it is because His Excellency, with a candor corresponding to the kindness which has marked his whole communication to me on the subject, has intimated to me that He stated to Your Lordship that I am a Roman Catholic and that the circumstance of an Attorney General (Mr. Plunkett being one also) and Solicitor General being both R. Catholics, tho' no objection with His Excellency (who if it were a valid objection would be the most competent person to pronounce it to be so), yet might be made by some parties a matter of imputation on the Government.

It may be permitted me to remark on this topic that the functions of Attorney and Solicitor General have been concentrated for
the last four years in Mr. Plunkett, a R. Catholic, without any inconvenience having been even affected to be felt by any party from the circumstance.

In conclusion, I will only remark on this subject that I respectfully and confidently expect, from your Lordship’s sense of Justice, that Your Lordship will not regard the accident of my religion as a legitimate obstacle to my promotion, nor revive, in my regard, the penalties of repealed laws in opposition to the claim upon Your Lordship’s consideration which I may have derived from the faithful and diligent discharge of my public duty.

I have, &c.,

R. THEERY.

[Sub-enclosure.]

CERTIFICATES.

I, FRANCIS FORBES, Chief Justice of the Supreme Court of New South Wales, hereby certify that Roger Therry, Esq., Barrister at Law and Commissioner of the Courts of Requests, has practised several years past in the Supreme Court with considerable reputation and success, and that, from the opportunities I have had of estimating his professional abilities, I have formed a high opinion of his knowledge as a lawyer, and of his talents as an advocate. In the course of his practice, he has acquired a good deal of experience on the Criminal side of the Court, insomuch that, should any vacancy occur in the Law appointments of the Colony, I should feel that I was discharging a public duty in recommending him as qualified, in every respect, to fill the situation of one of His Majesty’s Law officers with equal credit to himself and advantage to the community.

FRANCIS FORBES.

Sydney, 14th October, 1834.

In reply, I have great pleasure in certifying that, during the five years you have been in this Colony, in my opinion, you have demonstrated such professional knowledge and forensic skill, both in the Civil and Criminal Departments, as fully qualify you to discharge with credit and advantage to His Majesty’s service any appointment, which may be conferred upon you. As to the propriety of your conduct as a Barrister of the Court, my testimony is scarcely necessary. It is sufficient for me to say that you have, throughout your career, sustained that gentlemanly carriage and high tone of honorable integrity, which have ever distinguished the British Bar.

JAMES DOWLING.

Sydney, 15th October, 1834.

The opinion, expressed by me in the above letter, of Mr. Therry is not only not changed, but confirmed in every particular, by nearly six years’ further experience of him in all the relations, which would render him eligible for advancement in the profession of which he is a member.

JAMES DOWLING.

Sydney, N.S.W., 3rd March, 1840.

Resolution of The Legislative Council of New South Wales.

29th August, 1838.

That this Council are of opinion that, notwithstanding the able and satisfactory manner in which Mr. Commissioner Therry has administered the duties of his office, economy would be observed and much advantage secured in the administration of Justice, in the districts in which from the rapid extension of the Colony it may now be found expedient to establish Courts of Requests, if the duties of the Commissioner were confined to the County of Cumberland, and similar powers to those vested in him were given to the several Benches of Magistrates in the other Counties; so that the facilities afforded by this Court to the poorer Classes of Suitors may be more generally attainable in the distant districts of the Colony.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despach No. 38, per ship Kinnear.)

My Lord,

Government House, 16th March, 1840.

With reference to my Despatch of the 19th Feby. last, No. 24, I have now the honor to forward to your Lordship a Copy of a further letter from Lieutt. Governor Hobson, dated
the 17th Feb., 1840, detailing his proceedings at Hokianga on
the Western side of the Northern Island of New Zealand.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[A copy of this letter, dated 17th February, 1840, will be found
in a volume in series III.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 39, per ship Kinnear.)

My Lord,

Government House, 17th March, 1840.

I have the honor to forward herewith the Returns called
for by the Order of the House of Commons of the 29th Novr.,
1837, and by Lord Glenelg's Despatch of the 30th Decr. of the
same year, No. 58, as far as the same can as yet be furnished
by this Government.

With respect to the labor which the preparation of these Re­
turns has occasioned, I beg to refer your Lordship to my Des­
patch of the 8th Novr., 1838, No. 182, and to enclose Copies of
two Memoranda, which have been furnished to me in further
explanation of the subject by the Principal Superintendent of
Convicts.

I think it right to add that the preparation of these Returns,
in the Department of the Principal Superintendent of Convicts
alone, had cost up to the 31st Decr., 1839, the sum of £777 15s. 4d.

I have, &c.,

GEO. GIPPS.

LIST OF RETURNS* SENT HEREWITH.

Furnished by the Auditor General.

1. An Abstract of the Revenue of the Colony, received in each
year from the 1st April, 1810, to the 31st Decr., 1823.
2. An Abstract of the Revenue of the Colony for 14 years, from
1824 to 1837.
3. An Abstract of the Revenue of the Colony for 1838 and 1839.

By the Sheriff.

Return of the number of persons committed for trial in the
Colony, their Crimes, and subsequent disposal, in the years 1836
and 1837.

(Returns of a similar nature for 7 years, ending with the year
1835, and intended also for the House of Commons, were forwarded
with Sir Richard Bourke's's Despatch of the 8th June, 1837,
No. 42.)

By the Principal Superintendent of Convicts.

Return of the number of Convicts in the Colony, holding Tickets
of Leave, in Assignment, or how otherwise distributed, showing
their ages, sex, sentences, etc., for the years 1828, 1829, 1830, and
1831.

* Note 109.
My Lord,

Government House, 20th March, 1840.

I have the honor to report to your Lordship that the ship "Middlesex," which sailed from Dublin on the 6th July, 1839, with 200 male Convicts, did not arrive at Sydney until the 24th Jan., 1840, after the unusually long passage of 202 days.

I enclose a Copy of a Report made to me by a Board of Officers, whom I caused to assemble and enquire into the circumstances which occasioned this delay in the ship's voyage; and from it your Lordship will perceive that it was not until after the vessel had passed the Cape of Good Hope, that a deficiency in the supply of water was discovered, and that no blame can be attached either to the Master or the Surgeon Superintendent for having under such circumstances borne up for the Mauritius.

As the deficiency in the water appears to have arisen from the Casks in the lower tier never having been filled, I think it right to report the circumstance, in order that such measures may be taken against the persons in fault, as to Her Majesty's Government may seem proper.

I enclose also a Copy of the Report made to me by the Surgeon of the "Middlesex" on his arrival.

I have, &c,

GEO. GIPPS.

[Enclosures.]

[Copies of these reports are not available.]

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Sir,

Downing Street, 21 March, 1840.

With reference to former communications,* I transmit to you, herewith, for your information and guidance, Copies of a Correspondence, which has passed between this Department and Mr. T. Potter Macqueen, on the subject of the claim preferred by that Gentleman to a Secondary Grant of Land in New South Wales.

I have, &c,

J. RUSSELL.

[Enclosure No. 1.]

Sir,

17 Golden Square, 14 Jan., 1840.

I was anxious for a brief interview with you in order to set right an error, into which I have been inadvertently led by supposing that a letter intended for your perusal, which I entrusted to my Friend and Solicitor Mr. Beeven, had been duly laid before you, and which would have at once explained the view I entertain of my pretensions to a secondary Grant of Land in the Colony of Australia.

* Note 110.
When I first made this claim during the Governorship of Sir Richd. Bourke, no doubt was entertained by the Officers of Government of the Justice of my claim. The only question was the extent of the Grant. It was stated on the part of the Governor that he was limited in primary and secondary Grants to 2,560 acres; but, my grant being direct from the Crown and of unusual extent, my secondary Grant must likewise emanate from Downing Street. This led to a new discussion; my original grant was made by Lord Liverpool in March, 1824; confirmed by Lord Bathurst in May, 1824; The Grant made out and committed to my Agent, Mr. McIntyre, in July; Mr. MacIntyre sailed with two Vessels full of Emigrants, stock and general outfit in November, and reached Sydney in April, 1825. But, owing to the difficulty in finding 20,000 acres of contiguous good soil, the Deed from the Government officials was not executed until July, 1826, subsequent to the arrival of the new regulations awarding a distinct duplicate of all parts after seven years of successful Cultivation, and substituting this arrangement for the former Rule of giving a secondary Grant in proportion to the number of Convicts employed, and free Emigrants conveyed from this Country at a rate of £16 each per annum, Such secondary Grants to be valued at 3s. 4d. per Acre. The real doubt then under discussion was under which of these regulations I must ground my request; and, in my anxious wish to select the course which would give least trouble, I prepared the former guided by the opinion of Mr. Fisher, the Crown Solicitor, that, altho' originally emanating from Downing Street, The grant was not valid until recognised in the Colony, which regulation brought me distinctly within the regulations of 1826; this appeared the more reasonable as my agent Mr. Melntyre, tho. received his grant of 2,560 acres on the same day with me, has since received his secondary Grant of a similar amount. I may however add that, had I proceeded under the old rules, my claim for employment of Convicts had amounted to 38,000 Acres instead of 20,000.

When I had the pleasure of seeing Mr. Talbot, he produced a short extract from Sir George Gipps's Despatches against this interference. I most respectfully beg leave to protest I cannot admit the interference of one, whose power is limited to concerns of less magnitude than my own; and, as my original agreement was made in Downing Street at a time when Lords Egremont, Salisbury, Western, Portman, and Sligo received similar overtures, of whom I alone at an expence of £48,000 have carried out the wishes of the then existing Government, so I must now claim not to be considered in the light of an ordinary settler. I could never for a moment contemplate that, after the acknowledged services I have rendered to the Colony, any doubt would arise in granting me the same essential benefits then pledged to me; and, in this spirit, I once more respectfully beg to tender my claim.

I have, &c.,

T. Potter Macqueen.

[Enclosure No. 2.]

Under Secretary Vernon Smith to Mr. T. Potter Macqueen.

Sir,

Downing Street, 29th Jan., 1840.

I have laid before Lord John Russell your letter of the 14th Instant, relative to your claim to a Secondary Grant of Land in New South Wales.
In reply, I am directed to acquaint you that his Lordship does not consider that he should be justified in admitting that claim. You received a Grant of Land of far greater extent than was permitted by the general regulations in force at the time to be granted to Settlers, and the grant was made prior to the promulgation of that Rule, of which you claim the benefit, and which was not retrospective. For that reason and as no trace could be found recorded in this Department of any special stipulation securing to you that benefit, Sir George Gipps was informed that your claim was inadmissible; and Lord John Russell finds in your letter no grounds, which would require or justify a departure from the decision of his Predecessor.

I have, &c.,

R. V. Smith.

[Enclosure No. 3.]

Mr. T. Potter Macqueen to Under Secretary Vernon Smith.

Sir,

30 Sackville Street, 8 March, 1840.

I had the honor to receive your letter of the 29th January at the commencement of a severe fit of illness, the duration of which has prevented my replying at an earlier day.

It appears that the objections entertained by Lord John Russell to my claims for a secondary Grant of Land in New South Wales are twofold: 1st. that the grant which I received was a very extensive one, and 2ndly. that the regulations of 1826 cannot be considered in a retrospective view.

To the first of these objections, I would humbly submit that the only measurement of extent of surface was the extent of Capital proposed to be invested; and, if I can prove that I have fulfilled all that was ever required, it signifies not if the extent were 1,000 or 1,000,000 acres.

I have by me a note taken in the presence of Mr. Goulburn in 1824 when deliberating on the offers made to me by Lord Liverpool, by which it appears that the annual Cost of each Convict to the Crown equalled £25, and that, to encourage settlers to relieve Government, the terms of that day were to hold the land 6 years free of all demands, then to pay a quit rent of 15s. per 100 Acres redeemable at 20 years' purchase.

Thus my grant of 20 Thousand acres would at the end of six years have been redeemable at an expense of £3,000.

But to encourage the relieving the Colonial Government from the Maintenance of Convicts, an allowance in remission of such rent or payment of £25 per annum, being the average expense of each Convict to the Crown, was tendered; and hence, if I had employed 20 Convicts, I had been entitled to a yearly remission of £500, which in six years had amounted to the £3,000 required.

Now I shew that I actually employed 100 Convicts, and, then asserting my right of vesting the surplus in the purchase of fresh Land at the same rate, I might have claimed a most enormous tract of country, acting upon the regulations of the same Government up to 1826.

But, as the Local grant of the Estate was not made until the latter part of 1827, it appeared more simple and certainly a far more moderate request to act upon the principle of the new regulations, which were far more intelligible and specific, and, in so doing, my legal advisers as well as those of the Crown in the Colony consider I was adopting the least objectionable mode of procedure.

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With respect to the 2d objection of the regulations of 1826 not being retrospective, the first doubt is if it can be so regarded when the grant was not known as real property in the Colony for several months after it had come into operation, and the unquestionable fact that other parties taking minor grants on the same day with myself had obtained their secondary grants in due season. I therefore beg to submit that, if I am denied the benefit of the regulations of 1826 on the plea that the rough order for selections was issued from Downing Street (tho' not recognized as property in the Register of the Colony until 1827), still I cannot be deprived of my preexisting rights of future increase in conformity with those orders, which the recent regulations were calculated to amend and diminish.

Having offered to the Secretary of State these suggestions, I would rather throw myself on his own sense of Justice.

Mr. Fisher, the Crown Solr., is now on his way home on leave. He will be able to substantiate every fact relative to outlay of Capital and general benefit of example. Of course under the Colonial regulations I am entitled to my extra grant of 2,560 acres as the maximum a Governor can allot; but I would candidly ask Lord John Russell, under all the circumstances of the case, what excess beyond 2,560 acres he may consider me warranted in seeking.

My object is to prepare a new property by the investment of fresh Capital for the reception of one of my sons when of sufficient age.

I have, &c,

T. POTTER MACQUEEN.

[Enclosure No. 4.]

UNDER SECRETARY VERNON SMITH TO MR. T. POTTER MACQUEEN.

Sir,

Downing Street, 21st March, 1840.

I have laid before Lord John Russell your letter of the 8th Instant on the subject of your claim to a secondary Grant of land in New South Wales; and I am to acquaint you in reply that his Lordship finds in that letter no fact or argument which would justify him in receding from or qualifying the decision which was communicated to you on the 29th of January last.

If you shall hereafter urge your claim for the 2,560 acres to which you refer, that claim must in the first instance be preferred to the Local Government with whom it will rest to consider whether it is admissible. On that question however, Lord John Russell wishes to be understood as neither expressing nor intimating any opinion.

I am, &c,

R. VERNON SMITH.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 43, per ship Kinnear.)

My Lord,

Government House, 21 March, 1840.

With my Despatch of the 4th Decr. last, No. 164, I transmitted to Lord Normanby a Copy of the Report of the Committee of the Legislative Council of this Colony on the subject of Emigration for the year 1839, in which a rise in the Bounties on Emigrants brought to New South Wales by private individuals was recommended; I now have the honor to forward
Copies of a Government Notice, which I caused to be issued on the 3rd inst., carrying out the views of the Committee.

I have only further to state at present on this subject that, though I have with great reluctance sanctioned this increase in the Bounties, I am satisfied that the measure was one absolutely necessary in order to secure a supply of Emigrants.

I have, &c.,
GEO. GIPPS.

[Enclosure.

This notice, dated 3rd March, 1840, was published in the "Government Gazette."

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 44, per ship Kinnear.)

My Lord,
Government House, 22nd March, 1840.

With reference to my Despatch of the 27th Decr., 1839, No. 183, in which I reported that the exploring Expedition, fitted out by the Government of the United States and consisting of four vessels of War, had visited Sydney, I beg to inform your Lordship that, some short time after the Expedition had left this Port, an application was made to me by the American Consul at Sydney, Mr. Williams, to cause a number of Deserters from the Squadron to be received into the custody of the Civil Power, and detained until Mr. Williams might have an opportunity of forwarding them to their respective vessels, a compliance with which application I felt it my duty to decline, though I did so with all possible expressions of courtesy and friendship.

Mr. Williams, being under the impression that some convention exists between Great Britain and the United States for giving up Deserters, will I believe make a communication on the subject to his Government; and it is on this account that I think it necessary to trouble your Lordship with this Despatch.

I can scarcely doubt that I acted right in not taking these Deserters into custody, as I never heard of Deserters either from the Army or Navy in Canada being given up by the Government of the United States.

I have, &c.,
GEO. GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 33, per ship Surrey.)

Sir,
Downing Street, 23 March, 1840.

I have to call your attention to the fact that no Blue Book has been received at this office from New South Wales for the year 1838.
You will have the goodness to report to me the cause of this dereliction of an important duty on the part of the Colonial Secretary. I beg at the same time to refer you to Chapter 5 of the Printed Book of Regulations, Page 51, wherein the Governor is forbidden to issue his Warrant for the payment of the first Quarter of the year's Salary to the Colonial Secretary unless he shall have delivered the Blue Book for the previous year to the Governor for transmission to this Office.

It is very desirable that the Returns for last year should be transmitted with as little delay as possible. I have, &c.

J. Russell.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 45, per ship Kinnear; acknowledged by lord John Russell, 4th September, 1840.)

My Lord, Government House, 23rd March, 1840.

In my Despatch of the 18th Decr., 1839, No. 176, I reported the arrangements which had been made in consequence of the resignation by Mr. Francis Fisher of the Office of Crown Solicitor, and, as part of those arrangements, that the whole of the papers left by Mr. Fisher in his office had been placed in the hands of Dr. Kinchela, for the purpose of being arranged and disposed of. As this business could not fairly be considered to fall within the duties, which Dr. Kinchela is bound to perform for the Government by virtue of the agreement reported to Lord Glenelg in my Despatch of the 13th Octt., 1839, No. 164, I agreed with Dr. Kinchela that he should receive for his trouble a remuneration of £200; and I have now the honor to report that, the duty having been satisfactorily performed, and the long accumulated arrears in the Law Department cleared off, I have caused the sum of £200 to be paid to Dr. Kinchela as agreed on.

I am happy to say that the saving, effected by the resignation of Mr. Fisher, will more than cover this expence within the present year, and that consequently no further vote will be required from the Legislative Council on account of it.

I have, &c.

Geo. Gipps.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 34, per ship Surrey.)

Sir, Downing Street, 24th March, 1840.

I have the honor to acquaint you that, in consequence of an urgent application from Mr. C. D. Riddell, the Colonial Treasurer of New South Wales, in expectation of his Wife's
RUSSELL TO GIPPS.

approaching confinement, I have granted an extension of his Leave of absence for Six Months from the expiration of his former leave. It must, however, be generally understood that Officers quitting the Colony on Leave of Absence are not to expect an extension of the regulated period of 18 months, except for the most urgent reasons.

I am, &c,

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 46, per ship Kinnear.)

My Lord,

Government House, 24th March, 1840.

I have herewith the honor to forward to your Lordship a Return of Immigrants, who arrived in this Colony in vessels chartered by Government during the half year ended the 31st Decr., 1839, being in continuation of the one transmitted with my Despatch of the 15th July, 1839, No. 104.

I have, &c,

GEO. GIPPS.

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

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch marked "Private and Separate," per ship Surrey; acknowledged by Sir George Gipps, 16th July, 1840.)

Sir,

Downing Street, 25 March, 1840.

I feel it to be my duty to call your attention to the inconvenience, which has been experienced from the infrequency of your Communications of late to this Department.

In your Dispatch No. 91 of the 12th of June last, which reached this Department in the month of November, you transmitted a Printed Copy of your Address on opening the Session of the Legislative Council. You there adverted to several subjects of much importance; but, on none of those subjects, have I received any subsequent information. It has been found impossible to form any calculation of the amount of the Funds, which may be applicable to the purposes of Emigration, or to lay down any plan of Emigration to New South Wales for the present year. Reports have reached this Country through the Public Journals of the discovery of a New Tract of valuable Land in the Vicinity of the Big River, on which it would have been highly desirable that some authentic information should have been received. You adverted in your opening Speech to a plan of Education which you were about to propose. That subject has excited notice in
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25 March.

Necessity for full reports.

Parliament; and I was forced to have recourse to Colonial Journals for the only information which it was possible to obtain on the subject. Adverting to the interest with which the Colony of New South Wales is regarded, and its distance from this country, I am sure that it is scarcely necessary for me to impress upon you the importance of keeping Her Majesty's Government duly informed on all points of local interest. I am, &c.,

J. EUSSELL.

26 March.

Fresh evidence available in defence of J. Mitchell.

Fresh evidence to be considered.

Refusal to discuss case of J. Mitchell with P. Scott.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 35, per ship Elphinstone; acknowledged by Sir George Gipps, 19th January, 1841.)

Downing Street, 26 March, 1840.

With reference to Lord Glenelg's Dispatch No. 205 of the 31st of August, 1838, I have to acquaint you that it has been represented by the Friends of Mr. Mitchell that he is prepared to bring forward facts, which are material to his defence, and which were not taken into consideration on the investigation which ended in his removal from the Medical Establishment of New South Wales.

I enclose a Copy of a letter which was addressed to Mr. P. Scott on this point by direction of Lord Glenelg on the 31st of Octr., 1838, together with a Copy of one which has been addressed by my Under Secretary of State to Mr. J. Young in reply to a renewed application on behalf of Mr. Mitchell; and you will afford Mr. Mitchell an opportunity, if he should desire it, of bringing under the Consideration of the local Government any new facts or arguments, which may not have been already fully advanced and considered; altho' it is at the same time to be understood that this instruction is not to have the effect of reopening a consideration of facts which have already been brought under review.

I inclose, for your further information, a copy of the report made by Sir R. Bourke in this Country, which is referred to in Lord Glenelg's Dispatch, No. 205. I am, &c.,

J. RUSSELL.

[Enclosure No. 1.]

SIR GEORGE GREY TO MR. P. SCOTT.

Downing Street, 31 Octr., 1838.

Sir,

I am directed by Lord Glenelg to acknowledge the receipt of your Letter of the 23d Inst. and to acquaint you in reply that it does not appear to his Lordship that any advantage to the Public service or to the private interest of Mr. Mitchell would be promoted by engaging with any third person in a discussion of the merits of the question controverted between Mr. Mitchell and the late Governor of N. S. Wales.
Mr. Mitchell enjoyed the most ample opportunities of defending himself on the charges preferred against him. He made that defence. It was carefully examined by the local Government with every disposition to befriend Mr. Mitchell, and re-examined by Lord Glenelg in the same spirit. The result was to produce in his Lordship's mind the conviction that the decision was right, and that it ought to be maintained. If Mr. Mitchell has any facts to allege or any arguments to urge which have not already been fully advanced and considered, the Local Govt. will be found ready to afford redress. But the discussion to which you invite Lord Glenelg could not expedite, although it might retard any renewed application which Mr. Mitchell may be disposed to make to the Local Authorities. His Lordship, therefore, with every feeling of respect towards you feels himself bound to decline the further prosecution of this Correspondence.

I am, &c,
GEO. GREY.

[Enclosure No. 2.]

UNDER SECRETARY VERNON SMITH TO MR. J. YOUNG.

Sir, Downing Street, 26 March, 1840.

Having laid before Lord John Russell your Letter of the 17th Instant, I am directed to Acquaint you, in reply, that His Lordship will transmit to the Governor of New South Wales a copy of the Letter which was addressed by Lord Glenelg's direction to Mr. Scott on the 31st of Octr., 1838, with instructions to afford Mr. Mitchell an opportunity of bringing under the consideration of the local Government any facts decidedly new, or arguments which might not have been already fully advanced and considered; but it must at the same time be understood that this Instruction is not to have the effect of reopening a consideration of facts which have already been brought under review.

I am, &c,
R. VERNON SMITH.

[Enclosure No. 3.]

SIR RICHARD BOURKE TO SIR GEORGE GREY.

Sir, Woodlawn, Maidstone, 9 August, 1838.

I have the honor to acknowledge the receipt of your letter of the 10th Ultimo, transmitting by direction of Lord Glenelg the copy of a Despatch from the acting Governor of New South Wales, with a letter and a printed statement from Mr. James Mitchell upon the subject of his removal from the office of Colonial Surgeon in that Colony, and requesting the communication of any observations I may have to make on the case. Confining myself in reply to the question of Mr. Mitchell's removal, I will briefly bring under Lord Glenelg's notice the grounds upon which I considered that measure of severity to be absolutely necessary.

It will be readily admitted that, in every Department of the public service, a due subordination amongst the Persons employed is essential to its efficiency, and that Functionaries of a lower class are bound to obey the lawful orders of their superiors with fidelity and promptitude. Any wilful failure in these respects is usually visited by a severe punishment. In the case under consideration, it was fully established that Mr. Mitchell, the Colonial Surgeon stationed at Sydney Hospital, had wilfully disobeyed the orders of his superior. It appeared that he was directed by a Department

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26 March.

order of the Deputy Inspector General Thompson, dated 9th August, 1837, to consider himself personally responsible for the Medical care and other Medical duties of the Convict Barracks at Hyde Park. Under this order, he was called upon by the Superintendent of the Barracks (which are immediately contiguous to the Hospital) to attend a corporal punishment, at which the presence of a Medical Officer is made necessary by regulation. Having declined to attend upon the requisition of the Superintendent, the special order of the Deputy Inspector General for his attendance was conveyed to him by that Officer and by a Medical officer, Surgeon Dumoulin of the 50th Regt., when he positively refused to attend, stating to the latter that he would sooner quit than attend. The Deputy Inspector General was in consequence obliged to name another Medical officer for this duty, and the punishment did not take place for two days. Surgeon Mitchell subsequently refused to obey the Department standing order, requiring his signature to the orderly Book (see printed statement, appendix 109, page 32, also appendix Nos. 119, pp. XCIX–C, and here I have to observe that Surgeon Mitchell, having delayed to send in his statements to the Secretary of State until after I had left the Colony, I have not had access to original documents but have been obliged to turn to Surgeon Mitchell's pamphlet,* taking for granted that the Copies he gives are correct, and selecting from a large mass of papers put together to suit his purpose, those to which I have to refer).

The wilful and deliberate disobedience of Surgeon Mitchell being fully proved, and the defence which he set up appearing to me wholly unavailable, I thought it necessary to remove him from the Colonial service. The grave nature of his offence and his previous conduct towards his superior officer renders this measure unavoidable. He had on a former occasion brought unfounded or frivolous charges against the Deputy Inspector General, prosecuting them with the most determined and rancorous hostility, and had been no farther punished for this insubordinate proceeding than by a public reprimand, but accompanied with an intimation that the next well founded complaint of misconduct would be more severely dealt with. His culpability being again fully established, and his offence being one which was at the root of all due subordination in the Department, no milder sentence than that of removal could be passed upon him without serious injury to the public service.

Surgeon Mitchell's assertion in the 9th Article of the conclusion, page fifty two of his pamphlet, that “during the investigation, the document most essential to his defence was withheld” from him, is a most unwarrantable mis-statement. He did not apply for the paper alluded to until the investigation was concluded and the decision of the Governor made known to him. A copy was then furnished as he requested. A perusal of the paper (see page Forty one of the printed statement, article 64) will shew that it makes in no way for his defence, and he was informed that it had not been considered as evidence against him. The enquiry was limited to two charges preferred by the Deputy Inspector General, of which copies had been furnished to him. Witnesses in support of these charges had been examined in his presence and cross examined by him, and he called and examined a Witness in his defence. He also put in a written statement, which was taken into consideration on the part of the defence (see appendix to printed statement, No. 6, also No. 113, Page 92).

* Note 111.
The foregoing observations are limited to the transactions immediately connected with Surgeon Mitchell's removal. I presume that Lord Glenelg does not desire that I should follow this Gentleman through all the details of his pamphlet. The contents indeed furnish abundant proof of Surgeon Mitchell's determined opposition to his superior officer, and that, sooner than submit to his authority, he would resign his appointment.

I beg leave to add in conclusion that, with respect to the constitution of the public Hospitals in New South Wales, I am fully convinced of the utility of the late arrangement which puts them under the regulations of Military Hospitals, and am further of opinion, for reasons given to the Secretary of State upon a former occasion, that, as the officer placed by Her Majesty's Government at the Head of those institutions belongs to a Military Department, it will be advisable to fill up the vacancies occurring in the list of Colonial Surgeons and Assistant Surgeons by Army appointments likewise. I admit at the same time that no inconvenience from the mixture of Civilians and Military Medical Officers has occurred to my knowledge except in the Sydney Hospital, and that, notwithstanding what Surgeon Mitchell alleges as to the vexatious interference of the Deputy Inspector General, a Civilian from a Country Colonial Hospital was immediately found ready to take office at Sydney on the removal of Surgeon Mitchell.

Having upon former occasions reported to Lord Glenelg on the conduct of the Deputy Inspector General with reference to his Colonial charge, I do not think it necessary at this time to make any observations on the subject.

I have, &c,

RICHARD BOURKE.
1840.
26 March.

Former feeling of security of settler.

Criticism of administration of Sir G. Gipps.

Alleged prevalence of crime.

not a fastening of any kind was thought necessary to the doors and windows of the House. There were 24 assigned Servants on the farm in Huts within an hundred yards of the House, and no one then dreamt of harm. At that time, Sir George Gipps had but recently arrived in the Colony, and the Assigned Servants had not had time to learn that Murder and Robbery might be committed with impunity. I have chosen to send this extract direct to your Lordship rather than to publish it in the newspapers, because I feel confident that your Lordship will give the subject that attention which its importance deserves. The letter, although dated in July, has only just come to hand.

I am, &c.,

[Unsigned.]

[Sub-enclosure.]

EXTRACT of a Letter from New South Wales, dated July, 1839.

"Our new Governor has altogether disappointed the expectations that were formed of him from his reputed candor and business habits; instead of grappling with the crying evils that beset us on all sides, he has done little else than make fine speeches to the Council and skirmish a little with the enemy's outposts. Not a single abuse of any consequence has been corrected during his administration, and that most deplorable of them all, the laxity of convict discipline, has increased to such a degree that life and property are exposed to the greatest peril even in the most populous districts. In the more distant parts, bands of Bush rangers plunder and lay waste the Country with impunity. During the late Maitland races, there were upwards of thirty highway Robberies committed within three miles of the Town, most of them between it and the Green hills, and many of them accompanied with bloodshed. On three successive nights, no less than seven burglaries were committed within a mile of the same spot; and it is by no means uncommon for eight or ten fellows well armed and mounted to ride up to a farm in open day, "Call up" the occupants and their servants, and carry off all the valuable property they can find. This has actually happened to three different settlers within 12 Miles of me in the last month.

"But, were I to enumerate all the thefts, the midnight robberies, the murders that have taken place since you were here within a radius of a dozen miles from Bowthorne, it would fill a little volume, and the worst of all is, that such are the facilities of escape afforded by the law and its technicalities and its interpreters to these Villains, that it is rarely possible to bring them to justice; and I may safely say that the thrice convicted felon in this country has a much better chance of escape from punishment, than the man who was never before charged with crime in England. This is a melancholy picture but it is a true one; and I should be guilty of concealment, if I omitted stating the facts. Such indeed has been the Lawless condition of this district that I have not had my clothes off for the last six months except to shift them. I have found it necessary for the protection of my family and property to forego the luxury of a bed and to lay myself down clothes and all on a couch in the passage with the outer door open, a brace of pistols in my pocket and my double gun at my side, ready to start up and sally out on the first alarm or noise made by the dogs. I have never yet had occasion to make use of my fire arms, but I attribute this
exemption chiefly to the vigilance I have practiced. These things very soon get known, and the gentry are not fond of paying visits where they expect to meet resistance.

"It is to be hoped, however, that this is an evil which will cure itself, and that its very enormity will force the attention of our Legislators to it."

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 48, per ship Kinnear.)

My Lord,
Government House, 26th March, 1840.

With reference to my Despatch of the 30th Decr. last, No. 185, reporting the names of the vessels in which some invalided Seamen had been embarked for England, I beg to report to your Lordship that the ship "Medway" having sprung a Leak at Sea, and returned to Port Jackson, the three men named in the margin,* have been taken out of that vessel, and embarked on board the ship "Argyle," Gatenby, Master, now loading for London.

I have, &c,

GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 49, per ship Kinnear.)

My Lord,
Government House, 28th March, 1840.

I have had the honor to receive Lord Normanby's Des­patch of the 31st Augt., 1839, No. 132, in which I am desired to call on Mr. H. I. Pilcher for a Copy of the Memorial which he had addressed to His Lordship, and to report on the same; and I accordingly have the honor to report to your Lordship that, having communicated with Mr. Pilcher on the subject of his Memorial, I find it to be only a repetition of the one which was transmitted by me to Lord Glenelg with my Despatch No. 123 of the 13th Augt., 1838, and disposed of by Lord Nor­manby's reply of the 12th March, 1839, No. 22.

I have, &c,

GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 50, per ship Kinnear; acknowledged by lord John Russell, 27th October. 1840.)

My Lord,
Government House, 30th March, 1840.

With reference to my Despatch of the 10th June, 1839, No. 90, on the subject of the disposal of religious books received in New South Wales by Convict ships, I have the honor to submit

588 HISTORICAL RECORDS OF AUSTRALIA.

1840. 30 March.

Return of sales of religious books.

Religious books ex convict ships to be distributed amongst convicts.

To your Lordship a Return of three sales of Books of this description, received by the Convict Ships named in the margin.*

Your Lordship will perceive by this Return that 55 Bibles, 171 Testaments, 131 Prayer Books, 162 Psalters produced the sum of £7 17s. 6d., being £3 8s. 6d. less than what they ought to have sold for, according to the prices at which they were estimated by the Revd. Mr. Cowper.

Under these circumstances, I have directed that in future the Books received from Convict ships shall be placed at the disposal of the Clergyman appointed to afford religious instruction to the Convicts in Sydney, under the authority of Lord Normanby's Despatch of the 18th June, 1839, No. 71, and that they may be distributed by him to the Convicts in different Government Establishments according to his discretion.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[SIR GEORGE GIPPS TO LORD JOHN RUSSELL.]

(Despatch No. 51, per ship Kinnear; acknowledged by Lord John Russell, 3rd September, 1840.)

My Lord,

Government House, 31st March, 1840.

It is with great regret I have to report to Your Lordship that Lieutt. Governor Hobson was attacked with Paralysis on the 1st inst., when on board Her Majesty's ship “Herald” in the river Waitemata in New Zealand.

The Lieutt. Governor was conveyed from Waitemata, which is in the Estuary called the Thames, to Waimati in the Bay of Islands, and left there under the care of the Missionaries when the “Herald” sailed for Sydney on the 11th inst.

I enclose for your Lordship's information a Copy of a report of the state of the health of the Lieutt. Governor, made to me by the Surgeon of Her Majesty's ship “Herald,” to which I think it right to add a Copy of a letter, which covered it, from Capt'n Nias, Commanding the “Herald,” though I am unable to offer any explanation of the different statements therein alleged to have been made by the Surgeon.

In order to provide for the administration of the Government, in the possible event of the relinquishment of it by Capt'n Hobson, I have thought it right to invite the Major General Commanding Her Majesty's Forces in these Colonies to send a Field Officer to New Zealand; and I have accordingly to report that Major Bunbury of the 80th Regt. will proceed thither by

* Marginal note.—Waverley, Whiby, Barrosa.
the first opportunity, and that I have issued a Commission, authorising him to enter on the Government in the event of the death, absence or resignation of Captn. Hobson.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[Copies of the report and letter, both dated 28th March, 1840, will be found in a volume in series III.]

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SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 53, per ship Kinnear.)

My Lord,

3rd April, 1840.

Your Lordship is aware that frequent complaint has been made from this Government of the enactment in the 2nd Clause of the 2nd and 3rd Wm. IV, C. 62, by which the Governor of a Penal Colony is prohibited from granting Tickets of Leave to Convicts, until they have been 4, 6 or 8 years in the Colony, according as their sentences are respectively for 7 or 14 years or for Life.

In my Despatch of the 1st Jan'y., 1839, No. 1, I alluded to some of the inconveniences which are felt to arise from the enactment complained of, but I omitted to mention two prominent ones, which with permission I will now bring under Your Lordship's notice.

The first is that the portion of his sentence, which a Convict serves in England, cannot be reckoned in computing the 4, 6 or 8 years, mentioned in the Act, and that consequently a Convict, who, previously to being sent out of England, may have served two or three years in the Hulks, has as long a period to serve in New South Wales, before he can obtain a Ticket of Leave, as he would have had, if he had been transported on the day after he was sentenced; and further that a Convict under a Seven Years' Sentence, who may not arrive in the Colony until after three of them are elapsed, can never obtain a Ticket of Leave at all, but must pass, without any intermediate probation, from the condition of abject servitude to that of unqualified freedom.

The second is that the want of power on the part of the Governor to grant the indulgence of a Ticket of Leave often forces him to grant the far greater one of a Conditional Pardon. This most frequently happens in cases where individuals have rendered some service to the Public, or distinguished themselves by some strikingly meritorious act, such as the apprehension of offenders, or the giving information leading to their apprehension,
or the rendering of assistance in some case of extremity, such as a conflagration or shipwreck.

I now enclose to Your Lordship a List of 13 persons of this description, who are in my opinion fully entitled to the indulgences of a Ticket of Leave, though I hesitate to recommend them for the higher boon of a Conditional Pardon.

The restrictions in the Act referred to being imposed only on the Governor and not on the Secretary of State, it appears to me that, though I cannot myself grant Tickets of Leave to the persons named in the accompanying List, Tickets may legally be granted under the authority of Your Lordship. The object of this Despatch therefore is to request such authority; and I beg leave to add that, until instructed to the contrary, I shall continue from time to time to submit similar Lists for your Lordship's consideration and commands. I have, &c.,

GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 54, per ship Kinnear; acknowledged by lord John Russell, 3rd September, 1840.)

My Lord, Government House, 4th April, 1840.

I have the honor to report to your Lordship that Her Majesty's Ship "Herald," Captn. Nias, reached Sydney on the 26th Ulto., having returned from New Zealand for Provisions after an absence from this Port of only sixty seven days; and it is with very great concern that, at the request of Lieutt. Governor Hobson, I forward to your Lordship a Copy of a letter (brought by the "Herald"), containing an account of a conversation which passed between himself and Captn. Nias on the 7th ulto.

On the subject of this conversation I shall refrain from making any comment. I deem it however necessary to acquaint your Lordship that circumstances had occurred, even before the "Herald" sailed from Sydney (which she did on the 19th Jany. last), to cause me to apprehend that a good understanding would not long be preserved between Captn. Nias and Captn. Hobson, and that, partly in consequence of this apprehension and partly from a knowledge that the "Herald" was proceeding with only three months' provisions, I earnestly requested Captn. Nias that the "Favorite," Sloop of War, which had joined from India only on the 9th Jany., might not be sent on any distant voyage, but kept in readiness to relieve the "Herald" before her provisions should be exhausted. The "Favorite" however was, contrary to my expressed desire, sent through Torres Straits and on a voyage round Australia, which must yet probably occupy her several
months, and the consequence is that, notwithstanding the
evident disadvantage of bringing Capt'n Hobson and Capt'n. Nias
again into contact, I have no means of preventing it, unless I
allow Capt'n Hobson's operations either to be suspended for the
space of probably three months, or to be carried on without that
ostensible support from Her Majesty's Government, which is
not only due to Capt'n Hobson's station, but also I believe essen­
tial to the success of the enterprize in which he is engaged.

It was under these circumstances that, considering it to be
the duty of every officer to sacrifice all private feeling to a sense
of public duty, I made on the 31st Ulto. a requisition on Capt'n.
Nias to return to the Bay of Islands, and resume his communica­
tions with Capt'n. Hobson.

I send herewith a Copy of the letter, in which I announced to
Lieutt. Governor Hobson the intended return of the “Herald,”
and to it are appended Copies of the correspondence which passed
between myself and Captain Nias on the subject.

It remains for me to explain to your Lordship that, on account
of the necessity for again bringing Capt'n Hobson and Capt'n.
Nias into communication, I have not shewn to Capt'n. Nias
Capt’n Hobson's letter of the 10th ulto., and that my not having
shewn it to him is probably the reason why no explanation or
statement from Capt'n. Nias accompanies this Despatch.

I have, &c.,

GEO. GIPPS.

[Enclosures.

Copies of these letters, dated 10th and 31st March, 1840, will
be found in a volume in series III.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch marked “Confidential,” per ship Kinnear; acknowledged
by lord John Russell, 3rd September, 1840.)

My Lord, Government House, 4th April, 1840.

In connexion with the subject of my public Despatch of
this day's date, No. 54, I think it right, in further explanation
of my views of the present state of affairs in New Zealand, to
enclose to your Lordship a Copy of a Confidential letter, which
I wrote yesterday to Lieutt. Governor Hobson.

I take this opportunity also of enclosing to your Lordship a
List of all the Appointments which have been made for New
Zealand up to the present date.

I have, &c.,

GEO. GIPPS.

[Enclosures.

A copy of the letter, dated 3rd April, 1840, and of the return
will be found in a volume in series III.]
The Historical Records of Australia.

Sir George Gipps to Lord John Russell.
(Despatch No. 55, per ship Kinnear; acknowledged by Lord John Russell, 3rd September, 1840.)

My Lord,

Government House, 5th April, 1840.

I had the honor, on the 27th Feby. last, to receive your Lordship's Despatch of the 26th Septt., 1839, No. 7, authorising me to send Troops to New Zealand; and I have in consequence to report that a Detachment, consisting of the officers and men named in the Margin,* embarked on board Her Majesty's Store ship "Buffalo" on the 3rd instt., and sailed this day for the Bay of Islands.

I hope I may be permitted to avail myself of this opportunity of expressing my sense of the readiness with which Mr. Wood, Commander of Her Majesty's ship "Buffalo," has complied with all the requisitions which I have had occasion to make to him in connexion with this service.

I have, &c,

GEO. GIPPS.

Lord John Russell to Sir George Gipps.
(Despatch No. 38, per ship Elphinstone.)

Sir,

Downing Street, 6 April, 1840.

With reference to my Dispatch No. 35 of the 8th November last, I transmit to you a Copy of a Letter to Mr. J. Reid, from which you will perceive that, under the circumstances therein stated, I have consented to Extend for one Month the period of his arrival in the Colony.

I have, &c,

J. EUSSELL.

[Enclosure.]

Under Secretary Vernon Smith to Captain J. Reid.

Sir,

Downing Street, 9 April, 1840.

I have laid before Lord John Russell your letter of the 27th Ulto., and I have his Lordship's directions to acquaint you in reply that, on the understanding that you have actually engaged your passage for N. S. Wales by the ship "Isabella Watson," and that the unforeseen detention of that Vessel has been the single cause of your prolonged stay in this Country, his Lordship accedes to your application for a further extension of one month of the period allowed by the General Order of August, 1834, for your arrival in the Colony as a Retired Military Settler.

You are doubtless aware that the Regulations of 1834, by which the upset price of Land was fixed at 5s. per Acre, are no longer in force.

I am, &c.,

R. VERNON SMITH.

[The following memorandum was transmitted with this series of despatches:—

There is no Dispatch Numbered 39.

Colonial Office, 9 July, 1840.]

* Marginal note.—1 Field officer (Major Bunbury); 1 Captain; 2 Subalterns; 4 Serjeants; 80 Rank and File; 1 Commissariat officer; 1 Do. Storekeeper.
GIPPS TO RUSSELL.

1840.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 40, per ship Elphinstone; acknowledged by Sir George Gipps, 28th October, 1840.)

Sir,

Downing Street, 11th April, 1840.

The Lords Commissioners of the Treasury have directed a further Advance of £4,275 to be made to the Agent General for New South Wales on account of the Government of that Colony; and I have to desire that the necessary steps may be taken for the repayment of that amount into the Military Chest on the Station.

I am, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 56, per ship Pero; acknowledged by Lord John Russell, 10th November, 1840.)

My Lord,

Government House, 11th April, 1840.

I have the honor herewith to forward a letter, which has been addressed to Your Lordship by the Seven Sons and one Stepson of the late Mr. Henty* of Van Diemen’s Land, requesting either that possession may be confirmed to them of some land which they have occupied at Portland Bay, or that compensation may be made to them for the loss of it.

The Messrs. Henty have appended to their letter a Copy of a Memorial, which they had previously addressed to me; and your Lordship will perceive that it is in consequence of my having, with the advice of my Executive Council declined to recognize their claims to any portion of the land or to compensation for the loss of it, that they appeal to Your Lordship.

I further enclose a Copy of the Minute made on the subject by the Executive Council, and, having done this, I should leave the case in the hands of Your Lordship, were it not that the Messrs. Henty have (unintentionally I am willing to believe) in their letter to Your Lordship greatly misrepresented a conversation, which one of their Body had with me when lately in Sydney.

I certainly said to Mr. Henty that the principal difference between their case and that of the Port Phillip Association was that the Association had made a pretended purchase from the Natives; but I never said, at least I certainly did not mean to say, that Mr. Henty’s case would have been any stronger, if there had been a pretended purchase from the Natives, for I distinctly told Mr. Henty that I held all such purchases to be absolutely

* Note 112.
null and void, and that the recognition of them in any way would be likely to involve us in difficulties, especially at a time when we are about to declare the invalidity of any titles to land acquired from the Natives of New Zealand. A reference to the case of the Port Phillip Association will show that the compensation of £7,000, granted to them, was obtained by the persevering efforts of their friends at home; and that it was stated by the Executive Council, in their Minute of the 21st Octt., 1836, that the Council considered any compensation to the Association to be "justifiable only under the express authority received from Her Majesty's Government." For the history of the case of the Association, I beg to refer Your Lordship to Sir Richard Bourke's Despatch of the 12th Novr., 1836, No. 121.

The Messrs. Henty, like the first Settlers at Port Phillip, claim to have rendered good service to the Government and to the Colony of New South Wales by opening a district of Country, which might otherwise have remained unoccupied for a number of years; but, so far from considering this any advantage, I look upon it as directly the reverse, not only because the dispersion of our Population is increased by it, but because also we are forced prematurely to incur considerable expense in the formation of new Establishments. I have already, in consequence of the proceedings of the Messrs. Henty, been obliged to send two Expeditions to Portland Bay, and I am now under the necessity of organizing a Police Force there, and of laying out a Town, besides incurring expense for the Protection of the Aborigines.

But notwithstanding all these considerations, should your Lordship be of opinion that the precedent established in the case of the Port Phillip Association must guide us in dealing with that of the Messrs. Henty, I would beg leave to point out that the Association received compensation only for the outlay, which they had made previous to the publication of Sir Richard Bourke's proclamation of the 26th Augt., 1835, and that consequently the Messrs. Henty can, even according to that precedent, claim no more.

It is further to be borne in mind that, if the Messrs. Henty have the prospect of suffering a loss on the buildings which they have erected, and the land which they have brought into cultivation, they on the other hand have gained greatly by having been in the undisturbed and exclusive possession of a very extensive tract of the best grazing land in the Country for a period of six years.
Your Lordship is aware that Portland Bay is in the South Western extremity of this Government, close upon the borders of South Australia, and distant about 800 miles from Sydney.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[A copy of the letter, dated 3rd April, 1840, will be found in a volume in series III, and of the minute in a volume in series II.]

Lord John Russell to Sir George Gipps.

(Despatch No. 41, per ship Elphinstone; acknowledged by Sir George Gipps, 11th July, 1841.)

Sir,

Downing Street, 14 April, 1840.

I transmit to you the Copy of a letter from Mrs. Ann Fish, making enquiry respecting her Husband who is supposed to be residing 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 am, &c.,

J. Russell.

[Enclosure.]

Mrs. Ann Fish to Secretary of State.

Hon. Sir, Blackburn, 9 April, 1840.

I hope you will pardon the intrusion of this letter; the reason is my husband Willm. Fish, a Pensioner from Her Majesty’s 77 foot at 8d. per diem, commuted his pension as a single man, contrary to W. Fish.

I have wrote to the Secretary of the Colonial Department, at that time it was Lord Glenelg, who advised me to write to him at Sydney, New South Wales, and to send it through the Post Office, which I did according to his Lordship’s directions, but never received any answer.

I was advised to write to the foreign Department once more and they would probably get returns from Sydney and Hobart. I have to request your Lordship will acknowledge the receipt of this Letter.

I am, &c.,

Ann Fish.

Gremshaw Park, near the Poor House, Blackburn, Lancashire.

Lord John Russell to Sir George Gipps.

(Despatch No. 43, per ship Elphinstone; acknowledged by Sir George Gipps, 16th July, 1841.)

Sir,

Downing Street, 18 April, 1840.

I have the honor to acknowledge the receipt of your Despatch No. 101 of the 5th of July last transmitting, in compliance with Lord Glenelg’s Dispatch No. 87 of the 10th March,
1838, and for the information of the Lords Commissioners of the Treasury, Returns of the Proceeds of the Effects of Deceased Convicts in the Colony under your Government.

Having Communicated your Dispatch and its Inclosures for the consideration of the Board of Treasury, their Lordships observe, in reply, that, as it appears from the Returns forwarded by you that the whole of the Sums, deposited in the Colonial Treasury or in the Savings Banks at New South Wales on account of deceased Convicts, were derived from the proceeds of the Effects of Convicts to whom no remission of punishment, either Absolute or Conditional, had been granted, those deposits devolve to the Crown; And as, in analogous cases in this Country, the Crown has been graciously pleased to entertain the application of Creditors, or of the personal Representatives of the deceased Felon, provided they are of good Character, and to make Grants to such parties of the Felon's Property, it is necessary that the deposits now in question should be remitted to the Board of Treasury, in order that they may be appropriated to any such Claimants.

You will accordingly cause the Sums specified in the Returns forwarded in your Dispatch, amounting to £616 5s. together with any similar deposits which may have accrued during the past year, to be paid into the Military Chest on the Station for that purpose; and you will forward, at the same time, for the consideration of the Lord Commissioners of the Treasury, any claims that may have been preferred in the Colony to portions of the property in question, and report the results of any investigation, which you may have been enabled to make respecting the grounds of claim or the Character of the Claimant.

I am, &c.,
J. RUSSELL.

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SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 57. per ship Pero; acknowledged by lord John Russell, 28th March, 1841.)

18 April.

My Lord,

Government House, 19th April, 1840.

I beg leave to report to your Lordship that a question has lately arisen as to the legality of the Importation into this Colony of French Wines in French Bottoms from the Dominions of the King of the French.

There are three Orders in Council which bear upon this subject, namely, those of the 1st June, 1826, of the 16th Dec., 1826, and of the 16th July, 1827. The first of these Orders in Council permitted the importation into the West India Islands and the
British Dominions of North America of all articles from France the duties on which did not exceed 7½ per Cent. ad valorem. The second Order prohibited the importation of Wines in the same Colonies, even though the duty on it should be less than 7½ per Cent. By the third Order, it seems to have been intended to put the trade of New South Wales, and other places not mentioned in the two preceding Orders, upon the same footing as the trade had been placed by the said two Orders in the West Indies and British North America. The doubts however, which I have alluded to, arise from the following words in this order of the 16th July, 1827:—

"And His Majesty doth further, in pursuance and exercise of the powers aforesaid and with the advice aforesaid, declare and grant that it shall be lawful for French Ships to import into the British Possessions on the Western Coast of Africa, and into the Colony of the Cape of Good Hope, and into the Island of Ceylon, and into His Majesty's Settlements in the Island of New Holland, and into the Island of Van Diemen's Land, and into the several Islands and territories dependent upon and belonging to the several Settlements or Colonies aforesaid, from the Dominions of His Most Christian Majesty, such goods being the produce of those dominions, as are mentioned, or enumerated, or referred to, in the Table subjoined to the said Order in Council of the 1st day of June, 1826," taking no notice of the Order of the 16th Decr., 1826.

I enclose the Opinion, which has been given by the Attorney General of this Colony upon the case as drawn up for his advice; and I have the honor to report that, until I am directed to the contrary by Your Lordship, the Importation of French Wine into this Colony in French Bottoms from the Dominions of the King of the French will be permitted on payment of the duty of five per Cent. ad valorem, which is that payable on all articles not of British growth or manufacture.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[A copy of this opinion is not available.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 44. per ship Elphinstone.)

Sir,

Downing Street, 20th April, 1840.

With reference to my Predecessor's Dispatch No. 103 of the 29th of July last, I have the honor to acquaint you that, under the circumstances stated to me by Mr. Ewing, late Lieutenant,
91st Foot, I have granted to that Gentleman a further extension for Six Months from the 1st of July next of the period for his arrival in New South Wales as a retired Military Settler.

I am, &c.,

J. RUSSELL.

22 April.

Despatch acknowledged.

Transmission of correspondence re defences of Sydney and Hobart town.

Additional engineer officer to be employed.

1840.

20 April.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 45, per ship Elphinstone.)

Sir, Downing Street, 22 April, 1840.

I have the honour to acknowledge the receipt of your dispatch, No. 122 of the 31 of August last, reporting that further representations had been addressed to you by several of the Inhabitants of Sydney, relative to the defenceless state of the Harbours of Sydney and Hobart Town.

I transmit to you herewith Copies of a Correspondence, which has passed on this subject between this Department, the Board of Ordnance, and the Board of Treasury, from which you will perceive that Her Majesty's Government are not prepared to adopt the proceedings with respect to the Works of Defence, as specified in the Report which accompanies Mr. Byham's letter of the 3rd of February; but that it is proposed to send out an additional Officer of Engineers to New South Wales to be employed, under the existing arrangement, on the Civil as well as the Military Works of Defence. This Officer will also be instructed to inspect the Stations in the Settlement of Western Australia, where it has been proposed to construct some Works of Defence, and to report upon that proposition.

I am, &c.,

J. RUSSELL.

[Enclosure No. 1.]

MR. E. BYHAM TO UNDER SECRETARY STEPHEN.

Sir,

Office of Ordnance, 3rd February, 1840.

In reference to the last paragraph of my letter of the 5th April, 1839, stating in reply to yours of the 16th of the preceding month that the Master General and Board had called upon the Commanding Royal Engineer at New South Wales for a report, plans and estimates of what he might consider necessary for the protection of the Principal Sea Ports of the Colony, I have the honor, by the command of the Master General and Board of Ordnance, to transmit to you for the information of the Secretary of State for the Colonial Department the enclosed copy of a report they have received from the Commanding Engineer on the subject adverted to; and I am to request you will move Lord John Russell to favor the Master General and Board with a communication, stating whether it is the wish of Her Majesty's Government that the measures proposed by the Commanding Engineer and supported by the Governor of the Colony shall be carried into effect, to enable the Master General and Board to arrange the selection of the
Engineer Officers applied for, as soon as it can be done, and to consider the question of providing for the expence of the services that may be determined upon.

I have, &c.,
R. Byham.

[Sub-enclosure No. 1.]

MAJOR BARNEY TO INSPECTOR-GENERAL OF FORTIFICATIONS.

Royal Engineer’s Office,
Sydney, 14th Sept., 1839.

In consequence of the receipt of a communication, dated Office of Ordnance, April 5th, 1839, with enclosure, requiring Plans and Estimates for putting the Principal Seaports of this Country in a state of Defence against desultory attacks from Foreign Cruisers, I have considered it advisable to withhold the Engineer Estimate 1840-41, which was confined to incidental services only, amounting to £260. The estimate, embracing the required papers, will be prepared and forwarded with the least possible delay to the extent of the information I can with confidence act upon, which I regret to say embraces but a small portion of this extensive Country.

The extended duties of the Department, arising from the charge of the Convict Works, has hitherto prevented my detaching an Officer, for the purpose of making Surveys (and reports) on the different Ports requiring attention; and I have considered it my duty to address His Excellency the Governor (see letter accompanying) on the subject of attaching two more Officers of the Corps to this Command; the recommendation of His Excellency will, I trust, have the effect of obtaining the necessary authority for dispatching the Officers to this Country with the least possible delay, the necessity for them I cannot urge too strongly.

In the hope that this application will be attended with success, I beg most distinctly to request that one officer should be selected (as second officer) fully capable of taking the details of duty, and in whom confidence may be placed. Hitherto I have been unable to the work of of this command in a satisfactory manner for want of such an Officer, which prevents my personal inspection of the outposts. And it will appear from the accompanying letter that the necessity for visiting the Stations frequently is of much importance. In absence of the Engineer Annual Estimate, I have the honor to recommend that £5,000 be brought forward in the Parliamentary Estimate towards the required defences of New South Wales with the assistance of Convict labour. I consider the sum sufficient for the construction of Batteries and permanent Blockhouses, immediately necessary to the defence of the Ports of Sydney, New Castle, Wollongong, Port Macquarie, and Port Phillip.

I have, &c.,
Geo. Barney,
Capt. and Bt.-Major, Royal Engineer Coy.

[Sub-enclosure No. 2.]

MAJOR BARNEY TO SIR GEORGE GIPPS.

Royal Engineer Office,
Sydney, 13 Sept., 1839.

Your Excellency is so perfectly acquainted with the duties of the Engineer Department, that I look with confidence to your support in my application for the addition of Two officers of the Corps to this command.

1540.
22 April.
Application for additional engineer officers.

I am led to bring the subject forward in consequence of being required to transmit Plans and estimates for putting the principal Sea Ports of this Country in a state of defence against desultory attacks from Foreign Cruisers. The extended duties of the Department, occasioned by the charge of the Convict Works, has hitherto disabled me either from personally visiting the principal Ports of this Country, or of detaching an Officer for that duty.

Of the two Officers attached to the command, one has been a considerable time employed upon a survey of the approaches to Sydney, both by Sea and Land, with a view to performing Plans of Defence; but the current duties of the Department so frequently required his attention, that it will yet be some time before the Work is completed.

The remaining Officer has been stationed at Norfolk Island (during the last year), where extensive buildings had failed for want of knowledge in the Foreman of Works; and I regret to state that this remark applies to nearly all the Work in New South Wales more particularly at the out Stations.

There is much and important information required in a New Country like New South Wales, which is so rapidly extending its Population and Territory; and I trust your Excellency does not consider the means at my disposal equal to the task; and I also trust your Excellency will bear me out in the recommendation that Two Officers of the Corps be immediately added to this command.

I have, &c,
GEO. BARNEY,
Capt. and Bt.-Major., R.E. Compy.

I can have no hesitation in stating that I am acquainted with no Colony or Station that is so much in want of Engineer Officers as New South Wales.

With respect to Convict Services and the Superintendence of Convict Labour, I have repeatedly offered this opinion to the Secretary of State, and the want of assistance is not less felt, I am sure, by Major Barney in the execution of his Military than of his Civil Duties.

[Enclosure No. 2.]

UNDER SECRETARY STEPHEN TO MR. C. E. TREVELYAN.

Sir,
Downing Street, 24th February, 1840.

I am directed by Lord John Russell to transmit to you, for the consideration of the Lords Commissioners of the Treasury, the enclosed copy of a letter from the Secretary to the Board of Ordnance with a copy of a report from the Commanding Royal Engineer at New South Wales relative to the Defences of the Principal Sea Ports of that Colony. I also transmit a Copy of a Despatch from Governor Sir George Gipps on the same subject.

Lord John Russell is not prepared on the information now before him to adopt the recommendation for undertaking the works of defence, specified in the accompanying report, but His Lordship proposes, with the concurrence of the Lords Commissioners of the Treasury, that an additional Officer of Engineers should be sent out to New South Wales to be employed under the existing arrangement on the Civil as well as the Military Works of the Colony.

I am, &c,
JAMES STEPHEN.
MR. C. E. TREVELYAN TO UNDER SECRETARY STEPHEN.

Sir, Treasury Chambers, 10th April, 1840.

I have it in command from the Lords Commissioners of Her Majesty's Treasury to request you will state to Lord John Russell, with reference to your letter of the 24th of February last, that my Lords, having had the communications from the Governor of New South Wales and from the Board of Ordnance relative to the defences of the Principal Sea Ports of that Colony, therein submitted to them, under consideration, concur in the sanction which his Lordship proposes to give for the employment of an additional Officer of the Royal Engineers at New South Wales under the existing arrangement; but that my Lords are also of opinion that the information afforded by those documents will not warrant the adoption of any proceedings with respect to the Works of Defence in that Settlement, as suggested by Sir George Gipps.

My Lords would further observe to Lord John Russell, with reference to the letter which you addressed to this Board by direction of the Marquis of Normanby on the 24th May, 1839, that the additional Engineer Officer, who may proceed to New South Wales, might be instructed to inspect the Stations in the Settlement of Western Australia, at which it has been proposed to construct some works of Defence and to report upon that proposition.

I have, &c,

C. E. TREVELYAN.

UNDER SECRETARY STEPHEN TO MR. E. BYHAM.

Sir, Downing Street, 22d April, 1840.

I am directed by Lord John Russell to acquaint you, for the information of the Master General and Board of Ordnance, that your letter of the 3rd Feb. last, enclosing a Report, furnished by the Commanding Royal Engineer at New South Wales, of the Works which he considers necessary for the protection of the Principal Sea Ports of the Colony, was referred for the consideration of the Lords Commrs. of the Treasury, who have expressed their opinion that the information afforded by that document will not warrant the adoption of any proceedings with respect to the Works of Defence there.

Their Lordships, however, concur with Lord J. Russell in the proposal for the employment of an additional Officer of the Royal Engineers in the Colony under the existing arrangement on the Civil as well as the Military Works of Defence.

I am, therefore, to request that you will move the Master General and Board to make arrangements for sending out this additional Officer, and to suggest, with reference to your letter of the 1 of May last, that he should be instructed to inspect the Stations in the Settlement of Western Australia, where it has been proposed to construct some Works of Defence and to report upon that proposition.

I am, &c,

JAS. STEPHEN.
1840.
24 April.
Despatch re circuit courts acknowledged.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 46, per ship Elphinstone.)

Downing Street, 24 April, 1840.

Sir,

I have the honor to acknowledge the receipt of your Dispatch No. 138 of the 17th Octr. last, forwarding certain Resolutions of the Legislative Council of New South Wales respecting the Establishment of Circuit Courts in the Colony; and, in reply, it is only necessary for me to refer you to my Despatch of the 30th January last, No. 14, on that subject.

I am, &c.,

J. EUSSELL.

25 April.

Despatch acknowledged.

Legal opinion re claim of T. A. Murray to land grant.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 47, per ship Elphinstone.)

Sir,

Downing Street, 25 April, 1840.

I have received your Dispatch, No. 84 of the 23d of May last, forwarding a letter from Mr. T. Aubrey Murray, claiming an additional Grant of Land in New South Wales as the Representative of his Father.

Having referred the claim for the consideration of the Law Officers of the Crown, I have now to acquaint you that they have reported their opinion that, assuming that under the regulations of 1826 and 1827 the Father of the Claimant was entitled to the Grant and afterwards died leaving his right to the Son, the Son is as much entitled to the Grant as he would be to the conveyance of an Estate, which the Father had bargained and paid for in his life time and demised to the Son.

They therefore submit their opinion that Mr. Murray's Claim is well founded.

They also conceive that the case in question can only apply as a precedent, where the conditions prescribed by the Regulations have been complied with by the Settler before his death, and that in such a case justice and equity require the Grant should be made to his Heir or demisee.

You will communicate this decision to Mr. Murray in reply to his Memorial of the 7 May, transmitted with your dispatch.

I am, &c.,

J. RUSSELL.

26 April.

Despatch acknowledged.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 48, per ship Elphinstone.)

Sir,

Downing Street, 26 April, 1840.

I have received your dispatch, No. 79 of the 7 of May last, enclosing a Memorial from Mr. Frederick Wright Unwin of Sydney, appealing against a decision of the Local Government on
his claim to certain Land in that Town, and praying a Trial of his case in the Supreme Court of the Colony.

Having referred this case for the opinion of the Attorney and Solicitor General, I transmit to you, herewith, for your information and guidance, a Copy of their Report on the subject stating their opinion that there is no foundation in Law or equity for Mr. Unwin's demand.

I am, &c.,

J. EUSSELL.

[Enclosure.]

MRS. CAMPBELL AND WILDE TO LORD JOHN EUSSELL.

My Lord,

We have the honor to acknowledge the receipt of your Lordship's letter of the 21st November, transmitting to us the copy of a despatch from the Governor of New South Wales and other papers, respecting the claim of Mr. F. W. Unwin to certain land in Sydney, and requesting our opinion whether the demand of Mr. Unwin is well founded in Law or in Equity.

Having duly considered these papers, we have to report to Your Lordship that, in our opinion, Mr. Greenaway, under whom Mr. Unwin claims, had no title whatever to the land and that there is no foundation in Law or in Equity for Mr. Unwin's demand.

We have, &c.,

J. CAMPBELL.
THOS. WILDE.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 49, per ship Elphinstone.)

Sir,

I have the honour to acknowledge the receipt of your Dispatch, No. 140 of the 24 Octr. last, reporting the result of the measures which you had adopted for quelling the mutiny which had broken out in the Detachment of the 80th Regt. stationed at Norfolk Island. And I have to express to you the satisfaction with which I have received this intelligence.

I am, &c.,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 50, per ship Elphinstone.)

Sir,

I have received your dispatch, No. 133 of the 3d Octr. last, transmitting for the Royal Allowance An Act passed in the Legislative Council of New South Wales in August last for the Establishment of Courts of Requests at the Towns of Melbourne and Port Macquarie, together with a remonstrance which was made against that Act by the Judges of the Supreme Court.
The Act, however, it appears, was adhered to by the Council notwithstanding such remonstrance.

I beg to refer you to the Statute 2 and 3 Victoria, Cap. 70, S. 2, for the Amendment and continuance for a year of the New South Wales Act, 9 Geo. 4, Cap. 83, transmitted in my Predecessor's Dispatch, No. 130 of the 29 of August last.

That Statute removes all doubt as to the validity of any Act similar to that now transmitted, which may be hereafter passed by the Legislative Council. Should that Act, therefore, be re-enacted under the Authority of the Statute above referred to, as would appear advisable, all doubt respecting the validity of it will be at an end; whereas the opinion of the Law Officers of the Crown in this Country not being binding on the Judges of New South Wales, it is possible that, even if the Act which you now submit were confirmed by The Queen under the advice of the Attorney and Solicitor General as to the competency of the Local Legislature to enact it, that question might still be debated in the Supreme Court of the Colony, and might possibly be decided there in such a manner as virtually to invalidate even the Royal Authority in this respect.

I am, &c,

J. EUSSELL.

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LORD JOHN RUSSELL to SIR GEORGE GIPPS.

(Despatch No. 51, per ship Elphinstone; acknowledged by Sir George Gipps, 14th October, 1840.)

Sir, Downing Street, 30 April, 1840.

I have to acknowledge the receipt of your Dispatch No. 139 of the 21st of October last, reporting the appointment of Mr. C. M. Lewis to the situation of Harbour Master at Port Phillip with a Salary of £200 per Annum.

As it does not appear that the creation of that Office has ever been reported to, or sanctioned by Her Majesty's Government, I am unable to express an opinion on the propriety of the Appointment.

I am, &c,

J. RUSSELL.

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SIR GEORGE GIPPS to LORD JOHN RUSSELL.

(Despatch No. 58, per ship Pero.)

My Lord, Government House, 1st May, 1840.

The Lord Bishop of Australia having furnished me with a Copy of his letter to Your Lordship of the 15th ulto., remonstrating against the decision conveyed in Mr. Labouchere's letter to the Secretary* to the Society for the Propagation of the Gospel in Foreign Parts of the 26th Augt., 1839, it is my duty to apprise Your Lordship of the receipt of the same.

* Note 113.
In consequence of this communication, I have informed the Lord Bishop that the expression in my Despatch of the 9th Novr., 1838, No. 183, which formed the subject of the abovementioned letter from Mr. Labouchere to the Secretary of the Society for the Propagation of the Gospel in Foreign Parts, was made use of by me solely for the purpose of urging on the Secretary of State a compliance with the Bishop of Australia's own wishes, as a reference to the Despatch in question will clearly show. At the same time, I considered it only candid and proper to inform His Lordship that, though I did not in Novr., 1838, when, as His Lordship observes, I had been only nine months in the Colony, ask the Secretary of State to withhold his sanction to the further embarkation of Clergymen, I did ask him so to do at a much more recent period; and, to avoid any misconception of my motives for so doing, I furnished the Lord Bishop with a Copy of my Despatch to the Marquis of Normanby of the 3rd Decr., 1839, No. 163.

In that Despatch, Your Lordship will observe that I stated the number of Clergymen, for whom provision was made by the local legislature, to be 89. I have since discovered that the number ought to have been stated as 106, the Missionaries, whose salaries are paid out of the Land Fund, having been omitted, and also the seceding Presbyterian Clergymen, whose salaries were then temporarily suspended.

Whilst I trust Your Lordship will believe that I entertain, equally with the Lord Bishop of Australia, a desire that the means of imparting religious instruction may be furnished as extensively as possible to the People of this Colony, I regret that I must still, upon financial grounds, adhere to the recommendation contained in my Despatch of the 3rd Decr., 1839.

As the Lord Bishop does not in any way contend that the Government is bound by existing agreements to find passages for Clergymen to Australia, it would be needless for me to enter on a reply to the arguments of His Lordship, in respect to what the Government is pledged to by the Church Act of the Colony.

I have, &c.,

GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

My Lord, Government House, 4th May, 1840.

On the 8th Decr. last, I had the honor to receive Lord Normanby's Despatch of the 10th July, 1839, No. 90, enclosing a Copy of Mr. Edward MacArthur's letter of the 3rd of the
same month on the necessity of establishing an efficient system of Steam boat Navigation on the Eastern Coast of Australia, and urging the Government to render assistance in the undertaking.

I have deferred replying to this Despatch until I could be in a situation to offer a decided opinion as to the necessity for an interference by the Government, such as is asked for by Mr. MacArthur. I am happy now to be able to inform Your Lordship that such interference is, in my opinion, unnecessary, a Company* with a large capital having been formed in the Colony for the purpose of establishing an extensive Steam communication, and orders having been sent to England for a number of Steam Vessels. One of Mr. MacArthur's brothers is, I am happy to say, Chairman of the Company.

I have, &c.,

GEO. GIPPS.

6 May.

Lord John Russell to Sir George Gipps.

(Despatch No. 52, per ship Elphinstone.)

Sir,

Downing Street, 6 May, 1840.

I have received your Dispatch No. 20 of the 23d of January, 1839, forwarding for the Royal Allowance an Act passed by the Legislative Council of New South Wales to regulate the Distillation of Spirits and the issue of Licenses for Distilling, Rectifying and Compounding Spirits in the Colony.

Having referred your Dispatch for the consideration of the Lords Commissioners of the Treasury, their Lordships have stated that they see no reason to object to the Provisions of the Act more particularly as the termination of it at the close of the present year will afford a fit opportunity for such modification of the rates of Duty on distilled or imported Spirits as experience may indicate to be expedient.

Her Majesty has, therefore, been pleased to confirm and allow the Act.

I am, &c.,

J. RUSSELL.

7 May.

Lord John Russell to Sir George Gipps.

(Despatch No. 53, per ship Elphinstone.)

Sir,

Downing Street, 7 May, 1840.

I have to acknowledge the receipt of your Dispatch No. 21 of the 23rd of January, 1839, on the subject of the mode in which the Drawback on Rum, supposed to be issued to the Troops in New South Wales, has hitherto been paid to the Commissary General.

* Note 114.
Having drawn the attention of the Lords Commissioners of the Treasury to this subject, I transmit to you the Extract of a letter, which has been addressed by their desire to this Department, expressing their approval of the notification, which you had made to the Officer in charge of the Commissariat in regard to the Drawback on that spirit.

I am, &c.,
J. RUSSELL.

[Enclosure.]

EXTRACT of a letter from the Secretary to the Treasury to J. Stephen, Esq., dated 4 May, 1840.

"I HAVE to request you will acquaint Lord John Russell that my Lords have also had under their consideration Sir George Gipps's dispatch No. 21, and that their Lordships approve of the notification, which he had made to the officer in charge of the Commissariat in regard to the Drawback in Spirits consumed by the Troops after the passing of the Act, which legalises the Distillation of Spirits in the Colony at the reduced rates of duty of 4s. 6d. and 3s. per Gallon, and that they have signified such approval to the Commissary, and have at the same time enjoined him to afford every facility to the officers of the Civil Government for giving effect to such precautions as the Governor may adopt for protecting the Colonial Treasury against any undue charge for Drawback."

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 60, per ship Pero.)

My Lord, Government House, 7th May, 1840.

I regret very much that circumstances have prevented my replying until now to the Despatch No. 240 from Lord Glenelg, dated the 10th Novr., 1838, in which I was desired to report on the state of the Mission to the Aborigines at Wellington Valley, in consequence of a representation which had been made to His Lordship by the Church Missionary Society that the Government of New South Wales was about to establish a Police Force at the Mission, which the Missionaries apprehended would be injurious to their labours.

I have now the honour to forward to Your Lordship Copies of the Minutes of Proceedings, which have been had before myself and my Executive Council on the subject of the Mission, and appended to them are Copies of the evidence taken before us, the result of which has been, as Your Lordship will perceive, the abandonment of the intention of keeping a Police Force at the Mission, and the determination to remove it, as soon as circumstances will permit, to a New Township or Village, which is to be laid out at the distance of about nine miles from the residence of the Missionaries.
I beg however distinctly to state to Your Lordship that I have acquiesced in this arrangement, rather out of deference to the wishes of the Church Missionary Society than from any idea that the presence of a few Constables, under the superintendence of a Magistrate who is a married man, would be injurious to the Mission; and Your Lordship will probably concur in this opinion, when I state that a Party of Soldiers, under the command of a non-commissioned Officer, had previously been quartered there ever since the Mission was established; and that the Missionaries had further granted permission to two unmarried Settlers, with their Convict Servants, to reside on the premises.

Your Lordship will observe that the evidence before the Council gives a very unfavourable account of the State of the Mission; and that a report of it, hardly less discouraging, is contained in a letter from the Revd. Richd. Taylor, who is himself a Missionary, to the Rev. Wm. Cowper, the Secretary to the local Committee of the Church Missionary Society at Sydney. I regret to be forced to say that in my opinion, notwithstanding the statements in their Annual reports alluded to in Mr. Coate's letter to Lord Glenelg of the 31st Octr., 1838, the Mission has as yet done little good in the Colony, and I doubt whether much is to be expected from it, though certainly its chances of success would be improved by the withdrawal (as recommended by the local Committee) of one of the Missionaries.

When the Mission was first established, Wellington Valley was at the extreme verge of the European Settlements in the Colony; but, during the last few years, grazing stations have been advanced so far beyond it, that it is now on the high road to a District very extensively occupied by Settlers; and, as the road passes through the centre of the Missionary Land, and close by their buildings, the Mission has been a regular halting place for travellers; and such it must remain, even after the Police Station is removed to the New Village about to be formed. I regret that under these circumstances I cannot take upon myself to advocate with Your Lordship any extension of the pecuniary grant now annually made by this Government to the Mission, especially as, in the case of other Missions, namely, that of the Wesleyans at Port Phillip, and that of the Lutherans at Moreton Bay, one half of their expenses is defrayed by the Societies to which they belong, whilst, as far as I am informed, the Church Missionary Society has only within the last year been called upon to contribute anything to the support of the Mission at Wellington Valley.
GIPPS TO RUSSELL.

I beg to assure Your Lordship that there is no subject to which my attention has been more anxiously directed than that of the Protection and Civilization of the Aborigines of this Country; and, in a separate Despatch, I propose to bring under Your Lordship's notice some documents explanatory of the measures, which have recently been adopted for this purpose. I have, &c.,

Geo. Gipps.

[Enclosure.]

PROCEEDINGS of the Executive Council in reference to a Despatch from the Right Honorable Lord Glenelg, dated 10th November, 1838 (No. 240), relating to the Aboriginal Mission to Wellington Valley, and their complaint in regard to the establishment thereof of a Police Station and Post Office.

EXTRACT from Minute No. 10 of the year 1839, dated 9th April, 1839.

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 laid before the Council a despatch from the Right Honorable Lord Glenelg, dated 10th November, 1838 (No. 240), transmitting a copy of a letter dated 31st October, 1838, addressed to his Lordship by the Secretary of the Church Missionary Society, bringing under his Lordship's notice the present circumstances of the Mission to the Aborigines of New South Wales, particularly in reference to the Police Station and Post Office, which had been recently established at Wellington Valley to the serious injury, as alleged, of the Missionary Establishment there, accompanied by a number of letters* which had been addressed to the Colonial Government by the Corresponding Committee in this Colony of the Society above mentioned, and other persons, relative to the subject in question.

His Excellency being desirous to afford time to the Members, for the perusal and deliberate examination of these papers, the further consideration of the subject was deferred.

EXTRACT from Minute No. 12 of the year 1839, dated 17th April, 1839.

Present. As Before, with the addition of the Right Reverend the Lord Bishop of Australia.

With reference to the proceedings on the 9th Instant, relative to the Secretary of State's despatch on the subject of the Aboriginal Mission at Wellington Valley, and their complaint in regard to the establishment there of a Police Station and Post Office, His Excellency informed the Council that he had directed the attendance to be requested of the Reverend William Cowper, one of the Members of the Corresponding Committee of the Church Missionary Society, and also of Henry Fysche Gisbourne, Esqr., late Police Magistrate at Wellington Valley, for the purpose of affording information on the subject to the Council; these Gentlemen were then severally introduced and examined, and their Evidence will be found in the Appendix; the further consideration of the subject was deferred.

* Marginal note.—Appendix to Minute No. 39/10. See annexed Letter referring to B 1, 2 and 3, p. 6. See also B 4 and 5, pages 17 and 25.

† Marginal note.—Appendix to Minute No. 39/12, A 1 and 2, pages 27 and 33.
EXTRACT from Minute No. 13 of the year 1839, dated 19th April, 1839.

Present, as on last occasion.

His Excellency the Governor laid before the Council a copy of the Annual Report* of the Mission to the Aborigines at Wellington Valley for the year 1838, and, with reference to the proceedings of the Council on the 17th Instant, stated that Mr. John Maughan whose name had been alluded to by the Gentlemen previously examined, and Charles Wray Finch, Esqr., a Magistrate residing in the neighbourhood of Wellington Valley, would to-day appear before the Council for the purpose of affording further information on the subject of the Mission above-mentioned; those Gentlemen, being then severally introduced, were examined, and their Evidence will be found in the Appendix;‡ the Council are of opinion that the further consideration of the subject should be deferred, and that the attendance of the Gentlemen composing the Mission should be requested.

EXTRACT from Minute No. 18 of the year 1839, dated 28th May, 1839.

Present, as on last occasion.

His Excellency the Governor with reference to the proceedings on the 17th and 19th Ultimo, relative to the Mission to the Aborigines at Wellington Valley, laid before the Council a copy of a letter§ addressed to the Reverend William Cowper by the Reverend Richard Taylor, dated the 6th of February last, giving an account of the opinion which, upon a recent visit to the Mission, he had formed of its present condition and prospects, which he represents as not being very satisfactory, in respect to any perceptible improvement in the Religious and Moral or Social habits of the Adult Black Population.

His Excellency likewise laid before the Council a Plan or Design∥ for a Town, which had been proposed to be established at the junction of the Bell River with the Macquarie, at the distance of about two miles from the Missionary Station accompanied by the Deputy Surveyor General's letter of the 21st of March No. 39/113 transmitting the same.

His Excellency also stated that the Reverend William Watson had arrived, and was in attendance; being introduced, he was examined, and his Evidence|| will be found in the Appendix.

The Council having carefully considered the whole subject, and particularly the opinions expressed by Mr. Maughan and Mr. Watson that there is a very suitable situation for the site of a Town at a place known by the native name of Nuria or Newry, upon the banks of the Bell river and the road from Wellington Valley to Bathurst, at the distance of about six or seven miles from the Missionary Station, they recommend that the Deputy Surveyor General be directed to cause a survey to be made of the place alluded to, and of the surrounding neighbourhood, within limits not exceeding eight miles from the Missionary Station, nor less than three miles, and to report particularly on the respective advantages and disadvantages

* Marginal note.—Appendix to Minute No. 39/13, A 1 and 2, pages 43 and 46.
† Marginal note.—Appendix to Minute No. 39/13, A 3 and 4, pages 47 and 52.
§ Marginal note.—Appendix to Minute No. 39/18, A 1, page 55.
∥ Marginal note.—Appendix to Minute No. 39/18, A 2, page 62.
|| Marginal note.—Appendix to Minute No. 39/18, A 3, page 63.
of the place in question, or of any other which may be deemed more favourable, as compared with the site which has been proposed at the junction of the Bell river with the Macquarie.

**Extract from Minute No. 25 of the year 1839, dated 22nd August, 1839.**

Present, as on last occasion.

His Excellency the Governor, with reference to the proceedings on the 9th, 17th and 19th of April, and 28th of May last, in regard to the selection of such a site for a Town or Village at Wellington Valley, or in the adjacent District, as not unnecessarily to encroach upon the Aboriginal Missionary Station there, now laid before the Council a letter* from the Deputy Surveyor General (dated 13th Instant No. 39/362) reporting that the ground at Newry (the place which was recommended by Mr. Maughan and the Reverend Mr. Watson) has been examined, and found to be suitable for a Village; but neither is the inclination of the Land so well adapted as that at the confluence of the Bell with the Macquarie River, nor is the site so central; that the Country about the lower or Eastern road to Wellington has been also examined, but is found to be badly watered, and no suitable place for a Village has been discovered.

A letter† from the Police Magistrate Mr. W. Warre Barrow is confirmatory of the above mentioned Report.

The Council are of opinion that, in order to leave the Missionaries at Wellington Valley in the exclusive possession of the ground there hitherto occupied by them, as the Land at Newry is represented as being not in-eligible for the site of a Village, they recommend that that situation should be fixed upon, and the Police Establishment removed to it from Wellington Valley as soon as circumstances will permit.

**True Extracts:**—WM. MACPHERSON, Clerk of Councils.

Council Chamber, Sydney, 6th April, 1840.

A copy of a letter from the Reverend Wm. Cowper to the Colonial Secretary, dated 26th August, 1839 (see page 79) is herewith transmitted as being connected with these proceedings, although received too late to be laid before the Council at their last meeting on this business, 22d August, 1839.

WM. MACPHERSON.

**[Sub-enclosures.]**

**List of Papers relating to the Aboriginal Mission at Wellington Valley laid by His Excellency the Governor before the Executive Council 9th April, 1839.**

_B._—A Despatch from the Right Honorable Lord Glenelg to His Excellency Governor Sir George Gipps, dated 10th November, 1838, No. 240, with its enclosures, being copies of

(1) Letter from D. Coates, Esqr., Secretary to the Church Missionary Society to Lord Glenelg, dated 31 October, 1838.


(3) Letter from Sir George Grey to D. Coates, Esqr., dated 10th November, 1838.

_B._—A Despatch from the Right Honorable Lord Viscount Goderich to Major General Bourke, dated 21st December, 1831, No. 49, with its enclosures, being copies of

(1) Letter from D. Coates, Esq., to Horace Twiss, Esq., dated 1st January, 1830.

(2) Mr. Twiss's reply dated 18th February, 1830.

† Marginal note.—Appendix to Minute No. 39/25, A 2 and 3. Letter from Rev. Cowper, page 72, and from Mr. Barrow, page 76.
List of papers submitted to executive council.

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1840.

7 May.

(3) Letter from R. W. Hay, Esqr., to Mr. Coates, dated 20th November, 1830.

(4) Mr. Coates' reply, dated 30th November, 1830.

(5) Letter from Mr. Coates to Viscount Howick, dated 11th October, 1831, with copy of Instructions from the Church Missionary Society to Revd. Wm. Watson and Mrs. Watson on their proceeding to New South Wales, dated 7th October, 1831.

B.3.—Copies of the Letters and other papers under this mark laid before the Council and enumerated in the following List have not been made; but the Abstract given is believed to contain all that is essential in them, and all that appears to be necessary, when accompanied by the evidence given by the persons examined before the Council, and the other papers of which copies are herewith transmitted.

(1) Letter from the Revd. Richard Hill, Secretary to the Corresponding Committee in New South Wales of the Church Missionary Society to the Colonial Secretary, dated Sydney, November 18th, 1833, transmitting Extract from Letter from Revd. Wm. Watson, dated 15th November, 1833, pointing out natural boundaries for the Land which the Missionaries wish to occupy. On this letter is minuted as "the Governor (Sir Richard Bourke's) decision.

(2) Letter from the Surveyor General to the Colonial Secretary, dated 17 December, 1833 (No. 33/845), containing a more perfect description of the Land above mentioned, viz., "Commencing at the confluence of the Rivers Bell and Macquarie, and bounded on the North and East by the river Macquarie, until it turns to the East at a point about two miles South East of Wellington Station, on the South East by the hills to Welbong Caves, and on the West by the hills about a mile West of the Bell to the confluence aforesaid.

(3) Letter from John Kinchela, Junr., Esqr. Police Magistrate at Bathurst, to Revd. Wm. Watson, dated 30th November, 1837, asking whether two of the range of Government Buildings at Wellington (partly occupied by the Missionaries) could be conveniently spared to be occupied as a Lock up and Constable's dwelling, and as an Hospital.

(4) Memorandum from the Colonial Secretary to His Excellency the Acting Governor, Colonial Resident Studdgrass, stating that the Police Magistrate at Bathurst suggests that Wellington should be notified as a place for holding Petty Sessions."

Approved 30 February (signed) K.S.

(5) Letter from Revd. Wm. Watson to John Kinchela, Junr., Esqr., dated 2nd March, 1838, informing him that the Corresponding Committee of the Church Missionary Society cannot sanction the establishment of a Lock up and an Hospital at Wellington, and that the evil influence of a European population would increase the difficulty of converting the Natives to the Christian Faith.

(6) Letter from Revd. Wm. Watson and Revd. James Gannon to the Colonial Secretary, dated 12th March, 1838, representing the great injury which will be caused to the objects of the Mission by the introduction of penal institutions and the increase of the European population, and respectfully remonstrating against the proposed measures of the Government.

(7) Letter from Henry Fysche Gisborne, Esqr. (appointed Police Magistrate at Wellington) to the Colonial Secretary, dated 13 March, 1838, respecting Constables, and the appropriation of part of the Government Buildings at Wellington for their use.

(8) Letter from Do to Do, dated 17 March, 1838, urging the necessity of a larger establishment of Constables.

(9) Letter from Deputy Surveyor General to Colonial Secretary, dated 20 April, 1838, in Answer to enquiries about Mr. Hill's letter (No. 1 of this list).

(10) Letter from Revd. William Coaper, Secretary for the Corresponding Committee of the Church Missionary Society, dated 5 April, 1838, requesting that, as part of the Buildings are required by the Government, those next the River may be repaired and appropriated to the Missionaries, and that, if Wellington is to be made a Police Station, the establishment may consist wholly of married persons favourably disposed towards the Mission.

(11) Rough Sketch or plan of the Government Buildings at Wellington showing their position, etc.

(12) Minute by His Excellency the Governor, dated 31 May, 1838, suspending further proceedings relative to the permanent establishment of a Police Station at Wellington until the return of the Lord Bishop of Australia from Van Diemen's Land.

(13) Monthly Report for the District of Wellington by Mr. Gisborne to His Excellency the Governor, dated 10th June, 1838, the details in this Report in reference to the Mission are nearly to the same effect as stated in his evidence before the Council.

(14) Letter from Revd. Wm. Watson to H. F. Gisborne, Esqr., dated 20th July, 1838 (in reply to one from Mr. Gisborne) stating that, having received the charge of all the Government buildings at Wellington for the use of the Missionary Establishment, he cannot give up any of them unless duly authorised so to do.
concluding upon this point, it may not be improper to mention that every man, who
THE humble Petition of the undersigned Magistrates, Landholders,
[Enclosure B 4 to Minute No. 10 of 1839.]

he almost always immediately returns; thus a constant move is kept up among the
is sent to Hospital, has to travel to Bathurst, an inconvenience which would have

to be hired from Bathurst, to which place, after the expiration of his agreement,

they are exposed by the distance of the nearest located township from the situation
of their properties. In the present scarcity of Convict labour, it is necessary to
employ many free men, while, under existing circumstances, almost every man has

to the Mission, but rather to assist and co-operate therein as far as in his power, with

with a Minute by His Excellency the Governor directing the Police Magistrate to be

instructed as requested, and the obligation of giving every assistance to the Mis-
sionaries urged upon him.

before proceeding with the prayer of this

that your Petitioners, being Landholders, Stockholders or otherwise interested
in the prosperity of Wellington, beg leave, before proceeding with the prayer of this
Petition, to tender their thanks to your Excellency for having so promptly carried

into effect the measure of your immediate predecessor, by facilitating the establish-
ment of a Police force at Wellington Valley, a measure which has efficiently secured
the peace of the District, and by which your Petitioners are enabled to maintain
a degree of subordination among their Convict Servants and others impossible before.

Your Petitioners, moreover, almost all of whom are owners of Establishments or
residences in progress, and requesting that a Copy of his letter may be forwarded to
the council.

of town at Wellington valley.

1840.
7 May.

List of papers submitted to executive council.

Petition for formation of town at Wellington valley.

Your Petitioners, moreover, almost all of whom are owners of Establishments or
Stations in this neighbourhood, have occasionally felt the want of Public Stores, from
which Articles necessary upon a farm might be procured without the trouble, delay
and expense of sending a distance of one or in some cases even two hundred miles
to Bathurst, the nearest township where their wants can be supplied.

Your Petitioners have further to remark another and a greater evil, to which
they are exposed by the distance of the nearest located township from the situation
of their properties. In the present scarcity of Convict labour, it is necessary to
employ many free men, while, under existing circumstances, almost every man has
to be hired from Bathurst, to which place, after the expiration of his agreement,
he almost always immediately returns; thus a constant move is kept up among the
laboring part of the population, tending to engender unsettled habits, pernicious
to the men themselves, and extremely detrimental to the interests of your Peti-
tioners, which are centred in the permanent proprietors of the District. Before
considering upon this point, it may not be improper to mention that every man, who
is sent to Hospital, has to travel to Bathurst, an inconvenience which would have
been more severely felt had it not been for the unceasing exertions of Dr. Hathorn, whose valuable aid your Petitioners have heard with great regret they are in danger of losing from his inability to continue a practice, which must be both unsatisfactory, and comparatively inefficient without the advantage of an Hospital.

As a remedy for these evils, your Petitioners beg leave humbly to request that the intention of the Government so to do has been demonstrated by the fact of their having caused a reserve to be made near the Caves for that purpose, although, unfortunately there seldom being any Water in the Bell river opposite that site, such a want would prevent it from being a desirable locality.

Your Petitioners cannot affect to be ignorant that an opposition to this project has been raised in certain quarters on account of the contiguity of the Aboriginal Mission; but, without entering into any lengthy discussion, your Petitioners trust they may be allowed respectfully to submit that it would be a case of extreme hardship if the interests of the European population of this District were to be compromised in order to prosecute an experiment upon the Natives, which after upwards of Six years' trial has proved a failure as regards the Adults, whatever may hereafter be the effect upon the children at present under tuition.

In conclusion, your Petitioners trust they have shewn, 1st. That the general state of the District and the peculiar locality of Wellington Valley is such as to justify their present application; 2dly. That the granting the prayer of this Petition will be conducive to the prosperity of the District by facilitating the establishment of houses of accommodation, Stores, etc., etc., and by tending to fix and concentrate its population; and 3dly. That the objections raised on account of the Mission are objections that would apply equally to the establishment of a Police force, the traffic on the road, the neighbourhood of any Settlers whatever, or any other popular improvement which would increase the resources or promote the advancement of the District.

Your Petitioners therefore pray that your Excellency will graciously order a Township to be laid out, and allotments put up for sale in Wellington Valley. And your Petitioners as in duty bound Will ever pray.

WM. LAWSON, Junr., J.P.
WM. H. SUTTON, J.P.
ARTHUR REMMIE, J.P.
JOHN MAXWELL, J.P.
R. O'NEILL RAYMOND, J.P.
H. F. GIBBON, J.P.
JOHN SMITH.
G. TOLLEMACHE.
C. Wray Finch, A.S.
FINCH HOLLINGSWORTH.
JOHN HOGARTH.
ANDREW REBB.
WM. MCDONALD.
ALEX. MCDONALD.
CAVIN RALSTON.
D. DONALD.
JOHN STREET, J.P.
JOHN KINSELLA, J.P.
J. BUTLER KINSELLA.

Surveyor General's Report.

The best position for a Township appears to me to be at the confluence of the Macquarie and Bell rivers, and which would take in a small portion of the Land occupied by the Missionaries; there are however two reserves in the neighbourhood, one at the Caves as mentioned herein, but which appears too small for the object proposed; the other is more extensive, but it is situated at the wrong side of the Macquarie according to the direction of the roads. The accompanying rough tracing will best enable His Excellency to determine the point. 20th Novr., 1838.

S. A. Perry, Dr. Sur. Genl.

[Enclosure B 5 to Minute No. 10 of 1839.]

Reverend W. Cowper to Sir George Gipps.

Sir, Sydney, 28 November, 1838.

I have the honor to acknowledge the receipt of your Excellency's letter, with the accompanying papers, having reference to the formation of a Township on a part of the land occupied by the Mission at Wellington Valley; those papers I submitted this day to the consideration of the corresponding Committee of the Church Missionary Society, and I now beg leave to enclose a Copy of the Committee's Resolution upon the Subject.

I have, &c.,

William Cowper.
Extract from the Minutes of the corresponding Committee of the Church Missionary Society, Sydney, 28 November, 1838.

"7. This Committee having taken into consideration the communication received from His Excellency the Governor respecting the Town or Village proposed to be erected upon a part of the Land occupied by the Mission at Wellington Valley, also the observations of the Revd. J. Gunther upon the very great difficulty which the absolute impossibility of conducting a Mission to the Aborigines of New Holland in the vicinity of any Town or Police Establishment; it was resolved that this Committee do not consider themselves in a position to offer any opinion upon the necessity or expediency of forming a Township on the Land located for the Mission; nor have they any funds at their disposal to meet the expenses of recommencing the Mission upon ground uncleared and without Buildings; but they would beg leave to state that, as the Mission was originally undertaken by the Church Missionary Society at the instance of the Home Government, and the station at Wellington Valley had then recently been vacated and the Buildings were no longer required by the Colonial Government, it was deemed most advisable from the eligibility of the Site and the economy of the measure to establish the Mission in that part of the Colony; this Committee must therefore refer the matter in question to the Committee of the Church Missionary Society in London, observing, however, that they fully concur in the opinion of the Missionaries, as to the total impracticability of satisfactorily conducting a mission to the Aborigines of New South Wales in the neighbourhood of any Town."

WILLIAM COWPER.

[Enclosure A 1 to Minute No. 12 of 1839.]

THE REVEREND WILLIAM COWPER, examined before the Executive Council, Wednesday, 17 April, 1839.

I am of opinion that, if the Police Station is continued at Wellington Valley, it will entirely defeat the purpose for which the Missionary Station there was designed; but the number of Stock Stations in the vicinity of the Missionary Station is now so great that I do not know whether it would not be better to remove the Missionaries 40 or 50 Miles further into the Interior. One of the Missionary Gentlemen (Mr. Gunther) told me that he thought it would certainly be better that they should go further into the Interior, where there would be less intercourse with the Whites, but for the difficulty and expense of the Conveyance of their Supplies from Sydney; he was of opinion that the establishment of the Police Station had been the cause of preventing the Blacks from coming so frequently or in such numbers to the Missionaries, as they previously did. The Missionaries have been established almost seven years at Wellington Valley; I think they have made some progress in the objects of the Mission, perhaps as much as could in that time be expected among such a people. In Otaheite 17 or 18 years elapsed before any sensible benefit was the result of the labours of the Missionaries among them; this also was the case in New Zealand; and, in such similar undertakings as I have read, I think almost seven years at Wellington Valley; I think they have made some progress in the objects of the Mission, perhaps as much as could in that time be expected among such a people. In Otaheite 17 or 18 years elapsed before any sensible benefit was the result of the labours of the Missionaries among them; this also was the case in New Zealand; and, in such similar undertakings as I have read, the Accounts of 18 to 20 years appears in most cases to have been as early as any sensible good was discernible.

I think the Missionaries should continue their labours, but that they would do so with better prospects of success if removed to as great a distance, and secluded as much as possible from the White population. I would suggest and recommend that a Station of eight Miles Square or 40,000 Acres, with abundance of water and a fair proportion of rich soil, be appropriated with protection for Missionary purposes exclusively. However unblameable and correct in every respect the conduct of a Police Magistrate may be, he cannot at all times effectually watch over and control the persons under him; Mr. Gunther states that he had heard there is a great concourse of Natives about 50 or 60 miles from Wellington Valley, at a place where there is a tract of good soil and abundance of water, Kangaroos, etc. I am of opinion that the removal of the Missionary Establishment to that place could not be accomplished for less than £300. The expense of the removal, I think, should certainly be defrayed by the Government, in consideration of the benefits which the public will derive from the new appropriation of the Land and premises at Wellington Valley. I think a sum might be obtained from the Missionary Society in London. I believe their funds are very ample. The Mission has not since their arrival made any application to the Church Missionary Society for pecuniary Aid; the £600 per Annum allowed by the Colonial Government has, until the last year, been adequate to the support of the Mission. I think that £150 to £200 might be raised by Private Contributions in the Colony for the benefit of the Mission. Religious instruction communicated to the Blacks at such a remote Station, where there would be seldom or never opportunities of their coming in contact with, or being exposed to the bad example or vices of the White population, would certainly less effectually qualify the Blacks for resisting temptations when such should befall them; but their minds are in so low and weak a state that they will for a
Examination of Revd.
W. Cowper
by executive council.

long time require nursing and gentle treatment and culture, all which could be
more effectually accomplished at such a remote station. Men just emerging from a
Barbarous or Savage state, even with some instruction, moral improvement and
religious feeling, are not like persons who have been brought up in the habits and
feelings and mental discipline of civilization. The very partially cultivated and
more than semi-barbarous creature, having no correct views of his duty, nor any
firmness or energy of mind to withstand allurements, is attracted by every new
scene or trivial exhibition, and is immediately drawn into temptation and probably
into immorality and wretchedness.

The place to be selected should be at a distance from any road or thoroughfare,
or place now or likely soon to be occupied by the White Population; The Mis-
nionaries have some cultivated Paddocks, but the crops on them had generally
been indifferent, and the long recent drought had made them still less productive;
and I fear that abandoning them would be deemed any great sacrifice; they
have a considerable herd of Cattle, also a flock or two of Sheep; I do not know
what number; they frequently made distributions of Meat to the Blacks, occasionally
to the extent of a hundred to one hundred and fifty pounds in a day. I have heard
that Mr. Watson had Cattle and Sheep of his own, which were grazed on the Mission
grounds; as an apology for such being the case, he alleged that, when at any time
the state of the herd belonging to the Mission would hardly afford Animals fit for
slaughter, he did not scruple to give Aid from his own herd; Mr. Gunther had neither
Cattle nor Sheep nor has he ever shown a desire for having any. There was a long
and painful correspondence between the Colonial Committee and Mr. Watson on the
subject of his Cattle and Sheep; he was required by the Committee to remove them
to a distance from the Mission Station, and he has at length done so, but he was
very intemperate, and used much unpleasant language on the occasion.

There were also disagreements between him and Mr. Gunther and Mr. Porter,
the other two Gentlemen of the Mission, and the Colonial Committee were of
opinion and had recommended to the Society in London that another Clergyman
should be sent out, and Mr. Watson should be withdrawn from the Mission. The
Colonial Committee consist of Mr. McLeay, Mr. Macquoid and myself. The Com-
mittee had been of opinion that a properly conducted Police Establishment would
not be injurious to the objects of the Mission, but great complaints had been made,
particularly by Mr. Watson; the conduct of the Constables and Witnesses and Ser-
vants had been particularly complained of; the departure of the Mail at the hour
appointed for Divine Service has also been a subject of complaint. I am aware
that, before a Police Establishment was placed at the Mission Station, a Corporal
and four private soldiers were stationed there for the purpose of protecting the
Missionaries; I am aware also that Messrs. Raymond and Morgan were permitted by
the Missionaries to take up their occasional residence in one of the spare houses at the
Mission Station; they did so without any Authority from the Colonial Committee,
or did the Committee even know of the circumstance until more than three years
after the first occurrence of it; they are both unmarried men; no complaints of
their conduct for three years had been made to the Committee; I am not aware
of the number of Blacks who reside at or are considered as in immediate connexion
with the Missionary Establishment; I think about ten or twelve reside there, and
are under daily instruction. I do not know what number of children are educated
by them, or what progress those children make; mention of such particulars is made
in the Journals transmitted yearly or oftener by the Missionaries to the Committee,
to be forwarded to the Parent Society, but no Copies of those Journals are kept
by the Committee, and I cannot at present state the numbers from recollection.
Mr. Gunther's Journals have been regularly received and Mr. Watson's Journals have not been so regular to him; he may have sent them latterly direct to
London; none have been received from him for some time; I do not know what
progress has been made by the Mission at Moreton Bay; The Revd.
J. C. S. Handt, stationed at Moreton Bay, is also supported out of the Colonial
Allowance of £500; the Sum of £300 per Annum additional was recommended by
Lord Glenelg to be granted towards the support of the Missionaries of the Church
Missionary Society but hitherto it has not been received.

I have never been at the Mission Station; my information is derived from the
Reports of the Missionaries, or from conversation with them, when any of them
have occasionally been in Sydney.

[Enclosure A 2 to Minute No. 12 of 1839.]
to those on the Talbregar and Bogan Rivers passes through the Missionary Settlement. Since the above Districts have become populous, there has been (and still is) a very considerable traffic upon this line of road, which, independent of the conveyances attached to every farm in the Interior, gives employment to certainly more than one regular Carrier. All the Drays, carrying Stores to the Stations below Wellington Valley, travel through the Missionary Settlement, and I have frequently seen two or three encamped there at night. Nor is it possible that they can go any other way, as this line of road is the only one by which they can reach their destination. The population in the neighbourhood of the Mission consists principally of Servants free and bond attached to the establishments of Settlers, which are immediately contiguous on all sides. Messrs. Raymond and Montefiore have large Establishments on land purchased from the Government, each within two miles from the Mission, and there are also others as well as public Stores close at hand. The located districts, which are accessible only by the line of road leading through the Missionary buildings, extend One hundred Miles beyond the boundaries of the Colony. There is consequently a population on all sides, and numbers continually passing to and fro; From the above circumstances, I consider Wellington Valley as an ineligible situation for a Mission at the present time, whatever it may have been formerly. A Police force was first stationed at Wellington Valley about twelve months since, consisting of one District Constable, one Ordinary Constable, and a Scourger; I was appointed Police Magistrate, and Mr. Turner the Clerk of the Bench, who was also Post Master; the number of Constables has been subsequently increased by the addition of a Chief Constable, two ordinary Constables, and a Lock-up Keeper. Previously to the establishment of a Civil Police at Wellington, a party of Mounted Police and foot soldiers were stationed there, most of whom were unmarried. The Infantry were there nominally for the protection of the Mission, but, not being in the least wanted, they were withdrawn on my recommendation. These men had occupied one of the Government buildings lent to the Mission, and two Gentlemen, Messrs. Maughan and Raymond, had had permission granted to them by the Missionaries to reside in another, which accordingly they had occupied for some years previously to my going there; the Missionaries had also allowed them to build a Barn on the Mission Land, close to the Mission House, and to enclose a large Paddock for cultivation; they had I believe three Single assigned Servants on the Spot. Shortly after my arrival at Wellington, Messrs. Maughan and Raymond moved to a house belonging to the latter gentleman, about two Miles Off, and I took possession of the Government building in which they had resided; the Police had some time previously been substituted for the Military, so that as far as regards the residence of Europeans on Mission Land, things were just as they had been, with the exception of there being a person in authority on the spot to keep the Police in order. The whole body of the Police were scarcely ever at Wellington together, as I immediately stationed two of them on the line of road to Bathurst, one at Gurry Goviar a distance of 30 Miles, another at Mr. Maxwell’s a distance of 12 Miles from Wellington; this reduced the number of Constables at Head Quarters to four, including the lock-up keeper, of whom three are married men; and, even of these, two are almost always absent on duty, so that in point of fact the number of Europeans actually resident at Wellington has been upon the whole decreased by the establishment of a Police.

During my residence there, I have never to the best of my recollection had any complaint of the Whites interfering with the Blacks made to me by any Member of the Mission; I have more than once punished Prisoners for taking Black Women; but these were Women with whom the Mission had nothing to do, and the men were either taken into custody by my order, or on the charge of their Masters; On the whole I have felt that the establishment of a Police cannot possibly have had a bad effect on the prospects of the Mission, but if any rather the contrary. I have always laid the most positive injunctions on every person under my authority not in any way to interfere with the Missionaries in their endeavour to convert and civilize the Natives, and I have no reason to think that those injunctions have ever been disobeyed; the good order of the neighbourhood has been latterly better preserved, and the assigned and other servants on contiguous establishments kept under better control; the passengers on the road have been under a Superintendence impossible before, and I should therefore say that, if these circumstances have caused any difference in the prospects of the Mission, it must be a favorable one. There must be a great traffic on the road, and there is a considerable population close at hand, certainly some hundreds within a circle of ten Miles, and, as this cannot be altered, I should conceive that a Police must do good.

A site for a Township has latterly been Surveyed in the fork of the Bell and Macquarie Rivers, and running down to the junction; it is on the Land lent to the Mission, and the junction is about two miles on the other side of the Missionary Establishment; The old Village reserve is about two Miles on this side, and on the edge of the Mission Land; It is entirely useless as a reserve, there being not sufficient water there at present, and the supply being never to be depended upon;
The fork of the two Rivers is a very good site for a township; I think no one would have thought of location; It is Opposite the only practicable Ford in some miles of the Macquarie River, and consequently on the high road to and from Bathurst; a town is of the Settlers of the District, praying that one might be laid out, and the Allotments put up for Sale; If they were put up, they would have been sold in the neighbourhood, as I have never seen a man either Black or White drunk at Wellington, and I do not even recollect a case of drunkenness having ever come before the Wellington Bench.

I have read the Missionary Report for the year 1837; it is in some respects false as regards facts, and in all respects delusive as regards prospects; it is greatly exaggerated both as to the number of Natives attached to the Mission, what has been done to them, and what is likely to be done. It is stated in the Report as the average daily issue of Beef is correct; it may be so; but, from what I know of the number of Natives and the Meat killed, it seems to me not to be correct. The number of Adult Natives is about twelve; they are mostly young men or very near to it; they get rations of Beef, and I believe sometimes other luxuries; for this they work a little by snatches, but are usually in a state of complete idleness; They are sometimes clothed and sometimes naked; The most civilized of them, that I have seen, can read a little by spelling; They are in general quiet well disposed men, in no way differing from many Natives that I have seen about the establishment of Settlers. I say they are in general quiet, although the "Parsons black fellows," as they are called, have the reputation of being the best fighters on that side of the Country; They wander away sometimes, but do not usually stay very long. I have not one of them who, in my opinion, understands the least of religion; They have repeatedly told me that they would stay with the Parson as long as he would feed them, and by Christian so long and no longer. I am a deferentially to the Mission is not habitable; It was only half roofed, and not complete in other respects; on the whole I consider the attempted Conversion and Civilisation of the Aboriginal Natives at Wellington Valley as a complete failure; The Natives whom I have seen, that do know anything of religious forms and words, ridicule them not from any intention to be blasphemous but from sheer ignorance; a Complaint was I believe made by Mr. Watson of the Prisoners having been punished in front of the Mission House; at the time this complaint was made I was away, but, having upon my return made enquiries, I was positively assured that the Prisoners had not been flogged at the Gaol during my absence; The Gaol is about two hundred yards from where Mr. Watson then lived; There was not the slightest necessity for any persons seeing the punishments who did not choose to look at them. After I returned, I obtained permission from Mr. Raymond to have the men punished inside his Barn, and they are now punished inside one of the unoccupied buildings.
GIPPS TO RUSSELL.

[Enclosure A 1 to Minute No. 13 of 1839.]

ANNUAL REPORT of the Aboriginal Mission Station, Wellington Valley, 1838.

In presenting their Sixth Annual Report, the Missionaries regret that they have to record the gradual disappearance of the Adult Natives from their scene of labour; for, while formerly there were generally on the Mission from fifty to sixty, frequently eighty, and sometimes upwards of a hundred Natives, since the month of July, 1838, there have seldom been more than twenty, frequently not above six, and sometimes not one, except the young men and Children, who are now strictly speaking members of the Mission family, being under daily instruction and residing in or about the Mission House. In the seed time, these young men were employed in ploughing and harrowing; some of them planted Maize Corn and worked in the garden, but the extreme drought has disappointed them of any fruits of their labour. They were all employed in washing and shearing Sheep, and indeed they have rendered themselves useful to the Missionaries in a variety of ways. The formation of a Police Establishment on the immediate Site of the Mission has proved in no small degree detrimental to these young men, as being the means of drawing them from their lessons and engagements at the Mission House, inducing them to attend the Establishment from one house to another to spend their time at the Court on Court days, and for a trifling remuneration to spend their time in fetching Wood, Water, etc., etc., for the Constables, Policemen and Servants of other persons connected with the Police Establishment. So far their attainments in religious and other useful knowledge has been retarded. Although the Missionaries deeply deplore this circumstance, as increasing their anxieties, partially counteracting their labours, and calling forth their utmost patience, they feel happy to state that, even amidst these distracting scenes and circumstances, the young men have improved both in reading the Holy Scriptures, and in acquiring religious knowledge. They frequently ask important questions on religious subjects and the explanation of Holy Scripture, which proves that they are not inattentive to what they hear and read. The Children read daily the Holy Scriptures; they have also commenced learning English Grammar and Geography, and are taught writing and Accounts. The Boys appear to be capable of learning any useful trade, and probably would soon make considerable proficiency with proper Tools and Materials and under a patient instructor. They laid the floor of one of their own huts with Brick-ended very well. They are very useful in the Garden, and are partial to working there. As regards the Adult Natives generally, to be occasionally visited by them, or occasionally to visit them in the Bush is not sufficient, they need to be under continual instruction and training like Children. If, as is almost universally asserted throughout the Colony, that the Aborigines of New Holland are more deeply sunk in moral degradation, and possess less intellectual capabilities than those of any other heathen Country, it must follow of course that, in endeavouring to raise them in the scale of human Society, and to make them acquainted with the Gospel of Jesus Christ, before their case can be fairly declared hopeless, a longer time must be allowed, and more energies put forth, than have been devoted by Missionaries in other parts, before they saw any permanent fruit of their labour. The history of the Danish Missions in Greenland and Labrador, of the London Missionary Society’s cause in the Islands of the Pacific, and of the Church Missionary Society’s proceedings in India and New Zealand, shows most clearly how many years of labour, trial, anxiety and patience were expended before the seed of Divine truth shewed that it had taken root in the hearts of the respective Natives.

Mr. William Porter arrived at Wellington Valley in 1838, having been sent out by the Church Missionary Society to take charge of the Secular affairs of the Mission, so that the other Missionaries find themselves at full liberty to devote their time to the great work to which they were appointed, the teaching and instructing the Natives in the knowledge of Jesus Christ and his Salvation.

WILLIAM WATSON.

A true Copy—WILLIAM COWPER.

[Enclosure A 2 to Minute No. 13 of 1839.]

Sir,

I have the honor to acknowledge the receipt of your letter (No. 39/140) of Transmission of the 5th Instant, and agreeably to your request I have now the pleasure to enclose annual report.

Sir, Sydney, 17th April, 1839.

WILLIAM COWPER.

1840.

ANNUAL REPORT of Aboriginal mission at Wellington valley.

WILLIAM PORTER.

Effect of drought on the said Mission. The Aborigines, perceiving that the Missionaries were unable to supply their various wants to the same extent as formerly, have in a measure discontinued their visits, and consequently the Missionaries have had fewer opportunities of conferring with the Aborigines on subjects of a religious and moral tendency.
I have written to the Missionary, Rev. J. C. S. Handt, at Moreton Bay, for his report; but as yet there has been no opportunity of sending my letter. So soon as I shall have received the report from that Station, I will take care to forward to you a Copy thereof.

WILLIAM COWPER.

20th April, 1839:—Comp'd., R. O'C.

The Honorable The Colonial Secretary.

[Enclosure A 3 to Minute No. 13 of 1839.]

Examination of J. Maughan by executive council.

I resided at Wellington Valley from 1835 until November last; I am not qualified to give an opinion as to the probable success of the Mission, having been too much engaged with my own affairs to pay much attention to the proceedings of the Mission; with respect to the children, however, I think much good may be done, but I do not think that any benefit has resulted to the Adults, either Males or Females; they can say prayers and go to Church, but they ridicule these prayers. Their numbers may be stated thus—Children 6 or 7, Adult Males 4 or 5, and Females 4 or 5. The Police Establishment I consider to be rather an advantage than otherwise, there is always a small party of Infantry there. Mr. Watson was always on good terms with them and permitted them to reside at the Station.

I had leave to plough some of the paddock, and did so last year after which I sowed the Land which I had ploughed.

There are 4 or 5 native men, all of whom may be considered as attached to the Mission, excepting one. I do not think that those Natives have been in any respect improved by their intercourse with the Missionaries, but I think the reverse: they have become more cunning and less industrious; they do not appear to have any desire to work even for themselves unless when rewarded for so doing. I should think that there may generally be about 40 or 50 Natives at the Native Camp, which is on the Mission Land, but never so many as 80 or 100 unless at a Corrobora. Mr. Watson goes to the Camp and reads prayers to them, but they do not appear to have any serious impression of the sacredness of prayers, nor to have any shame at ridiculing them, altho' sometimes they expressed some fear of Mr. Watson hearing of their doing so.

From what I have heard, I think, if Natives were withdrawn from all intercourse with Europeans but the Missionaries, some good might be effected. I do not think it possible they could be so separated at their present Station; the only ford of the river is at the present place unless perhaps on some private Lands.

I have said that with respect to the children much good may be done; but it is very difficult to persuade the Natives to give their Children to the Missionaries, and, even after doing so, they often take them away again. I think the result of the Mission a failure as respects the Adults, but not so with regard to the Children. The Females were kept so close that I can not Speak as to them.

The Mission lands were occupied to a small extent for the growth of grain, and the remainder for grazing. The Missionaries had some private Stock, but to a very limited extent; and they did not appear to pay any particular attention to it.

The Mission was beneficial to the Neighbourhood as promoting order by the observance of Sabbath; numbers of European Servants, both free and bond, attended the Church, some voluntarily, others were desired to do so. The Establishment of a Township with Police Office and Post Office would not in my opinion be in any way hurtful to the Missionary Establishment so far as respects the education of the Children. In respect to the Females, Mr. Watson has had more difficulty in keeping them from the Native Blacks, than from Europeans. In respect to the Males, Mr. Watson has so little control over them that I do not think the establishment of a Township would make any difference. The desired site for the Township is the best that can be fixed on, the line of road passing through it.
GIPPS TO RUSSELL. 621

The Military Station there consists of a Sergeant and two or three Men, some married, some unmarried; they have little or nothing to do; they formerly obtained some employment from the Missionaries but latterly they have not been so employed. I am not aware why the presence of Constables or a Police force should be more injurious than that of the Soldiers to the Mission. When parents wish to see their children, they are permitted to do so. The Police force has not deterred the Natives from coming to the Mission; the Police Establishment caused occasionally a great influx of Strangers who came to attend Court, etc. Ploughing was performed in a barn erected by me, which is not in view of the Mission house.

The sowing of the grain happened in March, 1838. I vacated the house occupied by me in September last. I reside with Mr. Raymond. Mr. Gisborne occupies the house I vacated. I think a Police Station would be beneficial. I think a Police Station might be established about 6 miles nearer to Bathurst on the Bank of the Bell River; it would be outside the Boundaries; it would not be equal to the site at the conflux. I think the presence of a Police Station would be beneficial to the Mission.

Drays often stop at the Mission Station; the Mission cannot prevent it; although they have often objected; the establishment of a Township at the conflux would cause drays to stop there; it is about 2 miles from the Mission Station; 1 dray in each two or three days during the Wool Season might be the average number passing by.

Mr. Watson and Mr. Gunther are both married. Mr. Porter is not so; Mr. Watson takes the lead.

Three or four Strangers might occasionally pass that way.

Mr. Watson has a few Sheep about 120 or 130 in all; he had a few horned Cattle, but he told me that he had made them over to the Mission, the stock belonging to the Mission could not meet the daily issue.

[Enclosure A 4 to Minute No. 13 of 1839.]

CHARLES WYATT FINCH, Esq., examined before the Executive Council, Friday, 19th April, 1839.

I have resided near Wellington Valley at a place about thirty miles from it. I have resided there 12 Months. I was not personally acquainted with the Missionaries. From the conversations I have had with the blacks, I do not think any good has been done. I have seen the Mission Report of 1837. I do not think it a candid one; it is calculated to lead the public to believe that more has been done than has been. I do not see that the character of the blacks is at all changed. I have service at my own place; the Blacks attended and could repeat the Lord's prayer, but without any knowledge of its meaning; I do not think that they believe in the existence of a good spirit; they believe in an evil spirit; they have no idea of a future Judgment or of future rewards and punishments.

The Missionaries are generally disliked among the Blacks, but from what cause I cannot tell; they are very averse to part with their children to the Missionaries, and do not give any thanks to them for their education. I do not think their habits of industry at all improved; I think the Blacks always speak the truth; I have never been told an untruth by a Black, and I believe them to be honest; I have always found them so; I have seen as many as 20 Blacks on the Mission, and occasionally as many as 100; Wellington Valley is not their head Station; they had two other Stations some distance off at which they more frequently reside; I speak of the Wellington Tribe; the same dialect is spoken for about 50 or 60 miles round.

It is a difficult question to answer as to whether the establishment of a Police Force has been beneficial or injurious to the Mission. If the Missionary statements are correct, and not overcharged, I think the vicinity of a Police Establishment would be beneficial to the Mission, as it would enable them to preserve order, and would also be a protection to them; since the establishment of a Police Force, there has been less crime; servants could not previously be kept in order. There are more Blacks at Bathurst than at Wellington Valley; I cannot say whether that portion of the Report for 1838, which relates to the laying a floor with Brick, and the Blacks asking important questions during the process, is a fair statement; my opinion is that it is an exaggerated one. I am not aware that any benefit has resulted to Adult Blacks. I do not know anything about the Children. I visited Wellington twice during the last year. I think many other places in the neighbourhood of Wellington might be found for a Mission Station. A Township is much wanted and the conflux is the best place for it; it cannot injure the Mission; it can have no effect upon it, surrounded as it would be by large establishments.

Examination of J. Maughan by executive council.

1840. 7 May.
Sir, 
Sydney, 26 April, 1839.

On the 22d Instant I received from the Revd. Richard Taylor a letter which it seems had been written in this Colony and was intended to be sent to me in February last, but was accidentally carried to New Zealand, and thence returned to me through the Post Office.

The Corresponding Committee of the Church Missionary Society, being of opinion that the statements in the said letter should be communicated to His Excellency the Governor and the Executive Council, have desired me to have the honor to enclose a Copy thereof, and at the same time to request that the information which it contains may be regarded as Confidential. I have, &c.,

WILLIAM COWPER.


Having recently returned from Wellington Valley, where I had an opportunity of examining into the present state of our Mission there, I beg leave to forward through you a brief account of my visit to the Corresponding Committee of Report by

7 May.

Revd. Sir, Liverpool, 6 Feb'y, 1839.

Transmission of report.

I found the number of Natives encamped in the neighbourhood of the Mission house very small, and very few of them receiving any instruction. There were from six to ten young men residing on the Mission premises and twelve children living in Mr. Watson's house composing his School. I examined them in the New Testament which they read with great facility, pronounced English without foreign accent, and readily answering many questions which I put to them from it. They were also perfectly acquainted with Watt's, the Assembly's, and another catechism, but they had not been taught the catechism of our Church. These scholars were chiefly girls. The two eldest were fifteen years old; they were mothers and had been rescued from the hands of the Whites with whom they had lived from the early age of eight years. I attended a service given to the Natives in their own language by Mr. Watson, when 25 were present; it was extremely interesting; the greatest attention was paid to what was said, and I much regretted to find that this Service was not given so frequently as it ought to have been. I was much grieved to notice the little desire the Natives have to learn anything: their only concern is about eating; and I feel convinced that the general idea entertained of the Missionaries is that they are Stationed Amongst them by Government only to distribute provisions. The Missionaries have many difficulties to contend with; they are surrounded by Settlers who live openly in adultery with native females, many of whom are children, bought at the age of eight years for oftentimes a mess of pottage. Some are mothers at 13; these vile people use every means in their power to prejudice the Natives against their teachers, and, whenever they require their assistance, scruple not to entice them away with the offer of a little rum. This description I fear too equally applies to the highest as well as the lowest, from the ruler to the ruled. The only Native I heard of, who really appeared to be under the influence of religion (though there are several under instruction, and who take much delight in singing, and sing with great sweetness) was a poor female, who was daily accustomed to retire to the bush for prayer. A white man endeavoured to entice her to accompany him, and, on her refusal, shamefully beat her; but, upon complaint being made, it was said, if he were punished, his dray would be delayed, and consequently his master would be the sufferer, he was therefore permitted to proceed. But I fear the Missionaries are not free from blame themselves, since they do not make any efforts to excite a more favorable feeling towards them. As I have already intimated, there is not even a regular Native Service on Sunday and only one in English, although there are two ordained Missionaries. I plainly told them, if they would visit the different Stations near them, they would shame the unrighteous deeds of their countrymen and hinder them from deluding the natives; at present being totally neglected by the Missionaries, they delight in opposing them. A most lamentable want of unanimity likewise prevails in the Mission, which cannot but materially suffer from it. The surrounding Settlers are now endeavouring to get Wellington Valley made a Township and most probably they will be successful. There are so many immoral characters residing in the immediate vicinity of the Mission that I fear it is of little real benefit; it is a question whether it would not be more desirable that it should be removed further into the interior, and that a large block of land should be set apart for that purpose, on which no Whites should be allowed to
reside; or else, that there should be several small Stations in different localities, that thus the tribes might be followed in their wanderings. They are a very interesting race, and perhaps have been more maligned than any other on the face of the globe. They are of a chocolate colour, several shades lighter than those in the vicinity of the Sea, and much better formed; they easily acquire our language, are partial to singing and very facetious; imitating with great exactness anything which may strike them in the manner or tone of those they see; they are as expert in the use of the gun as they are with their own weapons; the language is agreeable and expressive; it contains names not only for every plant but also for the different genera, and there are also words to distinguish marsupial animals as well as the flying one. Neither are they so destitute of religious ideas, as is commonly supposed. They believe in three Gods, one they say made all things, another is his son, which is very remarkable, and the third tells them when to corroborey, appoints their ceremonies, and teaches them their Sacred Songs. Their funeral rites are curious, and the manner of constructing graves, which, covered with a Tumulus of Earth, reminded me of our British Cairns. I have thus endeavoured to give a faithful though I fear not very satisfactory account of the present State of the Mission, as it appeared to me. I might have formed erroneous ideas respecting it; if so, I shall be pleased to find myself mistaken, and believe me, etc., RICHARD TAYLOR.

A true Copy:—WILLIAM COWPER.

[Enclosure A 2 to Minute No. 18 of 1839.]

Sir, Surveyor General's Office, 21 March, 1839.

In compliance with the directions of His Excellency the Governor personally communicated to me, I have the honor to forward for His approval a design for a Town at Wellington Valley. I do not apprehend that the demand for allotments in this Town will be very great, but that it will merely serve as a means of enabling a few Tradesmen to obtain a freehold. Under these circumstances, I should consider Two pounds per Acre sufficient for the upset price at present.

I have, &c.,

S. A. PERRY.

The Honorable The Colonial Secretary.

[Note 115.]

[A plan* of the country about the junction of the Bell and Macquarie rivers was attached.]

[Enclosure A 3 to Minute No. 18 of 1839.]

REVEREND WILLIAM WATSON, examined before the Executive Council, Tuesday, 28th May, 1839.

I think that the contamination of the Aboriginal Natives by their intimate connection with the Whites is very great. There is not a child at the Station who does not wear clothing. Drunkenness already prevails through means of sly Grog Selling, and I apprehend it will increase if a Township be formed there. Drunkenness prevails now more than before a Police Magistrate was appointed; before Constables were appointed, Spirits could not be legally sold; Constables themselves sold spirits; I have seen persons come out of Constables' houses drunk; I saw them go in apparently sober; I cannot adduce proof legally to convict them; cursing and swearing to a great extent prevailed; I did not report so to the Police Magistrate as I thought he must have heard it himself.

The person at whose house such scenes occurred is not a Constable now; he has resigned; his name is Morrisey; I believe that all the vices of Sydney would be introduced by constituting the station a Township; although evils exist to some extent now, they would then be greatly aggravated; sometimes there are 40 Natives residing at the Station; before the Police Establishment was formed from 120 to 130 attended Worship; 40 or 50 or 60 used to reside there. There are now 15 Children from 2 to 15 years of Age, and 7 or 8 young men reside there, 2 or 3 married females reside in the house, and 2 or 3 out of the house. I keep no journal or books, but a Diary in which the number of Natives visiting at the Mission Station is entered; I have had 10 or 12 young men residing with me at the Station; I had about 40 Natives residing at the Station before the Police Establishment was formed; I have had 10 or 12 young men residing with me at the Station; I had about 18 months ago, the maximum number of domesticated natives I had there, about forty. I keep no register. The natives have no Christian names. I keep an account of the rations issued. None of the 40 were baptised; we were not anxious to baptise them, until they should be sufficiently prepared. I have baptised 5 Children, of whom 3 were boys of 8 and 10 years of age; out of those 5, 4 have died. I keep no register. The natives have no Christian names. I keep an account of the rations issued. None of the 40 were baptised; we were not anxious to baptise them, until they should be sufficiently prepared. I have baptised 5 Children, of whom 3 were boys of 8 and 10 years of age; out of those 5, 4 have died. I half caste infant only remains; about 18 months ago, about 60 attended divine Service frequently, but not constantly.

* Note 115.
Mr. Maughan resided there about 3 years; service was performed every day; the
same persons did not always attend; about 60 generally attended, some coming
and others going.

I have found some of them in the bush in a state of knowledge which surprised
me. I never heard of Natives parodying their prayers, but I have heard that
Natives when absent from the Station have nevertheless said their prayers and
Grace. Mr. Taylor arrived on Saturday night, preached on Sunday, and was other-
wise engaged on Monday; he heard the children read and sing, but did not ask them
any questions. 13 Children with the assistance of Mrs. Watson make and mend
their own Clothes; all are clothed.

We had forty Acres of Land in cultivation, but only obtained half a Crop. About
the Year 1834, we had Sixteen Acres of Wheat, off of which we reaped about five
hundred or six hundred bushels. We have had only two Crops off the land.

I went to Wellington Valley about Six and a half years ago, when there were
only three European Stations there; now there are at least one hundred, and they
are increasing daily. The road passes through the Mission buildings, the traffic
upon it is increasing every year, more drays passed last year than during the five
and a half previous Years. Government cannot stop this increase, although it is
very prejudicial to the Black population; the conduct of the Europeans in charge
of the drays is very bad, they do not act on Christian principles towards the blacks;
I do not reckon the Police Magistrate among the number of Christian Laborers.
The only Police Magistrate, that I know, never attended Divine Service, nor did any
of his Servants. Mr. Raymond was a most regular attendant, Mr. Maughan also
attended very frequently. Mr. Gisborne and I were not on friendly terms. I have
never spoken to Mr. Gisborne, but the correspondence between us was of an
unfriendly character.

Mr. Gisborne said that the charge of all Government Buildings was committed
to him; he said so in a letter; I have the letter with me (letter handed in and
read); it excludes all the buildings in occupation of the mission; nevertheless I
replied that I would look for the keys of all the buildings excepting some occupied
by Mr. Porter. The prospects of the Mission were gradually improving before the
Police Station was established, but the neighbourhood of the Whites has been very
injurious; upon almost every Station (say to the number of fifty or Sixty),
Aboriginal Females are living with European Men, many of them being of very
tender Age.

Mr. Maughan and Mr. Raymond were there by permission three years and up-
wards; there were never any disagreements with these Gentlemen; on the contrary
they were always on good terms; they and their servants attended Church and
Evening prayer; Messrs. Maughan and Raymond considered themselves under an
obligation for being allowed to remain there, and therefore perhaps laid themselves
under restraint in their demeanour towards us. The Police Magistrate was under no
such obligation, and would not consider himself amenable to us for his moral con-
duct; drinking and singing, continued through out the night, set an example which
would be very bad; but the Police Magistrate would not be checked by the Mission.

I do not mean to allude to the late Police Magistrate or any of his Establishment
individually; but, speaking generally, cursing and swearing and other bad language
prevailed to a great extent. Mr. Eaglestone, Superintendent for Mr. Passmore, was
in my house one night, when there was a great deal of cursing and swearing at or
near the Police Magistrate's house. Two young Natives, who lived near the Police
Station was established, to remain quietly at home, after that time spent
much time abroad.

Mr. Gisborne and Mr. Raymond were on the Bench about 1 February last, when
a case was tried before them, in which Mr. Gisborne's Servants made a complaint
against me for insulting them, because I went at 11 O'Clock at night to reprove
them for making a noise and swearing. I cannot remember that I ever made any
prejudicial representations of Mr. Gisborne to Mr. Taylor. Mr. Gisborne had no females at all, I think. The Chief Constable was living with a Woman said not to be his Wife. There are three Women at Wellington Valley, Constables' Wives.
The Soldiers were taken away about Eighteen months ago; they behaved very well; at
first there were six Privates and one Serjeant; latterly, Since 1832, there have
been only three privates. Altho' the bad effects of the presence of a White popula-
tion were felt at their Stations on the River, yet at the Mission Station the dis-
advantages were not so much felt, as it has since been, owing to the immediate
presence of the Constables. The Natives are very generous to one another, and have
a community of Goods. Mr. Maughan and Mr. Raymond have repeatedly examined
children and expressed their admiration at their improvement.

The Natives are not willing to give their children to the Missionaries; they say
"White men advise them not to give up their children." In many cases, the
Aboriginal women murder their half caste children; they say that they are in-
stigated to do so by their White fathers. I have heard two particular instances in
which White men had done so. I questioned one of the men on the subject; he
denied it, but I believed it was true. All these cases occurred before the Police
Establishment was formed; one was found out just after; the children so destroyed 1840. I think I did in 1833 about a child being murdered by a Female at the instigation of a ticket of leave man; but it could not be substantiated. I do not remember whether or not I ever made any communication to the Attorney General; but oftener at the latter.

I think there is an eligible place for a township at Nuree, about seven miles on this side of the mission station; it is on the Bell river beyond the boundary; Mr. Jas. Smith has a stock station there; there are many persons who have not signed the petition for fixing on the junction of the river as the site for the township.

The reports for 1837 and 1838 are strictly true and are not colored or exaggerated. There were about sixty natives at Wellington Valley last week. I am certain that any person, who had land at the station for some time and taken notice of our proceedings, would be satisfied of the truth of the statements in those reports. I will instance Dr. Curtis, who manages for Mr. Montefiore and Mr. J. J. Moore. I am afraid that the anxiety of Mr. Raymond and Maughan for the establishment of the township has biased their minds unfavorably towards the mission.

These natives, who are under instruction, have advantages in point of food, which the others have not; we cannot afford clothing to the whole of them. I am afraid the white population has not benefited or but very little from the missionary labors. We have two English services every Sunday; when Mr. Taylor was there. Mr. Gunther was absent, on which account there was only one service that day; there is no regular native service, because, when natives who understand English are present, it is not deemed necessary; there may be from ten to twenty stations within ten miles of the mission; I have visited all of them a hundred times; I have seldom seen anybody but the hut keeper. We have distributed perhaps one hundred bibles and prayer books during the time we have resided there. We have made many attempts to obtain or rather inquiries to ascertain whether the station obtains the attendance of the shepherds but without success. We allow parents to come and see their little children. If the station should be removed, I do not think we shall succeed so well.

I think the blacks capable of learning anything as quickly as whites; in their savage state, their minds are quite uncultivated; their physical strength is equal to that of the whites. I have understood that the evidence of the native blacks would not be admitted in the courts; they are not generally speaking, I think, given to falsehood, unless for some powerful motive; I have had a young man five or six years; I never knew him to tell a falsehood. I think that some of the men are very jealous, whilst others again will compel their wives to go to the whites against their own inclinations. I think that the more general inclination of the black men would be to dispose of their wives for profit.

There has not been any particularly unpleasant correspondence with the committee. I have about fifty or sixty head of cattle and sheep; they have not been on the mission land for three years; about one hundred and fifty head of cattle and one thousand sheep belong to the mission; the mission consumes about 800 lbs. of meat per week, and the sheep would weigh about 40 lbs. each; the first inquiry about my own cattle and sheep was in November, 1837. The mission is entirely dependent on the £500 a year from the government.

[Enclosure A 1 to Minute No. 25 of 1839.]


I have the honor to acquaint you, for the information of his Excellency the Governor, that Mr. Assistant Surveyor Ogilvie having been called upon to ascertain and report with reference to your letter 3rd June last, No. 39/383, on a suitable site for a town in the Wellington district in lieu of that at the confluence of the Bell and the Macquarie, to which it appears that the missionaries object, reports that he has inspected the ground at Nuree, and finds it to be suitable for a village, but that it is not so central, nor are the features or the inclination of the land so well adapted as that at the confluence of the Bell with the Macquarie river; and further that he has examined the country about the lower or eastern road to Wellington and has not succeeded in finding any suitable spot, as that line of country is badly watered and of an inferior description.

I have, &c.,

The Honorable The Colonial Secretary.

S. A. Perry, A.S.G.

Sen. I. Vol. XX—2 R
1840. 7 May.

Sir, Sydney, 23rd July, 1839.

With reference to the Correspondence and to the Interviews which have taken place between His Excellency the Governor and the Corresponding Committee of the Church Missionary Society, relative to the location of a Government Civil Establishment on the spot which was specially allotted to the Missionaries at Wellington Valley, under the Sanction of the Right Honorable the Secretary of State, the Corr. Com. request that you will have the goodness to inform His Excellency that, as no communication has yet been received by them on the Subject since myself and the Rev. W. Watson were examined before the Executive Council, the Corr. Com. in compliance with the Instructions of the Parent Committee contained in a letter dated in London "22nd December," last, of which a Copy is here-with transmitted, feel it their Duty to request respectfully that His Excellency will be pleased, as soon as practicable either to remove the Civil Establishment from Wellington Valley altogether, or to remove the Mission, to a different Station, where the improvement of the religious, moral and social condition of the Aborigines may be most conveniently, most extensively and most permanently promoted.

At the same time, the Corr. Com. beg leave to state that, in consequence of the increased and heavy expense of the Mission at Wellington Valley, occasioned by the long continued drought, the scarcity of Wheat and Meat and the difficulty of obtaining supplies, the Agents of the Church Missionary Society have been necessitated to draw upon the Society for the sum of (£345 1s. 9d.) three hundred and forty five pounds one shilling and nine pence; and, as such scarcity and difficulty still continue, the Corr. Com. would respectfully solicit the favorable attention of the Colonial Government to this matter, and pray that some additional pecuniary aid may be afforded for this Mission in order to meet the present and past extraordinary expenditure. I have, &c.,

The Honorable The Colonial Secretary.

Rev. W. Cowper, New Holland Department.

Dear Sir,

Church Missionary House, 22 Decem., 1839.

1. We enclose a Duplicate of our letter in this Department, of the 7th Inst. and have since received no communication from you in it.

2. After having considered what is stated in your late Despatches, we do not see any reason to change the views expressed in our former letter respecting the injurious consequences which must, we apprehend, unavoidably follow to the Mission by the location of Government Civil Establishments within it. We, therefore, renew our request to the Corresponding Committee to press on the local Government either the removal of those Establishments altogether, or the location of the Mission in a different situation; but one wherein the improvement of the religious, moral and social condition of the Aborigines may be most conveniently, most extensively and most permanently promoted.

3. The usual publications for the New Holland Mission are included in the present shipment by the "Achilles." We remain, &c.,

D. COATES, Sec., C.M.S.

[Enclosure A 2 to Minute No. 25 of 1839.]

Sir, Wellington Office, 22nd July, 1839.

Local opinion re site for town at Wellington Valley.

With reference to your letter of the 3rd June, 1839, in which you request that I will ascertain whether in my opinion some eligible spot might not be found near Wellington Valley for the erection of a Township at a distance of not less than three nor more than eight miles from the Missionary Establishment, and in which you state it has been suggested that such a spot might be found on the River Bell at a place called "Newry," I have the honor to state, in consequence of His Excellency the Governor, that having visited "Newry" and not having seen any land there so well calculated for the site of a Township as that at the junction of the Bell and Macquarie Rivers, I appointed a day for a meeting of the settlers in this District in order that I might ascertain what was the general opinion upon the subject, which meeting in consequence of the shortness of the notice was not attended. I therefore beg leave to refer you to the petition signed by all the respectable persons in the District first presented to His Excellency the Governor, which prays that a Township may be laid out at the junction of the Bell and Macquarie Rivers, and to state that in my opinion no equally eligible spot can be selected for that purpose within the abovementioned distance from the buildings occupied by the Missionaries.

I have, &c.,


The Honorable the Colonial Secretary, etc., etc.

Sir, Sydney, 26th August, 1839.

Transmission of minutes.

By desire of the Corresponding Committee of the Church Missionary Society, I have the honor to enclose for the information of His Excellency the Governor a Copy of the Minutes made at their Meeting, held 23d Instant, upon the affairs of the Mission at Wellington Valley. I have, &c.,

The Honorable the Colonial Secretary.
MINUTES of the Meeting referred to in the foregoing.

Sydney, 23 August, 1839.


Minutes of last Meeting read.

Read letters from Rev. J. C. S. Handt, dated July 26 and 28, 1839, also read letter from Mr. Wm. Porter, dated 20 August, 1839.

Upon Mr. Porter's letter, it was resolved:

1. That, with reference to the unhappy disunion of the Missionaries, this Committee are still of the same opinion as expressed in their Minute, and in the Communication made in February last, respecting the expediency of removing the Rev. W. Watson from the Mission at Wellington Valley, and of supplying his place with another Missionary of a more conciliatory disposition.

2. That this Committee recommend to the Parent Committee the appointment of a Catechist and Schoolmaster, as now suggested by Mr. Porter.

3. That the additional expense hereby to be incurred be solicited from the Home Government.

4. That, instead of the quantity of land suggested by Mr. Porter, this Committee recommend 16 Sq. miles, or 10,000 acres, as nearly in the form of a square as may be practicable, and well watered, be solicited from Government.

5. That, while the Corresponding Committee admit that hitherto little has indeed been effected for the religious or moral improvement of the Aborigines; yet, as the Mission at Wellington Valley is the only one established in New South Wales, and, if this be relinquished, it is very probable nothing further in this way will ever be attempted with Government support, this Committee would therefore, with every consideration, which Humanity and Justice, Religion and Morality can suggest and sanction, recommend the adoption of more efficient measures for ameliorating the condition of the Aborigines.

True Copy:—William Cowper.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 61, per ship Pero.)

My Lord,

Government House, 7th May, 1823.

In connexion with my Despatch of this day's date, No. 60, on the subject of the Mission at Wellington Valley and the Protection and Civilization of the Aborigines of this Colony, I beg to enclose to Your Lordship Copies of the following documents:—

1. Copy of a Memorial addressed to me by certain of the Settlers in the County of Grant and District of Port Phillip;

2. Copy of the Answer to the same, sent according to my directions by the Colonial Secretary of this Government;

3. Copy of a letter from Mr. Dredge, Assistant Protector of Aborigines at Port Phillip, to the Superintendent of Port Phillip, tendering his resignation;

4. Copy of a letter from the Colonial Secretary to the Superintendent of Port Phillip in answer to the same;

5. Copy of Instructions, recently given to the Superintendent of Port Phillip, to cause Reserves to be made for the Aborigines in that District, each Reserve to be the Station of an Assistant Protector.

I beg to state to Your Lordship that these documents are selected out of a vast number bearing on the same subject, for the purpose only of showing that, notwithstanding the great
difficulties against which we have to contend, this Government is making every exertion in its power for the Protection and Civilization of the Aborigines.

For the same purpose, I subjoin a Return of the number of persons now engaged in the undertaking, and an Estimate of the annual expenses incurred on this account by the Colony.

I have, &c.,
Geo. Gipps.

[Enclosures.]
Copies of these papers will be found in a volume in series III.

12 May.
Approval of appointment of commissioners of courts of requests.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 55, per ship Elphinstone.)

Sir, Downing Street, 12 May, 1840.

Having referred for the consideration of the Lords Commrs. of the Treasury your dispatch, No. 134 of the 3d Octr. last, reporting the Appointment of a Chairman of Quarter Sessions and Commissioner of the Court of Requests at Melbourne, at a Salary of £350 per annum for the 2 Offices, and of a Commissioner of the Court of Requests at Port Macquarie with an Allowance of £50 per annum for the duty, I have to signify to you the sanction of Her Majesty's Government of those Appointments.

I am, &c.,
J. Russell.

13 May.
Approval of estimates for public works at Cockatoo island and Cook's river.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 56, per ship Elphinstone.)

Sir, Downing Street, 13 May, 1840.

I have to acknowledge the receipt of your dispatch No. 102 of the 8 July last, forwarding an Estimate amounting to £4,078 14s. 11d. for works in the Engineer Department of Convict Services at Cockatoo Island and Cook's River in New South Wales.

Having referred the Estimate for the Consideration of the Lords Commrs. of the Treasury, their Lordships have stated that they have been apprised by the Master General and Board of Ordnance that, as far as the Estimates submitted in your Dispatch have admitted of examination, they have no objection to offer to them or to the general arrangements which you proposed. Their Lordships have, therefore, expressed their sanction of the Expenditure which you have reported.

I am, &c.,
J. Russell.
GIPPS TO RUSSELL.  

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.  
(Despatch No. 63, per ship Pero; acknowledged by lord John Russell, 3rd November, 1840.)

13 May  
Government House, 13th May, 1840.  

At the request of Mr. Justice Willis, I transmit herewith copies of two letters which have been addressed to me by His Honor, in consequence of my having communicated to him the contents of Your Lordship's Despatch of the 28th Octr., 1839, No. 24.  

I have, &c.,  

GEO. GIPPS.

[Enclosure No. 1.]

MR. JUSTICE WILLIS TO SIR GEORGE GIPPS.  
Sydney, N.S.W., 30th April, 1840.  

Permit me most respectfully to thank you for transmitting to me Lord John Russell's Despatch, No. 24, dated 28th of October, 1839, with reference to my Letter to Your Excellency of the 30th of March, 1839, and regretting that in case of my being "compelled from ill health to relinquish my Seat on the Bench, that, owing to the comparatively short period of my service (the latter commencing early in 1827) and that in different Colonies, there is no fund from which a pension could be granted to me."  

Fortunately under Providence, with the caution I have observed, improvement in health has rather improved than diminished; yet I cannot but lament that, should it fail me, I must still cling to office for support, even tho' in some respects I should be virtually incapacitated.  

I have indeed indulged the hope that the same course would be observed towards the Judges of this colony as is pursued in England; and I was the more sanguine from the declaration of Lord Glenelg in his Despatch of the 18th of July, 1838 (in answer to the official Letter of the Judges of this Colony on the subject), "That the instances they (the Judges) cite in which retiring pensions have been given to two Judges (one of them only an acting Judge for not more than two Years, the other for a few years previously Attorney General) are, I trust, sufficient to satisfy them that, in the event which they contemplate of a Judge becoming incapable from age or infirmity to discharge the duties of his office a fair consideration will be given to his claim for a reasonable retirement.  

I trust this principle will yet be acted upon.

I am quite aware of the difficulty arising from services having been performed in different Colonies, and especially when transferred from the salubrious climate of Demerara; but I would venture with all deference to suggest that, as naval and military officers are in some measure compensated for services elsewhere by grants of land in the Australian Colonies, a somewhat similar plan might be resorted to in a case like mine. where, from the circumstances alluded to by Her Majesty's Colonial Secretary of State, I am now informed that "there is no fund from which a pension could be granted to me."

For my own part so long as I am able, I am quite willing to work; and I may add that, if my duties were chiefly limited to the quiet discharge of the Equity Business of the Colony (business with which I am the most familiar), I should probably be more...
permanently efficient than in any other capacity. It is the heat and agitation of a crowded Criminal or Nisi prius Court from which I chiefly suffer.

Self Interest would naturally induce me to prefer the full Salary of my Office as long as possible to a retiring pension of one third of the amount. It was to avoid an undue clinging to Office, to prevent the unseemly spectacle of a Judge almost powerless (as I feared I was becoming) from Infirmitiy appearing before the Public, that induced my application; and, if no arrangement for some provision when Infirmitiy may overwhelm me shall be made, I fear my poverty but not my will may yet place me in so unhappy a Situation.

If your Excellency shall see no objection, may I trespass so far on your kindness as to request that this Letter may be communicated to Her Majesty's Colonial Secretary of State. I am quite willing that my case should be Submitted to the Imperial Parliament. With much Respect, I have, &c.,

JOHN WALPOLE WILLIS.

[Enclosure No. 2.]

MR. JUSTICE WILLIS TO SIR GEORGE GIPPS.

Sir, Sydney, 6th May, 1840.

With reference to my letter of the 30th of April last, I beg permission most respectfully to add that the late Judge Stephen obtained valuable Grants of Land, and, on retiring from the Bench, received a Pension after about six years' Judicial Service in the Colony; and that Dr. Kinchela appears to have held Office as Attorney General for about five Years (an Office to which in England no retiring Pension is annexed) and was in fact only an acting Judge from the 16th of April, 1836, to the 7th of Novr., 1837 (a period of little more than a Year and a half) when a pension was assigned to him by Her Majesty's Government of £500 per an.

My appointment to this Colony took place in April, 1837, now three years ago.

I am aware that both the Gentlemen I have alluded to Served before in other Colonies, but neither of them had ever previously been a Judge, nor am I aware of any loss of Property or Health in consequence of their former Services.

Under these circumstances, I still venture to hope that, according to Lord Glenelg's Despatch of the 18th of July, 1838, a fair consideration will be given to my claim for a reasonable retirement, and that I shall not be placed in a worse condition than my Predecessors, especially if I have to remain in Office a few years longer.

With great Respect,

JOHN WALPOLE WILLIS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Sdespatch No. 58, per ship Elphinstone.)

Sir, Downing Street, 16 May, 1840.

I transmit to you, herewith, the Copy of a letter and its Inclosure, from the Deputy Secretary at War relative to the conduct of Mr. H. C. M. Ximenes, late Ensign, 16th Regiment, in regard to certain Money and Effects taken charge of by him belonging to the late Ensign Roberts of the 44th Regt.
It appears that Mr. Ximenes is now on his passage to New South Wales with a view of becoming a Settler there; and I have to desire that you will not comply with any application, which may be made by that Gentleman for any remission in the purchase of Land, until he shall have satisfied you of his having duly transferred or remitted to the legal Representative of the late Ensign Roberts the Property which is supposed to be still in his possession belonging to that Officer.

J. RUSSELL.

[Enclosure.]

MR. L. SULLIVAN TO UNDER SECRETARY STEPHEN.

Sir, War Office, 13 May, 1840.

I am directed to transmit to you herewith a copy of a letter from Lieutenant Col. Roberts on the retired List of the Royal Artillery, relative to the conduct of Mr. H. C. M. Ximenes, late Ensign of the 16th Regiment, in regard to certain money and effects taken charge of by him, belonging to the Lieutt. Colonel's late Son, Ensign Roberts of the 44th Regiment.

As it is understood that Mr. Ximenes is now on his passage to New South Wales with the view of becoming a Settler there, I am to request that you will move the Secretary of State to issue such Instructions as shall prevent the Grant of Land or any other indulgence to Mr. Ximenes, until he shall have satisfied the Authorities in New South Wales of his having duly transferred or remitted the said money and effects to the legal Representative of the late Ensign Roberts.

I am further to request that you will apprize me of the Instructions, which Lord John Russell may give on this subject.

I am, &c,

L. SULLIVAN.

[Sub-enclosure.]

LIEUT.-COLONEL ROBERTS TO SECRETARY AT WAR.

Sir, Aviany Hythe, near Southampton, 29th April, 1840.

I have the honor to submit the following statement relative to the conduct of Ensign Ximenes, who I am informed has very lately sold his Commission in the 16 Regt. and sailed a few days ago as a Settler in Australia.

The first communication, which I received from Ensign Ximenes, was dated the 1st of last July on board the “Maitland”; it was a very kind letter informing me of the death of my late son Ensign Roberts of the 44th Regiment, and stated that he would take charge of my son’s baggage and save me much trouble by passing it through the Custom House with his own. It is about four months since the arrival of the “Maitland,” and I have since that time repeatedly written to Ensign Ximenes enquiring for certain articles belonging to my late Son (as they were not in his trunks which were forwarded to me) that I might, if not in Ensign Ximenes’s possession, enquire of the Captain of the Maitland concerning them; to some of these my enquiries, he has not yet returned any answer; and it...
1840.
16 May.

Statement by W. Roberts re retention of property of deceased son by H. C. M. Ximenes.

is only by gradual admission that he has informed me of the fate of some of the articles alluded to and that he had possession of some others, also that he had in hand £12 money belonging to my son, which he stated, in a letter dated 7 February last, he had lodged with my Agents Messrs. Cox and Co.; but, this not being lodged after my having twice addressed Ensign Ximenes on that subject, I received an answer from him dated 13th Inst., in which he states that he will send all my Son’s things per Coach on the following Saturday and also the money alluded to in a case of Maps belonging to my Son; but on the arrival of the parcel, I found it consisted only of a Cloak and the case of Maps, and no money enclosed.

I beg also to add on this point that Ensign Ximenes stated that Captain Mylius of the 26th Regiment has some money belonging to my son, which would be forwarded to me by the overland Mail from India and I have reason to believe that my late Son Ensign Roberts had much more than £12 belonging to him after his death.

I beg to state that it is very lately that I have had any suspicion of Ensign Ximenes, which has prevented my making an earlier application on this subject; and, though he is no longer in the Army, yet, if Mr. Ximenes is gone to Australia to obtain a Grant of Land as a Military Officer, I respectfully submit for consideration whether any measure can now be taken to prevent his obtaining the Grant of Land until he has made reparation for the unfair and ungentlemanlike advantage which he has taken of my confidence and forbearance towards him.

I have &c,

WILL ROBERTS,
L.-Col., R. Artillery retired List.

Inability to detach additional engineer officer for Sydney.

LORD JOHN RUSSELL to SIR GEORGE GIPPS.
(Despatch No. 59, per ship Elphinstone.)

Sir,
Downing Street, 16 May, 1840.

In my Dispatch No. 45 of the 21st Ultimo, I acquainted you that the Master General and Board of Ordnance had been requested to make arrangements for sending out to New South Wales an additional officer of the Corps of Royal Engineers, to be employed on the Civil as well as the Military Works of the Colony, with Instructions to inspect the Stations in the Settlement of Western Australia, where it has been proposed to construct some Works of Defence, and to report upon that proposition.

I have now to acquaint you that the Master General and Board have reported that they have not at present the means of furnishing any additional Engineer Officer for Sydney, but that they propose to order one as soon as the effective strength is greater by Vacancies being filled up.

I am, &c,

J. RUSSELL.
RUSSELL TO GIPPS.

LORD JOHN RUSSELL to SIR GEORGE GIPPS.

(Despatch No. 60, per ship Elphinstone; acknowledged by Sir George Gipps, 12th October, 1840.)

Sir, Downing Street, 18 May, 1840.

Copies of four Acts were received at this Department on the 12th Instant duly authenticated, and marked as proceeding from the Council Office of New South Wales, having been passed by the Legislative Council in the months of September and November last. They have the following Titles:—

"An Act for facilitating Proceedings by and against the Sydney Alliance Marine and Fire and Life Insurance Company."

"An Act for facilitating Proceedings by and against a certain Banking Company, called the Union Bank of Australia, and for other purposes therein mentioned."

"An Act to amend an Act intitled ‘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 form 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.’"

"An Act to enable the Proprietors of a certain Banking Company carried on in the Town of Bathurst in the Colony of New South Wales under the name, style and form of the ‘Bathurst Bank’ to sue and be sued in the name of the President of the said Company for the time being, and for other purposes therein mentioned."

As these Acts are unaccompanied by any communication from you, I have thought it right to reserve them for the present in expectation of receiving shortly some report* from you respecting them. But, as these acts will not take effect until they shall have received the Royal Assent, I shall deem it my duty, in the event of my not hearing from you soon on the subject, to submit them to Her Majesty with such advice as I may be best able to offer regarding them.

I take this opportunity of repeating that I have not yet received any report from you on the various subjects which you may have brought before the Legislative Council during its last Session, an omission which will probably be noticed in Parliament.

I am, &c.,

[Unsigned.]

LORD JOHN RUSSELL to SIR GEORGE GIPPS.

(Despatch No. 61, per ship Elphinstone.)

Sir, Downing Street, 18 May, 1840.

I have received a letter, of which the inclosed is a Copy, from the Colonial Land and Emigration Commissioners with a

* Note 116.
Copy of a Notice Communicated to them by Mr. Latrobe, shewing the position of Five Buoys which had been laid down within the Entrance of that Port.

I have directed the transmission of a Copy of that Notice to the Lords of the Committee of Privy Council for Trade, as any information of that description is valuable.

It will, however, be desirable to point out to Mr. Latrobe the inconvenience of diverting his official Correspondence from the proper Channel by addressing his Reports to the Land and Emigration Board.

It may at the same time be convenient to authorize Mr. Latrobe to communicate direct to this Department Copies of any Reports, which he may address to you, and which may contain useful information regarding Port Phillip, altho' any Instructions founded on such Reports would be addressed to you.

I am, &c.,

J. RUSSELL.

[Enclosure.]

LAND AND EMIGRATION COMMISSIONERS TO UNDER SECRETARY STEPHEN.

Sir,

We have the honor to transmit to you the enclosed copy of a notice recently received from Mr. Latrobe, the Gentleman administering the Government at Port Phillip, shewing the position of Five buoys as now laid down within the entrance of that Port; and we would suggest that, if this information has not already reached the Colonial Department thro' other channels, it will be desirable now to forward it to the Board of Trade for the purpose of giving it publicity in such manner as may be most convenient for the information of all parties concerned in shipping and Trade.

We would also beg leave to mention that Mr. Latrobe states that it was in contemplation to erect a small light House in the course of the month of December last on the extremity of Gillibrand's Point.

We have, &c.,

T. FRED. ELLIOT.

ROBT. TORRENS.

E. E. VILLIERS.

[Sub-enclosure.]

STATION of Buoys at Port Philip at this present time Novemr. 1839.

"A Red buoy on the shoal called the Pope's Eye on the Rattlesnake's Chart on the Southern part of it so as to make a leading mark either for the South or Western Channel; this Buoy is in three fathoms at low water."

"A small half Tun Buoy (Black) on the extreme edge of the spit off Swan point in 2½ fathoms water at low water."

"A white Buoy on the Westernmost spit of the West sound abreast of Swan point in 2½ fathoms at low Water."
RUSSELL TO GIPPS.

"This buoy is on the spit that forms a light in the next sand."
"A black buoy on the spit running off from Indented head to the Eastward end forming the Northern entrance to the Channel in 23 fathoms at low Water. As these Buoys have all been laid down on the sands, Vessels should not approach them nearer than about Two Cable length."

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 65, per ship Pero.)

My Lord,

Government House, 20th May, 1840.

I have had the honor to receive Your Lordship's Despatch of the 30th Novr., 1839, desiring to know whether any objection exists to the grant of the Royal Exequatur to the appointment by His Majesty the King of the French of Mr. Faramond to be His Consul for New South Wales; and I have accordingly to report to Your Lordship that I am not aware of any objection whatsoever to this appointment.

I should observe however that Mr. Faramond is unknown to me, not being a resident in New South Wales.

I have, &c,

GEO. GIPPS

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 64, per ship Eden.)

Sir,

Downing Street, 22 May, 1840.

I transmit to you, herewith, a Copy of a letter from the Secretary to the Court of Directors of the East India Company, and I have to request that you will make the necessary arrangements for the payment to Mrs. Sarah Weston on account of the East India Company of the pension which she receives from the Company.

I am, &c,

J. RUSSELL.

[Enclosure.]

MR. J. C. MELVILLE TO UNDER SECRETARY STEPHEN.

Sir,

East India House, 6th May, 1840.

With reference to the arrangement with Her Majesty's Government, under which certain Pensions are disbursed at Saint Helena on the East India Company's Account, I am commanded by the Court of Directors to enclose, for the information of the Right Honble. The Secretary of State for the Colonies, copy of an application from Mrs. Sarah Weston, who solicits that her pension hitherto paid at that Island may in future be issued at Sydney, New South Wales.

I am to request that His Lordship will be pleased to give the necessary Instructions for making the payment accordingly on the Company's Account.

I have, &c,

JAMES C. MELVILLE.
1840.
22 May.

Petition of S. Weston re payment of pension.

[Sub-enclosure.]

THE PETITION OF SARAH WESTON, WIDOW.

St. Helena, 18th February, 1840.

Humbly Sheweth,

That, in 1832 at the decease of her husband who held the Office of Marshal in this Island for many years, your Honble. Court was pleased to grant her a pension of nine pence per diem, which since 1836 has been paid by her Majesty's Govt. on account of the East India Company.

That your Petitioner embarks this day for New South Wales to join her Son, who is a Clerk in a Government Office in Sydney, and in consequence humbly prays your Honble. Court will be pleased to communicate with His Lordship, the Secretary of State for the Colonies, with a view to your Petitioner's receiving her pension at that place.

And your Petitioner as in duty bound will ever pray.

SARAH WESTON.

25 May.

Memorial acknowledged from committee of Sydney dispensary.

Reference of application to board of ordinance.

South wing of hospital to be granted to dispensary.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 66, per ship Eden.)

Sir,

Downing Street, 25 May, 1840.

I have to acknowledge the receipt of your dispatch No. 107, of the 25 July last, transmitting a Memorial from the President and Committee of the Sydney Dispensary* praying that the South Wing of the General Hospital may be granted to them for the purposes of the Dispensary.

As it appeared from your Dispatch that a proposal had been transmitted to the Board of Ordnance by the Commanding Royal Engineer at New South Wales for applying the unoccupied wing of this Building to the purposes of a Military Hospital, I referred your dispatch for any suggestions which the Master General and Board might have to offer in that respect.

I enclose, for your information and guidance, a Copy of the Correspondence between this Department, the Board of Ordnance and the Board of Treasury on the subject, from which you will perceive that, although the Lords Comrs. of the Treasury cannot recognize any claims to the Building on the score of the particular Fund from which the expence of its original erection is alleged to have been defrayed at a time when almost every charge of the Colonial Government and Establishments was borne by this Country, yet, as the accommodation asked for the Dispensary does not apparently exceed that already taken up by the Pauper Patients, and as the reception of those Patients at the charge of the Colonial Government would cease upon that accommodation being granted, their Lordships will not object to the occupation of the Building for the purpose of the Dispensary.

* Note 48.
In communicating this decision to the President and Committee of the Sydney Dispensary, you will cause them to understand that the permission for this occupation is granted with the distinct understanding that the option of resuming the south wing of the Building at any time that it may be required for the Public Service is reserved to H.M. Government. I am, &c.,

J. RUSSELL.

[Enclosure No. 1.]

SIR,

I am directed by Lord John Russell to transmit to you, to be laid before the Master General and Board of Ordnance, the enclosed copy of a despatch* from the Governor of New South Wales, with a Memorial from the President and Committee of the Sydney Dispensary, praying that the South Wing of the General Hospital may be granted to them for the purposes of the Dispensary.

It appears from the enclosed Despatch that a proposal had been transmitted to the Master General and Board by the Commanding Royal Engineer at New South Wales for applying the unoccupied Wing of the Building to the purposes of a Military Hospital.

Lord John Russell would be glad to know whether the Master General and Board have any suggestion of that kind to offer. If not, his Lordship proposes without further delay to advise the Lords Commissioners of the Treasury to sanction the appropriation of that part of the Building for the purposes contemplated in the Memorial.

I have, &c.,

JAMES STEPHEN.

[Enclosure No. 2.]

SIR,

I have the honor by command of the Master General and Board of Ordnance to acknowledge the receipt of your letter dated the 30th January last, enclosing a Copy of a Despatch from the Governor of New South Wales and a Memorial from the President and Committee of the Sydney dispensary, praying that the south Wing of the general Hospital may be granted them for the purpose of the Dispensary.

The Master General and Board direct me to state to you, for Lord John Russell's information, that they are not prepared to accede to the proposed appropriation until it shall be explained what arrangement the Colony has to offer for providing a general Military hospital, to which purpose it was proposed by the Commanding Engineer, in a report dated 1st Septem., 1836, that the South Wing should be allotted. That proposition was approved by the late Governor and Commander of the Forces, as well as the Chief Medical Officer as appeared in the correspondence, estimate and plans, which the Master General and Board forwarded to the Lords of the Treasury on the 17th of April, 1837; but, by a decision dated 24th November following, their Lordships deferred any judgment on the proposed adaptation until further information should be received.

Under these circumstances, the Master General and Board must object to the proposed arrangement (which so far as they are at

* Marginal note.—No. 107, 25th July, 1839.
1840.  
25 May.  

Letter acknowledged.

Under Secretary Stephen to Mr. R. Byham.

I have laid before Lord John Russell your letter of the 4th Instant relative to an application made by the President and Committee of the Sydney Dispensary, that the South Wing of the General Hospital might be granted to them for the purposes of a Dispensary.

You state that the Master General and Board of Ordnance object to the proposed arrangement (which, as far as they are already informed, will oblige them to incur the expense of providing a Military Hospital) until the service chargeable on the funds of this Country, whether Military or Convict, shall be first provided for.

It appears to Lord John Russell that, under the circumstances reported by the Governor of New South Wales, in his dispatch No. 107 of the 25th of July last, the Building in question cannot justly be considered Ordnance property, or as held by the Ordnance Department in Trust for National, as Contradistinguished from Colonial purposes. It was built originally from a Colonial Tax, and seems rather of the nature of a joint property between the British and the Colonial Treasury. Lord John Russell would be glad to be informed of the grounds, on which the Master General and Board rest their conclusion that Sir George Gipps is mistaken in regarding the Building in question as being in part at least Colonial property, and applicable to the Colonial purposes. If the Board should still adhere to that opinion, his Lordship proposes to refer the question to the Lords Commissioners of the Treasury.

I have, &c.,

JAMES STEPHEN.

[Enclosure No. 4.]

Mr. R. Byham to Under Secretary Stephen.

I have the honor by the Master General and Board’s commands to acquaint you, for the information of the Secretary of State for the Colonial Department, that the establishment in question is called the Convict Hospital and was transferred to the Ordnance officers in Jan., 1836; and that, in report and estimate dated 1st September of that year for Convicts’ services, it is provided by the Commanding Royal Engineer, with the full approbation of the late Governor and concurrence of the Deputy Inspector of Hospitals, to concentrate the Military and Convict Hospitals at this site, an arrangement which is distinctly stated to have been its original appropriation.

The Master General and Board see no reason to doubt that the establishment was constructed, and has always been maintained
by the funds provided by, or at the disposal of the Home Government; and, as the arrangement proposed by Major Barney in 1836 is in accordance therewith, and was approved by the Governor of the Colony, the Master General and Board cannot concur in the expediency of transferring any part of the Establishment to the Colony, it being evident that, if that be done, this Country will have to provide funds for another Military Hospital.

I have, &c.,

R. Byham.

[Enclosure No. 5.]

UNDER SECRETARY STEPHEN TO MR. C. E. TREVELYAN.

Sir, Downing Street, 20th April, 1840.

I am directed by Lord John Russell to transmit to you to be Reference of laid before the Lords Commrs. of the Treasury the copy of a despatch from the Govr. of New South Wales, with a Memorial from the President and Committee of the Sydney Dispensary, praying that the South wing of the General Hospital may be granted to them for the purposes of the Dispensary.

I also enclose the copy of a correspondence, which has passed between this Department and the Board of Ordnance with regard to a proposal of the Commanding Engineer in the Colony that the South Wing should be allotted to a General Military Hospital, and from which their Lordships will perceive that the Board decline to acede to the appropriation, proposed in the Memorial, on the ground that the Hospital was transferred to the Ordnance Officers in the year 1836.

I am to request that you will move the Lords Commrs. of the Treasury to decide between these conflicting claims in a manner their Lordships may consider the most equitable to the Colony, which has borne so much of the Cost of the erection and maintenance of the building.

I have, &c.,

Jas. Stephen.

[Enclosure No. 6.]

MR. C. E. TREVELYAN TO UNDER SECRETARY STEPHEN.

Sir, Treasury Chambers, 14 May, 1840.

I have it in command, from the Lords Commissioners of Her Majesty's Treasury, to request you will state to Lord John Russell that my Lords have had under their consideration the Despatch from the Govr. of New South Wales, dated 29th July, 1839, with the documents therein inclosed relating to the appropriation of one Wing of the Building occupied as a Convict and General Hospital at Sydney for the use of the Sydney dispensary, which were submitted to this board in your letter of the 20th Ulto., and I have to request you will, with reference to those documents, call his Lordship's attention to the following remarks:

My Lords observe that the object of Sir George Gipps' proposition, and of the application in the Memorial from the Committee of the Dispensary, is to enable that Charitable institution to provide for the reception and treatment of pauper Patients, as well as for dispensing medicines to the poor at their own dwellings. Under the existing arrangements, free paupers are admitted into the Hospitals, under the charge of the Government Medical Officers, on payment from the Colonial funds to the Military Chest, from which all expenses of these establishments are defrayed, of an amount equal to the "average cost of the subsistence and other specific expenses
attending their admission." That payment is at present made at the rate of 1s. 9d. per day for each patient under treatment in the Hospital; and, as the charge on the Colonial fund for this purpose is considerable, it is doubtless very desirable that every reasonable assistance and encouragement should be given to any Local Charitable institutions, which may relieve the Colonial Fund, either wholly or in part, from this expense.

As regards the building for the use of which application is made,

My Lords further observe that, on the revision of the Convict and Colonial Establishments which took place on the first employment of officers of the Ordnance and Army Medical Departments in New South Wales, the charge of the Hospital devolved on the Medical Officers, as a Convict Establishment, and the building, which appears to consist of a centre and two detached wings, was placed, in common with all other buildings occupied for convict services, under the care of the Officers of the Ordnance Department. so far as regards attention to necessary repairs or any requisite alterations to render it more convenient for the purposes for which it was occupied.

In the year 1836, a proposition was made by the Commanding Royal Engineer in New South Wales, with the concurrence and approval of the Governor and Commanding Officer, Sir Richard Bourke, for converting a wing of the Convict Hospital into a Military Hospital, with a view both to the convenience of concentrating the Medical Establishments, and to the probable necessity which might eventually arise for removing the Military Hospital* from Fort Phillip, on the enlargement of that Military work.

This proposition, however, was not at the time adopted, and my Lords therefore presume that the wing, to which it referred, has continued to be occupied for the same purposes as the rest of the Building; and they are not aware of any other ground upon which the Hospital should be considered by the Master General and Board of Ordnance in the light of a Military Building, and at the disposal of that Department. My Lords must also further presume that Sir George Gipps had fully satisfied himself, before he recommended a compliance with the application on behalf of the dispensary, that the use of the Building, to which it refers, could be granted without detriment to any branch of the public service under existing arrangements.

I have therefore to request you will acquaint Lord John Russell that, although my Lords cannot recognize any claims to the building on the score of the particular fund from which the expense of its original erection is alleged to have been defrayed, at a time when almost every charge of the Colonial Government and Establishments was borne by this Country, yet, as the accommodation asked for the Dispensary does not apparently exceed that already taken up by the Pauper Patients, and as the reception of those Patients at the charge of the Colonial Government would cease upon that accommodation being granted, my Lords are not prepared to object to the occupation of the building for the purpose of the Dispensary. But my Lords, at the same time, conceive it will be advisable that the permission for this occupation should be granted with the distinct understanding that the option of resuming the building at any time that it may be required for the public service is reserved to Her Majesty's Government. I have, &c.,

C. E. TREVELYAN.

* Note 117.
RUSSELL TO GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 67, per ship Eden.)

Sir,
Downing Street, 27 May, 1840.

I have received your dispatch, No. 128 of the 17 Sept., last, transmitting the report of a Board of Enquiry into the charges preferred by Mr. H. F. White against Mr. Gray, the Police Magistrate of Port Macquarie.

Adverting to the course pursued by Mr. White during the course of the enquiry, I consider myself as authorised and required to acknowledge that enough has been proved for the exculpation of Mr. Gray. You will express to the Gentlemen, who conducted this laborious investigation, my thanks for the labor, which they bestowed on the enquiry, and my entire approbation of the manner in which it has been conducted.

I am, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 66, per ship Pero; acknowledged by Lord John Russell, 21st November, 1840.)

My Lord, Government House, 29th May, 1840.

I have the honor herewith to enclose to Your Lordship a Copy of the Address* with which I opened on the 28th inst. the ordinary Session of the Legislative Council of this Colony.

I have, &c.,

GEO. GIPPS.

P.S.—I enclose Copies of the Bills* presented to the Council, concerning the affairs of New Zealand.

[Enclosures.]

[The address will be found in the "Votes and Proceedings" of the legislative council; the bills were passed as acts of council.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 93, per ship Eden; acknowledged by Sir George Gipps, 17th December, 1840.)

Sir,
Downing Street, 31st May, 1840.

The rapid extension of Settlement over the surface of New Holland renders it natural to expect that new arrangements should be necessary for the Administration of its affairs. More especially as regards the management of Land, it would be but reasonable to suppose that the system which might sufficiently answer its purposes in long-settled portions of the Country should be less applicable to Tracts recently occupied, or to a

Note 118.
 Territory, of which the Settlement has still to be begun. I have required the opinion of the Commissioners of Colonial Lands and Emigration on these points, and have received more than one Report from them on the subject; and, although I abstain for the present from forwarding those Documents to you, because some parts of them cannot be acted on without consulting other Departments of the Government, you will understand that such decisions, as I am about to convey to you, are adopted in conformity with recommendations from the Commissioners.

I come to the conclusion that, for all purposes connected with the disposal of Land, it will be desirable that the present Territory of New South Wales should be divided into three distinct portions or Districts, which I may describe under the Names of a Northern, a Middle, and a Southern District. But, being desirous to give time for some further enquiries, I suspend for a short interval my directions on the Northern District, merely observing that the same general principles in the disposal of Land will be applicable there, as those which I am about to announce in regard to the Southern or Port Phillip District. With this remark, I proceed to the more urgent question of separating the Southern from the Middle or Sydney District.

These two Districts are to be divided by the Boundaries* of the two Southernmost Counties of New South Wales, as proclaimed by the Governor on the 14th of October, 1829, and from the limits of these two Counties by the whole course of the River Murrumbidjee and the Murray, until it meets the Eastern Boundary of South Australia, which of course will constitute the limit to the Westward both of the Sydney and of the Port Phillip District. Seeing how little the General direction of the Murrumbidjee, after leaving the Boundary of the original Settlement of New South Wales, varies from an East and West course, it has appeared to me more convenient to choose this natural and well defined Boundary than to adopt a Parallel of Latitude.†

It appears to me to be shewn that, in New Settlements, such as those comprized within the more recent of the two Districts thus separated, a fixed uniform price constitutes the best method of disposing of the Land. In Sales by Auction, the purchaser must wait a sufficient time for advertisement, and then may be outbid. He is exposed, therefore, to delay and to uncertainty. Both of these inconveniences are obviated by a fixed price. The fixed price also enables parties to know, before they leave this Country, the exact quantity of Land they can buy. Another circumstance, which, far from looking upon it with a jealous eye, I should consider to be a great advantage, is that one uniform Price for all Country Lands renders it probable that the

* Note 119.  † Note 120.
best Lands will be taken up first, instead of by a difference of Cost tempting persons to begin with Lands of secondary qualities. Thus none are forced into premature Cultivation, but the different Lands of the Colony are successively occupied in the natural order of their advantages.

These considerations, however, are less applicable to older Colonies. In them, the principal settlement has already taken place, whether well or ill, and the order of occupation is no longer to be affected by Government Rules.

There will also be a much greater inequality in the value of the Lands at the disposal of the Public. The Lands which remain in the hands of the Government in a Colony in the Circumstances of New South Wales may be expected to be the best and the worst; the worst, for obvious reasons; the best, on account of having been reserved because of their special advantages, or left unbought because of the high price they were expected to fetch. It would be very difficult under such circumstances to name any price, which would not be much too high for one description of Land, virtually rendering it inaccessible to everyone; or else much too low for the other, causing it to be instantly taken up by parties who might have no real want of it and not be in the condition best calculated to improve it, so as to contribute to the General prosperity of the Colony.

In the Middle District, therefore, including as it does all the Lands within the original limits of Settlement as proclaimed in 1829, it is intended that the method of disposing of Land should continue to be sale by auction, and the upset price to be 12s. per Acre, as at present. No change whatever is made by the present Instructions within this District.

But, in the Port Phillip district, all Lands will in future be open to sale at one uniform price, subject to the few following qualifications:

First. Lands required for public purposes, as, for example, for Roads, for Works of Defence, for Streets and open places in Towns, and for Public Buildings and places of public recreation, are to be reserved. The situation and extent of these reservations should, however, be decided as early as may be practicable, consistently with a due regard for the ends to be attained; and the reserves for buildings and works of defence should be made with great moderation. They should not be calculated in reference to all that it might be wished to be able to erect, but to what it is reasonable to suppose can in point of fact be erected, and will be really required within some reasonable period.

Secondly. Towns, which have been laid out already in which Sales of Town Lots have actually taken place at Auction, should...
1840.
31 May.

Instructions re disposal of land in new town sites.

Reasons for disposal of land by auction in settled towns; and at fixed price in new towns.

Price of town lots at Melbourne and Williamstown.

continue to be sold by that method. Melbourne and Williams Town will fall within this principle.

In regard to other Town Sites, the general Rule in New Districts should be to make no reservations for that purpose, and no distinction of price or mode of Sale, excepting only in regard to the Sites of Towns likely to be the Seats of a local Administration of Government, or else Sites on good Harbours which may be expected to become considerable Sea-Ports. Melbourne, if it had to be settled anew, would have been an instance of the former; Twofold Bay and Western Port may probably afford examples of the latter.

It will depend on the discretion of the Officer Administering the Govt, at Melbourne to determine what Sites shall be so reserved; but he must understand that it is to be done with much caution. I am inclined to think that there should not be more than two such Sites reserved in all besides Melbourne and Williamstown, and none are to be reserved Inland.

I believe that the establishment of Villages, and their gradual extension into Towns, may there be left best to the enterprise and judgment of Individuals.

There is a distinction, however, which it is necessary to mention here. In Towns where Sales by Auction have already taken place, I have stated that the same should continue. I have preferred this course because it appeared likely that in such situations a high artificial value would have been created, and that to introduce any other principle than Auction might create confusion, and injure the public Revenue without any longer bearing materially on the progress of a Town that had passed its infant stages. But, in laying out entirely new Towns, the object must be to hold out the greatest encouragement to the resort of Capital, without at the same time naming such terms as should enable every casual applicant to seize upon and preoccupy all the Advantages. I believe that a fixed price offers the best means of combining these objects. Sale by Auction would cause an uncertainty that would deter distant Capitalists, particularly those who are proposing to emigrate from this Country. On the other hand, too low a fixed price would render it unquestionable that the persons, who happened to be within reach of the District Land Office, when a Town was declared saleable on such terms, would seize on every acre to the general discouragement, instead of the encouragement, of distant Capitalists. I find that at Melbourne the Sales of Town Lots, as far as they have yet been officially reported, produced an average of nearly £130 per acre; and that at Williamstown, deprived th'o' it has yet remained of
Desiring then that no Town Sites shall be reserved inland, and that, even on the Coast, only the probable situations of considerable Sea-ports should be reserved, I propose to advance a step further, and to direct that, when such Towns are properly laid out and offered for Sale, the Lots may consist of Acres, or of equal parts of Acres, as the Circumstances of the Case may require, but that the price shall be fixed at the uniform rate of £100 per Acre.

Thirdly. There naturally arose the Questions whether to Reserve a right to Minerals or to reserve Lands known, or on good grounds supposed, to contain valuable Minerals. In general terms, I may say that I decide both questions in the negative. All Deeds of Grant, throughout the whole of the Colony, should henceforward convey to the purchaser everything below and every thing above the surface. Neither would I reserve Lands merely because supposed, or even certainly known to contain useful mineral substances. The small amount of profit derived from Mines throughout the great extent of the British Colonial Empire would appear to shew sufficient reason why such reservations would, as a general rule, be as unnecessary as they would be inconvenient to the natural progress of Settlement. But I have said that I make this decision in general terms only. In the unforeseen case of Mines of obviously an immediately high marketable value, and where competent parties could be expected to come forward at once with offers to work them on fair terms of profit to the Government, it would be no less due to the General welfare of the Colony, as a means of insuring the property falling into hands capable of doing it justice, than to the mere Advantage of the Revenue, that the matter should be treated as an exception. The proper Course in such a Case would be to take fitting measures to admit of public competition, under proper securities, for the due performance of Conditions and then to dispose of the Mines to the party making the highest offer.

Having thus explained the few and very qualified exceptional cases, which have occurred to me in regard to Towns, to Mines, and to ground required for public purposes, I now repeat that, with these exceptions, the Lands in the Port Phillip District will be open to Sale at one fixed, uniform price, and that the same principle will be applied to the Northern District, whenever Lands may be thrown open to Settlement in that part of the Colony.

The price I shall name for the present is £1 per Acre. This appears to be a reasonable price, adverting to the proceeds of
Sales hitherto; and it appears to answer well in the neighbouring Colony of South Australia, where there are neither the indications of its being too high by stopping the progress of Sales, nor yet too low by causing an excessive rapidity in the Appropriation of Land.

One qualification, which it can scarcely be necessary to mention, is that persons will of course not be able to pay any indefinite number of Pounds Sterling, and receive a corresponding number of Acres, but that they must buy in lots of such size as shall from time to time be established by Public Regulation. It appears that the Lots hitherto offered for Sale in New South Wales have not consisted of less than portions of one Square Mile. I am disposed to think that it would be desirable in the two Districts now separated from the older settlements to divide the Lots at least into portions of 160 Acres or one quarter of a Square Mile, if not into Eighty-Acre Sections; but these are questions to which it will be necessary to recur.

On the whole subject of Surveys, I shall very shortly have occasion to address you again, as I feel it to be of the highest importance to endeavour to keep them in advance of the progress of occupation. It is probable that, with this view, a strong surveying staff will be sent out from this Country direct to Melbourne.

It will be necessary also immediately to constitute at Melbourne an efficient and well appointed Land Office. Registers should be kept there of all Appropriations of Land already made within the New Southern District, and of all future appropriations; and the Reserves made for various Public purposes should be inscribed in the same Registers. There should also be Charts containing a representation of the division of the District into Lots, and shewing all appropriations and reservations so as at once to exhibit the Surveyed Land still open to selection.

All purchases should be required to be made at the Land Office of the District within which the Lands are situate, and the Money to be paid into the Local Treasury of that District. The only exception will be that, for the encouragement of Purchasers going out from the United Kingdom, persons will be allowed to deposit money with the Agent General for the Colonies, or such other Officer in this Country as may be appointed for that purpose, and thereupon will receive of the Land and Emigration Commissioners an Order entitling them to have credit for a corresponding Sum in the acquisition of Land in the Colony.

I am informed that, in certain states of the Exchange, this arrangement will be a boon to Emigrants of Capital by affording
them a profitable, as well as the safest, mode of remitting the money they purpose to invest in Land.

But it will more especially be an accommodation to such Emigrants by enabling the Government to let them name a proportionate number of Labourers, to be carried out to the Colony upon Bounty under such Regulations as shall from time to time be made for the purpose by the Board of Land and Emigration. It has long been a defect and a source of regret to persons who, in leaving this Country for Australia, were acquainted with deserving Labourers willing to accompany them, that they had no means of claiming a free passage for them. The Government Vessels were not open to them, because in those vessels it was thought essential that the Labourers should not be engaged to particular parties, but should all be open to the offers of the Public on their arrival in the Colony. On the other hand as to persons going out upon the Bounty obtained by application at Sydney, it was at any rate the supposed practice, and private individuals in this Country could hardly know the contrary, that such Passengers could only consist of persons, whose introduction had been requested by parties resident in that Colony. The deposit in this Country will now place the Emigrant of Capital at once in the position of a bona fide purchaser, and will enable the Government with propriety to accord him privileges in carrying out Labourers, altho' it will not be till he presents his Certificate at the District Land Office that he can actually select his Land.

It will, of course, be proper that very regular periodical Returns should be made from the New District to this Country of the quantity of Lands sold, and the Sums of Money received, as well as of the state of the Land Funds in the Local Treasury. It will be for you on the spot to issue for the present such directions as, by analogy to the practice at Sydney, you may consider expedient in respect to the Custody of any large balance which may thus accumulate in the District Treasury. But on the whole of the financial part of the arrangements I am in Communication with the Lords Commissioners of the Treasury, and shall have to write to you more definitely at a future opportunity. I shall probably then transmit, also, Copies of the Forms in which Returns will be required.

I am well aware that many supplementary measures of detail will have to be considered, and that unremitting attention will be requisite on first setting on foot so decided a change from the previous course of proceeding in the Southern parts of the Colony; but there is now a distinct Board of Commissioners* appointed to devote the whole of their time to questions of this

* Note 121.
nature, and I feel every hope that, with the care which it will
be their duty to bestow on the subject, aided by the Co-opera-
tion of the Authorities in the Colony, the present modification
may be so carried into execution as to constitute a benefit to
Settlers in the valuable Territory of Australia.

I enclose herewith an additional Instruction* under the Royal
Sign Manual giving effect to the preceding arrangements.

I am, &c.,
J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 70, per ship Eden.)

Sir,

Downing Street, 3d June, 1840.

I have received your Dispatch marked "Separate," of the
23rd of November last, in which you report the selection of Cap-
tain Maconochie to the Charge of the Convict Establishment at
Norfolk Island, and the arrangements which you had made for
giving effect to the measures contemplated by Government in
regard to the system of Convict Discipline, and I approve the
Course which you pursued in obedience to your Instructions.

I shall communicate with you further on this subject, when I
shall have had an opportunity of conferring with the Secretary
of State for the Home Department.

I am, &c.,
J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 71, per ship Eden.)

Sir,

Downing Street, 4 June, 1840.

I have to acknowledge the receipt of your dispatch, No. 68
of the 12 of April, 1839, reporting the Transfer of the Custody
of the Colonial Stores to the Ordnance Storekeeper at New South
Wales.

Having submitted your dispatch for the consideration of the
Lords Commrs. of the Treasury, their Lordships have signified
their approval of the arrangements relating to the Colonial Store
Department. In regard to the rate of remuneration stated to
have been assigned to Mr. Rogers, the Ordnance Storekeeper, in
consideration of the charge of the Colonial Stores, their Lord-
ships observe that, on adverting to the objects for which the
Ordnance Officers were stationed in the Australian Settlements,
they have thought it necessary to call on the Master General

* Note 57.
and Board for some explanation of the alleged refusal of Mr. Rogers to take charge of the Colonial Stores, and of the grounds on which it was thought necessary to assign so large an extra Allowance as £200 per Annum to that Officer for the performance of the duty.

I am, &c.,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 72, per ship Eden.)

Sir,

Downing Street, 5 June, 1840.

I have received your dispatch, No. 152 of the 16th Novr. last, forwarding a Memorial from Messrs. Ralph and James Scott Hindmarsh, praying for Grants of Land in New South Wales; and I am to request that you will acquaint those Gentleman that I must adhere to the decision of Lord Glenelg in cases precisely analogous to their own, which was conveyed to you in his Lordship’s despatch, No. 157 of the 16 of July, 1838.

I am, &c.,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 73, per ship Eden.)

Sir,

Downing Street, 6 June, 1840.

I have to acknowledge the receipt of your dispatch, No. 158 of the 26 of Novr. last, forwarding a letter from the Chief Justice of New South Wales, having for its object the prevention of any unfavorable impression on the part of H.M. Government respecting his Judicial conduct by an incorrect representation of what occurred on a recent Trial before Him in the Supreme Court, and subsequently in the Legislative Council of the Colony in consequence of that Trial.

I beg you will acquaint Sir James Dowling that no representation on the subject, to which he alludes, has reached this Department, and that, in the event of any such complaint being made, I will not fail to advert to the explanations he has given of his conduct on that occasion.

It is my opinion that Mr. McArthur was greatly to blame in bringing the subject before the Legislative Council without sufficient information, on which to accuse a Judge of partiality in the administration of justice; but that he was still more to blame in doing so without notice to the Chief Justice and during his absence.

I am, &c.,

J. RUSSELL.
Despatch acknowledged.

Solitary cells to be improved.

Transmission of report re solitary cells in military barracks.

1840.
8 June.

HISTORICAL RECORDS OF AUSTRALIA.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 74, per ship Eden.)

Downing Street, 8 June, 1840.

Sir,

I have received your dispatch, No. 151 of the 15 of Novr., 1839, relative to the representation made to the Army Medical Department on the state of the Solitary Cells in the Military Barracks at Sydney; and I transmit to you, for your information and guidance, a Copy of a letter, which has been addressed to the Secretary to the General Commanding in Chief on the subject, and have to request that you will render every facility in your power towards carrying into execution any plan for the improvement of the Cells, which Lord Hill may instruct the Major General Commanding the Troops at New South Wales to adopt.

I am, &c,

J. RUSSELL.

[Enclosure.]

MY LORD,

Downing Street, — June, 1840.

With reference to my letter of the 16th May, 1839, relative to a representation which had been received by the Director General of the Army Medical Department respecting the Health of the Soldiers undergoing Solitary confinement at Sydney and the state of the Cells, I am directed by Lord John Russell to transmit to your Lordship, for the information of the General Commanding in Chief, the enclosed copy of a report* from the Governor of New South Wales on that subject.

In laying that Despatch before the General Commanding in Chief, I am to request that you will state to His Lordship that, in Lord John Russell's view of the case, it is a matter of comparatively little importance whether the responsibility for the bad construction and management of those Cells rests with the Civil or the Military Authorities. Lord John Russell fears that the misapprehension, which seems to have arisen as to the fact, has diverted the attention of the local authorities from the far more material consideration, how the evil may be most effectually remedied, as on that head the Governor's despatch is entirely silent. Lord John Russell will instruct Sir George Gipps to render every facility in his power towards carrying into execution any plan, which the General Commanding in Chief may instruct the Major General Commanding the Forces on the N. S. Wales station to adopt for that purpose. Lord John Russell with a view of preventing any further delay will ascertain whether the Master General and Board of Ordnance are in possession of any report or information on the subject from their Officers at Sydney.

I have, &c,

JAMES STEPHEN.

* Marginal note.—No. 151, 15 Nov., 1839.
SIR GEORGE GIPPS TO LORD JOHN RUSSELL.  1840.
(Despatch No. 70, per ship Abberton.)

My Lord, Government House, 8th June, 1840.

I have had the honor to receive Your Lordship's Despatch Receipt of
of the 11th Novr., 1839, No. 38, together with the Seal* and War-
rant for using the same which accompanied it.

I have further the honor herewith to return the Seal of the Colony used during the Reign of His Late Majesty.

I have, &c.,
GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 71, per ship Abberton; acknowledged by
lord John Russell, 10th January, 1841.)

My Lord, Government House, 10th June, 1840.

In two Despatches of the 9th Feby. last, Nos. 13 and 14,
I reported to Your Lordship the departure for New Zealand of
Capt'n Hobson and Suite on board Her Majesty's Ship "Herald."

I now have to report to Your Lordship that, on the return of
the "Herald" to Sydney, an application, of which I enclose a
Copy, was made to me by Capt. Nias for payment of the sum
of £417 10s., on account of the passage of Capt'n Hobson and
the persons embarked with him in the "Herald," and that this
sum has been paid to Capt'n Nias, it appearing to me that, by
the Regulations of Her Majesty's service, a Copy of which is
enclosed in the letter of Capt'n Nias, the correctness of the
demand could not be questioned.

I enclose also Copies of the following documents which relate
to this charge, namely,

Letter from the Colonial Secretary to the Auditor General;
Voucher on which the sum of £417 10s. was paid to Capt'n.
Nias.

I have, &c.,
GEO. GIPPS.

[Enclosures.]

[Copies of these letters, dated 26th March and 2nd and
4th April, 1840, will be found in a volume in series III.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 72, per ship Abberton.)

My Lord, Government House, 13th June, 1840.

I herewith forward the usual Returns† (covered by an
explanatory letter) from the Principal Medical Officer in this
Colony of the diseases treated in the Convict Hospitals during
the year 1839.

* Note 71.  † Note 122.
1840.
13 June.

Neglect by J. V. Thompson to submit returns.

15 June.

Approval of appointment of O. Bloxsome.

The Returns however do not include the Hospitals at Norfolk Island, which have not yet been forwarded to me by the Principal Medical Officer, though they appear, by his letter, to have been received by him before the 22nd April last.

I regret to say, this is by no means the only instance in which I have had to complain of the dilatory proceedings of this Officer.

I have, &c.,

GEO. GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 75, per ship Eden.)

Sir, Downing Street, 15 June, 1840.

I have to acknowledge the receipt of your dispatch No. 177 of the 19 Decr. last, reporting the appointment of Mr. Bloxsome as Agent for the Church and School Estates; And I have to convey to you my approval of that appointment. I am, &c.,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 76, per ship Eden.)

Sir, Downing Street, 15 June, 1840.

I have the honour to acknowledge the receipt of your despatch No. 103 of the 29 Decr. last, reporting the Arrival of the American Exploring Expedition at Port Jackson, and stating that the most friendly intercourse prevailed between the People of the Colony and the Officers and Men of the Expedition during their visit.

I have had much satisfaction in receiving this information.

I am, &c.,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(A circular despatch per ship Eden.)

Sir, Downing Street, 15 June, 1840.

With reference to my Circular Despatch of the 22nd January last, I transmit herewith, for your information, a List* of the Vessels and Members belonging to the Royal Yacht Squadron.

I have, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch marked "Confidential," per ship Abberton.)

My Lord, Government House, 15th June, 1840.

With my Confidential Despatch of the 4th April last, I had the honor to submit to Your Lordship a Copy of a letter,

* Note 123.
which I addressed on the 3rd of the same month to Lieutt. Governor Hobson on the subject of the differences which had occurred between himself and Captn. Nias. I have now the honor to enclose a Copy of Lieutt. Governor Hobson's answer to the same, from which Your Lordship will be glad to find* that the resolution, which I adopted of causing the "Herald" to return to the Bay of Islands, has produced the effects I expected from it. Lieutt. Governor Hobson, though not sufficiently recovered from his attack of Paralysis to embark in the "Herald," was, at the time he wrote, well enough to carry on the Government, and, as Major Bunbury had proceeded to the Southward in the "Herald," I am willing to hope that affairs are now proceeding in a satisfactory manner throughout the whole of New Zealand.

Appended to the Copy of Lieutt. Governor Hobson's letter are Copies of the instructions given by him to Major Bunbury, and also a report from the Acting Colonial Secretary to the Lieutt. Governor of his proceeding on a Mission to a Tribe of Natives, occupying a part of the Country to the Northward of the Bay of Islands.

These documents are, I may remark, forwarded to Your Lordship only for the purpose of affording general information as to the progress of events in the parts of the country to which they relate.

I have, &c,

Geo. Gipps.

[Enclosure.]

[A copy of this letter, dated 5th May, 1840, will be found in a volume in series III.]

Lord John Russell to Sir George Gipps.
(Despatch No. 78, per ship Eden.)

Sir,

Downing Street, 17 June, 1840.

17 June.

With reference to your dispatch No. 128 of the 17 Septr. last, transmitting the Report of a Board of Enquiry into the Charges preferred by Mr. White against Mr. Gray, the Police Magistrate of Port Macquarie, and to my reply, No. 67 of the 27 ultimo, I have now to convey to you the sanction of Her Majesty's Government of the Expenditure of £204 12s. 2d. incurred by the Colony in the investigation of those Charges.

I am, &c,

J. Russell.

* Note 124.
1840.
18 June.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(My Lord, Government House, 18th June, 1840.

I have the honour to forward herewith a Copy of a letter, which I have received from Lieutt. Governor Hobson on the subject of Lodging Money for himself.

I have authorized the Lieutt. Governor to draw Lodging money at the rate mentioned in his letter, namely £400 per annum, until the House, which has been sent out in frame for him from England, shall be habitable, subject however to Your Lordship's approval, and to be refunded in the event of disallowance.

Whenever the Seat of Government may be fixed in New Zealand, and a site adopted for the Government House, it will I presume be permitted to attach to the House a reasonable quantity of Land in the nature of a Domain; but, until the point shall be settled, I do not feel competent to offer an opinion on the propriety of allowing the Lieutt. Governor to continue to draw a portion of his Lodging money, after a residence shall have been provided for him at the public expense.

I will only add that, though £400 a year may be considered a large sum for the rent of a house, in New Zealand, it is not I consider more than equivalent to the occupation of a house with the attendant advantages usually enjoyed by Governors of Colonies.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[A copy of this despatch, dated 7th May, 1840, will be found in a volume in series III.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Sir, Downing Street, 19 June, 1840.

I transmit to you herewith copies of a letter from the Secretary to the Board of Admiralty and of its Inclosures, containing a letter from the late Rr. Admiral Sir E. Maitland with a report from the Officer Commanding H.M.S. "Larne," on the occasion of her visit to the Bonin and Caroline Islands, in regard to acts of violence committed on the Natives by British Subjects, and particularly by the Master and Crew of the Cutter "Lambton" of Sydney.

I also inclose, for your information and guidance, a copy of the communication which has been addressed in reply by my directions, to the Board of Admiralty; and I have to request
that you will on every occasion use your utmost endeavours to bring to punishment any parties, whom you may have reason to suppose might be convicted either in the Piracy Court or in the Supreme Court of the Colony of such Atrocities as are described in the inclosed documents.

I am, &c.,
J. RUSSELL.

[Enclosure No. 1.]

SIR JOHN BARROW TO UNDER SECRETARY STEPHEN.

Sir, Admiralty, 27 March, 1840.

I am commanded by my Lords Commissrs. of the Admiralty to send you herewith, for the information of Lord John Russell, copy of a Letter from the late Rear Admiral Sir T. L. Maitland, dated the 5th Oct. last, No. 118, with the Enclosures in original, relative to the visit of H.M. Sloop Larne to the Caroline and Bonin Islands, and for any suggestion which His Lordship may be pleased to make with a view to put a check upon the lawless and atrocious proceedings there in detailed.

I have, &c,
JNO. BARROW.

[Sub-enclosure No. 1.]

REAR-ADMIRAL SIR FREDERICK MAITLAND TO MR. C. WOOD.

Sir, Wellesley at Madras, 5th October, 1839.

Referring to my Letters* No. 58 of the 17th August, and 63 of the 11 Oct., 1838, the one forwarding various documents connected with the case of Mr. C. H. Hart, Master of the British Cutter Lambton of Sydney in New South Wales, and the other acquainting the Lords Commissrs. of the Admiralty of my having ordered the Larne to Ascension and Nuttic in the Caroline Islands, to enable Her Commander to enquire into the extraordinary circumstances to which those Letters allude.

I have now the honor to transmit herewith, to be laid before their Lordships, Commander Blake's report of his enquiries whilst on that service, dated the 5th Feby. last, by which their Lordships will perceive that the charges, which were set forth against Mr. Hart in the depositions already transmitted, are well substantiated.

I also forward to be laid before their Lordships another Report from Commr. Blake, as to the state of the Bonin Islands, dated 31st December, 1838, together with a plan of the Harbour of Kittie on the South Eastern end of the Island of Ascension.

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

[Sub-enclosure No. 2.]

COMMANDER BLAKE TO REAR-ADMIRAL SIR FREDERICK MAITLAND.

Her Majesty's Sloop "Larne,"

Sir, at Sea, 5th Feby., 1839.

My accompanying letter No. 28 detailing my proceedings will inform you of my having made the Island of Ascension (Caroline Islands) on the 17th Ulto., of having obtained communication on the 18th, and received on Board an English Seaman as Pilot, and of having entered and moored in the Harbour of Kittie on the 19th.

* Note 125.
The same communication will also acquaint you of my sailing from Kittie on the 31st and making the Raven Islands on the following day, and communicating with Nuttic the South Westernmost of the group on the 2nd and 3rd Inst., on which latter day I finally made sail from off those Islands on my return to China.

With reference to that part of your orders to me of the 3rd Octt. last, regarding the "alleged highly irregular and criminal conduct of Mr. C. H. Hart of the Cutter 'Lambton' at Ascension and Nuttic in 1836 and 1837," I now beg, Sir, to submit for your information the following details gathered from the examination and accompanying depositions of various Individuals who were personally concerned in the transaction, severally alluded to therein. It was evident that the object of a visit from a Ship of War was at once conjectured by them; and, altho' the majority of them repaired to Kittie from their different abodes round the Coasts of the Island, there were some who did not make their appearance as I was informed thro' fear of apprehension.

With respect to the arrival of the Whale Ship "Falcon" in Metallinene Harbour, "Ascension," in April, 1836, her long detention there on the constant N.E. trade wind, the attempted plot of the Natives to cut her off and murder her crew, the discovery and consequent failure of it, her attempt to beat out and subsequent wreck, the pilferings carried on by the Natives on her stores goods, etc., which soon increased to the boldest depredations, and their firing the wreck are all known facts, which have in no instance met with the slightest contradiction. To this also is to be added the circumstance of Captain Hingston of the "Falcon" striking or shaking "Nanawah," one of the inferior Chiefs of a Tribe, on discovering that he and his people had during the night stolen a topsail, which it appears led to immediate revenge by the murder of Capt'n Hingston and the part of his Crew then with him on an Island, called Narbally, a short distance from the Mainland, on which had been deposited all the Cargo and heavy stores saved from the wreck. There is strong reason also to believe that a hostile feeling towards white men, on the part of Nanawah and his Tribe, together with an inordinate desire of plunder, contributed to the savage act perpetrated by them; especially as they were afterwards discovered to have been the principal in plotting the attack on the Falcon, while lying in the Harbor of Metallanine. From this period may be dated a general violent feeling of hostility on the part of every white man on the Island against the perpetrators of the murder, as well as against all others, who, by rendering assistance to them, should evince an inclination to take part in their defence, and a general determination to revenge the death of Captain Hingston and his people was from this period loudly declared.

A few days after the fatal occurrence, the English Cutter "Lambton," C. H. Hart, Master, and the Schooner "Unity" of Woakoo, commanded also by a Mr. Hart, arrived in the Harbour of Metallanine, finding the Falcon a wreck on the reef, and a warfare carrying on between the white men together with a friendly tribe of Natives their allies, and the Tribe and adherents of Nanawah; the Avon, Schooner under Sandwich Island Colors, commanded by a Mr. Deudoit of the Isle of France, was at this time lying in the Harbour of Kittie, on the lee side of the Island, and a message was sent down to request her assistance, which the Captain refused,
unless the whole of the property saved from the wreck was con-
signed to him, to which hard conditions they were partly compelled to yield. With the force therefore now available, attacks were commenced, in which it is almost unnecessary to say that the Euro-
peans uniformly had the advantage from the superiority of their means, their arms, ammunition, etc., while their Native allies were valuable channels of local information and as spies and in-
formants regarding the movements of the Enemy.

It has been said that, shortly previous to the attacks, a plan was concerted by the Natives to cut off the Cutter and two Schooners; but I nowhere found sufficient evidence to bear out such a supposi-
tion. They had undoubtedly become bold from success, as they considered it, in their plunder, murdering the Captain and his people, And hitherto escaping with impunity; and it is reported that they had fired at the Boats when on their way to the Shore for wood and water; that Musquets were fired at them I believe is true, for it appears that a state of open warfare had existed since the murder of Captain Hingston and his crew; and, as it is plain that the boats of the 3 Vessels, armed and manned with near 40 Europeans, accompanied by about 400 Native Allies in their Canoes, had another object than the one of merely proceeding on shore for wood and water. That object was undoubtedly to take vengeance for the murder of the Falcon's people.

Partial attacks and fighting were carried on now from day to
day at Metallanine and the neighbourhood, all the force of the Cutter and two schooners, their Guns, Arms, etc., the wrecked crew of the Falcon, and the white men previously on the Island being formed into one body under the Captains of the Vessels, who all joined in the general determination to revenge the murder.

It should here be observed that Nanaiah was at more than the third chief of his Tribe; tho' he had been known to be the most active in his hostility to the white men, and undoubtedly the in-
strument and instigator of the Murders and what still more incen-
ced him against him was the evidence of many Natives that he was the actual perpetrator of most barbarous and brutal cruelties in mutilating and defacing the bodies. Against him therefore, all the vengeance of the Europeans seems to have been directed. "Wargie" or 2nd Chief of the Tribe had evinced a friendship to-
wards them, but the Head Chief "Ishapow," tho' he had been by no means active in the matter, was nevertheless included in the proscription declared by the Europeans, as well as all who should in any way evince the slightest hostility to them. In consequence of this determination being made known, propitiatory offerings of the "Cava" root, according to custom in their own warfare, were fre-
quently made by various petty chiefs and others whose interest it was to remain neutral, but the "Cava" was never excepted. This had the effect of keeping them in a state of terror and suspense, and effectually deterring them from taking part against the White Men; during these several days' fighting and routing the hostile Tribes, their habitations, Cocoa-nut and Bread fruit trees and bannah plantations, and above all their "Cava," on which they set the greatest value, were fired, destroyed, and laid waste. These pro-
ceedings becoming universally known, an intimation was spread about that, if any of the Chiefs or others permitted the murderers to associate with or take refuge in their Tribes, they would be treated with the same severity. With the many advantages the
Europeans possessed, these measures soon brought things to an issue. A terror and apprehension pervaded the Natives generally, and had the effect of reducing Nanawah and his adherents to a state of entire destitution. With the aid of bribes and inducements, the Europeans had it all in their own hands. Information was now sent by the "Naua-neara-ghee" or Head Chief of the Warrah Tribe near Kittie, where Ishapow was concealed, adding that he should show no opposition to their seizing him. On this, two white men with a few natives hastened to the spot and found him in bed, when he was instantly fired at, but the ball missed him and went thro' his wife's arm. He immediately sprang up and bolted outside, when the party fired several shots at him, one of which passed through his back and killed him on the spot. On the following day, the identical man, who struck Captain Hingston his death blow, was recognized and pointed out by a Native boy, when he was seized but made his escape. This boy not long afterwards again caught sight of him, and at once pointed his Musket, which he had in his hand, to shoot him. It however missed fire, when he quickly seized one from a European near him and shot the man dead. This boy was on board the "Larne" in Kittie, and seemed an active, quick and intelligent lad.

Though the foregoing details recite in a cursory manner the leading occurrences up to the period when Nanawah was captured, it may be necessary to revert to the day of the "Lambton's" arrival, when intelligence of the Falcon's wreck and the murder was conveyed to Capt. Hart. On hearing it, he immediately declared he would revenge the death of Captain Hingston, and, by the evidence of James Headley, apparently a very respectable lad who was wrecked in the Falcon and joined the Cutter almost immediately on her arrival, Captain Hart had frequently given out that "he must catch a chief to hang for example"; and it will also appear by the deposition of Fredk. Randall, who, under the orders and directions of Captain Hart, had performed a prominent part in the whole affair, that he (Capt. Hart) had frequently said that "Nanawah should go up to his yard arm if he caught him."

The several accounts conveyed in the depositions will best explain themselves; but it is impossible to refrain from remarking on the boldness and high presumptuous tone of authority assumed by Captain Hart on all occasions. He seems to have taken the general Chief Command in the disposal of the Force, ordinary attacks, etc., and the implicit obedience apparently paid to him not only by his own Crew but by the whole of the Europeans shewed that he had inspired a terror amongst them against the slightest infraction of his Commands.

I had repeatedly enquired why Nanawah was not at once shot on Shore, instead of being brought on board the Cutter to be hanged in a formal manner? James Hall (alias Jim the Cooper) answer to this question was that it was Captain Hart's orders to bring him on board alive, if he caught him, and therefore to shoot him was more than he dared do. This was an order promulgated amongst all the White Men, and moreover the strictest injunctions were issued by Captain Hart previously to "Jim the Cooper" and others employed on the same object to hold out promises to him that no harm was intended him, that he was only to be removed to another Island, whither his family would be allowed to accompany him.
A day or two after Ishapoe’s Death, Naunwah, deserted by his People and in a helpless condition, was discovered by James Hall standing alone against a Bread Fruit Tree in a state of despair. He made no attempt to escape but said to Hall “I know what you want, shoot me, I am deserted and hunted everywhere.” Hall replied that “he dared not shoot him” and that he intended him no harm, in short proceeded as his orders directed. He prevailed on him to go on board the Cutter; but he evinced especial horror at the idea of being taken on board the “Avon,” as he said he knew what he might expect at Captain Deudoit’s hands. He was accordingly taken on board the Cutter at 7 P.M. when a “consultation” (as it was termed) was held, and a Sentence of Death, signed by the Three Commanders of the “Lambton,” “Avon” and “Unity,” and all the subsequent particulars up to the time of his execution on the following morning are fully detailed in Randall’s deposition.

An anecdote somewhat ludicrous, but perfectly true, is related of the preceding evening; on a discussion arising as to which of the Three Vessels he should be hanged on board of, Captain Deudoit of the “Avon” was at once out of the question, since for some private enmities he did not dare approach most of the “Lambton’s” Crew. It, therefore, remained between the two Captains Hart of the “Lambton” and “Unity” to execute him. These two vessels had been in the habit of wearing at their Mast heads on alternate days a sort of “Broad Pendant” (as it was described to me), each Commander assuming on that day the appellation of “Commodore,” the “Broad Pendant” being transferred every evening from one to the other. On the day of Naunwah’s capture, the Cutter had worn the “Pendant,” consequently it became the “Unity’s” turn to wear it on the following day; when the question became settled as to the execution taking place on board the “Lambton,” her Captain (C. H. Hart) said, “If I hang him, I will wear the Pendant,” a point which his namesake of the Unity readily conceded, and the “Lambton” did wear the “Pendant” accordingly during the Execution.

In order to illustrate further the bold and imperious tone of Captain Hart’s arrogated power and authority, there are other characteristic anecdotes which are corroborated by a host of individuals. He directed all the arrangements as if for a lawful naval Execution, and aped every formality of that awful scene. On Naunwah’s eyes being bandaged, he was asked by Captain Hart’s orders loudly addressed from abaft to Fredk. Randall, the Interpreter, “If he had anything more to say? or any message to send to his Family?” To this, his request was “that he might die by the hands of another Chief,” which passed unheeded; immediately afterwards, the gun was fired, and he was run up in the smoke; nearly all the white men on the Island attended the Execution, and, in order to give more effect to the scene, about twenty were drawn up on board the Cutter, with their small arms, and directed to discharge a volley, when the signal gun was fired. Among these were several of the Falcon’s Crew, and, all being loaded with ball, two or three of them pointed their muskets at Naunwah’s body, feeling a desire, as they said, to avenge their Captain’s death. Captain Hart at this moment standing aft directing the proceedings, with his pistols in his belt, and seeing the Muskets raised in that direction on a sudden exclaimed loudly “Fire a volley as you are ordered; any man who dares to discharge his piece at that body, I will this instant put a

1840.

19 June.

ball through his head," at the same moment taking his Pistols from his girdle. The Muskets were instantaneously lowered, and fired by way of a volley as directed.

Whatever may have been the aggressions of Nanawah, or whatever his deserts, there were circumstances occurred shortly before his Execution at once revolting and barbarous, and which exhibit in a strong light the cruel, the remorseless levity of seamen, when their passions have been let loose, and where they are uncontrolled by Discipline or Education. During the Morning, the hour of his Execution, when a scene of awe at least might have been expected from them, several of the seamen were diverting themselves with putting the rope over their necks, and practising ridiculous gestures by way of mockery on the wretch who was to be hanged, while he lay on the Deck before them shrieking with horror and despair; and, when the two hangmen stepped on board, a loud roar of laughter arose throughout the vessel, at which and the sight of his Executioners the wretch swooned away. These were two African Blacks belonging to the "Unity," one of whom I saw, and is now on Ascension. They were dressed in long red gowns, made up from Seamen's red kersey shirts and closed down the front. They had on long wigs made of canvas and thrummed with yarns of Manilla rope, four or five inches long, and powdered over with flour. and their faces painted in broad streaks of red, as also their legs and feet. Their devilish appearance had such an effect on Nanawah that he swooned away amidst the roar of laughter of the crew.

The Religion, if such it can be called, of the Ascension Natives seems to consist in a general belief and fear of supernatural Spirits, and Nanawah declared to Randall, his constant guard and Interpreter, that he thought these figures were the spirits of the Murdered people which the white men had the power to raise before him.

The circumstances attending this Execution have now been so fully detailed that it scarcely seems necessary to allude to them further. The Chief Nanawah was hanged on board the English Cutter Lambton in the harbour of Metallanine in the Island of Ascension (Caroline Islands) towards the end of August, 1830, under the special and personal superintendance of Mr. C. H. Hart, the Master of her, and the body was cut down at Noon by Fredk. Randall, under the directions of the said Mr. Hart, and towed on shore by the Natives for burial.

The accompanying depositions I conceive afford abundant proof of the transactions herein detailed; several other individuals, who were personally concerned in them, were examined in Kitty; but I have deemed it sufficient to select for transmission the circumstantial statements of those only, who appeared to me the most ready and intelligent; their several accounts of the whole affair are remarkably consistent, and nowhere did I discover any material discrepancy. It likewise cannot fail to be observed that they are for the most part in accordance with the outline of the matter as deposed to* by James Sindrey, George Richards and William Rogers before Captain Elliot at Macao in May and July last; with respect to Marshall's evidence taken at the same period, there are several occurrences distorted or misrepresented, though his narrative as to the movement of the Cutter regarding the attack on Nuttic seems tolerably correct. It is remarkable that every individual acquainted

* Note 125.
with him has without an exception been of one accord in declaring him to be a most abandoned character. He had represented himself at Ascension, as also at Guam and Maulla, as a son of the Earl of "Pomfret," and by these means had swindled various people, who were credulous enough to listen to him, out of money and other articles besides which he is a great Drunkard.

Though most of the same individuals were concerned in the occurrences both at Ascension and Nuttic, yet, as the following pages relate entirely to affairs at Ascension in August, 1836, I have abstained from confusing them with the transactions at Nuttic in July, 1837, to which latter subject I shall now advert.

It appears, by the statement of James Sindrey, taken before Captain Elliot at Macao in July last, that he went in the Lambton Cutter, Capt. Hart, to the Raven Islands in the very early part of 1836, when on a trading voyage for Tortoise shell out of Sydney, New South Wales; that he, with Captain Hart and two or three others, landed on Nuttic; that the natives seemed to receive them well; that he and an Ascension Native, who was with them, went from the Boat, leaving Capt. Hart and the others with her; that he was presently alarmed by the Ascension Native calling out to him "to be on his guard, as the Natives were getting their Clubs and arms to kill him," upon which they both ran for the Boat, he (Sindrey) being struck at on his way by a knife, and receiving a blow from a club on the calves of his legs; that they reached the boat and got safe on board the Cutter then lying too off; and sailed away to New Ireland and New South Wales; from whence he again sailed about May, 1836, in the "Lambton," Captain Hart still commanding her, but with another crew, and arrived at Ascension the middle of August. There is here a most important circumstance, which Sindrey has omitted to mention; when he went from the Boat with the Ascension Native, it was to seek among the Nuttic people for tortoise-shell in order to barter for it with Tobacco, axes, adzes, etc. It happened that he saw a large quantity of "Tortoise-shell" in one of the Native's Houses; he thought as much as 130 or 140 lbs., and was about to bargain, when he heard the alarm and ran for the Boat, when the Cutter departed as already mentioned, both Sindrey and Captain Hart under the full belief that there was a fine quantity of shell to be had at Nuttic. It seems the Cutter's time was employed, after August, 1836, when Nanawah was executed, between Guam and Maulla, besides various visits to Ascension, at which Island she happened to be in June, 1837. About this period several extra Europeans, beyond the usual number of her crew, were entered on board her; and, during the month of July or thereabout, she sailed from Ascension for the Raven Islands "proessedly" to trade there. In addition to the extra white men, she took with her a large boat which had belonged to the "Falcon," and which had been risen upon by Captain Hingston before his death for the purpose of taking him to Guam; she also took in tow two Canoes with about 15 Ascension Natives with Arms, etc., complete; with these she proceeded to Nuttic. It appears that they attempted to land near the same place as on the preceding year. Captain Hart and all his people went armed with Muskets, ammunition, etc., as well as the Ascension Natives in their Canoes. The Nuttic Natives showed a disposition to give them again a hostile reception, hanging about the bushes, with Clubs, slings, etc., in their hands, and beckoning them to come on shore; a few muskets
were fired but nothing more was done, and they all retreated that evening to a small Island to the Eastward where they slept.

On the following day. all proceeded on shore and commenced a general attack on the natives, routing and killing them in all directions. It is not denied that every man was shot under whatever circumstances he was found. Pits were discovered dug on the beach four or five feet deep, and covered over with the wild "Tara" leaf, which is immensely large. The whole party retreated again to the same Island for the night and renewed the attack on the following day, precisely in the same manner as before. No man was spared. One woman was accidentally wounded by a musket ball, but it is a fact that several of them within a few days afterwards destroyed their young children and hanged themselves. The Natives had no means of defence whatever beyond their Clubs and Slings against a strong party of Europeans and others well provided with fire Arms. On the afternoon of the second day's attack, the latter had entire possession of the Island, which is low and flat, and appears not more than from four or five miles in circumference. Every male having been shot except about twenty, who, during the first day's attack, took to their Canoes, on the N.E. side of the Island, and have never since been heard of. In my various enquiries, I have found various accounts as to the Number of Men killed, but all ranging between forty and sixty. It may therefore be fairly concluded that fifty men were destroyed, exclusive of those who took to their Canoes. Sindrey was not on this expedition, having remained at Ascension; but it appears that Captain Hart had good information as to where the quantity of "Shell," as seen by Sindrey the preceding year, was to be found. He repaired to the spot to possess himself of it, as is affirmed by Randall, Headley and Corgar, but what was his extreme disappointment when he found that, out of the 130 or 140 lbs. computed by Sindrey, not more than 20 lbs. of it were good? However he possessed himself of what was worth having, which from varied accounts is stated at from 18 to 30 lbs. and took it himself on board the Cutter.

During all my enquiries, it was ever denied that the women were violently treated, since it cannot be expected that the parties actually concerned, who were my only informants, would acknowledge it if it was so; nor could I for the same reason any where elicit a confession that there existed among the Crew a belief or suspicion that the Cutter was about to proceed to Nuttic with any other object than that of "trading." Facts however must stand as strong evidence on this subject. The Natives of Nuttic, if accounts be true, had already shewn a hostile disposition to the white men approaching their Shores; a repetition of the attempt therefore might naturally be expected to meet with the same hostile reception. The Island is small tho' the largest of the Group and the only one inhabited. Those Inhabitants were known to possess none but their native Arms. vizt., Clubs and Slings, not even Spears. They might have had treacherous designs or objects on the white man when they appeared; but there was no urgent reason why the latter, with the plea of Trading, should, whether from Avarice or Revenge, carry a forced invasion to their homes. Savages as they most undoubtedly are and with no other means of Defence but their Native Clubs and Slings, what other than a total annihilation of them could be expected from a strong armed force of renegade European Seamen, with excited passions and well supplied with
fire Arms and Ammunition. It must also be remembered that the additional large boat with the extra white men and Natives could not have been shipped at Ascension immediately before sailing without some effect. And I conceive that the shipment of those extra Europeans and the Falcon's Boat, together with a body of Natives and their Canoes, all about the same period, gives a strong tone of suspicion to the whole proceedings. To all my enquiries as to Captain Hart's declared intentions, before leaving Ascension for the Raven Islands, the Answer was that he always said "he meant to trade quietly if they would"; but on no occasion did he further disclose his intentions as to what measures he should adopt in case of other contingencies. It is possible that the Seamen, who shipped with him, were not acquainted with all his views; but I partly extracted from one individual an indirect and unwilling affirmative to the question "Whether he thought the Cutter was bound for an attack upon Nuttic in case the Natives would not trade with them quietly." In short, I conceive that it is an absurdity to blink the matter further; and, as I have before observed, the known facts of the case must in a great degree contribute the evidence, and I trust that the apprehension I have formed of them may prove plain and intelligible.

From all that has been said, it will not appear surprising that I could in no instance obtain direct evidence of a "long talked of Attack upon Nuttic," as deposed to by Marshall. Whatever may have been the secret broodings on that subject within Captain Hart's own bosom, I should think that he was not rash enough to avow them.

It is proved by the evidence of James Headly that Captain Hart had often said he was anxious to get the "shell" at "Nuttic," and that he would have it, while Massey and Corgat confirmed the same, viz., that he was always keen after the Shell, and that he would have the Nuttic Shell some how. It also appears from Massey's Statement that a desire to revenge the treachery of the Nuttic Natives on the Lambton's first visit to them was talked of among her Crew, though with about two exceptions she had since changed the whole of them at Sydney.

It needs but little sophistry to deduce a conclusion from all the foregoing history. The inference to be drawn from the various proceedings are simple and obvious and leave no ground for evasive or doubtful interpretations. The circumstances once Enumerated will themselves proclaim each prominent point of suspicion. Without adverting therefore to what had or had not been previously spoken of, or concerted, as to an attack upon Nuttic, it is sufficient to look to the points that preceded its actual accomplishment.

In the early part of 1836, the Lambton Cutter, Captain Hart, being on a Trading Voyage, calls at the "Raven Islands," and, while attempting an intercourse with the Natives of Nuttic, a large quantity of "Shell" is observed by one of the Crew, an Article which he was then employed in collecting, and to obtain which it is said "he was always very keen." The sudden hostility however evinced by the Natives at this moment drives them on board their Vessel and bars every prospect of further intercourse at present. The view therefore of trading quietly with them for this Shell is reserved for a future period. The Spot was known, and they might perhaps effect an intercourse at some more propitious opportunity. In July, 1837, the "Lambton" being in Metallanine harbour,
Ascension. Captain Hart gives out that he wants some additional hands, tho' the number of his crew was complete. Several Europeans are therefore shipped. It is said that the Cutter is bound to the "Raven Islands" about a day's sail from Ascension, for the purpose of "trading." The reception she had met with at these islands on a former occasion was known, as was the fact of part of the crew having narrowly escaped being murdered by the Natives. Yet, Captain Hart, who had himself witnessed this fact, gives out that he is about to proceed to Nuttic for the purpose of "trading quietly" with the Natives, if they will do so, but declares his intention no further. Having provided the Cutter with the extra hands, an additional large boat, and a number of Ascension natives, with their canoes all well armed, he sails for Nuttic. He attempted a landing and finds the natives disposed as before to give him an unfriendly reception. By way of inducing them to "trade quietly," he retreats to compose his force in order to visit their unfriendliness with redoubled vengeance on the following day, which he effectually executes, and, with a strong armed gang of Renegade European Seamen, exterminates in a most murderous manner the entire male population of the Island, a set of mere savages whose only defence against fire arms rested in their native clubs and slings. The victory thus achieved, and having now undisputed possession, he repairs to the known spot which contains the supposed treasure of the island, but what is his disappointment on discovering but one fifth part of it to be pure and the rest mere worthless dross, or in other words from twenty to twenty-five pounds of valuable shell of the Hawks-bill turtle, and the remainder upwards of £100 lbs. the worthless shell of the Green Turtle, the former of which he himself conveys on board the Cutter, and she shortly afterwards proceeds on her return to Ascension.

This latter circumstance of the quantity of shell formerly seen by Sindrey, dropped I imagine inadvertently by Headley during my examination of him, at once laid open an important feature of the subject. It affords in my opinion strong presumptive evidence of a preconcerted attack, and in short supplies, as it were, a key to the motives that directed it.

The entire history hitherto detailed was collected from individuals at Ascension, who were most of them present and personally concerned both in the execution of Nanawah in 1836, and the attack on Nuttic in 1837. Having sailed from Kittie Harbour on 31st January with the purpose of communicating with the Raven Islands, it only remained for me to obtain an interview with James Hall (alias Jem the Cooper) and Patrick Gorman, both of whom had acted prominent parts in each affair, and were now settled on Nuttic. We had no sooner stood in close under the lee of the Island on 2d February, than they both came on board, having taken us for a Whaler as we had hoisted neither ensign or pendant; and their surprise was perceivable on discovering their mistake. James Hall left the "Conway" Whaler at Ascension four or five years since, and was there in July, 1836. He at once related all the history of the affairs at, and near Matallanine, the Falcon's Wreck, the murder, fighting, etc., that ensued, and in short every other particular that has been already so often detailed. He declared that, when he met with Nanawah standing against a tree, he had little expected to see him; and, though he knew that he
must soon be captured, he had no idea of discovering him in such a destitute condition. He came upon him through the information of the Natives; he had distributed amongst them presents of tobacco, etc., as had most of the White men, to induce them to bring intelligence or to capture Nanawah. He had received orders from Captain Hart as had every other White man to take Nanawah alive if he could. He used only persuasion to him to induce him to go on board the Cutter, and held out to him that he would merely be removed to another Island, and that no other harm was intended him. These were Captain Hart's orders to every white man. After Nanawah was safe on board the Cutter, he had little more to do with him, as Captain Hart gave him in charge of Frederick Randall. He saw him smoking in the Cabin, and afterwards secured to a ring bolt on deck for the night, witnessed the preparations for his Execution in the Morning, and saw him hanged at Nine o'Clock.

Hall was not at the attack on Nuttic, but went down there to settle after it was "taken." He believes that the population is greatly reduced, as, on his first arrival there, he frequently knew of women destroying their young children and hanging themselves. He and the others, who settled there, took each of them four or five children under their care, whose Mothers had destroyed themselves, and whose fathers had been killed.

Patrick Gorman's statement, respecting the Metallanine affairs, the Falcon's Wreck, Murder, etc., was a counterpart of the others. He was on "Nor" the morning of the Murder, employed by Captn. Hingston in protecting some of the Goods, and saw the Malay and English Boy who escaped wading thro' the Surf towards them; and he afterwards saw the bodies of the Captain and others which were much defaced and mutilated. He goes on to state that he was at all the fighting that ensued at Metallanine when the Head Chief, Ishapow, was shot, and finally Nanawah taken prisoner. He with all the others was acting under Captain Hart's Orders; but he declared, had he met Nanawah, he would have shot him on the spot. He saw him brought on board the Cutter, knew he was to be hanged and saw him executed.

Regarding the Nuttic Attack in 1837, Gorman now went on to state the particulars much in the same strain as the rest had done. He joined the Cutter as an Extra hand; and, as to the landing, attacking, killing every man they could find, not ill treating the Women, Gorman's story was a repetition of the Rest, as was his account of Captain Hart getting from 20 lb. to 25 lbs. of Tortoise Shell, and several Natives putting to sea in their Canoes on the first day's attack; but like the others he refrained from saying a Word about the Quantity of shell supposed to have been formerly seen by Sindrey, until I questioned him, when he confirmed those particulars. After the Island was "taken" as Gorman termed it, he returned to Ascension and shortly afterwards again went down to Nuttic to settle there. It was now that Captain Hart gave him the Island, and made him Ishapow or Head Chief of it. He Had with him about 20 Ascension Natives, who were to assist him in collecting Shell until Captain Hart's Return, while he, by agreement, was to deliver up to him half of what he could obtain. He stated that, as the Work was done by himself, and all the Natives, Canoes, Poles, etc., his own, he considered the half, which he agreed to deliver over to Captain Hart, as a Return to him for his having
given him (Gorman) possession and made him Ishapow of the Island; and he added that he thought, as Captain Hart "had conquered and taken the Island," he had a right to make whom he chose the Ishapow or head of it.

It would be impossible to convey an idea of the wild and savage picture, which this man presented as he appeared to me on board the "Larne." He had on a sort of narrow mat with a long grassy fringe round his middle called a Wye-Wye and worn by all the Natives. His long hair hung clotted with oil; he had several wreaths of beads round his head, and was tattooed from head to foot.

I here beg to annex the following copies of original documents, which I procured from Gorman and which were left with him by Captain Hart on the above-mentioned occasion.

(Copy.)

This is to certify that I, Captain C. H. Hart of the Cutter Lambton, do leave on these the "Raven Islands" Patrick Gorman in full charge and possession of these Islands and all persons thereon, for the purpose of procuring tortoise-shell; any person or persons molesting the same, I shall consider Felony.

(Copy.)

I hereby leave you on these Islands in full possession thereof and charge of all the people, and all the tortoise shell that can be procured during my absence; and you are to have the one half and me the other.

C. H. Hart.

To comment on these two documents would be absurd. I shall therefore only proceed to Gorman's account of himself. He confessed that he shot a man after Captn. Hart's departure to the Southward; he denied that he was old or infirm, but made out that he believed him to be one of those who had taken to their canoes and returned, and that he considered he shot him in his defence. It is true that at this period two canoes with twelve Ascension Natives, five in one and seven in the other, started away to return to their own Island. Though eighty miles nearly in the wind's eye, the one with five arrived safe, but the other was never heard of. Gorman declared that he was ignorant of the cause of this act, unless it was, as he observed, "that they were afraid he should furnish them as they were aware he knew that some of them had had connection with one of his girls." I had heard this circumstance at Ascension; but, as Gorman is here the sole witness in his own case, as also in that of shooting the man, it is impossible to know what belief to attach to his story.

On Captain Hart's return to the Southward in three or four months, he called at Nuttic, and took Gorman to Ascension, from whence he shortly afterwards again returned to Nuttic in the Cutter, and Randall, McVie, Jem the Cooper and J. Parker with him, as also some more Ascension Natives who all settled there, and he had been there ever since. They were paid their wages by Captn. Hart in "trade," and the boat, which had formerly belonged to the Falcon, with her sails, gear, etc., in which all were to have an equal share. To my question as to his calculation of the number killed at the attack, he replied "better than half a hundred."
Fragments all in a decayed state, were found near the Beach at Nuttic on their first landing. From the Accounts given by the Women, 4 or 5 White men had come to the Island in her some time back and were killed. They affirmed that a long time had elapsed, and from the appearance of the Wood it was imagined that it must have occurred two or three years back. These savages here and at Ascension have no idea of record or calculation of time, and know not what written characters are. It must therefore be left to conjecture whether the boat in question was drifted on the Island, or whether she landed with a hostile purpose. If the latter, it affords some explanation to the reception given to the Lambton people on their first arrival.

It seems that, in the line of the Caroline Islands, the Current is perpetually setting strong to Westward, as also at some distance Northward and Southward of the Chain. We found it strong two or three days before making Ascension, and especially so on the night we stood off Nuttic, which we barely fetched in the morning, though we had carried all sail through the night to keep to windward. Many instances were related of the constant drifting of Canoes Westward, from Island to Island, and the only thing that indicates from whence they come is the make or fittings, as every Island possesses some peculiarity of its own with regard to its Canoes, and they are mostly known to the Europeans who remarked them when on their Sundry excursions in Whalers. Every Island also has its own Language, from which the Natives when drifted about are unable to explain from whence they come.

Nothing could be more striking than the difference of features and the exterior appearance of the Ascension and Nuttic Natives. About the time of our arrival, three Canoes with Natives in them were drifted on Ascension from the Dupency or Willington Island 50 or sixty miles to Eastward; and it is a curious fact that the Woman, who was confined on board the Cutter on her passage up to Ascension after the attack on Nuttic, was drifted on the latter Island, in a Canoe from one of the innumerable Islands, in the Ralick Chain, or the “King’s mill Group.” She had been on Nuttic about two months when the attack took place; and, by means of what she had acquired of that Language, she stated that they were drifted to sea, herself, and three men off their Native Island “Yep-pan,” that the men had died, and that she had subsisted on a small portion of rotten bread fruit for six or seven and twenty days when she reached Nuttic. Here the Natives would not assist her but offered her no violence in her weak and miserable condition. This Woman had never even heard of a white man; yet, whether from terror at remaining on Nuttic after the scene she had Witnessed there or other causes, she associated herself with them, and, being “taken to” as it is termed by one of them, she by her own desire accompanied him to Ascension in the Cutter, on board of which she was confined on the passage as already stated. I believe she was not only treated with humanity, but received every attention. Both she and her child are now living at Ascension with an European, with whom also are living two native children of Nuttic, whose mother destroyed herself, and whose father was no doubt among the number killed.

The residence taken up by European Seamen on the Various Islands throughout the Pacific is a circumstance strange and extraordinary. On Ascension, they are dispersed in all parts round the
Coast of the Island, residing with Chiefs or petty Chiefs under their immediate protection, to whose tribe they are considered to belong, and whose people become as it were their working attendants or slaves, pulling them in their Canoes, fishing for turtle for them, collecting shell, etc., in short doing whatever may be required for them; the only compensation they receive being occasional small payments in pieces of tobacco. The chief perhaps receives nothing for a long period; but, on the arrival of a ship when trading is carried on, he is presented, in return for his protection and the services of the people of his tribe, with one or two muskets, Axes, adzes for making Canoes, powder or a portion of Tobacco, or whatever he may most desire; and this seems to be the sort of tenure by which the white men hold their settlement in the Island. When the Chiefs have once engaged to protect, they have in general shewn great fidelity to the White men; or, if the contrary has occurred, it is admitted that the fault has been with the latter, either from an irreconcilable temper or a failure in their promises and engagements. This acts as a check on the bad and dishonest propensities of some of the renegade characters, since it must be the good feeling preserved with the Native Chiefs, Engendered by interest as well as by attachment, that must ever prove the best security of the white men under the very extraordinary circumstance of their established mode of living amongst a set of Savages. These people are jealous in the extreme of any violence offered to an individual of their own Tribe by any other, which often leads to immediate War and are keen at information or discovering any suspicious movements in another tribe.

The brother and refugee adherents of Nanawah with many others, who still maintain a lurking enmity towards the white men, have united themselves to a Tribe on an Island called Tarbac, close off the N.E. side of Ascension. Here they all reside, and seldom mix with others over on the Mainland. They say they defy the white men or any of the Native tribes their Allies, but have as yet dared no aggression. Should any thing be attempted, it is said that the Five large Tribes on Ascension, or certainly four of them, might be relied on to side with the Europeans. Those on Tarbac are aware of this, and the overwhelming force they would have to encounter will probably keep them quiet. Three renegade North American Blacks have taken up their quarters with these people, and swear vengeance against the white men on account of some former animosities. Martin, who acted as Pilot to the Larne, a quiet sort of man, living abreast of Tarbac, was for some time apprehensive of an attempt on his life by these men, and for a period of more than a month he assured me his chief would never leave his side, and that upwards of one hundred of his people slept every night around him armed with spears and muskets, and that any man attempting to approach would have instantly been killed.

I beg leave to enclose a copy of a paper I sent up to Tarbac, and which was read and explained to many of the Chiefs who came on board; and I am persuaded that the visit of a ship of War had a general beneficial effect, both with regard to the Europeans and the natives.

There are upwards of thirty white men now on Ascension and two on Nuttic; and, by accounts derived from several of them, there are Europeans and American Seamen at present domiciled on
the "Admiralty Islands," North of New Guinea, on "New Ireland," "New Georgia," on "Pleasant Island," "Ocean Island," on some of the "King's Mill Group," on "Navigation Island," on the "Fejee Islands" and many on the "Friendly Islands." Most of the above are known to individuals now on Ascension, and there are probably more of the same description.

The number of the Whalers cast away must also be considered. There are Seamen on Ascension, who belonged to the "Falcon" wrecked there, to the "Corsair," wrecked I believe on some part of the Ralick Chain, and to two others, one wrecked on "Gilbert's Island," one of "Hall's Group," and the other on "Ocean Island" a mere sand bank in Lat. 28° N. and a little West of 180°.

The majority of Europeans scattered about the Islands is undoubtedly composed of Seamen, who have deserted from or been wrecked in whalers; but there are others who have left small trading vessels chiefly connected with New South Wales or the Sandwich Islands, employed in collecting tortoise shell, "biche de mer," etc., and no small portion of their numbers also. I strongly suspect, is composed of runaway convicts from the penal settlements. It appears their occupation is divided between collecting Tortoise shell and breeding stock for the supply of Whalers or others that may call off for refreshments.

At Ascension, money of whatever coinage is valueless amongst them, and was absolutely rejected by the Europeans as useless to them. The articles of barter, they look for in return for their shell or supplies, are muskets, powder, ball or lead, clothing of any sort, axes, adzes, beads, and above all Tobacco, which actually constitutes the pay of the Natives; and it is a most extraordinary fact, utterly unknown to them at Ascension until their intercourse with Europeans about six or seven years since, is now grown to such an extent that it passes current with them like money. With the smallest portion of it, bread fruit, cocoa nuts, yams, fresh fish, etc., were purchased from the canoes alongside the ship, while the only purpose to which they would apply a dollar or any other coin was to make a hole in it and fasten it round their necks.

To acquire and instantly enjoy, the proverbial characteristic of savages, was here also thoroughly exemplified. A fish, the instant he was safe in the Canoe, was begun upon raw, they gnawing and tearing at it with their teeth and hands till they were surfeited. The same with Tobacco, which they instantly crammed in their pipe, and lighted, and continued smoking whatever more was obtained, handing it from one to the other, till the whole was consumed.

As money was of no use whatever, I directed the Purser to barter the Tobacco or slop clothing in his charge according as was most advantageous to the crown for fresh meat and vegetables for the crew, both at Ascension and Nuttic, procuring the usual certificates and receipts. By this means supplies were obtained at a very moderate rate and the Pigs at Nuttic were extraordinary fine. The pilot was also paid in Tobacco.

I was desirous of visiting an Island named to me by some of the Europeans at Ascension called by them Strong's Island, which I conceive to be the same as that marked in the charts as Single Island, to S.E. of Ascension, but our provisions would not admit of it, as we had already completed twelve weeks from Macao, and
1840.
19 June.

Report by
P. L. Blake
on general
conditions in
South sea
islands.

by a close estimate we mustered but sufficient for something short of five weeks for returning thither. An occurrence off the above named Island, as related to me by Edwin Roland who was present at it, seems to partake of a very extraordinary character. He called there in a trading schooner within the last year, having before been at the Island. The Captain very imprudently left the Vessel and Landed, when he and his boat's crew were seen to be attacked on the Beach. she being unable to render them any assistance. At the same time a number of Canoes were putting off from the shore towards the schooner when she immediately weighed. After beating about and finding it hopeless to recover their Captain, his boat's crew, etc., they stood off, and, when in the act of tacking, a shot from the shore, affirmed to have been either a six or nine pounder, was pitched close to the schooner; this was followed up by four or five more shots in succession, which were extremely well directed, and one of which it was said passed between the schooner masts. It is strongly conjectured from this circumstance that Europeans are concerned in it, and, if all be true, it certainly appears strange how a gun of that calibre could have found its way to the Island, and still more extraordinary how it could have been worked and directed with such precision by mere native savages, or whence the supply of shot and powder was obtained. I have described the occurrence as related to me, some of the details of which may or may not be true. It however appears certain that the Captain and his crew have never since been heard of, and that cannon shot were fired at the schooner from the shore.

It is impossible to close this subject without adverting to the various reports and assertions respecting the conduct of Captain Deudoit of the Avon, which on several occasions seems to partake of a marauding and Piratical Character. There are likewise insinuations with regard to some of his proceedings, which are almost too atrocious and diabolical to acquire belief. Still however I conceive, Sir, that, in all the windings of this complicated history, it is my simple duty to relate such circumstances as have reached me, and to render to you an impartial and perspicuous detail of all transactions, wherein British subjects or British Interest are concerned. Captain Deudoit is a British subject belonging to the Isle of France, and seems to have been a shrewd and daring marauder. He commanded the "Avon" schooner, said to be his own property, during her various visits at Ascension, at which Island he was lying when the murder of the Falcon's Captain and her people took place, but in a harbour to Leeward (Kittie) at a considerable distance from the scene of that disaster. The circumstance of his assistance being requested on that occasion, with the substance of his reply thereto, are already known. I have some hesitation in proceeding with the history as detailed to me by Edwin Roland, George Salter, and James Headley, the two latter having been part of the Falcon's Crew. By their accounts, the Avon had been laying in Matallamine with the Falcon when wind bound them for so long a period. The Falcon it appears was an extremely heavy Vessel, and it was said in her going had never exceeded seven knots; and, while lying near her in Matallamine in the Avon, Captain Deudoit had been heard to say "she would never get out of that and that he would yet have her oil." In the mean time he beat out in the Avon, and went down to Kittie, where he
shortly after heard of the Falcon's being wrecked in her attempt to get out. On receiving this intelligence, he repaired himself to Matallanine (leaving his schooner in Kittie), and while there endeavoured to barter for various of the Falcon's stores, etc., and other articles, among which was Captain Hingston's chronometer, for which he offered him a keg of tobacco, which Captain Hingston indignantly refused, saying he did not want to be "jewed." Here Deudoit asked him what he meant, and much enraged at him threatened him loudly, told him he should rue that expression and left him. He was on shore two or three days among the Matallanine Tribe ("Ishapows" and Nanawahs) and returned to his schooner in Kittie, where shortly afterwards the message reached him requesting his assistance. The reply is already known. However he moved up to Metallanine in the Avon where he remained during the fighting, etc., in which it is affirmed on all sides that he personally was little concerned.

It is here insinuated that he played a treacherous part towards the Falcon's Crew, devising a plot with Ishapow, for him to exterminate the whole of them, and then share together the booty of the wreck. He had already obtained from one of the mates and part of the crew, for some consideration, their signatures to a paper making over to him all their share and interest in the stores and cargo saved. But this did not content him. It is affirmed that Mr. Lands, the first Mate, was brought off by him, and received a sum of money to abandon those of the crew who looked up to him for a settlement of their dues out of the rescued property, and whose rights and interests he was bound to protect; as things proceeded, Deudoit began to evince an anxious desire that Ishapow was despatched, and the inference drawn from this is, that he apprehended from him a disclosure of his plans and proposals for murdering the Falcon's Crew. Be this as it may, James Hall (alias Jem the Cooper) declared to me and protested that he was ready to take a most sacred oath that Captain Deudoit proposed to him to poison Ishapow, and asked him to do it with a Bottle of Arsenic and a Bottle of Rum. He feigned "compliance and received the two bottles, and immediately went and told his partner William Grant, when they agreed, as Ishapow and his people had on a former occasion saved their lives (which was a fact) they ought not to take his. They therefore broke the bottle of Arsenic and drank the rum."

Ishapow's tribe had all along shewn great avidity to plundering the Falcon's wreck; but it was thought strange that the Chief Nanawah and his people should have selected such a thing as a ship's Main topsails to steal the night before Captain Hingston murdered; and it was known that Captain Deudoit had been trying amongst other things to barter for some of her sails. The final result of the affair was, as is well known, that Ishapow was shot, and Nanawah was hanged. Captain Deudoit now concluded a bargain with the two Capt's. Hart of the "Lambton" and "Unity" to convey to Guam, Manilla or China all those of the Falcon's crew, who might wish to depart, and paid eight hundred Dollars and seventy pounds of tortoise shell for the hire of their Vessels for that purpose, when they accordingly sailed. Five only of the Falcon's Crew remained behind, and are now on the Island. Captain Deudoit had, previously on his first coming up to Metallanine to Kittie in the Avon, laid his hands on many of the
1840.  
19 June.  
Report by  
P. L. Blake  
on general  
conditions in  
South sea  
islands.

Falcon's stores and Provisions and taken them on board his own  
schooner, and he now commenced shipping in every Article remain­  
ning that had been rescued from the wreck and deposited on "Narb­  
bally" and "Nor," blocks, rigging, tackle, sails, furniture, rope,  
Casks of Flour, beef, Pork, biscuit, and tar, etc., and upwards of  
400 barrels of Sperm Oil (from Eleven to 12 hundred of which had  
been saved out of 1,500); and this being done he forthwith sails  
for Woahoo. Here he sold the Oil and, having removed the  
Schooner's Cabin bulk heads to make room, immediately despatched  
her back to Ascension to ship the remainder about 750 barrels he  
himself staying at Woahoo. The Avon arrived with a strong crew,  
no doubt well paid, and effected the shipment of the rest of the  
Oil, still on Narbally, with which according to order to the mate  
then in command of her, she proceeded direct to Valparaiso where  
was sold, cargo and all as she stood.

If all these statements be true, and I heard them from several  
quarters related to me with very little variation, it throws a strong  
shade of suspicion on the proceedings of Deudoit from the first.  
At all events his seizure and appropriation to himself of all the  
rescued property of the Falcon, I conceive to be an act of a Down­  
right piratical Marauder. The value of the sperm oil only must  
have exceeded seven thousand pounds sterling, taking it at £50 per  
Ton, its common price at the Sandwich Islands, Eight barrels to the  
Ton. The Avon was always strongly manned and armed, and  
Deudoit had represented himself to the Europeans at Ascension  
and Elsewhere, as an officer of the King of France, with a roving  
Commission, and thus, as was confessed to me, he imposed on their  
ignorance and credulity and spread much terror and intimidation  
among them.

The Englishmen residing on Ascension catching turtle had on  
one occasion a dispute with Deudoit's people, who were employed  
on the same object. On this Deudoit sent on shore, seized them and  
brought them on board, put them in irons and took them to sea  
with him, keeping them in Irons on biscuit and water for six  
weeks, when the Avon returned to Ascension and they escaped. A  
dispute also arose latterly between Deudoit and Mr. Sands, the  
latter having accused him of the non-fulfilment of his bargain  
with him about the Falcon's people. Mr. Sands shortly afterwards  
was passing under the Avon's stern in a boat, when Deudoit from  
his Taffrail fired a pistol directly at him, the ball from which  
passed through the top of his hat and grazed his head.

This Captain Deudoit is now, I understand, located at Woahoo.  
marrried to the Daughter of a Captain of an English Merchant ship.  
I beg herewith to enclose copies of all the Depositions made by  
the several individuals at Ascension as also those made by James  
Hall and Pat. Gorman at Nuttie.

In relating the various transactions, I have kept the subjects as  
much as possible distinct from one another in order to preserve  
some perspecuity; and I trust that in my endeavours thus to fulfil  
that part of your Instructions, which directs me to report to you  
very fully the result of the investigation into Mr. Hart's particular  
cases, and likewise as to the state of the Islands and Natives gener­  
ally, You will not deem these lengthened details too tedious or  
profuse.

I have, &c.,  
P. L. Blake, Commander.
[Enclosure No. 2.] 

[Letter] 

1840. 

19 June. 

SIR, 

Downing Street, 18 June, 1840. 

I have laid before Lord John Russell your letter of the 27 Ultimo with the letter herein enclosed from the late Rear Admiral Sir F. L. Maitland, forwarding a report from the Commander of Her M. Ship "Larne" on a visit to the Bonin and Caroline Islands, in regard to acts of violence committed on the Natives by the Masters and others of British Vessels. 

I am to request that you will state to the Lords Commissioners of the Admiralty that the only course, which it appears to Lord John Russell can be taken on these atrocities, is that the Commander of any of Her Majesty's Ships of War, who may be sent to the Islands in the Pacific, should be instructed to ascertain what evidence can be procured with respect to any acts of murder, Piracy, or Robbery, which have been committed there of late years or which may be committed in future. Lord John Russell further proposes that such accounts and evidence should be transmitted to the Governor of New South Wales, who will be instructed to refer them to his Attorney General; and that, whenever it shall seem to the Governor that a Conviction is probable, Her Majesty's Naval officers on that station should be directed to capture the offenders and bring them to Sydney, and to detain and bring to the same place the witnesses necessary for the proof of their guilt. 

For the offences committed on board the Cutter "Lambton," the parties implicated might be tried before the Piracy Commission Court at New South Wales, and, for offences committed in the Islands, the parties might be tried before the Supreme Court of the Colony under the Provisions of the Act 9 Geo. 4, Cap. 83. 

Lord John Russell will immediately transmit copies of this correspondence to the Governor of New South Wales for his information and guidance. 

I am, &c., 

J. STEPHEN. 

[Letter] 

1840. 

20 June. 

SIR, 

Downing Street, 20 June, 1840. 

I have received your dispatch, No. 163 of the 3d of Decr. last on the subject of the Ecclesiastical Establishments of New South Wales; and, at your request, I will withhold my sanction for the present to any new applications for the payment of the outfit and passage allowance to Clergyman of any denominations. 

It will be necessary for you to bring the subject before the Legislative Council with a view to consider whether any corresponding amendment of the Church Act is required. 

I am, &c., 

J. RUSSELL.
HISTORICAL RECORDS OF AUSTRALIA.

LORD JOHN RUSSELL to SIR GEORGE GIPPS.
(Despatch No. 94, per ship Eden.)

1840.
20 June.

Sir,
Downing Street, 20 June, 1840.

With reference to my Despatch No. — of the 31st Ulto. enclosing the additional Instructions issued to you, under the Royal Sign Manual, respecting the alienation and Settlement of the Waste Lands of The Crown in the Colony, I now transmit to you a copy of a letter addressed to the Colonial Land and Emigration Commissioners, with copies of a correspondence with the Board of Treasury respecting the future appropriation of the proceeds of the Sales of Lands and the raising of Funds for the purposes of Emigration.

I have, &c,

J. RUSSELL.

[Enclosure.]

UNDER SECRETARY STEPHEN TO COLONIAL LAND AND EMIGRATION COMMISSIONERS.

Gentlemen,
Downing Street, 20 June, 1840.

With reference to my Letter of the 31st Inst., inclosing a copy of the additional Instructions to the Govr. of New South Wales respecting the Alienation and Settlement of the Waste Lands of the Crown in that Colony, I am directed by Lord John Russell to transmit to you, for your information and guidance, copies of a correspondence with the Board of Treasury on the proposals marked 10 and 11 contained in your Report of the 15th Ulto. respecting the future appropriations of the proceeds of the Sales of such Lands, and the raising of Funds for the purposes of Emigration by means of Loans.

Should you therefore at any time think a Loan Expedient or necessary, you will apply to Lord J. Russell that he may obtain the opinion of the Lords of the Treasury on the specific application you may make.

I am, &c,

J. STEPHEN.

[Sub-enclosure No. 1.]

UNDER SECRETARY STEPHEN TO MR. C. E. TREVELYAN.

Sir,
Downing Street, 5 May, 1840.

I am directed by Lord John Russell to transmit to you, to be laid before the Lords Commissioners of the Treasury, the copy of a report which has been received from the Colonial Land and Emigration Commissioners on the subject of the price to be placed upon public Land in the Territory of New South Wales; And I am to request that you will acquaint their Lordships that Lord John Russell proposes to submit for Her Majesty’s sanction the Instruments necessary to authorize the sale by uniform price at the districts to the Northward of the 31 and to the Southward of the 36th Degree of South Latitude, and also to authorize the effecting of such sales in this country under the authority of the Land and Emigration Board. His Lordship would however wish to be apprized of the views of the Lords Commissioners of the Treasury on the suggestions of that Board, contained in proposals marked 10 and 11,
respecting the future appropriation of the proceeds of such Sales as may be effected within the Colony. With regard to the proceeds of Sales which may be effected in this Country within the limits already mentioned, Lord John Russell proposes with the concurrence of their Lordships that the funds, which may be raised in that manner, should be paid into the hands of the Agent General and issued by him in pursuance of the directions of the Land and Emigration board for defraying the expenses of the removal of Emigrants to be approved by that Board. Lord John Russell desires me to add that in his opinion the nearest approach that can be made to the entire appropriation of the funds derived from sales of Colonial Crown Lands to the advancement of Emigration will be the most in accordance with the interests of the Colonies and the permanent welfare of the British Empire. I have, &c.,

JAS. STEPHEN.

[Sub-enclosure No. 2.]

LAND AND EMIGRATION COMMISSIONERS TO LORD JOHN RUSSELL.

My Lord,

2 Middle Scotland Yard, 15th April, 1840.

In our letter of the 28th January, we explained the grounds upon which we would recommend that one uniform price for public land should be established throughout the whole of the present territory of New South Wales, with the exception of the 19 Counties comprised within the original limits of settlement. We now beg leave to present our Report upon the supplementary questions on which your Lordship, at a personal interview on the subject, desired to receive our opinions. Those questions may be enumerated as follows:—

1st. Whether there should be two or more uniform prices, as, one for town lands, another for lands known or supposed to contain valuable mineral substances, and one other general price for every other kind of land.

2ndly. Whether all lands required or likely to be required for roads and other public purposes should be delineated in the Charts, and exempted from the rules of sale altogether.

3rdly. Whether lands should be saleable indifferenty either in this country or in the Colony.

4thly. Whether New South Wales should be broken up into three or more colonies, to be hereafter under distinct legislatures, and separate accounts of land sales be kept in each of them.

In regard to the first question, the following are the opinions we have to submit.

We have already proposed to except the 19 original counties of New South Wales from the operation of the uniform price. Land in these will continue to be sold by auction, whether in town or country, and accordingly such places as Sydney, Parramatta, Bathurst, and any other towns within the first limits of settlement, will be entirely unaffected by our recommendation.

In those districts to which the fixed price will apply, we think that towns, which have been already laid out, and on which actual sales of Town-lots have been effected, should be withdrawn from the operation of the uniform price; and that, with regard to the lands included in the plan of such towns, sale by Auction should remain the mode of proceeding. Melbourne and Williamstown in the Port Phillip district, and Port Macquarie to the Northward, will be cases of this kind.
1840.
20 June.

Rule proposed re land in new town sites.

Artificial values at seats of administration and seaport towns.

Value of land in secondary towns.

Proposed inclusion of mineral rights in sales of land.

Proposed discretionary power for governor.

But, while we offer these opinions in respect to already established towns, we take a different view in respect to all to be hereafter established.

We think that the general rule should be to make no special reservation of sites for towns, and no distinctions of price or mode of sale, and that the only two exceptions should be as follows; first, the sites of towns likely to become seats of local government, and secondly, sites on good harbors upon the sea-coast, which may be confidently expected to become considerable seaports. Melbourne, if it had still to be formed, would have been an example of the former; Twofold Bay and Moreton Bay, when opened to settlement, will afford examples of the latter. It is obvious that it must partly depend on the discretion of the Governor how to apply the terms of the rule to particular cases; but we apprehend there can be no difficulty in understanding and acting upon its spirit.

The grounds on which we offer the foregoing recommendations are these. The seats of local administration must have a peculiar value. They will attract labor and capital in order to perform the services, and to supply the consumption of the resident public functionaries; and this attraction is altogether independent of those ordinary facilities and advantages, which occasion a spontaneous influx of opulent Settlers. The presence of the governing authority gives an artificial, extraneous, and we might say a compulsory value to the town lands in its vicinity.

Great sea-port towns, being the outlets of the produce of the country, will also necessarily bear a high value.

But we conceive that, in the case of ordinary secondary towns, the value of land depends altogether upon the spontaneous influx of labor and Capital; and this influx will be rapid or tardy in proportion as the Capitalists expect a high or low Return. If we charge the incoming Capitalist a high price for his town land, we diminish his returns, we render investments in town land and building speculations less advantageous than they otherwise would be, and thus check the influx of Capital, prevent the natural rise in the value of property, and retard the enlargement of the town.

Such being our views on the subject of a distinction of price for towns, we now turn to the question proposed to us on minerals.

On the principle of giving the utmost encouragement to the introduction of Capital, and to investments in land, we think that the deeds of Grant should convey to the purchaser everything above, and everything below the surface. Nor would we except lands from the general uniform price merely because they were known or supposed to contain valuable minerals. To justify this recommendation, it may be enough for us to observe that, throughout the wide extent of the British Colonies, Nova Scotia, New Brunswick, and the Newcastle district in New South Wales afford the only examples we know of, in which the Crown has bargained for any profit whatever (and in New Brunswick it is still to come) from Mines; and the whole amount is insignificant compared with the general considerations involved in the present question. But, while, for these reasons, we would not make any general distinction of lands because known or supposed to contain Minerals, it would of course be open to the Governor, if some very remarkable case occurred of decidedly rich mines for which competent parties were willing to offer high terms, to deal with the case of such Mines specially, and not part with them to the first offer at the
ordinary price of common land. The proper course in such instance
would be to afford a sufficient opportunity for competition, and then
dispose of the Mines.

We cannot hesitate to answer in the affirmative the second ques-
tion proposed to us, vizt., whether all lands required or likely to be
required for Roads and other public purposes should be withdrawn
from sale altogether. Such lands we conceive should be delineated
upon the Maps exhibited in the Colonial land office, as unalienable
public property.

With respect to the third question, relative to the manner in
which the sales of public land should be conducted, we entertain a
strong opinion that the utmost freedom of choice should be allowed,
and that the grants should be made in the order of application at
the land office of each Colony. It is evident, however, that if this
important and equitable arrangement be adopted, absolute sales of
land in specified positions cannot be effected in this country. Con-
tracts for the purchase of land may be made in this country; but,
if land is at the same time to be sold to the first applicant who pays
the fixed price in the Colony, all that it is possible for the purchaser
in this country to obtain is an order for a specified quantity of un-
appropriated land, to be selected in the Colony by himself or his
authorized Agent. It is still, however, an advantage at home of the
fixed price, which we know by experience to be much valued by
intending Emigrants, that it renders the purchaser certain before-
hand of the quantity of Land he will obtain for his money. And on
the other hand, in those parts of New South Wales where sale by
Auction will continue in use, the expedient of accepting deposits in
this country and granting a corresponding credit in the Colony will
have the double advantage, first that, in certain states of the Ex-
change (which we believe have hitherto been the prevailing states,
although this does not appear to be the case at the present moment),
this resource would constitute a gain to buyers in remitting their
money for the purchase of land in the colony, and secondly, that it
would be an accommodation to them by rendering it practicable to
allow them at once to select and send out laboring people, or to
take them in the same ships with themselves, a privilege which
they have not hitherto enjoyed, and which of course could not be
accorded to parties except in respect of some actual payment, prov-
ing them to be bona fide purchasers.

We have given our best consideration to the important question
as to the division of New South Wales into three or more colonies;
the separation of the accounts of the proceeds of the land sales; and
the Government of the new Colonies by local Legislatures. The
results of our enquiry we now beg permission to submit.

The great division* of new Holland, lying to the eastward of
Western Australia, even excluding South Australia, exceeds in ex-
tent the whole of the States of the American Union. It appears in-
dispensably necessary, for the purpose of local administration, that
there should be a resident executive authority, and a resident judi-
cial authority at the southern, northern, and probably at more than
one intermediate division of this extensive region; and therefore
the question of separation is narrowed to the single consideration
whether there should be in each of these widely distant provinces
a resident legislative authority. Arguing from general principles,
it would appear that the perfection of civil institutions consists in
local self government regarding all that relates exclusively to local

* Note 126.
HISTORICAL RECORDS OF AUSTRALIA.

Inability to give opinion re necessity for central legislature.

Local land revenues to be applied for local purposes.

Appropriation of land revenue to emigration.

Fixed price proposed per acre.

Regulations proposed re disposal of lands.

interests, and in central authority regarding whatever extends to common interests. But the application of these general principles to the particular case now under consideration involves political questions, which do not properly fall within our province; and we are, therefore, not prepared to offer any opinion as to whether there is anything in the social relations, or geographical division of New South Wales, which would render it expedient to place the separate districts of Port Phillip in one direction, of Moreton Bay or the Big River in the other, and of Port Essington, if a settlement be created there, under the control of a central legislature resident at Sydney.

Though we thus abstain from offering any opinion upon a question purely political, yet we cannot hesitate to recommend the total separation of the funds obtained from the sale of Public land, and the strict and exclusive application of each portion of that fund to the uses of the particular district from which it may be derived.

On the important principle of considering emigration, the first and most proper of those uses, we have nothing to add to the observations submitted for your Lordship's consideration in our letter of the 26th February. This principle, as we freely acknowledge, is liable to limitation in those cases, in which the Revenue resulting from the sale of Public land forms the only available source from which the necessary expenditure required for the maintenance of the civil government can be supplied. But, to justify the exception, the difficulty of otherwise providing for the expenditure of the civil government ought to be extreme. In all cases in which this expenditure can be met either by imposing taxes, or by raising loans, the whole of the land fund ought, as we conceive, to be applied to its most legitimate purpose, that of supplying the amount of labor which the capital of the Colony requires.

We should be disposed to recommend one pound per Acre as the uniform price to be charged for public land throughout that portion of the Territory of New South Wales, which lies exterior to the 19 established counties: and we would suggest the expediency of allowing the purchasers to select their location in whatever districts they may themselves prefer. We recommend this price, because in South Australia it has been found to answer well, not discouraging the sale of lands, nor yet causing them to be alienated with any excessive rapidity; and we should infer from the analogous circumstances of the other settlements that the same effects may be anticipated there.

It only remains for us to submit for your Lordship's consideration, in conclusion, a summary of the practical measures which, as we conceive, it would be expedient to adopt. The suggestions, which we would offer, are:

1st. That the authority of the Governor of New South Wales, as respects the disposal of public land and of its proceeds, be forthwith limited to the territory, comprized within the 31st and 30th degrees of south latitude.

2nd. That, throughout the remaining divisions of the present territory of New South Wales, the public lands be open to sale at the uniform price of One pound per acre.

3rdly. That, for the reasons recently submitted by us to your Lordship, the privileges of military and naval settlers be discontinued throughout the Australian Colonies, and no distinction be preserved between them and all other purchasers of land.
4thly. That purchasers be allowed to pay their purchase money at the fixed rate in this country, and to take an order for the quantity of land, which may be paid for; which order shall entitle the holder to a grant of any land in a surveyed district, which, on applying at the Colonial land office, he may find not previously appropriated.

5thly. That such purchasers, paying money at home, shall have the privilege of naming a corresponding number of laborers to be conveyed to the Colony under such regulations as may from time to time be established for the purpose.

6thly. That the deeds of grant shall convey to the purchaser everything above and everything below the surface.

7thly. That the local authorities be empowered to mark out and to reserve from alienation, all lands required for roads, streets, public buildings, and public recreation.

8thly. That the local authorities be further empowered to reserve from alienation, at the fixed uniform price, the sites of principal towns calculated to become the political capitals of a Province, or principal seats of commerce on the sea-coast.

9thly. That, with the foregoing exceptions, no land be reserved as the sites of towns, and that, in all cases in which such reserves may have been already made, the lands comprised in them shall be sold by Auction to the highest bidder, should any portion of them have been disposed of as town allotments; but, if none have been so disposed of, shall cease to be reserved as town lots, and shall be open to sale at the general uniform price.

10thly. That in all cases, excepting those in which it may be found impracticable to provide by taxes or by loans for the necessary expenses of protection and government, the whole of the proceeds obtained by the sale of public land shall be employed as an emigration fund in conveying labor to the Colony, or administrative district, in which the land may have been sold.

11thly. That provision be introduced into the New South Wales and Emigration Commissioners to raise money on the security of the proceeds of the future sales of public land, for the purpose of promoting emigration to any of the present or future colonies in Australia, save and except South Australia, for which provision is made in the acts of Parliament already existing.

We have, &c,

T. FREDK. ELLIOT.
ROBT. TORRENS.
EDWARD E. VILLIERS.

[Sub-enclosure No. 3.]

UNDER SECRETARY STEPHEN TO MR. C. E. TREVELYAN.

Sir,

Downing Street, 9th May, 1840.

With reference to my letter of the 5th Inst, and to the report therein enclosed from the Colonial Land and Emigration Commissioners, relative to the disposal of the Crown Lands in Australia, and the application of the proceeds of the sales to the purposes of Emigration or otherwise, I am directed by Lord John Russell to transmit to you, for the consideration of the Lords Commissioners of the Treasury, an Extract from a further Report from the Land and Emigration Commissioners on the same subject.

I have, &c,

JAS. STEPHEN.
**Extract from the Report of the Colonial Land and Emigration Commissioners to James Stephen, Esqe., dated 26th February, 1840.**

"We are fully prepared to admit that cases may arise, in which the proceeds obtained by the sale of public land may be employed in defraying the expenses of the Civil Government without an infringement of the principle for which we contend.

"In countries in which a sufficient supply of labour can be procured with facility, the only object to be obtained in order to preserve a due proportion between labour and Capital is to render the acquisition of land so difficult as to prevent the population from spreading over unreclaimed districts in an isolated and semi-savage state; and consequently the amount of the price, which may be sufficient to secure this object, becomes an available fund, and may be properly applied to defraying the expense of the Civil Government.

"No exceptional case however, analogous to that which we have now stated, is found to exist in any of the Colonies hitherto established in New Holland.

"In all these Colonies, the highest price, which has been obtained for waste land, has not been found more than sufficient to defray the expense of conveying the requisite supply of labour, and consequently the withdrawal of the proceeds obtained by the sales of land from immigration converts the price demanded for waste land into a direct discouragement upon the introduction of capital; But here a further question arises for our consideration. Can this species of discouragement on the introduction of capital in the case of Australian Colonies be justified on the ground of expediency, or necessity? or must it be regarded, when considered with reference to permanent arrangements, as the least productive and most injurious source from which the means of defraying the expense of the Civil Government can be derived? We will proceed to apply ourselves to the consideration of these very important questions.

"In South Australia, the Expenditure of £20,000 in carrying Emigrants to the Colony has been found to increase the population by about 2,000 souls, including those above and below the regulated age, who pay their own passage, as well as the settlers of a Superior Class who accompany each emigration ship; and it appears by the latest financial Reports that the Revenue raised in the Colony amounts to something more than two pounds per head upon the whole population. Taking these facts as data, it follows that withdrawing £20,000 from the Emigration fund, and applying it to the General purposes of Government, would occasion a loss of population to the extent of 2,000 souls, and a loss of Revenue from internal taxation to the amount of £4,000 per annum. Now the Commissioners were able even in the first infancy of the Colony to obtain a loan upon Colonial Securities at 7 per cent., and could probably at the present time obtain a loan upon the same securities at 5 per Cent. Raising a loan of £20,000 at 5 per Cent. for defraying the expenses of the local Government would entail an annual charge of £1,000 upon the Revenue of the Province, while withdrawing the Sum of £20,000 from the Emigration Fund in order to defray the expenses of the local Government would occasion an annual Loss of Revenue to the amount of £4,000."
RUSSELL TO GIPPS.

There is another point of view, in which the financial question may be considered. The expenditure of an Emigration fund of £20,000 conveys to the Colony 1,000 Adult Emigrants of the labouring class, and each adult of the labouring class, males and females both included, has obtained, upon the average in money and rations, wages to the amount of about £50 per annum. The wages of the adult labourers, conveyed by an Emigration fund of £20,000, may be taken at £50,000 per annum. But the rate of profit in the Colony is at least 20 per cent., and therefore the Capitalists, who advance £50,000 per annum in wages, must obtain in return a reproduction of the amount of £60,000 per annum. It follows that withdrawing the single sum of £20,000 from the Emigration fund for the expenses of the Civil Government, must occasion a diminution in the gross produce of the labour and Capital of the Colony to the amount of £60,000 per annum.

There is still another point of view in which this question may be considered, when the proceeds obtained by the sales of Waste lands are employed as an Emigration fund, each successive Emigration leads to a further increase. Thus, when the operation of an Emigration fund amounting to £20,000 has caused an increase of population to the extent of 2,000 souls, the effect upon the progress of the Colony through the means of Emigration does not terminate with the first increase. The additional population creates an additional demand for food and causes an additional quantity of land to be purchased for supplying it; the proceeds of this purchase become a new Emigration fund; and the new Emigration fund again increases the population, the demand for land, and the funds applicable to Emigration. To divert the proceeds of the Land sales to the General purposes of the Civil Government in the manner recommended by Sir James Stirling would be to arrest this accumulating ratio of prosperity.

[Sub-enclosure No. 5.]

Mr. C. E. Trevelyan to Under Secretary Stephen.

Sir,

Treasury Chambers, 28th May, 1840.

I am commanded by the Lords Commissioners of Her M.'s Treasury to refer you to your communications of the 5th and 9th Inst., and to the 10th and 11th propositions in the Report from the Land and Emigration Commissioners of the 15th ulto. therein enclosed, to which the attention of this Board has been specially called, and I am to request that you will acquaint Lord John Russell that, with the understanding that sufficient provision is made from other sources for maintaining the principal Civil and Judicial offices under the Government of N.S.W. in an efficient state, and subject to the reservation of such sums as may be required for defraying expenses of surveying, or of opening communications with the Lands to be offered for sale by the Commissioners which shall not have been otherwise provided for, My Lords do not object to give their sanction for the appropriation of the Proceeds of Sales of Waste Lands contemplated by the 10th proposition; but, as regards the 11th, My Lords conceive it would be inexpedient that the Commissioners should be empowered to raise money in anticipation and on pledge of proceeds of future probable sales of Land, without the previous express and specific approval and authority of My Lords' Board.

C. E. Trevelyan.
1840.
20 June.

[Sub-enclosure No. 6.]

UNDER SECRETARY STEPHEN TO MR. C. E. TREVELYAN.

Downing Street, 13th June, 1840.

Sir,

Having laid before Lord John Russell your letter of the 28th Ulto., I am directed to request that you will acquaint the Lords Commissioners of the Treasury that Lord John Russell understands their Lordships as intending to convey their sanction to that part of the arrangement proposed in my letter of the 5th Ultimo, which contemplated the application towards Emigration expenses of the proceeds of the sales of Land to be effected in this Country especially within the Port Phillip District of New South Wales; but His Lordship would wish, before issuing the Royal Instructions for carrying that arrangement into effect, to receive a more explicit statement of the views of the Lords Commissioners on this particular subject; and Lord John Russell would be glad to receive an answer to this communication at their Lordships’ earliest convenience.

I have, &c,

J. STEPHEN.

[Sub-enclosure No. 7.]

MR. C. E. TREVELYAN TO UNDER SECRETARY STEPHEN.

Treasury Chambers, 18th June, 1840.

I am commanded by the Lords Commissioners of Her M.’s Treasury to refer you to your communication of the 13th Instant and to the letter, addressed to you by My Lords’ direction on the 28th Ulto. in reply to your previous letter of the 5th Ulto. on the subject of certain propositions contained in a Report from the Colonial Land and Emigration Commissioners which were therein submitted to the Board. I am to request at the same time that you will state to Lord John Russell that my Lords have not deemed it expedient to vest in the Emigration Commissioners or in the local authorities in Australia any general discretion to incur debt by raising Loans in anticipation of prospective Income; but that in other respects my Lords did not object to the terms of the 10th Proposition of the Commissioners, and are accordingly prepared to let the application of the Proceeds of such sales of Lands, in parts of the present Government of New South Wales situated to the Northward of the 31st or to the Southward of the 36th Parallels of South Latitude, as may be effected either in the Colony or in this Country, be regulated by the principle laid down in that Proposition, so far as it provided that the “whole of the Proceeds, obtained by the Sale of Public Lands shall be employed as an Emigration Fund in conveying labour to the Colony or administrative district in which the Land may have been sold, except in so far as it may be found impracticable to provide by taxes for the necessary expenses of protection or Government”; but my Lords were not prepared to extend this exception to provision for these expenses “by Loans.”

In accordance with these views, you will observe to Lord John Russell that the Territory, in which His Lordship proposes that the Commissioners shall be empowered to sell Lands, embraces on one side the District of Port Phillip, the expenses of which are at present specially charged on the Land Fund of the Colony of New South Wales, and on the other the District about Moreton Bay, to which my Lords conceive that the same considerations of distance
from the Seat of Government at Sydney, which have called for the formation of a large establishment of Public Functionaries at Port Phillip will be found to apply; and that, as it seems obvious on adverting to the amount of the expenditure and of the ordinary Revenue collection at Port Phillip, the former having been in the year 1838 £13,728, and the latter only £2,240, that no dependence can for some time be placed on any ordinary Revenue for the means of defraying the charge of their establishments; and my Lords apprehend that difficulty would be experienced in obtaining from the Legislative Council at New South Wales an appropriation for this purpose out of the General Revenue of the whole Colony, while the Land Fund is to be applied for the benefit of the separate districts; my Lords cannot but anticipate that it may become unavoidably necessary that recourse should for a time be had to the Land Funds of the respective Districts for the support of the Civil Government within them.

Under these circumstances therefore, My Lords have been desirous to guard against any such positive and unreserved pledge and appropriation of Funds to be derived from Land Sales without the limits specified in your letter of the 5th Ulto., as, in the event of any difficulty occurring in providing for the expenses of the Civil Government in the Districts before adverted to, should preclude the payment of those expenses out of the proceeds of Land Sales, and consequently that the exception in the 10th Proposition of the Commissioners, to which my Lords have referred, should be kept in view in any Instruction or authority regarding the sale of Lands, on the appropriation of Proceeds of them, that may be conveyed to the Commissioners or in any propositions for the promotion of such Sales that may be submitted by the Commissioners to the Public.

It has also appeared to my Lords to be necessary that, in any appropriation of the Proceeds of Land sales now in question, a distinct understanding should exist, that expenses attending surveys and the preparation and issue of Grants or the opening of communications with new Tracts of Country will constitute primary charges upon those Proceeds, unless other provision is made for meeting them.

In conclusion you will further state to Lord John Russell that it was in contemplation of the arrangements now more fully explained that directions were given by my Lords' Board for the communication addressed to you on the 28th Ulto.

I have, &c.,

C. E. Trevelyan.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(My Lord. Government House, 21 June, 1840.

My Lord,

I have had the honor to receive Your Lordship's Despatch of the 18th Novr., 1839, No. 45, conveying to me the opinion of Her Majesty's Law Officers that the Office of Judge of the Vice Admiralty Court in New South Wales is incident to that of Chief Justice, and that therefore the Chief Justice may hold

1840.

20 June.

Problem of expenditure of civil government.

Necessity for limitation on appropriation of land revenue.

Primary charges on land revenue.

Despatch acknowledged.
1840.
21 June.

Difficulty re chief justice acting as judge in vice-admiralty.

I am sorry to inform your Lordship that, though the difficulty which had been raised on this point is thus removed, another has arisen; and that, in consequence of it, the Chief Justice has declined for the present to act under the Commission which was addressed to Sir Francis Forbes on the 31st Octt., 1825. The new objection is that this Commission, issued in the name of His Majesty King George the Fourth, became void in the year 1830 by the demise of the Crown; and that, as it has never since been renewed, it is no longer of any effect.

Under these circumstances, a case having arisen to call for the jurisdiction of the Court of Admiralty, I have the honor to report to your Lordship that, by virtue of the Commission which I myself hold as Vice Admiral, and which is dated the 19th Septt., 1837, I have appointed Dr. Kinchela (late Attorney General of this Colony) to be my Deputy, and Commissary of the Court of Vice Admiralty, and that he is now acting as such in the case to which I have alluded.

Your Lordship will thus perceive that no inconvenience has arisen out of the circumstances, which have induced the Chief Justice to decline acting as Judge of the Admiralty Court; but the question still remains to be settled, whether a New Commission should not be issued to him, as, though the services of Dr. Kinchela are now available, circumstances may occur to deprive me of them; and in such case, I know of no other person whom I could appoint my Deputy, unless indeed it were the Chief Justice himself or one of his learned Brethren on the Bench. I have, &c.,

GEO. GIPPS.

22 June.

Despatches acknowledged.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 82, per ship Eden.)

Sir,

Downing Street, 22 June, 1840.

I have received your Dispatches, No. 146 of the 8 Novr. last, reporting the arrangements which had been made for the admission of Free Paupers to Convict Hospitals and of Convicts to the Lunatic Asylum in New South Wales, and No. 147 of the same date, reporting Dr. McLean’s appointment as Resident Surgeon at the Lunatic Asylum.

Having conferred on these subjects with the Lords Commrs. of the Treasury, I have to convey to you the approval of H.M. Government of the arrangements in question. I am, &c.,

J. RUSSELL.
Lord John Russell to Sir George Gipps.

(Despatch No. 84, per ship Eden; acknowledged by Sir George Gipps, 23rd November, 1840.)

Sir, Downing Street, 24 June, 1840.

I have received your dispatch, No. 11 of the 4 of February last, reporting on the claim of Mr. James Mudie to an additional Grant of Land in New South Wales.

I infer from your dispatch that Mr. Mudie's statement, that 560 acres of Land were actually ordered for him, is inaccurate in point of fact. On that assumption, I concur with you in thinking that Mr. Mudie has no claim to the Land. Your dispatch, however, contains no reference to that Statement; and, supposing it to be accurately made, it does not appear to me clear that this is a case to which the existing Regulations and Established Practice apply. It will be necessary, therefore, that you should ascertain and state, whether such an order was actually issued; and, if so, that you should further explain what is the regulation or what the practice which should prevent Mr. Mudie having the benefit of the order, after he had paid up the debt, the existence of which alone prevented his obtaining the Land at the time when his application was made.

I am, &c.,

J. Russell.

Lord John Russell to Sir George Gipps.

(Despatch No. 85, per ship Eden.)

Sir, Downing Street, 25 June, 1840.

I have received your dispatch, No. 168 of the 9 of December last, in which you report the measures which you proposed with reference to the system of general Education in the Colony of New South Wales.

Agreeing with you in your views upon this subject as applicable to New South Wales, I cannot think you did justice to those views in the propositions which you made. It being your opinion that no persons should be excluded from the Government Schools on account of their religious tenets, you proposed, however, the British and Foreign School system, which is equal and impartial for Protestants, who place the Bible in the hands of the young, but which is objected to on grounds of religious tenet by Roman Catholics. In order to repair this inequality, indeed, you proposed Separate Schools for the Roman Catholics. But you thereby made an inroad on your general principle of having Schools for all, and, the Roman Catholics being admitted to the benefit of an exception, The Members of the Church of England
naturally claimed another exception in favour of the Church Catechism.

I agree with you that the education of the British and Foreign School Society, being based on the Holy Scriptures, ought to be acceptable to all Protestants. But we know that in fact it is not so, a great part of the Members of the Church of England, many Wesleyan Methodists, and some of all persuasions requiring that education should be conducted according to the tenets of their own denomination.

Among the conflicting opinions on this subject, it is very difficult to give you any directions, which may tend to general agreement. I am disposed to think you will do well to confine the direct support of Government to the Orphan Schools already existing. The Parochial Schools of the Church of England and of the Roman Catholics ought to be supported in the main by local rates and voluntary contribution. This change, however, can only be brought about by a gradual reduction of the sums granted.

It should be your endeavour to introduce a principle of Charity and toleration in all the Schools to which any portion of Government aid is granted. In this Country, the British and Foreign Schools are apparently opposed to the National Schools; and yet the most intelligent supporters of each system are very nearly agreed. The British and Foreign School Society, the elder of the two, begun by proclaiming that no creed or catechism should be taught in the Schools; yet the conductors of the Society have no objection to a day being set apart when the children may be taught the Catechism provided such teaching is not compulsory.

The National Society, on the other hand, set out by proclaiming that the Catechism of the Church of England should be taught to all the children. Yet we have it on the high authority of the Archbishop of Canterbury that he and others, who think with him, do not wish to Compel the repetition of the Catechism by any Children whose parents conscientiously object to it.

I think it should be your object rather to obtain a mild and tolerant exception to any rule of the founders of a School, than to make a general admission of all sects and denominations the scope and object of the Schools. If the principal persons contributing have a security that their own tenets shall be taught at some period, and to all who will learn them, it will be more easy to induce them to combine in allowing exemption to the Minority, than to obtain from the beginning a formal exclusion of all peculiar doctrines.
Although you have failed in the establishment of a Board of Education, I think you should endeavour to form a system of inspection to which all should conform who receive any public aid.

The aid to be given should vary from one fourth to one half, the latter proportion being given only in cases where the poverty of the district makes it a special Case.

You may likewise, if you think you are likely to succeed in such a proposition, make it imperative on the founders of Church of England Schools, for which public Money is asked, to exempt, from learning the Catechism and Attendance on divine service according to the Doctrines and worship of the Church of England, children whose parents object to such parts of education. If this is done, the same toleration should be required in the Roman Catholic Schools. In the British and Foreign Schools, on the other hand, a day in the week should be set apart for instruction in the Catechism or formalities by the Members of different denominations.

I do not wish you however to impose such conditions on any existing Schools, but only as preliminary to future Grants.

I am, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 75, per ship Abberton.)

My Lord, Government House, 25th June; 1840.

In reply to your Lordship's Despatch of the 17th Oct., 1839, No. 15, wherein, on the application of John McCarron, Your Lordship desires to know whether the fate can be ascertained of a person named Henry Stokes, I have the honor to inform Your Lordship that, similar enquiries having been made some time since through Mr. Barnard, the Agent of the Colony, that gentleman was informed by the Colonial Secretary on the 13th July, 1839, that Henry Stokes was then commanding a small coasting vessel, called the "Patterson," belonging to Port Jackson, and that he then stated he had two or three times written to his friends, and should write again.

Since that time, Henry Stokes has been employed in the Colonial Coasting Trade, but not in command of the "Patterson"; and I beg to inform Your Lordship I have ascertained that he is still in existence.

I have, &c.,

GEO. GIPPS.
1840.
27 June.

Reference to speech by H. Labouchere.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 87, per ship Eden.)

Sir,
Downing Street, 27 June, 1840.

I have received your Dispatch No. 3 of the 5th of January last, in which you advert to the impression produced in New South Wales by a passage contained in a Speech made by Mr. Labouchere in the House of Commons in June, 1839, on the subject of the Appropriation of the Land Fund of the Colony.

I lost no time in calling Mr. Labouchere's attention to your communication, and I now transmit to you a copy of a letter which he had addressed to my Under Secretary of State on the subject.

I am, &c.,

J. RUSSELL.

[Enclosure.]

RIGHT HON. HENRY LABOUCHERE TO UNDER SECRETARY VERNON SMITH.

Board of Trade,
My dear Mr. Vernon Smith,
23d June, 1840.

I have read the Letter of Sir George Gipps which you have sent me, in which he complains of the impression produced in New South Wales by a passage contained in a speech of mine last year in the House of Commons on the subject of Emigration, as reported in the Newspapers, and which was supposed to be an extract from one of his Dispatches upon the subject of the appropriation of the Land Revenue.

I cannot undertake to say whether at that time I read that passage to the House as an Extract from a Dispatch of Sir George Gipps, or from some other document; but I have since looked over the official papers to which I then referred, and I have no hesitation in saying that if I did so I was in error, and that no such passage is to be found in the Dispatch of Sir George Gipps to which I alluded.

I remain, &c.,

H. LABOUCHERE.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 76, per ship Abberton; acknowledged by lord John Russell, 12th November, 1840.)

My Lord,
Government House, 27th June, 1840.

I regret very much to be forced to trouble Your Lordship with Copies of rather a voluminous correspondence, which I have had with Captn. Maconochie on the subject of his proceedings at Norfolk Island.

The authority, under which Captain Maconochie was appointed by me to the Superintendence of Norfolk Island, was contained in Lord Normanby's Despatch marked "Separate" of the 11th
of May, 1839. The general nature of the duties to be confided to him was defined in His Lordship's Despatch of the same date, No. 46.

In a series of Despatches numbered from 27 to 33, between the 24th Feby. and the 1st March in the present year, I detailed at considerable length to Your Lordship the measures, which I had adopted in respect to Norfolk Island, in consequence of Lord Normanby's instructions; throughout the whole of these Despatches, as well as in Lord Normanby's Despatch above mentioned of the 11th May, 1839, the principle is I think sufficiently apparent that the Prisoners sent from England were to be kept at Norfolk Island, quite distinct from those who had been previously transported thither for offences committed in New South Wales; and that, whilst Captn. Maconochie was at liberty to try experiments, and put his own system in force in respect to the former, he was in no way authorized to alter in any essential particular the discipline or management of the old establishment of the doubly convicted. In all the conversations I ever had with Captn. Maconochie on the subject, as well as in my written and official communications, I proceeded on the well understood assumption that the establishment of the doubly convicted was to be kept for the present entirely separate from the new establishment, and ultimately to be removed altogether.

Your Lordship will therefore, I am sure, readily imagine what must have been my surprise, when I learned that Captn. Maconochie had, within a week after his arrival in Norfolk Island, abolished all distinctions between the two classes; that he had extended equally to all a system of extreme indulgence, and held out hopes, almost indiscriminately, to them of being speedily restored to freedom; that he had entirely overlooked that passage in Lord Normanby's Despatch, which, even in respect to Prisoners from England, directed "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," and disregarded equally the effects which so great a change of discipline at Norfolk Island was calculated to produce on the large Convict population of this Colony, and the feelings of dissatisfaction and alarm, with which the Colonists of New South Wales would contemplate the speedy return to the Colony of more than a thousand persons of the most reckless character, who had been sent from it for the commission of crimes for the most part of the deepest dye.

Your Lordship will perceive, by the correspondence which is enclosed, that, though my disapproval of Captn. Maconochie's
proceedings was notified to him on the 28th April, 1840, and received by him on the 20th May, no attention whatever was paid by him to my communications, but that, on the contrary, within a few days after the receipt of them, the whole Convict population of the Island was on the occasion of Her Majesty's Birthday regaled with Punch, and entertained with the performance of a Play.

I have felt it my duty to repeat my instructions, as contained in the document marked F; and I trust that, by the declarations which I have made in the Legislative Council of my having done so, the very general alarm created in the Colony by Captn. Maconochie's proceedings will be abated.

In conclusion, I will only observe that my desire to see Captn. Maconochie's system tried in a fair and proper manner remains undiminished; but I must submit to your Lordship that, in trying it, the feelings or even the prejudices, if it be proper so to call them, of the Colonists of New South Wales should in some reasonable degree be attended to.

I have, &c.,

GEO. GIPPS.

Enclosures.

Copies of these papers will be found in a volume in series III.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 88, per ship Eden.)

Sir, Downing Street, 28 June, 1840.

I have received your despatch No. 162 of the 2nd of December last, inclosing the Financial statements and estimates of the Revenue and Expenditure of the Colony under your Government for the year 1839-40, together with a Copy of the Act for appropriating the Revenue.

Your Minute on the Finance for the year 1839-40 has attracted my serious attention.

You have pointed out very forcibly the policy and justice of charging local Expences and local improvements on local rates; and many of your observations appear to me to be marked by a large and enlightened comprehension of the true interests of the Colony.

I am sorry to perceive that the expence of Police and Gaols causes much complaint, and is borne unwillingly by the Legislature.

I cannot enter on this subject without referring to the General Financial state of the Colony. Of the ordinary Revenue of
£202,000 for the year 1838, it appears that there were raised, including arrears,
from Duties on Spirits Imported ... £109,645
ditto on Spirits distilled in the Colony ... 2,755
ditto on Tobacco Imported ... 20,935
do on Licenses to retail Wine and Spirituous Liquors ... 10,275

Port Phillip.
from duties on Spirits Imported ... 867
do on Tobacco Imported ... 801

£145,278

Other incidental receipts amount to about £10,000, leaving the amount of actual Taxation not raised from Spirits, Wine and Tobacco about £17,000 for the year.

In remarking upon the receipts, you observe that the Duties on Spirits and Tobacco had fallen off, not from diminution of consumption or want of means of purchase, but from the increase of smuggling.

I cannot consider that this Taxation is very onerous, or that it presses unduly on the resources of the Colony. Indeed you observe in your Minute that "in those Items of Revenue, which formed a surer test of prosperity, there has been an increase, tho' a small one"; and in the conclusion you state that "the condition of the Colony is one of unexampled prosperity, and that measures of common prudence only are required to ensure the long continuance of the many advantages which the Colony enjoys."

If on the other hand, however, I refer to the Expenditure, I am obliged to say that the large increase of late years appears inconsistent with those measures of common prudence which you recommend.

Taking several of the principal branches of Expenditure as compared with the year 1834, I find

1834. 1838. Decrease in revenue from spirits and tobacco.

Civil Departments ... £40,372 ... £65,497
Surveyor's General Department 12,090 ... 16,642
Department of Roads, etc. 20,048 ... 67,399
Town Surveyor of Sydney ... 230 ... 14,689

72,740 ... 164,227
72,740

£91,487

shewing an increase in those heads alone of £91,000, being about
With regard to the charge incurred on account of Police and Gaols, the serious attention of the Lords Commissioners of the Treasury has again been called to that subject; and, after a review of the whole question, I have received a recent communication from their Lordships, in which they observe in the first place that they have seen no reason to doubt that the objects of the Expenditure incurred for that service are correctly described by the statement in Sir R. Bourke's Despatch of the 20th of January, 1836, that "the demand for Police Magistrates and a larger Constabulary has arisen not merely from the desire of Protection by the Law against fraud and violence, but from the anxiety of the Settlers of N. S. Wales to turn to the best account, and obtain in the largest proportion, the labor of the Convicts assigned to their service. That to keep under or punish the idle or mischievous habits of these Servants, the proximity of a Justice of the Peace with Constables and the Ministers of Corporal punishment (called by a committee of the Council an indispensable class of Men) has always been required as necessary to the success and comfort of a rural Establishment. That security and gain are both considered in seeking an additional Police, and the call has therefore been loud to meet this demand."

Their Lordships further observe that, adverting to these objects of the Police Establishments and "to the continued call on the part of the Colonists for an increased Police, when the charge was principally defrayed by the British Treasury," which is likewise noticed by Sir R. Bourke, the expence attending those Establishments can obviously only be properly controlled and regulated by the local authorities, and with reference to the local means of meeting it; and, consequently that nothing but urgent necessity and unequivocal demonstration that the Estimates of the Colonial Revenue, on which the arrangements for placing the charge on the Colonial Resources have been adopted, were erroneous, that those resources were unequal to the charge, and that prospective embarrassments could not be obviated without relief in that respect, would fairly justify the retransfer of the charge in question to the funds of this Country, or warrant the application which it would in such case be requisite to make to Parliament for the means of defraying it. But the Lords of the Treasury further observe that, on referring to the actual state of the Colonial Revenue and Expenditure for the years 1833 and 1834, previous to the transfer of the Police charges, and for the years 1837 and 1838, subsequent thereto, as deduced from the accounts of the Colonial Government, it would appear that, while the
ordinary Revenue of the first mentioned period amounted to £300,680, or an average of £150,340 per annum, it had produced during the second £626,636, or an average of £208,878 per annum; and that, while the average annual Expenditure during that first period, exclusive of payments for Immigration, for care of the Aborigines, and for the Establishments at Port Phillip, which have been specially charged on the Land Revenue amounted to £115,018, it was during the second £251,188; and also that of the average annual increase of £136,170, which has thus occurred, £55,238 only was referable to the transfer of the Police and Gaol charges including £15,548 for building new Gaols and station Houses, which would abate on the completion of the Buildings, and that the remainder to the amount of £80,932 had arisen upon other branches of the Expenditure, not connected with that transfer, and of which also some portion ought obviously to have been provided for by special local rates.

On these results, the Lords of the Treasury have expressed their conviction of the fallacy of attributing to the transfer of the Police and Gaol charges the excess in the Colonial Expenditure, or the apprehended financial embarrassments which they consider to be more legitimately referable to "those demands upon the Government from every quarter arising from the reputation of a well filled Treasury," which are admitted in your Despatches of the 12th and 31st of October, 1838, as "difficult and almost impossible" to withstand; and they remark that, in your representations respecting the burthen imposed on the Colony by the transfer of the Police charges to the Colonial Treasury, you have totally omitted to notice the relief of the Colonial Funds from the charge, which they had previously defrayed for the maintenance of Convicts employed on Colonial Works, which charge, from the nature and extent of the works since carried on and from the larger number of Convicts retained under penal coercion whose labor is principally applied to Colonial objects, would have been very considerably enhanced in amount.

It is, therefore, clear that the financial embarrassments of the Colony have not been produced solely, or even mainly, by the transfer of the expense of Police and Gaols from the Estimates of the United Kingdom to those of New South Wales, but that they are chiefly to be attributed to the increasing Expenditure of the Colonial Establishments.

I am ready to admit that, in sanctioning this encrease, you have been supported and even outran by the general demand for new Offices and Augmented Salaries; that the Legislative Council have placed no check on those demands; and that the
1840.
28 June.

Refusal to alter decision re police and gaols.

Revenue adequate for expenditure.

Proposal for local assessments.

Encroasing prosperity of the Colony has blinded all classes to the improvidence of the course pursued. Nor is it out of the usual course that, when the ruinous consequences are at length perceived, the blame should be thrown on the Government of the Mother Country, and the whole evil be attributed to the demands made more than five years ago by the Treasury.

I cannot, however, urge the Lords of the Treasury to revoke that decision. I cannot propose to increase the existing burthens of this Country for that object, heavily taxed as the Inhabitants of the United Kingdom are at the present time. But I must impress upon you that the large expenditure of New South Wales, by exhausting the Land Fund, cuts off the sources of relief and future prosperity.

It is my opinion that £200,000, the ordinary Revenue of the Colony, ought to provide for its ordinary Expenditure, being £80,000 more than the Expenditure of the year 1834. The Land Fund might then be free for the purpose of promoting the Immigration of Laborers, the first want of the Colony.

It is desirable, no doubt, to have an efficient Police in the rural districts, and to provide for the lighting and watching of Sydney; but those objects might be far better attained by local assessment than by diverting the Land Fund for the purposes to which in 1831 it was appropriated.

I am glad to see that you concur yourself in this view; what is now required is firm and unflinching spirit in acting upon it. Whatever may be the decision of the Government respecting the loan which you have lately recommended, I must instruct you to prepare the Estimates of the next year on a reduced scale, and with a strict regard to economy, which can alone prevent future embarrassments, deeply injurious if not wholly ruinous to the Colony.

I have recommended to the Lords Commissioners of the Treasury to confirm the Ordinance which you have transmitted.

I have, &c.,
J. Russell.

29 June.

Despatch acknowledged.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 95, per ship Eden; acknowledged by Sir George Gipps, 19th December, 1840.)

Sir,

Downing Street, 29 June, 1840.

I received, subsequent to the date of the additional Royal Instructions respecting the alienation and settlement of the Waste Lands of the Crown in New South Wales, your Dispatch No. 169 of the 10th December last, in which, in transmitting a
RUSSELL TO GIPPS.

return of the sales of Crown Lands at Port Phillip, you express your opinion as to the effect of the sale of Land at a fixed price.

I referred your Despatch to the Colonial Land and Emigration Commissioners, in order to ascertain whether they saw any reason to alter or modify the opinion, which they had already expressed with regard to the advantage of adopting that system beyond the present boundary of the settled districts of New South Wales. I enclose a copy of the report which I have received in reply, and I have not seen any reason to advise Her Majesty to modify the instructions in this respect.

I have, &c.,
J. RUSSELL.

[Enclosure.]

LAND AND EMIGRATION COMMISSIONERS TO UNDER SECRETARY STEPHEN.

Colonial Land and Emigration Office, 9 Park Street, Westminster, 25th June, 1840.

We have the honor to acknowledge the receipt of your letter of the 22 Inst. enclosing a copy of a Despatch from the Governor of New South Wales, with a report of the Land Sales at Port Philip since the first Establishment of the Colony in 1837, and requiring us to consider that despatch, and to inform Lord John Russell whether we see any reason to alter or modify our former opinion with regard to the Sale of Land at a fixed price in New South Wales.

In the despatch thus referred to us, Sir Geo. Gipps states that, if any price whatever were fixed at which the first claimants might take such portion of land as he chose, a complete scramble would ensue; that every acre of good land would be immediately bought up by great Capitalists, at whose mercy all newly arrived Emigrants would be placed; that the System of Sale at an uniform price with unrestricted liberty of appropriation would lead to complete confusion if adopted anywhere within the 22 Counties of N. S. Wales, and that the system would lead to a still greater confusion if extended beyond these limits.

We have given to these statements of Sir Geo. Gipps our best consideration; and we have the honor to report that we see nothing therein to alter or modify our opinion that, subject to the exceptions and limitations specified in our former communications, the adoption of the System of Sale at an Uniform Price in the District beyond the Settled Counties of N. S. Wales would be followed by beneficial results. In regard to Country Lands, the Argument of Sir Geo. Gipps supposes that much more in quantity would be sold than at Auction. It will be obvious therefore, as far as regards these lands, that there would be no reason why the Sales at Port Philip would have produced less money at a fixed price of £1 than they have produced by auction at an average which, according to Sir Geo. Gipps' statements, did not exceed 16s. 1d. per acre. On the other hand, as regards important Towns, you are aware that we have excepted them from our recommendation of the uniform price.
Extensive purchases of land by the large Capitalists of New South Wales, to which the Governor refers, would encrease the Funds applicable to Immigration, and would thus secure the great desideratum, a more abundant supply of Free Labour; while the occupation of the best Qualities of land, which an unlimited right of selection would so materially promote, would encrease the produce of Capital and Labour employed upon the Soil, and thus accelerate prosperity.

We have, &c,

T. FREDK. ELLIOT.
ROBT. TORRENS.
EDWARD E. VILLIERS.

LORD JOHN RUSSELL to SIR GEORGE GIPPS.

(A circular despatch, received* 11th March, 1841.)

Sir,

I have the honor to transmit herewith, the copy of a Memorandum prepared by the Hydrographer of the Admiralty, pointing out the inconvenience resulting from the practice of White-washing Light Houses, and suggesting that they should be pointed either Red, or White and Red.

I have to desire that you will adopt all lawful means for enforcing the observance of this Rule within your Government.

I have, &c,

J. RUSSELL.

[Enclosure.]

SIR JOHN BARROW to LORD JOHN RUSSELL.

Sir,

I am commanded by my Lords Commissioners of the Admiralty to send you herewith a copy of a Memorandum from their Hydrographer upon the inconvenience resulting from the practice of White-washing Light Houses, and I am to request you will lay the same before Lord John Russell, in order that the attention of the Colonial Governments may be directed to the subject.

I am, &c,

J. BARROW.

[Sub-enclosure.]

MEMORANDUM ON WHITE LIGHTHOUSES.

The practice of whitewashing Light houses no doubt renders them more conspicuous in certain situations, but, when indiscriminately applied, it often produces the contrary effect. Thus a white Tower standing at the foot of a dark cliff, such as the South Stack, or immediately backed by high ground, may perhaps be readily seen from contrast; but when only backed by sea and clouds, a white tower becomes very indistinct, especially in misty weather. This is strongly exemplified in the Lighthouses on the Maiden Rocks, which being white from top to bottom, and even the rails, are according to the repeated reports from Captain Beechey most difficult to make out. Again on the coast of New Brunswick and Nova Scotia, Lieutenant Kendall has represented that the White Lighthouses there are scarcely distinguishable from the patches of snow-drift on the high back ground.

* Note 128.
RUSSELL TO GIPPS. 697

These remarks have been amply confirmed by Captain Martin White and by other distinguished Officers; and I think the case of fully sufficient importance to justify their Lordships in calling the attention to it of the Trinity House, the Commissioners of Northern Lights, and the Irish Ballast Office, and the Colonial Governments.

I would suggest that a red colour shews well in sunny weather, and is sufficiently opaque to contrast with the atmosphere. But broad stripes of White and Red either horizontal, vertical, or crossed, would be still more visible, or perhaps painting the lower half of the tower White, and the upper half Red.

13th June, 1840.

T. BEAUFORT, Captain.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 90, per ship Eden.)

Sir,

Downing Street, 30 June, 1840.

I transmit to you herewith a copy of a Despatch which I have addressed to the Lieutenant Governor of Van Diemen's Land, relative to the employment of Mr. Burnett,* late Colonial Secretary to that Government, in some subordinate Office, in the event of his returning to Australia; and I have to request that, if Sir John Franklin should intimate to you his inability at an early period to employ Mr. Burnett in Van Diemen's Land, you will endeavour to provide for him some such appointment as I have described in the Establishment of your Government.

I have, &c.,

J. RUSSELL.

[Enclosure No. 1.]

LORD JOHN RUSSELL TO SIR JOHN FRANKLIN.

Sir,

Downing Street, 29 June, 1840.

I transmit to you herewith a Copy of a letter, which was addressed to Mr. Burnett by my direction, after I had, at his urgent request, investigated the circumstances which led to his removal from the Office of Colonial Secretary to your Government.

I have further informed Mr. Burnett that I was prepared to intimate to you that he was in my opinion qualified to fill any Office of a subordinate nature in Van D. Land although he was not fitted for that of Colonial Secretary.

If Mr. Burnett should return to the Colony, you will confer on him any Appointment of a subordinate nature which you may deem calculated to fill with advantage to the Public Service. I have at the same time conveyed a similar intimation of my intention to the Governor of New South Wales, in order that, if you should not have an early opportunity of employing Mr. Burnett in Van D. Land, Sir George Gipps may endeavour to find some more suitable Office for him in the more extensive Establt. of his Govt.

I have, &c.,

J. RUSSELL.

* Note 129.
[Enclosure No. 2.]

UNDER SECRETARY VERNON SMITH TO MR. J. BURNETT.

Sir,

Downing Street, 31 March, 1840.

I am directed by Lord John Russell to acquaint you that he has carefully investigated the circumstances which led to your removal from the office of Colonial Secretary at Van Diemen's Land.

Lord John Russell thinks that there can be no question that a Colonial Secretary was bound to give the fullest information, unasked and unsolicited, respecting a transaction apparently violating the regulations of Government, and which nothing but the fullest disclosure from the first moment could make in any way compatible with your duties to the Government.

Indisposition of body and distress of mind arising from pecuniary embarrassment entitle you to a lenient construction of your conduct; but the same circumstances and especially the derangement of your affairs rendered you unfit to hold an office, which required an integrity above all suspicion, and a strict control over the evasions, frauds and concealments, by which the Government might be circumvented in its guardianship of the lands and rights of the Crown.

On a full consideration of those circumstances, Lord John Russell feels bound, although with regret, to adhere to the decision of his Predecessors in the case.

I have, &c,

R. VERNON SMITH.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 77, per ship Abberton.)

My Lord,

Government House, 30th June, 1840.

I have the honor herewith to forward to Your Lordship a Return of the Sales of Crown Lands in the Colony of New South Wales, between the 1st Jany. and the 30th June in the present year.

It will I trust be satisfactory to Your Lordship to perceive that the revenue of this half year has far exceeded that of any former period of equal duration, the large sum of £233,219 2s. 8d. having been realized by the sale of 125,554 acres, being at the average of £1 17s. 1d. per acre, which far exceeds, as I apprehend, the average of any other Colony under the Crown.

The average of Town allotments in Melbourne is £939 per acre; of Town allotments in Country Towns (or Villages rather) £88 per acre. The average of Country Land at Port Phillip is £1 15s. 5d. per acre; the average of other Country Land 13s. 3d. per acre.

I hasten to lay before Your Lordship this statement in the hope that it may reach England in time to prevent the raising of money by Loan, during the present year at least, for the purpose of carrying on Emigration. I could not safely have made any report on the subject earlier, as the account of a great Land
Sale on the 10th and 11th of the present month at Port Phillip, which realized £104,000, reached me only a day or two ago.

The result of the Sales now reported will, I trust, add weight to the opinions, expressed by me respecting the best method of disposing of Crown Lands, in my Despatches of the 2nd June, 1838, No. 82, and 10th Decr., 1839, No. 169; and I hope I may be permitted to add that they in some degree relieve me from the apprehension of seeing any innovation made upon the system of selling Land exclusively by Auction in this Colony.

The extreme anxiety, which I feel on this subject, will I trust excuse me from again endeavouring to impress upon Your Lordship that the sale of Land at any fixed price, either in the Colony or in England, would infallibly lead to a scramble for Land amongst our wealthy Speculators and Jobbers, who by their great command of Capital would buy up everything, and effectually defeat the object, which is alone I believe sought to be gained by the fixing of a uniform price, namely, the securing to a New Settler the acquisition of Land without being exposed to competition.

I have, &c,

GEO. GIPPS.

[Enclosure.]

[A copy of this return is not available.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 91, per ship Eden.)

Sir,

Downing Street, 1 July, 1840.

I have received your Despatch No. 178 of the 20th Decr. last, enclosing the Report of a Board appointed to enquire into certain charges of drunkenness and misconduct, brought against the Master of the Emigrant ship Florist, and into other allegations of the infraction of the Charter Party.

I have communicated on the subject with the Colonial Land and Emigration Commissioners, and under the circumstances of the case, I am of opinion that you exercised a sound discretion in withholding the usual gratuity from the Master of the Florist, and in inflicting the mulct of £200 taken out of the freight of the Vessel for the infraction of the terms of the Charter Party.

I have, &c,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 92, per ship Eden.)

Sir,

Downing Street, 2d July, 1840.

I have received your Despatch No. 176 of the 18th December last, in which you report a new arrangement of the Office...

I have communicated on the subject with the Lords Commissioners of the Treasury; and I have now to acquaint you that, under the circumstances, which you have represented, H.M. Government approve of the arrangement which you have made, and of the salaries assigned to the two Officers appointed to perform the duties of Crown Solicitor as now divided.

I have, &c.,

J. RUSSELL.

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LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 96, per ship Eden.)

6 July. Downing Street, 6th July, 1840.

Sir,

I have received your dispatch, marked Separate of the 23d of November last, in which you notify the selection of Captain Maconochie to be Superintendent of the Convict Establishment at Norfolk Island, and enclose a copy of a communication which Capt. Maconochie had addressed to you on his appointment to that Office. I had already received a copy of that letter from the Lieut. Governor of Van Diemen's Land.

I have communicated a Copy of your Dispatch to the Secretary of State for the Home Department.

I enclose, for your information and guidance, a Copy of an Order in Council for determining the places to which Convicts may be transported from the United Kingdom from and after the 1st of August next, the effect of which is to exclude the Colony of New South Wales from the List of such Penal Settlements.

Her Majesty's Government have also decided that no more Convicts should be sent from the Australian Colonies to Norfolk Island; as Goat Island within the Government of New South Wales and King's Island within that of Van Diemen's Land would appear to be proper selections as places of confinement for prisoners convicted in the respective Colonies, although on that point I would leave the choice, provided it were not a Settled district, to the discretion of yourself, and of the Lieut. Governor of Van Diemen's Land.

It is not contemplated to adopt the proposal of Captain Maconochie for the separation of Tasman's Peninsula and King's Island from Van Diemen's Land; but I have impressed on Sir J. Franklin the necessity of using the utmost care in the selection
Russell to Gipps.

of Officers to superintend the Convict Establishment there. Convicts at Norfolk Island, whose sentences are about to expire, shall, immediately before the expiration of their term of punish- ment, be sent to Van Diemen's Land, and those who shall have received a Ticket of Leave may be subjected in Van Diemen's Land to such restraints as upon a further consideration of the system may be thought most useful.

I have only further to make a few remarks which I would wish you to bear in mind in carrying out these measures.

1st. That Assignment, when once abolished, must in no shape be revived.

2nd. That of all systems of imprisonment that which is called the separate system is the most efficacious and complete.

3d. That, where from various reasons associated labor is adopted, it is not advisable to attempt, by coercive means, to enforce perpetual silence. Such attempts are never entirely successful, while they provoke and irritate the Criminal; Although silence during work as a means of discipline may be properly enjoined and enforced.

It is the intention of Her Majesty's Government that Capt'n. Maconochie's plan should be left to be tried by himself and that the experience of that trial should guide the further proceedings.

I am, &c.,

J. Russell.

[Enclosure.]

Order-in-Council.

At the Court at Buckingham Palace the 22nd day of May, 1840.

Present:—The Queen's Most Excellent Majesty in Council.

Whereas, by an Act passed in the 5th year of the Reign of His late Majesty King George the 4th, intituled, "An act for the Transportation of Offenders from Great Britain," it was amongst other things enacted that it should be lawful for His Majesty, by and with the advice of His Privy Council, from time to time to appoint any place or places beyond the seas either within or without His Majesty's Dominions to which Felons and other Offenders under Sentence or Order of Transportation or Punishment should be conveyed. And whereas, by an order made by the advice of his said late Majesty's Privy Council on the 23d June, 1824. His said late Majesty was pleased, in pursuance of the powers so vested in Him as aforesaid, to appoint New South Wales and Van Dieman's Land and all Islands adjacent thereto to be places to which Felons and other Offenders, then being or thereafter to be under Sentence or order of Transportation or Punishment, should be conveyed under the provisions of the said recited Act.

And whereas by the said Act it was farther enacted that it should be lawful for His Majesty by any order or Orders in Council to declare His Royal Will and Pleasure that Male Offenders,
1840.
6 July.

Order-in-council for determining places for transportation of convicts.

convicted in Great Britain and being under Sentence or Order of Transportation, should be kept to labor in any part of His Majesty's Dominions out of England to be named in such Order or Orders in Council.

And whereas His said late Majesty, in pursuance of the powers so vested in him, was further pleased by and with the advice aforesaid by the Order in Council aforesaid to declare His Royal Will and Pleasure that Male Offenders, convicted in Great Britain, and being under sentence or Order of Transportation, should be kept to hard labor in His Majesty's Colony of Bermuda.

And whereas, by an Act of Parliament passed in the 6th year of the Reign of His said late Majesty entitled An Act for Punishing Offences committed by Transports kept to labor in the Colonies and better regulating the Powers of Justices of the Peace in New South Wales, it was among others things enacted that it should and might be lawful for His said late Majesty, by any order or Orders to be by Him from time to time for that purpose issued with the advice of His Privy Council, to appoint, or by any such Order or Orders in Council to authorize the Governor, Lieutenant Governor or other person for the time being, administering the Government of any of His Majesty's Foreign Possessions, Colonies or Plantations to appoint the Place or Places within His Majesty's Dominions, to which any Offender, convicted in any such Foreign Possessions, Colonies or Plantations, and being under Sentence or Order of Transportation, shall be sent or transported; and it was thereby enacted that all such persons should, within the place or places to which in pursuance of any such Order or Orders in Council they should or might be so sent or transported, be subject and liable to all such and the same Law Rules and Regulations as were or should be in force in any such Place or Places with respect to Convicts transported from Great Britain.

And whereas, in pursuance of the said last recited Act of Parliament, and in exercise of the Powers thereby vested in Him, His said late Majesty on the 11th day of November, 1825, by and with the advice of His Privy Council did order that the Governor, Lieutenant Governor or other persons for the time being administering the Government of any of His Majesty's Foreign Possessions, Colonies or Plantations, should from time to time by Proclamation to be by them respectively for that purpose issued appoint the place or places within His Majesty's Dominions, to which any Offender convicted in any such Foreign Possessions, Colonies or Plantations and being under Sentence or Order of Transportation should be sent or transported.

And whereas it hath seemed fit to Her Majesty, on the advice of Her Privy Council, to revoke the said recited Orders in Council, and to substitute in lieu thereof such other provisions as are hereinafter mentioned. Now therefore, in pursuance and exercise of the Powers vested in Her Majesty in Council by the said recited Acts of Parliament, Her Majesty, by and with the advice of Her Privy Council, doth order, and it is hereby ordered that, upon and from the 1st day of August in this present year 1840, the said recited Orders in Council of the 23rd day of June, 1824, and of the 11th day of November, 1825, shall be and the same are hereby revoked so far as respects any Act, Matter, or thing to be done from and after the said first day of August, 1840, in the premises. And it is hereby
further ordered by the advice aforesaid and in pursuance and exercise of the authority aforesaid that, from and after the said 1st day of August, 1840, the Island Van Dieman's Land and Norfolk Island and the Islands adjacent to and comprised within the Government of Van Dieman's Land shall be the places, to which Felons and other Offenders in the United Kingdom there being or thereafter to be under Sentence or Order of Transportation shall be conveyed of convicts under the provisions of the said recited act of the 5th year of the Reign of His late Majesty King George the 4th; and it is hereby further ordered, by the advice aforesaid, and in pursuance and exercise of the authority aforesaid, that Male Offenders convicted in the United Kingdom shall, from and after the said first day of August, 1840, in pursuance of the provisions of the said last recited Act, be kept to hard labour in Her Majesty's Colony of Bermuda; and it is further ordered by the advice aforesaid in pursuance and exercise of the authority aforesaid that, from and after the said first day of August, 1840, the respective Governors, Lieutenant Governors and other persons for the time being administering the Government of any of Her Majesty's Colonies shall, in pursuance of the provisions of the said recited Act of the 6th year of the Reign of His said late Majesty, by Proclamation to be by them respectively for that purpose issued, appoint the place or places within Her Majesty's Dominion to which any Offender, convicted in any such Colonies and being under Sentence or Order of Transportation, shall be sent or transported, provided that neither the said Colony of Bermuda, nor any of Her Majesty's Colonies in New Holland or in the Southern Ocean be so appointed for that purpose, or by which Proclamation as aforesaid, other than the said Island of Van Dieman's Land and Norfolk Island and the Islands adjacent to and comprised within the Government of Van Dieman's Land. And the most Noble the Marquis of Normanby and the Right Honorable Lord John Russell, two of Her Majesty's principal Secretaries of State, are to give the necessary Instructions herein accordingly as to them may respectively appertain.

WM. L. BATHURST.

Sir George Gipps to Lord John Russell.

(Despatch No. 80, per ship Union.)

My Lord,

Government House, 6th July, 1840.

The accompanying Paper is only the Copy of a Despatch addressed by Lieutt. Governor Hobson direct to your Lordship; but, as opportunities from New Zealand to England may not frequently occur, and consequently the Lieutt. Governor may not have an opportunity to forward a Duplicate, I think it right to send one by a vessel now about to sail from the Port.

I have, &c.,

Geo. Gipps.

[Enclosure.]

[A copy of this despatch, dated 23rd May, 1840, will be found in a volume in series III.]
Advance to agent general.

Despatch acknowledged.

Criticism of claim of H. Bayley to land grant.

Refusal of land grant.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 98, per ship Eden; acknowledged by Sir George Gipps, 5th February, 1841.)

Sir, Downing Street, 8 July, 1840.

The Lords Commissioners of the Treasury having signified to this Department that they had directed an advance of one Thousand, Five hundred and Fifty seven pounds, to be made to Mr. Barnard the Agent General for New South Wales on account of the expences of Emigrants forwarded to that Colony by the Agent General for Emigration, I have to request that you will cause the necessary measures to be taken for the repayment of this sum to the Military Chest in the Colony from the Funds applicable to the charges of Emigration. I have, &c.,

J. RUSSELL.

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LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 99, per ship Lady McNaghten.)

Sir, Downing Street, 8 July, 1840.

I have received your Dispatch No. 182 of the 26th December last, inclosing a Memorial from Mr. Henry Bayley praying that, under the circumstances therein set forth, he may receive an Additional Grant of Land in New South Wales.

At the period when the system of making free Grants was abolished, Mr. Bayley had not established, and did not possess a valid claim to an additional Grant of Land. That he himself virtually admits. But, by subsequent transactions, the difficulty which stood in his way was overcome; and he asserts that, the new Regulations having been declared not applicable in such a manner as to destroy retrospectively any pre-existing rights, his claim should not be affected by them. Mr. Bayley had, however, no pre-existing right, inasmuch as at the time of the change his claim to an additional Grant was incomplete. For this reason, I feel that I can only confirm the decision of yourself and of the Council.

I am, &c.,

J. RUSSELL.

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SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 81, per ship Union; acknowledged by Lord John Russell, 2nd December, 1840.)

My Lord, Government House, 8th July, 1840.

I have the honor to forward herewith Copies of a correspondence, which has been forwarded to me by the Lieut. Gov­ner of New Zealand, respecting the claim of the Baron de Thierry to Lands in New Zealand.
RUSSELL TO GIPPS.

I will only observe that I think the Lieutt. Governor acted very properly in declining to accede to any terms, which might have the effect of acknowledging in the slightest degree whatever the utterly unfounded claims of the Baron.

I have, &c,

GEO. GIPPS.

[Enclosures.]

[Copies of these papers will be found in a volume in series III.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 101, per ship Lady McNaghten.)

Sir, Downing Street, 10 July, 1840.

I have to acknowledge the receipt of your Dispatch No. 159 of the 28th Novr. last, transmitting four Private Acts passed by the Legislative Council of New South Wales, and having communicated with the Lords Commissioners of the Treasury respecting two of those Acts, which relate to Banking Establishments in the colony, I have now to acquaint you that Her Majesty has been pleased to confirm and allow the Act relating to the "Union Bank of Australia," but that, for the reasons assigned in the accompanying copy of a letter from the Secretary to the Treasury, H.M. Government are unable to recommend the confirmation of that affecting "The Bathurst Bank."

I am, &c,

J. RUSSELL.

[Enclosure.]

MR. C. E. TREVELYAN TO UNDER SECRETARY STEPHEN.

Sir, Treasury Chambers, 3 July, 1840.

I am commanded, by the Lords Comrs. of the Treasury, to acquaint you, for the information of Lord J. Russell, in reply to your communication of the 19th Ulto., and with reference to the Acts of the Governor and Legislative Council of N. S. Wales therein submitted to this Board, that, as the Act relating to "The Union Bank of Australia" is one calculated to facilitate legal proceedings by or against the Establishment, to which it relates, by providing that the copartners concerned therein may sue and be sued in the names of certain Individuals acting on their behalf, my Lords do not object to the confirmation of it. But the Act relating to "The Bathurst Bank" contains other provisions not necessary with a view to the object above mentioned, and by the allowance of which the very objectionable proceeding on the part of an Establishment, constituted for the objects stated in the preamble of the Act of making Loans on the Security of real Property, would apparently be recognized and sanctioned, and My Lords therefore conceive that the confirmation of this Act would be unadvisable.

I am, &c,

C. E. TREVELYAN.
HISTORICAL RECORDS OF AUSTRALIA.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 82, per ship Union.)

My Lord,
Government House, 10th July, 1840.

I transmit herewith a Copy of a Despatch, which I have received from the Lieutt. Governor of New Zealand, on the subject of a disturbance at the Bay of Islands, in the quelling of which it was necessary to call in the assistance of the Military.

The result in this instance seems to have been satisfactory; the occurrence however shews the extreme caution that is necessary in dealing with the Natives, and the necessity of having a sufficient Military Force at command.

I have, &c.,
GEO. GIPPS.

[Enclosure.]

[A copy of this despatch, dated 15th June, 1840, will be found in a volume in series III.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(A circular despatch per ship Lady McNagneten; acknowledged by Sir George Gipps, 27th December, 1840.)

Sir,
Downing Street, 11th July, 1840.

The Secretary at War has informed me that doubts are entertained whether the Troops serving in the Colonies are secured by the 61st Clause of the Mutiny Act from the payment of Toll when passing Macadamised Roads, constructed under, and the Proprietors empowered to levy Toll by the authority of local Statutes only, a privilege which is secured to them in all cases of Tolls levied under the sanction of Acts of Parliament. I have therefore to desire that, in conformity with the wish of the Secretary at War, you would take measures for securing to the Officers and Soldiers serving in the Colony under your Government the same exemption from Toll, which is allowed to them in this country and which was intended to be obtained for them in the Colonies by the 61st Clause of the Mutiny Act, when passing Roads, Bridges, etc., in Uniform, Dress or Undress, and whether upon Duty or not.

I have, &c.,
J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 104, per ship Lady McNagnetten.)

Sir,
Downing Street, 13 July, 1840.

I transmit to you herewith, under a flying Seal, a Despatch which I have addressed to Captain Hobson, in consequence of a representation which I have received from the Wesleyan
GIPPS TO RUSSELL.

Missionary Society, in regard to the injury which they state that they have experienced from the proceedings of the Agent of the New Zealand Land Company at Port Nicholson. And I have to request that you will forward that Dispatch to Captain Hobson by the first opportunity which may offer after it shall have reached you.

I have, &c.,

J. RUSSELL.

[Enclosure.]

[A copy of this despatch will be found in a volume in series III.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 105, per ship Lady McNaghten.)

Sir,

Downing Street, 13 July, 1840.

I have the honor to acknowledge the receipt of your Dispatch No. 25 of the 21st of February last, in which you request my sanction to the compliance with an application which you have received from Mr. Burchard Fericks, a Native of Bremen, to be admitted to the privileges of a free Denizen in New South Wales.

I have to convey to you my authority for issuing the necessary Letters of Naturalization to Mr. Fericks. I am, &c.,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 106, per ship Lady McNaghten.)

Sir,

Downing Street, 14 July, 1840.

I have received your Dispatch No. 21 of the 14th of February last, transmitting a Memorial from Mr. William Hilton Hovell praying to be allowed a remission in the purchase of Land at Port Phillip; and I have to request that you will acquaint Mr. Hovell that it is not in my power to accede to the prayer of his Memorial.

I am, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 84, per ship Union.)

My Lord,

Government House, 14th July, 1840.

The very rapid increase in the Settlement of Port Phillip having rendered necessary some further arrangement in the Department of the Treasurer at Melbourne, I have the honor to report to Your Lordship that I have appointed Captn. Lonsdale Sub Treasurer at that place; and I have respectfully to request Your Lordship's confirmation of the appointment.
Under the arrangement which was sanctioned by Lord Glenelg's Despatch of the 29th May, 1838, No. 113, Mr. Webb, the Sub Collector of Customs, was authorized to act as Sub Treasurer with an allowance of £100 a year for the extra duty so imposed upon him; but not only has Mr. Webb's state of health been such as of late to incapacitate him for the performance of the united duties, but he also positively refused to give any security for the due execution of the duties of Treasurer; and when I state that the amount of Revenue, received at Melbourne during the present year, will including the Land Fund be in all probability not less than £200,000, I trust Your Lordship will consider that I should not have been justified in allowing so large a sum to pass through the hands of a public accountant under no security to the Government.

Capt'n. Lonsdale (formerly of the 4th Regt.) was appointed Police Magistrate of Melbourne by Sir Richard Bourke at the first opening of the Settlement, and continued, up to the time of the arrival of Mr. La Trobe, to be the Chief Agent of Government in everything that related to the affairs of Port Phillip; having in that capacity given great satisfaction to my Predecessor and myself, I considered the small advancement, which this appointment confers on him, to be due to him, if in acknowledgment only of the zeal, intelligence and integrity, which he displayed in the conduct of the important affairs entrusted to his management.

Subject to Your Lordship's approval, I have fixed Capt'n. Lonsdale's salary at £400 per annum, being only £100 more than he had as Police Magistrate, and he has given security to the amount of £8,000. I have further promised to him the continued occupation of a small house, which was erected for him when he first went to Port Phillip, as, if deprived of it, he would, even with the increase of £100 a year in his salary, be in a worse position than he was in before.

I left to Mr. La Trobe the filling up in the vacancy caused by Capt'n. Lonsdale's removal, and he has appointed a gentleman of the name of Simpson to be Police Magistrate of Melbourne.

I have, &c.,
Geo. Gipps.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 107, per ship Lady McNaghten.)

Sir, Downing Street, 15 July, 1840.

I have received your Dispatch No. 22 of the 15th of February last, transmitting a Memorial from Mr. G. C. Curlewis appealing against your decision on his application for an
additional Grant of Land; and I have to request that you will acquaint Mr. Curlewis that it is not in my power to accede to the prayer of his Memorial. I am, &c,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 110, per ship Lady McNaghten; acknowledged by Sir George Gipps, 3rd February, 1841.)

Sir, Downing Street, 16 July, 1840.

I transmit to you herewith a copy of a Communication which I have received from the Secretary to the Society for the Propagation of the Gospel, containing a representation in regard to the principle on which funds, raised by that Society in aid of the Advancement of Religious Instruction in New South Wales, are met by corresponding Grants from the Government; and I am to request that you will furnish me with a Report on this subject.

I am, &c,

[Enclosure.] J. RUSSELL.

REVEREND A. M. CAMPBELL TO UNDER SECRETARY VERNON SMITH.

Sir, 4 Trafalgar Square, 8 July, 1840.

I am directed by the Society for the Propagation of the Gospel to request the attention of Lord John Russell to the following statement:—

In a despatch, dated Downing Street, 12th May, 1836, and printed by order of the House of Commons, 11th March, 1837 (religious Instruction in Australia, p. 24), Lord Glenelg informs Sir R. Bourke that the Bishop of Australia has called his Lordship’s attention among other matters to the following point, “his claim to have such sums of money as may be placed at his disposal by Religious Societies in this Country regarded in the same light as contributions of individuals towards the erection and support of Churches and schools, and on the same principle met by an equal advance from the Colonial funds”; and Lord Glenelg adds that “he is disposed to admit the justice of this claim, and is convinced that the Council will always be disposed to meet liberally any aid, which may be afforded by Religious Societies in this country towards the advancement of Religion and Education in the Colony under your Government.”

The Society are informed that the present Governor of New South Wales, probably not having adverted to Lord Glenelg’s despatches, has decided that money placed at the disposal of the Bishop by Religious Societies is not to be considered in the same light as the contributions of individuals, and they are assured that a very serious obstacle has been thrown in the way of the advancement of Religion and Education by this decision.

They have to request therefore that Lord John Russell will give the necessary instructions for adhering to the regulation laid down by Lord Glenelg, upon the strength of which the building of Churches and school Houses in New South Wales has been undertaken but cannot be completed or paid for. I am, &c,

A. M. CAMPBELL.
Despatch acknowledged.

Delay in report on education.

Reports submitted on emigration.

Delay in public business in legislative council.

Problems of emigration.

1840.
16 July.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch marked "Separate," per ship Union.)

My Lord,

Government House, 16th July, 1840.

I have had the honor to receive Your Lordship's Despatch of the 25th March last, marked "Private and Separate," pointing out to me the inconvenience which had arisen from the infrequency of my reports on some matters of importance in connexion with the Government of this Colony.

I certainly do very much regret that my report on the subject of Public Education should not have been written before the 9th Decr. last, or forwarded before the 9th Jany. in the present year. As however the Resolution which I proposed to the Council on the 27th August led to no result, the necessity of making an early report on the discussions, which had taken place in respect to them, did not I confess occur to me.

On the subject of Emigration, a reference to the Despatches, which must have reached England shortly after the time when your Lordship wrote, will I trust relieve me from the imputation of any negligence in respect to this all important matter.

The Committee of the Legislative Council on Emigration, though appointed on the 25th June, 1839, did not report till the 12th Novr.; their report was taken into consideration on the 19th of the same month, and certain Resolutions adopted thereon, which Resolutions were made the subject of a Despatch by me on the 22nd of the same month, and the Despatch forwarded by the first vessel that sailed after it was written, though that was not until the 2nd Decr.

The delay in the presentation of the report I could not prevent, but I could prove, were it necessary, that I very repeatedly in Council complained of the way in which public business was impeded by the delays of Committees.

In this particular case however, it did not occur to me that the delay could occasion any inconvenience. I had previously reported that the feeling, both in the Council and the Colony, ran strongly against Government Emigration; and, in my Despatch of the 27th Feby., 1839, No. 38, I had stated that there would in all probability remain, after the end of 1839, no funds wherewith to carry it on; consequently unless funds could be raised in England for its support, I concluded it would, if not discontinued altogether, be at any rate carried on during 1840 on a very reduced scale. With respect to Bounty Emigration, on the contrary, every exertion was used (and especially by raising the Bounties) to give to it the utmost extension possible; on which subject, I would further refer to my Despatch of the 21st March last, No. 43.
The late astonishing increase in our Land Revenue (see my Despatch of the 30th June last, No. 77) has placed an unexpected amount of funds at our disposal for the purposes of Emigration; though (as I shall have occasion to report in another Despatch) it is yet doubtful whether the Legislative Council will lay on new taxes, sufficient to meet the ordinary expenses of Government, including in them the charges for Police and Gaols.

In respect to the discovery of a valuable tract of Land in the neighbourhood of the Clarence (formerly called the Big) River, I would crave leave to remark to Your Lordship that, from the earliest times of this Colony, the most exaggerated statements have been put forth of the fertility and natural advantages of each newly discovered District, the person or persons making the discovery seeking not unnaturally to magnify the importance of it. As soon as I had ascertained that the River Clarence was navigable to a distance of about 40 miles from the Sea, I despatched the Deputy Surveyor General to report on it; and I should certainly have forwarded his report to your Lordship, had it contained any recommendation on which it was necessary for me to seek for instructions, or any facts worthy in my opinion of being made the subject of a Despatch. I have since sent a Surveyor to examine the Country in the neighbourhood of this River, and to prepare for the measurement of it, though I apprehend that the greatest use to be derived from the discovery (if such it can be called) will be the formation of a road, by which Wool from the Pastoral districts between the 28th and 30th degrees of South Latitude may be brought for shipment in the Clarence River, instead of being sent as at present to Sydney.

As I shall very shortly address your Lordship on the subject of the progressive discovery and settlement of the Colony during the term I have held the Government of it, I will only here add that, since the so called discovery of the Big (Clarence) River, two other similar discoveries have at least been made, one of a fine district of Land about 60 miles to the North of Portland Bay, the other near Wilson’s Promontory, which is the South Eastern extremity of the great Island of Australia.

I have, &c,

GEO. GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 111, per ship Lady McNaghten.)

Sir,
Downing Street, 17 July, 1840.

I have received your Dispatches of the numbers and dates specified in the Margin,† reporting the measures which you had acknowledged.

* Marginal note.—See Confidential Despatch of the 17th July.
† Marginal Note.—No. 13, 9 Feb., 1840; No. 14, 9 Feb., 1840; No. 15, 9 Feb., 1840; No. 24, 19 Feb., 1840.
1840.
17 July.

Approval of policy re New Zealand and of services of W. Hobson.

1840.
17 July.

adopted, in conjunction with Captain Hobson, for giving effect to the intentions of H.M. Government in establishing British Authority in New Zealand; and transmitting the Reports which you had received from that officer of his proceedings on his arrival at the Bay of Islands.

Her Majesty's Government entirely approve of the measures, which you adopted, and of the manner in which they were carried into effect by Captain Hobson.

I have recommended the Appointments notified in your Dispatch No. 14 for the sanction of the Lords Commissioners of the Treasury.

I am, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch marked "Confidential," per ship Union; acknowledged by lord John Russell, 3rd December, 1840.)

My Lord,

Government House, 17th July, 1840.

The contents of Your Lordship's Private Despatch of the 25th March last lead me to suppose that, in addition to the official reports which I make on each matter of separate interest in the Colony, it may be agreeable to your Lordship to receive from time to time a general report on matters in progress; and that I should moreover make my communications in respect to them with less reserve than that which is usually observed in public Despatches.

I shall accordingly now proceed to make such a report on the existing state of our affairs:

The main, and I believe I may say the only source of discontent in the Colony is the long pending question of the payment by the Colony of the whole of the expenses of its Police and Gaols; It is the never ceasing cause of nearly all the abuse which is heaped upon Her Majesty's Government and myself; indeed I scarcely have had any difficulty to contend with that may not be traced to this source. Not having had a reply as yet to any of my Despatches on Finance, I am obliged, in answer to the demands which are constantly made to me for explanations as to the intentions of Her Majesty's Government in respect to this subject, to refer to the Despatch of Lord Glenelg, No. 208 of the 4th Septt., 1838, and to say that I consider the determination of Her Majesty's Government, as communicated to me therein, to be conclusive.
The excessive anxiety, manifested in the Colony for the application of the whole of the Land Revenue to the purposes of Immigration, may be traced also in a great measure to the same cause, inasmuch as the hope is indulged by many that, if the Home Government could be made to redeem its supposed pledges as to the expenditure of the Land Revenue, it would be forced as a consequence thereupon to take back upon itself the expences of the Police and Gaol Establishments of the Colony; whilst, on the other hand, I have pointed out to them that the only consequences would be that the Colonists would have to impose new taxes upon themselves in order to meet these expences. This was particularly explained in the address to the Council, which I transmitted to Your Lordship on the 29th May last with my Despatch, No. 66, and wherein I announced my intention to propose that each District should pay at least a portion of its own Police expences, and also of the expence of constructing and keeping in repair Public Works, Roads, Buildings, etc. A Bill, a copy of which is enclosed, to effect this object was accordingly presented by me to the Council on the 4th June last; but, on the question of its second reading, which came on upon the 14th inst., the Bill was rejected, every unofficial Member of the Council voting against it. It is now I believe the intention of some of the same Members to request that I will reproduce the Bill, but in a restricted form, that is to say, so that it shall provide for the maintenance of Roads, Public Works, Buildings, etc., by means of an assessment, but leave out the Police and Gaols. In the Course of the discussion on this Bill, some of the Members, though they voted against it, said that they would not refuse to provide even for the Police and Gaols, if absolutely necessary, by an addition to the import or ad valorem duties, and by a tax on Convicts in assignment; and it is in this state that the matter rests at present.

At the same time that I presented the Bill which has been rejected, I presented another for the establishment of Municipal Corporations, following as far as possible the English Municipal Corporation Act of the 6th Wm. IV, C. 76. This Bill (a copy of which is also enclosed) has been more favorably received than the other; but, as it contains the same taxing clauses for the maintenance of a Police Force within the limits of each Borough, it is very doubtful whether it will pass; and, even if it do pass, it cannot come into operation until Her Majesty's pleasure be signified on it, there being a Clause to this effect, in conformity with the 15th paragraph of my general instructions under the Sign Manual.
All other business in the Legislative Council has gone on with great harmony, and even the rejected Bill, I am happy to say, has led to nothing of an unpleasant nature between myself and the Council.

The Ordnance Bill, which gave rise to so much discussion* two years ago, passed without opposition, though out of doors the old clamour against it was revived.

Everything in respect to New Zealand is, I am happy to say, going on well.

The Bill† for the appointment of Commissioners to enquire into Land claims was read a second time yesterday, after a protracted debate of five days continuance, in the course of which Witnesses were examined and Counsel heard on the part of the Claimants. General rules for the proceedings of the Commissioners have been laid down in the Bill, as I thought it better that they should be so fixed than be left entirely to the discretion of the Executive.

The occupation of New Zealand is a measure, I am happy to say, very agreeable to the People of this Colony; and, though at first an outcry was raised against the appropriation of any portion of the Land Revenue of the Colony for purposes in New Zealand, the feeling of dissatisfaction in regard to it seems gradually wearing off.

The proceedings at Norfolk Island have caused me a good deal of anxiety, but my Despatch of the 27th ulto., No. 76, will have fully explained to Your Lordship the reasons for my disapproval of some of Capt'n Macconochie's measures. The excitement in the Colony produced by Capt'n Macconochie's proceedings has been very great, and would have been much greater, had I not avowed my disapproval of some of them. Play Bills from Norfolk Island, similar to the one which I enclose, are circulated in the Colony, and have given rise to loud expressions of dissatisfaction.

The general condition of the Colony continues to be, I am rejoiced to say, most prosperous. The late Land Sales have been wonderfully productive, as reported in my Despatch No. 77 of the 30th ulto.; and our Ordinary Revenue, though unequal to our expenditure, is improving.

The measures adopted last year, during the existence of the scarcity, proved eminently successful; and in nothing have I so much reason to think myself fortunate as in their result. The price of Wheat, which was once as high as 25s. per bushel, is now 9s. 6d. and Rice is very abundant at about 1½d. per pound.

* Note 131. † Note 132.
In conclusion, I am happy to be able to say that the Colony is free from any religious or political agitation of a local nature, with the sole exception of the subject of the expenses of Police and Gaols, already so fully dwelt on.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[These were copies of the "Police" and "Municipal" acts of council.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 112, per ship Lady McNaghten.)

18 July.

I have received your Dispatch No. 29 of the 26 Feby. last, enclosing an application from Capt. Maconochie to be allowed the sum of Two hundred Pounds to defray the expense of his outfit to Norfolk Island.

As I perceive from your dispatch that Captain Maconochie received the full Salary of his appointment from the date of his arriving at Sydney, I regret that I cannot recommend to the Lords Commissioners of the Treasury a compliance with his application for a further allowance.

I am, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 86, per ship Union.)

18 July.

With reference to Your Lordship's Despatch of the 16th Septt., 1839, No. 6, directing proceedings to be taken against Mr. R. Campbell for the recovery of £2,000 overpaid to him in the year 1825, I have the honor to state that, an action of Assumpsit having been brought by the Attorney General in the Supreme Court, a verdict of £2,000 was obtained on the 9th instant; the money will, when received, be paid into the Military Chest.

In justice to Mr. Campbell, I think it right to add that I understand his only object in defending the Action was to prove that he had used no concealment as to his receipt of the money.

I have, &c.,

GEO. GIPPS.
HISTORICAL RECORDS OF AUSTRALIA.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despache No. 114, per ship Lady McNaghten; acknowledged by Sir George Gipps, 20th March, 1841.)

Sir, Downing Street, 20 July, 1840.

I have received your Dispatch No. 26 of the 23rd of February last, in which you propose an arrangement for obtaining further assistance in the performance of the Law Business of your Government by the re-establishment of the Office of Solicitor General.

I regret that I do not feel justified in recommending to the Lords Commissioners of the Treasury any increased expense on this account, until the several Establishments of your Government shall have been reduced. I shall then be prepared to consider the arrangement which you propose. I am, &c.,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despache No. 115, per ship Lady McNaghten.)

Sir, Downing Street, 20 July, 1840.

With reference to my Dispatch No. 101 of the 10th Instant, I have now to acquaint you that Her Majesty has been pleased to confirm and allow the Act "for facilitating proceedings by and against the Sydney Alliance Marine and Fire and Life Assurance Company," And the Act "to amend an Act for Lighting with Gas the Town of Sydney," which were transmitted in your Dispatch No. 159 of the 28th of November last.

I am, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despach No. 137, per ship Union.)

My Lord, Government House, 20th July, 1840.

In my Despatch of the 4th of April last, No. 54, I reported to Your Lordship the circumstances under which an unpleasant difference had arisen between Lieutt. Governor Hobson and Captn. Nias, commanding Her Majesty's Ship "Herald." I now beg leave to inform Your Lordship that these circumstances, when known in the Colony, led to much animadversion on the conduct of Captn. Nias by the public Press; and that an article was at length published* in the "Sydney Gazette" of the 14th April, of so atrocious a nature and so directly tending to excite mutiny on board the ship commanded by Captn. Nias, that the Attorney General considered it his duty to file an ex officio

* Note 133.
information against the Editor of the Paper for a Libel. The Editor (Mr. Robertson), having suffered judgment to go against him by default, was brought up to receive the sentence of the Court on the 13th inst., which sentence was that he should be imprisoned for the space of one year, and pay a fine to the Queen of £200.

The Newspaper, in which the Libel is published, is enclosed, as also a Paper of the 17th inst., containing the sentence of the Supreme Court, as pronounced by the Chief Justice. The feature in the case, however, which I wish to bring more particularly under Your Lordship’s notice, or, if Your Lordship should think fit, under the notice of the Lords Commissioners of the Admiralty, is that Mr. Robertson in mitigation of punishment produced a letter from Mr. Alex. Lane, the Surgeon of the “Herald,” which served as the foundation for the Libel. The signature of Mr. Lane had been cut out, but there can be I believe no doubt whatever of his being the writer of it.

The Attorney General is now proceeding against Mr. McKellar, the person to whom Mr. Lane’s letter was addressed, for the publication of it. Should any further proof be adduced in the course of the proceedings of Dr. Lane’s being the writer of it, I shall report again to Your Lordship. I will only add that, as Capt. Nias has not been at Sydney since the publication of the Libel, I have had no communication whatever with him on the subject to which this Despatch relates.

I have, &c.,

GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 88, per ship Union.)

My Lord,

Government House, 21st July, 1840.

I have had the honor to receive Your Lordship’s Despatch of the 31st Decr., 1839, No. 69, respecting a disallowance of £231 17s. to Colonel Snodgrass, being the amount overdrawn by him whilst acting as Lieutt. Governor of Van Diemen’s Land in the year 1836.

I have communicated Your Lordship’s Despatch to Coll. Snodgrass; but, as I understand the sum of £1,500, a third part of the price of the Commission which Coll. Snodgrass has recently sold, is now retained in the hands of Government in England, I would, with reference to the refusal to refund already made in a similar case by Colonel Snodgrass, suggest that the amount of disallowance, on which Her Majesty’s Government intend to insist, should be retained out of this sum of £1,500.
1840.

21 July.

On the subject of Coll. Snodgrass’ refusal to refund, I beg to refer to my own Despatch of the 4th June, 1839, No. 88, and to Your Lordship’s reply No. 48 of the 23rd Novr., 1839.

I have, &c.,

GEO. GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 116, per ship Lady McNaghten.)

Sir,

Downing Street, 22 July, 1840.

I have received your Dispatches of the Numbers and Dates specified in the Margin relative to the suspension of Mr. H. C. Wilson from his office of First Police Magistrate of the Town and District of Sydney. These Dispatches reached this Department on the 11th and 13th Ultimo.

I delayed acknowledging your Dispatches on this case until a subsequent arrival from New South Wales, because I was led to infer from your Dispatch No. 5 that some further Documents might be expected from Mr. Wilson. Having now received Dispatches of a considerably later date than that referred to, without any additional communication from Mr. Wilson, I see no alternative but to confirm your suspension of him; because, from the documents now before me, it appears that he was convicted of a series of frauds on the Public Revenue, and that the conviction rested chiefly on his own admissions.

Under all the circumstances of the case, I approve of the grant of Half a Year’s Salary which, with the advice of the Executive Council, you made to Mr. Wilson to enable him to procure a passage for himself and family to England; but it must be understood that the grant of this allowance is not to be construed as a precedent on future occasions.

I also approve of the New arrangement of the office reported in your Dispatch No. 167; but I regret that circumstances have prevented my confirming your nomination of Captain Innes, whom you had appointed to the temporary discharge of the duties of Superintendent of the Sydney Police.

I am, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 89, per ship Union.)

My Lord,

Government House, 22nd July, 1840.

I had the honor on the 14th inst. to receive Your Lordship’s Despatch, No. 5, of the 20th Jany. last; and in reply to it, as well as to other Despatches named in the margin,† relating

* Marginal note.—No. 165, 5 Dec., 1839; No. 166, 6 Dec., 1839; No. 167, 7 Dec., 1839; No. 5, 11 Jan., 1840.
† Marginal note.—No. 9, 12th Jany.; No. 84, 3rd July, 1839.
to the affairs of the Australian Agricultural Company, I beg leave to report to Your Lordship that, though I have felt it proper to assign to the Company for their Agricultural purposes no greater number of Convicts than they may be considered fairly entitled to, in proportion to the supply afforded to private Settlers, I have never regulated the supply to their Collieries at Newcastle by the same rule; but that, on the contrary, I have, in consideration of the importance to the Public of a supply of Coal, given the Commissioner of the Company almost unlimited permission to have Convicts for the purpose of raising it. I have at the same time however intimated to the Commissioner my opinion that, in return for this advantage, the Company ought voluntarily to give up their Monopoly, for, though it is, I believe, in reality little advantageous to them and of no great disadvantage to the Public, it is nevertheless made the frequent theme of reproach to the Government which granted it. Since the receipt of Your Lordship's last Despatch upon the subject, I have again informed the Company's Chief Commissioner (Captn. King) that he is at liberty to take as many men from the Convict Barracks as he chooses; but, on account of his being able to find none accustomed to the Work, I doubt whether he will take any.

With respect to the Grant of Land in Illawarra made to Captn. Westmacott without the usual reservation of Coal, I have to explain that, though the Deed from the Crown of this Land was issued to Captn. Westmacott in 1839, his Title to it was derived from a promise made as long ago as 1825, the Land having in fact virtually, though not formally, been out of the Crown since that year.

I enclose a Copy of a Minute made by myself in respect to this Land on the 14th March, 1839.

Your Lordship is aware that in former years it was the practice in New South Wales to allow persons to take possession of Land on a mere promise from the Governor, and that consequently a great arrear exists in the issue of Deeds even to this day. Captn. King has, I am happy to say, informed me that he is now satisfied no injustice has been done to the Company, in respect to Captn. Westmacott's Deed, and that he has written to the Directors to that effect. I have, &c., Geo. Gipps.

[Enclosure.]

Copy of the Governor's Minute on Captain Westmacott's claim to Chippendale's land.

The word "granted" must here be taken to mean "given" or "promised" or "sold" and not taken to apply to the issue of a Deed of Grant. The first Act of giving or promising is binding.

* Note 134.
on the Crown, and it is impossible for the Crown by any subsequent agreement with a third party to exonerate itself from the performance of a prior agreement. There was no agreement between the Crown and the Company before 1830; whatever passed before that year was only preliminary negotiation; but there was a positive agreement between the Crown and the Grantee (Chippendale) in 1825, which was rendered more formal and irrevocable on the 13th October, 1829.

Captain Westmacott is in my opinion clearly entitled to his Grant free of any reservation of Coal, and it must issue to him accordingly.

The Monopoly of the Company is always understood to commence only from the Year 1830, and is to last for 31 years; but, if it is to have a retrospective operation on Lands promised in 1825, the 31 years ought to date from the same period.

It cannot be urged against Capt'n. Westmacott that other persons have consented to take their Grants with the reservation in them. They have done it probably in ignorance, or in indifference; and, in the great Majority of cases, it must be a matter of perfect indifference whether the reservation be made or not.

14 March. G.G.
in practice endeavour to avoid any measures which may lead to embarrassment, either in respect to American Citizens or the Subjects of other Powers.

For this purpose I propose,

1st. To postpone any enquiries into the Titles, by which Lands may be claimed in New Zealand by Foreigners, until after all claims of Her Majesty's Subjects shall have been disposed of;

2ndly. To continue, until Her Majesty's pleasure shall be known, to allow Americans and other Foreigners to fish in the Bays or Waters of New Zealand and to cure Oil on shore. I feel it right however to observe that a question may arise in England, whether oil so cured on the soil of a British Territory may not, if carried to England in British Bottoms, acquire the character of "British" and be admissible in Great Britain on payment of the duty chargeable on British caught Oil.

3rdly. I propose to make the payment of duties of Customs by Foreigners in New Zealand to commence only from the 1st July, 1841.

I would beg leave in conclusion to refer Your Lordship to my Confidential letter on this subject to the Lieutt. Governor of New Zealand of the 25th Jany., 1840, of which a Copy was forwarded with my Despatch to your Lordship of the 9th of Feby. last, No. 15, and to solicit Your Lordship's Instructions on the important matters referred to.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[Copies of these papers will be found in a volume in series III.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 91, per ship Union.)

My Lord,

Government House, 24th July, 1840

With reference to my Despatch of the 15th June last, marked "Confidential," in which I reported that Her Majesty's ship "Herald," having on board Major Bunbury, had sailed from the Bay of Islands for the purpose of procuring the acknowledgment of Her Majesty's Authority from the Chiefs in the Southern parts of New Zealand, I have the honor to inform Your Lordship that the "Herald" returned to Sydney this day, and that the duty, on which Major Bunbury was despatched by Lieutt. Governor Hobson, appears to have been very satisfactorily performed. Every point of importance on the Eastern Coast of New Zealand was visited by the "Herald," as far as the Southern point of the Southern or Stewart's Island; and Her Majesty's Authority established, either by the acknowledgment of the Chiefs, or (in
the Middle and Southern Islands) by declaration on the right of discovery.*

The "Herald" afterwards visited Port Nicholson, where everything was perfectly quiet, the Agent of the Company† having made full submission to Mr. Shortland, the Magistrate who had been sent to Port Nicholson by Lieutt. Governor Hobson. The "Herald" touched at the Bay of Islands on her return from Port Nicholson, and landed Major Bunbury.

I enclose herewith a Copy of a letter addressed by Major Bunbury to my Private Secretary, which will explain to Your Lordship why I am unable by the present opportunity to forward any official account of his proceedings.

One of the places visited by the "Herald" was Banks' Peninsula, the spot at which it has been said that a Settlement is about to be made by a Company formed in France. Of this Company however, or of any of its proceedings I know nothing, save what I have derived from English Newspapers.

The French Discovery Ships, "Astrolabe" and "Zelee," had been at Banks' Peninsula, but made no indications of forming a Settlement there.

I have, &c,

GEO. GIPPS.

[Enclosure.]

[A copy of this letter is not available.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 92, per ship Union.)

My Lord,

Government House, 25th July, 1840.

In my Despatch of the 4th of April last, No. 54, I incidentally mentioned that Her Majesty's Sloop "Favorite" had been despatched on a voyage round Australia, it being intended (though it was unnecessary for me then to allude to the circumstance) that she should touch at as many of the South Sea Islands on her way, as she conveniently could. I have now to report to your Lordship that the "Favorite" returned to Sydney yesterday, in consequence of her Commander (Captn. W. Croker), having been killed, as well as two Seamen, and her 1st Lieutt., a Mate (Mr. Ellerman) and 18 Seamen wounded in a conflict with the Natives of the Island of Tonga-taboo (Lat. 21½° S., Long. 175° W.).

The 1st Lieutt. (Dunlop), now acting commander, is still dangerously ill of the wound which he received; but from the 2nd Lieutt. (Van Dorrop) I have received the following account of this unfortunate affair:—

A War having been for some time carried on in the Island of Tongataboo between the Natives who have embraced

* Note 135.
† Note 136.
Christianity, and those remaining in Heathenism, Captn. Croker was induced by the representations of the Wesleyan Missionaries resident on the Island, to endeavour to effect a Peace either by conciliation or force. He accordingly landed a Party of about 90 men with three Guns and Ladders, which had been prepared for the purpose on board the "Favorite"; and, early on the morning of the 24th June, the Ladders were carried, and the Guns dragged by a party of from 1,400 to 1,500 of the Christian Natives to the spot (distant about four miles) where the Heathen Party were posted in a village or Camp. This Village or position had been strengthened in a manner, which implied some knowledge of the principles of Military defence, and there is reason to suppose that at least two or three white men had assisted in the construction of it. The Work consisted of a Stockade, formed of the trunks of Cocoa Nut Trees, covered by a mound of earth, and having a Ditch (partially wet) in front of it. The Gateway was strongly barricaded also with the Trunks of Cocoa Nut Trees, and defended by a Carronade. The Party within are supposed to have consisted of from 400 to 500 persons, of whom perhaps fifty were armed with muskets.

Captn. Croker with his marines and seamen and three Guns, accompanied by the Christian Natives, advanced to within a very short distance (said by my informant to be only 100 yards) of the Stockade, when a Parley ensued, in the course of which Captn. Croker was admitted within the Work, and honorably permitted to return unhurt. The time allowed to the Party within the Stockade for deliberation having expired, and no signal of submission being made, Captn. Croker advanced with his men to the attack on the Gateway. No shot appears to have been fired from the Stockade, until the attacking Party had actually reached the barricaded Gateway, but the Carronade was then discharged, and a fire of Musketry opened upon the Assaultants from the loopholes in the Stockade. Captn. Croker fell almost instantly; Lieutt. Dunlop and Mr. Ellerman (the Mate) were severely wounded, as well as a number of the seamen, the whole loss being that which I have already stated. The Party then retired to their Guns, and opened (for the first time) a fire on the Stockade; finding it however ineffectual, their Guns being entirely uncovered, and themselves exposed to the fire of Musketry from within, the attack was finally abandoned and the Guns left behind.

Captn. Croker was buried on the Island, and the Missionaries (The Revd. Messrs. Tucker and Rabone) conveyed for safety to the neighbouring Island of Vavou. The "Favorite" then returned to Sydney.
As soon as refitted, the "Favorite" will proceed to New Zealand; and the "Herald" (whose arrival at Sydney from New Zealand I reported yesterday) to China.

Her Majesty's Brig "Britomart" is now at New Zealand, Capt'n. Owen Stanley having proceeded thither in her at my request a few weeks since, and there are no other vessels of War on the Station.

GEO. GIPPS

My Lord,

In reply to your Lordship'sCircular* of the 25th Novr., 1839, desiring me to obtain a Copy of a letter addressed to Your Lordship by Mr. Peter Beauclerk Spicer, and to report upon the same, I have the honor to inform Your Lordship that, though Mr. Spicer is unable to furnish me with an exact Copy of his letter, I am fully acquainted with his case, and I enclose Copies of documents explanatory of it.

Mr. Spicer served 13 years as Superintendent of Convicts at Moreton Bay at a salary of £150, and was reduced, under the circumstances detailed in my Despatch of the 1st July, 1839, No. 99; whether Mr. Spicer, in consequence of having been so reduced, may claim compensation under the Secretary of State's Despatch of the 29th Septt., 1831, must remain for Your Lordship's decision. I feel it my duty however to observe that it would not have been difficult for me to find employment for Mr. Spicer in New South Wales, if he could produce such recommendations from persons under whom he has served, as would justify me in introducing him into the service of the Colony.

I have, &c,

GEO. GIPPS

Sir. Sydney, 5th May, 1840.

I do myself the honor to acquaint you for the information of His Excellency the Governor that I have received a letter from J. Vernon Smith, Esquire, by direction of the Secretary of State for the Colonies, informing me that my Memorial of the 13th of April, 1839, had been received; but, in consequence of it having been sent directly to the Secretary of State instead of being forwarded through the Governor according to the Regulations, the Governor has been directed to request from me a copy of it, in order that he may transmit such a report on my case as the circumstances may seem to require.

* No. 127.
I beg to state that the Memorial in question was made in my behalf by my Friends in England with a view of obtaining for me some other situation, or a compensation for the loss of the one I formerly held. I did not receive a copy of it but believe the purpose to be similar to one I sent to His Excellency the Governor in September last.

I take the liberty of stating that my late father was an officer in the Royal Navy for 53 years, and a post captain of 28 years, at the time of his death. It was in consideration of his services that the Secretary of State for the Colonies was pleased to direct the Governor of New South Wales, in the year 1825, to confer upon me some vacant appointment, and in consequence I came to the Colony and received the situation of Superintendent of Convicts. It is now 12 months since I was discharged, and I lament to think that so much time has been lost without having the means of profiting by it. I was led to expect, from the Secretary of State's despatch of the 29th of September, 1831, that some compensation would be granted to me, and which indeed would be of great assistance to me at the present time.

I beg that His Excellency will be pleased to take into consideration the prayer of my Memorial of last September, and recommend to be granted to me some compensation for the loss of a situation, which I held 13 years, to enable me to purchase a piece of land to settle in the Colony, and for which I shall always feel truly grateful.

I have, &c.

PETER SPICER.

[Sub-enclosure.]

The Humble Memorial of Mr. Peter Spicer, late Superintendent of Convicts at Moreton Bay,

To His Excellency Sir George Gipps, Governor in Chief of New South Wales and its Dependencies, etc., etc.,

Most Humbly Sheweth,

That Your Memorialist has been employed in the Service of Government in New South Wales more than thirteen years, and has held the appointment of Superintendent of Convicts at Moreton Bay from August, 1826, till May, 1839, when, in consequence of Moreton Bay being no longer a penal settlement, Your Memorialist was deprived of his Situation.

That Your Memorialist now Humbly begs your Excellency will graciously be pleased to take into consideration his length of service, having devoted the best part of his time at a remote penal settlement in the discharge of an arduous duty, to the satisfaction of the four commandants, and having only once had leave of absence from it for four months on account of ill health.

That, in consequence of the strict regulations of penal settlements, Memorialist had no means of acquiring any property, excepting what he could save out of his very scanty salary, and, being a civil officer, He was not entitled to a grant of land.

That Your Memorialist, being now discharged from the service without any immediate prospect of being again employed, most humbly implores Your Excellency to grant, or recommend to be granted to him, the compensation allowed by the established regulations for loss of office, under the authority of the Secretary of State’s despatch of 29th of September, 1831, and Your Memorialist as in duty bound will ever pray.

PETER SPICER.
Mr. Spicer’s Services in all were of 13 years’ duration, but he did not lose his situation from an event such as that described in despatch No. 27 of 29th September, 1831. He held his situation as long as it was in existence; it terminated in the natural Course of events; and it only remains to decide whether such be a case for compensation under the intention of the instruction referred to.

6th June, 1840.

W. MILLER, D.C.G.

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LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 118, per ship Lady McNaghten.)

Downing Street, 28 July, 1840.

Sir,

Appointment With reference to my Dispatch No. 115 of the 22d Instant, I have to acquaint you that I have appointed Mr. William Augustus Miles to the office of Superintendent of Police at Sydney on the reduced Salary of £400 a year, which you had assigned to Captain Innes.

I have received a communication from Mr. Miles of which I propose to enclose a copy, urging the propriety of raising the Salary of his office to £500 a year. Under all the circumstances, that appears to me to be a reasonable rate of remuneration; but I have informed Mr. Miles that, as I have found it requisite to press upon you the necessity of reducing the expenditure of the Establishments of New South Wales in order to bring them within the means of the Colony, I could only refer the question of increasing his Salary for the consideration of the Local Government.

I have referred the report of the Committee of the Legislative Council on the Police of the Colony, which accompanied your dispatch No. 6 of the 16 Jany., 1840, and the suggestions therein contained, for the consideration of the Lords Commissioners of the Treasury.

I have, &c,

J. RUSSELL.

[Enclosure.]

MR. W. A. MILES TO LORD JOHN RUSSELL.

No. 3 Trafalgar Square, July 24th, 1840.

My Lord,

I have the honour to address your Lordship on the subject of the proposed reduction from £700 to £400 per annum of the Office I hold as Magistrate and Police Superintendent at Sydney.

It appears that the expence of Police causes much complaint, and is borne unwillingly by the Legislature, so much so that, in June, 1839, a Committee of the Legislative Council was appointed to enquire into all its bearings of expence, etc., etc., etc.

In the copies of correspondence ordered to be printed on the 18th Instant, No. 509, is the report of that Committee, and, in page 66, the Committee propose an Increase of Salary to the Second Police Magistrate from £400 to £500 per annum, a sum
which "they do not consider more than adequate to remunerate his responsibilities and labour, more especially from the expenses to which he is subjected by a residence in Sydney," and the Committee further observe that, "although they cannot but regard the estimate high for the Town and District of Sydney, yet they have not considered themselves justified in further reducing it."

I therefore hope that your Lordship may be pleased to set my Salary at £500 per annum, a sum which the Committee does not consider more than adequate, and that Your Lordship may be pleased to accept the testimony of local experience so fully set forth by the Committee that the sum of £400 is an insufficient remuneration for the laborious and ceaseless duties of the important office to which Your Lordship has been pleased to appoint me.

I beg to add, My Lord, that I am making every arrangement to accelerate my departure.

I have, &c.,
WM. AUG. MILES.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 94, per ship Sarah Elizabeth.)
My Lord, Government House, 28th July, 1840.

I have the honor to report to Your Lordship that the ship "Maitland," having on board 302 Convicts, arrived here on the 13th inst.; but that, in consequence of there not being accommodation for them at Norfolk Island, I have been obliged to have these Convicts landed at Sydney, where they will be disposed of agreeably to the instructions contained in Lord Glenelg’s Despatch of the 6th July, 1838, No. 147, with the exception of the Boys, whom I have been forced to place in Assignment.

I take this opportunity of stating that the number of Convicts forwarded to Norfolk Island without being landed at Sydney now amounts to 617, and that the number on the old Establishment is 1,243.

I have, &c.,
GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 95, per ship Sarah Elizabeth.)
My Lord, Government House, 29th July, 1840.

I have had the honor to receive Your Lordship’s Despatch of the 26th Decr., 1839, No. 64, enclosing copies of letters from Mr. Wedge, claiming some further compensation for services alleged to have been rendered to this Government in opening the Country of Port Phillip; upon which I have the honor to report to Your Lordship that I have again looked through the correspondence on the subject of the first settlement of Port Phillip, but can see no reason for reopening, in favor of Mr. Wedge, a
Inability to reconsider claim of J. H. Wedge to compensation.

question which has been so frequently declared to be definitely settled; and I would beg leave to refer to my Despatch of the 12th April last, No. 56, reporting on the claims of the Messrs. Henty, to shew that I consider the irregular and unauthorized proceedings of Mr. Batman and his Associates to have been the cause of much inconvenience to this Government rather than of any advantage.

GEO. GIPPS.

Despatch acknowledged.

Reply by W. Lithgow re delay in reports.

My Lord, Government House, 30th July, 1840.

I had the honor to receive on the 27th June last Your Lordship's Despatch of the 31st Decr., 1839, No. 68; and, as directed therein, I called on Mr. Lithgow on the 29th of the same month for an explanation of the neglect complained of by the Commissioners of Audit. Mr. Lithgow has however informed me that he can offer no explanation beyond that which is contained in the letter, which was transmitted by me to Your Lordship with my Despatch of the 8th Jany., 1840, No. 4, but that, as stated in his letter, he is making every exertion to comply with the directions of the Commissioners of Audit.

I have, &c.,
GEO. GIPPS.

Despatch acknowledged.

Concessions to vessels of royal yacht squadron.


I have had the honor to receive Your Lordship's Circular of the 22nd Jany. last, conveying to me Copies of a correspondence between the Commodore of the Royal Yacht Club and Your Lordship, relative to the admission of Vessels belonging to the Royal Yacht Squadron in the Ports of Her Majesty's Colonial Possessions on the same footing as in England. In reply to which, I beg to assure Your Lordship that this Government will be happy to receive Vessels belonging to the Royal Yacht Club in the way that they are received in England; and that the Colonists of New South Wales hope to see the Commodore and his entire Squadron in Port Jackson before the end of the ensuing year.

I have, &c.,
GEO. GIPPS.
LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 120, per ship Lady McNaghten.)

Sir,
Downing Street, 1 August, 1840.

With reference to my Dispatch No. 111 of the 17th Ulto., I have now to convey to you the approval of H.M.'s Government of the Appointments for the Civil Establishment of New Zealand, notified in your Dispatch No. 14 of the 9th of February last.

I am, &c.,
J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 98, per ship Sarah Elizabeth; acknowledged by Lord John Russell, 10th February, 1841.)

My Lord,
Government House, 1st Augt., 1840.

I have the honor to transmit herewith a Copy of the Financial Minute, which I laid before the Legislative Council on the 29th ulto., with the Estimates for 1841.

The Estimates I cannot forward by the present opportunity, as they are not yet received from the Printer.

Your Lordship will have observed that, in my address to the Council which was transmitted with my Despatch of the 29th May last, No. 66, I stated it to be my intention to introduce a Bill to cause each District of the Colony to pay some portion of the expenses incurred within its limits for Police and Gaols, and also to provide for the construction and maintenance of High roads and Public Works; and I have now to report that I accordingly introduced early in the Session a Bill to this effect, a Copy of which I enclose. On its second reading however, this Bill was rejected; and I have in consequence been obliged to resort to other means to supply the deficiency in our Revenue, which is caused by the whole expense of Police and Gaols being thrown upon the Colony.

The method, which I have adopted, is explained by the present Minute, and may briefly be recapitulated as follows:

1. To charge upon the Land Fund the expenses of the Survey and Sale of Land, and the expenses on account of the Aborigines;
2. To cover the expense of erecting Churches by sales of portions of the Lands, which were formerly the property of the Church and School Corporation;
3. To enforce payment of a portion of the outstanding Quit Rents;
4. To raise the duties on Spirits and imported goods, as the Council is authorized to do by the 3rd Geo. IV, C. 96, S. 2, and the 9th Geo. IV, C. 83, S. 26 and 27.
Two reasons were prominently set forth in the Council for the rejection of the Bill which I have alluded to:

1st. That it was a measure expressly introduced to provide for the Police, the expense of which, or at least a portion of it, the Council has always maintained should be borne by the Home Government.

2ndly. That the Council, not being a Representative Body, ought not to impose any Taxes on the People.

That the former reason however operated more strongly than the other may be inferred from the fact, that I have since been requested by the Council to introduce the same Bill, as far as it relates to the Highways; and that accordingly I have again presented it, striking out only so much of it as relates to the Police.

I have, &c.,

Geo. Gipps.

[Enclosures.]

[The financial minute will be found in the "Votes and Proceedings" of the legislative council; the bill was the "Police" bill.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 99, per ship Sarah Elizabeth.)

My Lord,

Government House, 3rd Augt., 1840.

In obedience to the Order of the House of Commons, transmitted with The Marquis of Normanby's Circular of the 3rd Augt., 1839, I have the honor to forward herewith the undermentioned Returns from the Colony of New South Wales:

1. Abstract of the Revenue from 1825 to 1838 inclusive;
2. Abstract of the Expenditure for the same years;
3. Estimates for 1838;
4. Abstract of Imports and Exports for each of the foregoing years;
No. 5. Number and Tonnage of Vessels built and registered in the same years;
No. 6. Number and Tonnage of Vessels entered and cleared for the same period;
No. 7. Return of Free Immigrants from 1829 to 1839;
No. 8. Return of Convicts arrived from 1824 to 1839;
No. 9. Return of Crown Lands sold under the Regulations of 1st Augt., 1831, from 1832 to 1838.

I beg leave to explain to Your Lordship that the above Returns, although not strictly in conformity with the Order of the House of Commons, are prepared as fully as the Records of
this Colony enable me to furnish them. The Return of the quantity of Public Land sold or granted without sale from 1824 to 1837, being a work of great labor, is not yet completed; but it is in course of preparation, and will be forwarded to Your Lordship by an early opportunity. I have, &c., Geo. Gipps.

[Enclosures.]

[These lengthy returns were printed in the parliamentary papers of the house of commons.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 121, per ship Lady McNaghten.)

Sir, Downing Street, 4 August, 1840.

I have the honor to acknowledge the receipt of your Despatch No. 143 of the 4th of November last, reporting the arrival of Mr. La Trobe at Sydney, and his subsequent departure for Port Phillip; and inclosing copies of the Commission which you issued to that Officer, and of the Instructions with which he was furnished for his guidance as Superintendent of the District.

I have to signify to you the approval of H.M. Government of those Instructions. I am, &c., J. La Trobe.

P.S.—I inclose herewith the Copy of a Letter and its Inclosure from the Secretary to the Board of Treasury, with regard to the 4th Article of the Regulations, drawn up for the Collection and Expenditure of the Public Revenue at Port Phillip, which accompanied your dispatch.

J.R.

[Enclosure.]

MR. C. E. TREVELYAN TO UNDER SECRETARY STEPHEN.

Sir, Treasury Chambers, 30th July, 1840.

I have it in command from the Lords Commissioners of Her Majesty's Treasury to transmit copy of a report from the Commissioners of Audit dated 10th Instant, with reference to your letter and its enclosures of 10th June last, and to request that, in laying the same before Lord John Russell, you will observe to His Lordship that, as My Lords presume the functions and authority of the sub-Treasurer at Port Phillip in respect to the sales of Crown Lands will be limited, and subject to the superior direction of the superintendent of the settlement. in the manner adverted to in the said Report, my Lords are of opinion that the instructions issued by the Governor of New South Wales should be sanctioned.

I am, &c., C. E. Trevelyan.
Report on regulations re revenue and expenditure at Port Phillip.

[Sub-enclosure.]

AUDIT COMMISSIONERS TO COMMISSIONERS OF TREASURY.

My Lords,

Audit office, 10 July, 1840.

With Mr. Trevelyan's letter dated 23d Ultimo, we received for our consideration and for any suggestions we might see occasion to offer to your Lordship an Extract from a letter from the Colonial Secretary at New South Wales, dated 10th Sept., 1839, together with the regulations, herewith returned, for the collection and Expenditure of the Public Revenue at Port Phillip.

We beg leave to observe that the instructions, contained in the Extracts from the Colonial Secretary's letter, appear to us free from objections; and, with reference to the circumstances of the case, the regulations for the collection and expenditure of the Revenue do not seem to contain anything exceptionable provided the 4th Article is not so interpreted as to vest in the sub-Treasurer the sole Control of the sale of Crown Lands and the power to grant or withhold the various licences therein described, which we submit ought rather to rest in the superintendent, the Principal executive authority on the spot aided by his Council if any, and under the Instructions of the Governor in Chief than in a Subordinate Functionary.

If however the regulation was intended to limit the duty of the sub-Treasurer to the mere arrangement of the sales of Crown Lands, and the preparing, signing and issuing the licences, the authority to direct the sales and to grant the licences being reserved to the superintendent, we apprehend there would under such a restriction of its meaning be no objection to the regulations.

As however the accounts from Port Phillip for the Period, when these Regulations came into operation, have not been received at this office, it is not in Our power to apprise your Lordships in what manner the regulation No. 4 has been practically applied.

We have, &c,
F. S. LARPENT.
H. F. LUTTRELL.
HENRY ARBUTHNOT.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 100, per ship Sarah Elizabeth.)

My Lord,

Government House, 4th Augt., 1840.

In connexion with my Despatch of the 25th July last, No. 92, in which I reported to Your Lordship the return of Her Majesty's Sloop "Favorite" to Sydney, and the unfortunate affair at the Island of Tongataboo, in which Capt'n Croker lost his life, I think it proper to furnish Your Lordship with Copies of certain documents connected with the performance of a previous service, in which Capt'n Croker had been requested by me to cooperate with the Missionaries, namely, the recovery by amicable means of the remains of the late lamented John Williams,* whose successful labours as a Missionary are so well known to the Public, and who lost his life in attempting to open an intercourse with the Natives of Erumango in the month of Novr., 1839.

* Note 138.
GIPPS TO RUSSELL.

Your Lordship will, I trust, understand that the business, on which Captain Croker was employed at Erumango, was quite distinct from that on which he afterwards unfortunately engaged at Tongataboo, the one Island being 16 degrees of Longitude or about 900 miles distant from the other.*

I have, &c.,

GEO. GIPPS.

[Enclosure No. 1.]

MR. J. C. WILLIAMS TO SIR GEORGE GIPPS.

Fasitootai, Upolu, 7th April, 1840.

May it please your Excellency,

It is with feelings of gratitude that I now address a letter to your Excellency, thanking you for the very great kindness which your Excellency has taken in our behalf by requesting one of Her Majesty's ships of war to visit the New Hebrides in search of the remains of my father, the late Reverend John Williams, and that of his companion, who fell as martyrs in the cause of Christ, while endeavouring to introduce the Gospel into the Island of Eromanga.

I am thankful for the success which crowned their efforts; and now the remains are interred in the Island of Upolu, which is an alleviation of our feelings.

I have, &c.,

JOHN C. WILLIAMS.

[Enclosure No. 2.]

REV. R. ROSS TO SIR GEORGE GIPPS.

May it please your Excellency. Sydney. 10th June, 1840.

I beg to enclose for your Excellency a communication from the Rev. Thomas Heath, one of the Missionaries of the London Mission Society, who has just arrived by the "Camden" from the Navigator Islands, where he has been labouring for some years with much success. If it should be your Excellency's pleasure to see that gentleman, I shall be happy to have the honor of introducing him at any time you may think it proper to command his attendance.

I cannot allow this opportunity to pass without expressing, as agent of the London Missionary Society, the gratitude that has been felt, by the members of that Society and its Missionaries, for the prompt and generous manner in which your Excellency was pleased to exert yourself for the recovery of the remains of the late lamented John Williams, by sending H.M.S. "Favorite" to Eromango, under the command of a Captain the most suitable that could have been selected for engaging in so interesting a mission. I beg to congratulate your Excellency also on the result of that mission, a result which exceeds the most sanguine expectations that had been cherished.

I have, &c.,

ROBT. ROSS.

[Sub-enclosure No. 1.]

REV. THOMAS HEATH TO SIR GEORGE GIPPS.

May it please your Excellency, Sydney, 9th June, 1840.

I have just arrived here in the Missionary Brig "Camden" from the Arrival of Navigator's Islands. We left about the middle of April, and the "Favorite" had Revd. T. Heath.

1840. 4 Aug.

Visit of South sea islanders to Sydney.

In 1840, departed for Tahiti a few days before. We have called at Rotumah, at three of the islands of the New Hebrides, including Erromango, and also at the Isle of Pines and the main land of New Caledonia, and have placed teachers on most of them.

I have the honor to enclose for your Excellency extracts from the minutes of our meeting, held when Captain Croker was at Samoa, expressing our sense of the kind attentions of your Excellency and of the Captain.

I also beg leave to state that I have with me a Samoan Chief and two or other natives, together with a Rarotonga Chief, who has been for several years a teacher in connection with our Mission, whom it would gratify me to present to your Excellency if agreeable and convenient.

I also wish for an opportunity to present a few articles of manufacture and other curiosities, both from Samoa and the islands lately visited.

My address is at the Rev. Dr. Ross's, Elizabeth street South.

I have, &c.,

THOS. HEATH,
of the London Missionary Society.

[Sub-enclosure No. 2.]

EXTRACTS from Minutes of committee meeting held 30th March, 1840. Present ten of the Brethren of the Mission, Captain Croker, R.N., in the chair.

Mission at Navigators' Islands.

"It is with feelings of peculiar satisfaction that we acknowledge the kind and liberal manner, in which His Excellency Sir George Gipps responded to the applications made to him on the arrival of the 'Camden' at Sydney, by sending one of Her Majesty's ships of war to recover the remains of our lamented brethren (Rev. J. Williams and Mr. Harris), and to ensure the safety of our native teachers on the Island of Tanna.

"That we also are called upon to record the grateful sense we entertain of the manner in which Captain Croker, R.N. of H.E.M. Ship 'Favorite,' has followed up the liberal intentions of the Colonial Government, not only in recovering some of the remains of our brethren by an amicable negotiation with the natives, but by doing all in his power to protect our infant mission in Tanna. We cannot but record also our sense of the decidedly friendly manner in which Captain Croker has sought to promote the interests of our Mission both here and in the islands to the Westward."

THOMAS HEATH, For the Secretary.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 128, received* 11th March, 1841; acknowledged by Sir George Gipps, 5th April, 1841.)

Sir,

Downing Street, 5 August, 1840.

With reference to Lord Glenelg's dispatch No. 240 of the 10 of November, 1838, I transmit to you herewith, a Copy of a Communication, which I have received from the Secretary to the Church Missionary Society, in which he again brings under the consideration of Her Majesty's Government the state of the Society's Mission in New South Wales and urges the claim of the Society to some further support in aid of that Mission.

I referred that representation to the Colonial Land and Emigration Commrs. for any suggestions, which they might have to offer in regard to the proposals of the Society and the further measures to be taken for the security of the Aborigines, and I enclose a Copy of the Report which I have received on the subject from the Commissioners.

*Note 128.
In transmitting to you this report I must unreservedly express my sense of the extreme difficulty with which the question is surrounded, and, although the suggestions of the Commrs. are well worthy of the consideration of the Local Government, yet I do not, in the present state of the case, feel myself warranted in expressing my entire concurrence in them. I can, therefore, only recommend the question to your immediate and serious consideration, confident that it is unnecessary to impress upon you that with you rests the continual duty of devising and executing plans for the benefit of the Aborigines. You alone can effectually perform that duty, for, altho' you may be assisted by the suggestions of H.M. Government, it is impossible to furnish you from hence with definite instructions for your guidance on this subject.

I am, &c,

J. RUSSELL.

[Enclosure No. 1.]

REVD. DANDESON COATES TO LORD JOHN RUSSELL.

My Lord,
Church Missionary House, 14th Feb., 1840.

I am directed by the Committee of the Church Missionary Society to bring under your Lordship's consideration the circumstances of the Mission to the Aborigines of New Holland.

This Mission was undertaken by the Committee in the year 1830 at the instance of your Lordship's predecessor, Sir George Murray. The principle, on which the Committee undertook the mission, was that the Society should find two Missionaries and that Her Majesty's Government should assign a Sum of £500 per annum for the support of the Mission, and defray the outfit and passage of the Missionaries. The Committee were also led to expect that the Government would favourably consider an application for an enlargement of the pecuniary grant should the Mission proceed satisfactorily.

Unhopeful as the undertaking was from the degraded character of the Aborigines and from the demoralizing effects on them of their contact with the Convict population of the Colony, the progress of the Mission in the mellioration of their condition was as considerable as could reasonably have been expected. The Committee in consequence addressed a Letter to Lord Glenelg, Dec. 17/35, soliciting an increase of the annual Grant and the Assignment to the Society of a tract of land at Wellington Valley, where the Mission was located, in trust for the benefit of the Aborigines and in subserviency to the extension of the Mission to them. A copy of that Letter is hereto annexed.

To this application Lord Glenelg replied through Mr. J. Stephen, June 30, /36, encouraging the Committee to expect the Assignment to the Society of the land in question and an increase of the Annual Grant.

Previously however to Lord Glenelg's Communication to the above effect reaching the Governor of New South Wales, measures had been adopted for placing a Police Establishment at Wellington Valley. It was immediately felt by the Missionaries that such a proceeding involved consequences destructive to the beneficial Working of the Mission.
1840.
5 Aug.

Protest against police at Wellington valley.

Refusal of increased subsidy for mission.

Inadequacy of annual grant.

Request for land grant.

Necessity for seclusion of mission.

Representations to this effect were addressed by them to the Local Government, to the Committee and to their representatives in New South Wales. The subject was by direction of the Committee brought under the notice of Lord Glenelg, in a Letter* dated Oct. 31, /38, a copy of which is annexed.

In reply to that Letter, the Committee were informed by Sir George Grey, Nov. 10, /38, that Lord Glenelg had directed the Governor of New South Wales to transmit a Report on the whole subject and had called his attention to the Instructions upon it addressed to his Predecessors.

The Committee have recently learned by a communication from the Revd. W. Cowper, their correspondent in Sydney, that the Government had come to the determination to remove the Government Establishment from Wellington Valley, and for the present to allow the Missionaries to occupy the land there as heretofore.

In another communication, Mr. Cowper transmits a copy of a Letter from the Honble. E. D. Thompson to himself, under date of Augt. 5, /39, in which Mr. T. states, "I am instructed by his Excellency to inform you, with respect to the further pecuniary assistance which you apply for in aid of the Mission, that he regrets he has no funds out of which it can be afforded."

Under these circumstances, the Committee have directed me fully to lay before your Lordship the whole state of the case, and to solicit your effective interference to place the Mission on a permanent footing with sufficient pecuniary means for its support and progressive extension.

Your Lordship will observe that the Governor's sanction for the continuance of the Missionaries on the land at Wellington Valley is only temporary. This is a state of things wholly incompatible with steadily carrying out any plans, however well devised, for the improvement of the religion and Social Condition of the natives.

In any case this would be highly inconvenient and disadvantageous; but, in the actual state of the Aborigines of New Holland, it precludes all reasonable hope of success.

The present annual Grant of £500 is also quite inadequate to support two Missionaries and a Farmer, of whom the present Establishment consists, with the subordinate Agents, educational and Agricultural, which are indispensable for advantageously carrying forward the Mission.

This Committee strongly solicit the permanent assignment to the Church Missionary Society, in trust for the support of the Mission to the Natives, of the entire District at Wellington Valley. The extent of the tract of land in question is set forth in an official notice of the Governor of New South Wales issued in the year 1833 or 1834.

The Committee deem it essential to the successful prosecution of the Mission that this grant should not be liable to resumption, so long as the conditions of the Trust are fulfilled by the Committee.

The Committee further earnestly impress on your Lordship's attention the necessity for the welfare of the Natives and for the due exercise of the influence of the Missionaries over them that effectual measures should be taken to prevent any intrusion of the Colonists, especially of the Stockmen in the district assigned to the Mission on any pretext whatever.

With regard to an increased pecuniary allowance, the Committee are compelled to state that, in the present Situation of the Church
Missionary Society’s finances, they cannot appropriate any portion of them to the New Holland Mission.

They therefore earnestly call your Lordship’s attention to the provision of the requisite pecuniary means for supporting an Undertaking entered on at the special desire of Her Majesty’s Government.

As the proposed Grant of Land, if duly secured to the Society, would, it is conceived, by being rendered productive by Agriculture and Grazing through the Agency of the very competent Farmer now forming part of the Society’s Establishment at Wellington Valley, the pecuniary Grant might be gradually diminished as the land gradually advanced in productiveness. The Committee wish it to be understood that they have no desire to receive from Government, either by direct Grant or through the cultivation of the Soil, any larger pecuniary Amount than can be advantageously employed in promoting, by the most effective means, the religious, moral and social improvement of the Aborigines.

I have, &c,

D. COATES, Sec., C.M.S.

[Enclosure No. 2.]

LAND AND EMIGRATION COMMISSIONERS TO UNDER SECRETARY
STEPHEN.

Colonial Land and Emigration Office,
9 Park St., Westminster, 17th July, 1840.

We beg to acknowledge the receipt of your Letter of the 20th March, transmitting to us the copy of a Letter from the Secretary of the Church Missionary Society relative to the circumstances of the Mission to New South Wales and of Mr. Vernon Smith’s reply; and, in compliance with Lord John Russell’s directions, we have considered the proposals made by the Society, as well as the further measures which it may be expedient to take for the security of the Aborigines. Before offering, however, such opinions as we have been enabled to form, we would beg leave to call attention to the fact, which we find mentioned in the correspondence before us, namely, that the Secretary of State called upon the Governor of New South Wales in November, 1838, to transmit a report upon the whole subject, and, as that report has not been received, the information upon which we have had to found a Judgment has been necessarily imperfect.

In Mr. Coates’ Letter to Lord John Russell of the 14th February, we find that three requests are made on the part of the Society.

1st. That there be made to the Society a grant in perpetuity of the entire District of Wellington Valley, to be held in trust for the support of the Mission.

2nd. That effectual measures should be taken to prevent any intrusion of the Colonists, especially of the Stockmen, in the District assigned to the Mission.

3rd. That the pecuniary assistance now given to the Mission shall be increased so as entirely to maintain the Establishment.

As Lord John Russell has directed us to report upon the whole subject, we beg leave to offer the following observations upon each of the above points.

With respect to the first, we think that strong objection may be urged against it. It appears to us safer in the first place not to admit the principle that free grants of Land ought to be made to
Objections to free land grant for mission at Wellington valley.

Proposal for reserves of land for aborigines.

Individuals or Companies for any purpose whatsoever. In this case the object is no doubt desirable, though it is by no means certain that it can be attained by the means proposed. But the principle, once admitted, is capable of indefinite extension and is therefore easily open to abuse. And it moreover in every instance involves a waste of the only available source from which labour (the prime want of every new Colony) can be supplied. In the second place, we think that, whenever Government contributes largely to any undertaking, as it does to this, and as it is required still farther to do, it should have the ampest security that the Funds and resources placed at the disposal of private parties should not be misapplied nor made subservient to any but the public purpose for which they have been bestowed. And this security we conceive could not be had in the present case, if the Land were finally alienated and became the property of the Missionary Society, or rather of their representatives in the Colony. Again, the acquisition of land by the Missionaries is likely to be mischievous as regards the objects which they have in view. We observe, by the very scheme of the Society, that extensive profits are expected to be realized from the cultivation of the rich alluvial District in question, and we conceive that, in thus engaging in farming speculations, the Missionaries are laying themselves open to misconstruction of their motives, and to a consequent loss of moral influence, while at the same time their attention is likely to be diverted from their more immediate and especial duties. Another objection to an absolute grant of a particular portion of Land to private individuals for the use of the Natives is that the station, which it may be most advantageous for them to occupy at one period in the growth of a Colony, may be different at another. If it be right that the natives should have fixed places, to which they may resort on the confines of the settled districts, it may be found desirable, as the Colony extends and the settled parts press too closely upon the station, to take up a more interior position. In short, both for the sake of controlling those who hold any land which may have been set apart for the use of the Natives, and of providing against the contingencies affecting the eligibility of its position, we think that the Government should retain the right of property in such land in its own hands, and generally that, from the responsibility under which it acts, Government is the only safe Trustee which the Natives can have for any purpose.

At the same time, while we object to making free grants of Land to private parties who may undertake the protection of the natives, we are far from insensible to the claims which the natives themselves have upon the humanity of those who enter upon the occupation of the waste Lands of their Country. The different Settlements in New Holland have been planted without reference to the feelings and to the necessities of the Natives, who wander over the Land; and it appears just that, as appropriation proceeds, reserves of Land should be made for their use and benefit in order that the best means may be taken for enabling them to pass from the hunting to the agricultural and pastoral life, and that they may have spots on which to place themselves, whenever they may have been induced by any means to abandon their wandering habits. In so extensive a Colony as New South Wales, where the native inhabitants are thinly scattered over every part of it, we think that these reserves would probably require to be made in several different
places; that they should be most carefully chosen so as to re-
move the necessity of changing the position to as distant a period as possible; but yet that it should remain in the power of Govern-
ment to change it whenever it was found expedient with reference to the best interest of the natives. Positive orders also should be
given to the Governor to keep these reserves strictly confined to the use for which they have been intended. It is to be observed that the land-fund will be thus diminished by the amount of the reserved land; and it appears but reasonable that any further aid which may be required for the natives should be given out of the general revenues of the Colony. If this were refused by the Local
authority administering such funds, the Governor, we think, should be empowered to take what was required out of the land-fund, as we observe is now the case in New South Wales. But, of all money devoted to this purpose, the strictest account should be rendered.

If it were deemed desirable to surrender the reserved land to the management of the Missionary Society, an official inspector should be appointed by the Governor to visit periodically the establishment, to reside from time to time at it, and to make the fullest report of all he observed. If farming operations were engaged in, regular and detailed accounts should be sent in by the manager in the same manner as would be done by the Steward of any private estate, and they should be properly examined and audited. Every security in short should be taken that the land was held solely for the Public objects to which it was devoted. When all these precautions, and others which greater foresight might suggest, had been taken, it is still impossible, judging from experience, to feel sanguine as to the result. By reference to the evidence taken before the House of Commons' Committee on Aborigines, it appears that in many cases where the attempt to fix the wild natives upon particular spots has been carried into effect, the consequences have been far from satisfactory.

In Canada where the experiment has been extensively tried, and under circumstances as regards the natural endowments of the natives far more favourable to its success than could be the case in Austrailia, the result for the most part has been that the natives have been either isolated from the Colonists and so remained in a wild state or have become inveterately addicted to vicious indul­gences, under the influence of which their numbers are constantly diminishing. The remnant of the inhabitants of Van Diemen's Land were removed to Flinders Island under circumstances which are described to the Committee as decidedly advantageous for their acquisition of Christianity (320), and for their civilization (316). In the report of the Committee this removal is called an act of real mercy. The chief person under whose charge they were placed took it is said (308) "considerable pains and with very great success to reconcile them to their state, insomuch that their happi­ness, and every point of view in which we could wish them well, were increased by their removal." Yet we believe that not one individual of this race is now in existence.

As regards the natives of New South Wales, great difficulty appears to be found in inducing them to settle in any fixed spot. The present Bishop of Australia informed the Committee "that assignments of land were made to the natives by Governor Mac­quarie, but that it was found impossible to attach them to the soil." In other passages, he states "that Governor Macquarie had

* Note 140.  † Note 141.
1840. attempted to settle them on a portion of land, which was set apart for that purpose and to instruct them in reading and some degree of religious knowledge, but that the scheme had failed; that his efforts appeared to be hopeless and not to produce any effect equivalent with the expense which had been incurred." It may of course be argued that the best method of dealing with the natives may not have been adopted, and that, notwithstanding the authority of the Bishop, who appears unfavourable to the scheme of assigning lands to the natives, more successful results would have been obtained from a different system. And we certainly are inclined to think, as we before stated, that moderate reserves of land for the use of the natives should be made in all those countries, which like New Holland have been arbitrarily occupied. By moderate reserves, we mean reserves of that extent which would enable them to live, not as hunters, in which case no good would be done, but as cultivators of the soil. Should they refuse to become stationary themselves, they might yet be prevailed upon, when they went upon distant expeditions, to leave their women, upon whose understandings and feelings, if decent and orderly conduct were enforced, a favourable impression might be made, or, as would be still more desirable, they might leave their children, who could be regularly taught at school and trained in early youth to civilized habits—the only way perhaps in which those habits will ever be rendered tolerable to savage natives. We would therefore on no account recommend that the Missionary Society should not be allowed to follow out the experiments, which, in common with others, they have now for ten years by means of Colonial funds been making in New South Wales; but on the contrary we would advise that they should for that purpose continue to hold some portion of the land, which may be set apart in the Colony for the use of the natives.

With respect to the expediency of allowing to them the exclusive occupation of Wellington Valley, or the practicability of securing it, we are but imperfectly informed in the absence of the Governor's report. In a communication made by the Missionary Society to the Secretary of State in June, 1836, we observe that the extent of the district of which a grant is applied for is 43 miles long by 21/2 Miles wide. It is a retired and fertile spot about 240 miles West of Sydney, and the curious and extensive caverns,* which are found in the surrounding limestone rocks, are said by Sir T. Mitchell, who explored them, to have given a character of mystery and sanctity to the place in the eyes of the natives. Its further advantages as a Missionary station were thus described to the Committee on Aborigines (297): "It is in the first place situated in the very region of the natives, being at all seasons greatly frequented by them; their intercourse with the Europeans, while the Valley was occupied as a Government station, has rendered them very extensively acquainted with the English language, while the breaking up of the establishment and the removal of those attached to it has withdrawn the great source of apprehension as to the injurious effects of intercourse with a corrupt white population. The houses and buildings erected for Government purposes, and now standing vacant, would afford immediate accommodation to the members of the mission; and the land, which has been under tillage, would both furnish them with provision for their own support and might act as an inducement to some of the natives to attach themselves

* Note 142.
to agriculture more readily than if they were required to commence upon land in its natural state." Unless therefore the Governor of New South Wales, in the Report which he has been required to make, should state any objections connected with the circumstances of the Colony, of which we have no knowledge, we think that no more advantageous spot than Wellington Valley could be fixed upon as a reserve of land for the use of the Natives. The only evil connected with the place is that described by the Secretary of the Missionary Society in his evidence before the Committee, namely, "that it is in the midst of a district which is occupied by scattered farm houses and residences for stockmen and persons of that class who are looking after the cattle and flocks of the proprietors." These Stockkeepers are described by another witness (1835) as convicts in the distant employ of the farmers, and quite out of their reach and control. The neighbourhood of such persons is of course a great drawback to the advantages of the station, and the consideration of this evil leads us to the second point brought under the notice of Lord John Russell by the Secretary of the Church Missionary Society.

Upon the request which the Society has made that effectual measures should be taken to prevent the intrusion of the Colonists, especially the Stockmen, in any district which may be assigned to them, we cannot deny that the end appears to us most desirable. At the same time, considerable difficulty must be felt in rendering any measures effectual for the purpose. Great objection was made, we observe, by the Missionaries to the establishment of a general police station in their neighbourhood, and it is stated, in some of the earlier correspondence referred to us, that the police in fact caused some of the evils which they ought to have prevented. It is plain however that there can be no sufficient security taken against the intrusion of improper persons upon a Missionary station, but by the presence of a force, however small, either of the Military or the police. We would therefore suggest that the Governor should use his discretion as to which description of force it would be best and most convenient to employ; but that either a small detachment of soldiers under a non-commissioned officer or a small body of the Border Police should be placed at Wellington Valley, and patrol in the neighbourhood for the purpose of keeping off all persons not authorized by the Governor or the Missionaries to visit the station. The persons composing this force should in either case be selected on account of good character and steady habits; and it might perhaps be expedient to give them a slight increase of pay while engaged on this service. Any instance of misconduct should be reported by the Missionaries to the Governor, who would take steps immediately to punish it. The carrying into effect indeed of this scheme of protection must so entirely depend upon the Governor, who alone can judge upon the spot what measures are practicable and expedient, that we should recommend that the matter be wholly referred to him. We would only remark that there is no point, which appears to us better established by the evidence taken before the Parliamentary Committee, than that, wherever un-restrained intercourse has taken place between the natives and the lower classes of settlers in a Colony, all hope of the civilization of the former has been at once and for ever extinguished. It appears to us therefore that, unless the power can be granted to the Missionaries of in a certain degree isolating themselves from the
1840.
5 Aug.

Criticism of request for increase of annual subsidy for mission.

Settlers, their own labour will be lost and the expense incurred in their undertaking be thrown away.

We will now turn to the third point, adverted to in the Letter from the Secretary to the Church Missionary Society, vizt., an increase in the annual allowance of £500 made to the Mission out of the Colonial Funds. So long as the expenses of Aborigines continue charged on the Land Fund, it would be competent to the Secretary of State, should he deem this increase expedient, to carry it into effect by the authority of The Crown. But, before imposing an additional burden upon the Colony on this account, it is right to consider, first, that it would not be unreasonable to expect that the Society should have made out of its large Revenues (amounting last year we believe to £90,000) some contribution to the expense of the Mission to New Holland; and, in the second place, it is but just to the Colony of New South Wales not to overlook the sums, which it annually pays for the protection and to promote the civilisation of the Aborigines. In the estimate of the expenses for the year 1840, which has recently been received at the Colonial Office, we find that provision is made for a Chief Protector with four Assistants, and allowance for Clerks and Servants; That a sum is placed at the disposal of the Protector for donations; That a further sum is to be placed in the hands of the Police Magistrates and Crown Commissioners to be laid out in the purchase of provisions, clothing, etc., for the use of the Natives; and that an allowance is given to maintain permanent establishments for the benefit of the natives at Lake Macquarie, at Wellington Valley, at Moreton Bay, and at Port Phillip; the two latter on the wholesome condition of an equal sum being raised by private contributions. The estimated amount of these several charges is £5,454 12s. If rightly used, this appears to us a considerable sum. At all events we think that, before any further grant should be ordered, it ought to be made clearly apparent what amount of good had been effected by the sums already expended, as well as the extent to which good was either impeded or prevented from want of further contributions. It is possible that the report from the Governor may supply the requisite information upon these points. At present the only additional expense, which we think should be incurred for the establishments at Wellington Valley, is a portion of the cost of maintaining a small force sufficient to prevent the intrusion of unauthorized persons. We recommend this only because it appears that without the presence of this force the exertions of the Missionaries must be altogether nugatory.

If, upon further information received from the Colony, it should be deemed desirable to increase the allowance now made for the general wants of the Establishment at Wellington Valley, we would venture to suggest whether it might not be desirable to appoint a Medical officer instead of another Missionary. Two Missionaries are already maintained there, and we observe that the Secretary of the Society, in his examination before the Parliamentary Committee, admits (1370) "That at no period a very large number of natives resort to the station for the population is very scanty, and the number assembling at any one time not considerable." Two Missionaries might therefore be sufficient to instruct them in the truths of religion; but we think that the presence of one, who could relieve bodily infirmity and mitigate the sufferings of disease, would render the spot more permanently attractive to the natives.
than it could ever rendered simply by providing the means of instruction, of which they do not feel the want, or even by a supply of food which for the most part they must be accustomed to obtain by their own exertions. The relief afforded also would inspire a feeling of gratitude towards those by whom it had been administered, would cause the presence of European Settlers to be regarded as a blessing instead of a curse, and thus prepare the way for ultimate civilization. Moreover medical skill would be most usefully engaged in regulating the effect of clothing and new diet upon the natives, and generally in preparing their bodies for the adoption of the habits of civilized life. This appears to be an essential preliminary towards an end so much desired; but which has been in a great degree overlooked. Having, however, offered such observations as we had to make upon the proposals of the Church Missionary Society, which have been referred to us, We will not further pursue the subject.

We have, &c,

T. FREDK. ELLIOT.
ROBT. TORRENS.
EDWD. E. VILLIERS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 146, received 11th March, 1841.)

Sir,
Downing Street, 5 August, 1840.

With reference to my Dispatch No. 93 of the 31st May last, I transmit to you herewith a Copy of a letter from the Colonial Land and Emigration Commissioners with forms of two Public Notices, by which they propose to give publicity to the new arrangements regarding the Disposal of Crown Lands in New South Wales, sanctioned by the Royal Instructions of the 23d May, 1840, which were transmitted to you with My Dispatch above mentioned.

I have signified to the Commissioners my approval of those notices, and I have to request that you will communicate copies of them, and of the Commissioners’ letter to the Superintendent at Port Phillip.

I have, &c,

J. RUSSELL.

[Enclosure.]

LAND AND EMIGRATION COMMISSIONERS TO UNDER SECRETARY STEPHEN.

Sir,
Colonial Land and Emigration Office,
9 Park St., Westminster, 3d Augt., 1840.

In reference to Lord John Russell’s Dispatch to the Governor of New South Wales on the new Measures to be adopted in the District of Port Phillip, and to the Royal Instructions by which it was accompanied, as communicated to us for our guidance on the 9th ultimo, We have the honor to transmit herewith, for the information of Lord John Russell, two public Notices containing the regulations by which we propose to carry the new arrangements into effect, so far as regards their operation in this Country. On the greater part of these Papers, it is not necessary that we should trouble Lord John Russell with any comments, as their object will be sufficiently apparent on the face of them.

* Note 128.
We shall only subjoin a few Remarks on those points, which seem to require an explanation of the motives with which they have been introduced.

It will be observed that we have named 320 Acres or half a Square Mile for the size of the smallest sections of Country Land. At the time when Lord John Russell addressed his Dispatch to the Governor, we were disposed to think, in accordance with an opinion contained in one part of that Despatch, that it would be desirable to aim at dividing the Country into Lots of 160 or even 80 Acres.

But since that period further enquiry and additional experience have led us somewhat to modify our views. In the Older Settlements of New South Wales, the division has hitherto only been, as you are aware, into Square Miles. Sir Thomas Mitchell, whom we consulted on this point, observed to us that, in Pastoral Countries where great extent of Ground might be expected to be purchased, it would probably be a needless expense to divide the whole surface of the Land into Minute Sections, of which few comparatively might be required singly. This remark appears to us very just. We cannot also but be impressed with the striking Evidence which we have received, and the urgent complaints of the great cost of the Survey Department in South Australia, in which Colony 80 acres has been fixed as the ordinary Lot. These considerations have led us to the conclusion that it would be unadvisable to pledge the Government at present to any general division of the Territory of Port Phillip into Sections smaller than 320 Acres or half a Square Mile.

In the 9th Clause of the Notice to Purchasers, we have provided for something in the nature of what has come to be understood amongst Colonists by the name of a Special Survey. The general Rule will be of course that Purchasers can only select their Lands in districts, which are ready surveyed and thrown open for Sale. But, if a Person should pay at once for 5,120 Acres or 8 Square Miles, We propose to allow him the privilege of demanding a Survey of that Quantity in one Block in any part of the Colony he may choose. Various considerations have led us to wish to make the experiment of leaving this privilege open to the acquisition of Settlers.

In the first place we may observe that, if the price be sufficiently high to prevent excessive appropriations, we are disposed to think that it is better the dealings of the Government in Land should tend towards a wholesale character, than that they should principally be in detail, and we are willing to encourage any description of purchases, which appear likely to promote that result. We think also that the proposed provision is favorable to enterprise, And we believe that it may enhance the Rate of the Revenue from Land. Such being grounds in support of the measure as regards the Government, the following are some of the reasons why we suppose that it may be acceptable to purchasers. In any case in which an individual may think that he discerns a situation Where by judicious efforts he could establish a Town, whether on the Coast or Inland, it may be a great object to him to be able to acquire a property on the Spot, though beyond the limits of the Districts ready surveyed. And the same as to any Locality which a person may consider likely to lie on some important line of communication. Examples of large purchases from these several motives might easily be furnished both from South and from Western Australia.
In the latter, we may cite an instance which has been recently under Lord John Russell's notice. We mean Capt'n Symers's purchase of a detached tract on the line between the Original Settlements and King George's Sound. Large Flock Masters also may be expected to be desirous to choose Situations, where they are beyond the inconveniences attendant in such cases upon numerous Neighbours.

One main Question must be whether these special Surveys will be conducive or otherwise to the great object of keeping the Surveys, generally, equal to the demand for Land. The probable distance of some of them will be an unfavorable element, both as regards time and expense. But, on the other hand, the laying out of the ground in one Block, so as to save all running of Interior Boundaries, must constitute a great saving, especially, we should anticipate, in the matter of Expedition.

Upon the whole, therefore, we should wish, as we have above stated, to try the experiment of offering settlers the choice of this method of acquiring Land in large Quantities. It will soon be seen whether it is much made use of. And, in case of Defects which the practical Operation of the plan may bring to light, it must depend upon their nature whether they should be considered sufficient objection to the principle of the measure, or only imperfections which ought to be remedied.

We hope that Lord John Russell will approve of the Expedient we have adopted in clauses 12 and 13 for extending to the Older parts of New South Wales some of the benefits of these arrangements as to the Port Phillip District. It is not easy to render any settlement, where the price is uncertain, being dependent on Auction, so attractive to purchasers in England as where the price is fixed. Now there are special Reasons for nevertheless continuing in force the method of Auction in the Sydney district. But, by the course laid down in the two last clauses of the Notice, we provide for the individual, who has determined before hand that he will invest some certain Sum in the purchase of Land in that District, a perfectly safe mode of remitting his Money to Sydney without Cost, and we also enable any one, who wishes himself to select Labourers to go to that part of the Colony, to acquire the privilege of naming them, if of proper qualifications, for a free passage.

Submitting to the favorable consideration of the Secretary of State the few changes or additions, which have thus occurred to us upon the Original recommendations on which His Lordship's Despatch of the 31st of May to Sir George Gipps was founded, We have, &c.

T. FREDK. ELLIOT.

EDWD. E. VILLIERS.

[Sub-enclosure No. 1.]

NOTICE to Persons desirous of Purchasing Land at Sydney or Port Phillip.

Office of Colonial Lands and Emigration, 9 Park Street, Westminster, August, 1840.

1. With a view to promoting Settlement in the Australian Colonies, the following measures have been adopted under the sanction of Her Majesty's Government.

2. It has been determined that, for all purposes connected with the disposal of Land, that portion of the Territory of New South Wales, which lies to the South of the Counties of Murray and St. Vincent, and of the Rivers Murrumbidgee and Murray, as far as the Eastern Boundary of South Australia, shall be separated from the rest of New South Wales, and be distinguished by the title of the Southern or Port Phillip District.

Notice to persons re purchasing land at Sydney or Port Phillip.
Notice to persons re purchasing land at Sydney or Port Phillip.

3. Within the Port Phillip District, Land will henceforth be sold at the fixed uniform price of One Pound per acre, in sections of one half of a square mile, or 320 acres each.

4. Towns already laid out, and in which any Land has actually been sold, will be exempt from the operation of the foregoing rule, and Town Lots in them continue to be sold by Auction; and the Government will also have the power, should it be deemed expedient, to reserve any sites of Towns likely to become the seats of Local Administration, or any sites eminently adapted for Commercial Sea-Ports. The formation of all other Towns and Villages, including therefore every Inland Town, except where the residence of a Government may be established, will be left to the enterprise and judgment of Individuals.

5. Certain Lands, to be properly marked out in Maps exhibited at the Land Office in the Colony, will be set apart for Roads and other public purposes, and will be regarded as inalienable public property. But it is not intended, unless in very special and rare cases, to make any reservation of Minerals, and all Deeds of Grants therefore will convey to the purchaser everything above and everything below the surface.

6. Purchasers in the Colony must buy their Land at the Office for Crown Lands in the District of Port Phillip.

7. Purchasers in England will have to deposit their purchase money with Mr. Barnard, the Crown Agent for the Colony, No. 2, Parliament Street, from whom they will obtain a receipt, on production of which at the Office of the Colonial Land and Emigration Commissioners, No. 9, Park Street, Westminster, they will be furnished with an Order, stating the number of acres which they have purchased, and directing that this quantity shall be granted to them upon their naming in the Colony the spot of unappropriated Land which they shall select.

8. The Charts and Registers to be kept in the Land Office at Melbourne are intended to furnish full and authentic information of all appropriations of Land, and of all Surveyed Lands not appropriated, and of all portions of Land reserved for public purposes. Each purchaser will be allowed to select his Land in the order of his application at that Office.

9. Any one, who shall pay in this Country or in the Colony the price for 8 Square miles, or £5,120, will not be confined to Districts already surveyed and open for sale, but will have the privilege of demanding a special Survey of the Land he is desirous to acquire. This Land, however, must be taken in one block, of which only the outer boundaries therefore will be surveyed. It will also be subject to all regulations, which may be established in the Colony, respecting the proportion of front to depth, water-frontage, reserves for roads, and other conditions of similar nature.

10. Every purchaser will be entitled to name a number of persons of the labouring class for a free passage to the Colony, in proportion to the amount of purchase money which he has paid in this Country, viz., For every £20, 1 Adult Person of 14 years and upwards, or 2 Children between 7 and 14, or 3 Children under 7. The whole must be subject to the approval of the Commissioners, and fall within their General Regulations on this subject, of which a copy will be furnished to any person requiring them.

11. Persons, who may wish to avail themselves of the above advantage, will be required to send into this Office Lists of the names and descriptions of the people they propose for a free passage within six months of the date of their purchase, after which time no further claim to any nomination for a free passage will be admitted. Purchasers of Special Surveys, however, will be allowed 18 months.

12. In the older parts of New South Wales, constituting what will henceforward be called the Sydney District, Land continues to be sold by Auction at an upset price of 12s. per acre, in lots of 640 acres, or one square mile.

13. Should any person intending to purchase Land in this portion of New South Wales think proper to deposit money in this Country in the mode above mentioned, he will receive from the Land and Emigration Commissioners an Order entitling him to credit for a corresponding sum in the acquisition of Land at the Public Sales in the Colony, and he will be allowed to nominate Emigrants for conveyance to Sydney, under the same Rules and Regulations as above referred to for the District of Port Phillip.

By Order of the Board.

S. WALCOTT,
Secretary.

Regulations for Free Passages Granted in this Country to Persons Named by Purchasers of Land at Sydney or Port Phillip.

Office of Colonial Lands and Emigration,
9 Park Street, Westminster, August, 1840.

The following are the Regulations on the eligibility of Candidates proposed by Land Purchasers for a free passage to Sydney or Port Phillip, and also the conditions on which the passage, when granted, must be understood to be accepted.
Trade or Calling.

1. The Emigrants must belong to the Class of Mechanics and Handicraftsmen, Agricultural Labourers, or useful Domestic Servants. All the Adults must be capable of Labour, and emigrate with the intention of working for Wages after their arrival.

2. Persons, therefore, who are proceeding to the Colony to buy Land, or invest a small capital in Trade, are not eligible for a free passage.

3. The classes most in demand may be described as follows:—Shepherds and Farm-servants; the trades employed in building, such as Carpenters, Joiners, Plasters, Bricklayers, and Stonemasons, Quarrymen, and Brickmakers; country Blacksmiths, who can Shoe Horses; Wheelwrights; and a moderate number of Tailors and Shoemakers.

Description of Family and Age.

4. The Emigrants are required to consist principally of married people and their families.

5. Single women, without their parents, are only admissible if they are Emigrating under the immediate care of some married relatives, or else attached as domestic servants to ladies going out as cabin passengers in the same ship.

6. Single Emigrants cannot be allowed except in a number not exceeding that of the single women in the same ship. If named by a Land Purchaser, they can only be accepted in case the same party has named an equal number of single women, who conform to regulation 5.

7. The age of persons accepted as adults is to be not less than 15, nor generally speaking more than 35. But the latter rule will admit of being relaxed in favor of the parents of sons and daughters, of useful ages, going by the same ship.

Character.

8. Good character is indispensable, and decisive certificates will be required both to this point, and also to competence in the professed trade or calling of the proposed Emigrant.

Form of Application.

9. All applications, therefore, must be made in the form hereto annexed for the purpose, duly filled up and attested, as explained in the form itself, and then forwarded to this Office.

10. For the present, the limited amount of Funds does not admit of giving free passages except to Emigrants named by Parties who have made purchases in this Country of Colonial Land. No others therefore need apply, as it will be impossible to comply with their applications.

11. Purchasers must make their application within the first six months, after which the right of nomination ceases. Purchasers of "Special Surveys," however, are allowed eighteen months. The nomination will be subject to the approval of the Commissioners, whose answer must be received before the Emigrants are led to make any preparation.

Proceedings subsequent to Application and Approval.

12. An early answer will be given. If approved of, the Emigrants will be registered in this office as accepted for a free passage, and accommodation be found for them at the first suitable opportunity. But due notice will be given, and they should not in the meanwhile withdraw from their employment.

13. The Emigrants must pay their own journey to the port of embarkation.

14. Provisions, Mattresses, and Bolsters, and Cooking Utensils will be found for them. But Blankets, Sheets, and Coverlets are not supplied, and they must provide a sufficient stock for themselves and their families. They should also bring their own Towels, and their own Knives and Forks, with tin or pewter Plate, Spoons, and drinking Mugs.

15. The Emigrants must bring their own Clothing, and cannot be allowed to proceed unless they provide themselves with a sufficient supply for their health during the voyage. The lowest quantity, that can be admitted, would consist of two complete Suits of exterior Clothing (including two pairs of Shoes) and of six changes of Shirts and Stockings; but, as a general rule, it may be stated that the more abundant the stock of Clothing, the better for health and comfort during the passage. It should be observed that the usual length of the voyage to New South Wales is about four months, and that, at whatever season of the year it may be made, the Emigrants have to pass through both very hot and very cold weather, and should therefore be prepared for each.

16. Each family should furnish itself with two canvas Clothes Bags as the heavy Boxes and Chests will be put away in the Hold, and there will only be access to them once in every three or four weeks.
1748 HISTORICAL RECORDS OF AUSTRALIA.

5 Aug.

Regulations for free passages for nominees of purchasers of land.

17. It is desirable that Emigrants should take out with them the necessary tools of their Trades; bulky Agricultural Implements, however, cannot be admitted, on account of their inconvenient size and weight; neither can Furniture be received on board; Mattresses especially, and Feather Beds are strictly prohibited.

18. The whole quantity of Baggage allowed for each adult Emigrant in as much as will measure 20 cubic feet, and not exceed half a ton weight. It should be divided as far as possible into 2 or 3 boxes of not more than 24 or 3 feet long, by about 20 inches wide and 18 inches high. People should not crowd the ship with Boxes only half filled, and must pack their effects close.

19. Only the luggage really belonging to each family of passengers is intended to be taken under the foregoing allowance. If anyone should attempt to impose on the Commissioners by letting the baggage of other persons, not members of his family, go under his name, he will forfeit his passage, and not be suffered to proceed.

20. Letters and applications should be addressed, Post Paid, to Stephen Walcott, Esquire, Secretary to the Board of Emigration, No. 9, Park Street, Westminster.

By Order of the Board,

STEPHEN WALCOTT,
Secretary.

[A form for applicants, proposed for a free passage to Port Phillip or Sydney, was attached to this notice.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 101, per ship Sarah Elizabeth; acknowledged by lord John Russell, 17th February, 1841.)

My Lord,

Government House, 5th Aug., 1840.

The letter, which I herewith enclose, has been addressed to Her Most Gracious Majesty by the Revd. Thos. Heath, a Missionary of the London Society now in Sydney, being intended to accompany a Box of Curiosities from the South Sea Islands, which Mr. Heath is desirous to present to Her Majesty; and I should explain to Your Lordship that this humble mark of respect is tendered to Her Majesty by Mr. Heath and his fellow Missionaries in testimony of their gratitude for the assistance, which they recently received from Capt'n Croker and the Officers and Crew of Her Majesty's Ship "Favorite" in recovering the remains of the late Head of their Mission, the Revd. John Williams, who was barbarously murdered at the Island of Erumango, * in the month of Nov., 1839.

Trusting that this humble mark of their gratitude and duty may not be unacceptable to Her Majesty, and unwilling to deprive them of the satisfaction of tendering it, I have caused the Box, which contains their offerings, to be consigned to Mr. Barnard, and shipped in a vessel shortly about to sail from this Port.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

REVEREND THOMAS HEATH TO HER MAJESTY THE QUEEN.

May it please your Majesty,

I am employed as a Christian Missionary in the Navigators' Islands, South Pacific, under the auspices of the London Missionary

* Marginal note.—Lat. 19° S., Long. 169° E.
GIPPS TO RUSSELL.

Society. In consequence of the melancholy murder of our late fellow labourer, the Rev. Jno. Williams, author of "Missionary Enterprises," I have been deputed to visit the New Hebrides and New Caledonia for the purpose of furthering the objects of our Society. During our voyage, I had opportunities of collecting various curiosities illustrative of the manners of the several people visited. On my arrival at Sydney, I had the honor of an interview with His Excellency Sir George Gipps, the Governor, on which occasion I took the liberty of enquiring whether he thought a selection from the curiosities referred to would gratify your Majesty, and he expressed himself of opinion that they would.

I therefore take the liberty of leaving with him, for your Majesty, the articles specified in the inclosed list. They are of no intrinsic value, but they are illustrative of the condition and manner of several tribes, in whom, since the days of Captain Cook, the British public has taken great interest, and who are becoming now still more interesting from the fact that Christianity and its handmaid civilization are happily making progress among them.

I have no doubt that it will be gratifying to your Majesty to know that British blessings are in the course of being widely extended at her antipodes.

The result of Missionary operations in the Navigator Islands, which were commenced in 1830, has been the conversion of nearly 40,000 of them from heathenism. Some of the females there have assumed, and take pride in being called by, your Majesty's name; and by multitudes there Britain is regarded with mingled wonder, respect and gratitude.

I have, &c.,

THOMAS HEATH.

At Sydney, New South Wales, 7th July, 1840.

[Sub-enclosure.]

List of Articles for Her Majesty the Queen, referred to in the Accompanying Letter.

A wooden image, being one of the Penates of a Chief's family, Navigators' Islands.

Specimen of native earthenware from the Fiji Islands.

Spears from New Caledonia, New Hebrides, and Navigators' Islands.

Various clubs from the same Islands (the hawkbill-shaped ones are from the Isle of Pines and New Caledonia).

Bow and arrows from Erumanga, New Hebrides.

Fine mats, Navigators' Islands.

Coarse Do. and Native Cloth Do.

Tortoise Shell bonnet from Do.

Various combs—chief's hair, female girdles (their only dresses), Nets, string, etc., etc., from the several islands above mentioned.

Specimens of the productions of the Mission Press.

Tobacco Pipe and stone hatchet, the latter from New Caledonia.

Shaggy Mat, Navigators' Islands, female dress.

Native plane or wood-smootheener, Navigators' Islands.

Shells.

* Note 143.
SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 102, per ship Sarah Elizabeth.)

My Lord,

On the 4th April last, it was my painful duty to transmit to Your Lordship with my Despatch No. 54, a copy of a letter from Lieutt. Governor Hobson, detailing the particulars of a conversation which had passed between Capt'n. Nias and himself; and, in the concluding paragraph of my Despatch, I stated that, in consequence of the necessity which then existed for bringing Lieutt. Governor Hobson and Capt'n. Nias again into communication, I had not shewn the Lieutt. Governor's letter to Capt'n. Nias. I have now to report to Your Lordship that Capt'n. Nias having returned to Sydney in the "Herald," as stated in my Despatch of the 24th July last, No. 91, I have considered it right to give him a copy of the documents transmitted with my Despatch, No. 54, and I enclose a Copy of a letter from Capt'n. Nias to myself, acknowledging the receipt of the same.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[A copy of this letter is not available.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 122, per ship Lady McNaghten.)

Sir,

I have received and laid before the Queen your Dispatch No. 17 of the 10th of February last, transmitting for the Royal Allowance an Act No. 9 passed by the Legislative Council of New South Wales "to consolidate and amend the Laws for the Distillation of Spirits in the Colony, and for repealing certain Laws relating thereto."

Her Majesty has been graciously pleased to confirm and allow that Act.

I am, &c.,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 123, per ship Lady McNaghten; acknowledged by Sir George Gipps, 5th February, 1841.)

Sir,

I have the honor to acquaint you that the Lords Commissioners of the Treasury have apprized me that they have authorized an advance of One thousand, Five hundred and forty six
RUSSELL TO GIPPS.

pounds, 17s. 6d. to be made to Mr. Barnard, the Agent General
for New South Wales, on account of that Government; and I
have to request that you will take measures for causing the re-
payment of that amount into the Military Chest of the Colony.

I am, &c.,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 124, per ship Lady McNaghten; acknowledged by
Sir George Gipps, 24th September, 1841.)

Sir,
Downing Street, 8 August, 1840.

I referred for the consideration of the Lords Commiss-
ioners of the Treasury your Dispatch No. 4 of the 8th of Janu-
ary last, transmitting an explanation by the Auditor of New
South Wales of the delays in the transmission of the Accounts
of the Colony, complained of by the Commissioners of Audit,
and also inclosing a Copy of a letter from the Acting Colonial
Treasurer containing further information respecting the forgery
committed on the Colonial Treasury in the Year 1837.

You will perceive from the accompanying letter from the Sec-
retary to the Board of Treasury that their Lordships concur in
the suggestions submitted to you by the Colonial Auditor with
reference to the duty of arranging, numbering, and endorsing
the Treasurer's Accounts and Vouchers before those Accounts
are delivered to the Auditor. You will, therefore, issue the
necessary orders in that respect. And you will furnish a report
in detail at an early period on the other suggestions of the local
Auditor.

With regard to the fraud committed on the Colonial Treasury
in the year 1837, you will perceive that the Lords Commissioners
have authorized the removal of the whole of the surcharge which
remained against the Treasurer on that Account.

I am, &c.,

J. RUSSELL.

[Enclosure.]

MR. C. E. TREVELYAN TO UNDER SECRETARY STEPHEN.

Sir,
Treasury Chambers, 5th August, 1840.

With reference to your letter of the 17th of June last and
to the despatch from the Governor of New South Wales, and the
other documents therein enclosed, relating to the delay, which had
occurred in the transmission of the accounts of that Colony, and to
the Forgery on the Colonial Treasury: I have it in command from
the Lords of H.M.'s Treasury to request you will state to Lord
John Russell that, altho' the explanations respecting the non-trans-
mision of the accounts, and the neglect to attend to the requisi-
tions and queries of the Commissioners of Audit, which were con-
tained in the Statement addressed by the local auditor to the

1840.
7 Aug.

8 Aug.
Reference of
reports to
treasury.

Approval of
proposals re
treasurer's
accounts and
vouchers.

Report
required.

Removal of
surcharge
against
treasurer.

Criticism of
explanations.
Colonial Secretary on the 31st December last, do not appear to be in all respects satisfactory. My Lords abstain at present from suggesting any additional Instructions to the Governor on the subject in the explanation that the communication, which has been made to him in consequence of the letter addressed to you from this Board on the 23rd December last, may elicit some further, and more satisfactory information than that now furnished.

At the same time I have to request you will further state to Lord John Russell that it appears, from the Statement of the local auditor above alluded to, that he had submitted various suggestions to the Governor with the view of expediting the transaction of the business of his department; that my Lords entirely concur in the suggestion, which has reference to the duty of arranging, numbering, and endorsing the Treasurer's accounts and Vouchers, which should be performed in the Treasurer's Office before the Accounts are delivered to the Auditor, and that my Lords have therefore to request that Lord John Russell will instruct the Governor to issue the necessary orders in that respect, and that the attention of Sir George Gipps may also be called to the other suggestions upon which his report in detail should be required.

I have further to transmit to you Extract of the Report of the Commrs. of Audit of 9th Ulto. relating to the Forgery, by which the Colonial Treasury was defrauded of a Sum of £159 in the year 1837, and to request you will express to Lord John Russell the concurrence of my Lords in the opinion therein submitted in regard to the responsibility of the Treasurer; but, at the same time, that you will acquaint his Lordship that, on adverting to the considerations suggested by the Commrs. of Audit as well as to the further information respecting the proceedings adopted by the Treasurer for the detection of the perpetration of the Fraud which has now been furnished, my Lords have felt warranted in authorizing the removal of the whole of the surcharge which remained against the Treasurer on this account.

C. E. TREVELYAN.

[Sub-enclosure.]

Extract of a report from the Commissioners of Audit, dated 9 July, 1840.

"With respect to the Forgery in 1837, by which the Colonial Government was defrauded of £159, we do not see any sufficient reason, after due consideration of the arguments contained in Mr. Campbell and Mr. Lithgow's letters, to alter the opinion we have already so fully expressed in our reports to your Lordships, dated 10 Jany., 1839 (No. 24), and 11th March, 1840 (No. 144), vizt., that it was never intended that the Treasurer should be relieved from all responsibility, as to the production of proper and authentic documents in support of payments claimed in his Accounts, altho' the duty was also imposed on the Auditor, under the 9th Article of his instructions, of seeing that the necessary documents were properly executed before payment was made. The responsibility was in our opinion a concurrent responsibility intended merely as an additional safeguard to the Public, and the Auditors' preliminary check could not, we think, be justly considered as exonerating the Treasurer from the ordinary duty of ascertaining the correctness of his own Vouchers."
GIPPS TO RUSSELL. 753

"There is, however, one circumstance now stated by Mr. Lithgow, which may perhaps induce your Lordship finally to relieve Mr. Riddell from the disallowance of the one half of the amount of the fraud, which we have been directed to make by your Lordships' minute of 2d June last, transmitted to us in Mr. Trevelyan's letter, dated 18 June, namely, that it is the only loss from forgery sus- 

 LORD JOHN RUSSELL TO SIR GEORGE GIPPS.  13   Aug. 840.

(Sign Post No. 125, per ship Lady McNaghten.)

Sir, Downing Street, 8 August, 1840.

I have the honor to acknowledge the receipt of your Dis- 

patch No. 27 of the 24th of February last reporting the depar- 

ture of Captain Maconochie for Norfolk Island, and notifying 

the appointments which you had made of Subordinate officers 

for the Convict Establishment there.

I have to convey to you the approval of H.M. Govt. of the 

appointments and arrangements as reported in your Dispatch.  

I am, &c.,  

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.  10 Aug.

(Sign Post No. 126, per ship Lady McNaghten.)

Sir, Downing Street, 10 August, 1840.

I have received your Dispatch No. 180 of the 23rd of 

December last, inclosing a Report on the claims of Messrs. 

Fairlie and Co. against the Government of New South Wales; 

and I have to express my concurrence in the opinion expressed 

in that Report in regard to the claim, and in the arguments by 

which that opinion is supported.  

I am, &c.,  

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.  10 Aug.

(Despatch No. 105, per ship Sarah Elizabeth; acknowledged by 

lord John Russell, 17th January, 1841.)

My Lord, Government House, 10th Augt., 1840.

I have had the honor to receive Your Lordship's Despatch 

No. 33, of the 23rd March, 1840, on the subject of the delay in 

transmitting from this Colony the Annual Blue Books; and in 

reply, I beg leave to report to Your Lordship that, finding every 

exertion which I have hitherto used ineffectual to expedite the 

returns from the different Heads of Departments, which are
Salaries to be withheld.

required for the compilation of this Book, I have this day given an order that no salary shall be issued to any person whomsoever, from whom returns for the Blue Book may be due on the 1st of March in every year.

I have, &c.,
Geo. Gipps.

Confirmation and allowance of acts of council.

Lord John Russell to Sir George Gipps.
(Despatch No. 127, per ship Lady McNaghten.)

Sir,

Downing Street, 11 Augt., 1840.

I have received your dispatch No. 16 of the 10th of Febry. last, transmitting for the Royal Allowance 24 Acts which were passed by the Legislative Council during the Session of 1839.

A schedule of their Numbers and Titles is annexed to this Dispatch.

Her Majesty has been graciously pleased to confirm and allow the following Acts:—

No. 1, “to remove doubts concerning the validity of certain Grants of Land.”

No. 2, “to enable the Wesleyan Methodists to appoint Trustees for Chapels built before the year 1836.”

No. 4, “to render references to arbitration more effectual.”

No. 5, “for adopting a certain Act of Parliament intitled ‘An Act for the amendment of the Laws, with respect to wills in the administration of justice in New South Wales, in like manner as other Laws of England are applied therein.’”

No. 10, “to alter and improve the mode of electing a Chairman for Courts of General and Quarter Sessions.”

No. 11, “to make further regulation with respect to trial by Jury in Criminal Issues and to amend the form of proceeding in Criminal prosecutions.”

No. 13, “to amend an Act for consolidating and amending the Laws relating to the Licensing of Public Houses.”

No. 14, “further to amend an Act for regulating Building and Party Walls, and for preventing mischief by fire in the Town of Sydney.”

No. 17, “to provide for Trial by Jury at Courts of Quarter Sessions to be held at Berrima.”

No. 19, “to authorise the establishment of Markets in certain Towns, and for the appointment of Commissioners to manage the same.”

No. 20, “to enable the Church Wardens of the Church of St. James in Sydney to build a new side wall thereto”; and

No. 21, “to make good certain contracts entered or to be entered into by certain Banking and other Co-partnerships.”
The Act No. 3, "to repeal an Act relating to the Revenue of Customs," and the Act No. 9, "to consolidate and amend the Laws for the Distillation of Spirits and for the issue of Licenses for Distilling, Rectifying and compounding Spirits and for repealing certain Laws relating thereto" have been referred for the consideration of the Lords Commissioners of the Treasury.

The Act No. 6 "to establish Courts of Requests at Melbourne and Port Macquarie," a Copy of which accompanied your Dispatch No. 133 of the 3d Octr. last, has already been disposed of by my dispatch No. 50 of the 28th of April last.

I have referred for the opinion of The Queen's Advocate the Acts No. 7 "to remove doubts as to the validity of certain Marriages by Wesleyan Methodist Ministers," and No. 23 "for the better ensuring the Registration of Marriages, Baptisms and Burials."

The Acts No. 12, "to consolidate and amend the Laws relating to the Savings Bank," and No. 22 "to abolish the Transportation of Female Convicts," have been referred for the consideration of the Secretary of State for the Home Department.

I have referred for the opinion of the Law officers of the Crown the Acts No. 15 "for abolishing arrest on Mesne process in Civil actions, except in certain cases," and No. 18 "for extending the remedies of creditors against the property of Debtors."

The Appropriation Act No. 24, a Copy of which was transmitted with your Dispatch No. 162 of the 2d of Decr. last has been recommended to the Lords Commissioners of the Treasury for confirmation, as you have already been informed by my Dispatch No. 88 of the 28 of June.

Her Majesty has been pleased to disallow the Act No. 8 "to amend an Act for registering Deeds and Conveyances and for other purposes, and to prevent Convicts under sentence from working as Conveyancers."

This Act is plainly unobjectionable as far as regards the main design of it; but the last Clause denounces the punishment of working in Chains against any convict who shall draw any Instrument or Will relating to any Property in the Colony. That punishment is much too severe for that which is in itself no offence, altho' it might be wise to prohibit such a practice and to declare all such Wills void, until they have been shewn to have been prepared with the full knowledge and consent of the Testator.
1840.
11 Aug.
Disallowance of act for admission of evidence of aborigines.

The Act No. 16 "to allow the Aboriginal Natives of New South Wales to be received as Competent Witnesses in Criminal cases" is also disallowed.

Having referred that Act for the consideration of the Attorney and Solicitor General, I enclose a Copy of their Report which will shew the motives by which I was induced to advise Her Majesty to disallow that Act.

J. RUSSELL.

[Enclosure No. 1.]

THE ATTORNEY AND SOLICITOR GENERAL TO LORD JOHN RUSSELL.

My Lord, Temple, 27th July, 1840.

Having duly considered the Act passed by the Legislative Council of New South Wales "To allow the Aboriginal Natives of New South Wales to be received as competent witnesses in Criminal Cases," transmitted to us by your Lordship's directions, we have to report to your Lordship that in our opinion it cannot properly be submitted to The Queen for confirmation.

To admit in a Criminal case the evidence of a witness acknowledged to be ignorant of the existence of a God or a future state would be contrary to the principles of British jurisprudence; and the Act is loosely worded with respect to the admission of such evidence and the weight to be given to it that we do not think it could be attended with any advantage.

We should have supposed that the Aboriginal Natives might have been sufficiently instructed before being produced as witnesses to render their evidence admissible according to the established rules of Law, which do not define the distinctness of Religious ideas or to what degree the belief in a future state is to be fixed to qualify a witness to take an Oath.

We have, &c,

J. CAMPBELL.

THOS. WILDE.

[Enclosure No. 2.]

[In this schedule the titles of the acts of council, 3 Vict., Nos. 1 to 24, were enumerated.]

12 Aug.

Returns required by house of commons.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(A circular despatch, received* 11th March, 1841; acknowledged by Sir George Gipps, 5th August, 1841.)

Sir, Downing Street, 12th August, 1840.

I have the honor to transmit to you herewith the copy of an Address of the House of Commons calling for Returns relative to the Clergy in the British Colonies receiving any Grants of Public Money, and I have to desire that you will lose no time in causing the Returns required by the Address to be prepared and transmitted to me according to the enclosed Forms, in order that they may be laid before the House of Commons.

I have, &c,

J. RUSSELL.

* Note 128.
Resolved, Martis, 14° die Aprilis, 1840.

That an humble Address be presented to Her Majesty that she will be graciously pleased to give directions that there be laid before this House Returns of the number of Roman Catholic Bishops or Priests receiving any Grants of Public Money in the British Colonies, and the total amount of those Grants, the dates from which those Grants severally commenced, and the authorities under which they were granted.

Of all the Grants or Loans of Public Buildings or Public Lands in the Colonies to Roman Catholic Bishops or Priests, stating in each case, the extent of the Lands so granted or lent and their present application, and the public use to which those Buildings or Lands so granted or lent were before applied, with the dates respectively of such Grants or Loans.

Of the Persons who have applied to Parliament for such Grants or Loans.

Similar Returns with regard to all classes of Protestant Clergy-men, Ministers, Preachers, Elders and Trustees for any religious or charitable purposes.

And also, a Return of the numbers of Congregations of each denomination of Christians in each of the British Colonies.

Ordered, that the said Address be presented to Her Majesty by such Members of this House as are of Her Majesty's Most Honorable Privy Council.

Sir George Gipps to Lord John Russell.

My Lord,

Government House, 15th Augt., 1840.

I have had the honor to receive Your Lordship's Despatch of the 21st of March, 1840, No. 32, containing a Copy of a letter from Sir W. Somerville, respecting certain property supposed to have been left in New South Wales by a man named Hugh Corrigan; on which subject, I beg leave to report that I have already fully investigated the claim preferred by the relatives of Hugh Corrigan, and caused them to be informed of the result, as will be seen by the documents of which I enclose Copies.

I regret that Mrs. Corrigan should have been led, by the mistake of Mr. Manning, to suppose that property to the amount of £200 had been left by her deceased husband; but I am satisfied that it was a mistake, and moreover it is clear that Hugh Corrigan could have had no legal claim to the property of his
1840.
15 Aug.

HISTORICAL RECORDS OF AUSTRALIA.

reputed Wife, Elizabeth Noble, his former and lawful Wife, the
present claimant, Mrs. Corrigan being alive at the time of
Elizabeth Noble's death. I have, &c.,

GEO. GIPPS

[Enclosure.]

MR. H. W. PARKER TO MR. NATHANIEL HILL.

Sir, Government House, Sydney, 20 May, 1840.

In reply to your letter of the 27th Decr., 1839, I am directed
by Sir George Gipps to enclose to you a communication respecting
the Estate of the late Hugh Corrigan, which has been received by
His Excellency from the Registrar of the Supreme Court of this
Colony, dated the 19th of the present month.

I have, &c,

HT. WATSON PARKER, Private Secy.

[Sub-enclosure.]

MR. J. E. MANNING TO MR. H. W. PARKER.

Sir, Supreme Court, 19th May, 1840.

Referring to documents connected with the Estate of the
late Hugh Corrigan, in consequence of a recent application made
to His Excellency by Nathaniel Hill, a male Relative of Deceased.
I find that very shortly after the death of Corrigan, having reason
to suppose there might be near £200 receivable by his next of Kin
in Ireland after payment of his Debts, I wrote to them to recom­
mend them being represented here, and thus unfortunately raised
hopes which after results have disappointed. I find that at the
Settlement of my Intestate Estate Accounts with Mr. Justice Burton
in 1838, there was really a Balance of £1 7s. 3d. and no more. I
should, however, observe that the Balance was reduced to this
Small Sum from a larger Original One by my having transferred
from this Estate to the Credit of that of the Widow, Elizabeth
Noble, a Sum of £50 towards Satisfaction of £300, which I received
in July, 1834, from Mr. Macdonald of Pitt Town, and which formed
above 3/4ths of all the Assets of Hugh Corrigan administered by me,
as the price of a Town property contracted to be sold to him by
Corrigan in his life time as his own in right of this Mrs. Noble
with whom he intermarried. It was afterwards, however, that he
had no Such Marital rights inasmuch as he had a former Wife Mary
Ann Corrigan then, and Still living at Prives Town, County of
Lowth. The discovery of the Invalidity of this Marriage was not
made by me until after I had distributed nearly all the Assets
under the Order of Court among the Creditors of Hugh Corrigan.
I have Subsequently also been assured that Corrigan him­self
died a prisoner of the Crown, and as such could hold no property.
Any that he possessed in his own right would devolve to the Crown,
and not to his next of kind. I apprehend however that the £50,
and the trifling Balance of £1 7s. 3d. now in my hands both equally
belong of right to the representatives of Mrs. Noble as Creditors
of Hugh Corrigan, as Cestui que trusts, to whom his Estate is
accountable for the proceed of her property received by him or
by myself under the Order of Court and acting as Administrator
of Corrigan's Estate in the belief that the funds of right belonged
to him.

I have, &c.,

J. E. MANNING, Regr., S.C.
Sir George Gipps to Lord John Russell.

(My Lord, Government House, 16th Augt., 1840.

I have the honor to forward herewith two Acts of the Legislative Council of this Colony relating to New Zealand, and respectfully to request Her Majesty's Gracious allowance of the same.

The first entitled "An Act to declare that the Laws of New South Wales extend to Her Majesty's Dominions in the Islands of New Zealand, and to apply the same, so far as applicable, in the administration of justice therein; and to indemnify certain officers for acts already done," is merely, as its Title implies, a declaratory act to remove all doubts of the Laws of New South Wales being in force in New Zealand.

The second, entitled "An Act to empower the Governor of New South Wales to appoint Commissioners with certain powers to examine into and report on claims to Grants of Land in New Zealand," has been passed in pursuance of the instructions conveyed to me in Lord Normanby's Despatch, No. 118, of the 15th Augt., 1839.

Your Lordship will observe that the Commissioners, to be appointed under this act, are empowered and directed in every case to enquire strictly into all the circumstances under which the Land was acquired, or alleged to have been acquired, by the claimant from the Natives; and that a mode is devised, by the help of a Schedule marked D, for exhibiting a comparative statement of each individual's equitable claim, founded on the two considerations, of the time when the land was acquired, and the price paid for it. The result so obtained is not however to be definite in settling the number of acres to be allowed to any claimant; it is only to serve as one element among many for the guidance of the Commissioners and the Government.

The Act further provides that the Commissioners are in no case to recommend a larger grant to any individual than 2,560 acres; though this of course cannot limit Her Majesty's Prerogative of granting more, should circumstances in any case require it. I thought it of importance to introduce the restriction into the Act, if only to serve as a sort of index of the intentions of Government.

The number 2,560 was adopted solely because it was the Maximum Grant, which the Governor of New South Wales was empowered to make prior to the introduction of the system of selling Land in 1831.)
Your Lordship is, I dare say, aware that there are persons who claim hundreds of thousands and even millions of acres in New Zealand.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[These were copies of the Acts of Council, 3 Vict., No. 28, and 4 Vict. No. 7.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

My Lord,

Government House, 16th August, 1840.

Having, in my Despatch of this day's date No. 110, forwarded to Your Lordship an Act passed by the Legislative Council of this Colony to facilitate the settlement of claims to grants of land in New Zealand, I think it proper to explain in a separate Despatch some of the circumstances, which have attended the passing of this Act through the Council.

In prior Despatches, I have informed Your Lordship that speculations in land in New Zealand have been carried to a great extent, during the last few years, by persons either resident in New South Wales, or resorting from thence to New Zealand, which speculations or purchases were carried on even after the issue of the Proclamations, of which Copies were forwarded with My Despatch No. 13 of the 9th Feb'y., 1840.

The declared intention of Government to enquire into Titles of Land, and to disallow all exorbitant claims, occasioned much dissatisfaction among those purchasers or speculators; and, when the Act for appointing the Commission to enquire into the claims was brought forward by me in Council, it was loudly denounced by the parties interested as illegal and unjust. Petitions praying to be heard against the Bill were presented from various individuals; and the prayer of these Petitions being acceded to, five different individuals were admitted to plead the cause of the Petitioners before the Council. Of these five persons, three were Barristers, who appeared on behalf of the Petitioners generally; the others were Mr. Busby and Mr. Wentworth, who were heard on their own account. Mr. Busby, the late Resident, claimed somewhat more than 50,000 acres of land, besides a Township or site of a Town in the Bay of Islands, which he valued at £30,000. Mr. Wentworth claimed about 100,000 acres in the Northern Island, and about twenty Millions of acres in the Middle Island, being as he stated, the whole of
that Island with the exception of about three millions of acres, which belonged he said to prior purchasers.

Two entire days were devoted by the Council to the hearing of these gentlemen; their arguments however had not the effect of preventing the passing of the Bill in the shape in which I have submitted it for the approval of Her Majesty.

I have, &c.,
GEO. GIPPS.

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SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch marked “Separate No. 2,” per ship Sarah Elizabeth; acknowledged by lord John Russell, 15th January, 1841.)

My Lord,

Government House, 16th Augt., 1840.

There is yet a transaction connected with the passing of the New Zealand Land Commissioners Act, transmitted with my Despatch of this day's date No. 110, which I feel it my duty to report to Your Lordship, especially as, in consequence of the part which Mr. Wentworth took in it, I would desire to withdraw the recommendation of Mr. Wentworth for a seat in the Legislative Council of this Colony, contained in my Despatch of the 3rd April, 1839, No. 63.

In the month of Feby. last, seven Chiefs from the Middle Island* of New Zealand happening to be in Sydney, it was suggested to me by the persons, who brought them here, and under whose protection they were living, that they should be invited to sign a Declaration of willingness to receive Her Majesty as their Sovereign, similar in effect to the Declaration which Captn. Hobson was then engaged in obtaining from the Chiefs of the Northern Island.

The Chiefs in question of the Middle Island were accordingly brought to the Government House, and, through the Medium of an Interpreter, the nature of the document they were required to sign was fully explained to them in the presence of myself, the Colonial Secretary, and several persons who claimed to have purchased land in the Middle Island; and amongst other things, it was expressly declared to them that only such purchases of land, as should be approved by Her Majesty, would ultimately be confirmed. At the conclusion of this conference, a present of ten sovereigns was made to each of the Chiefs, and they all promised to attend on the next day but one to sign the paper, which was to be prepared for them. On the day appointed however, none of them appeared; and, in reply to a message that was sent for them, a short answer was received from one of the Englishmen, under whose protection they were, that they had

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* Note 144.
1840.
16 Aug.
Refusal due to advice of W. C. Wentworth.

Purchase of land in New Zealand by W. C. Wentworth.

Resignation of W. C. Wentworth as magistrate.

been advised to sign no treaty, which did not contain full security for the possession by the purchasers of all lands acquired from the Natives. It subsequently appeared that it was by the advice of Mr. Wentworth that they adopted this course of proceeding; and Mr. Wentworth also, when before the Council, acknowledged that he not only had given this advice, but also that he had subsequently, and after the issue of my Proclamation* in conjunction with four or five persons purchased the whole of the Middle Island (or all the unsold portions of it) from these very Natives, paying them for it £200 in ready money, with a promise of a like sum per annum, as long as they should live.

Such was the origin of Mr. Wentworth's claim to twenty millions of acres in the Middle Island; and it was the legality and validity of this transaction that he appeared before the Council to defend.

In consequence of the animadversions made by me in Council on this proceeding of Mr. Wentworth, and particularly of my having said that he had in my opinion exposed himself to a prosecution for a Conspiracy, Mr. Wentworth has thought proper to resign his Commission as a Magistrate, and (to use his own expression) to separate himself entirely from any official connexion with my Government.

I have, &c.

GEO. GIPPS.

17 Aug.

Act for vesting military lands in ordnance officers.

Sir George Gipps to Lord John Russell.

(My Lord, Government House, 17th Augt., 1840.)

My Lord,

I have the honor to forward herewith An Act, passed by the Legislative Council of this Colony for vesting in the Principal Officers of Her Majesty’s Ordnance all lands now held by them for Military purposes; and in so doing, I beg to refer to the several Despatches on this subject marked in the margin.†

I beg to report to Your Lordship that, though much hostility was again manifested to this Act by the public press, it met with but little opposition in the Council, the nature of it being better understood than it was in 1838.

A Clause however was added (the 15th) at the earnest desire of some of the Members, requiring the Officers of Ordnance in the Colony to make annually to the Governor a return of all lands held under the Act, and of all rents or profits derived

* Note 90.
† Marginal note.—Sir George Gipps to Lord Glenelg: No. 150, 26th Sept., 1838; No. 151, 27th Sept., 1838; No. 152, 28th Sept., 1838. Lord Normandy to Sir George Gipps: No. 121, 21 Augt., 1839.
GIPPS TO RUSSELL.

therefrom, with a view to its being laid by the Governor before the Council. To this Clause I made no objection, and I trust it will not be considered an improper one by your Lordship.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[This was a copy of the act of council, 4 Vict., No. 2.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(My Lord, Government House, 17th Aug., 1840.)

In connexion with my Despatch of this day's date, No. 111, on the subject of the Ordnance Vesting Bill, I have the honor herewith to forward the Report of a Committee of the Legislative Council of this Colony, which was appointed to consider the proposals respecting the removal of the Barracks from George Street, Sydney, which formed the subject of my Despatch to Lord Glenelg of the 26th Sept., 1838, No. 150, and of Lord Normanby's answer to the same of the 21st Augt., 1839, No. 121, which latter covered a correspondence on the subject between Your Lordship's Under Secretary and the Secretary to the Board of Ordnance.

Your Lordship will perceive that the Committee approve of the proposal, provided the expense to be borne by the Colony do not exceed the sum of £60,000; and I beg to report to Your Lordship that I have signified to Major Barney, the Commanding Royal Engineer, that I am ready to make advances from the funds of the Colony for the erection of the New Barracks on the condition contained in the report, whenever he may think fit to commence them. The sum of £60,000 will, I believe, be sufficient to erect the Barracks, provided the work be undertaken whilst some assistance in the shape of Convict labour can be given to it; but if it be deferred until there shall be no longer any Convict labour at the disposal of this Government, the sum, to which it is proposed to limit the expenditure, may possibly be found insufficient; and moreover the fluctuations in the value of property are so great in Sydney, as well as the price of labour, that I would not on the part of the local Government desire to enter into any engagement, the execution of which is in any way unnecessarily to be deferred.

GEO. GIPPS.

[Enclosure.]

[This report, dated 16th June, 1840, was printed in the "Votes and Proceedings" of the legislative council.]
HISTORICAL RECORDS OF AUSTRALIA.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 129, received* 11th March, 1841.)

Sir,
Downing Street, 18 August, 1840.

With reference to my Dispatch No. 127 of the 11th Instant, I have the honor to acquaint you that Her Majesty has been graciously pleased to confirm and allow two Acts passed by the Legislative Council of New South Wales in the Session of 1839, entitled (No. 7), "An Act to remove doubt as to the validity of certain Marriages by Wesleyan Methodist Ministers," and (No. 23) "An Act for the better ensuring the Registration of Marriages, Baptisms and Burials."

I am, &c.,
J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 113, per ship Sarah Elizabeth; acknowledged by lord John Russell, 8th February, 1841.)

My Lord,
Government House, 18th Augt., 1840.

I have the honor to transmit herewith to Your Lordship An Act of the Legislative Council of this Colony entitled, "An Act to consolidate and amend the laws relating to Actions against persons absent from the Colony, and against persons sued as joint contractors."

I am induced to lose no time in transmitting this Act to Your Lordship, in consequence of a remonstrance against it (of which I enclose a Copy) having been addressed to me by Mr. Justice Willis, in the terms prescribed by the 9th Geo. IV, C. 83, S. 22, which remonstrance it would have been my duty to lay before the Council, had not Mr. Willis subsequently consented to withdraw it, on my assuring him that I would transmit a Copy of it to Your Lordship.

As this Act was presented by me to the Council at the express request of the Chief Justice and Mr. Justice Stephen (by the latter of whom the Bill was drawn), I considered it proper to communicate to them the contents of Mr. Justice Willis' remonstrance; and I enclose a Copy of a letter, addressed by Mr. Justice Stephen to the Chief Justice in reply to the objections of Mr. Justice Willis.

Upon the subject of this Act, I will only make the following remarks:—

The proceeding by Foreign Attachment was introduced into New South Wales by the 4th Geo. IV, C. 96, S. 11, though personal property only and not land was thereby made attachable.

By the Act however of the 54th Geo. III, C. 15, S. 4, Land was made equally liable with personal property to be taken in

* Note 128.
execution for debt; and, under such circumstances, I must say it appeared to me quite within the competency of the Local Legislature to pass an Act authorising Land to be taken under the process of attachment.

The following passage on the subject of Foreign Attachment in New South Wales is taken from the Despatch of Secretary Sir George Murray, No. 17, of the 31st July, 1828, which accompanied the present New South Wales Act 9th Geo. IV, C. 83.

"On comparing the present Act with the Statute of 1823, the first circumstance, to which your attention will probably be directed, is the omission of many topics, upon which on the former occasion Parliament thought it necessary to legislate. Of these the most important are the enactments respecting Foreign Attachment and Insolvency. It was thought that it would be at once inconvenient and useless to make any provision upon these subjects; inconvenient, because it was impossible in this Country to obtain an adequate knowledge of local circumstances, with reference to which such enactments should be framed; and useless, because the powers delegated to the local authorities are sufficiently large to enable them to regulate these matters, as they may deem most convenient."

I have, &c.,
Geo. Gipps.

[Enclosure No. 1.]

[This was a copy of the act of council, 4 Vict., No. 6.]

[Enclosure No. 2.]

Mr. Justice Willis to Sir George Gipps.

Sir, Supreme Court, Sydney, 1st August, 1840.

"The Act to consolidate and amend the laws relating to actions against persons absent from the Colony, and against persons such as joint contractors," recently transmitted to the Supreme Court, appears to me to be entirely repugnant to the laws of England and my opinion is founded on the following grounds, viz.:—

The law of England does not, generally speaking, authorise a creditor to resort to the property of his debtor in satisfaction of his demand until he has established its legality by proper evidence in some Court of Justice, i.e., until he has brought his action and obtained final judgment therein.

To effect this, it is necessary that the debtor should be present in Court, either by attorney duly authorised by him or in propria persona, it being a maxim of the English law "that a man shall be heard before he is condemned." Woolsey Doct. and Pr. Lord Mayor's Court ch. 1st.

The law of England as consolidated and improved in these respects by Stat. 2 Wm. IV, c. 39 (amended by 3 and 4 Wm. IV, c. 67, and some of its provisions extended by the Act of 4 and
5 Wm. IV, c. 82), provides one uniform process by writ of "distri­

blingas" for enforcing appearance in case the defendant cannot be

served with the writ of summons; and, if the return to the dis­

tringas be "non est inventus," or nulla bona, an appearance may be

entered for him, and the Act likewise prescribes the course of
proceeding to outlawry. I need not detail the proceedings under
the special writ of "capias utlagatum" how they affect the pro-

perty of the absent defendant, or the steps to be taken by the
plaintiff to avail himself of it in satisfaction of his debt. They
are clearly pointed out by the legal authorities on the subject, and
are altogether repugnant to the proceedings prescribed by the pre-

sent Act. It is true that the proceedings by foreign attachment
(which are only authorised by peculiar local custom) are not in
accordance with the general law of England, but the present Act
of Council is also repugnant to the doctrine and practice of attach-
ment in the Lord Mayor's Court of London, where it principally, if
not indeed solely, exists. Thus, for instance, with regard to the
property attachable, it is limited to all debts, goods and effects for
which by the custom (of London) debt or detinue will lie, or for
which an action of assumpsit, trover, debt, or detinue may be
brought in the Courts above. Rent is not attachable, nor in general
any such debts or other property for the recovery whereof an action
at law will not lie, but wherein recourse must be had to the Courts
of Equity or the Ecclesiastical Courts (See Woolsey's Doct. and Pr.
in the Mayor's Court pp. 43 and 45). Yet the present Act of Coun-
cil, in direct opposition both to the general law of England and the
proceedings by foreign attachment according to custom in England,
embraces "lands and hereditaments to which the absent defendant
is legally or equitably entitled or otherwise beneficially interested
in." I forbear troubling your Excellency with further details, trust-
ing that I have already pointed out sufficient manifest repugnancy
to the laws of England in this very extraordinary enactment.

I have, &c.,
JOHN WALPOLE WILLIS.

[Enclosure No. 3.]

MR. JUSTICE STEPHEN TO SIR JAMES DOWLING.

My Dear Chief Justice,
3d August, 1840.

I am obliged by your allowing me the perusal of Mr. Justice
Willis's Representation against the "Absent Defendants Act" just
passed. I could have wished that the objection, made by him to this
highly useful Act, had been mentioned to myself, and at an earlier
period. I certainly took every pains to elicit opinions on the
Draft; and, for this purpose, early in April, I sent Mr. Willis a copy
of my Letter to the Governor, explaining its intended provisions.
But I only mention this to explain that I have done what I could
to avoid a collision of opinion between us.

The first or only question, which presents itself on our Colleague's
representation, is this. In the event of a Debtor's absconding,
shall his landed property be (practically) exempt from liability to
meet his debts? Under the old Law, if all the Debtor's property
were in Land, the Creditor had no remedy. If it were under mort-
gage, it is difficult to say that even a prior Judgment Creditor
would have had a remedy. The Creditors at large would, certainly,
have none.
It seems to me that this point embraces the whole of Mr. Willis's observations. For, as to the English Writs of "Distringas," and "Capias utlagatum," I cannot discover what his remarks on these amount to, except as introductory to his main (or sole) objection, that the Act extends to land. It is possible that process of outlawry, and therefore the "Capias Utlagatum" Writ, might advantageously be introduced here. I need only say, that it has not been and that the Law of Foreign Attachment has, for many years, been Substituted for it. And the only question for discussion is, shall that Process merely touch goods?

It is broadly said that to make it extend to Land is "manifestly repugnant" to English Law. Why is it so? Is every instance of mere non-identity with English Law, a repugnancy to that Law? It requires surely no argument to shew that a Colonial Enactment may be quite unlike, and yet not be repugnant to English Law. Every Colonial Statute Book has a hundred instances to prove this. If it could be shewn that any principle of Justice is violated, or any fixed principle of English Law of universal application, the case would be very different. But, before we determine that there is any such violation, let us look at the enactment.

A Debtor absconds, heavily in debt. His debts have been contracted in this Colony (for the Act extends to no other) and he can be nowhere found. This Act proposes that the Creditors shall thereupon have the power, on certain conditions, to attach summarily all the Debtor's goods, credits, and landed property, or so much as may be sufficient to satisfy the claim or claims against him. These conditions are most cautiously framed, so as to protect the Absentee. First, the Creditor must prove his case, as he would, were the Debtor present. Secondly, he must advertise his Proceeding, that the absent man, or his Friends, may have full opportunity of coming in to defend. Thirdly, he must give ample security to return the amount recovered by him, in case the Debtor should afterwards disprove the claim.

It is admitted that all this is unobjectionable, except as to the taking of Lands. It seems admitted, further, that it would be unobjectionable to take Lands; provided only that this were done under another more cumbersome Process. But, if the thing may be done at all, why it should not be equally done by the Process of Foreign Attachment, I am at a loss to understand.

The practice in the Mayor's Court of London (whence we borrow this unmeaning term) or in the Tolsey Court of Bristol (where the same custom exists) affords no arguments on this question. They are inferior Courts. Our's is the Supreme Tribunal of the Colony. A power over Lands could not safely be entrusted to a Court of the former description. But there is such a power vested in the Supreme Court of New South Wales by express act of Parliament. This, alone, if there were no other, would form a complete answer to Mr. Justice Willis's Representation. In England, there is no Process, even in the Superior Courts, for seizing and selling Land. But in these Colonies, as in the West Indies, Lands may, by Act of Parliament, be taken under a common Writ of Fieri Facias, and sold just as goods may be. What repugnancy, then, can there be in allowing the two species of property to be both alike taken under a Foreign Attachment? issued as that Writ is proposed to be here?
Such a provision, for the Mayor's Court of London, would have been incongruous and extraordinary. In this Colony, under the control of the Supreme Court, it seems to me quite consistent and natural. And, unquestionably, such a provision is highly expedient, if not absolutely necessary, in a Country where Landed possessions are almost universal, and form so valuable a part of property with all classes.

Lastly, I cannot think that this Act, in the part represented against, is repugnant to the Laws of England, when I bear in mind that, at my instance, the same Provision was passed in Van Diemen's Land in the "Absent Defendants Act" of that Colony, in 1834; that it forms too prominent a feature in that Law to justify the supposition that it was overlooked; that the Chief Justice there, Sir John Pedder, though a strenuous objector to innovations, never protested against it; that neither did Mr. Justice Montagu, though a jealous observer of my proceedings on such subjects; and that it has been confirmed at Home, and been for six years the Law of the Sister Colony, without (so far as I remember) one difficulty having ever arisen on it.

As the provision in question is an important one, I would respectfully request that a copy of this Letter, through His Excellency the Governor, may be communicated to The Right Honorable The Secretary of State. The objection, which has been made, should not be considered without its answer. For myself, I need hardly remind you that nothing led me to interfere, in framing this Act, but the numerous defects and difficulties, which we all found to exist under the old Law. And, in offering my services as a practical man in removing them, I sought not only your sanction, but also that of my other Colleague. I have however no interest in the matter; and, beyond my desire that the Act may be understood, I have scarcely a wish on the subject. I am, &c.

ALFRED STEPHEN.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

19th August, 1840.

Sir,

I transmit to you, herewith, a copy of a Communication of memorandum which I have received from Major Macarthur, with a copy of a Memorandum on the subject of the recent Instructions relative to the Sale of Lands in New South Wales.

Major Macarthur has been informed that these Papers would be sent to you for any observations, which you might have to make on the objections raised to parts of these Instructions.

I am, &c,

J. RUSSELL.

[Enclosure No. 1.]

MAJOR MACARTHUR TO UNDER SECRETARY VERNON SMITH.

Major Macarthur presents his Compliments to Mr. Vernon Smith and begs to transmit to him a Copy of a Paper, delivered to Lord John Russell a few days since on the subject of the Partition of the Territory of N. S. Wales into Districts for purposes connected with the Sale of Land in that Colony.
Major Macarthur would be obliged if Mr. Vernon Smith would remind Lord John of it, and impress upon his Lordship that it would tend to allay extreme anxiety respecting these "Instructions," if Lord John would cause it to be signified to Major M. or in any other mode that may obtain publicity, that these "Instructions" were not to be carried into full effect until Sir George Gipps had an opportunity of reporting upon them.

16 Carlton House Terrace, 12 August, 1840.

[Enclosure No. 2.]

Copy of a Memorandum (almost verbatim) respecting "Instructions under the Royal Sign Manual and Signet, Addressed to Sir George Gipps, the Governor of New South Wales, dated 23rd May, 1840."

The following observations are presented to Lord John Russell, not on behalf of an individual, but on that of an entire Colony.

It is evident that the proposed partition of the territory of New South Wales into three divisions, for purposes connected with the sale of land,* has been made in ignorance of the localities, and without sufficient practical information; that, in truth, the best reason that could now be assigned for giving a character of permanency to limits, which are thus rendered the boundaries of the "Middle or Sydney District," is that the more recent the Map of Australia, the more glowing the tints of the London topographer by which those limits are defined; although it is notorious that the Colony now extends far beyond the confines of the nineteen counties which they are made to describe.

These boundaries were mere temporary limits for purposes of local regulation and arrangement, and, if fixed limits are to be established, more especially on the south, to separate the Sydney and Port Phillip Districts, such limits have been already found in those mountains, which have proved a barrier to the flocks and herds of the colonists of New South Wales, now occupying every valley accessible from the inner or northern side.

These colonists derive their supplies from towns connected with the Port of Sydney, and, so far from having any kind of relation with Port Phillip on the south, they are not only more remote from it, but separated by lofty masses of mountains, extremely difficult to traverse excepting by a circuitous route under their western extremity

* For all purposes connected with the disposal of land, it will be desirable that the present territory of New South Wales should be divided into three distinct portions or districts, which I may describe under the names of a Northern, a Middle, and a Southern District. But, being desirous to give time for some further inquiries, I suspend, for a short interval, my directions on the Northern District; merely observing that the same general principles in the disposal of land will be applicable there, as those by which I am about to announce in regard to the Southern or Port Phillip District. With this remark, I proceed to the more urgent question of separating the Southern from the Middle or Sydney District.

These two districts are to be divided by the boundaries of the two southernmost counties of New South Wales, as proclaimed by the Governor on the 14th of October, 1829, and, from the limits of these two counties, by the whole course of the river Murrumbidgee and the Murray, until it meets the eastern boundary of South Australia, which of course will constitute the limit to the westward both of the Sydney and of the Port Phillip District. Lord John Russell to Sir George Gipps, 31st May, 1840. Sessional Paper No. 559.

† Sydney and Port Phillip are by land about 500 miles apart.
The Colonists, therefore, cannot but deem it a very serious grievance that their long-established connexion with the seat of Government at Sydney should be so far disturbed that, for every purpose connected with the purchase of lands, now occupied by them under license or otherwise, they should be compelled to repair to Port Phillip, where it is provided by the present instructions "that all charts of lands shall be kept for public inspection, and that no person in New South Wales shall be entitled to purchase land within the Port Phillip District, except by payment made to the Treasurer at the town of Melbourne."

It may seem due, therefore, to the Colonists of New South Wales that they should have the advantage of a more deliberate consideration of the propositions contained in the instructions, and that, before the same shall be carried into full effect, the Governor of that Colony shall be directed to report upon them; or, should this course be deemed objectionable, that the Surveyor-General of New South Wales, now in England (unless already consulted) be directed to state to Lord John Russell, from his practical knowledge of the subject, his opinion of the proposed measure.

London, 8 August, 1840.

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SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 115, per ship Ellen.)

My Lord, Government House, 20th Augt., 1840.

I herewith have the honor to forward Copies of the Estimates for 1841, which ought to have accompanied my Despatch to Your Lordship of the 1st instant, No. 98, but which could not then be forwarded, as they were not received from the Printer.

As soon as these Estimates, and the Appropriation Act shall have passed the Council, the whole of the Financial papers of the year will be furnished in the usual manner. I have, &c., Geo. Gipps.

[Enclosure.]

[A copy of the estimates was printed in the "Votes and Proceedings" of the legislative council.]

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SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 116, per ship Ellen.)

My Lord, Government House, 21st Augt., 1840.

On the 10th June last, I reported to Your Lordship, in my Despatch No. 71, the payment to Captn. Nias, R.N., of the sum of £417 10s. for the entertainment of Captn. Hobson and suite on board Her Majesty's ship "Herald"; and I now have the honor to enclose papers relating to a further payment of £147 for the entertainment of Major Bunbury of the 80th Regt. who was embarked under the circumstances detailed in my Despatch of the 24th July last, No. 91.
Gipps to Russell.

Your Lordship will observe that it was objected by the Auditor General of this Colony that the sum only of £74 could, according to the regulations, be paid in this case, but that, on Capt'n Nias repeating that he considered himself entitled to £147, this latter amount has been paid to him, though at the same time Capt'n Nias was informed that a reference on the subject would be made to Her Majesty's Government. I have, &c.,

Geo. Gipps.

[Enclosures.]

[Copies of these papers are not available.]

Sir George Gipps to Lord John Russell.

(Despatch No. 117, per ship Ellen; acknowledged by lord John Russell, 22nd April, 1841.)

My Lord,

Government House, 22nd Augt., 1840.

In my Despatch of the 25th of July last, No. 92, I reported to Your Lordship the unfortunate circumstances under which Capt'n Croker, R.N., of Her Majesty's Ship "Favorite," lost his life at the Island of Tongataboo; and I also mentioned that three Guns belonging to the "Favorite" were left in the hands of the Natives of that Island.

I herewith have the honor to enclose a Copy of a letter addressed to me by Lieutt. Dunlop, acting Commander of the "Favorite" in which it is proposed that the "Favorite" should take on board a Party of Soldiers, and proceed to Tongataboo for the purpose of recovering her Guns.

Your Lordship will perceive by my answer to Lieutt. Dunlop, a Copy of which is annexed to his letter, that I have not judged it proper to direct the embarkation of any Military Force to cooperate in such an undertaking without the previous sanction of Her Majesty's Government; but at the same time I beg to submit to Your Lordship's consideration whether some means ought not to be taken for the recovery of the Guns.

I have, &c.,

Geo. Gipps.

[Enclosure No. 1.]

Lieutenant Dunlop to Sir George Gipps.

Her Majesty's Ship "Favorite."

Sir, Sydney, 19th August, 1840.

Her Majesty's Ship "Favorite" being now nearly ready for sea, I beg permission to represent to you that, when the attack was made by a party from this ship on the fortress of Beia, on the Island of Tongataboo, the 24th of June last, two long six-pounders and one twelve-pounder carronade were unavoidably left behind, and were taken possession of by the heathen belonging to the
1840.
22 Aug.

Proposed employment of military to recover guns.

Letter acknowledged.

Refusal to detach military.

HISTORICAL RECORDS OF AUSTRALIA.

fortress; that to have attempted to communicate with the heathens in their then excited State of mind for the recovery of the guns would have been certain destruction to all who might have been employed on such service; but I now beg to submit to your consideration that an attempt could be made with every likelihood of success, if a party of about 120 soldiers, with two field-pieces, were added to the force belonging to this ship. That to allow the guns to remain in possession of the heathens is likely to be most detrimental to any merchant ships touching at that Island, as well as an example to any of the other islands which may be tempted to act offensively.

I have, &c.,

R. S. W. Dunlop,
Actg. Commander.

[Enclosure No. 2.]

SIR GEORGE GIPPS TO LIEUTENANT DUNLOP.

Sir, Government House, Sydney, 22nd August, 1840.

I have had the honor to receive your letter of the 19th instant, proposing that an attempt should be made to recover the three guns belonging to the Sloop under your command, which were recently left in the hands of the natives of the Island of Tongatapu, and suggesting that a party of 120 soldiers with two field pieces should be embarked in the “Favorite,” in order to assist in the recovery of them. Under all the circumstances of the case, however, I feel it my duty to state that, until instructions on the subject shall be received from Her Majesty’s Government, I do not feel at liberty to move the Major-General Commanding Her Majesty’s Troops in this Colony to employ any portion of the force under his command in the manner you propose. I beg at the same time to state that I concur with you in thinking that the guns must not permanently be left in the hands of the natives.

I have, &c.,

[Unsigned.]

24 Aug.

Allowance of appropriation act.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Dispatch No. 131, received* 11th March, 1841.)

Sir,

Downing Street, 24 August, 1840.

With reference to my Dispatch No. 87 of the 27th of June last, I transmit to you herewith a Copy of a letter from the Secretary to the Board of Treasury; And I have to acquaint you that Her Majesty has been graciously pleased to confirm and allow the Act No. 24 for appropriating the Revenue for the present year.

I am, &c.,

J. Russell.

[Enclosure.]

MR. C. E. TREVELYAN TO UNDER SECRETARY STEPHEN.

Sir,

Treasury Chambers. 1st August, 1840.

I have it in command from the Lords Comrs. of Her Majesty’s Treasury to acknowledge the receipt of your Letters of the 8th and 11th Ultimo and of the documents therein enclosed, and I have to request, with reference thereto, that you will acquaint Lord John Russell that my Lords have not failed attentively to consider

* Note 128.
GIPPS TO RUSSELL.

the Minutes of His Excellency Sir George Gipps and the estimates and other Documents relating to the Expenditure of the Govt. of New South Wales for the year 1840, as well as the very comprehensive Report of the Committee of the Legislative Council on the subject of the Police Establishment.

I have to request you will further state to Lord John Russell that the consideration of those Documents tended to confirm in every respect the views on the subject both of the Expenditure of the Colony generally, and of that for the Police particularly, which My Lords have recently communicated to his Lordship with reference to the Estimates and proceedings of the local Council relating to the appropriation of the Revenue for previous years; and, as my Lords have not seen reason to object to any specific charges provided for in the estimates of 1840, their Lordships only deem it necessary to express their concurrence in Lord John Russell's recommendation that the Appropriation Act for the Service of this year which was submitted in Sir Geo. Gipps' Despatch of the 2nd December last should be allowed, and in the terms of the communication addressed by his Lordship to that Officer on the 29th Ultimo.

I have, &c.,

C. E. TREVELYAN.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 118, per ship Ellen.)

My Lord, Government House, 24th Augt., 1840.

I have the honor herewith to forward to Your Lordship a Transmission of Copy of a Despatch from the Lieutt. Governor of New Zealand, dated the 21st July last (received at Sydney on the 21st inst.), enclosing Copies of a correspondence, which had passed between himself and Monsr. Lavand, the Commandant of the Corvette "L'Aube," and of the French Naval Forces in the Pacific Ocean.

As connected with the important subject of this correspondence, I beg leave to refer to my Despatches to Your Lordship of the 9th Feby., 1840, No. 15, 23rd July, No. 90, and 24th July, No. 91.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[A copy of this despatch will be found in a volume in series III.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 119, per ship Ellen.)

My Lord, Government House, 24th Augt., 1840.

In connexion with the subject of my Despatch of this day's date No. 118, I have the honor herewith to enclose a Copy of the instructions, which were given to Captn. Stanley of Her Majesty's Brig "Britomart" by Lieutt. Governor Hobson on the 23rd July last.
1840.
24 Aug.
Approval of action of W. Hobson.

I trust Your Lordship will agree with me in thinking that the Lieutt. Governor has acted with proper firmness and discretion in the delicate position, in which he was placed by the arrival at the Bay of Islands of the French Vessel of War commanded by Monsr. Lavand.

I have, &c.,
GEO. GIPPS.

[Enclosure.]

[A copy of these instructions will be found in a volume in series III.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 132. received* 11th March, 1841.)

Sir,
Downing Street, 25 August, 1840.

In my Dispatch No. 128 of the 5 Instant, I referred to the proposals of the Church Missionary Society and the Report of the Colonial Land and Emigration Commissioners thereupon, declining at the same time to furnish you with positive Instructions on the subject of the Aborigines. In so acting, however, I felt that, while it was not expedient absolutely to fetter your discretion, suggestions from H.M. Government for your guidance might further and promote the great object in view.

I proceed now to communicate some remarks on the Report, and on the General subject.

1. We should run a risk of entire failure if we should confound in one abstract description of Aborigines the various Races of People, some half-civilized, some little raised above the brutes, some hunting over vast Tracts of Country, others with scarcely any means or habits of destroying wild animals at all, who have encountered the discovering or invading nations of Europe over the face of the Globe. One Tribe in Africa often differs widely in character from another at fifty miles distance; the Red Indian of Canada and the Native of New Holland are distinguished from each other in almost every respect. We, indeed, who come into contact with these various races, have one and the same duty to perform towards them all; but the manner, in which this duty is to be performed, must vary with the varying materials upon which we are to work. No workman would attempt to saw a plank of fir, and cut a block of Granite with the same Instrument, tho' he might wish to form each to the same shape. You, however, who are acquainted with the circumstances in which you have to act, can decide in what manner you can best execute the intentions of the Queen's Government to do justice and shew kindness to the Natives of the Colony over which you preside.

* Note 128.
2. There appears to be great difficulty in making reserves of Land for the Natives, which shall be really beneficial to them. Two sources of mischief mar the most benevolent designs of this nature; the one arising from the inaptitude of the Natives to Change their desultory habits and learn those of settled Industry; the other from the Constant inroad of Europeans to rob, corrupt and destroy them.

Between the Native, who is weakened by intoxicating liquors, and the European who has all the strength of superior Civilization and is free from its restraints, the unequal contest is generally of no long duration; the Natives decline, diminish, and finally disappear.

The Church Missionary Society propose, in order to prevent those mischiefs, that they should hold Land in Wellington Valley in trust for the Natives; and that all interference on the part of other settlers should be prevented. To the remarks of the Commissioners in this plan, I would only add that it might be useful, and would certainly be just, to engage to the Missionaries that, if the Crown should think proper at any time to resume the Land on Wellington Valley, a full compensation or allowance shall be made to the Society for all improvements which they may have made of a permanent Character. Any thing which can be done, without violation of principle, to induce the Church Missionary Society to continue their work, should be done. Nothing can be more painful or more laborious or more dangerous than to take up a post in the midst of a race of suspicious, ignorant, indolent Savages, and to defend their cause and their existence against rapacious, violent and armed Europeans. Yet such is often the position of the Missionaries. None but a strong feeling of religion would induce good men to undertake such a task. But, in giving such men all encouragement, every precaution should be taken against those who, counterfeiting the same holy and religious zeal, become speculators in Colonial Agriculture, and lose sight of the sacred purpose for which alone they have been intrusted with the funds of the Society.

3. The Commissioners recommend that a small force should be stationed for the protection of the Missionaries and Natives. I think it may be advisable to give the men employed in this service double pay, and reduce them to their former service and pay on any instance of misconduct.

4. The best chance of preserving the unfortunate race of New Holland lies in the means employed for training their Children. The Education given to such Children should consist in a very small part of reading and writing. Oral instruction in the
factual truths of the Christian Religion will be given by the Missionaries themselves. The Children should be taught early; the boys to dig and plough, and the trades of Shoemakers, Tailors, Carpenters and Masons; the Girls to sew and Cook, and wash linen, and keep clean the rooms and furniture. The more promising of these children might be placed, by a law to be framed for this purpose, under the Guardianship of the Governor, and placed by him at a School or in Apprenticeship in the more settled parts of the Colony. Thus early trained, the capacity of the race for the duties and employments of Civilized life would be fairly developed.

5. There remains, as connected with this subject, the vast and perhaps insuperable difficulty of the conflict carried on with little intermission between the Colonists and the Natives. The Colonist occupies a larger Tract of Land than he has the means to guard; his Cattle stray, and are killed by the Natives; he collects a force and revenges his loss on the first Tribe he encounters. Again, the Natives finding the Cattle unwatched drive away a herd, and deprive the Colonist of his wealth, a new source of retaliation and bloodshed. It is but too clear that the only effectual remedy for this lamentable evil is an organized force adequate to keep both parties in check, and confine each to the limits which the Government shall assign. But this remedy is so expensive, and requires so much vigilance, so much temper in every soldier or Constable, and the Territory to be traversed is so large, that it is, after all, imperfect.

6. I have not yet touched on the application of the Land Fund to the protection of the Aborigines. It is my opinion that fifteen per Cent. of the yearly produce of Sales should be so applied. It will be for you to consider the details of the appropriation. But I must for the future require that, on or before the 15th of January in every year, a Report should be made to you, for the information of Her Majesty and of Parliament, stating all the transactions of the past Year relating to the condition of the Natives, their numbers, their residence at any particular spot, the changes in their social condition, the Schools, and all other particulars, including the state and prospects of the Aboriginal Races.

I shall transmit a copy of this Dispatch, with some other remarks in reference to the same subject, to the Lt. Governor of Port Phillip, Western Australia, South Australia and New Zealand.

I am, &c.,

J. RUSSELL.
GIPPS TO RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 133, received* 11th March, 1841; acknowledged by Sir George Gipps, 19th March, 1841.)

Sir, Downing Street, 26 August, 1840.

The Senate of Hamburgh having appointed Mr. William Hampden Dutton, a Merchant at Sydney, to be their Consul, I have to request that you will state whether you are aware of any objection to the grant of the Royal Exequatur on that appointment.

I am, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 120, per ship Ellen; acknowledged by Lord John Russell, 21st July, 1841.)

My Lord, Government House, 26th Augt., 1840.

In the Address with which I opened the present Session of the Legislative Council, and which was transmitted with my Despatch of the 29th May last, No. 66, Your Lordship may have observed that I intimated my intention of laying before the Council a Bill for the establishment of Municipal Corporations. I now transmit to your Lordship a Copy of the Bill, which I accordingly presented to the Council, but which for reasons hereafter to be mentioned has not yet passed into a Law.

Your Lordship is aware that, in addition to the general arguments† in favor of Corporations set forth in my opening Address, a strong necessity exists for a measure of this nature, in order to relieve the Local Government from a portion at least of the very heavy expenses, which have hitherto been incurred by it in the Town of Sydney for purposes, which I believe in every other Town of equal importance in the British Empire are provided for out of Corporate Funds, and superintended by Municipal Authorities.

In the last four years, no less a sum than £111,418 has been expended in this way, that is to say, £54,397 for Police, and £56,421 for general purposes, such as lighting, paving, cleansing, and improving the Town.

One of the professed objects of the measure being therefore to force the People of Sydney to take a portion of these expenses on themselves, Your Lordship will not be surprised to hear that, though the introduction of Municipal Institutions was acknowledged to be very desirable, a great deal of ill disguised opposition was offered to the Bill; by some it was urged that, being a Taxing Bill, the present Council, which is not a representative Body, was incompetent to pass it, and that it ought to be

* Note 128.  † Note 138.
1840.
26 Aug.
Arguments used against bill.

Rights proposed for emancipists and expirees.

Counsel heard on behalf of emancipists.

Objections by Sir G. Gipps to counsel for anti-emancipists.

Decision by council to hear counsel for anti-emancipists.

Reasons for withdrawal of bill.

postponed, until the Colony should be in possession of the long expected New Constitution; by others it was said that the offer of a Corporation for Sydney should be rejected, unless accompanied with a large endowment of Land or Money; a question also arose as to the extent to which the Municipal Authorities were to have control over the Police of the Town; and I am sorry to add that, on the subject of the qualifications to be required, both on the part of the Electors and the Electected, the old animosities between the two parties in the Colony, called Emancipist and Free Emigrant, were revived.

The 5th Clause of the Bill proposed to admit persons, who had come to the Colony as Convicts, to vote at elections of Town Councillors, provided they had been free of their sentences for three years; the 30th Clause, as originally framed, excluded the same persons altogether from being elected; but, before the Bill was laid before the Council, though after it was printed, I allowed some words (in manuscript) to be added to the Clause, making them eligible, provided they have been free of their sentences for seven years.

Soon after the Bill was laid upon the Table, Counsel was heard on the petition of the class of persons called Emancipists against the restrictions of 3 and 7 years respectively, contained in these Clauses; but it was not until about two months afterwards, nor until the Bill had proceeded in Committee as far as the 28th Clause, that the opposite or anti-Emancipist party petitioned to be heard in reply. I opposed in Council the prayer of their petition, first, on the ground that they came too late, and secondly that I did not remember that in England Counsel had ever been heard by either House of Parliament against the removal of the disabilities, under which Roman Catholics formerly laboured, or of those which were imposed on Dissenters as well as Catholics, by the Test and Corporation Acts; that it appeared to me still more objectionable to hear Counsel in favor of creating new disabilities; and that there would be moreover in my opinion something revolting and ungenerous in so doing. On a division however, it was decided by a majority of one that Counsel should be heard, several Members alleging that, as they had heard Counsel on one side, they thought themselves bound in fairness to do so on the other. The result of this division caused me to withdraw the Bill, for I feared it would be impossible to proceed further with it, and to hear Counsel in favor of the exclusion of the Emancipists without producing much agitation in the Colony; whilst no delay in the main object of the measure would necessarily be incurred by postponing it for a
Session, there being a Clause in the Bill preventing its coming into operation until Her Majesty's pleasure shall be signified upon it.

In withdrawing the Bill, I explained that I should seek your Lordship's instructions upon some of the most material points involved in it, and that I hoped at no distant date to introduce it again to the Council.

Before I proceed to the points on which I have to ask for instructions, it may be necessary for me to explain generally the nature of the Measure.

It is modelled very closely upon the English Corporation Act, 5th and 6th Wm. IV, C. 76, and follows that Act, as far as it is applicable (under the 141st Clause of it) to the incorporation of New Boroughs. The principal deviations from the English Act are the following:

Clause 5.—The household qualification, originally proposed to be £10, was raised in Committee to £30, on account of the extreme dearness of house rent, not only in Sydney but throughout the Colony. In the Committee, this Clause was also further altered by striking out the proviso respecting persons who had been Convicts, and making a residence of three years necessary for all persons without distinction. This however is not a departure from the English Act, but rather an adherence to the principle of it.

Clause 30.—The qualification for a Councillor or Alderman is here proposed to be the possession of property to the amount of £1,000 in large Boroughs, and £500 in smaller ones.

The Bill only proceeded in Committee as far as the 28th Clause; had it reached the 30th, I have little doubt that the qualification would have been considerably raised, in the same way as the household qualification in the 5th Clause was increased. Had the Committee come to this Clause, I have also good reason to believe that the proviso respecting Emancipists would have been carried, that is to say, the proviso which makes them eligible when their sentences shall have been expired seven years, but not sooner; and I must acknowledge that this appears to me a fair compromise between total exclusion demanded by the one party, and unrestricted admission contended for by the other; the majority however of the unofficial Members would have been in favor of entire exclusion, in the proportion I believe of 5 to 2.

Clause 46.—In England, under the 57th Clause of the 5th and 6th Wm. IV, C. 76, the Mayor alone is ex officio a Magistrate; I proposed that the Aldermen should be Magistrates also, in
order to give greater dignity to the office, and to induce persons of consideration in the Colony to enter the Corporations.

I now proceed to the points, on which I feel it necessary to seek instructions from Your Lordship before I again introduce the Bill to the Council.

1. The way in which Charters are to be issued, or whether Charters are necessary at all:

To wait for a Charter from Her Majesty would lead to a delay of a year at least after the passing of the Bill; and I find by Blackstone, Book 1, Sect. 18 (Vol. 1, P. 473, octavo edition of 1809), that the Queen may delegate to any of Her Subjects the power of granting Charters. I do not believe at present possess the power of issuing a Charter, but, under this opinion of Blackstone, I presume it could be granted to me. On the other hand, it does not seem to me clear that a Charter, in addition to an Act of Council, is absolutely necessary; and I find that the City of Toronto was incorporated by an Act of the Local Legislature in 1834 (4th Wm. IV, Ch. 23) without any mention of a Charter being made in it.

On the eligibility of persons, who came to the Colony as Convicts, or Emancipists as they are usually called, to seats in the Council:

The concession to this class of persons of the elective franchise under the 5th Clause of the Bill may be considered I think as settled; but their admission to the Town Council will be strongly contested, and the more so, if Aldermen, under the 47th Clause, are to be Justices of the Peace.

The arguments in favor of the admission of Emancipists are grounded, first, on general expediency, or on the cruelty and impolicy of their exclusion; and secondly, on the alleged illegality of their exclusion, since by the acts of the Imperial Parliament named in the margin,* persons who have been pardoned, or who have undergone their sentences, are restored to all the rights of free men.

The sentiments, which I myself expressed upon the subject, were that, notwithstanding the Acts of Parliament quoted, it was in my opinion competent to the Legislature to exclude them, if the circumstances of the Colony or any consideration of policy required it; and that, if any danger existed of persons of this class being elected in sufficient numbers to form in any Town Council an Emancipist Interest, or to raise up opposite factions within it (as might have been apprehended some twenty or even ten years ago), I should have been in favor of their exclusion; but that under existing circumstances, when by the progress of

* Marginal note.—7th and 8th Geo. IV. C. 28, S. 13; 9th Geo. IV. Cap. 32, S. 3.
free Immigration the Colony is fast losing its Convict character, and the election of not more than two or three Emancipists into any Town Council is apprehended by any one, I was disposed to think the time to be come, when it would be for the advantage of the Colony to admit them.

Without being in possession of your Lordship's opinions on the subject, I did not like to press my own views with greater earnestness; and I have moreover, ever since my arrival in the Colony, endeavoured to stand neuter between the two parties which formerly agitated it, feeling assured that the natural progress of the Colony must fast sweep away all grounds for dissension among them.

I further however ventured to say in Council that, in my opinion, even though Emancipists were allowed to be elected into the Town Councils, the principle of double election involved in the 26th Clause would in all probability effectually prevent any person of that class from ever being chosen an Alderman, the Aldermen being elected by the Council, and not by the whole constituency of the Borough; the possible evil therefore of an Emancipist becoming a Magistrate, by virtue of his office of Alderman, did not appear to me to be a very formidable one; and I referred to a Despatch from Lord Bathurst to Sir Thomas Brisbane, dated the 29th July, 1823, No. 26, to shew that, although no Emancipist has of late years been placed in the Commission of the Peace, no absolute prohibition to their appointment to the Magistracy has ever existed.

The next point, on which I feel the want of instructions from Your Lordship, is that of the Police.

The Bill proposes to retain the management of the Police in the hands of Government, though a considerable portion of the funds necessary for the maintenance of it is to be raised by rates in the respective Towns or Boroughs. This is, as far as I am informed, the course pursued, or intended to be pursued, in the New Boroughs of England, and is also the principle on which the Metropolitan Police is constituted under the 10th Geo. IV, C. 44; and in the same way as assistance is given to the Metropolitan Police by an annual grant from Parliament, I proposed that some assistance should be given annually to Sydney, and probably to other Towns; as without it, the inhabitants could scarcely bear the very heavy expence which in every Town it is necessary to incur on account of the Police.

In various Despatches, I have pointed out to Your Lordship that the principal difficulties, which I have to contend with in the administration of this Government, are connected with the maintenance and control of the Police; that I should therefore,
as far as the case of my Government or my personal comfort is concerned, be anxious to get rid of the entire control of the Police, or to entrust as much as possible of the management of it to the Local Authorities, Your Lordship will readily believe; but at the same time an imperative sense of duty forces me to say that I doubt whether, in the present state of the Colony, it be not absolutely necessary for its welfare that the control of the Police should be retained in the hands of the Executive.

Your Lordship will observe that the Bill does not propose to give to any Corporation a Court of Quarter Sessions, nor any separate Jurisdiction. In Sydney, a separate Jurisdiction would be attended with considerable additional expense, and is not I think at all wanted. In smaller Towns, it would be a burden which they could not bear.

I have now, I believe, touched upon every point of interest, which has been raised during the discussion of this Bill, except that of the funds or revenues which the different Corporations are to have at their command.

A claim to the disposal of all Crown Lands within the Borough was set forth in the public prints, but met with no support in the Council, and is I consider altogether inadmissible.

If it be found that any assistance is necessary in order to set the Corporate Body in motion in any Town, I am disposed to think it should be given in money by Vote of the Legislative Council; and that, in the same way, assistance should, if necessary, be given from year to year, though I doubt whether permanent assistance can or ought to be expected for any purpose but the maintenance of the Police, the Lighting, Cleansing and Paving of a Town, being properly a local charge, as well as the payment of the salaries of the Officers of the Corporation and the upholding of Municipal Buildings. I have, &c.,

GEO. GIPPS.

[Enclosure.]

[This was a copy of the "Municipal Corporations" bill.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 121, per ship Ellen; acknowledged by lord John Russell, 21st July, 1841.)

My Lord,

Government House, 26th Augt., 1840.

In my Despatch of the 1st inst., No. 98, I reported to Your Lordship the rejection of the Bill, which I introduced early in the present Session of the Legislative Council for making each District in the Colony pay a portion of its own expenses for Police and Public Works; and at the same time I stated that I
had been requested again to present the same Bill, striking out the parts of it which related to the Police.

I now beg to inform Your Lordship that I accordingly presented the Bill a second time, with the alterations which are marked in the enclosed Copy of it. As however the 6th Clause of the Bill involves the same question as to the eligibility of persons who have been Convicts, which led to the postponement of the Municipal Corporation Bill, reported in my Despatch of this day's date, No. 120, I beg further to inform Your Lordship that I felt the same necessity for postponing the consideration of it, and that it has accordingly been withdrawn for the present Session.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

This was a copy of the "Highways" bill.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 135, received* 11th March, 1841.)

Sir,

Downing Street, 28 August, 1840.

With reference to my Dispatch No. 127 of the 11th Instant, I have now the honor to acquaint you that Her Majesty has been graciously pleased to confirm and allow the following Acts passed by the Legislative Council of New South Wales in the Session of 1839:

No. 15. — "An Act for abolishing arrest on Mesne Process in Civil Actions, except in certain cases, in New South Wales and the Dependencies thereof;"

and No. 18. — "An Act for extending the remedies of Creditors against the property of Debtors in New South Wales and the Dependencies thereof."

I am, &c.,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 137, received* 11th March, 1841; acknowledged by Sir George Gipps, 10th October, 1841.)

Sir,

Downing Street, 31 August, 1840.

With reference to my Dispatch No. 127 of the 11th Instant, I now transmit to you a copy of a letter from the Under Secretary of State for the Home Department, with a report from the Home Inspectors of Prisons on the Act of your Government No. 22 of the 19th November, 1839, entitled "An Act to abolish the Transportation of Female Convicts."

* Note 128.
I have to request that you will take an early opportunity of proposing to the Legislative Council the amendment of the Act, suggested by the Home Inspectors of Prisons. I should also wish to receive from you a report on the state of the Prison at Parramatta with reference to the observations of the Inspectors; and you will in future act on the suggestion, with which their report concludes, in the adoption of plans in the construction of Prisons.

J. RUSSELL.

[Enclosure.]

MR. S. M. PHILLIPPS TO UNDER SECRETARY STEPHEN.

Sir, Whitehall, 19th Augt., 1840.

With reference to your letter of the 5th Instant, I am directed by the Marquess of Normanby to transmit to you, for the information of Lord John Russell, the enclosed report of the Home Inspectors of Prisons on the Act passed by the Legislative Council of New South Wales, intituled "An Act to abolish the Transportation of Female Convicts."

Two enclosures, which accompanied your letter of 5th Instant are herewith returned.

S. M. PHILLIPPS.

[Sub-enclosure.]

INSPECTORS OF PRISONS TO MR. S. M. PHILLIPPS.

Sir, Raymond Buildings, 17th Augt., 1840.

We beg to acknowledge the receipt of your letter dated 12th Instant transmitting to us, by direction of the Marquess of Normanby, a Copy of an Act passed by the Legislative Council of New South Wales, intituled, "An Act to abolish the Transportation of Female Convicts," and an extract from the Despatch of Sir George Gipps to Lord John Russell, transmitting this Act, and desiring that We would report our opinion as to the propriety of recommending this Act for the Royal Allowance.

Upon an examination of this enactment, we are induced to call his Lordship's attention to the third and fourth sections, which authorize the courts or justices in petty Sessions in certain cases to award to female offenders Imprisonment in solitary or dark cells on Bread and Water for any period not exceeding twenty days at any one time, and not exceeding sixty days in any one year. We beg to observe that the power to award, as part of the sentence, Imprisonment in dark cells is not recognized in any Act prescribing the treatment of Prisoners in this Country, and the practise of confining Prisoners in dark cells is only resorted to as a punishment for aggravated breaches of prison discipline, and then only for a few days. Our Experience has satisfied us that Imprisonment in a dark cell is a punishment which loses even its deterring effects by continuance or repetition; while it produces no moral benefit, but is generally found to harden and degrade. We therefore beg leave to suggest that the word "dark" be omitted in Clauses 3 and 4. With this alteration, we submit that the Act is proper to receive the Royal Assent.
From the plan of the Cells which have been recently erected at the Female Factory at Paramatta, a copy of which was transmitted to us in your Letter dated the 7th instant, We observe that the Cells, in which it is proposed to enforce the Solitary Confinement herein referred to, are of very limited dimensions, being only eight feet by five feet, and nine feet high, a size which we have always deemed very inadequate for continued close confinement, even for a few days. We are not able to form any accurate Opinion as to the ventilation of these Cells; but, as far as the Plans enable us to judge, We fear that it will necessarily be very defective. These circumstances strengthen our objection to the Clauses to which we have referred.

We cannot but express our regret that a range of not less than Seventy two Cells, of these narrow dimensions, has been completed at the Female Factory at Paramatta; and we venture to suggest that much advantage might arise, in the case of any further enlargement of Prisons in New South Wales, were the Plans of the proposed Buildings sent home for the approval of the Secretary of State before the Works are proceeded with.

We herewith return the enclosures of your Letter.

We are, &c,

W. CRAWFORD,  Inspectors
WHITWORTH RUSSELL,  of Prisons.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 124, per ship Ellen.)

My Lord, Government House, 31st Augst., 1840.

I have the honor to enclose herewith a Copy of a letter which was received on the 13th July last from the Government of India, requesting that a supply of Salt Meat might be forwarded to Canton for the use of the Naval and Military Force now employed against China;* and I have the honor to report shipment of that 170 Tons of Salt Meat have been accordingly purchased by the Commissariat, and forwarded to Canton in the Barque against China.

"George the Fourth," which sailed from Sydney yesterday.

I have, &c,

GEO. GIPPS.

[Enclosure.]

MR. C. H. MADDOCK TO COLONIAL SECRETARY THOMSON.

Sir, Fort William, 24th February, 1840.

I am directed to communicate to you the request of the Governor General of India in Council, acting upon the authority of H.M.S. Government in England, and in communication with Sir Gordon Bremer, Commodore and Naval Commander in Chief, that the Governor of New South Wales would take measures for supplying the expedition, which by the direction of Her Majesty's Government will probably sail from Singapore early in May, with 1,200 tierces of salt meat of 300 lbs. each.

2. It would seem to be sufficient to meet all exigencies if the meat were sent in successive despatches, supposing the whole

* Note 145.
quantity cannot be at once prepared, so as to arrive at the mouth of the Canton River at such periods towards the close of the summer, or early in the autumn, as may be found easily practicable; and, in the event of the main body of the fleet having left that part of the coast, the naval Commander in Chief will make arrangements so that the commanders of the vessels in which the provisions from New South Wales shall be shipped may be informed of the point to which they are to proceed to discharge their cargoes.

3. His Excellency the Governor of New South Wales will be pleased to inform the authorities in England of the extent to which he may be able to comply with this respect, and he will draw for payment either upon Her Majesty's Treasury in England or upon the Government of India, as upon a consideration of the State of the Exchanges may appear to him to be most expedient.

I have, &c.

C. H. MADDOCK,
Secy. to the Government of India.

1 Sept.
Transmission of letter from J. H. Wedge.

 LORD JOHN RUSSELL to SIR GEORGE GIPPS.
(Despatch No. 138, received* 11th March, 1841; acknowledged by Sir George Gipps, 26th September, 1841.)

Sir,

Downing Street, 1 September, 1840.

With reference to my dispatch, No. 9 of the 24 Jany. last, enclosing suggestions submitted by Mr. J. H. Wedge in regard to the amelioration of the condition of the Natives at Port Phillip, I now transmit to you, in order that it may be referred to Mr. La Trobe for his Report, the Copy of a further communication from Mr. Wedge, relative to the depredations committed by the Aborigines on the property of the Settlers in that District.

I am, &c.,

J. RUSSELL.

[Enclosure.]

MR. J. H. WEDGE to LORD JOHN RUSSELL.

Six Mile Bottom,

New Market, Cambridgeshire, 24th July, 1840.

Connected with the suggestions of the Amelioration of the condition of the Aborigines of New Holland, which I had the honor to submit for your Lordship's perusal on the 18th of last January, I have received a letter, dated 13th November, 1839, from my relative who has charge of my blacks at Port Phillip, communicating that he had been subject to the depredations committed by the Aborigines on several occasions.

Imagining that your Lordship would wish to be informed of the state of affairs, and to receive suggestions from those possessing Colonial experience, I presumed, in submitting my plan of the 18th January, on my long residence in Van Diemen's Land (15 years) and the many opportunities, afforded me by the situation I held in the Survey Department of that Colony, of observing the habits and character of the Natives. I had also opportunities of

* Note 138.
making the same observations in respect to the Aborigines at Port Phillip whilst I was residing there, and during the several excursions I made in examining the Country in 1835.

I now take the liberty of copying, for your Lordship's further Information, an extract of the letter from my Nephew's letter, and, by advice, I also send a copy of what I have written in reply.

The depredations I am sorry to say are not confined to one locality, for I perceive by the Colonial Newspapers that extensive losses have been sustained by the settlers in various parts of the Colony by the depredations of the Native tribes.

The immense extent of Border Territory of New South Wales will render it extremely difficult to afford protection either to the Natives or to the settlers by the appointments that have been made or by the employment of a Police force. Hostility from the natives must be the natural result of their being driven from their hunting grounds; at the same time, it cannot be expected that the Colonists will witness the destruction of their property with indifference or without taking every means in their power to protect it. I believe that fatal collisions between the natives and the Stockkeepers will take places and that they are much more frequent than is known to the Government, and I fear they will continue while it is made to the interest of the Colonists to assist in civilizing the natives in the way I have had the honor of suggesting.

I have, &c,

JNO. II. WEDGE.

[Sub-enclosure.]

EXTRACT of a letter from Charles Wedge, Port Phillip, 13th November, 1839.

"I AM very sorry to tell you that the Natives are here very troublesome. They took your horse 'Rattler' off the tether and killed and ate him; they also took at one haul 70 Ewes and 100 Lambs and have since taken about 25 more; they killed a cow and calf and wounded another and scattered them terribly. We have however collected them again. One of my shepherds was severely wounded in the hand; he is however now well. You may depend I do not allow these things to be done with impunity. The value of the stock destroyed by these savages amounts to about £300, and, although we have been compelled to pay the following taxes, vizt.:—Licence to Graze £10, for every sheep 1d. per head, for cattle 3d., and for horses 6d. per Head annually, with the promise held out of establishing a Border police, we have as yet received no protection whatever. I have made no complaints to the authorities, as, when they have been made, no notice has been taken of them except to threaten with the severity of the Law in cases of retaliation."

Reply to the foregoing.

"I REQUEST to learn from your Letter, as well as by the public Newspapers, that the depredations of the Natives are so frequent and of the Character you describe; at the same time it is only the natural consequence of the occupancy of their country, for it must follow that, as Colonization advances, they will be driven from their haunts, and, in proportion to the extent of the country occupied, they will be deprived of the food it yielded them. The
1840. 1 Sept.

Suggestions by J. H. Wedge re problems caused by hostility between settlers and aborigines.

Consequence must be a feeling of hostility towards the settler; and, having occupied a taste for mutton and horseflesh, a disposition to commit depredations on the flocks and herds, as they have no other alternative otherwise than by falling back on the adjoining tribes, from whom they will encounter an equal hostility as from the settlers. The Depredations on the property of the Settlers will give rise to an unfriendly feeling on their part, and their stock keepers; what this will lead to, the annals of Van Diemen's Land will point out, and of which you are but too well acclimated. Upon this subject, I have written to Lord John Russell, telling him what the present state of affairs must lead to, opposed as are the interests of the Settlers and the Aborigines; and I pointed out a plan that would be likely to avert the melancholy consequences; and I will again draw his Lordship's attention to the subject. The collisions that have taken place and those that will follow, I look upon as resulting from the inefficiency of the Government measures, not from any unwillingness on the part of Government, but from not being in possession of the real state of affairs. If we deprive the natives of the means of subsistence by taking the Country from them, we are bound as an act of justice to make them an adequate return in a Supply of food. This however cannot be done by individuals without compensation, and this could be provided for in the way I have suggested; it would then become the interest of the settlers to Domesticate instead of driving the natives from their stations. I would strongly recommend you to communicate officially to the Government whenever acts of aggression are committed by the natives. The onus will then rest with the Government if the information remains unheeded; and you will only have done your duty in making a communication, which the Government have a right to expect from respectable Settlers. It may very justly be said, 'how can protection be afforded if information is not given that it is required?' Think well of this. It is said that the Local Government, in answer to communications and applications for protection, have neglected and have intimated that the severity of the law will follow any casualty that might ensue from repelling the attacks of the natives; connected with this, I believe both the local and Home Government have a very difficult task to perform; the former from the inadequacy of the instructions and powers trusted to it, the immense extent of Border Territory, and the scanty force at its disposal; The latter from the feeling in England being decidedly and strongly in favour of the Aborigines, and a very influential body headed by Mr. Buxton are urging the Government to respect the rights of the Natives and to afford them protection. If protection could be extended to the settlers, the force employed would in all probability come occasionally into fatal collision with the natives, a knowledge of which would raise a clamour, and the conduct of the Government would be called in question. On the other hand, the settlers are not an influential body, and have no Parliamentary interest to force their claim for protection; if therefore, in resisting the depredation of the Natives, any of them should be killed, and it should come to the knowledge of the Government, a prosecution would follow; and, unless a strong justification could be proved, a conviction and its consequences would ensue. To facilitate these prosecutions, strong representations have been made pointing out the necessity of passing an act to enable the courts of law to receive the evidence of the Natives.
"Under all these circumstances I would recommend you, should you unfortunately be placed in a position which requires you to repel attacks, to use as much forbearance as is compatible with your own safety and the security of your property, and on no account to retaliate afterwards, for in that case the innocent may suffer. I would also strongly recommend you, in the event of an unavoidable collision to make an official report of it to the Government."

J.H.W.

LUDD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 139, received* 11th March, 1841.)

Sir, Downing Street, 2 September, 1840.

I transmit to you herewith a Copy of an Act, passed in the late Session of Parliament, to continue until the 31st day of December, 1841, and to the end of the then next Session of Parliament, and to extend the provisions† of an Act to provide for the administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual Government thereof, and for other purposes relating thereto.

I also inclose for your information a Copy of a Bill which H.M. Government introduced into Parliament during the course of the Session for the better Government of New South Wales; but circumstances having defeated their intention of endeavoring to obtain the assent of Parliament to that Bill during the Session, it became necessary to renew the existing Law for another year.

With a view to provide for the Government of New Zealand, and perhaps for the Government of Norfolk Island, a Clause has been added‡ to this continuing Act, enabling the Crown to constitute a Legislative Council in any of the Islands which have now, or which may hereafter be, comprised within and be Dependencies of New South Wales; but I am not at present prepared to state when Her Majesty will be advised to execute the power thus vested in Her.

I am, &c.,

J. RUSSELL.

[Enclosure No. 1.]

[This was a copy of the statute 3 and 4 Vict., c. lxii.]

[Enclosure No. 2.]

A BILL To make further Provision for the Government of New South Wales and Van Diemen's Land.

8 July, 1840—4 Vict.

[Note.—The Words printed in Italics are proposed to be inserted in the Committee.] WHEREAS it is expedient that further provision be made for the Government of New South Wales and Van Diemen's Land; Be it therefore enacted, by The Queen's most Excellent Majesty, by and

* Note 128. † Note 146. ‡ Note 147.
with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same. That there shall be within the Colony of New South Wales a Legislative Council, to be constituted in the manner and for the purposes hereinafter mentioned, and that the said Legislative Council shall consist of Thirty-six Members, and that Twelve of the Members of the said Council shall from time to time, in the manner hereinafter mentioned, be appointed by Her Majesty, and that Twenty-four of the Members of the said Council shall from time to time, in the manner hereinafter mentioned, be elected by the Inhabitants of the said Colony.

2. And be it Enacted, That the Legislature now by law established within the said Colony of New South Wales, shall, by Ordinances to be for that purpose made and enacted, in the manner, and subject to the conditions now by law required in respect of any Ordinances made and enacted by the said Legislature, make all necessary provisions for dividing the settled parts of the said Colony into convenient Electoral Districts, and for appointing and declaring the number of Members to be elected for each such district, and for the compilation and revision of Lists of all persons qualified to vote at the Elections to be holden within such districts, and for the appointing of Returning Officers, and for the issuing, executing and returning the necessary Writs for such Elections, and for determining the validity of all disputed Returns, and otherwise for ensuring the orderly, effective and impartial conduct of such Elections.

3. And be it Enacted, That no person shall be entitled to vote at any such Election as aforesaid, unless he shall be in his own right seized of or entitled to an estate of freehold in possession, or lands or tenements situate within the district for which such Vote is to be given, of the clear value of Five hundred Pounds sterling money at the least, over and above all charges and incumbrances in any way affecting the same, or unless he shall be a householder within such district occupying a dwelling-house of the clear annual value of Ten Pounds sterling money at the least.

4. And be it Enacted, that no person shall be entitled to vote at any such Election as aforesaid, unless he be of the full age of Twenty-one Years, and a natural born subject of The Queen, or naturalized by Act of Parliament; and that no person shall be entitled to vote at any such Election who shall have been attainted or convicted of any treason, felony or infamous offence within any part of Her Majesty's dominions, unless he shall have received a pardon for such offence, or shall have undergone the sentence or punishment to which he shall have been adjudged for such offence.

5. And be it Enacted, That whenever it shall be established to the satisfaction of the Governor of the said Colony, that the seat of any elective Member of the Legislative Council hath become vacant, it shall be lawful for such Governor, and he is hereby required to issue a Writ for the Election of a Member to serve in the place so vacated, during the remainder of the term of the continuance of the said Council, and no longer.

6. And be it Enacted, That it shall be lawful for Her Majesty, by any Warrant or Warrants to be from time to time issued under Her Majesty's Sign Manual, and countersigned by one of Her Majesty's Principal Secretaries of State, to nominate and appoint one equal Third part of the said Council, and to designate either
the whole or any portion of such non-elective Members of the said Council, either by their proper names, or as holders for the time being of any public offices within the said Colony; and it shall also be lawful for Her Majesty, by any such Warrant or Warrants, from time to time to delegate to the Governor of the said Colony the power of designating either the whole or any proportion of such non-elective Members of the said Council, either by their proper names or as holders for the time being of any such public offices as aforesaid; which delegated power shall nevertheless be exercised by any such Governor provisionally only, and until Her Majesty’s pleasure shall be known.

7. And be it Enacted, That in the event of the death, absence, incapacity or resignation of any non-elective Member of the said Council, who shall have been so designated by his proper name, it shall be lawful for the Governor of the said Colony to designate by name and appoint some person to succeed to the place in the said Council of the Member so dying or being absent, or having so resigned or become incapable, which appointment shall be valid and effectual until the same shall be confirmed, or a new appointment made by a Warrant, to be issued as aforesaid, under Her Majesty’s Sign Manual, and countersigned by one of Her Majesty’s Principal Secretaries of State.

8. And be it Enacted, That every appointment which shall be made by the Governor of any non-elective Member of the said Legislative Council, shall be made by Letters Patent to be for that purpose issued under the Public Seal of the said Colony.

9. And be it Enacted, That it shall be lawful for the Governor of the said Colony for the time being to fix such place or places within any part of the said Colony, and such times for holding the first and every other Session of the said Council as he may think fit; such times and places to be afterwards changed or varied as the Governor may judge advisable and most consistent with general convenience and the public welfare, giving sufficient notice thereof; and also to prorogue the said Council from time to time, and dissolve the same by proclamation or otherwise, whenever he shall deem it expedient.

10. And be it Enacted, That there shall be a Session of the said Council once at least in every year, so that a period of Twelve calendar Months shall not intervene between the last sitting of the Council and Assembly in one Session, and the first sitting of the Council in the next Session; and that every Council shall continue for Five Years from the day of the return of the writs for choosing the same, and no longer, subject nevertheless to be sooner prorogued or dissolved by the Governor of the said Colony.

11. And be it Enacted, That the said Council shall be called together for the first time at some period not later than Six calendar Months after the proclamation of this Act within the said Colony.

12. And be it Enacted, That the said Legislative Council shall at its first meeting, and before proceeding to the despatch of any other business, elect some one Member of such Council to be the President thereof, and as often as the place of the said President shall become vacant by his death, resignation or removal by a vote of the said Council, shall again elect some other Member to be President thereof, and the President so elected shall preside at all meetings of the said Council: Provided nevertheless, That it shall be lawful for the Governor for the time being of the said
1840.
2 Sept.

Number necessarily present for transaction of business.

Oath of allegiance.

Oath of allegiance.

Affirmation.

Standing orders to be adopted.

Re-election and re-appointment of council.

Colony to disallow the choice of any such President, and upon such disallowance being signified by the said Governor to the Legislative Council, such appointment shall become and be absolutely null and void, and the said Legislative Council shall forthwith proceed to the choice of some other Member of the same to be President thereof, and so from time to time until the choice of a President who shall be allowed by the Governor for the time being.

13. And be it Enacted, That the said Legislative Council shall not be competent to the despatch of business unless there be present, exclusive of the President, one-third part at least of the non-elective Members of the said Council; and that all questions which shall arise in the said Council shall be decided by the majority of votes of such Members as shall be present other than the President; and in all cases where the votes shall be equal, the President shall have a casting vote.

14. And be it Enacted, That no Member of the said Legislative Council shall be permitted to sit or vote therein until he shall have taken and subscribed the following oath before the Governor of the said Colony, or before some person or persons authorized by such Governor to administer such oath:—

"I, A.B., do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Colony of New South Wales, dependent on and belonging to the said United Kingdom; and that I will defend Her, to the utmost of my power, against all traitorous conspiracies and attempts whatever which shall be made against Her Person, Crown and Dignity; and that I will do my utmost endeavour to disclose and make known to Her Majesty, Her heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against Her or any of them; and all this I do swear without any equivocation, mental evasion or secret reservation, and renouncing all pardons and dispensations from any person or persons whatever to the contrary. So help me God."

15. And be it Enacted, That every person authorized by law to make an affirmation, instead of taking an oath, may make such affirmation in every case in which an oath is hereinbefore required to be taken.

16. And be it Enacted, That the said Council at its first meeting, and from time to time afterwards as there shall be occasion, shall prepare and adopt such standing Rules and Orders as shall appear to the said Council best adapted for the orderly conduct of the business of such Council, which Rules and Orders shall by such Council be laid before the Governor of the Colony, and being by him approved, shall become binding and in force, subject nevertheless to the confirmation or disallowance of Her Majesty in manner hereinafter provided respecting the Ordinances to be made by the Governor and Council of the said Colony.

17. And be it Enacted, That upon any dissolution or other determination of the said Council, it shall be lawful for the Governor of the Colony to issue new Writs for the General Election of elective Members to serve in the Legislative Council in like manner as Writs shall have issued for the first General Election; and it shall also be lawful for such Governor in the name and on the behalf of
The Governor of the said Colony of Power of
New South Wales, with legislative
the advice and consent of the said Council, shall have authority to make Laws and Ordinances for the peace, welfare and good government of the said Colony: Provided always, That such Laws and Ordinances shall not be repugnant to the law of England.

19. And be it Enacted, That it shall be lawful for the Governor of the said Colony of New South Wales to transmit to the said Council for its consideration the drafts of any such Laws which it may appear to such Governor desirable to introduce, and such proposed Laws shall thereupon be considered by such Council in like manner as if the same had originated therein.

20. And be it Enacted, That every Bill which has been passed by the said Council shall be presented for Her Majesty's assent to the Governor of the said Colony, and that the Governor shall declare according to his discretion, but subject nevertheless to the provisions contained in this Act, and to such instructions as may from time to time be given in that behalf by Her Majesty, Her heirs or successors, that he assents to such Bill in Her Majesty's name, or that he withholds Her Majesty's assent, or that he reserves such Bill for the signification of Her Majesty's pleasure thereon.

21. And be it Enacted, That whenever any Bill which shall have been presented for Her Majesty's assent to the Governor of the said Colony shall by such Governor have been assented to in Her Majesty's name, such Governor shall by the first convenient opportunity transmit to one of Her Majesty's Principal Secretaries of State an authentic copy of such Bill so assented to; and that it shall be lawful at any time within Two Years after such Bill shall have been so received by such Secretary of State, for Her Majesty, by order in Council, to declare her disallowance of such Bill, and that such disallowance, together with a certificate under the hand and seal of such Secretary of State, certifying the day on which such Bill was received as aforesaid, being signified by such Governor to the Legislative Council of the said Colony, by speech or message to the said Council, or by proclamation, shall make void and annul the same from and after the day of such signification.

22. And be it Enacted, That no Bill which shall be so reserved for the signification of Her Majesty's pleasure thereon shall have any force or authority within the Colony of New South Wales, until the Governor of the said Colony shall signify, either by speech or message to the Legislative Council of the said Colony, or by proclamation, that such Bill has been laid before Her Majesty in Council, and that Her Majesty has been pleased to assent to the same; and that an entry shall be made in the Journals of the said Legislative Council of every such speech, message or proclamation, and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the Records of the said Colony; and that no Bill which shall be so reserved as aforesaid shall have any force or authority in the said Colony unless Her Majesty's assent thereto shall have been so signified as aforesaid within the
23. And be it Enacted, That with the deductions and subject to the provisions hereinafter contained, the whole of Her Majesty’s revenue within the said Colony arising from taxes, duties, rates and imposts levied on Her Majesty’s subjects within the said Colony shall be appropriated to the public service within the said Colony, by Ordinances to be for that purpose enacted by the Governor, with the advice and consent of the Legislative Council of the said Colony, and in no other manner: Provided always, That it shall not be lawful for the said Council to enact, or for the said Governor to assent to any Law or Ordinance appropriating to the public service any sums or sum of money arising from the source aforesaid, unless the Governor on Her Majesty’s behalf shall first have recommended to the Council to make provision for the specific public service towards which such money is to be appropriated.

24. And be it Enacted, That no part of Her Majesty’s revenue in the said Colony, arising from the sources aforesaid, shall be issued or shall be made by any such Law or Ordinance issuable, except in pursuance of Warrants under the hand of the Governor of the Colony directed to the public Treasurer thereof.

25. And be it Enacted, That the said revenue of the Colony of New South Wales shall be permanently charged with all the costs, charges and expenses incident to the collection, management and receipt thereof, such costs, charges and expenses being subject nevertheless to be reviewed and audited in such manner as shall be directed by any ordinance of the said Council.

26. And be it Enacted, That out of the said Revenue Fund there shall be payable every year to Her Majesty, Her heirs and successors, the sum of for defraying the expenses of the several services and purposes in the Schedule marked (A) to this Act annexed, and a further sum of for defraying the expense of the several services and purposes named in the Schedule marked (B) to this Act annexed, the said sums of and to be issued by the Treasurer of the said Colony in discharge of such warrant or warrants as shall be from time to time directed to him under the hand and seal of the Governor; and the said Treasurer shall account to Her Majesty for the same through the Lord High Treasurer or the Commissioners of Her Majesty’s Treasury of the United Kingdom of Great Britain and Ireland, in such manner and form as Her Majesty shall be graciously pleased to direct.

27. And be it Enacted, That until altered by any ordinance of the said Legislative Council, the salaries of the Governor and the Judges shall be those respectively set against their several offices in the said Schedule marked (A); but that it shall be lawful for the Governor to abolish any of the offices named in the said Schedule (B), or to vary the sums appropriated to any of the services or purposes named in the said Schedule (B), and that the amount of saving which may accrue from any such alteration in either of the said Schedules shall be appropriated to such purposes connected with the administration of the Government of the said Colony as to Her Majesty shall seem fit; and that accounts in detail of the expenditure of the several sums of and hereinafter granted, and of every part
thereof, shall be laid before the Legislative Council of the said
Colony within Thirty Days next after the beginning of the Session,
after such expenditure shall have been made: Provided always,
That not more than shall be payable at the same time for pensions to the Judges out of the said sum of
and not more than shall be payable at the same time for pensions out of the said sum of,
and that a list of all such pensions and of the persons to whom the same shall have been granted shall be laid in every year before the said Legislative Council.

28. And be it Enacted, That it shall be lawful for Her Majesty, with the advice of Her Privy Council, or under Her Majesty's Signet and Sign Manual, or through one of Her Principal Secretaries of State, from time to time to convey to the Governor of the said Colony of New South Wales such instructions as to Her Majesty shall seem meet for the guidance of such Governor for the exercise of the powers hereby vested in him of assenting to or dissenting from, or for reserving for the signification of Her Majesty's pleasure, Laws or Ordinances to be passed by the said Council, and it shall be the duty of such Governor to act in obedience to such instructions.

29. And whereas, by Commissions under the Great Seal of the United Kingdom, and by certain instructions under Her Majesty's Signet and Sign Manual accompanying such Commissions, Her Majesty has been pleased to authorize the Governor of the said Colony of New South Wales in the name and on the behalf of Her Majesty to alienate and convey the unsettled Lands of the Crown, situate within the said Colony, subject to the Regulations in that behalf contained in the said instructions: And whereas Her Majesty hath by a Warrant under Her Majesty's Sign Manual, bearing date on the Tenth day of January, One thousand eight hundred and Forty, been pleased to constitute and appoint certain persons therein named to be Her Majesty's Commissioners for the purposes therein mentioned, under the style and title of the Colonial Land and Emigration Commissioners: And whereas it is expedient that no part of the unsettled Lands of the Crown within the said Colony shall hereafter be granted, alienated or conveyed to any person or persons, or to any body or bodies corporate or politic by the said Governor, or by the said Commissioners, or otherwise under Her Majesty's authority, except in the manner hereinafter mentioned; Be it therefore Enacted, That it shall not be lawful for the said Governor, or for the said Commissioners, or for any other person or persons acting in the name and under the authority of Her Majesty, to grant, alienate or convey any of the unsettled Lands of the Crown within the said Colony of New South Wales to any person or persons, or to any body or bodies corporate or politic, except in pursuance of sales to be made either by the said Governor or by Her Majesty's Colonial Land and Emigration Commissioners for the time being, all which sales shall be made in pursuance of or in conformity with such Instructions as have been or as shall hereafter be issued by Her Majesty for the guidance of the said Governor, or of such Commissioners as aforesaid for the time being in the discharge of that service, all which instructions shall be laid before both Houses of Parliament within One Month from the date thereof, if Parliament shall be then in Session sitting, or if not, then within One Month after the commencement of the then next
ensuing Session of Parliament: Provided nevertheless, That nothing herein contained shall extend to prevent the setting apart and appropriating within the said Colony, without purchase, any tracts of Land which may be required for the formation of roads, canals, towing-paths, public wharfs or quays, or for the sites of public buildings, churches, chapels, hospitals, or for military defences, or for the public health or recreation, or for any other purpose of general utility or convenience of society at large within the said Colony.

30. And whereas the said Colony of New South Wales is of great extent, and it may be fit that the territories now comprised within the said Colony should be divided into separate Colonies, and provision should be made for the temporary administration of the Government of any such newly-erected Colony as, not being comprised within the limits hereinafter mentioned, may not possess a sufficient population for the immediate establishment therein of the form of Government hereinbefore provided; Be it therefore Enacted, That, anything hereinbefore contained to the contrary notwithstanding, it shall be lawful for Her Majesty, by Letters Patent to be from time to time issued under the Great Seal of the United Kingdom, to define, as to Her Majesty shall seem meet, the limits of the Colony of New South Wales, and to erect into a separate Colony or Colonies any territories which now are or which hereafter may be comprised within the said Colony of New South Wales: Provided always, That no part of the territories comprised within the Nineteen existing Counties of Argyle, Bathurst, Bligh, Brisbane, Camden, Cook, Cumberland, Durham, Georgiana, Gloucester, Hunter, King, Murray, Northumberland, Phillip, Roxburgh, Saint Vincent, Wellington and Westmoreland, in the said Colony of New South Wales, shall by any such Letters Patent as aforesaid be detached from the said Colony, but that each of the said Nineteen Counties shall form part of the said Colony of New South Wales.

31. And be it Enacted. That, in case Her Majesty shall by any such Letters Patent as aforesaid establish any such new Colony or Colonies as aforesaid, beyond the limits of the said Nineteen Counties, it shall be lawful for Her Majesty, by any such Letters Patent, to authorize any number of persons, not less than Seven, including the Governor or Lieutenant-Governor of any such new Colony or Colonies, to constitute a Legislative Council or Legislative Councils for the same; and that every such Legislative Council shall be composed of such persons as shall from time to time be named or designated by Her Majesty for that purpose, and shall hold their places therein at Her Majesty's pleasure; and that it shall be lawful for such Legislative Council to make and ordain all such Laws and Ordinances as may be required for the peace, order and good government of any such Colony as aforesaid, for which such Legislative Council may be so appointed; and that in the making all such Laws and Ordinances, the said Legislative Council shall conform to and observe all such Instructions as Her Majesty with the advice of Her Privy Council shall from time to time make for their guidance therein: Provided always, That no such Instructions and that no such Laws or Ordinances as aforesaid, shall be repugnant to the Law of England, but consistent therewith so far as the circumstances of any such Colony may admit: Provided also, That all such Laws and Ordinances shall be subject to Her Majesty's confirmation or disallowance, in such manner and
32. And whereas an Act was passed in the ninth year of the reign of his late Majesty King George the Fourth, intituled, "An Act to provide for the Administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual Government thereof, and for other Purposes relating thereto," which Act will expire at the end of the Session of Parliament next ensuing or the Thirty-first day of December, One thousand eight hundred and Thirty-six; Be it Enacted, That so much of the said Act as relates to the constitution, appointment and powers of a Council in New South Wales, therein mentioned, shall be repealed and that, subject to the provision hereinafter contained, the other parts of the said recited Act shall be continued during the continuance of this Act, both with respect to the said Colony of New South Wales and the said Colony of Van Diemen's Land; Provided always, That nothing herein contained shall extend or be construed to extend to repeal or abrogate any Law or Ordinance made in pursuance of the said recited Act, but that every such Law or Ordinance shall hereafter be as valid and effectual as if every part of the said recited Act had been hereby made permanent: Provided also, That it shall be lawful for the Governor and Council of the said Colony, in exercise of the powers to them respectively granted by this present Act, and in the manner and subject to the rules hereinbefore prescribed, to repeal, vary or alter all or any part of the said recited Act, or any Law or Ordinance made in pursuance thereof.

33. And be it Enacted, That by the word "Governor" as employed in this Act, shall be understood the person for the time being lawfully administering the Government of the said Colony of New South Wales.

34. And be it Enacted, That this Act shall be proclaimed by the Governor of New South Wales and shall take effect within the said Colony from the day of the proclamation thereof, and shall continue and be in force until the Thirty-first day of December in the year and if Parliament is then sitting, thenceforward until the end of the then Session of Parliament.

35. And be it Enacted, That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

Schedule (A).

Schedule (B).

[The schedules were not attached, and the bill was endorsed, "Prepared and brought in by Lord John Russell and Mr. Vernon Smith."]
1840.
3 Sept.

Despatches acknowledged.

Statutory power for separate government in New Zealand.

Policy to be adopted.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 140, received* 11th March, 1841.)

Downing Street, 3 September, 1840.

Sir,

I have received your Despatches of the numbers and dates specified in the margin† in which you report the progress of affairs at New Zealand.

I have to express to you the approval of Her Majesty’s Government of the measures which you adopted as reported in those Despatches.

In my dispatch No. 139 of the 2 Instant, I pointed out to you that provision had been made in the Act, which had been passed in the late Session of Parliament continuing the New South Wales Act, for enabling Her Majesty to make separate provision for the Government of New Zealand, altho’ I stated at the same time that it was uncertain at what period Her Majesty might be advised to exercise the power thus vested in her. At the present moment, it would be inexpedient entirely to separate New Zealand from your Government, nor do I deem it advisable to take any measures for appointing a successor to Captain Hobson, while he is able to continue in the performance of his duties. I received with much regret the announcement of his illness, which occurred at a time when his services were most urgently required.

I have communicated your Dispatch No. 54 with its enclosures to the Lords Commissioners of the Admiralty for their consideration.

I have, &c.,

— J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 141, received* 11th March, 1841.)

Downing Street, 4 September, 1840.

Sir, 4 Sept.

Approval of payment to J. Kincanela.

I have to acknowledge the receipt of your dispatch No. 45 of the 23d of March last, reporting the payment of a Gratuity of £200 to Mr. Kincanela as a remuneration for arranging and disposing of the Papers, left by Mr. Fisher on his resignation of the Office of Crown Solicitor; And I have to convey to you the sanction of H.M. Government of that payment.

I am, &c.,

— J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(A circular despatch, received* 11th March, 1841.)

Downing Street, 4th September, 1840.

Sir, 4 April.

I have the honor to acquaint you that, with the view of contributing to the efficiency of the Judicial Committee of the

* Note 128.
† Marginal note.—No. 51, 31 March, /40; No. 54, 4 April, /40; Confidential.
4 April, /40; No. 55, 5 April, /40.
Privy Council as a Court of Appeal, and of promoting the due administration of Justice in the Foreign Possessions of The Crown, Her Majesty’s Government consider it proper to furnish the Colonial Judges and other Legal Functionaries with Copies of the Printed Reports of the proceedings before the Judicial Committee on Appeal Cases, referred for their adjudication.

I accordingly transmit herewith, for the use of the Judges and the Law Officers of the Colony under your Government, five copies of these Reports; and I have to direct you to take the necessary steps for obtaining out of the Colonial Revenue, and remitting to me, the Sum of £7 17s. 6d. in repayment of the price of these copies, the expense of which has, in the first instance, been defrayed out of the funds of the Council Office.

I have, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 128, per ship Ellen; acknowledged by lord John Russell, 26th March, 1841.)

My Lord, Government House, 5th Septt., 1840.

With reference to my Despatches of the 8th Novr., 1838, No. 182, and 17th March last, No. 39, I have the honor to forward herewith a further portion of the Returns,* called for by the Order of the House of Commons of the 29th Novr., 1837, transmitted to me by Lord Glenelg’s Despatch of the 30th Decr., 1837, No. 58.

The remainder of the Returns are in course of preparation, and will be forwarded to Your Lordship by the first opportunity after they shall have been completed.

I think it proper to observe that the expense incurred in the preparation of these Returns, in the Department of the Principal Superintendent of Convicts alone, now amounts to the sum of £1,006 13s. 4d.

I have, &c.,

GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 129, per ship Eliza Francis.)

My Lord, Government House, 9th Sept., 1840.

I have the honor herewith to forward to Your Lordship a Copy of the Report on the subject of Emigration for the year 1840, made by the usual Committee of the Legislative Council of this Colony.

* Note 109.
On comparing this Report with those for the years 1838 and 1839, Your Lordship will perceive little if any alteration in the views of the Committee.

The preference is given as before to the Bounty system over that of Government Emigration; but at the same time the Committee recommend, as a supplement to the Bounty system, that Immigration under the immediate direction of the Government should still be partially continued.

By carefully watching the progress of Emigration under the Bounty system, the Emigration Board in London will, it is hoped, be enabled to judge of the extent to which Government Emigration should be thus resorted to, as a supplement to that on the Bounty system; and I would myself beg leave to suggest that, whenever the supply under the Bounty system may appear to fall short of the proportion of about 10,000 souls per annum, the Commissioners should endeavour to make up the complement.

Our Land Revenue bids fair at present to be able fully to meet the expences of such an Immigration; but, as this Revenue is subject to great fluctuations, I would beg leave to suggest that Immigration ought to be carried on independently of any consideration either of its actual or expected amount; and I would further beg to refer Your Lordship to my Despatch of the 22nd Novr., 1839, No. 157, to shew that there is no sacrifice, which the people of this Colony are not prepared to make, and no security which they are not ready to offer, in order to procure the supply of Labour, which they so unanimously concur in thinking essential to the continued prosperity of the Colony.

As a proof of the condition of the Laboring Classes in New South Wales, and of the advantages which persons may reasonably expect to share in by emigrating to its shores, I would beg to refer Your Lordship to the evidence of the Actuary of the Sydney Savings Bank, who informed the Committee of the Legislative Council that, during the year 1839 (the year of the greatest scarcity ever known in the Colony), the Bank opened 100 new accounts with Depositors per month; and that, during the present year (1840), the average number of new depositors is 150 per month; that 19 Depositors out of every 20 belong to the Laboring Classes; that Compound interest at the rate of ten per cent. per annum is allowed by the Bank; and that the present amount of Deposits (exclusive of those of Convicts) is £127,000.

There may be some newer Colonies, in which, owing to the destitution in them of all comfort, Wages may be higher than in New South Wales; but I hesitate not confidently to assert that there is no Country, in which Laborers living in equal comfort can put by so large a portion of their Wages.
I deem it essential also to observe that, though the Proprietors of Land or Stock and even persons of the Middle Orders of Society suffered greatly from the effects of the Drought of 1838 and 1839, the Laboring classes were but slightly affected by it, because in Sydney food was provided for them in abundance either by the Government, or by an Association formed for their relief, and in the Country, Laborers are almost universally, as well as their families, provided with rations by their employers.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[This report, dated 2nd September, 1840, was printed in the "Votes and Proceedings" of the legislative council.]

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LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 145, per ship Abberton.)

Sir, Downing Street, 10 Sept., 1840.

I transmit to you herewith two Despatches, which I have addressed under a flying Seal to the Lieutenant Governor of the British Settlements at New Zealand and the Superintendent at Port Philip, enclosing Copies of my recent Instructions to you with regard to the Aborigines, and directing the transmission of periodical Reports on the state of the Aborigines, shewing what has been done for their improvement and welfare in the course of the year preceding. I have to request that you will forward these Despatches to their respective destinations by the first opportunities which may offer. Similar Despatches have been addressed to the Governors of Western and Southern Australia.

I have, &c.,

J. RUSSELL.

[Enclosures.]

[Copies of these despatches will be found in a volume in series III.]
and adverting to the measures to be adopted for carrying out the system of Convict discipline to be tried at Norfolk Island under the immediate superintendence of that Officer. I have referred those dispatches to the Secretary of State for the Home Department with a request that the Home Inspectors of Prisons and the Governor of Parkhurst Prison might be called on for any remarks or suggestions which they might have to offer on the subject. Together with their remarks, I transmit for your information a Copy of a Dispatch, which I have addressed to the Lieut. Governor of Van Diemen's Land, in communicating to him your Dispatches and Capt'n Maconochie's Reports with reference to the system which is to be pursued at Tasman's Peninsula; and you will perceive it there stated that it is intended that Captain Maconochie should under your direction carry on the system at Norfolk Island, but entirely unconnected with Tasman's Peninsula. Notwithstanding the objections which I entertain, in common with those authorities whose Reports are enclosed, to the Theory of Captain Maconochie that reformation is to be the sole object of the Convict system, I still wish the experiment to be tried under his immediate supervision, but with the clear understanding that you shall remove him, if you should find mischief ensue in Norfolk Island from his management.

J. RUSSELL.

[Enclosure No. 1.]

MR. S. M. PHILLIPPS TO UNDER SECRETARY STEPHEN.

Sir,

Whitehall, 1st September, 1840.

I am directed by the Marquess of Normanby to transmit to you, for the information of Lord John Russell, the enclosed copy of a Report from the Inspectors of Prisons, respecting Capt'n Maconochie's proposed system of Convict Discipline in Norfolk Island.

I am, &c.,

S. M. PHILLIPPS.

[Sub-enclosure.]

INSPECTORS OF PRISONS TO MR. S. M. PHILLIPPS.

Sir,

Raymond Buildings, 11th August, 1840.

We beg to acknowledge the receipt of your letter dated the 25th Ultimo, transmitting by direction of the Marquess of Normanby a copy of a Despatch from the Governor of New South Wales relative to Convict Discipline in Norfolk Island, and desiring us to furnish his Lordship with any Remarks or Suggestions which we may have to offer thereon.

In reply, we beg to state that, having given our best consideration to the Papers now transmitted to us, the Documents which have been lately laid before Parliament on the treatment of Convicts and the Publications of Captain Maconochie on the subject, we are
of opinion that the Plan, which has been recommended by that officer, is open to very serious objections; that it is founded on theoretical views of the character of Convicts, and mistaken principles of Criminal punishments; and that it will be very far from being productive of the beneficial results which Capt'n Maconochie so confidently anticipates.

We do not conceive, from the terms of your letter, that Lord Normanby requires us to enter fully into the reasons on which the unfavorable opinion, which we entertain of Captain Maconochie's Plan, has been formed; a course which would render necessary a lengthened and elaborate Report. We refrain from this the more especially as it has been already determined to make an experiment of the Plan at Norfolk Island, and as Captain Maconochie must by this time have made some progress in carrying it into effect. We are, however, quite prepared to enter fully into the subject, should Lord Normanby desire it.

We are, &c,

WILLIAM CRAWFORD, (Inspectors of Prisons.
WHITWORTH RUSSELL,

[Enclosure No. 2.]

MR. S. M. PHILLIPPS TO UNDER SECRETARY STEPHEN.

Sir, Whitehall, 6th Augt., 1840.

With reference to your letter of the 23rd Ulto. transmitting Copies of certain Despatches received from the Governor of New South Wales relative to Convict Discipline in Norfolk Island, I am directed by the Marquess of Normanby to transmit to you, for the purpose of being laid before Lord John Russell, observations which have been made on the Desps. above mentioned by the Govr. of Parkhurst Prison.

I have, &c,

S. M. PHILLIPPS.

[Sub-enclosure No. 1.]

MR. R. WOOLCOMBE TO MR. S. M. PHILLIPPS.

Sir, Parkhurst Prison, 3rd Augt., 1840.

In compliance with the Instructions, contained in your letter of 25th July, that I should furnish the Marquess of Normanby with any remarks or suggestions I might have to offer on certain Despatches therein enclosed, and received from the Govr. of N. S. Wales relative to Convict Discipline at Norfolk Island, I now forward the accompanying Memoranda, and, in so doing, would respectfully state that, from the little experience I have had on the general question of convict Discipline, I feel great diffidence in expressing any opinion on the subject.

I would further add that since connected with the Criminal Dept. my attention has been exclusively devoted to the treatment of Juvenile Offenders in a Reformatory Prison, a question rendered distinct from the treatment of Adult Transports in a Penal Colony not only by the widely differing conditions of youth and manhood, but by the various collateral circumstances attendant on the Two Estates.

I have, &c,

ROBT. WOOLCOMBE, Governor.
Criticism by R. Woolcombe:

1840.
10 Sept.

Remarks and suggestions by the Governor of Parkhurst Prison... on certain Desps. from the Governor of N. S. Wales relative to Convict Discipline at Norfolk Island.

Enclosure 1 in No. 1, containing "Memorandum on the Assistance that would be desirable in order to give full development to the principles of Social Management in a large Insular Establishment."

From his Paper it appears that Captain Maconochie advocates what he terms the "Social Management of Prisoners" as a system in preference to coerced labour under the stimulus of either fear or confinement, and he grounds this preference on the presumption that such a system of free labour must eventually prove not only most productive, but also most economical, and to be obtained with a less amount of direct Superintendence.

The Experience obtained at Parkhurst Prison in the Establishment of a New System of Prison Discipline for Juvenile offenders has already afforded striking evidence to be gathered from the records of the Establishment that Criminals of the most difficult class to manage, viz., boys devoid of all consideration and sunk in ignorance as well as vice, are to be more easily convinced of their past misconduct, and led out of their former bad habits by Christian Instruction and mild treatment than by severity; and that, at the commencement of any new System of Discipline, the most liberal allowance of intelligent superintendence should be afforded, for, until principles become operative on the Mass, which under good Govt. should eventually leaven itself, the entire process remains one of Agencies.

Capt. Maconochie is of opinion that the number of Clergymen should be much greater in a Reformatory Establishment than in one merely Primitive, by which Expression, it is presumed he means the commencement of his out door Social Management, previous to which he supposes every Prisoner to have passed thro' a Probationary course of separate confinement under active spiritual Instruction on an average to the extent of 4 Months, and concludes that the proportion of One Clergyman to every 1,000 Prisoners will be sufficient (both Social and Separate Classes inclusive). Every Clergyman would thus appear to have as it were a double charge, the general superintendence of 100 Prisoners (Sunday and week days) and the special daily Instruction of 100 separately confined. Considering that every Prisoner, so long as he remains an unconverted character, is in reality a practical heathen, and that his sincere conversion to and abiding by Christian Principles forms the only sound basis on which a Social Community can be raised out of a Criminal Population with any prospect of permanent prosperity, the proposed Number of one Minister to every thousand Souls may not prove adequate to the necessity, especially as it is admitted that the great majority of Criminals at their conviction are in a state of decided mental as well as spiritual ignorance.

Enclosure 2 in No. 1, Containing "Memorandum on the Sale of Marks for present Indulgencies."

Sir Geo. Gipps, in his letter addressed to Lord John Russell and attached to the Documents now under consideration, having therein
stated that Captain Maconochie's wish to sell indulgencies to the prisoners in exchange for marks of approbation, is not in accordance with the views of Her Majesty's Government, inasmuch as it would seem to be the intention that no transported felon should, during the period of at least two years, receive any indulgence whatever, no comment on this proposition is offered.

ENCLOSURE 3 in No. 1, Containing "Memorandum on remission of punishments."

The principle, here proposed by Captain M. of permitting a transport to emancipate himself from punishment by the mark system, such marks being attainable by what Capt. M. terms Good Conduct, but which practically will be more probably obtained through the agency of quick talents and mechanical skill, need be most carefully exercised, or it would appear to favor the clever delinquent, and place the less gifted, who possibly also might be the less guilty, in the worse position of the two, without reference to their original offences or sentences, the latter of which ought not to be disturbed by circumstances incidental to the capacities of the individual and bearing no relation except indeed in aggravation to this degree of guilt.

In the proposition of breaking the period of punishment into defined stages, always providing for separate confinement at night, through each of which stages every transport should pass before liberated, there appears much which might be beneficial and salutary, but even this arrangement does not appear to altogether obviate the possible if not probable inexpediency and injustice of providing the accomplished rogue with the power of demanding his freedom at the expiration of a shorter period of time than his less talented fellow prisoner; again, as remarked by Sir Geo. Gipps, the power of affixing good or bad marks, which in practice must be exercised by subordinate agents, is in itself a power not only of remitting but also of aggravating punishment.

It appears to be the general opinion of all persons conversant with the treatment of criminals that free pardon, or even remission of any portion of the sentence awarded, has been productive of much evil by learning the authority of the law in its deterring character. In the ratio that capital punishment is diminished, should the certainty of secondary penalties be definitely fixed both as to award and infliction.

ENCLOSURE 4 in No. 1, Containing "Memorandum on the formation of a library at Norfolk Island."

Crime being a moral delinquency, and brought into action thro' the absence of religious and moral principles, every available effort must be made in the case of criminals, both for their own sakes and that of society, to awaken and develop the better feelings of humanity, which, tho' dormant in most, in few, very few cases are extinct. The recommendations in this paper appear founded on a true estimate of human character, and, if generally brought into practice thro' the different stages of confinement both previous and subsequent to conviction, might be productive of great results. Whether it would be profitable to admit so wide a range of books as proposed might be a question. The proposition of establishing a fund by the voluntary subscription of marks, taken at their current value, for the maintenance and increase of a prisoners' library at Norfolk Island.

* In line 8 of the 8th paragraph, enclosure 7 in No. 1, are the terms substantial labour and service the means by which the marks are to be gained.
Library, might create a sound test of their desire to improve themselves and prove in many ways beneficial.

The eagerness with which books are sought by the Juvenile Prisoners in Parkhurst Prison exceeds belief, and the effect, produced, by their being provided, sufficiently expressed by the following anecdote.

The Governor and Chaplain of the Prison were for a long time at a loss how best to provide for those hours of intermission from direct instruction in School and Chapel on the Sunday, which are necessary for health and which it was desirable so to regulate as to mark a difference between the Sabbath and other days of the Week.

Undue Restraint only created as great an evil as it was desirable to avoid.

It occurred to the Governor to distribute a considerable number of appropriate little Books among the Boys, which they might read or otherwise during these broken periods. They were not even told to be careful of them, or that they were to be returned. The result was most gratifying. All were soon in groups either as readers or listeners. In the Evening, when asked for, the books were all returned free from dirt or mutilation. This Plan is now pursued on every Sunday.

It is esteemed as a great privilege by the Prisoners and thus order and improvement have been combined together with a proper and cheerful observance of the day.

Captn. Maconnochie's suggestion of forming a library implies an Educated Body of Prisoners. Will convicted Adults of that class to be sent to Norfolk Island be found in that condition on their arrival, or will 4 or 5 months probationary instruction enable many to use books with advantage either for information or amusement? If not, the establishment of Adult Schools on a voluntary principle of attendance might be adopted simultaneously with the commencement of the Social Experiment, and, in aid of such Schools, Premiums be offered to Schoolmasters to Emigrate from this Country for their Management. The Colony would soon provide itself with Masters, but it might not be advisable at first to permit Prisoners to conduct the Schools however well qualified.

ENCLOSURE No. 5 in No. 1, containing "Memorandum on the expediency of cultivating a Taste for Music."

The effect of singing has been found to be powerful and most salutary among the Prisoners at Parkhurst. The first symptoms of mental development are frequently elicited in the singing class, in which all are placed without reference to taste or musical powers. The heavy indifference to instruction of any kind, which at first manifests itself among criminal boys, often gives way to harmony; and, by its instrumentality, the mind and feelings are as it were insensibly allured into activity; and pleasurable sensations once experienced from tuition of any kind almost invariably stimulates the mind to other efforts.

ENCLOSURE No. 6 in No. 1, being "on the Expediency of sending Female and Juvenile Convicts to the same general establishment with Male Adults."

In this paper, Captain Maconnochie recommends associating Men, Women and Children together for Reformatory Training, but does not state his detail. Respecting the reception of Women, much may possibly be advanced on both sides of the question; but,
as to Boys being mixed with Adult Transports excepting under the most pressing necessities, every consideration of their peculiar circumstances seems to forbid such a system. In order to form a just Estimate of the means most likely to produce a beneficial change on different human characters, we should analyze the Elements to be acted on, before it can be determined what each may require.

In the present case these Elements are Manhood and Youth.

The probability is that the Adult Transport is a Man in Crime as well as in years. His passions in full development, ungoverned and as fixed as habit can make them. It may be presumed that, in most cases, he has not fallen a victim to sudden impulse or to more experienced associates, but has stood in Society willingly dependent on Plunder for his maintenance, and fully prepared for either individual or combined infraction of the Law, in short a responsible and finished Agent for evil in himself.

But how stands the Child of Tender years, say from 9 to 14, in reference to these several circumstances? The criminal Infant (for so it is proposed to legally consider the convicted Youth under 21 years of age by the Bill introduced in the Lords by the Chancellor for the care and Education of Infants who may be convicted of Felony) may be and in the large majority of cases is found to have been the victim of neglect by wicked Parents, very frequently of destitution, and invariably of some one of those many accidents of life to which Youth is subject, and out of which Crime, with its consequences, may have arisen without the attachment of moral Guilt as determined by free agency and Individual Responsibility. And, with a view to the reformation of these two Parties so widely differing from each other, Capt. M. proposes their association together in the same general Establishment. The Boy naturally watching the Elder Criminal's Example, and he the Adult being so provided with a ready instrument for mischief, if still inclined to Villainy.

Is it not then more wise and prudent to completely separate these classes, while under penal discipline and Instruction, rather than to associate them under any regulations which however guarded must incur some risk of continued contamination, with the chance only of a problematic good?

Capt. M., in support of this proposal of associating Men, Women and Children together in a penal Colony, assumes that The Family, consisting of Husband, Wife and Child, is the Cradle of Order and Morality. In the future generations of a Colony first established by penal Settlement, such might be the case, because the Connexions would then be natural; but, to suppose that Criminal Men, Women and Children, wholly unconnected by any previous ties, and only congregated in consequence of their Vices, could by any possible training be converted into a family, so that, as Capt. M. expresses himself, "All would thus benefit by the presence of all," appears visionary and improbable.

The opinion of the Home Inspectors of Prison, Messrs. Crawford and Russell, that it is impossible to combine a good Juvenile with an Adult System of Discipline is confirmed by the experience of all who have been practically engaged in the question. It is believed by the writer of these Remarks that until the two questions of Adult and Juvenile Prison Discipline are recognized and treated as wholly distinct from each other, both in principle and detail, no satisfactory results in either will be obtained.
The Parkhurst Experiment will shortly be sufficiently proved to
mark its success or failure, and, when provided with an outlet for
its inmates so as to secure to them some new Field on which to
settle free from their old Associations, it is hoped this Establish­
ment will prove the economy as well as expediency of arresting
Juvenile Crime at its earliest stages, it being self evident that the
true interest of Society consists in not permitting the Juvenile
delinquent to grow up into the confirmed Felon, and thus to tax
the Public first by Plunder and subsequently for maintenance and
safe custody from Infancy to age. When, by a timely and sound
interference, he may be saved and become useful in his after life.

ENCLOSURE 7 in No. 1, Referring to “Memorandum suggested by
Lord John Russell’s, Lord Howick's and Sir R. Bourke's several
Minutes on Transportation.”

This Enclosure being in reference to papers not in the possession
of the Governor of Parkhurst Prison, and to local Statistics of
which he has no knowledge, no remarks are offered on its contents.

The remaining papers of the Despatch refer exclusively to
matters of local detail connected with Norfolk Island and Aus­
tralia, and for the reason above stated are not commented on.

[Enclosure No. 3.]

LORD JOHN RUSSELL TO SIR JOHN FRANKLIN.

Sir, Downing Street, 10 Sept., 1840.

With reference to my dispatch No. 108 of the 6 Ultimo, I
have now to intimate to you that, as Transportation to New South
Wales is at an end, and Norfolk Island and Tasman’s Peninsula
are together with Bermuda the places abroad in which confinement
is hereafter to take place, it will be necessary that you should
take immediate measures for the reception of a greater number of
Convicts at Tasman's Peninsula.*

Omitting for the present all details, I transmit to you the
accompanying Copies of Dispatches which I have received from
the Governor of New South Wales, enclosing Copies of Reports from
Captain Macanochie with reference to the measures to be adopted
for carrying out the system of Convict Discipline to be tried at
Norfolk Island under the immediate superintendence of that officer;
and I confine myself to these observations.

1st. The object to be first sought in punishment is example to
Society. By “aiming at reform almost exclusively” as Captain
Macanochie recommends, we should cease to make the Law a
Punishment to evildoers. If this principle were pushed to its full
extent, it would lead to the most absurd results. A Sheepstealer, if he were established in a Farm well stocked
for him, would probably refrain from stealing sheep. But every
other laborer on the Land, seeing the mode in which Crime had
been rewarded, would be tempted to commit the same offence. In­
dulgencies, Libraries, and freedom from Bars and Bolts partake
of the same character, tho' not to the extreme extent of the case
I have supposed; they will tend to make what is called punish­
ment an addition to the existing temptation to crime.

Remission of punishment.

2. It is intended that at a certain period the severity of punish­
ment should be relaxed, But this is to be done for the first period
in separate Establishments such as Norfolk Island and Tasman’s
Peninsula, and not in the midst of Society in New South Wales or
Van Diemen’s Land.

* Note 148.
3. It is intended that Captain Maconochie should under the Governor of New South Wales carry on the system in Norfolk Island but entirely unconnected with Tasman's Peninsula.

4. I agree with Capt'n Maconochie that, while the Prisoners are allowed to work their way back to Society, they should be subject to some of its temptations. Such temptations recur with double force, where they have been entirely withheld and kept out of sight during the whole period of punishment and reform. But this plan must be adopted gradually and with caution, otherwise it will lead to a signal failure.

5. The first Stage of Tickets of Leave should keep the Convict in public employment. The Convicts might be paid wages, and worked in parties not only in making roads but in clearing Land, erecting Buildings, making Fences, and in short improving the Crown property for Sale. They would at the same time be fitting themselves for the extended freedom of subsequent stages. I transmit to you two letters of Captain Montague's on this subject. I concur in the proposals made by him except with regard to the first stage. In the first and second, I think the convict should be required to place a certain percentage of his earnings in the Savings Banks of the Colony to be at his disposal when he reaches the highest or last stage.

I have transmitted copies of Sir George Gipps' Dispatches with Captain Maconochie's reports to the Secretary of State for the Home Department with a request that Lord Normanby would refer them to the Home Inspector of Prisons and to the Governor of Parkhurst Prison for any observations or suggestions which they might have to offer on the subject.

I send copies of their replies.

In the next session of Parliament, I shall introduce a Bill on this subject.

J. RUSSELL.

[Sub-enclosure No. 1.]

CAPTAIN MONTAGU TO UNDER SECRETARY VERNON SMITH.

Leamington, 12 August, 1840.

I beg to acknowledge your letter of the 8th Instant, transmitting to me by Lord John Russell's direction the draft of a proposed Instruction to the Lieutenant Governor of Van Diemen's Land with regard to the System of Convict Discipline to be adopted in that Colony, upon which His Lordship has honored me by requesting my observations or suggestions.

I concur entirely in the conclusions His Lordship has arrived at upon Capt'n Maconochie's Scheme of "aiming at reform almost exclusively," and also that "at a certain period the severity of punishment should be relaxed"; and I think that experiment will be better tested in separate establishments than in the midst of a Colonial Society; but I look with greater confidence to a favorable result from Tasman's Peninsula than Norfolk Island, because, for the reasons I had the honor to submit to Lord John Russell in October last, I consider the former the preferable locality, and also because I apprehend Capt'n Maconochie's peculiarly indulgent notions of crime and his mode of palliating it, together with his views on reform and his unabated disregard of that grand requirement of Society, the punishment of Offenders for example's sake will operate unconsciously perhaps to himself to prejudice the trial.
Under this impression, it is pleasing to learn that the System to be carried on in Norfolk Island will be entirely unconnected with Tasman's Peninsula; for, if it had been confined to one spot under Captain Maconochie's Superintendence, it might fail from extraneous causes, and, if it should, the failure would be improperly ascribed to defective inherent principles; such an event will now however be avoided, and a fair experiment will at all events be secured for the system at Tasman's Peninsula.

I trust I may be excused for observing that I differ from Lord John Russell's Proposition for making the first stage of Tickets of Leave resemble the Social System, and I presume to do so with great deference in a practical point of view only, after many years experience in Convict character and conduct.

I quite concur in the Principle that Prisoners, while working their way back to Society, should be subject to some of its temptations, and to a certain extent I have seen that principle in operation for many years in Van Diemen's Land, although not carried out to the length it was susceptible of. The Ticket of Leave System was originally introduced with that intention, and, although it was efficient enough in discipline, it certainly permitted the Prisoner to enter too suddenly into Scenes of temptation.

But this defect had been long since remarked upon by some of the Colonial Authorities, and had been rectified in part by Instructions from England. Lord John Russell's present intention is further to improve the System, and, by a different mode, render that Class of Prisoners more fitting for the extended freedom of subsequent stages. I have no doubt that His Lordship's intention is capable of being acted upon to some extent, and I shall rejoice to see such considerable views in operation, as I am persuaded that every measure, which has a tendency gradually to create character and self respect in minds of the Prisoner Population by teaching them to withstand the temptations of their Stations in life, is more likely to be durable than any sudden change of circumstances, and will be found to be the most humane course to that class, and most beneficial to Society; but I am fearful that working it by the Social System will produce unlooked for difficulties. It is perhaps unnecessary for me to detail the grounds of my fears. Most of them are to be found in the documents, which were transmitted to the Secretary of State in Sir John Franklin's Despatch on Prison Discipline in 1837, and were subsequently presented to Parliament by Lord John Russell; but I can undertake to assure His Lordship that Captain Maconochie's Social System found no advocates in the Colony, and was pronounced to be an impracticable scheme by every person whose opinion derived weight from experience and practice in the Treatment of Convicts, and I have reason to believe that Captain Maconochie himself became a convert, when he was brought into closer contact with Convicts than he had been when he wrote his Theory.

The fact is that Capt'n Maconochie's principles for a new plan of Convict Discipline by the Social System were formed and published at a time, when he was practically ignorant of the System, he proposed to reform, and of the general Sentiments of the Convicts themselves in respect to rewards and punishments; and, so universal and unequivocal was the condemnation of it by the public functionaries, the Colonists, the whole of the Colonial press, and
the Convicts themselves, that I should not be doing my duty to Lord John Russell, were I to withhold from him any opinion that the experiment of it in Van Diemen's Land with any class of convicts will be attended with hazard and disappointment.

In addition to these observations, it appears to me that, if the Ticket of Leave men are to be worked under the Social System in making roads, clearing Land, etc., they will not be placed in Situations of greater temptation than they had been while employed in punishment parties, because, as they will necessarily be removed from communication with other Society and the settled Districts, they will have no greater trials to encounter than before.

But, if their first stage placed them under moderate temptations in approved employments in the settled Districts, and their temptations were increased in subsequent stages, they would gradually be fitting themselves for greater freedom; and such a plan, I respectfully suggest, might be contrived, by graduating to a very low degree, ascending by small degrees the Ticket of Leave indulgence, in short to allow freedom to be acquired by very small instalments, under regulations to be established for that purpose and enforced by the Department in charge of Convicts; and such a plan would, I confidently believe, accomplish Lord John Russell's intentions on this point.

I have, &c.,

JOHN MONTAGUE.

[Sub-enclosure No. 2.]

CAPTAIN MONTAGU TO UNDER SECRETARY VERNON SMITH.


In obedience to the desire of Lord John Russell conveyed to me in your letter of the 26th Instant, I have now the honor to submit, more in detail, the plan of Convict discipline, which I would propose for the Ticket of Leave Prisoners in Van Diemen's Land. In my letter of the 12th instant, I suggested, that the instalments of indulgence in the Ticket of Leave System should be small, and that with each advance there should be increased temptation for the Prisoner to encounter, so as to fit him gradually, for the trials of perfect freedom.

To effect such an object, it appears to me essential that the path to be trodden should assimile, as nearly as practicable, the probable one each individual will pursue when free; and, if this view be correct, it would be difficult indeed impossible to adhere to a particular form of temptation for any one, although I can perceive no difficulty in establishing a system, from which deviations can be made to suit particular cases without departing from its governing principle.

The periods, allotted for Prisoners to hold Tickets of Leave in reference to their sentences before acquiring freedom, should be clearly defined in order that their advancement in the several stages of indulgence be the acknowledged and certain rewards of merit.

With these remarks, I would suggest the following stages for the Ticket of Leave Prisoners.

1st Stage. To be employed in the settled Districts in any manner approved by the Government upon a rate of wages considerably below the average obtainable by free people, and account satisfactorily for the expenditure thereof on presenting themselves once in every fortnight to the Police Magistrate of the District.
2nd. The rate of wages to be increased to the average of free people, but the accounting for the Expenditure to be dispensed with, and the period of appearing before the Police to be extended to six weeks.

3rd. To be allowed to choose their own Employers without requiring the approval of the Government, but simply to report their engagements; be permitted to retain whatever wages they procure, and to appear before the Police once in three months.

4th. To be allowed to set up in any business or in any place, approved by the Government, either for themselves or on account of others, and appear before the Police once in six months.

5th. To be allowed to select and change the place of residence, and to set up in any business for themselves or others unconnected with the sale of spirits without requiring the approval of the Government, but to report both for its information and appear before the Police once a year.

6th. To be under no other restriction than to report themselves once a year to a Police Magistrate.

For the three first stages, I would recommend that two thirds of the whole period for holding a Ticket of Leave be appropriated in equal divisions, and the remaining third to the three last stages in equal divisions likewise; and, in order that the Ticket holders should have a feeling of security in whatever periods may be determined upon, I would suggest that they should not be liable to any extension excepting by the Sentence of two concurring Magistrates for the three first stages, and by the Quarter Sessions or Supreme Court for the three last stages of the indulgence.

It will, I have no doubt, occur to Lord John Russell that there are two objections to the plan proposed for the first and second classes of Tickets of Leave, in obliging the men to work for wages below the full value of their labor in the Market. One is that the forced reduction may tend to depreciate so materially the free labor as to deter the working classes from emigrating to the Colony; the other is that the Government may be subjected to the Imputation of partiality in its selection of Employers; and, if these objections are deemed of importance, they can be obviated by authorizing the men to receive the full value of their labor, and by requiring them to pay into the savings Bank the excess, they would in consequence obtain above the rates proposed for them.

The sums so deposited should, I think, be repaid to the men upon their obtaining the fourth class Ticket of Leave, a measure which would create an additional stimulus to good conduct during their progress through the previous stages.

I have, &c,

JOHN MONTAGU.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 148, received* 11th March, 1841.)

Downing Street, 11 September, 1840.

Sir,

I have received a letter from the Bishop of Australia, of which the enclosed is a Copy, written with reference to a Communication, which was addressed to the Society for the Propagation of the Gospel in regard to the means of the Colonies of New South Wales and Van Diemen’s Land to bear the charge

* Note 125.
of their Ecclesiastical Establishments, a Copy of which Letter was transmitted to you with Lord Normanby's dispatch, No. 127 of the 26 of August, 1839.

It is to be regretted that the Bishop of Australia did not transmit this communication through you, as his Lordship combats the statement, which you had made as to the adequacy of the Ecclesiastical Establishment of New South Wales. It is obviously impossible to consider His Lordship's representation without some further Report from you. I however propose that so many Clergymen should be sent out as provision has already been made for in the Colonial Estimates.

With respect to Religious Instruction generally, altho' the funds of the Colony must be spared at present, a larger measure of Religious Instruction will eventually be required and should be afforded, as far as the Colonial Revenues will allow of it.

You will communicate the substance of this Dispatch to the Bishop of Australia.

I am, &c,

J. RUSSELL.

[Enclosure.]

BISHOP OF AUSTRALIA TO LORD JOHN RUSSELL.

My Lord,

Sydney, 5th April, 1840.

A communication having been made to me of the letter addressed by Mr. Under Secretary Labouchere by direction of your Lordship's predecessor, the Marquis of Normanby, to the Reverend E. Hawkins, Secretary to the Society for the Propagation of the Gospel in Foreign Parts, concerning the further supply of Clergy­men for the service of the Church in this Diocese, I am impelled to take a liberty, which I solicit your Lordship to pardon, in addressing to you some observations connected with the subject of that letter.

The paragraph, by which my attention has been forcibly arrested, and to which I am anxious to direct your Lordship's attention is the following:

"His Lordship requests you will inform the Society that the Governor of New South Wales has stated, in a Despatch dated in November last, that there is now no want in the Colony of Clergy­men of any denomination. Lord Normanby is glad to have received this assurance, since the demands made on the revenues of the Australian Colonies for the maintenance of their Religious Establish­ments are now so great that there is reason to apprehend a serious deficiency; and, so long as those resources shall continue in their present state, it will not be in the power of Her Majesty's Government to augment the existing Establishment, nor can they pledge themselves to maintain it in its present strength by supplying all such vacancies as may hereafter occur."

A full statement of circumstances would lead to the conclusion that, so far as concerns the Church of England at least, His Excellency the Governor has proceeded upon misapprehension in thus reporting to the Secretary of State. But, without entering at the present time into such statement, though I am at any suitable time prepared to bring it forward, Your Lordship will allow me to
observe that the determination thereupon announced not to augment the existing number, nor even to pledge the Government to supply such vacancies as may hereafter occur, is at variance with the existing law of the Colony, and would seriously interfere with the rightful claims, which under that law the Members of the Church of England have established for themselves. I beg with the utmost deference to refer your Lordship to the 1st and 2nd sections of the Act of Council of 7th W. 4 No. 3, entitled "An Act to promote the building of Churches and Chapels, and to provide for the maintenance of Ministers of religion in New South Wales," wherein it is provided that, whenever a sum of not less than three hundred pounds shall have been raised by private contribution and applied towards the building of a Church or Chapel and a dwelling House, where the same may be deemed necessary, for the officiating Minister thereof, "it shall be lawful for the said Governor with the advice of the Executive Council by warrant under his hand as aforesaid to authorize from time to time the issue from the Colonial Treasury of Stipends towards the support of the Ministers of Religion duly appointed to officiate in any churches or chapels to be erected in manner aforesaid, or in any churches or chapels already erected, and of which Trustees shall be appointed for the maintenance thereof as hereinafter mentioned by virtue of this Act, such stipends being issued at the rates hereinafter mentioned, that is to say," etc.

According to the ordinary principle of construing Acts of the Legislature, I believe I am warranted in observing that the words "shall be lawful" involved an imperative sense; and that by "any Churches or Chapels" is meant all such as fall within the description of the Act. I therefore contend, on behalf of the Members of the Church of England, that, so long as that act of Council shall continue in force, it is not within the competency of the Secretary of State or of the Governor to withhold stipends from clergymen duly appointed to Churches and Chapels of the two following Classes —

1st. Such as were erected previous to the passing of the Act, 29th July, 1836, and to which Trustees were appointed within six months from that date.

2nd. Such as have been since created in places where a sum of not less than Three hundred pounds has been raised by private subscription, and applied towards the building of a Church or Chapel.

In every case of the latter description especially, those subscriptions were advanced on the faith of Government, considered to be pledged by this act to provide a fixed endowment towards the support of the Clergyman; they would not have been advanced except upon that understanding; and I wish to be understood as maintaining with the utmost respect, but still most firmly, that, so long as this Act continues in force, the Government is under a legal Obligation not only to secure to the existing incumbents such Stipends as the Act authorizes, but also to supply all such vacancies as may hereafter occur; that is to say, to continue similar stipends to Clergymen duly appointed to officiate in such Churches or Chapels in room of those now in possession.

It is far from my wish or disposition to add a single observation which can bear the sense of questioning upon insufficient grounds
the correctness of the affirmation, conveyed in His Excellency the Governor's despatch of November, 1838, that there was even then no want of Clergymen in the Colony; but, as this was but nine months after the arrival of His Excellency, who at that time I believe had scarcely quitted Sydney, it was in the nature of things impossible that His Excellency should have spoken from personal knowledge or observation; and I am at a loss to conceive upon whose authority that statement may have been adopted.

Had His Excellency done me the honor to consult me, or to make any reference to me upon the subject previously to so addressing the Secretary of State, I feel assured that I could have given such certain and positive information to the contrary, as would have satisfied His Excellency that the representation in question was far from portraying accurately the religious condition of the Colony, at least as related to the Church of England. I am prepared with the unquestionable evidence of facts to demonstrate this, whenever it shall be Your Lordship's pleasure to call for it; and the fairest proof, which can be offered, will be afforded by my having within the present year to present applications from ten or more additional places having complied with the terms of the Act of Council; and therefore every one entitled to receive for their Clergyman a stipend of greater or less amount as graduated by the provisions of that law.

I do therefore, under a strict sense of my duty, most earnestly beseech Your Lordship that, as you value the religious welfare of the people of this community, and, independently of that observance which is due to the existing laws, Your Lordship will not be induced to withhold from the Society for the Propagation of the Gospel such means and encouragement as it is in the power of Government to afford in aid of their disposition to provide regularly ordained and suitable instructions for the Members of the Church of England in this portion of Her Majesty's dominions.

I have, &c.,

W. G. AUSTRALIA.

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LORD JOHN RUSSELL to SIR GEORGE GIPPS.

(Despatch marked "Separate," received* 11th March, 1841.)

Sir, Downing Street, 11 Sept., 1840.

With reference to my Dispatch of this day's date, I transmit to you a copy of a letter which I have received from the Revd. Dr. Heptonstall, and I have signified my assent to the appointment of the additional number of Roman Catholic Clergymen proposed in that letter.

I have, &c.,

J. RUSSELL.

[Enclosure.]

REVD. THOMAS HEPTONSTALL to LORD JOHN RUSSELL.

Acton, 7th July, 1840.

I have the honor of acknowledging the receipt of your Lordship's letter of the 22d Ulto., by which I am informed that your Lordship's sanction will be withheld for the present to any new...

* Note 128.
applications for the grant of the outfit and passage allowance to
the Colony of New South Wales to Clergymen of any denomination.
As it is stated that Your Lordship's sanction will be withheld
for the present to any new applications, I respectfully urge that I
may not be debarred from the power of presenting the names of
three Catholic Clergymen for New South Wales (three only having
gone out last year) to complete the number of six, whose names I
had permission to present by your Lordship's Predecessor in office.
The Marquis of Normanby, by his letter dated the 10th June, 1839;
and further that I may also be allowed to present the name of one
Catholic Clergyman for Van Diemen's Land, power having been
granted to The Revd. W. Ullathorne by Lord Glenelg in a letter,
dated 3rd March, 1838, to present the names of two and The Revd.
T. Butler being the only individual sent out.
I have, &c.,
THOS. HEPTONSTALL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 140, received* 11th March, 1841.)

Sir,

With reference to your despatch, No. 173 of the 14 Decem-
ber last, forwarding a Demand for Clothing, which will probably be
required for Convicts in New South Wales and in Norfolk
Island during the year ending the 31st March, 1842, I have
now to transmit to you, for your information, Copies of a Corre-
spondence, which has passed between this Department, the Home
Office and the Board of Treasury, on the subject of this Re-
quisi­tion, from which you will perceive that, in consequence of
the proposed cessation of transportation to New South Wales,
it has not been considered necessary to forward to the Colony
the quantity of Clothing originally applied for.

I am, &c.,
J. RUSSELL.

[Enclosure No. 1.]

UNDER SECRETARY STEPHEN TO MR. S. M. PHILLIPPS.

Sir,

I am directed by Lord John Russell to transmit to you, for
the consideration of the Marquis of Normanby, the enclosed copy
of a Despatch from the Governor of N. S. Wales with a statement
of the Quantity of Clothing, which he considers will probably be
required for Convicts in that Colony and in Norfolk Island during
the year ending the 31st March, 1842.

Before communicating on the subject of this requisition with the
Lords Commissrs. of the Treasury, Lord John Russell would be glad
to be informed of the probable numbers of the Convicts to be sent
out to New South Wales. It appears to His Lordship that Sir
George Gipps' calculation is erroneously formed, as Transportation
to New South Wales will cease after the 1st August, 1840.

I am, &c.,
J. STEPHEN.

* Note 128.
MR. S. M. PHILLIPPS TO UNDER SECRETARY STEPHEN.

Sir, Whitehall, 4 July, 1840.

I have received and laid before the Marquess of Normanby your letter of the 20th Ultimo, with its accompanying copy of a dispatch from the Governor of New South Wales and enclosed statement of the quantity of clothing, which will be required for Convicts in that Colony and in Norfolk Island during the year ending 31st March, 1842.

Lord Normanby directs me to inform you, in reply to your enquiry as to the probable number of Convicts to be sent to New South Wales, that Transportation to that Colony will wholly cease after the 1st August next; at which period, 575 Male Convicts have been sent thereto since the 1st January last.

It is proposed to transport about 2,000 Convicts annually to Van Diemens, a portion of whom it is presumed will be transferred from thence to Norfolk Island under such directions as Lord John Russell may think it expedient to give; but, as Lord Normanby is not aware of what number of prisoners it is intended to place in that settlement, he is not enabled to give a definite answer to your enquiry.

I am, &c.,

S. M. PHILLIPPS.

UNDER SECRETARY STEPHEN TO MR. C. E. TREVELYAN.

Sir, Downing Street, 24 July, 1840.

I am directed by Lord John Russell to transmit to you for Reference of the consideration of the Lords Commissioners of the Treasury the requisition for enclosed copy of a Despatch from the Governor of New South Wales, with a statement of the quantity of Clothing which he considers would probably be wanted for Convicts in that Colony and in Norfolk Island during the year ending 31st March, 1842.

As it appeared to Lord John Russell that this Statement had been prepared on an erroneous calculation, formed in ignorance of the fact that Transportation to New South Wales would cease after the 1st of August, 1840, his Lordship thought it right to obtain some further information on the subject from the Secretary of the Home Department.

I enclose for the information of the Lords Commissioners a copy of a letter which has been received from Mr. Phillipps in reply to that reference, and I am to request that you will lay that Letter before their Lordships for their assistance in framing their instructions for complying with the requisition in question.

I am, &c.,

J. STEPHEN.

MR. T. CRAFER TO UNDER SECRETARY STEPHEN.

Sir, Treasury Chambers, 7th Sept., 1840.

With reference to your Letter of the 24th July last, I have it in command from the Lords Commrs. of H.M. Treasury to transmit to you, for the information of Lord John Russell, copy of a letter from the Secretary of the Ordnance dated 24th Ultimo, on the subject of the Requisition for Convict Clothing for New South Wales, which accompanied Sir George Gipps' despatch of the
1840.
12 Sept.

Proposed reductions in supply of convict clothing.

THOS. CHAFER, pro. Sec.

[Sub-enclosure.]

MR. G. BUTLER TO MR. C. E. TREVELYAN.

Sir, Office of Ordnance, 24th Augt., 1840.

Having submitted to the Board of Ordnance your letter of the 4th Instant enclosing a Requisition for Clothing for Convicts' Service in New South Wales and at Norfolk Island for the year ending 31st March, 1842, I have the honor to return the Requisition and to acquaint you for the information of the Lords of the Treasury that the Board are of opinion, if the Demand be supplied as reduced in Red Ink, it will be amply sufficient to meet the probable wants of the Colony, the requisition having been originally framed upon erroneous data, the presumed increase in the number of Convicts not being likely to take place; and that, should their Lordships concur in this opinion, the Storekeeper at Sydney will be acquainted with the reduction made in the Demand, in order that he may compensate in his future demands for any excess or deficiency which may ensue from this alteration.

I am also to acquaint you that the cost of the Supply as reduced is estimated at £10,781, and to request that the Requisition may be returned to me with their Lordships' further directions on the subject.

I have, &c,

G. BUTLER, for the Secy.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 130, per ship Eliza Francis.)

My Lord, Government House, 12th Septt., 1840.

With reference to my Despatches of the 6th and 24th July last, Nos. 80 and 91, I have the honor to forward herewith a Copy of a further Despatch from the Lieutt. Governor of New Zealand, relative to the proceedings of the Settlers at Port Nicholson.*

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[A copy of this despatch, dated 1st August, 1840, will be found in a volume in series III.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 150, received† 11th March, 1841.)

Sir, Downing Street, 13 Septembr., 1840.

With reference to my dispatch of the 11 Augt., No. 127, in which you were informed that the Act, No. 3, transmitted

* Note 136. † Note 128.
in your dispatch of the 10 Feby., No. 16, relating to the Revenue
of Customs, had been referred for the consideration of the Lords
Commrs. of the Treasury, I have now to acquaint you that,
their Lordships having reported to me their opinion that this
Act is not liable to any objection, I have submitted it to The
Queen for confirmation and that Her Majesty has been graci-
ously pleased to confirm and allow the said Act.

I am, &c.,
J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 131, per ship Eliza Francis.)
My Lord,
Government House, 14th Septt., 1840.

With reference to my Despatch of the 8th July last, No. 81, I have the honor herewith to forward Copies of a fur-
ther correspondence which has taken place between the Lieutt.
Governor of New Zealand and the Baron de Thierry.

I have, &c.,
GEO. GIPPS.

[Enclosure.]

[A copy of this despatch, dated 1st August, 1840, with its enclo-
sures, will be found in a volume in series III.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 152, received* 11th March, 1841; acknowledged by
Sir George Gipps, 15th March, 1841.)

Sir,
Downing Street, 15 September, 1840.

The Lords Commrs. of the Treasury having intimated to
me that they have authorized an advance to the Agent General
for New South Wales on account of the Colonial Government
to the amount of £4,290, I have to request that you will take
the necessary measures for the repayment of that Sum without
delay into the Military Chest.

I am, &c.,
J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 153, received* 11th March, 1841.)

Sir,
Downing Street, 16 September, 1840.

I transmit to you herewith a Copy of a letter from the
Secretary to the Colonial Committee of the General Assembly of
the Church of Scotland with an Extract from the Minutes of the
Committee, dated the 11 ulto., containing a Report on the

* Note 128.
820 HISTORICAL RECORDS OF AUSTRALIA.

1840.
16 Sept. present state of the Presbyterian Church in New South Wales, particularly in reference to the Presbyterian Church Act Amendment Bill.

I am, &c,

J. RUSSELL.

[Enclosure.]

MR. W. YOUNG TO UNDER SECRETARY VERNON SMITH.

Sir, Edinburgh, 21st Augt., 1840.

I have been directed by the General Assembly's Acting Colonial Committee to transmit to you, for the information of the Rt. Honble. the Secretary of State for the Colonies, an Extract from the Minutes of the Committee dated the 11th Current, containing a Report on the present state of the Presbyterian Church in New South Wales, particularly in reference to the Presbyterian Church Act Amendment Bill.

The Report was prepared partly in consequence of the transmission to the Committee by the Local Legislature of the Report of the Committee of the Legislative Council with the Minutes of Evidence and Appendix, in which it is stated, in reference to the Presbyterian Church Act Amendment Bill, that it appears to your Committee, that no Legislative Enactment "to carry into effect the proposed change in the Presbyterian Church in the Colony can be satisfactory and permanent until the views of the Parent Church be ascertained on the controverted points of Church Discipline."

Similar Extracts from the Minutes of the Colonial Committee have been prepared for the local Govt. and for the Presbytery of New South Wales. I have sent the Communications enclosed with a respectful request from the Committee that they may be forwarded along with any communication, which Her Majesty's Government may have to make to the Governor of New South Wales on the subject.

I have, &c,

WM. YOUNG,
Secretary to the Committee.

[Sub-enclosure.]

EXTRACT from the Minutes of a Meeting of the General Assembly's Acting Committee on Colonial Churches, held at Edinburgh upon the 11th day of August, 1840.

The following Report from the Sub Committee on the State of the Presbyterian Church in New South Wales was then given in by Mr. Dunlop, the Convener of the Committee, read and ordered to be engrossed in the minutes:

"Your Sub Committee have taken into consideration the Report of the Committee of the Legislative Council of New South Wales on the 'Presbyterian Church Act Amendment Bill,' transmitted to the Committee from the Council office, together with the copy of the proposed Bill, petitions against the same, and the documents connected with the subject of it annexed to the said Report; and they have also taken into consideration a variety of other communications made to the Committee on the same subject. The Sub Committee cannot doubt that the Committee will feel and most readily acknowledge the obligation, under which they are laid by the Legislative Council in transmitting to them the above mentioned Report with the documents annexed, and for the anxious
desire evinced by the Legislative Council that their Enactment should be in accordance with the principles and constitution of the Church of Scotland; the principles which the Committee formerly announced in the course of the previous proceedings in regard to the divisions in the Presbyterian Church of New South Wales, as those by which the relations of branches of the Church of Scotland in the Colonies to the Church at home must be regulated, having been especially brought under the consideration of last general Assembly in the Report of the Committee, and having received the approbation and sanction of the Assembly, it appears to your Sub Committee that no doubt can now be entertained that the terms of the proposed Union, agreed to between the Presbytery of N. S. Wales and the separating Ministers so far as constituting the basis of the intended Synod of Australia and the Enactments of the 'Presbyterian Church Act Amendment Bill,' are in accordance with the Constitution of this Church, and the relations which she desires to subsist with her branches in the Colonies.

"The objections stated to the terms of Union and to this Bill by certain Members of Presbytery appear to the Sub Committee not to be inconclusive.

"The proposition that this Church claims and should exercise legislative and appellate Jurisdiction over the Church Courts of the Colonies has been negatived by the deliverance of Assembly approving of the Committee's Report; while at the same time a reference for advice by the Colonial Courts, not at instance of a minority of the Court or by the parties to a cause which would be equivalent to an appeal, but by act of the Supreme Judiciary in any Colony, will always be received and considered by this Church.

"The Assertion again that the Church in the Colony will be Separate from the Church at Home or independent of it, in any sense which indicates separation or disconnection, is not well found. A fundamental principle of the proposed Synod is that it shall be in connection with the Church of Scotland; and another fundamental principle is that its Ministers shall declare their adherence to the standards of this Church. This connection cannot be maintained without the concurrence of the Church at home, and the necessity of this concurrence affords the utmost protection which the circumstances of Colonial Churches admit of, and your Sub Committee believe it to be a sufficient protection against an abandonment of the principles and standards of the Church of Scotland.

"The necessity of this continued connection also affords an answer to the alarm expressed that property originally granted to the Members of the Church of Scotland should be carried off to another communion. Under the proposed Bill, it could not, the Committee conceive, be enjoyed or retained by any Church Judiciary in the Colonies not in connection with the Church of Scotland, or after such connection had come to an end. If this, which must undoubtedly be the intention of the Bill, be not expressed in sufficiently explicit terms, it would be proper to add some words to make it more clear, and indeed the sub Committee would at any rate desiderate an addition to the Second Clause of the Bill of this tenor, such Synod continuing to be in connection therewith and to adhere to the confession of Faith and Standards of the said Church.

"Your Sub Committee, while approving generally of the terms of Union above referred to, cannot but express their regret that the
Presbytery should have agreed to the condition regarding the reception of the Member of Presbytery, who had separated from them, independent, nor exclusive of any consideration of what the Church at home might have done in reference to that Individual, who had unquestionably reverted under her immediate discipline and jurisdiction. The considerate course adopted by the Church at home in leaving that Individual to be dealt with exclusively by Colonial Judicatory, which he pledged himself to join, has prevented any practical inconvenience arising from the conduct of the Presbytery; but it enhances the regret of the Committee that so much less consideration should have been shewn by them to the Judicatories of the parent Church than has been shewn by the Parent Church to the Colonial Judicatory. At the same time, the Sub-Committee fully appreciate the difficult positions in which the Members of Presbytery were placed, and rejoicing at the Union which has been agreed to, and which they trust will soon be permanently secured, they are willing to overlook any causes of difference that are now pressed, and, encouraging peace and brotherly love, to urge the United Church to the accomplishment of the great objects committed to their Charge.

In regard to one subject brought under the notice in the Letter from the Presbytery of N. S. Wales to the Commission of the General Assembly, and as to which it properly falls to the Colonial Committee to advise the presbytery, viz., the election of representative Elders, your Sub-Committee cannot hesitate in giving their opinion that the practice as to that matter, referred to in the Letter, is inconsistent with the rules and constitution of the Church of Scotland. The practice stated is that, where there is only one Elder in the Congregation, two or more Members of Presbytery, without authority from the Presbytery, associate themselves with him, and, designating themselves the Kirk Session, give him a Commission to represent them in the Presbytery. This practice the Sub-Committee hold to be altogether inconsistent with the principles of representation in the Presbyterial Judicatories, with regular order, and with the Constitution of the Church; and they trust that it will be henceforth discontinued. They would further suggest that the Committee might avail themselves of this occasion to point out the importance of there being in each Congregation a full and efficient Session, wherever fit and proper persons can be found to undertake the office and duties of the Eldership.

The Sub Committee beg to suggest that whatever deliverance be come to by the Committee should be communicated not only to the Presbytery of New South Wales, but also to the Legislative Council; and they would also recommend that copies of the report of the Committee to last Assembly with the deliverance of the Assembly thereon be also transmitted to these bodies.

On hearing and considering this Report, the Committee approved of the same and directed copies thereof to be sent to the Colonial Office, the Legislative Body and Presbytery of N. S. Wales; also that Mr. Berry should be written to in answer to his letter on the subject to which the Report relates.

Extracted from the Minutes of the General Assembly's Acting Committee on Colonial Churches, etc., etc.

Wm. Young, Secretary to the Committee.
SIR GEORGE GIPPS TO L ORD JOHN RUSSELL.
(Despatch No. 132, per ship Eliza Francis.)

My Lord,
Government House, 17th Sept., 1840.

I have the honor herewith to submit to Your Lordship, a Report re
quarantine of ship at Port Phillip.

I have, &c.,
GEO. GIPPS.

[Enclosure.]

[A copy of this report, dated 27th August, 1840, will be found
in a volume in series III.]

SIR GEORGE GIPPS TO L ORD JOHN RUSSELL.
(Despatch No. 134, per ship Eliza Francis; acknowledged by
lord John Russell, 29th March, 1841.)

My Lord,
Government House, 21st Sept., 1840.

I have the honor to acknowledge the receipt of Your Lordship's Despatch of the 29th Feby., 1840, No. 26, and at the same time to report that the gentleman named in it, Mr. Knox Childe, arrived a short time since in the Colony, and that the Bounties promised to him on the Immigrants which he brought to the Colony have been paid, and a credit of £500 allowed to him in the purchase of Land.

Having in my Despatch of the 28th Augt., 1839, No. 121, stated that I have no objection to urge against the practice recently adopted of allowing persons to lodge money in England for the purchase of land in Australia, I will only on the present occasion suggest that, in order to avoid the inconvenience of long outstanding accounts, it might perhaps be desirable that the parties lodging the money should be required to claim their land within a limited period either of three or five years.

I have, &c.,
GEO. GIPPS.

SIR GEORGE GIPPS TO L ORD JOHN RUSSELL.
(Despatch No. 135, per ship Eliza Francis.)

My Lord,
Government House, 23rd Septt., 1840.

With my Despatch of the 24th Augt. last, No. 119, I transmitted to Your Lordship Copies of the Instructions, which had been given to Capt. Stanley of Her Majesty's ship "Brito-mart" by the Lieutt. Governor of New Zealand, on his proceeding to Banks' Peninsula in the Middle Island, where it was expected.
that some Emigrants from France were about to form a Settlement;* I have now the satisfaction to inform Your Lordship that Captn. Stanley preceded the French in his arrival at Banks' Peninsula, and that the British Flag was flying, and the British Authority established there, when the French Whaling Ship the "Comte de Paris" (Captn. Langlois) arrived, and landed about 50 Emigrants.

Capt. Lavand, in the French Corvette "L'Aube," arrived at Banks' Peninsula after Captn. Stanley, and only one day before the "Comte de Paris," and he has I understand pledged himself that nothing shall be done that can be considered as an attempt to take possession of the Country for the French Government.

Captn. Langlois claims I understand a considerable extent of land as a purchase from the Natives.

The Emigrants are described by Captn. Stanley as being mostly Mechanics or Laborers; and are under the direction of a gentleman sent from the Jardin des Plantes.

The spot where they have landed is called Akaroa; it is a good harbour, but surrounded by steep and thickly wooded Mountains 3,000 feet high.

A Police Magistrate (Mr. Robinson) was left at Akaroa, having been sent thither in the "Britomart" by Lieutt. Governor Hobson; and the "Britomart" was at Port Nicholson on the 4th inst., the day to which my accounts from Captn. Stanley come down.

I have, &c.,
GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 136, per ship Eliza Francis; acknowledged by lord John Russell, 26th February, 1841.)

My Lord,

Government House, 24th Septt., 1840.

In compliance with the directions contained in Your Lordship's Circular† of the 27th Decr., 1839, I have called on Mr. W. S. Parker for a Copy of the letter, which was addressed by him to Your Lordship on the 1st July, 1839, and herewith transmit to Your Lordship the Copy which has been accordingly furnished to me by Mr. Parker.

I have caused a Copy of the Minute which I had previously made on Mr. Parker's application to be subjoined to Mr. Parker's letter, from which Your Lordship will perceive that Mr. Parker has no claim whatever to an additional Grant of land, it having been decided in numberless cases that no person can claim an Additional Grant of land, who emigrated before the promulgation of the orders of 1826 and 1827.

I have, &c.,
GEO. GIPPS.

* Note 149. † Note 137.
MR. W. S. PARKER TO COLONIAL SECRETARY THOMSON.

Sir,

Clarefield, Port Macquarie, 16th June, 1838.

I have the honor to acknowledge the receipt of your letter dated 26th April, in reply to my application for an additional Grant of Land, in which you state that, as I arrived in the Colony previously to the Regulations of 1826 and 1827, His Excellency could not entertain my application. In reply, I beg to submit to His Excellency that, on my visiting the Colony, I did not avail myself of becoming a Settler, and that I had no intention of doing so under the then Existing regulations, but was about leaving the Colony when I was encouraged, by the publication of the regulations alluded to, to settle in it, and upon their faith, and in accordance with them, I became a Settler and obtained my primary Grant. I have therefore to hope that the indulgence, which they held out, may not be withheld from me because I did not revisit Europe and then return to the Colony.

Relying on the justness of my Claim, as Settling under the regulations, I respectfully Solicit His Excellency the Governor to reconsider my case; and, should His Excellency not feel authorised to admit my claim to the Benefit of the regulations, that my case may be submitted to the Home Government for the consideration and decision of the Secretary of State.

W. S. PARKER.

Minute of His Excellency the Governor upon the Foregoing Letter.

"INFORM Mr. Parker that I am strictly forbidden from Sanctioning any additional Grant to a person who left England on the faith of the regulations of 1826 or 1827, and that it would be quite useless to make application to the Secretary of State upon a point on which his decision has been already so formally pronounced."

1st July.

G.G.
1840.
25 Sept.

Statement by W. Thomas.

MR. W. THOMAS TO MR. G. A. ROBINSON.

Sir,

Turrick, 17th Augt., 1840.

In answer to your communication of the 15th Inst., No. 386, which fortunately has so soon come to hand, I beg thro' you to acknowledge with gratitude the anxious Solicitude of my much Hond. friends in England, and to Solicit that you will assure them how Sensibly I feel their enquiries after myself and family. That the family including James John Whitham have all, with the exception of Mrs. Thomas and my eldest daughter, enjoyed an uninterrupted good State of health Since arriving in these Colonies.

The following are the dates when parcels of letters have been sent by us to England Since our arrival:—

Sent from Sydney.—Sth Augt., 1838: To the Rt. Hon. the Countess Dowager of Ilchester, and other friends. Decr. 3rd, 1838: To Revd. George Clayton and other friends.

Sent from Port at Melbourne.—Febry. 28th, 1839: To Mr. George Christie and other friends. Octr. 25th, 1839: To the Rt. Hon. the Countess Dowager of Ilchester and other friends, acknowledging a large Case of Bks. and other presents for Self and family.

Port Phillip.—Decr. 25th, 1839: To Rt. Hon. the Countess Dowager and other friends in Ausr. to letters received.

Port Phillip.—Febry. 22nd, 1840: To Rt. Hon. the Countess of Ilchester, and other friends.

These letters have all (with the exception of those of Sth Augt. and 3rd Decr., 1838) been directed in a parcel under cover to The Hon. M. Foxstrangways. Under Secretary, Foreign Office, London. I have, &c.,

WM. THOMAS,

P.S.—It has caused me no Small uneasiness and is Singular that I have not reed. a Single answer to letters Sent from Port Phillip.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 154, received* 11th March, 1841.)

Sir,

Downing Street, 26 September, 1840.

With reference to my dispatch No. 20 of the 18 February last, I transmit to you, herewith, Copies of a further Correspondence with the Revd. Dr. Lang, relative to his claim to half Salary during his absence from New South Wales, together with a Copy of a Report from the Colonial Committee of the Church of Scotland on the subject; and I beg to call your attention to that part of the letter to Dr. Lang of the 26 Inst., in which he is informed, with reference to his project of introducing American Missionaries into New South Wales, that no part of the Public Revenues of the Colony can be appropriated to the support of

* Note 128.
Russell to Gipps.

Aliens officiating in the Church there, and that no guarantee can be given except by Her Majesty's Government to any such aliens that their continued residence in the Colony will be permitted.

I am, &c,

J. Russell.

[Enclosure No. 1.]

Revd. J. D. Lang to Under Secretary Vernon Smith.

Sir,

London, 30 Decr., 1839.

With reference to my former Letter, enclosing the Certificate from the Colonial Treasurer of New South Wales of the payment of my Salary as Minister of the Scots' Church, Sydney, up to the 18th of January last, and requesting that an order might be given for the payment of the half Salary allowed in similar cases from that date, I have the honor to request that as the preliminary ecclesiastical arrangements, on the part of the Committee and Commission of the General Assembly on the one hand, and myself as the Representative of the Synod and Presbyterian inhabitants of New South Wales on the other, have now been definitely and satisfactorily agreed on, which, I understand, was deemed a perquisite to the payment of my Salary at the date of the letter I allude to, the necessary order for that payment may now be given, provided there is no further objection on the part of the Right Honorable the Secretary of State.

I have, &c,

John Dunmore Lang.

[Enclosure No. 2.]

Under Secretary Vernon Smith to Revd. J. D. Lang.

Sir,

Downing Street, 15th Jan'y., 1840.

Having laid before Lord John Russell your Letter of the Decision re payment of your Salary and of the Salaries of those Ministers, who were led to separate themselves from the Church of Scotland in New South Wales, must depend on the result of the investigation into the whole question by the General Assembly of the Church of Scotland, which result has not yet been communicated to his Lordship, Lord John Russell, however, thinks it right to apprise you that he considers it highly objectionable to permit any Clergyman to draw Salary during such frequent and protracted absence from his duties.

I am, &c,

R. Vernon Smith.

[Enclosure No. 3.]

Revd. J. D. Lang to Lord John Russell.

My Lord,

32 Jervin Street Crescent, 29th July, 1840.

I have the honor to represent to Your Lordship that, on calling at the Colonial Office on my return from the United States, where I have been for several months past, I was informed by one of the gentlemen in the Office, for any letter that may have been written me on the subject during my absence has unfortunately miscarried, that Your Lordship had declined authorizing the payment of my half Salary since I left New South Wales.
If this is really the case, I beg most respectfully to inform Your Lordship that, under the circumstances that led to my voyage to England, I am constrained to regard such a proceeding, on the part of Her Majesty's Government, as tantamount to a sentence of condemnation, either on myself personally or on the numerous and respectable individuals by whom I was publicly and solemnly deputed to proceed to England for the decision of an ecclesiastical question of the utmost importance to the cause of religious liberty in the Colonial Presbyterian Church for all time coming; and, as I cannot charge myself with having done anything in the case, either in the Colony or in England, to merit Your Lordship's censure individually, and as I cannot suppose that Your Lordship could have intended to punish my constituents through their delegate, I cannot submit, after all the sacrifices both personal and pecuniary which I have voluntarily undergone for the last eighteen years for the planting of religion, morality and education in a Country which Your Lordship's predecessors till very recently had reduced, through long neglect and mismanagement, to a state that might have disgraced the Government of Turkey, I cannot submit, in such circumstances and after such sacrifices, to be sent back to New South Wales in all probability for the last time, as a culprit or evildoer without knowing the reason why, and without taking such steps for my personal vindication as may appear expedient and necessary, if that reason should not be satisfactory.

My Lord, the present condition of the Church of Scotland is sufficient to convince Your Lordship that the principles of Ecclesiastical Polity in the Presbyterian Church, as connected with the State, are not so well defined, but that great difference of opinion may arise on this subject. I beg therefore to remind your Lordship that the main question, that led to my voyage to England, was whether the General Assembly's Committee or the Assembly itself had a right to exercise jurisdiction over the Presbyterian Church in New South Wales. On that question, certain Presbyterian Ministers in the Colony maintained the affirmative, and the Colonial Government received and acted on their opinion; while eleven of my brethren and myself, supported by a large majority of the Presbyterians of the Colony, maintained the negative. And Your Lordship is aware that, in the course of the recent proceedings in the case in this country, the Assembly's Committee have distinctly disclaimed all jurisdiction over the Colonial Presbyterian Church, and thereby decided the question in favor of my brethren and myself, and set the matter at rest for the future. The Committee have indeed asserted that they did not attempt to exercise jurisdiction in the case from the first; but I beg to submit to Your Lordship that my brethren and myself were satisfied that they did, and Your Lordship is aware that, in such cases of differences of opinion, Colonists are not in the habit of receiving definitions from those by whom they conceive they have been wronged or oppressed.

My Lord, the difficulties in the Presbyterian Church in New South Wales arose entirely out of the fact that the Church of Scotland had treated her Members in that Colony with indifference and neglect for fifty years; and that, in consequence of the great lack of a Missionary spirit in her communion, a large proportion of the Presbyterian Ministers, who had gone out to the Australian Colonies, were inefficient, and not a few unworthy men I have already, my Lord, been unfortunately constrained to become the
Russell to Gipps.

Prosecutor in not fewer than four cases of clerical delinquency in these Colonies; in three of which the unhappy individuals were disgraced for immorality, while the fourth went to his grave with the brand of public approbrium upon his name. In such circumstances, My Lord, an honest man, who desires fearlessly to do his duty without regarding consequences, must expect to be misrepresented and traduced from all quarters, even by parties who are unconscious themselves of the evil influence under which they are acting. But, as my conscience does not accuse me of having acted in any manner under the influence of improper motives, I cannot submit to be virtually censured and condemned by Your Lordship in silence.

My Lord, the mere amount of Salary that is at present due me, to what ever inconvenience the want of it may subject me, is not the ground of my present appeal. I knew well that the parties, on whose behalf I was delegated to proceed to England, will not suffer me to lose a single farthing of that amount personally. But, as I cannot but regard the withholding of it by Your Lordship, under the circumstances I have stated, as an injustice which I do not merit at Your Lordship's hands, I beg most respectfully to request that I may not be constrained to appeal in any quarter, and especially to the Presbyterians of New South Wales, on my return to the Colony against such injustice. I cannot, My Lord, consider myself under any personal obligations to Her Majesty's Government. I am confident I have repaid tenfold to the Colony of New South Wales in real and extensive benefit rendered to the cause of public morals, religion and education in its Territory all the salary I have ever received from its Treasury; and, after having spent so large a portion of my life and the whole of my private fortune in such a cause, I confess I cannot but regard it as peculiarly aggravating to be repaid by Your Lordship with unmerited condemnation.

In regard to my recent voyage to America, I beg to inform Your Lordship that it was undertaken, with the previous concurrence and approval of certain of my brethren and people in New South Wales, for the purpose of endeavouring to interest the American Presbyterian Church in the promotion of the Spiritual welfare of Australia and New Zealand. In that object, I beg to inform Your Lordship I have been completely successful, the American Presbyterian Church having agreed to establish a mission to the Aborigines in each of these localities by sending three educated Missionaries to New South Wales and two to New Zealand, while the American Seamen's Friend Society have also agreed at my suggestion and request to send out a Chaplain to the Seamen in the Port of Sydney and another to those in the Bay of Islands, New Zealand.

As a proof that the settlement of the differences in the Presbyterian Church in New South Wales did not depend on any authoritative decision of the General Assembly's Committee or Commission, I beg to inform Your Lordship that they were finally and amicably settled in the Colony in the month of February last, before any decision of those bodies could have been heard of; and that settlement was effected precisely on the terms, which had been mutually agreed to before the fact of the uncalled for interference of the Assembly's Committee in our affairs was known in the Colony.

And, as a proof that my brethren and myself were not singular
1840.

26 Sept.

1840. in our opinion as to the importance of the question of jurisdiction abovementioned, I beg to inform Your Lordship that the Professor of Theology and Church History in the Divinity College of the American Presbyterian Church in Princeton, New Jersey, informed me they considered the decision of that question well worth a voyage to England.

I have, &c.,

JOHN DUNMORE LANG.

[Enclosure No. 4.]

UNDER SECRETARY VERNON SMITH TO REVD. J. D. LANG.

Sir, Downing Street, 6 August, 1840.

Having laid before Lord John Russell your Letter of the 20th Ultimo, I am directed to transmit to you a Copy of a communication, which was addressed to you on the 15th of January last, in answer to an application for the payment of Salary during your absence from New South Wales, and which Letter it appears probable did not reach you.

I am directed further to acquaint you that, in a Despatch bearing date the 18th of February last, Sir George Gipps was informed that, adverting to your frequent absence from the Colony and to the circumstances under which you had come home, Lord John Russell did not feel justified in authorizing your receiving any Salary during your absence.

Lord John Russell does not entertain this opinion as to the payment of your Salary from any disapprobation of your Mission, but upon the general rule that such payments are intended for the services of residents in the Colony and should not, in justice to the Colony, be extended to persons absent upon Missions, however desirable may be the object of such Missions.

I am, &c.,

R. VERNON SMITH.

[Enclosure No. 5.]

REVD. J. D. LANG TO UNDER SECRETARY VERNON SMITH.

Sir, 19 West Square, 12 August, 1840.

Letter acknowledged.

I have the honor to acknowledge the receipt of your letter of the 6th Instant, enclosing a copy of a letter addressed to me on the 15th of January last, informing me that, "adverting to my frequent absence from the Colony and to the circumstances under which I had come home," Lord John Russell did not feel authorized to grant me the usual allowance during my present absence.

In reference to this communication, I beg leave to represent to his Lordship that my frequent absence from New South Wales in every instance but the present has arisen from a state of things, which has been my great hardship and misfortune, and by no means my fault. It has arisen entirely from the fact that, previous to the year 1837, when in consequence of my last voyage to England a Committee of the General Assembly of the Church of Scotland was entrusted with the task of selecting Presbyterian Ministers for New South Wales, I was, as a Minister of that Church, the Spiritual Son of an unnatural parent, that took no concern in the Spiritual Welfare of her children in the Colonies; for it was purely because there was no public body or Society in the Church of Scotland that took the slightest interest in the Affairs of the Presbyterian Church in New South Wales that I was obliged to come home again and again
to procure additional labourers for that distant Colony. I had no business of my own on any of these occasions to bring me to England, none whatever; and I beg therefore to submit whether it is not peculiarly hard that I should thus be censured and punished for the criminality of others.

As I have reason to believe that I am the only person on the Civil Establishment of New South Wales at present absent from the Colony, whose half salary has been withheld, and as it will be impossible to convince the Colonial Public that the circumstance has not been expressly intended in my own case as a mark of special dishonour, while I am well aware it will be gladly interpreted as such by many in the Colony. I shall feel myself constrained, should his Lordship persevere in his determination, to appeal to the Colonial Public on my return to New South Wales as to whether I have merited such a Mark of dishonor at his Lordship's hands. I had hoped that, as the troubles of the Colonial Presbyterian Church are now definitely settled, I should have been spared the necessity of any such proceeding; and I am willing to believe that, on reconsidering the Matter, his Lordship may not see it necessary to subject me to it. But, as I was sent home as the Delegate of a large Body of Ministers and People to appeal to H.M. Govt. in a case of much importance to their Spiritual Welfare, and as I am not conscious of any personal demerit in that capacity, I shall have no other course than the one I have mentioned, in the event of His Lordship's continuing to withhold my Salary, even though the peace of the Colony should thereby be disturbed again.

I beg distinctly to state that I am in no apprehension of eventually losing my half salary, as I know well that the people, by whom I was publicly delegated to proceed to England, are both able and willing to prevent such an issue; but, as they are concerned that I should not suffer either loss or dishonor, so long as I discharge my duty honorably as their delegate, they are also concerned in declaring whether I have done so or not, and whether, "in the circumstances in which I came home," I have merited what will be universally interpreted in the Colony as pains and penalties at the hands of the Right Honble. Secretary of State.

As I am on the point of embarking for the Colony, I trust never to return to Europe, I shall feel much obliged by an early reply.

I am, &c,

JOHN DUNMORE LANG.

[Enclosure No. 6.]

UNDER SECRETARY VERNON SMITH TO REVD. J. D. LANG.

Sir,

24th August, 1840.

Having laid before Lord John Russell your Letter of the 12th Instant, I am directed to acquaint you in reply that his Lordship has transmitted Copies correspondence to the Colonial Committee of the Church of Scotland, requesting them to favor his Lordship with their opinion whether the occupations, in which you report yourself to have been engaged during your absence from N.S. Wales, have been so far in prosecution of the duties of your Ministerial Office as to justify H.M. Govt. in remunerating you at the public expense in respect of the services in which you have been employed during that period.

I have, &c,

R. VERNON SMITH.
HISTORICAL RECORDS OF AUSTRALIA.

[Enclosure No. 7.]

UNDER SECRETARY VERNON SMITH TO REV. J. D. LANG.

Downing Street, 26th Septr. 1840.

Sir,

With reference to my letter of the 24th Ultimo, I am directed by Lord John Russell to acquaint you that, on a consideration of the Report which his Lordship has received from the Colonial Committee of the General Assembly of the Church of Scotland, it does not appear to him that H.M. Govt. would be justified in sanctioning your remuneration at the Public Expense on account of the Services in which you have been engaged during your absence from N. S. Wales.

Lord John Russell directs me to add with reference to your project of introducing American Missionaries into N. S. Wales, that no part of the Public Revenue of that Colony can be appropriated for the support of Aliens officiating in any Church there, and that no guarantee can be given, except by H.M. Govt., to any such Aliens that their Residence in the Colony will be permitted.

I am, &c.,

R. VERNON SMITH.

[Enclosure No. 8.]

MR. W. YOUNG TO UNDER SECRETARY VERNON SMITH.

Sir, Edw., 19th September, 1840.

I have been directed by the Colonial Committee of the General Assembly of the Church of Scotland to acknowledge receipt of your letter to Principal Macfarlan, the Convener of the Committee, with the enclosed copy of a Correspondence between the Colonial Department of Her Majesty's Government and the Reverend Doctor Lang, relative to the payment of his half Salary during his absence from New South Wales, and at the same time to transmit to you an Extract from the Minutes of the Committee, containing their opinion on the subject referred to in your letter.

I am, &c.,

WM. YOUNG.

[Sub-enclosure.]

EXTRACT from the Minutes of a Meeting of the General Assembly's Acting Committee on Colonial Churches, held at Edinburgh upon the sixteenth day of September, Eighteen hundred and forty years.

"The Committee took into consideration the letter of Mr. Vernon Smith of date 24th August, accompanying the correspondence between the Reverend Doctor Lang and the Colonial Office, relative to the payment of his half salary during his absence from the Colony, and requesting, by desire of Lord John Russell, the opinion of the Committee "whether the occupations in which Doctor Lang reports himself to have been engaged, during his absence from New South Wales, have been so far in prosecution of the duties of his ministerial office as to justify Her Majesty's Government in remunerating him at the public expense in respect to the services in which he has been employed during his absence."

"It would be highly satisfactory to the Committee if Her Majesty's Government could feel themselves warranted to allow Doctor Lang his half salary in consideration of the circumstances that he was
RUSSELL TO GIPPS.

requested to come to this Country by a large body of the Colonists, and that the refusal of the salary may produce some irritation hurtful to the cordiality of the union, which has happily been re-established in the Presbyterian Church of New South Wales; but with reference to Doctor Lang's occupation and "services," while absent from the Colony, as to which Her Majesty's Secretary for the Colonies desires the opinion of the Committee, they cannot state that they consider these to justify his remuneration at the public expense.

"1. It appears to the Committee that Doctor Lang's visit to Britain was alike unnecessary and useless, in so far as the interests of the Presbyterian Church in New South Wales were concerned. The apprehension of an assumption of jurisdiction on the part of the Church at home over the judicatories of her Colonial branch was wholly unwarranted by any thing done by the Church at home; and, considering that the majority of the Presbytery of New South Wales, the judicatory in recognised connexion with the Church, avowed the opinion that no such Jurisdiction had been claimed or exercised, a written communication might properly have been deemed sufficient to ascertain whether any ground of apprehension really existed before the step was adopted by a minister of leaving his charge and coming home for that purpose. And this course being followed, the same disclaimer would instantly have been given, which was made by the Committee in their very first communication to the Government after they saw the assertion of Doctor Lang as to this matter, in his letter to the Colonial office of the 14th June, 1839, and before he had made any Communication to them at all.

"2d. On his arrival in Britain in June, 1839, Doctor Lang did not apply to the Church to have this point settled, but applied to Her Majesty's Government by his letter of 14th June, 1839, above mentioned, for certain specific objects as being "indispensably requisite" to the restoration of union in the Colonial Church. The first and chief of these was the disallowance of the Presbyterian Church act of 9th September, 1837, passed during his previous absence, which he represented as the main or rather the sole obstacle to union; and, without the disallowance of which, he stated all prospect of Union to be hopeless. The second was the granting of salaries to the separating ministers on the Certificate of the moderator of the Synod, or in other words the recognition and endowing of the Synod as a separate Church. The third had reference to disputes as to certain Church property in two districts of the Colony; and the fourth was to obtain instructions to the Governor of New South Wales to summon a General Synod of all the Presbyterian ministers in the Colony to form a system of Government for the Presbyterian Church there. It was not till Her Majesty's Government had positively refused to grant Doctor Lang's application as to the most important of these objects, the disallowance of the act of 1837 (the period for disallowing which expired on the 9th September, 1839), that he entered into any communication with the Church at home at all in regard to the matter of jurisdiction, not having even acknowledged the receipt of any application for a Conference, addressed to him on the 19th August, till the 6th September, after the final answer of Her Majesty's Government refusing to disallow the Act of 1837.
Opinion of committee re value of visit of Revd. J. D. Lang to England.

3rd. That none of these objects, the Attainment of which seems to have been the primary purpose of his visit to Britain, were in any degree necessary to the restoration of union in the Presbyterian Church of the Colony is established by the fact that, in the month of October, 1839, before the intelligence of even Doctor Lang's arrival in Britain could have reached the Colony, an union was definitely agreed upon between the Presbytery and the separating ministers on the very same terms that had been adopted in October of the preceding year, but which had been broken off by Doctor Lang and his adherents on the occasion of his leaving the Colony for this Country, the Presbytery having been all along willing to adhere to them.

4th. Immediately on opening a communication with this Church, Doctor Lang received from a Committee of Commission, appointed to confer with him, the same statement as to jurisdiction which this Committee had given previously in their first communication to the Government, but with which he was not then in any degree satisfied; and he pledged himself to concur, on his return to New South Wales, in an union on the terms which had been agreed to in October, 1838, this Union having, in point of fact, been accomplished in the Colony about the very same time, independently altogether of the result of Doctor Lang's mission to this Country. The whole proceedings as to this matter were finally confirmed by the Commission of Assembly at its meeting on the 11th December, 1839, and, as already observed, there never could have been a moment's hesitation in removing any apprehension of a claim of jurisdiction, which the Church of Scotland had not only never exercised as to her Colonial branches, but had positively refused to exercise when proposed by any of them.

5th. As to Doctor Lang's proceedings in America, the Committee know nothing but what is stated in his letters to the Colonial Office. They fully appreciate the devotion and zeal exhibited by many of the Christian Missionaries from America; but they cannot think that Doctor Lang was the individual to be chosen to make a selection, even if it had been deemed a proper measure to resort to another country for the purpose of obtaining missionaries. As to this, they doubt exceedingly the prudence in the present position of the Presbyterian Church of New South Wales, with its recent differences scarcely healed, of introducing a class of Ministers from a foreign land, instead of obtaining from this Country whatever additional supply might be required, the more especially as their views, though generally the same, may and unquestionably will differ on some important points from those of their brethren from Britain, and as there may thereby possibly be created a new element of division. Further the Committee cannot approve of an individual minister, though with the concurrence of some of his brethren and people, doing this without the sanction of his church, which does not seem to be alleged, or of the Government, from which he seeks remuneration while so occupied.

While the Committee, agreeably to the desire of the Noble Secretary for the Colonies, thus submit their views as to the occupation and services of Doctor Lang while absent from the Colony, and respectfully state their opinion that these would not seem to them to warrant the payment of his salary, they would earnestly trust that on other grounds, viz., consideration for the feelings of those by whom he was requested, however unnecessarily, to
GIPPS TO RUSSELL.

proceed to Britain, and a desire to avoid any new cause of irritation, Her Majesty's Government could find it consistent with their duty to grant Doctor Lang's application, at least for the time during which he was engaged in the special mission to Britain with which these parties had entrusted him." Extract from the Minutes of the General Assembly's Acting Committee on Colonial Churches by Wm. Young, Secretary of the Committee.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(A circular despatch, received* 11th March, 1841.)

Sir, Downing Street, 26th September, 1840.

I enclose herewith for general information in the Colony under your Government the accompanying public notice, which has been issued by command of the Post Master General, prescribing, in pursuance of the Act 2 and 3 Victoria, c. 96, the rate of postage on all printed Votes and Proceedings of the Imperial Parliament sent from any part of the United Kingdom to the British Colonies by private Vessels, and on all printed Votes and Proceedings of the Colonial Legislatures, sent to the United Kingdom by private vessels.

I have, &c,

J. RUSSELL.

[Enclosure.]

[This was a printed notice, dated 2nd September, 1840, fixing the rate of postage on "Votes and Proceedings" at 2d. for every four ounces.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 138, per ship Eliza Francis; acknowledged by Lord John Russell, 28th February, 1841.)

My Lord, Government House, 26th Septt., 1840.

At the request of the Legislative Council of this Colony, I have the honor to transmit herewith to Your Lordship addresses of Congratulation to Her Most Gracious Majesty and Her Illustrious Consort, on the occasion of Her Majesty's auspicious Nuptials; and I have to request that Your Lordship will favor myself and the Council by presenting the same to Her Majesty and Prince Albert.

That the congratulations of Her Majesty's faithful Subjects, in these remote parts of Her Dominions, should be presented so long after the celebration of the happy event, which called them forth, will be taken I trust only as a proof of the vastness of that Empire over which Her Majesty has been so happily called to Reign.

I have, &c,

GEO. GIPPS.

* Note 128.
1840.
26 Sept.

[Enclosure No. 1.]

ADDRESS OF CONGRATULATION.

To The Queen's Most Excellent Majesty.

We, Your Majesty's Loyal and dutiful Subjects, the Governor and the Legislative Council of New South Wales in Council Assembled, unanimously present to Your Majesty our heartfelt congratulations upon the Auspicious occasion of Your Royal Marriage with a Prince, who adheres to the principles of his illustrious Protestant Ancestry, and unites in his own person virtues and endowments promising the best security for Your Majesty's happiness and the welfare of your People.

This expression of our Loyalty will unavoidably reach your Majesty long after the happy event, but our feelings, we trust, will not be considered the less deep and sincere.

May Your Majesty, with your Royal Consort, under the blessing of Divine Providence, enjoy a long, prosperous, peaceful, and truly Glorious Reign, and may the Imperial Crown of Great Britain be transmitted to your Decendants as the Protectors of Right and the Guardians of Liberty, Civil and Religious, to the remotest Posterity.

GEORGE GIPPS, Governor.

Signed by His Excellency the Governor as President on behalf of himself and the Council.

WM. MACPHERSON, Clerk of Councils.

A True Copy:—WM. MACPHERSON, Clerk of Councils.

[Enclosure No. 2.]

ADDRESS OF CONGRATULATION.

To His Royal Highness Prince Albert of Saxe Cobourg and Gotha, etc., etc., etc.

We, the Governor and the Legislative Council of New South Wales in Council Assembled, with unfeigned respect and sincerity unanimously congratulate Your Royal Highness upon the joyful occasion of Your Marriage with our Most Gracious Queen.

In the Historical Renown of Your illustrious Family, and in the personal character of Your Royal Highness, we hail the bright presage of happiness to our beloved Sovereign, whilst we equally recognise, in this Auspicious Union, a strong additional Security for the Maintenance of the National honor and prosperity.

These cheering anticipations we entertain in common with our fellow Subjects throughout the Empire, and it is our fervent prayer that Heaven, by showering blessings upon Her Majesty and Your Royal Highness, may fulfil the ardent hopes of a Loyal, United, and Grateful People.

GEORGE GIPPS, Governor.

Signed by His Excellency the Governor as President on Behalf of himself and the Council.

WM. MACPHERSON, Clerk of Councils.

A True Copy:—WM. MACPHERSON, Clerk of Councils.
GIPPS TO RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(A circular despatch, received* 11th March, 1841.)

Sir, Downing Street, 28th September, 1840.

It has become my melancholy duty to communicate to you the intelligence of the decease of Her Royal Highness The Princess Augusta Sophia, which event took place at Clarence House, St. James's Palace, on the 22d Instant.

I have, &c.,

J. RUSSELL.

[Enclosure.]

[SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 139, per ship Eliza Francis; acknowledged by Lord John Russell, 7th April, 1841.)

My Lord, Government House, 28th Sept., 1840.

I propose in the present Despatch to report to Your Lordship the progress, which has been made in the extension of our knowledge of this Colony and in the Settlement of it, during the time that I have had the honor to be entrusted with the chief administration of its affairs.

Before however I enter on the subject, I feel it may be expedient to offer some preliminary observations on the general nature and character of the Country.

* Note 128.
It is well known that Australia presents a surface to the Settler very different from that of any other Country, into which Colonization by Europeans has been introduced; that, in consequence of the absence of dense forests or extensive swamps, it is pervious to the Settler in almost every direction, whilst the traffic over it is further facilitated by the general dryness of its soil. In their natural state too, the lands, though far from rich, offer very extensive pasturage, and therefore afford the means of profit to the Settler, almost without the outlay of any Capital. These peculiarities have since the first occupation of the Colony led to the wide dispersion of its inhabitants; and, without seeking on general principles to invalidate the soundness of those theories, which have lately been propounded on the subject of Colonization, and which assume as their basis the necessity of concentrating population, I think I may venture to say that they are altogether inapplicable to a Country like New South Wales. Let the evils of dispersion therefore be what they may, they must here be borne with; our flocks and herds already stray over a country 900 miles long by 300 wide; and I hesitate not to say that any attempt to bring them within the limits even of our twenty contiguous Counties would end in failure, if not in the ruin of the Colony.

Excessive droughts occasionally (perhaps periodically) occur in the Country; but, instead of repining under these temporary afflictions, the inhabitants ought to bear in mind that, but for their occurrence, the Country would not offer to the Settler the advantages which it so peculiarly does. It is to the general dryness of the climate and the soil that the Settlers are indebted for their chief prosperity; and they might yet have been confined to a narrow circuit around Sydney, had the character of the Country been different from what it is.

Prior to my assumption of the Government, twenty Counties had been laid out,* pursuant to the general instructions given to my Predecessors under the Sign Manual; but these Counties serve no other purpose than that of indicating certain tracts of country, as they are not coterminous with any Jurisdiction either Civil or Ecclesiastical. It is however a long established regulation of the Government that no land can be sold beyond their limits. The extreme boundaries of County Lands have come therefore to be called the Boundaries of Location; and, accordingly as lands lie within or beyond those Boundaries, a different system is followed in the management and civil Government of them.

Within the Boundaries, the whole Country is divided into Police Districts, each having a Bench of Petty Sessions and

* Note 150.
generally a Stipendiary Magistrate; and, of these Districts which are of very unequal size, there are at present thirty.

Beyond the Boundaries, the Country is also roughly divided into Districts, in each of which there is a Commissioner of Crown Lands, who is the Chief Magistrate of it, and has under his command a small force of Mounted Constables, who in order that they may be distinguished from the more regular Mounted Police of the Colony, are called by the name of the Border Police.

Within the Limits of Location, land is either sold or let on lease; beyond the Limits it is neither sold nor let, but Licences are granted, at the discretion of the Crown Commissioner, for the occupation of such portions of land as may be desired by Proprietors of Stock, on each of which Licences a fee of £10 is payable annually, and an assessment under a Local Ordinance (2nd Vict., No. 27) is levied on the Stock depastured there.

Each allotment of land, for which a Licence is thus given, is called a Station; and the Stations may vary in extent from 5,000 to 30,000 acres.

The quantity of Stock, on which assessment was paid for the half year ending the 31st Decr., 1839, was 7,688 Horses; 371,699 Horned Cattle; 1,334,593 Sheep; and the number of Licensed Stations was 694. The real quantity of Stock however in all probability exceeded the quantity returned.

The rapidity, with which Stations are pushed into the interior, is very great; and they are frequently formed without the permission or even the knowledge of the Commissioner.

Towards the North, Stations already extend to the Country behind Moreton Bay, 300 miles beyond the Limits of Location; To the South and West, they extend beyond Port Phillip to the boundaries of South Australia.

The persons, who form these Stations, are the real discoverers of the Country, and they may be said to be in Australia (what the Backwoodsmen are in America) the Pioneers of Civilization. Wherever they find good pasturage, they fix themselves, and do not become known, even to the Commissioner, until some accidental occurrence (perhaps an unfortunate collision with the Aborigines) bring them under his notice, and ultimately under that of the Government.

The exposure to the hostility of the Aborigines is one of the greatest drawbacks to the advantages, which the Australian Settler enjoys in the facility of forming such Stations; but, of these or the dreadful consequences which follow from it, it is not now my purpose to speak.

Another drawback is the great distance to which they are led from Sydney, and the consequent difficulty in getting the
supplies of which they stand in need, and also in sending their produce and specially their wool to market.

The necessity of opening a shorter communication with the Sea leads to the formation of new roads; and in this way, roads or rather routes are now being opened to the Sea from the Pastoral districts, which I have spoken of as lying to the North of Sydney, and behind Port Macquarie, the Clarence River, and Moreton Bay, or between the 32nd and 25th degrees of South Latitude.

The first and last of these places have long been known, each originally having been a Penal Station or place of second transportation for Convicts from Sydney; but the Clarence River was only discovered about two years ago by persons engaged in the cutting of Cedar, which is usually found in the Rivers on the Eastern Coast of Australia.

Soon after I heard of the discovery of this River, I sent the Deputy Surveyor General to visit it; and a Copy of his Report, together with such further notices of it as he has been able to collect, are given in the appendix to this Despatch, marked A.

It being desirable to form a Town or Settlement at the head of the navigation of this River, I have now a surveying Party there; and a Commissioner of Crown Lands, with his party of Border Police, is also there to preserve order among the Cedar cutters and Cattleowners, who are also beginning to form stations there. The Clarence River falls into the Sea in about Latitude 29° 20' South; its mouth is therefore about 340 miles to the North of Sydney, and 90 miles to the South of Moreton Bay.

The proceedings, which I contemplate at Moreton Bay, were reported in my Despatch No. 99 of the 1st July, 1839, and have been approved by Your Lordship's Despatch, No. 15 of the 6th Feb., 1840. A Surveyor's Party has been employed there since the month of April, 1839, and a large quantity of land is now surveyed and ready to be brought into the market, whenever the circumstances of the Colony may seem to call for the sale of it. The Appendix B contains a general report of the progress of this Survey, with the necessary accompaniment of Plans.

Your Lordship may observe on any Map of Australia, and particularly Arrowsmith's published in 1838, a ridge of mountains extending parallel to the Sea Coast between the Latitudes of 26° and 32°. From the Eastern side of this ridge, various streams (of which the Clarence is the largest yet discovered) run by a short course to the Pacific, whilst, from the Western side of the same ridge, the waters take a very circuitous course
to the Darling and Murray Rivers, and ultimately through a portion of South Australia to the Southern Ocean. On the summit of these Mountains, a considerable extent of comparatively flat land has obtained the name of New England; and it is one of the best grazing Districts in the Colony, there being on it 66 stations.

The descent from the table land to the Pacific is steep and difficult; had it been easier, the three routes, which I have mentioned to Port Macquarie, the Clarence, and Moreton Bay, would in all probability have been opened some years ago.

To the South of Sydney, the same or a similar ridge presents itself, running through the Counties of Cumberland, Camden, and St. Vincent, though nearer to the Sea. This ridge has hitherto cut off the Western parts of these Counties, as well as the Counties of Murray, King, Georgiana, and Argyle, from any communication with the Sea except by the way of Sydney; but I am happy to say that a route has been discovered, which may be made practicable with little trouble or expence from a place called Narriga, on the Western side of the ridge in the County of St. Vincent, to Jervis Bay, which is a commodious harbour in Lat. 35°; A similar route may, it is hoped, be opened to Bateman's Bay, which lies fifty miles further South, and another perhaps still further South to Twofold Bay. At this latter place, there is a very large Cattle Station belonging to Dr. Imlay (formerly a Surgeon in the Navy), but the usual communication with it is by water.

Further South and veering to the West, there is a ridge of Hills, marked on most recent Maps as the Australian Alps, and called sometimes in the Colony the Snowy Mountains. Although a Cattle station had been pushed beyond these mountains by a gentleman of the name of MacAlister, the Country between them and the Sea was altogether unknown until the month of March last, when the Count Streleski, a Political Exile who since the latter misfortunes of Poland has devoted himself to the pursuits of science, attempted and achieved the exploration of it.

I have the satisfaction herewith to forward to Your Lordship a Copy of the account furnished to me of his journey by the Count; and I cannot do so without making Your Lordship aware of the feelings of respect and esteem, which have been excited towards him amongst the People of this Colony.

The Count's Memoir, as well as a Copy of his Map, is with his permission transmitted as Appendix C.

The District of Port Phillip was opened and the Town of Melbourne founded by Sir Richard Bourke in the year 1837;
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1840.  
28 Sept.  

Progress at Port Phillip.  

but, with the exception of a few Town allotments, no land had been sold when I entered on the Government of New South Wales in the month of Feby., 1838.  

Aided by the resources of this Colony, but without the assistance of borrowed money, and unaided by artifice or delusion or by attempts in England to calumniate its elder Sister, this New Settlement has I believe in the judgment of all impartial persons equalled, if it has not surpassed its boastful rival in South Australia.  

The Map which I transmit herewith (appendix D) will shew the quantity of land surveyed, and also the quantity sold at Port Phillip. The number of acres sold up to the present time is 159,494, and the net amount realized £312,700 10s. 7d., being at the average rate of £1 19s. 2d. per acre.  

The net amount of other revenues collected at Melbourne was in the year 1837, £2,358 15s. 10d.; 1838, £2,819 17s. 10d.; 1839, £14,703 5s. 10d.; and in the first six months of 1840, £11,747 3s. 2d.  

To the Westward of Port Phillip, and near upon the confines of South Australia, is Portland Bay, where an unauthorized Settlement was formed in 1835 by some gentlemen from Van Diemen's Land in the same manner that the first unauthorized Settlement was formed at Melbourne and Geelong by the Port Phillip Association.  

The attention of the Government was drawn to Portland Bay in 1839; and the necessity of forming a Settlement there manifested itself shortly afterwards, when the fact was ascertained that Stations had been established in the fine Country to the North of it on the River Glenelg, visited by Sir Thomas Mitchell in 1836, and by him called Australia Felix.  

An object also of considerable interest, which presented itself in this quarter, was to settle the position of the Meridian Line, which separates the Province of South Australia from New South Wales, and to ascertain on which side of that Meridian Line (or the 141st degree of East Longitude from Greenwich) the mouth of the River Glenelg was situated, the same having been very differently placed by different authorities, particularly by Mr. Arrowsmith and Sir Thomas Mitchell.  

Upon this duty I despatched, in the month of Sept., 1839, Mr. Charles Tyers, a gentleman whose services I had lately secured for the Surveyor General's Department in New South Wales, and who, in addition to much experience in practical astronomy, possesses a knowledge of the principles on which geodetic operations on an extensive scale can alone be carried on.
The Report made to me by Mr. Tyers forms the Appendix E to this Despatch; and I have to explain that I caused it to be printed, in order that, by being circulated among the officers of the Department, it might stimulate them to exertion, and serve as a model for other operations of the same nature.

Mr. Tyers ascertained the mouth of the Glenelg to lie a little to the Eastward of the 141st Meridian from Greenwich, and consequently to be within the Colony of New South Wales, though the Meridian crosses the River at the distance of only a few miles from its mouth.

In the immediate neighbourhood of Portland Bay, there is but a narrow slip of good land; between which and the fertile lands of the Australia Felix of Major Mitchell, there is an intervening tract of poor Country of nearly forty miles in extent; as this latter is however easily traversed, there can be little doubt that the good lands will speedily be occupied, and a Government Establishment at Portland Bay has become therefore indispensable. A Town indeed has been laid out by Mr. Tyers, and the first allotments will be sold on the 15th Octt. next.

The claims of the Messrs. Henty to a portion of the lands at Portland Bay were reported on in my Despatch to Your Lordship, No. 56 of the 11th April, 1840.

Having now spoken of the whole of the line of Sea Coast, and of the Country bordering on it from Moreton Bay to the confines of South Australia, it remains for me only to speak of the interior.

Wheresoever a River presents itself running to the Westward, the course of it is marked by Stations; and this is particularly the case on the Namoi, the Macquarie, and the Lachlan, on the borders of each of which they extend perhaps to a distance of from 200 to 300 miles beyond the Limits of Location; but, as every step in this direction leads the Settler farther from the Sea, as well as from Sydney, the limit seems, in the opinion of some people, to be attained, beyond which the feeding of Sheep will cease to be a profitable employment, the Wool not bearing the expence of transport from a more distant country.

Horses and Horned Cattle may however still be reared to advantage at more remote stations, as they may of course be driven, when of a proper age, to a market however distant.

Along the whole of the road from Sydney to Port Phillip, Villages have been laid out and Police Stations formed by the Government, according to the intention reported in my Despatch of the 21st July, 1838, No. 115; this road is therefore now as safe and as easily traversed as any other in the Colony; indeed it may
be mentioned as a proof of the open and accessible character of the Country generally, that this road, or at least the portion of it which lies between Yass and Melbourne, about 380 miles in extent, has been opened at no cost whatsoever to the Government, and very little to individuals; and that it is not only practicable but easy throughout its whole length for carriages of any description.

Your Lordship will have observed that I have not spoken of any New Expedition, undertaken either by the Government or by Individuals for the mere purpose of Discovery, and indeed none such have been attempted.

The long and expensive journeys of Sir Thomas Mitchell in the years 1835 and 1836, though highly interesting, led to no discoveries which could be turned to profit, with the exception perhaps of the fertile land of Australia Felix, which would surely have been reached by the ordinary advance of our Graziers, even though he had never visited it.

The expectation of finding a large River, or an Inland Sea sufficiently near to be of any use to our Settlers, has altogether vanished; and consequently the desire to penetrate into the Interior is less ardent than it was.

I have frequently expressed my willingness to encourage an attempt to penetrate either from Moreton Bay or any of the Northern parts of the Colony to Port Essington; but hitherto no person has presented himself to claim the honor of the enterprise.

Meanwhile in South Australia, a praiseworthy emulation has arisen to enter upon the field of Discovery; and a gentleman, every way I believe fitted for so laborious and hazardous an undertaking, has lately started* from the Head of Spencer's Gulf, with the design of placing the British Standard on the central point of Australia, and thereafter pursuing his course to the Gulf of Carpentaria or Port Essington.

Sincerely hoping that Mr. Eyre may succeed in his arduous and honorable enterprise, I will conclude with informing Your Lordship that I have conveyed instructions to the officer in command of the Post at the last mentioned place to render to him, or any of his party on their arrival, every assistance that may be in his power to bestow.

I have, &c.,
Geo. Gipps.

[Enclosures.]

[Copies of these reports will be found in a volume in series V.]

* Note 151.
GIPPS TO RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 140, per ship Eliza Francis; acknowledged by lord John Russell, 16th March, 1841.)

My Lord,

Government House, 29th September, 1840.

At the request of Captn. Maconochie, I forward to Your Lordship the accompanying Papers:

No. 1. Memorandum founded on his experience at Norfolk Island.

No. 2. Proposed Regulations for Penal Stations under the new system.

In thus however complying with Captn. Maconochie's request, it is my duty to state to Your Lordship that I can in no way recommend that Captn. Maconochie's Proposed Regulations should be adopted for Penal Stations in general; and that in particular I consider them unfit for Norfolk Island, so long as it remains a place of second Transportation for Convicts from New South Wales.

I think it right also to enclose herewith a Copy of the letter, which was written to Captn. Maconochie by my order on the subject of his proposed Regulations by the Secretary of this Colony.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[Copies of these papers, dated 24th July, 1st August, and 15th July, 1840, will be found in a volume in series III.]

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 156, received* 11th March, 1841.)

Sir,

Downing Street, 30 September, 1840.

I have to acquaint you that, the Revd. P. A. Hogan having been selected by the Revd. Dr. Heptonstall, and having produced satisfactory testimonials, I have authorised the issue to him of the usual allowance of One Hundred and Fifty Pounds on account of his Outfit and passage to New South Wales as one of the Six Roman Catholic Clergymen for whom provision was made in the Estimates for the past year.

I am, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 141, per ship Eliza Francis; acknowledged by lord John Russell, 31st March, 1841.)

My Lord,

Government House, 30th Sept., 1840.

Agreeably to the instructions contained in Your Lordship's Despatch of the 22nd Jan'y., 1840, No. 7, I have called on Mr. Anderson, late Colonial Surgeon on the Convict Establishment

* Note 128.
of this Colony, for the Medical Certificate required by the Lords of the Treasury, before they will take into consideration his claim for a retiring allowance; and I have the honor herewith to forward the Certificate which Mr. Anderson has handed to me.

I have, &c.,
GEO. GIPPS.

[Enclosure.]

MEDICAL CERTIFICATE.

I certify that Mr. Matthew Anderson was employed as Surgeon in the Medical department of this Colony under my directions from February, 1824, until I retired from the service in April, 1836; that he continued in charge of the Medical Establishments at Parramatta to the 31st of December, 1838, and that, during the last twelve months of that time, his health became so much impaired as to incapacitate him for the efficient performance of his duties, and that he has finally been compelled to retire from the department in consequence of continued ill health.

J. BOWMAN, late Inspector of Colonial Hospitals.

Sydney, New South Wales, 27th August, 1840.
COMMENTARY.
COMMENTARY
ON
DESPATCHES
TO AND FROM SIR GEORGE GIPPS,
FEBRUARY, 1839—SEPTEMBER, 1840.

Note 1, page 6.
This address.

This address was delivered on the 14th of February, 1839. Sir George Gipps stated that he had summoned the council to pass "a measure for the establishment of a Police Force beyond the settled districts of the Colony. The vast interests, which have grown up in those distant parts of the Territory, and the number of persons of all classes now engaged in depasturing Sheep and Cattle beyond what are called the Boundaries of Location, might be sufficient of themselves to call for the protection of a Police Force; but the necessity for it is rendered far more urgent by the frequent aggressions made of late by the Aboriginal Natives upon the Flocks and Herds of the Colonists, as well as on the lives of their Stockmen, by the outrages which have been committed on the Aborigines as well as by them, and particularly by one atrocious deed of blood for which seven unhappy men have suffered death on the scaffold." Sir George Gipps then detailed the provisions for the proposed bill to establish the border police.

Note 2, page 29.
The Official Reply.

The claims of Fairlie, Clark, Innes and Co. were the subject of despatches from Governor Bourke, dated 28th February, 1832 (see page 538 et seq., volume XVI), from viscount Goderich, dated 22nd March, 1833, from R. W. Hay, dated 22nd April, 1833 (see pages 53 et seq. and 79 et seq., volume XVII), and from lord Glenelg, dated 1st November, 1835 (see page 174 et seq., volume XVIII).

Note 3, pages 30 and 31.
As stated by the Jury.—A late decision.

The statement by the jury and the decision will be found on pages 179 and 178, volume XVIII.

Note 4, pages 32, 37 and 139.
General Darling's Proclamation.

A copy of this proclamation will be found on pages 19 and 20, volume XV.

This dispatch was dated 31st October, 1838 (see page 638 et seq., volume XIX).

This was the statute, 5 and 6 Wm. IV, c. lxi, entitled, "An Act to repeal an Act of the Ninth Year of His late Majesty for regulating the Carriage of Passengers in Merchant Vessels from the United Kingdom to British Possessions on the Continent and Islands of North America, and to make further Provision for regulating the Carriage of Passengers from the United Kingdom." It was passed on the 31st of August, 1835.

Hannibal Hawkings Macarthur married Anna Maria, the sister of Phillip Parker King.

The erection of the statue was effected by public subscription. The cost of the statue was £2,000 and the estimated cost of the pedestal, etc., was £400. At the time the names of the subscribers were published, the amount subscribed was £1,809 1s. 4d. by over eight hundred subscribers in sums from £50 downwards. In June, 1839, the amount subscribed was £2,191 9s. 9d., and the balance required (£208 10s. 3d.) had been promised.

It was intended that the modern Macquarie street should be extended due south through the modern Hyde park, and the "spot" selected was at the intersection of this intended street with the modern Park-street. This proposal was abandoned, and the statue was erected close to its present site at the entrance from Macquarie-street into the Domain in March, 1842.
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Note 12, page 73.

Whose parents and Brother had been murdered.

An account of the wreck of the barque Charles Eaton with Captain D'Oyly and family on board will be found on pages 373 and 374, volume XVIII.

Note 13, pages 74 and 76.

The Statute.

Sir George Gipps submitted a report on the inconvenience caused by the provisions of the statute, 2 and 3 Wm. IV, c. lixii, in a despatch, dated 1st May, 1838 (see page 402 et seq., volume XIX). The clause, which caused most inconvenience, is quoted in note 85, volume XIX.

Note 14, page 75.

I had the honor to propose.

The proposal was contained in a letter, dated 30th September, 1837 (see page 98 et seq., volume XIX).

Note 15, page 75.

A Book.

This was either an octavo volume, containing pages vii and 222, published at Hobart town in the year 1838 and entitled, Thoughts on Convict Management and other subjects connected with the Australian Penal Colonies, or an octavo volume, containing 40 pages, published at Hobart town in the year 1839 and entitled, General Views regarding the Social System of Convict Management.

Note 16, page 77.

Two Despatches.

These despatches were dated 23rd and 24th April, 1838 (see pages 391 et seq. and 394, volume XIX).

Note 17, page 78.

The Trial.

The trial was reported in a despatch, dated 23rd April, 1838 (see pages 392 and 393, volume XIX).

Note 18, page 90.

The Act.

This was the act of council, 2 Vict., No. 27, entitled "An Act further to restrain the unauthorised occupation of Crown Lands and to provide the means of defraying the expense of a Border Police." It was passed on the 22nd of March, 1839.

Note 19, page 92.

A report.

This report was dated 5th March, 1839, and was printed in the Votes and Proceedings of the legislative council.

Note 20, pages 99 and 100.

The opinions of Dr. Lushington.—A Letter.

The opinion of Stephen Lushington and the letter will be found on pages 389, 390 and 391, volume XVIII.
A most oppressive drought.

This was probably the worst drought experienced in New South Wales. It lasted from the year 1838 to the year 1843, and it was at its worst in the year 1839. For two years, the Murrumbidgee river ceased to run, and all the fish were gathered in a few deep holes, the water of which was undrinkable. The settlers obtained water by sinking holes in the bed of the river.

Daniel McCullum or McCallum arrived in the colony as a convict, and was pardoned by Governor King on the 21st of July, 1801, in order that he might practice his profession as a surgeon.

By the seventh clause, it was provided that the commissioners should decide on all claims "by the real justice and good conscience of the case." The clause concluded with the provision "that nothing herein contained shall be held to oblige the Governor to make and deliver any such grant, as aforesaid, unless His Excellency shall deem proper so to do."

These quarters ("quaters" was an error in original) were erected next to the first hospital in Sydney in the modern George-street north, and their site was selected by Governor Phillip in 1788. When the general or "rum" hospital was erected in Macquarie-street, these quarters were required no longer.

This committee was appointed on the 7th of April, 1837, "to inquire into the System of Transportation, its Efficiency as a Punishment, its Influence on the Moral State of Society in the Penal Colonies, and how far it is susceptible of Improvement."

The application was transmitted by Sir Richard Bourke with his despatch, dated 18th November, 1837 (see page 183 and also pages 539 and 540, volume XIX).
Note 30, page 163.

The official despatch.

This despatch was dated 31st January, 1838 (see page 252 et seq., volume XIX).

Note 31, page 165.

Yarrowlumla.

This grant now forms part of the federal territory at Canberra, and the homestead, known as Yarralumla or Yarrowlumla house, is used as a temporary hostel for visitors to Canberra.

Note 32, page 176.

The appendix.

This appendix was printed in the Votes and Proceedings of the legislative council and filled thirty-seven pages.

Note 33, page 182.

A List of those Acts.

These acts were 8 Wm. IV, Nos. 1 to 8. No. 1 was the Sydney town surveyor act; Nos. 2 and 3 adopted imperial statutes; No. 4 was the annual appropriation act; No. 5 was the English church temporalities act; No. 6 was the Sydney building act; No. 7 was the Scotch Presbyterian church temporalities act; and No. 8 was the licensed publicans act.

Note 34, page 184.

The Act of Council.

This was the act, 2 Wm., No. 4, entitled, "An Act to provide for the payment of the Salaries of the Governor of New South Wales and the Judges of the Supreme Court thereof out of the Revenues of the Customs of the said Colony."

Note 35, page 186.

The 6th Section.

The fifth chapter contained the regulations for the expenditure of public money. The sixth section included the following:—"Before the expiration of the month of June, in each year, the Governor will submit to the Council of his Government, or, in the case of British Guiana, to the Court of Policy, such an estimate as he may think necessary of the whole expenditure, not already fixed under the sanction of His Majesty's Government, which is intended to be charged upon the Colonial revenue for the year then next ensuing."

Note 36, page 187.

Alfred Stephen . . . arrived in this Colony.

Alfred Stephen was the third son of John Stephen, who was appointed a judge of the supreme court of New South Wales on the 17th of August, 1825. Alfred Stephen was a cousin of James Stephen, the under secretary for the colonies, and was born at St. Christopher, West Indies, on the 20th of August, 1803. He was called to the bar at Lincoln's Inn in November, 1823. His career in Tasmania and New South Wales was unique from the number of important offices, which he held during his long life. After serving as solicitor-general in Tasmania from May, 1825, he held office at attorney-general for the island from 1832 to 1838. On the 30th of April, 1839, he was appointed a puisne judge of the supreme court of New South Wales and held this office until the 7th of October, 1841, when he was appointed
chief justice of New South Wales. After holding this office for twenty-nine years, he retired on the 6th of November, 1873. He was president of the legislative council of New South Wales from the 20th of May, 1856, to the 28th of January, 1857. On the 30th of April, 1879, he was appointed lieutenant-governor of New South Wales, and administered the government on several occasions both before and after this appointment. In 1846 he was knighted; in 1862 he was made a C.B.; in 1874 a K.C.M.G.; and in 1884 a G.C.M.G. He died at Sydney on the 15th of October, 1894.

Note 37, page 187.
The terms of the 22nd Geo. III, Ch. 75.

This statute was entitled, "An Act to prevent the granting in future any Patent Office, to be exercised in any Colony or Plantation now or at any time hereafter belonging to the Crown of Great Britain, for any longer Term than during such Time as the Grantee thereto shall discharge the Duty thereof in person and behave well therein." This statute was passed, because "the practice of granting offices in his Majesty's colonies and plantations in America and the West Indies to persons, resident and intending to reside in Great Britain (in consequence whereof such offices are exercised by deputy and have been frequently farmed out to the best bidder), has been long complained of as a grievance by His Majesty's loyal subjects in those parts, who have been thereby exposed to exactions and oppressions."

Note 38, page 187.
The accompanying copy.

The copy of this newspaper is not available. An address to A. Stephen, signed by C. McLachlan, C. Swanston and numerous other residents of Tasmania, was printed in the issue of the Hobart Town Courier, dated 3rd May, 1839.

Note 39, page 192.
Some Coal.

The application by C. Swanston and others to open coal-mines at Western port was transmitted by Sir George Gipps with his despatch, dated 7th June, 1838 (see pages 435 and 436, and also 464, 749 and 750, volume XIX).

Note 40, page 194.
A fine.

Sir George Gipps reported the fine imposed on Joseph Catterall for contempt of court in a despatch, dated 10th January, 1839 (see page 740 et seq., volume XIX).

Note 41, page 197.
The Commission of the Governor of Van Diemen's Land.

When the island of Van Diemen's land (Tasmania) was proclaimed an independent colony on the 3rd of December, 1825, Governor Darling was sworn in as governor of the new colony by virtue of a commission, dated 16th July, 1825 (see page 1 et seq., volume V, series III). By this commission, it was provided that, in case of the death or absence out of the said island or its dependencies of Governor Darling, the lieutenant-governor should assume the administration. Accordingly, when Governor Darling sailed from Hobart town on the 6th of December, 1825, lieutenant-governor Arthur assumed the administration. When Sir Richard Bourke succeeded Governor Darling, and when Sir George Gipps succeeded Sir Richard Bourke as governors of New South Wales, both Sir Richard Bourke and Sir George Gipps
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held commissions as governors of Van Diemen's land (Tasmania), but were never sworn into that office. The administration of the island was fulfilled by lieutenant-governor Arthur and his successor, Sir John Franklin, under the section of the commissions providing for the absence of the governor.

Note 42, page 205.

Which have been printed.

Copies of these printed documents are not available. At this period, petitions and documents were frequently printed as broadsides for circulation.

Note 43, page 216.

The Swamp.

This was the Lachlan swamp, from which the water was carried to Hyde park by means of a tunnel known as "Busby's bore" (see note 52, volume XIX).

Note 44, page 217.

Hyde Park Barracks.

These barracks were erected by Governor Macquarie. The building is still extant on the eastern side of Queen's square, Sydney, and is used principally in the administration of justice.

Note 45, page 219.

My late father.

Edward Macarthur (afterwards lieutenant-general Sir Edward) was the eldest son of John Macarthur of Camden park, the practical founder of the wool-growing industry in Australia.

Note 46, page 233.

The 4th Clause.

This clause was as follows:—

"And whereas, by the said before recited Act passed in the fourth year of the reign of his said Majesty, intituled, 'An Act for making, altering and improving the Roads throughout the Colony of New South Wales, and for opening and improving the Streets in the Towns thereof,' certain further duties, powers and indemnities are imposed and conferred upon the said Surveyor General and his assistants; and it is expedient to amend the same; Be it therefore enacted, That, from and after the passing of this Act, all the said duties, powers and indemnities, so imposed and conferred upon the said Surveyor General and his assistants by the said Act, shall be imposed and conferred upon the officer commanding the Royal Engineers in New South Wales and his assistants, or upon such other person or persons as shall be duly appointed by the Governor of the said Colony to the charge of tracing, laying out, making, repairing or fencing of any road or roads, or to the charge of constructing or repairing any bridges in the said Colony, or to any other duties set forth in the said last recited Act."

Note 47, page 244.

Also page 257.

The long contemplated notice.

This notice was as follows:—

"His Excellency the Governor desires to draw the attention of owners of Stock throughout the Colony, and of the Public in general, to the extensive powers, which by an Act, passed in a recent extraordinary Session of the Legislative Council (2 Vict., No. 27), are now vested in the Commissioners
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of Lands acting beyond the boundaries of location, as well as to the fact that these Commissioners are now Magistrates of the Territory; and as one of the principal objects, which the Council had in view in passing the Act referred to, was to put a stop to the atrocities which have of late been so extensively committed beyond the boundaries, both by the Aborigines and on them. His Excellency deems the present a proper occasion to notify to the Public that he has received distinct instructions from Her Majesty's Government to cause an inquest or inquiry to be instituted in every case, wherein any of the Aboriginal Inhabitants may have come to a violent death in consequence of a collision with white men; and that His Excellency is determined to make no distinction in such cases, where the aggressors or parties injured be of one or the other race or colour, but to bring all as far as may be in his power to equal and indiscriminate justice.

"As human beings partaking of our common nature—as the Aboriginal possessors of the soil from which the wealth of the country has been principally derived—and as subjects of the Queen, whose authority extends over every part of New Holland—the Natives of the Colony have an equal right with the people of European origin to the protection and assistance of the Law of England.

"To allow either to injure or oppress the other, or to permit the stronger to regard the weaker party as aliens, with whom a war can exist and against whom they may exercise belligerent rights, is not less inconsistent with the spirit of that Law than it is at variance with the dictates of justice and humanity.

"The duties of the Commissioners of Crown Lands in respect to the Aborigines will be to cultivate at all times an amicable intercourse with them, to assist them in obtaining redress for any wrong to which they may have been exposed, and particularly to prevent any interference on the part of white men with their women. On the other hand, they will make known to them the penalties to which they become liable by any act of transgression on the persons or properties of the Colonists. They will endeavour to induce the Chiefs in their respective districts to make themselves responsible for the good conduct of their tribes, and they will use every means in their power to acquire such personal influence over them as may either prevent aggression or ensure the immediate surrender of the parties who may be guilty of it.

"His Excellency thinks it right further to inform the Public that each succeeding despatch from the Secretary of State marks in an increasing degree the importance, which Her Majesty's Government and no less the Parliament and the people of Great Britain attach to the just and humane treatment of the Aborigines of this country; and to declare most earnestly and solemnly his deep conviction that there is no subject or matter whatsoever in which the interest as well as the honor of the Colonists are more essentially concerned."

Note 48, pages 261 and 636.

The Sydney Dispensary.

During the government of L. Macquarie, the condition of the pauper sick was pitiable, and the necessity for relief was felt keenly. In 1816, William Redfern, the colonial surgeon, advocated the establishment of a dispensary; but the idea was abandoned, as it was considered impracticable at that time. In 1826, the project was revived successfully by William Bland. A subscription of £367 5s. was raised. The governor was appointed patron,
A. Macleay president, T. Icely treasurer, E. J. Keith secretary, and a committee of twelve to manage the Institution. Drs. Bowman, Bland, Ivory, Doyle and McIntyre offered their services gratuitously. Premises were rented, and a dispensary was opened for the free medical treatment of persons unable to pay for medical attendance. For each annual payment of £1, a subscriber was entitled to have one patient constantly on the books. At first, the institution was supported entirely by public subscriptions; but, from and after the year 1835, a subsidy equal in amount to the annual subscriptions was granted by the government. The duties of the medical officers increased so much that, in 1839, F. Mackellar was appointed medical officer to the dispensary at a salary of £130 per annum. This dispensary ultimately developed into the modern Sydney hospital.

Note 49, page 261.

The South Wing.

The general hospital was erected in Macquarie-street by D'Arcy Wentworth, Garnham Blaxell and Alexander Riley under a contract with Governor Macquarie (see page 401 et seq., volume VII). It consisted of the hospital building proper, a detached building on the north intended for the residence of the principal surgeon, and a detached building on the south intended for the residences of the assistant surgeons. The northern detached building now forms the central portion of parliament house, and the southern or south wing is now occupied by the mint.

Note 50, page 263.

A Narrative of the Voyage.

A note on this publication will be found numbered 71 in volume XIX.

Note 51, page 271.

Also page 434.

The materials of the houses.

John Batman erected two houses at Melbourne. One of these stood on Batman's hill, which hill has now been removed and occupied the modern site of the railway offices and goods sheds at Spencer-street. The second house occupied the site of the present building of the A.M.P. society at the corner of William and Collins streets.

Note 52, page 272.

Also page 406.

The events which occurred in China.

The dispute with the Chinese government arose from the traffic in opium. Lin, the imperial commissioner at Canton, demanded the surrender of all opium in the possession of foreign merchants. This demand was resisted, and, on the 24th of March, 1839, the chief superintendent for British trade in China, C. Elliott, arrived at the British consulate at Canton from Macao. The Chinese provincial government thereupon placed guards around the consulate to prevent anyone leaving, and withdrew all servants and food supplies from foreigners. Elliott, being thus forcibly detained and considering the safety of all foreigners, called on the merchants to deliver their supplies of opium to him holding the British government responsible for all delivered. As the result, 20,283 chests of opium valued at £2,000,000 were delivered to Elliott for surrender to the Chinese (see also note 145).
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Note 53, pages 278 and 517.

A claim.—The Proclamation or General Order.

This claim was the subject of a report by Governor Macquarie in 1814 (see page 339, volume VIII), by Sir Thomas Brisbane in 1825 (see page 515, volume XI), and by Governor Darling in 1826 (see page 362, volume XII) and in 1827 (see page 560, volume XIII). The claim was referred to Governor Darling by Earl Bathurst in January, 1827 (see page 17 et seq., volume XIII).

The proclamation will be found on page 564 in this volume.

Note 54, pages 279 and 518.

Mr. Hay's letter.—The Instructions.—The Commissions.

Copies of the letter of R. W. Hay will be found on page 19 et seq., volume XIII; of the instructions of 1786 and 1789 on pages 9 et seq. and 124 et seq., volume I; and of the commissions of Governors Bligh and King on page 1 et seq., volume VI, and on page 384 et seq., volume III.

Note 55, page 281.

Mary and Jane Callum.

These were the legatees of Daniel McCallum or McCullum (see pages 114 and 115).

Note 56, page 285.

Thomas Laslett.

The appointment of Thomas Laslett was announced in a despatch, dated 8th March, 1837 (see page 703, volume XVIII).

Note 57, page 285.

Also pages 354, 490, 514, 516 and 648.

Letter.

Copies of these papers are not preserved with the original of this despatch at Government House, Sydney.

Note 58, page 287.

Those additional duties.

The annexation of the islands of New Zealand as a dependency of New South Wales was mentioned by Sir George Gipps in his opening address to the legislative council in May, 1840, and at the same time he forecasted additional labours for the council in the consideration of the legislation necessary for their administration.

Note 59, page 296.

The Letter.

An extract from this letter will be found on page 758, volume XIX.

Note 60, page 298.

The Amendment.

The amendment was as follows:—

"Be it therefore enacted, That it shall be lawful for the local Legislatures of the said respective Colonies by any Laws or Ordinances, to be by them or either of them from Time to Time for that Purpose made, in the Manner prescribed by the said recited Act, and subject to the Conditions and Provisoes therein contained, to make such Provision, as to them may seem meet,
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for the better Administration of Justice, and for defining the Constitution of the Courts of Law and Equity, and of Juries, within the said Colonies respectively, or within any present or future Dependency thereof respectively, any thing in the said recited Act or in any Charter of Justice or Order in Council, made and issued in pursuance thereof, or in any Law, Statute or Usage to the contrary thereof in anywise notwithstanding. The "said recited Act" was the statute, 9 Geo. IV, c. lxxxiii, and the "said Colonies," New South Wales and Van Diemen's land (Tasmania).

Note 61, page 307.

The wording of the 13th Section.

This was as follows:—

"And be it further enacted that it shall be lawful for his Majesty, by any such charters or letters patent as aforesaid, or by any order or orders to be by him made, with the advice of his privy council, to institute circuit courts at such times and in such districts or counties within the said respective colonies, as shall from time to time be deemed necessary."

Note 62, page 310.

Also pages 314, 327 and 341.

Presbyterian Church Act.

This was the act of council, 8 Wm. IV, No. 7, entitled "An Act to regulate the temporal affairs of Presbyterian Churches and Chapels, connected with the Church of Scotland in the Colony of New South Wales." It provided for the appointment of trustees for churches, chapels and ministers' dwellings belonging to the Presbyterian church; but the appointment of not more than five and not less than three trustees for each parish was made by the presbytery at its sole discretion from a list of ten persons, nominated by the subscribers and seat holders of the church or chapel. The presbytery was thus created the dominant body. It was also provided that the ministers of these churches or chapels should be recognized by the presbytery.

Note 63, pages 311 and 321.

Unwarrantable proceedings.—An Act of interference.—Resolutions.

The record of the proceedings and the resolutions will be found on page 570 et seq., volume XIX.

Note 64, page 311.

A College.

This was the Australian college, which was founded in the year 1831 (see note 182, volume XVI).

Note 65, page 315.

Twelve Ministers.

These were the ministers who were associated with the Reverend J. D. Lang in the formation of the synod of New South Wales (see page 318). The payment of stipends under the general church act was subject to a certificate from the moderator of the presbytery, and, as these ministers had not joined the presbytery, the necessary certificate was not granted.

Note 66, pages 320 and 513.

A special Act.

This was the act of council, 2 Vict., No. 16. By this act, it was provided that the governor, with the advice of the executive council, could issue, for the year 1839, the stipends to ministers professing to hold the standards
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of the church of Scotland but disclaiming the jurisdiction of the presbytery of New South Wales, and could grant subsidies for the erection of churches and dwelling-houses for such ministers under the provisions of the "general church act."

Note 67, page 322.

To direct the Governor.

These instructions were contained in a despatch, dated 3rd September, 1838 (see page 569, volume XIX).

Note 68, page 348.

Your Lordship's entrance.

Lord John Russell announced his assumption of office as secretary of state for the colonies in a circular despatch, dated 3rd September, 1839 (see page 306).

Note 69, page 386.

That part of the Territory of New South Wales.

The territory assigned by Sir George Gipps to the district of Port Phillip included about one-half of the modern state of Victoria. It extended from the South Australian boundary in the west to the one hundred and forty-sixth meridian of longitude in the east. This meridian passes close to the modern town of Benalla, and lies between Western port and Wilson's promontory. Thus the whole of Gippsland and the mountainous country in the east of the modern state was excluded. It was bounded on the south by Bass strait, and on the north by the thirty-sixth parallel of latitude. This parallel passes close to the modern town of Yarrawong, which formed the north-east corner of the district. On the west, this parallel crosses the South Australian boundary about thirty miles north of the Melbourne to Adelaide railway.

Note 70, page 390.

The new Building.—The old Lunatic Asylum.

The "new building" was erected on the land now occupied by the hospital for insane at Gladesville. The lunatic asylum was established at Liverpool in the beginning of the year 1827, when the building formerly used as a court-house was appropriated for the accommodation of the patients removed from the first lunatic asylum at Castle hill.

Note 71, pages 391 and 651.

A Seal.

This seal replaced the seal of William IV (see page 218 and note 50, volume XVII). The new seal like that of William IV was one-sided only, and combined the essentials of the obverse and reverse of the seal authorised in 1817 (see note 97, volume IX), but the motto "Sic fortis Etruria crevit" was omitted. This seal was in use until the year 1870.

Note 72, page 397.

Loan.

This was the first complete proposal for raising a loan for government purposes in the colony of New South Wales. This specific loan was not raised; but, between the years 1843 and 1855, the net amount of £724,733 3s. 1d. was raised by the sale of debentures for the assistance of immigration. By the 18th section of the South Australian act (4–5 Wm. IV, c. xev, passed on
the 15th of August, 1834), authority was given for raising £200,000, by debentures to be known as "South Australian Colonial Revenue Securities," for the purpose of paying the expenditure incurred in founding the colony of South Australia (see note 189, volume XVIII). This was the first Australian loan.

Note 73, pages 400 and 403.
Also pages 526, 529 and 540.

An entire new system.

A. Maconochie enunciated his views of the treatment of convicts in an octavo volume of forty pages, which was published at Hobart Town in 1839. It was entitled, General Views regarding the Social System of Convict management suggested by Captain Maconochie, R.N., K.H. This system was described as the "social system" as opposed to the "silent" and "separate" systems. The general principle was the reform of the criminal by means of a gradual and progressive relaxation of all forms of restraints and thereby enabling him to resist temptations when his full freedom was restored. The methods to be adopted were detailed by A. Maconochie in a series of memoranda (see page 530 et seq.).

Note 74, page 403.

Sir James Dowling.

James Dowling was granted the honour of knighthood on the 26th of November, 1838, and was the third recipient of that honour for services in the colony of New South Wales, his predecessors being John Wylde and Francis Forbes.

Note 75, page 405.

The Bathurst Bank.

The Bathurst bank was established at Bathurst on the 1st of January, 1835, with a capital of £10,000. The president was A. K. Mackenzie, and the directors George Rankin, Alexander Watt, D. M. Irvin, George Busby and John Liscombe. The cashier was John Slade. The directors sat every Wednesday for the purpose of discounting bills and transacting banking business. Deposits paid into the bank of Australia at Sydney on account of the Bathurst bank were considered the same as if paid in at Bathurst, and could be drawn on producing the deposit receipt. This was the first arrangement for remitting money from Sydney to Bathurst. The bank issued notes, payable on demand in specie, or in bills, if required, on the bank of Australia.

Note 76, page 405.

Being the 5th in Sydney.

The five banks were the bank of New South Wales with a capital of £150,000, established in 1817; the bank of Australia with a capital of £220,000, established in 1826; the Commercial banking company of Sydney with a capital of £300,000, established in 1834; the bank of Australasia with a capital of £600,000, incorporated by royal charter; and the Union bank of Australia.

Note 77, page 406.

Whose Report.

This report, dated 31st August, 1839, was printed in the Votes and Proceedings of the legislative council.
The protests of John Blaxland and Sir John Jamison were against the appropriation of £104,867 ls. 1d. for defraying the expenses of the police and gaol departments including those at Port Phillip.

The resolution was as follows:—

"That, in the opinion of this Council, the Colonial Revenue is unequal to the payment of the whole expense of maintaining the large Police and Gaol Establishment, necessary chiefly for the due restraint of British Convicts, without encroaching too heavily on a Fund, the whole amount of which it is essential to the prosperity of the Colony should be expended in the encouragement of Immigration; and moreover that, in Equity and Justice, one half of the expense of the Police and Gaol Establishment ought to be borne by the British Treasury, so long as the Penal character of a large proportion of the Population subsists."

These were as follows:—

"2672. Would the same objection apply to the system of the British and Foreign School Society? Not at all; there would be little or no objection to it on the part of Protestants."

"2677. Assuming, then, that an efficient general system of education was provided in the colony, on the principle of the British and Foreign School Society, do you anticipate beneficial results from that? I do; but the Catholics should not be excluded from a fair portion of the revenue also; there might be separate schools for them."

The articles of association of the Port Phillip association provided that John Batman and J. H. Wedge should have the general superintendence of the lands, acquired by J. Batman for the association from the aborigines at Port Phillip. J. H. Wedge fulfilled these duties, surveyed the lands in the neighbourhood of Port Phillip and examined the surrounding country.

The reference was to the attempt made by lieut.-governor Arthur to capture the aborigines of Tasmania. A cordon of military was drawn across the island from the mountains to the east coast, and then gradually converged on Tasman's peninsula. It was expected that all the aborigines would thus be driven on to the peninsula and captured. The attempt was an utter failure (see volume in series III).

These despatches were principally covering letters to the enclosures. Those enclosures, which are available, will be found in the volumes of the series to which they belong. The letters were similar in form to the letter, dated 15th December, 1837 (see page 196 and also note 58, volume XIX).
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Note 83, page 472.

An extract.

Although, in a letter dated 23rd June, 1840 (see page 688), the right hon. H. Labouchere stated that he was in error in quoting from a despatch, Sir George Gipps, in despatches dated 31st October and 3rd November, 1838 (see pages 642 and 644, volume XIX), stated that he was averse to the raising of a loan on the land revenues, and that he consistently maintained the right of the crown to the appropriation of such revenues.

Note 84, page 472.

A Pamphlet printed by Ridgway.

This pamphlet was reprinted in volume xlviii of Hansard's Parliamentary Debates: third series, commencing with the accession of William IV.

Note 85, page 473.

The passage he had meant to read was.

The conclusion of this quotation was:

"that the carrying on of emigration on a large scale by means of a loan would be to create a perpetual debt against the colony, which experience had taught them would not easily be got rid of; and moreover it would be extremely difficult to administer the government of the colony with a proper economy in the midst of the factitious wealth produced by the loan."

Note 86, pages 479 and 482.

The opinion.—Were communicated.

The opinion and correspondence were communicated with lord Glenelg's despatch, dated 12th January, 1839 (see page 744 et seq., volume XIX).

Note 87, page 487.

It unnecessary again to detail.

The details were given by J. H. Wedge in his letter, dated 22nd April, 1839 (see pages 450 and 451).

Note 88, page 489.

A man.

William Buckley was born near Macclesfield in Cheshire. He served for a short period in the Cheshire militia, but was removed, on account of his splendid figure, to the 4th or King's Own regiment. He was convicted of participation in a conspiracy at Gibraltar and sentenced to transportation. He arrived at Port Phillip with the expedition under lieut.-governor Collins in the year 1803. He was then employed as a servant to the lieutenant-governor. In the month of November, 1803, he with two others deserted from the camp, which was formed in the neighbourhood of the modern town of Sorrento. For nearly thirty-two years, he lived with the aborigines, and nothing authentic is known of his history or of the fate of his companions during this period. He was discovered, in the year 1835, by the party who were left by John Batman at Indented head.

Note 89, page 491.

A Board of Commissioners.

This board was appointed to take the place of the South Australian colonisation commissioners, who numbered nine and were too numerous to carry out effective administration, and of the agent general for emigration, whose duties were too manifold for one man.
The board was appointed for the sale of lands and for promoting emigration. Its duties were (1) "the collection and diffusion of accurate statistical knowledge; (2) the sale in this country (i.e., Great Britain) of waste lands in the colonies; (3) the application of the proceeds of such sales towards the removal of emigrants; and (4) the rendering of periodical accounts, both pecuniary and statistical, of your administration of this trust."

Note 90, page 493.
Also page 762.

Three Proclamations.

These proclamations were each dated 14th January, 1840. The first proclamation defined the jurisdiction of Sir George Gipps, and extended it to include "any Territory which is or may be acquired in sovereignty by Her said Majesty, Her Heirs or Successors, within that group of Islands in the Pacific Ocean, commonly called New Zealand."

The second proclamation announced the appointment of William Hobson as lieutenant-governor.

The third proclamation declared that no title to land would be recognised in New Zealand, unless derived from or confirmed by a grant in the Queen's name; that commissioners would be appointed to inquire into claims to land, which had been acquired on equitable conditions; and that all purchases of land from Maori chiefs or tribes after the date of the proclamation were absolutely null and void.

Note 91, page 493.

Having been advertised.

In the issue of the *Sydney Gazette*, dated 4th January, 1840, the sale by auction of two thousand acres of land at the Bay of islands, New Zealand, was advertised to be held on the 6th of January by Hebblewhite and Vickery, auctioneers at Sydney. The vendor's name was not stated; but it was announced that it was the first public sale in the colony of land in New Zealand.

In the same issue of the *Sydney Gazette*, there was an advertisement, signed W. Boodie, in which all persons were cautioned against purchasing land in certain localities in New Zealand.

Note 92, page 495.

A combination.

In the year 1839, the journeymen compositors were formed into a society known as the "Australian Society of Compositors," which was controlled by a trade council. In March, 1839, a letter was addressed by the council to the compositors in Great Britain, protesting against alleged misrepresentations relating to the conditions of the trade in the colony and to the prospects of employment. The alleged misrepresentations were said to be due to the desire of the master printers "to cause a surplus number of Workmen, and thereby obtain labor on their own terms." At the beginning of 1839, the compositors, "after mature deliberation, could not muster strength enough for a strike to raise their wages to a level with other mechanics here (i.e., in the colony), who may not receive three-fourths of a Compositor's wages at home." The result of the dissatisfaction was the "combination" to which Sir George Gipps referred.

Note 93, page 498.

Berrima.

The first road to the southern districts of the colony crossed the Mittagong range by steep gradients at a distance of from seventy-three to seventy-five
miles from Sydney. This road is still in existence, and lies a little more than a mile east of the town of Bowral. After crossing the range, the road proceeded to a ford on the Wingeearribee river at a point eighty miles from Sydney, which is known as Bong Bong. The river at this ford flows through alluvial country, and in wet seasons the ford was frequently impassable. At Bong Bong, a court-house, gaol and school-house were erected, a detachment of military were quartered, and sittings of the bench of magistrates were held. In 1830, Thomas Mitchell, the surveyor-general, surveyed the Mittagong range. As a result of this survey, he decided to construct a deviation of the main southern road to avoid crossing the range and to secure a rocky ford on the Wingeearribee river. This deviation passes through the present town of Mittagong, and the ford selected is situated at Berrima. This road was not completed for some years. In the year 1837, the judicial administration of the district was removed from Bong Bong to Berrima. For many years, Berrima was an important centre; but, on the building of the main southern railway line at a distance of about five miles, its prosperity began to wane. At the present time, its former importance is indicated by massive buildings and a large gaol.

Note 94, page 503.
A larger commission.

In January, 1837, lord Glenelg proposed the appointment of a “chief agent for emigration” to control the selection and shipment of emigrants from Great Britain to the Australian colonies (see page 711, volume XVIII). This proposal was approved by the lords commissioners of the treasury, and, in the following April, Thomas Frederick Elliot was appointed “agent general for emigration.” He held this office and controlled emigration until January, 1840, when he was appointed one of three “land and emigration commissioners” (see note 89).

Note 95, page 508.
A route.—His applications.

A note on the route of H. Hume and W. H. Hovell on their journey from Lake George to Port Phillip will be found in volume XI, numbered 151. The first application was dated 25th September, 1828 (see page 726, volume XIV).

Note 96, page 508.
An allowance of £7,000.

The decision on the claims of the Port Phillip association were reported by Sir Richard Bourke in his despatch, dated 12th November, 1836 (see page 588 et seq., volume XVIII).

Note 97, page 513.
Former correspondence.

The reference was to despatches, dated 3rd September, 1838, and 1st January, 1839 (see pages 569 et seq. and 713 et seq., volume XIX).

Note 98, page 515.
Captain Hobson’s first negotiations.

W. Hobson arrived in the bay of Islands on the 29th of January, 1840. On the following day, he issued a proclamation stating that letters patent had been issued on the 15th of June, 1839, whereby the boundary of the territory of New South Wales had been extended “to comprehend any part
of New Zealand, that is or may be acquired in Sovereignty by Her Majesty, Her Heirs and Successors.” He also announced that he had been appointed lieut.-governor by letters patent, dated 30th July, 1839. He then entered into negotiations with the Maori chiefs, and, as the result, he concluded the treaty of Waitangi on the 6th of February, 1840. This treaty consisted of three articles. By the first article, the chiefs of the confederation and other separate and independent chiefs ceded without reservation all rights of sovereignty over their lands to the British crown. By the second article, all property in land, forests, waters, etc., were secured to the chiefs; but the British crown was granted the exclusive right of pre-emption over all lands, which might be sold by the Maori proprietors. By the third article, the British crown promised full protection, and all the rights and privileges of British subjects.

Note 99, page 517.

A Grant.

In a note in lead-pencil on the original of this enclosure preserved at government house, Sydney, Sir George Gipps stated that it was asserted that the deed of this grant was executed six months after the arrival of Governor Bligh.

Note 100, pages 517 and 518.

A Despatch.—The correspondence.

The despatch was dated 7th October, 1814 (see page 338 et seq., volume VIII). The correspondence will be found on page 18 et seq., volume XIII.

Note 101, page 518.

Three Despatches.—A Despatch.

The despatches were dated 8th February, 1825, 18th July, 1826, and 22nd October, 1827 (see page 515, volume XI, page 362, volume XII, and page 560, volume XIII). Earl Bathurst’s despatch was dated 18th January, 1827 (see page 17, volume XIII).

Note 102, page 521.

One such instance.

The reference was to John Macdonald (see page 756 et seq., volume XIX, and pages 275, 276, 296 and 297 in this volume).

Note 103, page 532.

In . . . the Report.

The select committee of the house of commons, on page xiv of the report dated 3rd August, 1838, recommended the adoption of the mark system proposed by A. Maconochie.

Note 104, page 556.

Sir Thomas Mitchell.—Peninsular Plans.

During his visit to England, Thomas Mitchell, in addition to receiving the honour of knighthood, was granted the honorary degree of D.C.L. at Oxford.

The plans illustrated the principal actions during the Peninsula wars.

Note 105, page 558.

These Grants.—A Grant.

A note on these grants will be found on page xv, volume IV, and on page xiii, volume VI.
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Note 106, page 558.
The land claimed.

The eastern boundary of this land followed generally the alignment of Villiers-street from the river to Fennell-street. From Fennell-street, the boundary of the land claimed extended nearly north-west. All the lands between these boundaries and the Parramatta river were the subject of the claim. These included the areas, occupied by the King's school, the Roman Catholic chapel and school, the government domain, the female penitentiary, and a number of private allotments.

Note 107, page 559.
The only book.

This book is preserved in the office of the registrar-general at Sydney.

Note 108, page 571.
To grant your informant.

An action for ejectment was tried in the supreme court on the 21st of September, 1839, against T. Bell, J. Williams, Revd. J. Troughton and others. Bell was superintendent at the female factory, Williams a constable at the domain gates, Parramatta, and Troughton a master at King's school. The attorney-general and crown solicitor held that these persons held no possession of the land except as the King's servants, and that no action of ejectment could be brought against the crown. For precaution, the attorney-general had also filed a bill in the revenue exchequer jurisdiction of the court. Counsel for plaintiffs claimed that the land was not actually in possession of the crown. After considerable argument, the case was allowed to stand over.

Note 109, pages 574 and 799.
Returns.

These returns were laid on the table of the house of commons.

Note 110, page 575.
Former communications.

The previous claim by T. P. Macqueen to a secondary land grant was contained in a memorial, dated 25th June, 1838 (see page 541 et seq., volume XIX).

Note 111, page 584.
Surgeon Mitchell's pamphlet.

This was a pamphlet, printed for private use at Sydney in 1838, and entitled, Statement of the Case of James Mitchell, Esq., late Surgeon on the Civil Establishment of New South Wales. It contained eighty-two pages octavo, with an appendix of one hundred and seven pages.

Note 112, page 593.
The late Mr. Henty.

Thomas Henty was a landed proprietor and banker at West Faring in Sussex, England. He had seven sons. He obtained an order for eighty thousand acres at the Swan river settlement in West Australia. When the prospects of that settlement declined, he emigrated to Tasmania and settled at Launceston. With his sons, he made several visits and explored the northern coast of Bass strait, and discovered several suitable sites for settlement. In a memorial, dated 17th February, 1834, he solicited permission to purchase on this coast two thousand five hundred acres each for
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himself and his seven sons at five shillings per acre, and offered to surrender his order for land in West Australia. This request was refused. On the 19th of November, 1834, his two sons, Edward and Stephen, arrived at Portland bay in the schooner Thistle and formed the first permanent settlement in the present state of Victoria. The occupation of this land was not recognised by the government.

In 1846, the claims of these first settlers were adjusted by the payment of £348 for improvements at the port, and the grant of ten acres of town lands, valued at £100 per acre, of eighty-five acres of suburban lands at £2, and sixty acres at £2, a total compensation of £1,638.

Note 113, page 604.

Mr. Labouchere’s letter to the Secretary.

This letter, addressed to the Reverend E. Hawkins, will be found on pages 294 and 295.

Note 114, page 606.

A Company.

This was the Australian steam navigation company, which was formed with a capital of £250,000 in five thousand shares of £50 each. James Macarthur was chairman of the company, and, prior to a general meeting of subscribers called on the 24th of February, 1840, applications for six hundred and forty shares had been lodged.

Note 115, page 623.

A plan.

On this plan, the reserve for the mission station and the surrounding country were delineated. The reserve lay entirely between the rivers Macquarie and Bell, extending southerly from their junction about four miles. Two roads entered the mission reserve on its southern boundary, one from Molong and one from Bathurst. These roads joined at the mission buildings, and then proceeded to a ford on the Macquarie river just above its junction with the Bell river. The village reserve at Numa was situated on the west side of the Bell river, and was crossed by the road from Molong, but was about four miles from the road from Bathurst.

Note 116, page 633.

Some report.

Sir George Gipps submitted a report on the four private acts of council, mentioned by lord John Russell, in a despatch dated 28th November, 1839 (see page 404 et seq.).

Note 117, page 640.

The Military Hospital.

This was the building, which was used until recently as the Fort-street school for boys. It was erected by order of Governor Macquarie (see page 684, volume X). When it was appropriated for school purposes in the year 1849, it was remodelled both within and without.

Note 118, pages 641 and 777.

The Address.—The Bills.—The general arguments.

The address was delivered on the 28th of May, 1840. Sir George Gipps stated that the revenue had increased and more than ten thousand immigrants had arrived during the previous year. Consequent on the extension of powers of the council, he proposed to introduce bills for the institution
of circuit courts and the extension of courts of requests throughout the territory. He announced the annexation of New Zealand and the intended introduction of bills for its government. He discussed problems of immigration and forecasted the municipal corporations bill.

The two bills were (1) "to declare and extend the Laws of New South Wales to Her Majesty's Dominions in the Islands of New Zealand, and to apply the same, so far as applicable, in the administration of Justice therein; and to indemnify certain Officers for acts already done" and (2) "to empower the Governor of New South Wales to appoint Commissioners to examine and report on Claims to Grants of Land in New Zealand."

The arguments used in favour of municipal institutions were as follows:—

"The early establishment of Municipal Corporations and of other Institutions, by which men are led, in any Town, District or County, to take the management of their local affairs into their own hands, has never failed to produce good effects in Countries peopled by the descendants of Englishmen; and it is, I believe, principally to the neglect of these Institutions in the early stages of their existence that, in Colonies or Countries not of British origin, the failures are to be attributed of the exertions which have often been made in after periods to establish the principles of Constitutional Government. To introduce, therefore, such Institutions into this peculiarly British Colony may be considered an imperative duty on us; and the introduction of them seems to me to be especially necessary at a time, when the People of the Colony are anxiously expecting an alteration in the Constitution of their Government, which shall give to it a more popular form; for it is, I believe, impolitic, if not unsafe, to entrust any People with a Control over their Government in the exercise of its higher functions, who have not been previously trained to the temperate exercise of their own powers in the management of their local affairs."

Note 119, page 642.

The Boundaries of the two Southernmost Counties.

These counties were named St. Vincent and Murray, and their southern boundaries extended from the coast a little south of Bateman's bay to the Murrumbidgee river. The Port Phillip district thus included the present state of Victoria and that part of the present state of New South Wales which lies between the Murray and Murrumbidgee rivers.

Note 120, page 642.

To adopt a Parallel of Latitude.

Prior to the year 1840, the boundaries of the principal subdivisions in the territory of Australia had been meridians of longitude and a parallel of latitude. In 1786, the western boundary of New South Wales was fixed at the one hundred and thirty-fifth meridian of longitude. In 1825, this boundary was moved west to the one hundred and twenty-ninth meridian. When the settlement of West Australia was accomplished under lieut.-governor Stirling, this meridian was adopted as the eastern boundary of the new colony. When the province of South Australia was authorised by the British statute passed in August, 1834, the boundaries assigned to the new province were the one hundred and forty-first and one hundred and thirty-second meridians in the east and west, and the twenty-sixth parallel in the north. It was necessary to adopt this method of determining boundaries, as the interior of Australia was then unknown in the locality of the boundaries desired.
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Note 121, page 647.

A distinct Board of Commissioners.

This was the board of land and emigration commissioners (see note 89).

Note 122, page 651.

The usual Returns.

These returns will be found in a volume in series VI.

Note 123, page 652.

A List.

This was a lengthy printed list giving the names of the members of the yacht squadron with full details of their vessels.

Note 124, page 653.

Your Lordship will be glad to find.

W. Hobson alleged gross ill-treatment and "persevering animosity" from J. Nias during the first voyage to New Zealand; but, on this occasion, W. Hobson reported that "Captain Nias' conduct since his return here has been marked by the greatest official and personal civility, and he has expressed on all occasions a ready compliance with my wishes."

Note 125, pages 655 and 660.

My Letters.—As deposed to.

Copies of the letter, dated 17th August, 1838, and of the depositions of James Sindrey, George Richards and William Rogers will be found on pages 18 et seq. and 17 et seq.

Note 126, page 677.

The great division of new Holland.

By the commission of Governor Darling, dated 16th July, 1825 (see page 99 et seq., volume XII), the territory of New South Wales was defined as all that portion of the continent of Australia lying to the east of the one hundred and twenty-ninth meridian of east longitude, which forms the boundary of the present state of West Australia. This "division" includes the present states of Queensland, New South Wales, Victoria and South Australia and also the northern territory of the Commonwealth.

Note 127, page 689.

Lord Normanby's Despatch.

This despatch was dated 11th May, 1839 (see page 152 et seq.).

Note 128, page 696.

Also pages 734, 743, 756, 764, 772, 774, 777, 783, 786, 789, 798, 801, 812, 815, 816, 818, 819, 826, 835, 837 and 845.

A circular despatch received.

The originals of these despatches, preserved at government house, Sydney, are endorsed, "received 11th March, 1841," and not in the usual way per a certain named ship. On the 11th of March, 1841, three ships arrived in Port Jackson from Portsmouth, Plymouth and Liverpool respectively; they were the Portland, Glenswilly and Brothers.
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Note 129, page 697.
Mr. Burnett.

John Burnett was appointed colonial secretary of Van Diemen's land in 1826, and assumed office in the month of November of that year. The papers relating to his removal from office will be found in a volume in series III.

Note 130, page 705.
The preamble.

The preamble was as follows:—"Whereas several persons have formed themselves into a company or society, established at Bathurst under the name, style or firm of 'The Bathurst Bank,' as well for the purpose of discounting and issuing of promissory notes and bills of exchange, and lending moneys on securities and cash accounts, and for the safe custody of moneys and securities for moneys for the general public accommodation and benefit, and also for transacting and negotiating all such other matters and things, as are usually done and performed in relation to or connection with the ordinary business of banking." By section 5 also, the bank was empowered to lend money on the security of real or chattel estates.

Note 131, page 714.
The Ordnance Bill which gave rise to so much discussion.

The opposition to the ordnance bill was reported by Sir George Gipps in despatches, dated 26th and 27th September, 1838 (see page 592 et seq., volume XIX).

Note 132, page 714.
The Bill.

This bill was passed as the act of council, 4 Vict., No. 7, entitled, "An Act to empower the Governor of New South Wales to appoint Commissioners, with certain powers, to examine and report on Claims to Grants of Land in New Zealand." By section 1, it was declared that all titles to land in New Zealand were "absolutely null and void except such as are or may be allowed by Her Majesty." By section 2, the governor was empowered to appoint commissioners, and their powers and duties were defined.

Note 133, page 716.

An article was at length published.

This was a sub-leader headed "Malignity, Tyranny and Cowardice," which filled three-quarters of a column. It commenced, "We had hoped that we had already exposed the worst features in the character of the unworthy commander of H.M. ship Herald, but we were mistaken." It alleged that Joseph Nias had ordered a midshipman to send £320, which he possessed, out of the ship, and had refused to allow the midshipman personally to take the money ashore. In the article, Joseph Nias was called a "mean-souled abortion of humanity," and was described as vile, degraded and worthless.

Note 134, page 719.
The practice in New South Wales.

A note on this practice will be found in volume XVI, numbered 57.

Note 135, page 722.
The right of discovery.

The right of discovery was based on the voyage by James Cook in H.M. barque Endeavour in the year 1770, when he circumnavigated the
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“middle” or south island of New Zealand; and, on the 1st of February, 1770, he proclaimed British sovereignty over this island, the ceremony taking place on Motuara island.

Note 136, pages 722 and 818.

The Company.—Port Nicholson.

The New Zealand land company was formed with a capital of £400,000 in four thousand shares of £100 each. The company was formed “for the purpose of employing capital in the purchase and resale of lands in New Zealand and the promotion of emigration to that country.” It was controlled by the earl of Durham as governor, Joseph Somes as deputy governor and a board of seventeen directors. Six hundred fully paid shares were allotted for land already purchased from the Maoris and the expense of negotiating such purchase. This company virtually forced the settlement of New Zealand by the British government, just as the Port Phillip association forced the settlement of Victoria (see page xxv, volume XVIII). In the year 1839, a party under the control of colonel William Wakefield sailed from England in the ship Tory and arrived in Queen Charlotte’s sound, New Zealand, on the 10th of August, 1839. On the 24th of October, Wakefield completed an alleged purchase from a few Maori chiefs of all that part of New Zealand lying between latitudes 38° and 43° on the western coast and 41° and 43° on the eastern. On the 22nd of January, 1840, the ship Aurora arrived with immigrants at Port Nicholson. A provisional constitution, containing fourteen articles, had been drafted for the government of this settlement. These articles provided that English law should be adopted in the settlement. A committee of fifteen named members was appointed with power for the company to add five members. The membership of the committee was limited to twenty-five, and colonel William Wakefield was appointed as first president. This committee was authorised to appoint an umpire, and George Samuel Evans was nominated for this office. The umpire with seven assessors was to conduct all criminal proceedings and to pass sentences. No sentences of imprisonment for more than three months or of a fine for more than £10 could be imposed without the approval of the committee. In civil proceedings, the umpire was to be assisted by two arbitrators, one to represent each side, and the decision of the majority to rule. The committee was to appoint five of its members as a committee of appeal to hear appeals from decisions in civil and criminal proceedings. The committee was also to make ordinances for the good government of the settlement.

This constitution was rendered inoperative by lieut.-governor Hobson asserting control over Port Nicholson, and appointing a police magistrate at the settlement.

Note 137, pages 724 and 824.

Circular.

References to these circular letters will be found on page 712, volume XIX.

Note 138, page 732.

John Williams.

The Revd. John Williams was born on the 29th of June, 1796. On behalf of the London missionary society, he sailed as a missionary to the South seas in November, 1816. With the exception of the time occupied in a short visit to England, he devoted the rest of his life to mission work in the islands until he was killed by the natives on the 20th of November, 1839.
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Note 139, page 736.

A Letter.

A copy of this letter will be found on page 660 et seq., volume XIX.

Note 140, page 739.

The House of Commons' Committee.

On the 9th of February, 1836, the following resolution was moved in the house of commons:—"That a Select Committee be appointed to consider what Measures ought to be adopted with regard to the Native Inhabitants of Countries, where British Settlements are made, and to the Neighbouring Tribes, in order to secure to them the due observance of Justice and the protection of their Rights, to promote the spread of Civilization among them, and to lead them to the peaceful and voluntary reception of the Christian Religion."

Note 141, page 739.

Not one individual of this race is now in existence.

This statement was erroneous. The last full-blooded survivor of the Tasmanian aborigines was a female, named Truganini, who died in May, 1876, at the age of seventy-three years. The last full-blooded male survivor was her husband, known as King Billy Lanny, who had predeceased her, dying as a patient in the general hospital at Hobart.

Note 142, page 740.

The curious and extensive caverns.

These caverns are known as the Wellington caves. Their existence was first recorded by Sir Thomas Mitchell, who discovered many fossil remains in them. In the year 1867, professor Richard Owen suggested their thorough exploration. Accordingly, in 1869, the curator of the Australian museum, G. Krefft, accompanied by the reverend W. B. Clarke and A. M. Thomson, were sent to examine them. This expedition extended largely the knowledge of the extinct fauna of Australia.

Note 143, page 749.

Author of "Missionary Enterprises."

The reference was to an octavo volume, entitled, A Narrative of Missionary Enterprises in the South Sea Islands; with Remarks upon the Natural History of the Islands, Origin, Languages, Traditions and Usages of the Inhabitants. It was illustrated with numerous wood engravings by G. Baxter.

Note 144, page 761.

The Middle Island.

The islands of New Zealand were known as the north, middle and south islands. They are now known more commonly as the north and south islands and Stewart island respectively.

Note 145, page 785.

The Naval and Military Force now employed against China.

After the surrender of the opium, detailed in note 52, the Chinese imperial commissioner made further arrogant demands, which were accepted as a casus belli by the British government, and war was declared on China in 1840. A naval and military expedition was organized, and, in the same year, Chusan was captured. In 1841, the Bogue forts were taken. Thereupon Hong Kong was ceded, and an indemnity of 6,000,000 dollars was paid by
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the Chinese government. The war continued, and Canton, Amoy, Ning-po and other cities were captured. In 1842, a treaty was concluded, whereby Amoy, Fuzhou, Ning-po and Shanghai were opened to foreign trade, and an indemnity of 21,000,000 dollars was paid.

Note 146, page 789.
To extend the provisions of an Act.

This act extended the act 9 Geo. IV, c. lxxxiii, as amended by the act 2-3 Vict., c. lxxx, to the 31st of December, 1841, and thenceforward to the end of the then next session of parliament.

Note 147, page 789.
A Clause has been added.

Two clauses were added. The second clause of the statute was as follows:—

"...And whereas the said Colony of New South Wales is of great Extent, and it may be fit that certain Dependencies of the said Colony should be formed into separate Colonies, and Provision should be made for the temporary Administration of the Government of any such newly erected Colony; be it therefore enacted, That it shall be lawful for Her Majesty, by Letters Patent to be from Time to Time issued under the Great Seal of the United Kingdom, to erect into a separate Colony or Colonies any Islands, which now are or which hereafter may be comprised within and be Dependencies of the said Colony of New South Wales:"

The third clause provided that Her Majesty could by letters patent appoint any number of persons, "not less than seven including the Governor or Lieutenant Governor," to form a legislative council with power to make laws for the government of the new colony, subject to confirmation and submission to parliament.

Note 148, page 808.
Tasman’s Peninsula.

Tasman’s peninsula forms the eastern side of Storm bay in the south of Tasmania, and is joined to Forestier’s peninsula by a narrow neck of land, about three hundred yards in width and a quarter of a mile in length, known as Eaglehawk neck. It formed an ideal site for a penitentiary as the connecting neck of land was easily guarded by soldiers and dogs chained at intervals on the land. A number of penal stations were formed on the peninsula, the principal one being Fort Arthur founded by lieutenant-governor Arthur in September, 1830. A station for juvenile convicts was formed at Point Puer, probation stations at Flinders bay and the Cascade, and other stations at the coal-mines, Saltwater creek agricultural station, and Impression bay. The area of the peninsula is about 45,000 acres.

Note 149, page 824.
A Settlement.

L’Anglois, the master of a French whaling ship, asserted that, in August, 1838, he purchased the whole of the Banks peninsula from the Maoris. After his return to France, the Nanto-Bordelaise compagnie was formed with a capital of one million francs. To this company, L’Anglois ceded the land purchased in return for one-fifth interest in the company. The company then ceded one-fifth of the land purchased to the French government for the purpose of a penal settlement, and sent thirty men, eleven women and twenty-two children as pioneer immigrants in the ship Comte de Paris to Banks peninsula. On arrival at the peninsula, however, the British authorities were in possession.
COMMENTARY.

Note 150, page 838.

Twenty Counties had been laid out.

Nineteen counties were established by the government order, dated 14th October, 1829 (see page 424 et seq., volume XVII).

Note 151, page 844.

A gentleman . . . has lately started.

On the 2nd of June, 1840, a meeting was held at Adelaide to arrange for an expedition into central Australia under the leadership of Edward John Eyre. Charles Sturt occupied the chair, and, at the conclusion of the meeting, £360 had been raised and the government had promised two horses. Sixteen days later, Eyre left Adelaide, carrying a silken union jack, worked by the ladies of Adelaide, to be unfurled in the centre of Australia. He was accompanied by six white men and two black boys with thirteen horses, forty sheep and provisions for three months. Eyre proceeded north to lake Torrens, but was baffled by the salt marshes on the borders of the lake. He attempted unsuccessfully to proceed north by Flinders range. After finding the series of salt lakes lying to the west of lake Torrens, which he imagined formed one continuous lake, he finally reached Fowler's bay, where the cutter Hero was awaiting him. He then decided to attempt to reach King George's sound, accompanied only by one white man and three black boys. His journey along the Great Australian bight was a tragedy. His white companion was murdered by two of the black boys, who immediately deserted. He was then six hundred miles from his goal. He struggled on accompanied by one black boy, subsisting principally on horse flesh. When nearly exhausted, a French whaling vessel was discovered in an inlet. On this vessel, he recuperated for twelve days, and then renewed his journey. He was successful in reaching King George's sound; from whence he returned to Adelaide where he was received with enthusiasm in August, 1841 (see volume in series V).
# SYNOPSIS OF DESPATCHES

The reference to the despatches marked "a" in the sixth column will be found on pages 711-713, volume XIX.

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