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.

Proposition 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.
Proposal by E. Macarthur for steam navigation on east coast of Australia.

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 valleys, 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 valleys, 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 expence; 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 enterprizer 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.

1839.
10 July.
defray in fifteen years the entire cost of the enterprize as well as in the meantime pay 5 per cent. on the interest of the money advanced, and also all the expences of management, insurance, and wear and tear of the Vessels.

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.

Southward.

<table>
<thead>
<tr>
<th>Port</th>
<th>Miles</th>
<th>Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hobart Town to Sydney</td>
<td>800</td>
<td>80</td>
</tr>
<tr>
<td>Launceston</td>
<td>600</td>
<td>60</td>
</tr>
<tr>
<td>Adelaide</td>
<td>1,100</td>
<td>110</td>
</tr>
<tr>
<td>River Glenelg</td>
<td>850</td>
<td>85</td>
</tr>
<tr>
<td>Portland Bay</td>
<td>800</td>
<td>80</td>
</tr>
<tr>
<td>Port Phillip</td>
<td>600</td>
<td>60</td>
</tr>
<tr>
<td>Western Port</td>
<td>550</td>
<td>50</td>
</tr>
<tr>
<td>Corner Inlet</td>
<td>400</td>
<td>40</td>
</tr>
<tr>
<td>Cape Howe</td>
<td>285</td>
<td>29</td>
</tr>
<tr>
<td>Twofold Bay</td>
<td>250</td>
<td>25</td>
</tr>
<tr>
<td>Bateman Bay</td>
<td>150</td>
<td>15</td>
</tr>
<tr>
<td>Jarvis Bay</td>
<td>100</td>
<td>10</td>
</tr>
<tr>
<td>Shoal Haven</td>
<td>80</td>
<td>8</td>
</tr>
<tr>
<td>Illawarra, Port of Wollongong</td>
<td>70</td>
<td>7</td>
</tr>
</tbody>
</table>

Northward.

<table>
<thead>
<tr>
<th>Port</th>
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<th>Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sydney to Broken Bay</td>
<td>30</td>
<td>3</td>
</tr>
<tr>
<td>Port Hunter</td>
<td>80</td>
<td>8</td>
</tr>
<tr>
<td>Port Stephen</td>
<td>100</td>
<td>10</td>
</tr>
<tr>
<td>Port Macquarrie</td>
<td>200</td>
<td>20</td>
</tr>
<tr>
<td>Moreton Bay</td>
<td>450</td>
<td>45</td>
</tr>
<tr>
<td>Harveys Bay</td>
<td>620</td>
<td>62</td>
</tr>
<tr>
<td>River Boyne</td>
<td>670</td>
<td>67</td>
</tr>
</tbody>
</table>

Eastward.

<table>
<thead>
<tr>
<th>Port</th>
<th>Miles</th>
<th>Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Zealand</td>
<td>1,000</td>
<td>100</td>
</tr>
</tbody>
</table>
NORMANBY TO GIPPS.

A Comparative statement of the Freight and carriage of goods.

<table>
<thead>
<tr>
<th>£</th>
<th>s.</th>
<th>d.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comparative statement of the Freight and carriage of goods.</td>
<td>1839.</td>
<td></td>
</tr>
<tr>
<td>10 July.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The carriage of goods per Waggon from London to Portsmouth and back being 144 miles is</td>
<td>6 0 0 per ton</td>
<td></td>
</tr>
<tr>
<td>From Sydney to Goulburn, 140 m.</td>
<td>14 0 0 &quot;</td>
<td></td>
</tr>
<tr>
<td>or equal to the Freight of a Ton of wool at 1d. per lb. from Sydney to London.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Its effect may thus be illustrated that, when salt is selling at Sydney at £4 per ton, its price at Goulburn is £20.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The mean Freight of Wool, Oil, Timber, and Flax from Sydney to London and Liverpool is</td>
<td>7 0 0 per ton.</td>
<td></td>
</tr>
<tr>
<td>From Sydney to Hobart Town</td>
<td>1 10 0 &quot;</td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>From Sydney to New Zealand at a distance of 1,000 miles, Freight is £2 to £2 10s. per ton.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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. 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.

My Lord,
London, 27 June, 1839.

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.

J. MUDIE.

[Enclosure No. 2.]

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

Sir, Nevenden Hall, 5 July, 1839.

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.

J. MUDIE.

[Sub-enclosure.]

SIR RALPH DARLING TO MR. J. MUDIE.

Sir, Cheltenham, 3 July, 1839.

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.

RA. 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.

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

[179x650]GIPPS TO GLENELG. 225

1839.
11 July.

Non-payment by C. D. Riddell.

Statement by P. L. Campbell re interest credited to C. D. Riddell.

Protest by W. Macpherson against demand for repayment.

Repayments by officers of customs and postmaster-general.

Sec. I. Vol. XX—P
1839.
11 July.
Repayment by
J. Gibbes and
G. Cooper.

Certificate
re interest
received by
J. Raymond.

Statement by
P. L. Campbell
re non­
payment by
C. D. Riddell;
and re
"contingent
account."

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, General Post Office, Sydney, 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, Colonial Treasury, 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 in­
estant, 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 Trea­
surer'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 Philip.
Another item also of the C.A. Account arises from the Sales of
Pounded Cattle, the proceeds of which are lodged with the Treasur-
er 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
respecting 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 adverted 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 (£3,964 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
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
1839.
11 July.

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 any where 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
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.
1839.
11 July.

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.

Petitions received from N. L. Kentish.

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.

13 July.

Transmission of correspondence re act for appointment of town surveyor.

Disallowance of act.

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.
NORMANBY TO GIPPS.

[Enclosure No. 1.]

UNDER SECRETARY STEPHEN TO MR. R. BYHAM.

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.

[Enclosure No. 2.]

MR. R. BYHAM TO UNDER SECRETARY 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.

[Enclosure No. 3.]

UNDER SECRETARY STEPHEN TO MR. 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.

In 1839, 13 July.

Inability to amend act.

Act to be allowed or disallowed.

Letter acknowledged.

Recommendation for disallowance of act.

15 July.

Correspondence re minimum price of land.

Price to be fixed at Port Phillip.

15 July.

Correspondence re minimum price of land.

Price to be fixed at Port Phillip.

HISTORICAL RECORDS OF AUSTRALIA.

certain powers hitherto vested in the Surveyor General are transferred to the Officer Commanding the Royal Engineers in that Colony, and stating that, for the reasons which you have assigned, the Master General and Board of Ordnance would suggest that the words quoted in your letter should be expunged from the Act.

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.
NORMANBY TO GIPPS.

[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 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 requested, to you 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, viz.t.: 

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 from taken 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
238

HISTORICAL RECORDS OF AUSTRALIA.

1839.
15 July.
Proposal for redemption of quit rents.

also upon a system of fair equivalent extinguish a source of revenue by no means popular in its nature or collectable with satisfaction to the Settler or the officers, who may have charge of the Collection, either as to time or the very small sums, into which those Rents are reduced by being payable half yearly by parties, resident of necessity in the interior at distances which make it wholly impracticable to collect under the present system.

I have, &c,
Jos. HENRY MOORE.

Approximate estimate of amount of annual quit rents.

[Sub-enclosure No. 3.]

APPROXIMATE Estimate of Amount of Annual Quit Rents, which may arise under Lands Granted.

<table>
<thead>
<tr>
<th>Rate</th>
<th>Title</th>
<th>Annual Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Under Grants issued, 578,027 acres.</td>
<td>£ 595 16 6</td>
</tr>
<tr>
<td>2d</td>
<td>Location Order, 340,094</td>
<td>2,550 14 1</td>
</tr>
<tr>
<td>3d</td>
<td>do</td>
<td>887,642</td>
</tr>
<tr>
<td>4th</td>
<td>Allotments</td>
<td>2,511</td>
</tr>
<tr>
<td></td>
<td>Total.............1,909,274 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.

Acres. R. P. £ s. d.
Old Grants................571,097 0 0 595 16 0
New Grants prior to October, 1834 ...... 15,927 1 27 249 5 6
From October, 1834, to December, 1838 ...... 34,527 3 2 2,687 17 9
Arrears thereon to 1835 £8,803 11 7
Total acres................951,546 0 29 £3,532 19 9
Deeds actually issued.

Internal Revenue Office, January, 1839.
Jos. HENRY MOORE.

INTERNAL REVENUE OFFICE INSTITUTED JULY, 1828.

STATEMENT Shewing the Amount received in each year under the respective heads of Revenue as likewise the Total amount received to and for 31st December, 1838.

<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>
</tr>
</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>1828</td>
<td>4 6 0</td>
<td>2,573 7 1</td>
<td>0 10 0</td>
<td>43 18 4</td>
<td>500 0 0</td>
</tr>
<tr>
<td>1829</td>
<td>26 13 6</td>
<td>5,837 10 6</td>
<td>1,104 6 4</td>
<td>149 11 6</td>
<td>2,775 0 0</td>
</tr>
<tr>
<td>1830</td>
<td>2 12 0</td>
<td>3,100 8 3</td>
<td>464 13 5</td>
<td>533 12 7</td>
<td>3,025 0 0</td>
</tr>
<tr>
<td>1831</td>
<td>0 0 0</td>
<td>1,862 9 0</td>
<td>482 0 5</td>
<td>1,214 3 5</td>
<td>4,076 0 0</td>
</tr>
<tr>
<td>1832</td>
<td>3 6 8</td>
<td>13,507 13 6</td>
<td>396 3 9</td>
<td>1,115 11 4</td>
<td>5,200 0 0</td>
</tr>
<tr>
<td>1833</td>
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**HISTORICAL RECORDS OF AUSTRALIA.**

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

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**Totals** 3,477 10 0
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<th>Totals Collected in each year</th>
<th>Gross Totals collected in each year—amt. received on Land Sold, including</th>
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1839. 15 July. 

Statement of revenue collected in Tasmania.
STATEMENT showing amount received each year, etc.—continued.

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Despatch acknowledged.

Refusal to modify instructions.

Despatch acknowledged.

Necessity for prevention of conflicts with aborigines.

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.

[Enclosure No. 2.]

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.

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...
GIPPS TO GLENELG. 243

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 Jan'y, 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;
Minutes of executive council re collision between mounted police under J. W. Nunn and aborigines.

and a letter was written to the Magistrates instructing them to commence the investigation.

On the 9th of July, however, and before any thing 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 atrocious 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 shew 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.
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
248  HISTORICAL RECORDS OF AUSTRALIA.

1839.
22 July.
Minutes of executive council re collision between mounted police under J. W. Nunn and aborigines.

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. Even 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.

WM. MACPHERSON, Clerk of Councils.

Sydney, 27th July, 1839.

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

Sir,

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.,

EDW. D. DAY, Police Magistrate.

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

[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, 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, and that 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 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 neighborhood. 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 be commenced at once, I am 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,


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.

In consequence of the 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 an hundred persons, were set at large, and treated kindly by me, so much as to make them believe that they remained with the tribe until they are eventually delivered up to me; amongst these, 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 who were 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 regret to say that they 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 the man 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 blacks 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. Until I had sent parties out to scour the country and ascertain that the Blacks were not in the neighbourhood, I ordered me to proceed in consequence of that report to the place mentioned. After marching all night, we 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 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 much that it was impossible for any one person to put a stop to the firing at once. 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.

JOHN LEE.

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 Gwydir 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 Lewis coming up. I called to him that I was speared. I heard a shot immediately after, but the pain of my wound was so great that I cannot 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 Hanan 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 that 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.

Sir,

Bell’s Station, Manilla River, 6th December, 1837.

I avail myself of the opportunity of a Stockman going from here to Invermien to state, for the information of His Excellency the Governor, that I proceeded on another survey of my District on the 26th of October last, and traced the Namoi down, taking returns of Inhabitants, Stock and Fire arms, and I will immediately on my return forward to you in Duplicate my Itinerary and Census. On my route I heard of many outrages committed by the Natives on Stock at a number of the Stations, and also of their having murdered five men, and I made it my business to make every Inquiry to find out the cause of this increasing evil. This evil is not confined to the Stock actually killed by the Blacks, but a herd of Cattle that has been harassed and speared by them wander away in all directions from their run, and, the pasture is most luxuriant, the cattle are invariably in poor condition wherever this evil exists. On the Namoi River, the stations below Sir John Jamison’s run are more or less subject to their depredations, and at Loder’s, which is the farthest down station.
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 then 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 Gwyder 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 back bone 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, Court House, Merton, 19th May, 1839.

We had the honor to receive your letter of the 4th Inst, communicating to us Examination 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 McK. Cobban, 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
expedition was to drive away certain tribes of Blacks who were murdering some white people and committing outrages on their runs; Spearng the Catttle 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. They further reported that they could guide the party to the place where the Wild blacks were encamped with a tame tribe, whom they had gone to visit. We marched from Green hatches that night about nine o'clock with the view surrounding the wild tribe at daylight on the next morning, before they dispersed in search of food. We saw the blacks' fire about daylight the next morning; they were encamped on the banks of the River Namoi with a deep reach in front and a brush and ledges and rocks quite inaccessible to us. They shouted out defiance at us, as I understood, 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 runs to a camp at Green hatches back the same 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; I kept hold of them by their hair, until they were secured again. Major Nunn and myself first became aware of this attempt of escape by hearing the Sentinels fire. After the two blacks, who I caught, 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 neck, on which he had received the first shot. The Blacks boy, who acted as Interpreter, told me that one Black present knew the blacks 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 reaching 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 spears 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, an old 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—d 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 was done in general. I am quite positive that no shot was fired first; 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 the 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 undertaking to guide us to them; 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 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, while I, with the rest, rode down the side of the Creek to co-operate with them; in going down the Creek, Serjeant Dean came upon their camp and found a great number of spears and other weapons. I should suppose three or four hundred in all, and fortunately secured them. I had ridden past the Camp without noticing the arms; but, on hearing a firing behind me in the camp, I returned and Serjeant Dean informed me that, while securing the arms, a body of Blacks came upon him to seize the arms, when he fired on them and they retreated; while I was with Dean I heard a struggling fire to the right at a considerable distance in the brush from the party I had sent in that direction. I also heard some firing down the Creek from the party that had proceeded in that direction when I returned to Serjeant Dean; when I rejoined this party, I was informed they had shot one or two Blacks who had 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, 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. It appears 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. OGILVIE, J.P.; J. PIKE, J.P.


[Enclosure A 9 to Minute No. 20 of 1839.]
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 the 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; Fenton (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.

* 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.
MR. J. MUDIE TO 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.

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

Sir, Downing Street, 26th July, 1839.

Having laid before the Marquis of Normanby your letter of inability to 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 Emigrant 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.

(Despatch No. 107, per ship Palestine; acknowledged by lord John Russell, 25th May, 1840.)


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 (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 expense 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.]

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.
1839. 26 July.

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 July.

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 Settlement 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 circumstances 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, 

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. 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
sueh 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-

lency 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,

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
Hiero-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
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 Honorable 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 witheld 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...
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.

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.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(My Lord, Government House, 30th July, 1839.

On the receipt of Lord Glenelg’s Despatch No. 188 of the
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 Papers
of certain Queries, which were subsequently addressed by me to the
Police Magistrate of Port Phillip, as also of the answers returned
transmitted.
to these Queries; and lastly, I enclose to your Lordship a Copy
of a Minute made by the Executive Council, when all the docu-
tments 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 con-
sidered apart from that of the Association, of which he was a
Member; and that therefore the prayer of his Memorial is con-
sidered 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 Concessions to
indulgence consented to allow the materials* of the houses, and
representatives of J. Batman.
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.
HISTORICAL RECORDS OF AUSTRALIA.

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.

Sir George Gipps to Marquess of Normanby.
(Despatch No. 111, per ship Palestine; acknowledged by Lord John Russell, 24th December, 1839.)


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 Sincapore.

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.
HISTORICAL RECORDS OF AUSTRALIA.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

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

My Lord,

Government 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.

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. Boyer 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 15 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. Frederk. 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 forbid 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.
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 emigrant on ship St. George.

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.

DAVID BOYTER.

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.

ORDER BY HOUSE OF COMMONS.

Resolved, Martis, 7° die May, 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
Sir George Gipps to Marquess of Normanby.

(Despatch No. 118, 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 ult. 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 (Coeheresses) 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 Sept., 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 Augst., 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.

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.]

[Tthis 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.
NORMANBY TO GIPPS.

[Enclosure No. 1.]

RIGHT 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.

[Enclosure No. 2.]

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.

Colonel Windham sent out a ship to Canada in May last with 181 persons at his sole expense, to Cobourg in the Upper Province.

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.
MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 113, per H.M. ship Druid.)

13 Aug.

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 ing and Tide Surveyor at Port Phillip, I have the honor to convey to you my approval of that Appointment. I have, &c,

NORMANBY.

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 124, per ship Mangles.)

13 Aug.

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." ]

MARQUESS OF NORMANBY TO SIR GEORGE GIPPS.
(Despatch No. 114, per H.M. ship Druid.)

14 Aug.

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.)

14 Aug.

Sir, Downing Street, 14 August, 1839.

I have received your dispatch No. 34 of the 22d Feb., 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.)

14 Aug.

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 unbiased 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.)

Downing Street, 14th August, 1839.

Sir,
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.

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.

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<th>Adults</th>
<th>Children over 7 years</th>
<th>Children under 7</th>
<th>Total</th>
</tr>
</thead>
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<td>45</td>
<td>18</td>
<td>229</td>
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<td>148</td>
<td>30</td>
<td>30</td>
<td>208</td>
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<td>259</td>
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<td>54</td>
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<td>284</td>
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<td>693</td>
<td>172</td>
<td>115</td>
<td>980</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 Aug., 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.
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.)

Sir, Downing Street, 20 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. R. 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.

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
290

HISTORICAL RECORDS OF AUSTRALIA.

1839.
21 Aug.
Approval of exchange of land at Sydney.

Proposals re expenditure on new barracks at Sydney.

Adjustment on purchase of land.

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.
[Enclosure No. 4.]

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 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.

[Enclosure No. 5.]

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.  

Appointment and salary of F. W. Small.  

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.  
(Despatch No. 119, per ship Lady Fitzherbert.)  

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 £22 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.

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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 on warrant.

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.]

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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.
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, 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.

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.

[Enclosure.]
1839.  
27 Aug.  
 Forgery alleged  
by D. Boyter.

Explanation  
by M. W. 
McDonald re  
recommendation  
of  
J. McDonald.

**HISTORICAL RECORDS OF AUSTRALIA.**

With regard to the Letter* addressed to "John McDonald, Esqre.," it will doubtless have been observed that Dr. Boyter declares the use of the last denomination to have been a forgery, as he never employed any such designation to a man received into an Emigrant Ship as a Free Passenger.

I have, &c.,

T. FREDK. ELLIOT.

* [Sub-enclosure No. 1.]

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

Edinburgh, 29th July, 1839.

Dear Sir,

I dont 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

* Note 59.
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 solicitations; 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.

(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...
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.
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 to 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...
1839.  
29 Aug.  
Reforms proposed in judicial and legal institutions.  

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
1839.
30 Aug.
Objections to appointment of army chaplain.

Reasons for absence of naval chaplain.

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.

Sir,

31 Aug.

Correspondence with W. W. Burton re evidence of aborigines.

Proposal for act of council.

Objections to rejection of evidence for religious reasons.

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

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

Downing Street, 31st August, 1839.

Sir,

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.

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 Abori-
gines 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 informa-
tion 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

1839.
31 Aug.
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.

Sir,

London, 17 Augt., 1839.

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
1839.
31 Aug.

Neglect to
ship guns from
England.

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.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 1, per ship Lord Eldon.)

Sir,

Downing Street, 4th September, 1839.

I have received your Dispatch No. 2 of the 2d of January
last, and, having conferred on the subject with the Lords Com­
missioners of the Treasury, I have to convey to you the sanction
of Her Majesty's Government of the arrangement which you
have made with regard to the Office of Crown Prosecutor.

I have, &c.,

J. RUSSELL.

Proposal for
establishment
of circuit
courts.

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 anxi­
ous 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.

(1839. 5 Sept. Reasons for proposal).

Order-in-council required for establishment of circuit courts.

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.

* Note 61.
308 HISTORICAL RECORDS OF AUSTRALIA.

1839.
6 Sept.

Payment for passage money for bishop of Australia.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 2, per ship Lord Eldon; acknowledged by Sir George Gipps, 27th November, 1840.)

Sir, Downing Street, 6th September, 1839.

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.

Sir, Admiralty, 15th July, 1839.

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 expense 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.

Sir, Downing Street, 10th August, 1839.

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 expense 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.

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. I have, &c.,

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 Ultimo 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. I am, &c.,

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. 3.]

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.

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.
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.
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 willful 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 Presbytery 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
RUSSELL TO GIPPS.

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 doctrines are still accordant with those of the Scottish National Church, soliciting the usual allowance for passage and outfit for certain 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 Presbyterian 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 circumstances to act on behalf of their beloved Church agreeably to the word of God, the dictates of their own consciences, the acknowledged 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 Congregations of the Colony united), approving of my conduct in the strongest terms; leaving the Colony in such circumstances, I appeal to 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 after­
wards 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.
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.
1839.
7 Sept.

Arrivals of further clergy.

Inquiry by clergy re status of presbytery.

Decision of presbytery re clergy introduced by Revd. J. D. Lang.

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.

2nd. 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 expenses. 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 antiprotectorant 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 Presbytery.
Formation of Synod of New South Wales.

1839.
7 Sept.

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.
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 Honorable 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
Effect of action of colonial government.

Refusal of salaries to adherents of synod.

Support of synod by Presbyterian colonists.

Special act passed re salaries.

320

HISTORICAL RECORDS OF AUSTRALIA.

1839.
7 Sept.

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 Episcopalian, 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 mean time 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 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

* Note 63.
Decision by synod on refusal of salaries.

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 dragonaded either by the Civil government of the Colony, as had been attempted by the Honorable the Executive Council, or by transmarine ecclesiastical authority.

1. 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 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 judicatory 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.

Systems for church government.

Protest against appellate jurisdiction claimed by committee of general assembly.

1839.

7 Sept.

HISTORICAL RECORDS OF AUSTRALIA.

System, and is of indispensable necessity to ensure the purity and efficiency of any Presbyterian Church in a remote Colony, it is one which the Synod of New South Wales can ever forego, so as either to recognize or tolerate the exercise of authority, whether Legislative or Judicial, over the Presbyterian Church in the Australian Colonies on the part of the General Assembly of the Church of Scotland, in which the Presbyterian Church in these Colonies neither has nor can have any representation. For I beg most respectfully to inform Your Lordship (for the General Assembly’s Committee and Commission to dey it if they can) that jurisdiction without representation is equally abhorrent to Presbyterian principles, whether it is attempted to be exercised by a Pope or a General Assembly; whether the seat of the central and irresponsible authority be in Rome or in Edinburgh.

II. In the name also and on behalf of the Synod of New South Wales. I protest, My Lord, against the deliverance of the General Assembly’s Committee and Commission, and the right which is therein assumed to legislate for the Colonial Clergy in all matters connected with their internal discipline and government, as an unworthy attempt to degrade the clerical office in the case of every ordained Presbyterian Minister in that Colony. The Theory of the Presbyterian system. My Lord, is that the preaching of the Gospel and the dispensation of the Sacraments are the highest ecclesiastical functions; discipline or Church government, which, agreeably to the practice of the Apostolic Church, is shared with the laity, being held the lowest. But, in the instance in question, the Committee and Commission of the General Assembly virtually declare that Ministers, who have been pronounced by their Mother Church capable of performing the highest ecclesiastical functions, are nevertheless incapable of performing the lowest; and the said Committee and Commission consequently attempt to wrest the reins of ecclesiastical discipline and government out of the hands of these ministers, and to exhibit to the Christian people one body of clergy in the Presbyterian Church inferior to another in their standing and office; a state of things, My Lord, which the Presbyterian System repudiates and abhors. Inacquaintance with this distinguishing feature of that system was to be expected, My Lord, on the part of the Episcopalian Members of the Government of New South Wales, including even the Protestant Bishop; for, as it is the theory of Episcopacy as well as of the Romish system that the government of the Church is the highest ecclesiastical function, it was natural for these gentlemen to suppose that the same principle must obtain in the Presbyterian Church; or in other words, that the Presbyterian Clergy of the Colony must have some higher order of clergy beyond seas to legislate for them, and to coerce them in all matters of Church government. But the maintenance of such a principle by the Committee and Commission of the General Assembly of the Church of Scotland could only have arisen from the lamentable inexperience of these bodies in the discharge of their own bounden duty as nursing fathers of the Colonial Churches. a duty. My Lord, which I am sorry to add, it is the shame of the Church of Scotland to have discharged so remissly or rather to have neglected so long.

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-
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 inevitably 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.
Necessity for independence of colonial Presbyterian church.

Danger of ecclesiastical control of church from Great Britain.

Protest against effect on clergy of decision of general assembly.

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 beneficent 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 paraphernalia 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 regarded 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 disallowance, 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.
Reasons for

disallowance.

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
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 enquiry."

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.

I have the honour to present to Your Lordship the following documents as illustrative of the nature of this case:

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.

No. 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 (669) 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 forty 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 Pennant Hills, of date Paramatta, 13 June, 1838; signed by (167) 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 persons, chiefly 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.

Principle involved in dispute.

Cause of delay of arrival of Revd. J. D. Lang.

Request for prompt consideration.

Proposed reference to synod of Ulster.

HISTORICAL RECORDS OF AUSTRALIA.

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 (99) 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 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, unprijudiced 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 Cambelltown 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.

1838.
7 Sept.
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 their 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 REV. 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.]

REV. 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.]

RUSSELL TO GIPPS. 333

[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.

H. LABOUCHERE.

[Enclosure No. 6.]

EEVD. 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 Instant, to 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 I have observed, throughout the Document referred to, the implied charges manifest 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 necessary, for the establishment of their case, to pursue such frivolous grounds. If indeed there were the slightest foundation for the charges which the Committee have thus virtually preferred against me, 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" reached Bass Straits on her voyage to that Colony; when it 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
1839.
7 Sept.

Services of adherents to synod.

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 mouths, 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 been heard before, 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 before-hand, 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 incontestibly 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 Ministers 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
1839.
7 Sept.
Action taken by committee of general assembly.

Advice given by Revd. J. D. Lang to immigrant clergy against joining presbytery.

confidence 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 engaged, 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 representations, and to exert a most unfavourable influence on those who actually 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 Committee, 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 Edinburgh, 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 Committee had suffered me to be traduced as a Minister of the Gospel, while they denied me every opportunity of explanation, nay, knowing 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 desirous 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 of 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 enquire 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
1839.
7 Sept.

Disavowal by committee of right of jurisdiction over colonial church.

Mandates issued by committee notwithstanding disavowal.

Determination of Presbyterians in colony to secure independence.

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 authorized 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 negotiations 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 Church and the Presbytery 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. JAMES FULLERTON.

Rev. 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 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, 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 whatever 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-...
1839.
7 Sept.

has all but destroyed its usefulness for the People of Scotland, are great indeed; and, great as are 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. MACARTHER.

[Sub-enclosure B.]

Extracts from minutes re proposed union in Presbyterian church.

EXTRACT MINUTE NO. I.

Presbytery of New South Wales, Sydney, 5th 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, viz.:-

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 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.
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.

A copy of the proceedings of the Synod on this occasion having been transmitted to the Presbytery, the following Resolution, referring to their former Resolution as to the necessity of having the Act of 1837 superseded in the first instance by a new Legislative enactment, was adopted.

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.]

EIGHT HON. HENRY LABOUCHERE TO REVD. J. D. LANG.

Sir, Downing Street, 8 August, 1839.

Having laid before the Marquis of Normandy your Letter of 31st Ultimo, I am to acquaint you that His Lordship has directed the transmission of a copy of that communication to the Committee of the General Assembly of the Church of Scotland on Colonial Churches.

I am, &c.,
H. LABOUCHERE.

[Enclosure No. 8.]

REVD. J. D. LANG TO RIGHT HON. H. LABOUCHERE.

Sir, 2 Cecil Street, Strand, 19 August, 1839.

I do myself the honor to request that the Colonial Agent Request General may be authorised to pay me the half salary allowed to my Revd. J. D. Lang for 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.
344

HISTORICAL RECORDS OF AUSTRALIA.

1839. 7 Sept.

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 18th 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. Riddell.

[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, 1837, at the instance of the four ministers referred to, commonly called The Presbyterian Church Act, virtually setting aside the General Church Act and constituting these Ministers a close corporation for their own communion and empowering them to make regulations for all ministers of that communion, who should thereafter arrive in the Colony.

From the steps which certain of my brethren and myself, amounting altogether in December last to twelve ordained ministers, deemed it necessary to take in these unprecedented circumstances for the moral welfare and reformation of our communion, a temporary 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 Scotland, when that schism would otherwise have been healed spontaneously 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 ecclesiastical questions (and especially on the point of ecclesiastical Jurisdiction, 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, that 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 representing 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 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.
SIR,

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.

HISTORICAL RECORDS OF AUSTRALIA.

[Enclosure No. 12.]

REV'D. 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 case of Presbyterian Church in New South Wales.

11 George Street, Adelphi, 2nd Sept., 1839.

In the year 1835, 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 the 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 innocent in appearance,
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 my 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 1638.

That appeal was most cordially responded to by a large majority of the Presbyterians of the Colony; for, although 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 Normandy 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 Normandy 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 Presbyterian element 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 Normandy, in which the assumption of ecclesiastical jurisdiction by the general Assembly over the Colonial Presbyterian Church is also shown 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 Normandy being transmitted, with its enclosures, to the General Assembly's Committee, that body forwarded a long report on the subject to the Government, 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 repellng certain charges of duplicity and falsehood,
1829.
7 Sept.

Press of case of Presbyterian church in colony.

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, braving 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 horror, demonstrate 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 never consent, 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 reenter 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 argument 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 re­ commend to Her Majesty, any time during the present week, to disallow that Act, 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 argument what cannot be obtained by force of argument.

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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.

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 pecuniary 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
the circumstances of the Colonial Presbyterian Church, its disallowance cannot possi-
ably 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 import-
ance 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 Septr., 1839.

I am directed by Lord John Russell to acknowledge the receipt of your Letter of the 2nd Instant, on the subject of the dis-
allowance 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 direc-
tion 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 oppor-
tunely 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 quarten 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.
1839, 12 Sept.

Substitution of rice for bread in rations of convicts.

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.

Want of wheat.

Prospects of harvest.

14 Sept.

Report re mutiny of soldiers at Norfolk island.

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.
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.]

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.

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. Pierlie 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 Jan., 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.

CHAS. BOUCHIER.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.


My Lord,

I have the honor to submit to your Lordship a statement of the further proceedings, which, in consequence of Lord Glenelg’s Despatch No. 196 of the 28th Augt., 1838, have been had in the case of Mr. H. F. White, whose suspension from the situation of an Assistant Surveyor was reported by me in my Despatch of the 13th April of the same year, No. 59.
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 expense 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 of the charges as impugned the integrity or the ability of Mr. Gray in the discharge of his Magisterial 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 Commissioners, which shews the estimation in which Mr. Gray is held by the persons best qualified to judge of his merits as a Magistrate. 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.
Clemency impossible owing to conduct of H. F. White.

Confusion of names in despatch from Lord Glenelg.

Cost of inquiry.

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 Lieut. 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.]

[LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 7, per ship Woodbridge; acknowledged by Sir George Gipps, 5th April, 1840.)

26 Sept.
Difficulties expected by W. Hobson through want of military.

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, advertning to the difficulty of detaching any of Her Majesty's Troops to New Zealand, could only refer Capt'n. 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.

J. Russell.

Sir George Gipps to Marquess of Normanby.

(Despatch No. 131, per ship Regulus.)


I have had the honor to receive your Lordship's Circular Despatch of the 27th Feby. last, and with it a Copy of Mr. Montgomery 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.

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 Feby., 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 occurrence of vacancies.

Mr. Bellew Graves, having however, about the same time, had an offer of employment in the Bank of Australia, has preferred entering the service of that Establishment.

GEO. GIPPS.

Sir George Gipps to Marquess of Normanby.

(Despatch No. 133, per ship Regulus; acknowledged by lord John Russell, 28th April, 1840.)


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 Macquarie. I also forward to your Lordship a Copy of a Remonstrance, which was made against this act by the three Judges of

* Note 5.
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
GIPPS TO NORMANBY.

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 venture 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 Jany. 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.
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 Dependencies 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. 3.]

[This was a copy of the "Votes and Proceedings" of the legislative council for the 29th of August, 1839.]
SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 134, per ship Regulus; acknowledged by
lord John Russell, 12th May, 1840.)

My Lord,

my despatch of this day's date, No. 133, I have re­
ported 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 Ses­
sions have been already established at Melbourne, and will
shortly be established at Port Macquarie, under the Act of Coun­
cil 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 At­
torney General and subject to Her Majesty's pleasure, Mr. Ed­
ward 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 how­
ever 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,

The Lords Commissioners of the Treasury have intimated to me that they have directed the PayMaster General to issue

the Agent General for New South Wales the sum of £10,000,
364  HISTORICAL RECORDS OF AUSTRALIA.

1839.
5 Oct.

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. Busby, 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.]

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LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 10, per ship Mangles.)

9 Oct. Sir, Downing Street, 9 October, 1839.

Appointment of I have to acquaint you that the Revd. Joseph Piatt, having

Sir,

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 Emigration 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 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
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.

I have, &c.

T. FRED. ELLIOT.

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 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>Cork and Tipperary</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>Waterford 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>do</td>
<td>19th</td>
</tr>
<tr>
<td>Florist</td>
<td>Gravesend</td>
<td>Kent and Sussex</td>
<td>Sydney</td>
<td>18th</td>
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<tr>
<td>China</td>
<td>Waterford</td>
<td>Waterford and Tipperary</td>
<td>do</td>
<td>25 July</td>
</tr>
<tr>
<td>North Britain</td>
<td>Kingston</td>
<td>Kildare</td>
<td>do</td>
<td>12th August</td>
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<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 Sept</td>
</tr>
<tr>
<td>George Pyle</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 to sail about the end of Sept.</td>
</tr>
<tr>
<td>Henry Porcher</td>
<td>Isle of Skye</td>
<td>Western Highlands</td>
<td>do</td>
<td>Begg. of Oct.</td>
</tr>
<tr>
<td>Glen Huntley</td>
<td>Cromarty</td>
<td>Cromarty and adjig. Country</td>
<td>do</td>
<td>Do</td>
</tr>
<tr>
<td>Adam Lodge</td>
<td>Cork</td>
<td>County of Limerick</td>
<td>Sydney</td>
<td>Middle</td>
</tr>
<tr>
<td>James Patterson</td>
<td>Gravesend</td>
<td>Home Counties</td>
<td>do</td>
<td>End</td>
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[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
RUSSELL TO GIPPS.

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.

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 Augst. 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.

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.
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.)

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.
GIPPS TO NORMANBY.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 15, 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 let me know the fate of my brother-in-law, 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 the following 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 Sept. 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.
Resolutions of legislative council re necessity for establishment of circuit courts.

1839.
17 Oct.

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 preventive 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 remote 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
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 MARQUES 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 Dispatch 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.
1839.
23 Oct.
Instructions to be transmitted.

I beg to express to you my thanks for the detailed observations on this subject, contained in your Dispatch, and to apprise 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.

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.

GEO. GIPPS.
RUSSELL TO 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. Gammanic will be prepared to embark and return to Sydney on being relieved by the Detachment of the 50th Regt. now in the Offing.

T. BUMUBY, 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.
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.

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.

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 24, per ship Mangles.)

28 Oct. Sir, Downing Street, 28th October, 1839.

Despatch acknowledged.

Inability to grant pension to J. W. Willis.

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.)

28 Oct. Sir, Downing Street, 28th October, 1839.

Despatch acknowledged.

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.
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.

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.

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.

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.]
LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 28, per ship Mangles.)

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.)

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...
Method for supply of stationery. 

should be supplied from Her Majesty's Stationery Office through the Ordnance Department, and the other through the Colonial Agent, Mr. Barnard.

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.)

My Lord,


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.

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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.
whether in addition to the expenses of outfit and of travelling to
the Port of Embarkation, part of the Passage money could be ex­
pected 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 llth 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 char­
acter. 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 re­
muneration 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 re­
source by the pressure of want and misery, produced by the lack
RUSSELL TO GIPPS.

1839.
31 Oct.

Report by C. Inches re difficulty in procuring emigrants for ship James Pattison.

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 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 enquiries 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, Battle, 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 advertize 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. &c,
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. &c,
DAVID FORREST.

[Enclosure No. 2.]
UNDER SECRETARY STEPHEN TO MR. T. F. ELLIOT.
Sir, Colonial Office, 31st Octr., 1839.
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 Jany., 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...
1839.
1 Nov.
System of concessions to officers.

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 favourable 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.

(Despatch No. 143, per ship Bardaster; acknowledged by Lord John Russell, 4th August, 1840.)

My Lord, Government House, 4th Novr., 1839. 4 Nov.

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.

(Despatch 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...
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.

7 Nov.

SIR JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 34, per ship Mangles.)

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
Governor of New South Wales on account of the mortality in his ship, and requesting the opinion of Sir Willm. 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, 1839.

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.

initialed (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. 15, 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.
HISTORICAL RECORDS OF AUSTRALIA.

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 Dec., 1839; but, as the New Lunatic Asylum is now occupied, which has been built by the Colony, it is proposed that, from the 1st Jan., 1840, this establishment shall be made purely a Colonial one, and the whole expense 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.,

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 80 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. 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, charges for 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 about 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 expedient 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...
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 building 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,

With reference to my despatch of this day's date, No. 146, on the subject of the division of the expences 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 expense will only be about £75 a year.

According to the arrangements reported in my despatch of this day's date, No. 146, this expense 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 Febry., 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>1838 9th Oct. 216 20,200</td>
<td>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</td>
<td>29th August &quot;</td>
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I have, &c.,
GEO. GIPPS.

* Note 71.
1839.
12 Nov.

Return required of allowances for civil services to medical officers.

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.

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.

14 Nov.

Despatch acknowledged.

Withdrawal of complaint by H. Donnison.

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.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despach 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.

I have, &c.,

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."

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LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despach 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.

I have, &c.,

J. RUSSELL.
1839.
15 Nov.

Reply to complaint by T. Lewis.

Inferior solitary cells in military barracks.

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.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 43, per ship Mangles.)

Sir, Downing Street, 16 November, 1839.

I have received your despatch, No. 93 of the 15th of June last, forwarding the copy of a Memorial from Mrs. Jane Du Moulin, Widow of the late Surgeon Du Moulin, of the 50th Regiment, praying for a Grant of 800 Acres of Land.

I beg you will express to the Memorialist my sincere regret that it is not in my power to depart from the Established Regulations in her favour.

I have, &c,

J. RUSSELL.

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, 5th 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.
1838, 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 Despatch 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.

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.]

* Marginal note.—1838, 22nd Sept., No. 147; 1839, 27th July, No. 108; 31st July, No. 111; 14th Sept., No. 127; 24th Oct., No. 140.
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.

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.
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,
Geo. Gipps.

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.

Claim; and I therefore approve your suggestion that the repayment should be made from any remuneration, which may be voted to Colonel Snodgrass for certain extra services performed by him as Brigade Major in the Colony, for the grant of which you state that a proposal is now under the consideration of the Legislative Council.

I have, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO MARQUESS 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.
to point to the 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 Con-
victs, 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 re-
specting 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 Captn. Maconochie,
but also of putting an end to the estrangement, which had for
above a year existed between him and Sir John Franklin.

Captn. 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 Captn. Maconochie,
immediately on his arrival in Sydney, expressed to me person-
ally, and has since repeated by letter, that, though ready to pro-
cceed 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's 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,
1839.
23 Nov.
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.

urged by Captn. Maconochie against the fitness of 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 inaccessibility, the fertility of its soil, and the 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 Captn. 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 Captn. 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 Straits, 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 (Lieutt. 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. 403

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 expence 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 expence 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 expence 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.]

[SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.  
(Despatch No. 158, per ship Bardaster; acknowledged by lord John Russell, 6th June, 1840.)

My Lord, Government House, 26th Novr., 1839.  
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 Capt'n. 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.

[Enclosure.]

[A copy of this letter is not available.]

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(My 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 instt., 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 intituled '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
1839.
29 Nov.

Sir George Gipps to Marquess of Normanby.
(Despatch No. 160, per ship Royal Admiral.)

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.

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.

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.)

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.
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.
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 expenses 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 graciously 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.]

Sir George Gipps to Marquess of Normanby.

(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.
Russell to Gipps.

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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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.

Lord John Russell to Sir George Gipps.

(Despatch No. 53, per ship Marmion.)

Sir,

Downing Street, 4 December, 1839.

I have to inform you that, since the date of the Instructions addressed to you by the Marquess of Normanby respecting New Zealand, a large body of persons have embarked for those Islands.

I transmit to you, for your information, copies of a correspondence on this subject between the Department and Mr. Geo. Frederick Young.

However unjustifiable may be the course taken by the “New Zealand Land Company,” the persons who have embarked, being for the most part ignorant of the relations between this Country and the New Zealanders, and not aware of the distinction between New Zealand and any of Her Majesty's Possessions in Australia, are to be regarded with consideration and kindness.

At this distance from the Scene of their destination, I find it impossible to fetter the discretion of Captain Hobson by any
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 it 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 inhuman 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 intelligence 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 Frize 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 August, 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, — August, 1839.
No. 3. Marquess of Normanby to Captain Hobson, 15 August, 1839.
No. 4. Marquess of Normanby to Sir George Gipps, 15 August, 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 enclosure G. F. Young to Lord J. Russell, 7 Nov., 1839.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despitch No. 164, per ship Royal Admiral; acknowledged by lord John Russell, 7th October, 1840.)

My Lord,

I have the honor herewith to forward to your Lordship a copy of the report of 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 Octt. 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.]
 request for decision re limits of diocese of Australia.

South Australia to be included in diocese.

[Enclosure.]  

BISHOP OF AUSTRALIA TO LORD GLENEILG.

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 Bishoprick 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° 37' S., to the Southern extremity of New South Wales or Wilson's Promontory in the Lat. of 39° 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
Interpretation of definition.

Interpretation of provision in statute for erection of province of South Australia.

1839.
5 Dec.

“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 132nd 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
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 Watchhouse 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
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,
the latter of whom, on account of their having been dismissed by Coll. Wilson, might be supposed to bear him ill will; 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.

(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.)
TRANSMISSION OF LETTER FROM H. C. BUTLER.  

Refusal of land grant for H. C. Butler.

Claim by H. C. Butler to land grant.

1839.  
7 Dec.

Transmission of letter from H. C. Butler.

HISTORICAL RECORDS OF AUSTRALIA.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.  
(Despatch No. 55, per ship Marmion.)

Downing Street, 7 December, 1839.

Sir,  

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 advertized 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.

H. C. BUTLER.

[Sub-enclosure No. 1.]

MR. H. C. BUTLER TO COLONIAL SECRETARY.

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...
that period was employed by me in the service of Government, and in the performance of arduous duties.

I trust this may be considered as strengthening my claim to the indulgence I now solicit, the time having arrived when circumstances have rendered it expedient for me to resign my appointment, and place myself in the position of a new Settler.

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 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. 3.]

COLONIAL SECRETARY THOMSON TO MR. H. C. BUTLER.

Sir, Colonial Secretary's Office, Sydney, 7 May, 1839.

With reference to your letter of the 2nd Instant, enclosing a Memorial for transmission to the Right Honble. the Secretary of State on the subject of your claim to a Grant of Land in this Colony, I have the honor to inform you that His Excellency the Governor feels it would not be of the smallest advantage to you, if he were to transmit your Memorial to the Secretary of State; as cases precisely similar to yours have been brought under Lord Glenelg's notice and his Lordship's decision given against them.

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.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(Despatch No. 167, per ship Royal Admiral; acknowledged by Lord John Russell, 22nd July, 1840.)

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

With further reference to my Despatch of the 5th instt., No. 165, on the subject of Coll. Wilson's suspension, I beg leave to report to your Lordship that I have appointed temporarily Captn. J. Long Innes (late adjutant of the 39th Regt.) to discharge the duties of Superintendent of the Sydney Police at a Salary of £400 per annum instead of £700, received by Coll. Wilson; by which means the advance reported in my Despatch of yesterday's date, No. 166, of £850 to Coll. Wilson, to enable him to return with his family to England, will be saved in little more than a year, which must necessarily elapse before Her Majesty's decision on Coll. Wilson's case can be made known to me.

The situation held by Coll. Wilson was that of First Police Magistrate of the Town and District of Sydney, there being two other Police Magistrates junior to him. His salary was £700 a year, and the particular duties, with which he was charged,
Position and duties of H. C. Wilson.

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.

Rearrangement on appointment of J. L. Innes.

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.

Minute to council on education.

Proposed introduction of Irish system of education.

Contract for school-house at Wollongong.

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 Augt. 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.

10 Dec.

Transmission of return of land sold at Port Phillip.

Details re sale of land.

SIR GEORGE GIPPS TO MARQUESS OF NORMANY.

(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
1839.
10 Dec.
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.]

[A copy of this return will be found in a volume in series III.]

11 Dec.
Transmission of general muster of convicts.

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 Deer., 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 instt.

I enclose a certified statement of the expence 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.
1839.
14 Dec.

Transmission of requisition for convict clothing.

Method of forming requisition.

HISTORICAL RECORDS OF AUSTRALIA.

SIR GEORGE GIPPS TO MARQUESS OF NORMANBY.

(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.
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.

———

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 Habiliments 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.

1339.
17 Dec.

Despatch acknowledged.

Refusal to remove bishop of Australia from councils.

1839. 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.

18 Dec.

Despatches re difficulties in law business of government.

Reforms in department of crown solicitor.

1839. 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., 203. 1839, 2nd Jan., No. 2; 3rd Jan., No. 3; 15th Feb'y., No. 28; 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...
1839.
18 Dec.
Arrangement
of papers by
J. Kinchela.

Request for
confirmation of
appointments.

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 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.]

19 Dec.
Objections to
dual offices
held by
W. Macpherson.

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...
440

HISTORICAL RECORDS OF AUSTRALIA.

so distant from the event as one year and five months any judicial enquiry into the causes which led to the death of the Aborigines. In this case, it may have been impossible to have summoned an impartial Jury. I agree however with the Attorney General that it is much to be regretted that the practice of holding 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 European 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 entrusted 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 unfortunate 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 impossible that the Government should forget that the original aggression 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 without 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,
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 Feb'y 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
1839.
23 Dec.


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 ineffectual 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 Dickenson Mann, 9 a. 2 r. 39 per.; Term, 14 years. 11th Aug., 1804, Nathaniel Lucas, 1 a. 0 r. 0 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 1823, 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. Secy.'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. 25 p. and the portion of which he still let the parties in possession was 1 a. 2 r. 7 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 16th Novr., 1833, amounting to £772 16s., 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

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. Ferguson and Co. to 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
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 Decr., 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 property. 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 services 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.
1839.
26 Dec.

Transmission of copies of letters.

Outrages by and on aborigines.

Hostility of aborigines.

448 HISTORICAL RECORDS OF AUSTRALIA.

[Enclosure.]

MR. J. H. WEDGE TO LORD JOHN RUSSELL.

Shady Camps.

My Lord, near Linton, 12th December, 1839.

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.

My Lord. 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 communi-
cated by Mr. Mercer to the Department over which Your Lordship
presides. I will therefore only advert to the inadequate remunera-
tion 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 imme-
nent 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 com-
munication 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 satisfac-
tory results.

Through the communication I made to the Colonial Government,
Mr. Stewart, Police Magistrate, was sent to investigate the circum-
cstances 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 Gov-
ernment. On this point, I take the liberty of referring Your Lord-
ship 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 separ-
ate 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 prede-
cessor, 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 con-
sideration 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.
450 HISTORICAL RECORDS OF AUSTRALIA.

[Sub-enclosure No. 2.]

MR. J. H. WEDGE TO LORD GLENELG.

My Lord,

near Linton, 22nd April, 1839.

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 Jany., 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.]

Extract 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 Decemr., 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, etc.,

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, 1835, 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
1839.
26 Dec.
Memorial of
H. Bayly
soliciting
primary land grant.

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, 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, by his Attorney, R. MANSFIELD.

18 October, 1837.

[Appendix A, referred to in Paragraph 3.]

Sir, Downing Street, 8 October, 1829.

Reply to application by H. Bayly for land grant.

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, &c., 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.

Refusal of additional land grant.

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, &c., ALEXR. MCLEAY.

H. Bayly, Esq., George Street.

A true Copy:—R. MANSFIELD.
GIPPS TO NORMANBY.

[Enclosure J 3 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, soliciting additional land grant.

To His Excellency Colonel Kenneth Snodgrass, C.B., Senior Military Officer in Command of Her Majesty's Forces within the Territory of New South Wales and Governor in Chief of the same, etc., etc., etc.,

Saideth,

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 Honourable 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 hereby 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 £3. 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.
HISTORICAL RECORDS OF AUSTRALIA.

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 the same 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 claims 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.

[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:—

By Grant 1,500 Acres.

By Purchase of the Crown .............................

By Reserve .............................................

By private purchase, Gift or Inheritance ..............

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.
[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 A No. 28/143 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.,

[Enclosure J 8 to Minute No. 4 of 1839.]

Sir,
Surveyor General’s Office, Sydney, 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 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.

[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, 1828, 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 Five hundred Acres, situated at the South Creek, as security for the repayment of a loan of 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 commensurate 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,

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 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 for grant of most important Offices in the Colony of New South Wales, viz., Frederick Goulburn, ten thousand Esq., late Colonial Secretary, John Thomas Bigge, Esq., late Commissioner of acres. 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 5th October, 1829, see page 544.]

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 Sepr. 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.

I have, &c.,

J. RUSSELL.

Despatch acknowledged.

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.
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 between 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 between 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 "greeness 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 inst., 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 Captn. 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,
Sir, 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.
(Despash 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 Decr., 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>
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<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 Jany., 1839.</td>
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<td>John McKenzie</td>
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<td>James Shea</td>
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<td>William Hinch</td>
<td>&quot;Medway&quot;</td>
<td>Griffin</td>
<td>— Jany., 1840.</td>
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<td>James Curtis</td>
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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.]
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 imports. 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 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.
1839, 31 Dec.

Clergy appointed for Tasmania; but permitted to remain in New South Wales.

Arrival of clergy in Tasmania.

Request for additional clergy.

HISTORICAL RECORDS OF AUSTRALIA.

[Sub-enclosure.]

SIR JOHN FRANKLIN TO MARQUESS OF NORMANBY.

Van Diemen's Land, Government House, 23rd July, 1839.

My Lord,

In acknowledging the receipt of the Despatches enumerated in the Margin,* acquainting me that the Revd. J. Mayson, the Revd. G. E. Turner, the Revd. W. H. Walsh, and the Revd. H. Fry had been recommended by the Society for the propagation of the Gospel as qualified to fill the office of Chaplain in this Colony and that they had been accordingly appointed, I have the honor to inform your Lordship that two of these Clergymen, namely, the Revd. Mr. Walsh and the Revd. Mr. Turner, having taken their passage in a Vessel bound direct to Sydney were on their arrival permitted by the Bishop of Australia to remain in New South Wales, and thus their services have been secured to that Colony.

The other two Ministers, as well as the Revd. Mr. Bishon, appointed by the Despatch No. 274 of the 10th March, 1838, have arrived here, and have respectively been placed in the ministerial charge of Congregations.

I have also the honor to report that the Revd. Mr. Cotter, an ordained Clergyman of the Church of England, who had gone out to New South Wales with the view to employment, was directed by the Bishop to proceed to this Island, and that, upon the recommendation of the Archdeacon, he had been nominated as Chaplain of the Colony and stationed at Green Ponds, an appointment the confirmation of which I beg to recommend to your Lordship.

I would add that, in six or seven Parishes, the provisions of the Church Extension Act, which has received the approval of Her Majesty, have been so far complied with by the Inhabitants professing the Doctrines of the Church of England as to entitle them to the aid from the Public Revenue in the erection of places of Worship and Ministers' dwellings, and also, to the Salary for a Chaplain as fixed by that Act; consequently were that number of Clergymen to arrive in this Colony, they could at once be employed; I beg therefore strongly to urge that some means may be adopted, by which at least that number of Clergymen may be induced to proceed to this Colony.

I have &c.

JOHN FRANKLIN.

[Enclosure No. 2.]

UNDER SECRETARY VERNON SMITH TO REVD. PRINCIPAL MACFARLAN.

Sir, Downing Street, 31st December, 1839.

With reference to the correspondence, which has passed from time to time relative to the appointment of Clergymen of the Church of Scotland to the Ecclesiastical Establishment of New South Wales and Van Diemen's Land, I am directed by Lord John Russell to transmit to you, for the information of the Committee of the General Assembly of the Church of Scotland on Colonial Churches, the enclosed copy of a communication which His Lordship has thought it right should be made to the Society for the propagation of the Gospel in Foreign Parts, with reference to an application

* Marginal note.—No. 279, 14 May, 1838; No. 312, 26 June, 1838; No. 365, 26 Sept., 1838.
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.

R. VERNON SMITH.

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. Eiddell, 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.


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 Departmt., 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.
468 HISTORICAL RECORDS OF AUSTRALIA.

[Sub-enclosure.]

Extract of a Report from the Commissioners of Audit, dated 9th December, 1839.

"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