HISTORICAL RECORDS
OF
AUSTRALIA.
COMMONWEALTH OF AUSTRALIA.

HISTORICAL RECORDS OF AUSTRALIA.

SERIES I.
GOVERNORS' DESPATCHES TO AND FROM ENGLAND.

VOLUME XXI.
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INTRODUCTION.

SIR GEORGE GIPPS.

During the administration of Sir George Gipps, a partly elective legislature was granted to the colony, as the result of the constant agitation conducted during a number of years. In the introduction to volume XVIII, a short summary is given of the progress of this agitation during the administration of Sir Richard Bourke. At the time of the arrival of Sir George Gipps, this agitation was lulled temporarily in anticipation of the passing of a new act for the government of the colony. However, the act, 9 Geo. IV, c. lxxxiii, was continued for one year by the act, 1 and 2 Vict., c. 1, passed in 1838, for a second year with certain amendments by the act, 2 and 3 Vict., c. lxx, passed in 1839, for a third year with further amendments by the act, 3 and 4 Vict., c. lxxii, passed in 1840, and the original act with the amending acts was continued for one year by the act, 4 and 5 Vict., c. xliv, passed in 1841, before the new act, 5 and 6 Vict., c. lxxvi, was passed in 1842 for the government of the colonies of New South Wales and Van Diemen's land. Thus, in the first four years of the administration of Sir George Gipps, certain important developmental changes occurred in the legislature, and further opinions were received in England from the colony as to the reforms necessary for the good government of the colony.

On the 29th of May, 1838, Sir George Gipps opened his first session of the legislative council. As soon as he had delivered his address, the attorney-general presented a petition, signed by many leading colonists, praying that the public should be admitted to hear the debates of the council. The prayer of this petition was granted immediately by resolution of the council, and, on the 5th of June, regulations* were adopted to control the admission of strangers. As the result of this important change, a summary of the debates in council was printed in the newspapers, and the speeches were subjected to public criticism.

When the report of the passing of the extending statute, 1 and 2 Vict., c. 1, in 1838, was received in the colony, Sir George Gipps

*See note 91, volume XIX.
wrote a despatch,* dated 1st January, 1839, in which he detailed the reforms required in his opinion in the legislature. He assumed that the time had come, when some form of representative government was required in the colony, but that circumstances rendered it still unsafe to create a purely representative body. He therefore advocated a mixed legislature for the colony, partly elected by the people and partly nominated by the Crown, "during what may be called its intermediate or transition state." He stated that public opinion would not be satisfied with any legislature unless, in its fundamental principles, it was analogous to that of Great Britain.

He advocated a legislative council of not less than twenty-four, nor more than thirty-six members, of whom not less than one-half nor more than two-thirds should be elected by the people. He proposed that triennial elections should be held under a system of direct election by electors, qualified by the possession of a £10 household occupancy, clear of all incumbrances, or of landed or real property to the value of £500 without residence, and that emancipists or expirees should be qualified to vote, if eligible; that the governor should have no power of dissolving the legislature at his pleasure; and that the proposed constitution should last for three elections or for nine years. For the purposes of the election, "the colony should be divided into six electoral districts, of which Sydney should be one," and that "each district should elect three or four members according as the total number elected is to be eighteen or twenty-four." He proposed that one member should be added for the district of Port Phillip, whenever the population numbered seven thousand, and a second whenever it numbered fifteen thousand; and that all elections should be held on the same day. To provide for the representation of minorities, he proposed that no elector should be allowed to vote in more than one district and for more than one candidate, irrespective of the number of members to be returned for the district; this system had proved of value in Lower Canada. He proposed that the division of the colony into electorates and the machinery for elections should be determined by the council itself, and in the first instance by the existing council.

The qualification proposed for elective members was the possession of real or personal property within the colony to the value of £3,000, clear of all incumbrances; but residence within the

* See page 719 et seq., volume XIX.
electorate was not necessary for the member elected. The
nominee members should be removable at the pleasure of the
Crown, and a president should be nominated by the Crown. The
persons disqualified for membership were to be any judge during
his term of office, any ecclesiastic, and any emancipist or expiree.

The governor, he proposed, should have the power to convene
and adjourn the council, and should open and close each session
in person. All communications during the session should be by
message from the governor, and through the president or a deputa­
tion of members from the council. Every member should have the
power to initiate measures with the exception of money bills, which
should be initiated by message from the governor as well as any
ordinary bills he might consider necessary. The governor should
have the right to amend bills, and to return them to the council
any number of times with amendments, and conferences in camera
between the governor and the council should be held, when
demanded by either party. The governor should have the right
to confirm or disallow bills without assigning reasons. He further
proposed the abolition of the power of the judges to put a veto
on acts passed by the governor and council.

He advocated also that power should be given to the council
to establish grand juries, one or more masters in chancery if
necessary, and circuit courts, and to give to the courts of quarter
sessions a requests jurisdiction with cognizance of money causes
to the extent of £30; and that a decision should be given on the
appropriation of the territorial revenue of the colony.

In the administration of justice, he advocated also statutory
provision for the appointment of one or more additional judges
and for the abolition of military juries in the criminal jurisdiction
of the supreme court and of the trial of issues by a judge and
assessors in its civil jurisdiction.

About the middle of the year 1839, the British government
decided to postpone further the passing of a new act for the
colony. Consequently, in August, the statute, 2 and 3 Vict., c. lxx,
was passed to continue the statute, 9 Geo. IV, c. lxxxiii, subject
to an amendment granting the council power “to make such
provision, as may seem meet, for the better administration of
justice, and for defining the constitution of the courts of law and
equity, and of juries.” The control of the administration of
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justice was transferred thereby to the council. The granting of this extended power was due* to a recognition that the existing supreme court was inadequate to the needs of the colony and to the arguments contained in the despatches† from Sir George Gipps, dated 1st and 7th January, 1839.

After this statute was received in the colony, and with the increased powers conferred, the legislative council passed in October, 1840, three acts, 4 Vict., Nos. xxii, xxv and xxviii, "for the more effectual administration of justice," "for better regulating courts of requests," and "for the trial by jury in civil and criminal cases in the circuit and other courts." By the first act, the appointment of additional judges, not exceeding two, for the supreme court was authorised, and also the appointment of resident judges at Port Phillip and New Zealand. Provision was made for appeals from decisions of the resident judges to the judges of the supreme court sitting in Sydney in banco; for the establishment of circuit courts and their procedure; for the vesting of equity jurisdiction in one judge with the right of appeal from the decision of such judge to the full court at Sydney; for the revival of the office of master in equity; for the regulation of mesne process arrest; for the powers of a single judge in vacation; and for the power to direct trial of feigned issues. By the second act, the governor with the advice of the executive council was authorised to appoint places for the holding of courts of requests, and to appoint a commissioner or commissioners for such courts. By the third act, it was provided that all issues in civil and criminal cases should be tried at circuit courts by a jury of twelve inhabitants.

It was thus that the abolition of military juries and the establishment of circuit courts were obtained in the colony after long agitation extending over many years.

In the meantime, whilst these changes were effected in the colony, a bill‡ was introduced into the house of commons on the 6th of July, 1840, "to make further provision for the government of New South Wales and Van Diemen's land." By this bill, it was proposed to establish a legislative council consisting of thirty-six members, twelve to be nominated by the crown and twenty-four to be elected by the people. For the purposes of the election, the then existing legislative council was to divide "the settled parts

* See page 299 et seq., volume XX. † See pages 719 and 738, volume XIX. ‡ See page 789 et seq., volume XX.
INTRODUCTION.

of the colony into convenient electoral districts,” and to provide
the machinery for elections. Electors were to be natural-born
subjects of the Queen, or those naturalised by act of parliament,
over the age of twenty-one years, and in possession of freehold,
lands or tenements within the district for which a vote is given
of the value of £500, free of all charges and incumbrances, or in
occupation of a dwelling-house within the district of £10 clear
annual value. Convicts were to be disqualified as electors, but
emancipists or expirees were eligible. The nominee members were
to be appointed by royal warrant, unless the power of appoint­
ment was delegated to the governor by royal warrant. No quali­
fications were proposed for the nominee members, but they could
be designated either by their proper names or as holders of public
offices. The governor was to be empowered to fix the places and
times for holding the first and every other session of the council,
and to prorogue or dissolve the council when he deemed it ex­
pedient. If not dissolved, each council was to continue for five
years; and a session was to be held at least once in every year,
the first not later than six months after the proclamation of the
act. The council was to have the right to elect one of its members
to serve as president; but the governor was to be empowered to
disallow the choice of the council, whereupon another choice was
necessary. It was provided that at least four of the nominee mem­
bers, exclusive of the president, should be present at all meetings
for the despatch of business. Provision was also proposed for the
election and nomination of members on the dissolution or other
determination of the council; for the initiation of legislation; for
the assent, or withholding of assent to bills by the governor, or
the reservation of bills by him for the royal pleasure; for the dis­
allowance of any bill within two years by Her Majesty; and for
the appropriation of the revenue after providing for a civil list
specified in two schedules. It was proposed that no Crown lands
in future should be disposed of except by sale. Power was to be
reserved to create by letters patent one or more new colonies
within the territory of New South Wales, and to create a legisla­
tive council or councils in the same, provided that no part of the
nineteen then existing counties* should be separated from the
colony of New South Wales.

This bill was not passed, and, on the 7th of August, 1840, the
act, 3 and 4 Vict., c. lxii, was passed to continue the existing
act as amended. By the new act, it was provided also that Her

*See page 424 et seq., volume XVII.
Majesty could by letters patent erect into a separate colony or colonies any islands comprised within or dependencies of the colony of New South Wales, and could establish a legislative council therein.

The necessity for the power to create new colonies was due to the proposal for erecting the islands of New Zealand into a separate colony, which was effected under this act.*

When the bill, which was presented to Parliament in July, 1840, was received in the colony, it was subjected to much criticism. Exception was taken to the franchise on the ground that it was not liberal enough; but Sir George Gipps supported the proposed franchise, stating† “that there is scarcely a house in Sydney, which may not be valued at a higher yearly rent than £10, and that the same is pretty generally the case throughout the Colony.” The proposed limitation of the electoral districts to the nineteen settled counties, and the restriction of the electors to householders or property-holders within the districts, was considered objectionable, as thereby a number of persons in the colony outside these counties were disfranchised. These nineteen counties included the country on the coast from Moruya in the south to the Manning river in the north, extending west to an irregular line passing near the modern towns of Bowning, Burrowa, Cowra, Orange, Wellington and Talbragar. The strongest objection was taken to the power proposed to erect into a separate colony or colonies any of the lands lying without these counties.

Owing to the criticism of the bill and political exigencies in the British parliament, the original act, 9 Geo. IV, c. lxxxiii. with the amending acts was further extended for another year by the act, 4 and 5 Vict., c. xliv, passed in 1841.

The act, 9 Geo. IV, c. lxxxiii, had expired on the 31st of December, 1836, and it was not until the 30th of July, 1842, that the new act, 5 and 6 Vict., c. lxxvi, was passed, entitled, “An Act for the Government of New South Wales and Van Diemen’s Land.” This act was passed without a dissentient voice in both houses of parliament. By this act, the long sought privilege of elective members in the legislative council was granted to the colony. This act was received in the colony on the 1st, and proclaimed on the 5th of January, 1843.

A legislative council of thirty-six members was constituted for the colony, twelve to be nominated by Her Majesty and twenty-
four to be elected by the people. The then existing legislative council was authorised to pass an ordinance for dividing the nineteen settled counties into electoral districts, and for determining the number of members for each district, provided that the district of Port Phillip and the towns of Sydney and Melbourne should be electoral districts, returning five, two and one members respectively. The boundaries assigned to the district of Port Phillip were the same as those of the modern state of Victoria. The governor was given power to determine the boundaries of the towns of Sydney and Melbourne, and such other towns as might be declared electoral districts. After its constitution, the council was given power to alter the system of representation by altering the electoral districts or by increasing the number of members, provided that one-third of the members were always nominees.

Persons qualified as electors were natural-born or naturalised subjects of the Queen of twenty-one years of age, in possession or occupancy of a £200 freehold or a £20 annual rental for six months prior to the election, on which all rates and taxes had been paid.

The qualifications for elective members were the possession or occupancy of a £2,000 freehold or a £100 annual rental. Any casual vacancy was filled for the term of the continuance of the council by a by-election, held under writ from the governor.

Nominee members were appointed by letters patent, either by their proper names, or as holders of any public office in the colony. The letters patent were issued under a royal warrant, or by the governor when the power was delegated to him; and it was provided that not more than one-half of the nominee members should hold office of emolument under the Crown in the colony. Nominee members were appointed for five years or until the council was sooner dissolved.

Seats became vacant by the absence of the member for two successive sessions without leave, by insolvency, conviction of felony, or insanity. The seats of nominee members, designated as holders of public offices, became vacant on their ceasing to hold such public offices.

The governor was authorised to fix the place and time of holding each session of the council; and the first was to be held within twelve months of the proclamation of the act.
The duration of the council was five years subject to pro­rogation or dissolution by the governor; and it was provided that not more than twelve months should elapse between two sessions. The council elected the speaker subject to disallowance of such election by the governor; and one-third of all members, exclusive of the speaker, were required to be present for the transaction of business.

The council was authorised to make laws, provided “that no such law shall be repugnant to the law of England, or interfere in any manner with the sale or other appropriation of the lands belonging to the Crown within the said colony, or with the revenue thence arising.” The governor was authorised to propose laws and amendments, and to return bills with amendments. This last-mentioned power was granted “to counteract the inconvenience which might result from the absence of reconsideration of such measures in a second Chamber.”

The governor was authorised to assent to any bill, to withhold assent, or to reserve any such bill for Her Majesty’s pleasure. Any bill, to which assent might be given, became law in the colony; but power was reserved for Her Majesty to disallow any such bill within two years. Bills reserved had no force or authority, until Her Majesty’s pleasure was announced.

The council was given full power to appropriate the revenue arising from taxes, duties, rates and imposts within the colony, after the expense of collection and management had been provided, and the sum of £81,600 had been appropriated for civil and judicial services and public worship, specified in three schedules.

In ten sections of the act, provision was made for the creation of district councils for such divisions of the territory as might be incorporated by the governor by letters patent. The franchise and the qualifications for membership of these councils were similar to those of the legislative council. If the population of such a division was less than seven thousand, the number of councillors was fixed at not more than nine; if between seven and ten thousand, at not more than twelve; if between ten and twenty thousand, at not more than fifteen; and if over twenty thousand at not more than twenty-one. The councillors were to hold office for three years, and to be presided over by a warden. These councils were empowered to make orders and bye-laws for the
construction and maintenance of public roads; for building, repairing and furnishing public buildings; for the management of all property belonging to the district; for providing the means of defraying such expenses of the administration of justice and police, as might by law be directed to be defrayed out of district funds; for providing for the establishment and support of schools; and for raising revenue for any of the objects of the district councils. One-half of the expense of the police establishment (exclusive of the convict establishment) was to be defrayed out of the general revenue of the colony, and the other half by assessments to be levied by the district councils in such proportions as might be determined by the legislative council.

Provision was also made for the erection by letters patent of new colonies and the establishment of a form of government in such colonies, provided that no part of the territories south of the twenty-sixth parallel of south latitude should be detached from the colony of New South Wales. This parallel passes the coast of the modern state of Queensland about ninety miles north of Brisbane.

It will be noted that the principal differences in this act and in the bill proposed in the year 1840 were the altered franchise; the qualifications of members; the exclusion of the necessity for nominee members in a quorum; the limitation of the number of officials eligible as nominee members; the appointment of a speaker in place of a president; and the extension of the limits of the country to be retained in the colony of New South Wales.

This act was received unfavourably in the colony. The principal objections were: the large sum which was appropriated from the revenue under the schedules; the denial of any control over the land revenues; the establishment of district councils, thereby causing increased taxation; the non-adjustment of the police, gaol and judicial expenditure; the denial of the principle of responsibility as to legislative control, which had been conceded in the United Canadas; and the limitation of the franchise to property-holders and residents within the boundaries of location.

In the despatch, dated 5th September, 1842, transmitting the statute, lord Stanley stated that the limitation of the franchise to property-holders and residents within the boundaries of location was tentative and subject to amendment.
The last session of the old legislative council commenced on the 24th of January, 1843. The principal act passed was “to provide for the division of the Colony of New South Wales into Electoral Districts, and for the Election of Members to serve in the Legislative Council.” After reciting the allocation of five members to the district of Port Phillip, two to the town of Sydney, and one to the town of Melbourne under the British statute, the act provided that two members should be elected for the county of Cumberland, exclusive of the city of Sydney and the towns of Parramatta, Liverpool, Campbelltown, Windsor and Richmond; and one member for each of the following:—The county of Northumberland, exclusive of the towns of East Maitland, West Maitland and Newcastle; the county of Camden; the county of Argyle; the county of Durham; the county of Bathurst; the united southern counties of St. Vincent and Auckland; the united south-western counties of Murray, King and Georgiana; the united midland counties of Cook and Westmoreland; the united western counties of Roxburgh, Phillip and Wellington; the united northern counties of Gloucester, Macquarie and Stanley; the united north-western counties of Hunter, Brisbane and Bligh; the town of Parramatta; the Cumberland boroughs, i.e., the towns of Windsor, Richmond, Campbelltown and Liverpool; and the Northumberland boroughs, i.e., the towns of Newcastle, East Maitland and West Maitland. Full machinery for the conduct of the elections was also provided.

This act passed the final stages on the 23rd of February, and the old legislative council terminated its sittings.

In accordance with this act of the old council, the elections were held and the new council met for the first time on the 1st of August. The first business was the election of a speaker. Alexander Macleay, member for the northern counties, and Edward Hamilton, an unofficial nominee member, were proposed, and the former was elected by a majority of 17 to 13. On the 3rd of August, Sir George Gipps delivered his opening speech.

The constitution was no sooner proclaimed than agitations for reform were commenced. These agitations found active expression during the progress of the elections, and were continued both within and without the council; they will be noted in the introduction to a later volume.

Fredk. Watson.

June, 1924.
DESPATCHES.
HISTORICAL RECORDS
OF
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SERIES I.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 157, received* 11th March, 1841.)

Sir, Downing Street, 1 October, 1840.

I have to acknowledge the receipt of your dispatch of the 12 February last, No. 19, reporting the resignation by Dr. Dobie of the appointment of Health officer at Sydney, and your nomination of Dr. Arthur Savage, late Surgeon of the Emigrant Ship "Magistrate" as his successor; and, in reply, I have to express to you my approbation of your selection of Dr. Savage for this appointment.

I am, &c.,
J. EUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 142, per ship Eliza Francis; acknowledged by lord John Russell, 27th April, 1841.)

My Lord, Government House, 1st Oct., 1840.

The Female Factory at Parramatta being an Establishment, to which much attention has been directed in consequence of statements† concerning it made before the Transportation Committee, I propose in the present Despatch to report to Your Lordship the measures which have been adopted in respect to it, since I have had the honor of administering the Government of New South Wales.

Having been authorized before I left England to incur the expence, which might be necessary to place at least a portion of the inmates of this Factory or Female Prison in Separate confinement, I caused a Building for this purpose, containing 72 cells, to be commenced on the 11th June, 1838 (a few months after my arrival in the Colony), and by great exertions it was

SER. I. VOL. XXI—A  * Note 1.  † Note 2.
HISTORICAL RECORDS OF AUSTRALIA.

1840.
1 Oct.

Erection of cells for solitary confinement.

Cost of cells and additions to female factory.

Act of council re punishment of females.

General effects of act.

Problem of employment at female factory.

Manufacture of New Zealand flax.

Needlework.

finished and occupied by the 10th Septt., 1839. The building consists of one Wing of a Prison on the plan of the American separate system, or, which is nearly the same thing, the plan approved by the English Inspectors of Prisons, with the exception that the Cells in the lower range or ground floor (being intended for short periods only of confinement) are but half the size of the upper cells. Of these lower cells, there are 36, and, in each of the second and third tiers or ranges, there are 18, making in all as above stated 72; and the cells of the second and third tiers are of the dimensions recommended by the Inspector of Prisons. A Plan of this range of Cells was forwarded with my Despatch No. 31 of the 28th Feby. last, when reporting on the proposed erection of a Prison at Norfolk Island.

The labour having been supplied in great part by Convicts, the cost of this building was only £2,580, or upon an average about £36 per Cell; but, in addition to the range of Cells, a new boundary wall was erected at a cost of £794, and a small building for a Store and the lodging of Turnkeys at a cost of £393, making in all £3,767.

The completion of these buildings, as well as the discontinuance of the transportation of Women to Moreton Bay, rendered necessary some alteration in the laws of the Colony in regard to the punishment of females, and accordingly an Act for this purpose was passed by the Legislative Council in the Session of 1839 (3d Vict., No. 22), which was forwarded with my Despatch No. 16 of the 10th Feby., 1840, for the approval of Her Majesty.

This Act has now been in force about ten months, and I am happy to say that the operation of it, combined with the punishment of the cells, has been found to be highly salutary; and indeed, at the present moment, order, cleanliness, perfect obedience and silence may be said to prevail in the Establishment to a degree scarcely surpassed in any Prison in England.

With respect to finding employment for the Women, I regret to say that I have not been equally successful, though much also in this respect has been accomplished.

My first endeavour was to introduce the dressing and manufacture of New Zealand Flax; and I caused the Women to be extensively employed in making nets from the twine which they manufactured. I hoped that the Nets would have been purchased for the purpose of fishing, or for the preservation of fruit from the ravages of Birds; but in this I regret to say I was disappointed; after carrying on the manufacture for some time at a loss, I was forced to give it up.

I tried also the manufacture of articles of Needlework for sale, and for this purpose caused, during my summer residence of 1838
at Parramatta, a quantity of materials to be purchased, and
worked up under the immediate superintendence of Lady Gipps
and her housekeeper. The profit however on the sale of these
articles did not amount to above £30 in three months; and as, in
the absence of my own family from Parramatta, the appointment
would have been necessary of some person with a considerable
salary to superintend the purchase and sale of the articles, the
attempt was not proceeded with.

I then determined to return to the plan, which had formerly
been in use, of taking in Needlework, but which was abandoned
some years ago, partly because in the then state of the Factory
the work was not generally performed in a satisfactory manner,
and partly because it was supposed that abuses existed in account­
ing for the proceeds of it. On these grounds, as also on account
of the additional trouble and responsibility which it would throw
on her, the revival of the practice was for some time objected
to by the Matron of the Establishment; but I am happy to say
that, having been insisted on, the result has been as yet satis­
factory.

The accompanying Return,* marked A, will shew to Your Lord­ship the sums which have been paid to the Commissary General
for Needlework, performed at the Factory since the 1st Jany.,
1839; and, as I am persuaded that Needlework is the best pos­
sible employment for Women, I lament it is quite out of my
power to procure more than sufficient to employ on an average
one third of the Women in the Factory.

Occasionally large quantities of work are required by the Ord­
nance Storekeeper, especially in making up Convict Clothing,
both male as well as female; and the employment afforded in this way
to the Women would be much larger than it is, if the practice
were adopted, which I recommended in my Despatch of the
12th Novr., 1838, No. 185, of sending out materials for clothing
only from England, instead of ready made articles.

In the accompanying Return (A), nothing is included for
work done in this manner for the Ordnance Storekeeper, or for
any Department of Government; the sums set down being the net
profit on work done for private individuals. The average amount
is at present about £60 a month, or £700 per annum.

Since the month of June last, I have allowed one sixth part
of all the money earned by the women to be given to them as
an encouragement to exertion and good behaviour; but it is only
the well conducted women who can participate in this advantage,
as they alone are allowed to work for the Public, the remainder
being employed on work for which no payment is received. Two
classes of Needlewomen are thus established, and an additional

* Note 3.
1840.
1 Oct.

Organisation of needlewomen.

The first Class consists of about 120 women, divided into parties of 9, 10 or 11, each woman of a party being responsible for the good conduct of the whole; the work is delivered to the woman, chosen among themselves to preside over them; and each Party has a separate worktable; an account of their week's work is taken every Saturday; and one sixth of the value of it is allowed to them in Tea, Sugar, Bread, Meat or Vegetables, at their own option.

Washing for military barracks and hospitals.

The washing also for the Military Barracks and Hospitals of Parramatta has, since the beginning of 1839, been performed at the Factory, by which a saving is effected in the Barrackmaster's account, though no payment has been made for the work to the Factory.

Washing proposed for private individuals.

I further propose to allow Washing to be performed for private Individuals on the same principle as Needlework, and I am not without hope that this employment may be found an advantageous one both to the Establishment and the Public.

Manufacture of straw hats and bonnets.

I have further introduced the Manufacture of Straw Hats and Bonnets; but this, though it affords excellent employment to a few of the most skilful of the women, has not yet proved a source of profit.

Picking of oakum.

The only other employment, which has as yet been found for the women, is the picking of oakum, which is not a bad employment for those who are either unskilful or sullen; sufficient of it however cannot be procured; and the trouble, expense or loss, occasioned in the transporting it from and to Sydney, absorb almost the whole of the profit which is derived from it.

Return of women and children in female factory.

I must now beg Your Lordship's attention to the accompanying quarterly Return,* marked B, of the number of Women and Children in the Factory during the last three years.

From this Return, Your Lordship will perceive that the number of women in the Factory progressively increased until the 1st Octt. last, when it reached the number of 970; the rapid increase in 1838 and 1839 is principally to be attributed to the long continued drought, and consequent dearness of provisions, which prevailed in the Colony during the greater part of those years; but it is in part also to be accounted for by the progress of the Immigration of free women into the Colony, and the diminished demand for female Convict servants consequent thereon; an increase of from 50 to 60 may also be accounted for by the breaking up of the Female Establishment at Moreton Bay; and some further increase may perhaps be ascribed to the greater caution.

* Note 3.
with which women are now assigned to private service, and especially in Sydney.

After Octt., 1839, the number began sensibly to decrease, and in June last was reduced to 713; the arrival however of two female Convict Ships in July and August caused it again to increase; and I feel bound to state that, unless the Transportation of Women to New South Wales be discontinued, the numbers in the Factory are in my opinion likely further to increase rather than diminish.

Your Lordship will probably be surprised at the number of Children in the Factory; but I regret to say that I have it not in my power to reduce it. Formerly children, on attaining the age of three years, were removed from the Factory to the Orphan Schools, and thenceforward maintained at the expense of the Colony; but our Orphan Schools have recently been so filled with the Children of Immigrants, that it is no longer in my power to dispose of the Children of Convicts in that way. In my Despatch of the 13th Feb'y last, No. 20, I reported to Your Lordship that, out of one Government Emigrant Ship alone (the "North Britain"), 27 children had been sent to our Orphan Schools.

All the children above one year old in the Factory are made to attend an Infant School within the Establishment, an arrangement which is producing good effects.

The arrival of a Female Convict ship does not always cause an immediate increase in the number of women in the Factory, as there is generally a demand for them for private service, it being preferred to take a woman (according to the local expression) from the ship, rather than from the Factory. But many people in Sydney take women in this way only on trial, with the intention of sending them to the Factory if not found useful, or, if found useful, of keeping them instead of others already in their service and of returning these others to the Factory.

Women, who bring children with them, are the only ones that go direct to the Factory; in the course however of less than a year, most of them find their way thither, and not a few of them in a state of pregnancy.

For these reasons, as well as for other obvious ones, I have long been anxious to abolish the assignment of Women in Sydney, but the apprehension of overcrowding the Factory has hitherto prevented my so doing.

Your Lordship is aware that the Women in the Factory are divided into three Classes, of which the First consists of those who are eligible for Assignment, and who are only detained in consequence of there being no demand for their services.
Formerly the number of Women in this Class was small in comparison with those in the Second or Third Classes; but the recent substitution of punishment in the Cells for punishment in the Third Class has altered these proportions, increasing those of the First Class, and diminishing those of the Third, as a Woman, on completion of her punishment in the Cells, goes at once to the First Class. It is for this reason that I have thought it right to give an order, confining to 130 of the best conducted women the superior ration, which used formerly to be given to all of the First Class, and to put the remainder of the First Class on the same ration as the Third.

The Second Class is now entirely composed of women who have children at the breast; and who for obvious reasons receive a higher ration.

With respect to the Superintendence of the Factory, I think it right to state that I have reason to be well satisfied with the conduct and exertions of Mr. and Mrs. Bell, the present Steward and Matron; and, though I have not been unmindful of the desire, expressed by some persons anxious for the improvement of the Factory, that a Committee of Ladies should be established to superintend it gratuitously, I feel satisfied that no Committee could at present be formed at Parramatta, whose services in this way would be likely to prove useful; a clashing of authority would also in all probability arise between the Committee and the Visiting Magistrate, in whom the principal authority over the whole Establishment is now vested, and who, being a paid officer of the Government, is under a responsibility to it, which could not be imposed on an unpaid Committee.

I cannot conclude without assuring Your Lordship that I shall continue to give my unwearied attention to this Establishment.

I have, &c,

GEO. GIPPS.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 158, received* 11th March, 1841.)

Sir, Downing Street, 2d October, 1840.

I have received a communication, dated the 21st February, 1840, from Mr. G. R. Griffiths† of the Bank of Australasia on the general state and prospects of the Australian Colonies.

Having referred that letter to the Colonial Land and Emigration Commissioners, I enclose a copy of their Report, and I have informed Mr. Griffiths that he may, on applying to you, have access to that Report if he should desire it. I am, &c,

J. RUSSELL.

* Note 1. † Note 4.
RUSSELL TO GIPPS.

[Enclosure.]

LAND AND EMIGRATION COMMISSIONERS TO UNDER SECRETARY STEPHEN.

Colonial Land and Emigration Office,

Sir,

9 Park Street, Westminster, 8 September, 1840.

In reference to your letter of the 29th July, accompanied by one from Mr. Griffiths of the Bank of Australasia at Sydney on the general state and prospects of the Australian Colonies, we have the honor to state that we have carefully perused that Communication.

We find that it relates to the following Copies:

1st. The exclusive appropriation of the Land Revenues to the supply of labour to the Colony;
2ndly. The continuance, under proper Regulations, of the system of assigning Convicts;
3rdly. The introduction of Hill Coolies from India; and
4thly. The objections in Mr. Griffiths' opinion to the increase of the upset price of Land to 12s. All these questions have formed the subject of so much deliberation by Her Majesty's Government, and of so many recent discussions, that there is little which it can be necessary for us to offer upon them on the present occasion.

On the advantage of appropriating the Land Fund as far as possible to purposes of Emigration, our own views have been repeatedly expressed. A Correspondence between the Colonial Department and the Board of Treasury, on the extent to which this principle could be carried in New South Wales, was printed for Parliament last session, and several Debates took place upon the subject. We have not any further remarks to submit upon it at present.

The whole question of Convict management, including the system of assignment, has been so fully considered and publicly discussed, that on the point also any observations we could make could not but be superfluous.

With regard to the introduction of labourers from India, it would occupy much time fully to develop the views we entertain. We must say that, notwithstanding the consideration urged by Mr. Griffiths, we have always thought it fortunate that the Council of New South Wales have never been induced to recommend the adoption of the measure. Independently of the hazards to the people themselves, and of the difficulties connected with the voyage, to which point Mr. Griffiths adverts, we apprehend that there would be much danger in the plan to the tone of activity and enterprise which has hitherto so eminently characterized this Colony. It would be exceedingly likely to degrade the standard of labour. Even as regards the first outlay, we observe by the evidence that was taken before the Council in 1837 that there was much less difference than might have been anticipated between the importation of a Hill Cooly, and of an Emigrant from England; and, as regards the permanent effect on the population, it must not be forgotten that the passage money of the Englishman brings in an Individual, who intends to remain on the spot with all his descendants: “This is one respect” as was stated by Mr. Elliot in a report, dated the 1st December, 1837, “in which there must be a vast superiority in our well assorted parties of European families, including a carefully secured equality of females, as compared with any importations.

* Note 5.  † Note 6.
that could be made of Chinese, who only come to go away, or of Indian Coolies, who are accompanied by a scanty proportion of women, and who also stipulate to be returned to their own country." We must say that we agree in the opinion expressed at the conclusion of the Report, from which we have quoted this passage, that it would be a matter of congratulation if the Colony should always be deemed by its Inhabitants sufficiently likely "to prosper without introducing Indian blood into their population, or Indian habits into their industry."

The raising of the upset price of land to 12s. is, of course, like all other measures, attended by some objections as well as by grounds of recommendation. But we cannot help thinking that the decision adopted on that subject by Her Majesty's Government was on the whole advisable, and conducive to the permanent interests of the Colony.

We may state however in conclusion that Mr. Griffiths' remarks upon that, and upon the other subjects of his letter, are offered with moderation, and shew a correct knowledge of the course of administration on these points for some time past; and we are glad to have had an opportunity of perusing his communication.

We have, &c.,

T. F. ELLIOT.
ROBT. TOKEENS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 143, per ship Eliza Francis.)

My Lord,
Government House, 2nd Oct., 1840.

In my Despatch of the 1st August last, No. 98, I reported to Your Lordship that, as part of the Financial arrangements of the year, I proposed to introduce a Bill to increase the Duties on Spirits and Imported Goods, as the Council is authorized to do by the 9th Geo. IV, C. 96, and the 9th Geo. IV, C. 88, S. 26 and 27.

I have now to report to Your Lordship that the Bill which I introduced has been passed by the Council, and will be submitted for Her Majesty's approval, together with the other Financial Papers for the year, as soon as the whole can be printed.

I have, &c.,
GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 144, per ship Eliza Francis.)

My Lord,
Government House, 3rd Octt., 1840.

With reference to my Despatch of the 4th June, 1839, No. 88, on the subject of a disallowance of £554 to Colonel Snodgrass, and also to Your Lordship's despatch of the 23rd Novr., 1839, No. 48, I have the honor to report to Your Lordship that the sum of £754 13s. has been voted to Coll. Snodgrass by
the Legislative Council of this Colony for services rendered to
the Colony during the time he held the situation of Brigade
Major; and that consequently the disallowance in question will
be deducted from this sum.

Your Lordship will however understand that this sum will not
cover the disallowance made against Coll. Snodgrass in Van
Diemen's Land, which was alluded to in Your Lordship's Des­
patch of the 31st Decr., 1839, No. 69.

I have, &c.

GEO. GIPPS.

[Enclosure No. 1.]

MR. V. G. DOWLING TO LORD JOHN RUSSELL.

My Lord, 4 Norfolk St., Strand, 3d August, 1840.

I must trust to your Lordship's kindness to receive the
apology, which I tender for this obtrusion on your Lordship's at­
tention. Knowing the value of your Lordship's time, I shall be brief.
In the last Letter which I received from my Brother, Sir James
Dowling, Chief Justice of New South Wales, who was originally
appointed to the office of Puisne Judge of the Colony in 1827, he
expresses an anxious wish to visit his native Country on leave of
absence for two years, a relaxation, which, from the anxious and
laborious discharge of his duties for a period of nearly thirteen
years and the state of his health, he feels necessary to restore
him to that vigour of body and mind which may enable him, he
trusts, for many years to come, to continue the useful and I believe
not less zealous discharge of his Judicial functions. Sensible of
the importance of his presence in the Colony at this Juncture in
the absence of Judge Burton, he has refrained personally from
making this application, and in fact intimates that he would not
do so unless he were certain of Judge Burton's return, on whose
competence to discharge the duties of Chief Justice in his absence
he has every reliance. Now, My Lord, it happens that I am fully
aware of Judge Burton's intention to return to the Colony from
this Country in October next, and it is only contingent upon that
gentleman's arrival that I make this request. That which I would
ask is that your Lordship will be pleased to grant Sir James
Dowling the leave, which he requires, for two years, upon his being
able to make those arrangements consistent with a proper and
conscientious regard to the Public Service. By his being thus early apprized of your Lordship's gracious intention he will be enabled more effectually to take those steps by which his desires for the interests of the Colony may be secured. I am persuaded that no consideration would induce him to quit his post, if he thought his absence would be in the slightest degree detrimental to the Judicial Interests of the Colony, and upon this footing I am satisfied your Lordship may place the most implicit confidence.

My name may probably be familiar to your Lordship, having been connected with the Press of London for upwards of six and thirty years, during which period, I hope I may say without vanity, I have "done the State some Service." I am now and have been for many years Editor of "Bell's Life in London," and connected for the same period with "The Observer" Newspaper. I have till recently held the office of Chairman of the Newspaper Press Benevolent Association. May I add too that I have been Vice Chairman of the Board of Guardians of "The Strand Union" ever since the Establishment of the New Poor Laws, and have the gratification of knowing, from the votes of thanks of my Brother Guardians, that, by my unremitting application to the duties of my office, I have mainly contributed to place that particular Union, as compared with others in the Metropolis and its neighbourhood, in a position to be quoted as an example well worthy of imitation.

I have, &c.,

VINCENT GEO. DOWLING.

[Enclosure No. 2.]

UNDER SECRETARY VERNON SMITH TO MR. V. G. DOWLING.

Sir,

Downing Street, 6th October, 1840.

I am directed by Lord John Russell to acknowledge the receipt of your Letter of the 3d August, in which you submit for his Lordship's consideration the wish of Your Brother the Chief Justice of New South Wales to absent himself from his duties in that Colony for a period of Two years upon the return of Mr. Justice Burton, at present on leave of absence in this Country.

In reply I am directed to acquaint you that the leave of absence of every officer residing in New South Wales must originate not with the Secretary of State but with the Governor and that, therefore, Sir James Dowling must address his application for such indulgence to Sir George Gipps. Lord John Russell directs me at the same time to add that the absence of the Chief Justice of any Colony is a measure of grave importance, in favour of which the most weighty reasons ought always to exist, and that an absence for so long a period as two years appears to his Lordship scarcely admissible in any single case. I have, &c.,

R. VERNON SMITH.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 147, per ship Eliza Francis.)

My Lord,

Government House, 6th Octt., 1840.

With my Despatch No. 110 of the 16th Augt. last, I had the honor to forward a Copy of the Act, which was then recently passed by the Legislature of this Colony, for the Settlement of claims to Grants of Land in New Zealand.
GIPPS TO RUSSELL.

I have now the honor to report to Your Lordship that the news of the passing of this Act caused a considerable sensation among the Settlers of the New Zealand Company at Port Nicholson; and that, a Public Meeting of the Settlers being in consequence convened, the gentlemen named in the margin* were deputed to proceed hither, and to wait on me, in order to urge their claims to the favorable consideration of Government.

The Deputies arrived in Sydney on the 22nd ulto., and had their first interview with me upon the 24th, on which occasion they delivered to me a Paper, of which a Copy is annexed marked A. A second interview took place upon the 28th, after which I caused to be delivered to the Deputies a Paper, of which a Copy is enclosed marked B; and I have since received from them a Paper, of which a Copy is also enclosed, marked C.

A decision based upon these Papers, and especially on the former part of the one marked B, will in the course of a few days be put into a more formal shape; and I hope by the next vessel to be able to forward to Your Lordship a Copy of it. The Papers now enclosed will however suffice to show to Your Lordship that I have not deemed it necessary to disturb the Settlers at Port Nicholson, but that on the contrary, as they have made an entire submission to the Government and have paid what may under all the circumstances of the case perhaps be considered a fair price for their lands, I propose to confirm them in the possession of them, leaving any question respecting the disposal of the money, which has been paid for the Lands, to be settled between the Government and the parties who received it.

I have judged it however to be of the most vital importance to confine the Settlers at Port Nicholson to one continuous block of land, and not to allow them to spread over a vast extent of Country, selecting all the best and leaving the inferior land to those who may come after them. To confine them in this manner appears to me moreover to be in conformity with the agreement which they entered into on leaving England, which was that they should be settled on a Township of 110,000 acres, and should have priority of choice, according to the lots which they drew, or rather I believe raffled for.

A Township can, I apprehend, have no meaning other than a continuous block of land; and a raffle or lottery usually implies that there are to be blanks in it, as well as prizes.

It is quite true that, in the 110,000 acres which are to compose this Township, there will be a considerable proportion of mountainous or barren land; but, on the other hand, there is some

* Marginal note.—Dr. Evans; Mr. Moreing; Mr. R. D. Hanson.
† Note 7.
of very first rate quality, as also the site of a Town, which will command one of the very best harbours in New Zealand, and the one perhaps best suited to Commerce in the whole country.

I have also no hesitation in saying that the land, which is to be secured to them, would, if sold by the Government in the usual manner, produce a sum considerably exceeding what they have paid for it.

Trusting that Your Lordship will approve of what I have done in respect to these Settlers, I will next take the liberty of offering some suggestions as to the course which it may be expedient to pursue in regard to the Company.

Supposing that the Company is to be continued, it will be most essential to limit them in the acquisition of land to localities approved by the Government; also to stipulate that their lands shall be taken in continuous Blocks; and that no Block shall be less than half a million, if not a million of acres. For each acre in each Block, the Company should be required to expend a certain sum of money in Emigration (say 15s. or any other sum), and this Emigration should be of Laborers and Mechanics only with their families, and include no persons of a higher order. Your Lordship is doubtless aware that at present the Company pay out of their Emigration Fund the passages of persons, whose claims to such an indulgence would not be admitted in New South Wales.

The establishment of Towns should be reserved to the Government, or, if the Company be allowed to establish them, they should be required, in addition to the sum of 15s. per acre for Emigration, to pay a sum of at least £100 per acre for all land either in the Town or its immediate vicinity, to meet the expense of the Establishments which the Government will be called upon to create, and the Public Works or Buildings which may be required in it. If these conditions be not enforced, all the delusions, which have been practised in South Australia, will be repeated in New Zealand.

I have repeatedly taken the liberty to express to Your Lordship a very decided opinion against the principle of putting a fixed and uniform price upon land, the value of which nature itself has made variable.

I readily allow that the objections to such a practice are not so strong in an entirely New Colony as in an older one, nor in a poor Colony as in a rich one; but, even in a New Colony, to divide a large mass of territory into portions of equal areas, but of very unequal values, and then to dispose of them on the principle of a Lottery, appears to me a species of gambling,
which I humbly submit it would scarcely be decorous for any Government to engage in or encourage.

Some of the early drawn lots at Port Nicholson have, I am told, been sold for upwards of £1,000 each; whilst the last drawn lots may possibly, if the land be taken continuously, not be worth more than half what they cost.

If, on the contrary, land be not taken continuously, but the good land only taken and all that is bad left, I must submit that the price, which has been fixed of £1 per acre, is altogether insufficient.

To allow persons to select (as is the case in South Australia) first a District of 15,000 acres, and then out of this District to pick 4,000 acres in 40 or more different portions at £1 per acre, appears to me, I must say, a more ruinous system of settling a Country than any other I ever heard seriously proposed.

On the South Australian plan too, the sites of Towns, equally with Country lands, are disposed of at the rate of £1 per acre; or rather they are given to the purchasers of Country lands in the proportion of one Town acre for every hundred Country acres; whilst the average price, realized by this Government for Town allotments at Port Phillip, has been £317 9s. per acre, and, even in second rate country Towns throughout New South Wales, the average price of recent sales is not less than £80 per acre.

But even setting aside the wastefulness of this part of the South Australian plan, the proportion of one Town acre for every hundred country acres is far too great. The Settlers at Port Nicholson acknowledge this, and already complain that they have a Town laid out of eleven hundred acres, instead of having it comprised, as it very advantageously might have been, within fifty or one hundred acres.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

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

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 148, per ship Eliza Francis.)

My Lord,

My Lord, Government House, 6th Octt., 1840.

The disposal of land in New Zealand, being a matter of the highest importance to the welfare of that Colony, I do myself the honor to transmit to Your Lordship a Copy of a letter which I addressed on the 3rd instant to Lieutt. Governor Hobson, enclosing a Copy of the Regulations which I propose to establish.
In connexion with the subject of these Regulations, I would beg in a particular manner to refer Your Lordship to my Despatch of this day's date, No. 147, respecting the claims to land at Port Nicholson by the Settlers of the New Zealand Company.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

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

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LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 160, received* 11th March, 1841.)

Sir, Downing Street, 7 October, 1840.

I have to acknowledge the receipt of your dispatch of the 4 of December, 1839, enclosing the copy of the Report made to the Legislative Council of New South Wales by the Committee appointed during the Session of 1839 to consider the subject of Emigration. Having referred that dispatch and its enclosure to the Colonial Land and Emigration Commissioners, I now transmit to you a Report, which I have received from them dated the 14 Ulto., and which will engage the serious attention of yourself and of the Legislative Council.

The main question, controverted between the Committee of the Council on the one hand and the Commissioners on the other, respects the comparative advantages of the two Systems of supplying Emigrants to New South Wales. One of these is designated as the "Bounty System," and the other as the "System of Government Emigration." To myself it appears that on either side the debate is urged somewhat beyond the real necessity of the case. The two systems are contrasted not merely as different, but as opposed to and irreconcilable with each other. It seems throughout to be assumed that these two methods of promoting the same common end must necessarily be pursued by distinct Agencies, if not in a spirit of rivalry and competition. I cannot view the subject in this light, and I think it inconvenient that it should be so regarded by others.

The ultimate object in both cases is the same. It is that of supplying New South Wales with good and effective manual Labourers, imported thither at no unnecessary charge to the Public Revenue. In accomplishing this object there are two main considerations to be kept in view.

First. It is desirable that the existing Colonists in New South Wales should be satisfied both with the choice of the Emigrants introduced there, and with the rate of the Expenditure which may be incurred on that account. But, secondly, it is not less necessary

* Note 1.
that Her Majesty's Subjects in this country should be protected against being seduced from their homes by fraudulent or deceptive statements, and against their exposure during the voyage to dangers or to hardships, needlessly affecting their lives, their health or their comfort.

Now in order to secure both these objects, it appears to me that the two systems might to a certain extent be advantageously combined with each other. When Emigrants are sent to New South Wales by the Commissioners, securities are taken both in this Kingdom and in the Colony against the abuses to which I have adverted. But when they are sent under the care of persons receiving bounty, there is no security whatever taken in this kingdom either that they should not be induced to emigrate by false representations, or that the vessels in which they sail should be Sea-worthy, Well found and properly provisioned. There is no apparent reason for this distinction. The Emigrants removed by the Receivers of the Bounty might with as much facility as any other class of Emigrants be brought under the cognizance and protection of the Emigration Commissioners and of their Agents at the different out Ports. By this method, one of the great objections, which the Commrs. have urged against the system of Bounties would be effectually obviated. The two plans would then have thus much in common, namely, that both at the commencement and at the close of the voyage responsible officers of the Government would watch over the safety of the Emigrants, their proper selection, and the prevention of the frauds to which poor and ignorant persons, engaging in adventures of this kind are so readily exposed.

For these reasons, I have to direct that all persons, to whom the Bounty may hereafter be promised, should be required as a necessary condition for receiving it to report to the Emigration Commissioners in this Kingdom or to their Agents at the Outposts, the Number, the names, the Sexes, the ages, and the occupations of the various Emigrants, whom they are about to remove; on receiving such reports, the Commrs. or their agents will inspect and communicate with the Emigrants. If they shall be satisfied that they are persons corresponding with the Terms prescribed by the Local Government, and that they have not been induced to quit this Country by any Fraud or Misrepresentation, and that the vessel in which they are about to sail is Sea-worthy, well-found, duly provisioned and of proper dimensions, it will be the duty of the Commrs. or their Agents to deliver to the Master of the Vessel a Certificate to that effect, and of every such Certificate the Commrs. will transmit a duplicate to you. But, without the production of such a certificate, you will not
1840.
7 Oct.

HISTORICAL RECORDS OF AUSTRALIA.

Criticism of report from committee of legislative council.

Comparison of government and bounty systems for immigrants.

General description of two systems.

hereafter pay to any person the Bounty on the introduction of any Emigrant. This Regulation is to take effect from the time of your receiving it, and in respect of all applications for Bounty which may be made at any subsequent period. I am, &c.,

J. RUSSELL.

[Enclosure.]

LAND AND EMMIGRATION COMMISSIONERS TO UNDER SECRETARY STEPHEN.

Colonial Land and Emigration Office,
9 Park Street, Westminster, 14 September, 1840.

We have had the honour to receive your letter of the 17th July, enclosing a Dispatch from Sir George Gipps, together with a Report from the Committee of the Legislative Council of New South Wales on the subject of Emigration to that Colony.

The Committee we find most strongly urge the necessity of "neither permitting Immigration to be suspended nor checked in its extent" (p. 13); and it is satisfactory to observe the tone which these Representatives, as they may be called, of the Colonists take with respect to the discontinuance of the system of Assigning Convicts. "Numerous hands," they say (p. 9), "will be required to supply the deficiency of Agricultural and Mechanical Labourers thereby occasioned, but there will be, they trust, now that the principle source of contagion is about to be stopped, a greater probability of the Immigrants continuing to preserve their habits and character unvitiated. Thus will they be better qualified to lay the foundation of a Community distinguished by superior regard to moral and religious principle."

The principal subject, however, which is discussed in the documents that have been referred to us, is the comparative operation of the two systems under which the Immigration of the Labouring Classes has been conducted, and to the consideration of this point we shall in the following Paper exclusively direct our attention. It is a subject of great importance to the Colony, of which the Revenue defrays the conveyance of the Emigrants; and we are not unmindful that it is one to which our attention was especially directed in Lord John Russell's Instructions upon the issue of our Commission. It is unnecessary, therefore, for us to say that the whole question has been fully and attentively considered by us, and we have now the honour to report the opinions at which we have arrived.

The two systems, to which we have adverted, have been called respectively the Government and the Bounty Systems. The Bounty System cannot be better described than in the words of our Instructions; "The system of paying from the Land Revenue Bounties to persons proportionate to the number of eligible Emigrants, whom they may introduce into the Colony from this Country, the Candidates for such Bounties being entrusted with the selection of the Emigrants and with whatever relates to the management of the voyage." Under the Government System on the other hand, the Emigrants have been selected and the ships engaged and dispatched by Government Officers in this Country, acting under the Officer styled the Agent General for Emigration.

As regards the positive efficiency of both, we see with pleasure that "the Committee has arrived at the conclusion that each of
the systems has had the effect of introducing great numbers of useful and industrious individuals of both sexes into the Country, whereby its moral, physical and political condition has already been much improved and the ground work has been laid for a future much more extended melioration" (p. 4). The most important question however is in what degree the two systems have respectively contributed to this result.

In instituting this comparison, there are of course many considerations to which it will be necessary for us to advert; but the two points, on which it is mainly important to consider and compare them, are the cost of conveyance, and the quality of the emigrants whom they are respectively the means of introducing.

Sir Geo. Gipps in the dispatch before us declares his opinion to be in favour of the Bounty System in both these respects. But, as this conclusion, at which he has arrived, is founded upon the Report of the Committee of the Legislative Council, and as he adopts the recommendations which are contained in it, it would perhaps be the most convenient course if we direct our attention principally to that Document and to the evidence by which it is accompanied: and at the same time furnish such information as to the past as may be derived from the Records of the Agent General's office, or such suggestions for the future as our own experience may enable us to make.

We have named the cost as the first point for comparison, because it is that which is first considered in the Report, and which appears very naturally to have attracted the most attention in the colony. We would not however be understood as thinking it by any means the first in real importance. The character and description of the emigrants, the circumstances under which they are selected in this Country and prevailed upon to choose the spot to which they will emigrate, and the moral and physical condition in which they are landed in the colony, are all points to our apprehension of higher importance than the money which may be paid for their introduction. And we are convinced that the Committee of the Legislative Council would be the first to admit that the introduction or continuance of any moral evil connected with the removal of the poorer classes from this country to the colony, which could possibly be prevented, would be very inadequately compensated by a small pecuniary saving in the cost of their conveyance. We are far from saying that such evil is incurred for such a reason in the Bounty System.

We have only thought it necessary to direct attention to the point, as one which should never be overlooked in considering any scheme for the Emigration of the Labouring Classes.

The conclusion at which the Committee arrives, after calculations of a somewhat complicated nature, is that in the government ships the average cost of emigrants per head, that is men, women and children, has been £19 7s., and that in the ships on Bounty it has been £15 6s.; without entering into the details of these calculations, we will merely remark that the periods for which the two systems are compared are not precisely the same; for the government ships, the calculation commences six months earlier than for the other, thereby throwing it into a period when the arrangements were not thoroughly matured, while the calculations for the Bounty System are carried over a whole quarter later than
Maintenance of immigrants after arrival under government system.

Insufficient trials of two systems.

Increase of expense in bounty system and decrease in government system.

for the Government System, thus affording greater scope for the operation of the constant improvements, which are practicable in the multifarious details connected with such a voyage. Another observation, that we must take, relates to the heavy charges which in calculating the cost of the Government system are inserted on account of the Emigrants' Barracks, and for the maintenance of the Immigrants after their arrival. Under the Bounty system, the Immigrants are only maintained by the Captain on board of ship for Forty Eight Hours after their arrival, and then have to provide for their own support; they consequently are no longer a charge upon the Colonial Fund when once they have arrived. We shall have occasion hereafter to remark that objections of a serious character might be urged against this course, if the Bounty system were greatly enlarged. We only advert to the subject here because a considerable item of expense is charged to the one system, which is not to the other, but which we are convinced that other would have to bear, if ever the whole Immigration of the year should be thrown permanently upon it. It should also be mentioned that the charges of the Immigrant Barracks appear to be unnecessarily high, inasmuch as the period for maintaining the Immigrants had been extended to four weeks, a period so long as to entail a heavy loss upon the Colony without conferring any corresponding benefit upon the Immigrants, as its effect could only be to indispose them from seeking employment. This, however, has been matter of Colonial arrangement; and no Department in this Country is in the least answerable for any inconvenience or unnecessary expense, which it may have entailed.

We may further remark that the experiment of the two systems can hardly yet be said to have been fully tried. The Bounty System indeed has been only tried on a very limited scale as compared with the other. During the year 1838 to which the Report refers, nearly Three Thousand more persons were introduced by the Government ships than by the Bounty; and in both systems changes have been going on up to the latest time at which they were respectively tried. Moreover as the Governor remarks the expense of the Bounty system is progressive, while that of the Government system has gradually decreased. This circumstance is admitted by the Governor in the dispatch before us; and in fact in the same Report of the Committee in which the extraordinary cheapness of the Bounty System is so greatly extolled, a very considerable augmentation in the amount of Bounty, and the introduction of a scale of Gratuities to the Surgeon and Officers of the Ships is recommended and has been adopted by the Governor. It appears also in the Evidence that the sum now named by the Governor, viz., £19 per adult, is still below a remunerating price to the principal manager of Bounty ships, and, therefore, that a further increase must eventually be made in it. Mr. James, the Agent for the person in this Country who has taken out the greatest number of Emigrants upon Bounty, and Mr. Smith, a Merchant in Sydney, engaged in the same trade, both declare that the system cannot be carried on upon the present low rates of Bounties.

Under these circumstances, it might naturally be asked with some surprise, how the Emigration has been hitherto carried on at a rate declared to be unrepenurating; but this point also we find explained in the Evidence before us. By the copy of an advertisement, which is printed in the Committee's appendix as having
been issued in this Country to persons collecting Emigrants on
Bounty, it appears that the Emigration under this system has been
only an assisted not a free Emigration. Each couple have been
required to pay £4 out of their own resources before a passage has
been granted to them; and it is, therefore, not surprizing that,
paying in part for themselves, they have cost the Colony less than
if taken free. But we apprehend it must be exceedingly doubtful
whether dependence could be put upon this system for supplying the
great stream of Emigration, which is annually required by the
Colony. It must be very questionable whether a sufficient number
of persons could be found capable of contributing to the expense
of their conveyance, even if it were a matter of indifference that
they should be landed in a penniless state in the Colony. We must
note it, therefore, as a material point that the system would very
likely be found not capable of such extension as the wants of the
Colony require.

Turning from the past to the future cost of the Emigration, we
find that the amount of Bounty now offered by the Colony to per-
sons, who will convey out eligible Emigrants, is £19 per married
adult, and it has been decided to grant Gratuities to different
officers to the extent of £1 10s. for each of the Emigrants landed.
The whole cost, therefore, per adult will be £20 10s. In stating this
as the probable cost, we must observe that the Committee reckon
on a saving by abolishing the Immigrant Barracks at Sydney, and
requiring the Shipowners to maintain the Emigrants for ten clear
days on board. We cannot but express our regret, however, that
motives of economy should have induced the recommendation of this
system; we much fear that, if carried out, it might prove neither
very humane in itself, nor perhaps expedient for the Colony, even
in the pecuniary point of view in which it is recommended. It
would be felt by a number of persons, men, women, and children,
who had been crowded together in a ship during a long and trying
voyage, as a considerable hardship to be forced to remain on board
the vessel for ten days after its arrival; and, if submitted to, we
think it would be likely to induce feelings of despondency which
would greatly predispose to disease. Should such break out, the
expenses of Quarantine would soon exceed the expense of any
properly regulated system of maintenance on shore in Barracks,
which have been already built. It would be, moreover, the Cap-
tain's interest that the people should remain on board as little
time as possible. There are various modes in which this might
be made sensible to them, and tend to increase their discomfort
in remaining; and in the end the greater number would probably
be induced to forego the maintenance, which was offered them, and
seek their fortunes at once in the Colony. It would be another way
in short of getting rid of any care over the Immigrants when once
they had arrived in the Colony; and, in the Report of the Committee
for the preceding year, we find it stated (p. 12), in speaking of
some of the Bounty Immigrants, "That it is in Evidence that such
persons too often come on shore in a state of much destitution, and
are exposed to great hazards in the course of their inquiries for
employment."

In a comparison, however, of the two systems of conveying Emi-
grants, it is not necessary to dwell on this point, inasmuch as, if
the cost proposed be right and be adopted, it is equally applicable
to both. The Immigrants might remain on both the Government
1840.
7 Oct.

Expenditure on immigrants under government system.

HISTORICAL RECORDS OF AUSTRALIA.

ships as well as in those which are fitted out on Bounty. And in
fact whatever mode of dealing with the Immigrants upon their
first arrival should be decided upon as the best should be pursued
in all cases alike without reference to the mode in which the In-
dividuals had happened to be convoyed into the Colony.

We shall now proceed to state the sum for which it may be
estimated that Emigrants could be conveyed in ships chartered by
our Board, and filled under our direction, and our best mode of
making this calculation will be by giving the result of actual
experience in the management of the South Australian Emigra-
tion. The principle, upon which it has been managed, modified
only by the improvements which have from time to time been intro-
duced into the details, has been tried for a considerable time, and
appears to us to work successfully. The mode of proceeding is to
advertise for Tenders of ships of a certain size, each Tender to be
sent into our Board by a fixed day and hour. At the appointed
time, our surveyor of Shipping attends and gives us such informa-
tion as to the ships which are Tendered, and as to the usages con-
ected with shipping, as we may require; and then, if no objection
exists in the particular case, we accept, subject to his actual survey
of the ship, the Tender which offers to take the Passengers at the
lowest rate per statute adult, that is for men, women and children,
only counting of the latter three between 1 to 7, and two between
7 and 14, as one adult, according to the terms of the Passengers
Act. Besides this direct charge for the passage, there are various
expenses incidental to the management of Emigration. There are
the expenses of the Department in our own office, the Fee to the
Agents for the Selection, the Fees to the Surveyor for examining
the vessels and superintending her fittings and inspecting the Pro-
visions, and the remuneration to the Surgeon who accompanies
the Emigrants, and the expense of mattresses for the voyage, Books,
and the maintenance at our Depot of parties who may arrive before
the ship is ready to receive them. The statement, we are about
to subjoin of the charges under each of these heads, is derived from
the actual cost in the year 1840. It may be remarked, however,
that the present year is by no means the most favourable to the
system, inasmuch as, from an increase in Freights from the scar-
city of the proper description of ships, the average passage money,
which in 1839 was £17 15s. 5½d., has been raised to £18 10s. 2d.,
that is by 15s. 8½d. per adult. It is also proper to mention that we
have now reduced the agents' fee by one half, and the cost of main-
tenance by Two fifths; but we have not introduced into Our Table
the new rates of charge under these heads inasmuch as the
change has only recently been made. At the same time, it should
be observed that they are reductions, which are fixed and per-
manent, while the passage money may be expected to vary from
time to time.

<table>
<thead>
<tr>
<th></th>
<th>£</th>
<th>s</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passage Money</td>
<td>18</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>Agency</td>
<td>0</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>Maintenance</td>
<td>0</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>Mattresses and Books</td>
<td>0</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>Surgeon</td>
<td>0</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>Inspector of Ships</td>
<td>0</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Office</td>
<td>0</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>Incidental Expenses</td>
<td>0</td>
<td>7</td>
<td>2</td>
</tr>
</tbody>
</table>

£20 19 6
According to this calculation, the expenses of an average family will be as follows, vizt.:—

<table>
<thead>
<tr>
<th>Description</th>
<th>£</th>
<th>s</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td>Married Couple</td>
<td>41</td>
<td>19</td>
<td>0</td>
</tr>
<tr>
<td>1 child between 7 and 14 (deducting agency not paid for children)</td>
<td>10</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>2 Children between 1 and 7 (deducting agency which is not paid for children)</td>
<td>13</td>
<td>14</td>
<td>8</td>
</tr>
</tbody>
</table>

£65 19 9

Under the Bounty system, adding to the passage money an allowance for Gratuities at the rate of £1 10s. per head, which is the amount Estimated by the Council, the same family will cost as follows:—

<table>
<thead>
<tr>
<th>Description</th>
<th>£</th>
<th>s</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td>Married Couple</td>
<td>41</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>One Child between 7 and 14</td>
<td>11</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>Two Children between 1 and 7</td>
<td>13</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

£65 10 0

We have omitted from each of these two statements the cost of maintaining the Immigrants upon their arrival in the Colony, because, as we have already said, we think that whatever expense may be necessary for this purpose ought to be incurred under both systems alike, and cannot form a proper ground of contrast. By the present Bounty Regulations, the passengers may be kept on board of ship for ten days after their arrival, while, under the system pursued by this office, the time named in the Tender of the ship is Seven days; but this is a difference too small to be taken into account, especially as it is probable that the Passengers would in neither case remain on board even for the shorter period.

The result of the calculations is to show that, under the system pursued in the South Australian Emigration, the expense of taking out a married couple is 19s. more, but of the whole of an ordinary family of five persons only 9s. 9d. more, than under the system of Bounty in New South Wales. We are quite aware that the Bounty Regulations are so framed as to discourage the introduction of families; but we are satisfied from our experience that, if the system be extensively tried, families must be taken or Children will be deserted; and we would submit the remark that, as it is so greatly for the interest of the Colony to retain all the Labourers that are introduced at its expense, the ties of family form the most effective means of securing that object.

Upon the whole, we come to the conclusion that, upon the plan which leaves the control and conduct of Emigration to private Enterprise, some saving in the expense is effected and perhaps always will be; but the advantage in this respect over the Government system is not very great, and by no means sufficient, if any evils of another nature should arise in the course of its operation to countervail them. We think also that, if tried on an extensive scale, no certain dependence could be placed upon this Plan for supplying the whole amount of Immigrants which are annually required by the Colony.

We now turn to the important consideration of the description of Immigrants, which each system has been the means of introducing into the Colony. It is with regret that we observe that the Committee report that, “without designing to detract from the character of usefulness and eligibility in many of the Immigrants
1840.
7 Oct.

Criticism of Immigrants under government system.

Introduced in Government Vessels, they cannot conceal the fact that there is evidence of a great proportion of this Class being of a contrary description" (page 6). It is of course not in our power to dispute the correctness of a judgment pronounced on the spot by competent authorities. It may be permitted to us to remark, however, that the Returns made to us of the disposal of Immigrants upon their arrival would not have led us to suppose that a great proportion were either useless or ineligible, in as much as with a few exceptions, where parties have gone to work upon their own account, they all appear to have been engaged by different Proprietors and Masters in the Colony. Very great stress has been laid by the Immigration agent at Sydney upon the case of one ship with Emigrants from Ireland, who were less successful; and he assigns as the reason their ineligibility. When asked whether the cause might not have been a feeling of prejudice, which unfortunately appears to have obtained against the people from Ireland, Mr. Pinnock, who has always been remarkable for his advocacy of the Bounty System, replied that he thought not, for that he "never found difficulty in disposing of useful Irish Emigrants," and remarked that in the Bounty ships they got off quite as rapidly as any others. This is a very different account, however, from that which is given by the parties directly concerned in those ships. The Agent, to whom most of them have been consigned, states in Evidence that he has "generally observed a prejudice against those from Ireland" (James, p. 39). And a merchant, whose House is also engaged in the introduction of Emigrants upon Bounty, states (Smith, 218 and 21) that the English and Scotch always go off first, and that he has written home in consequence Instructions not to send Irish if English or Scotch Emigrants can be obtained. We allude to these facts only to show that it may be from other causes than mere ineligibility, that difficulty may have been experienced in disposing of Passengers by a ship from Ireland. But we cannot quit the subject of the alleged prejudice, to which we have thus had occasion incidentally to advert, without expressing our regret at its existence, and our hope that no Public Officer will permit himself, or be suffered by the Authorities over him, to give it any countenance. We can only say, so far as regards their conduct on board of ship, judging by the Records in the Agent General's office, no people seem to us more susceptible of the influence of kind and judicious management than the Irish, or more capable of being carried out in good health, and certainly none to evince better feelings at the conclusion of their voyage towards those under whose care they have been safely guided to their destination.

There is another statement in Mr. Pinnock's Evidence, which we feel obliged to notice, especially as it led to an expression of censure on the officers at home by the High Authority before whom it was offered. Mr. Pinnock asserted (Q. 25) that a notice was "issued, under the authority of the Agent General in England, and circulated among the Poor Law Unions there, inviting persons under the age of Fifty to Emigrate with their families." The Notice thus referred to is placed in the Appendix, recorded there as it were against the Government Department for Emigration in this Country; it proves, however, to be a notice issued by a Cleric of a Union in Sussex without authority from any other quarter, and without pretending to have authority, and invites people anxious.
to emigrate to New South Wales to give in their names to him, the object obviously being that he might forward their applications for consideration. This appears to have been the regular practice in that part of the Country, far too general and too well understood for the people to imagine that the Clerk of the Union could have any other power than to be the Channel of collecting and forwarding their applications, or that the conditions of their acceptance or rejection could depend on any other than the proper Emigration officer, by whom they were always inspected in person before any decision on their cases took place. Far from being issued with the authority of the Agent General, there is not in the records of his office the vestige of any communication of such a notice to him. The only case, in which, under the management of the Emigration office, it was stated that married couples under 50 years of age might be allowed a free passage, was "provided they were still hale and capable of work," and had "growing up sons and daughters, and none below seven years of age." And we find by a letter addressed to the same Clerk of the Union, who issued the above objectionable notice, and at a period not long subsequent to its date, that the names of several Candidates forwarded by him were returned to him as being not qualified, and that he was informed they could not be accepted under any circumstances. And yet it is upon the strength of this document, issued in a single Union of the County of Sussex, not only without the authority of the Agent General, but in direct contradiction to the spirit of his own official notices, of which the Agent at Sydney duly received copies, that Mr. Pimncock gave the Committee of Council to understand that, throughout the Poor Law Unions of England and with the Agent General's authority, an intimation was circulated that persons of Fifty years of age, with any number of children, might obtain free passages to New South Wales.

We regret to say, however, that we cannot be surprized at any inaccuracies of this witness, when we advert to former instances of the same kind. On this point, it must be enough to refer to the incorrect statements pointed out by the Agent General in his Report at Page 67 of the Parliamentary Paper of 1839 (House of Commons, No. 536, 1). The whole force of the case can hardly be understood without turning to the Passage itself, to which we allude; but we may briefly convey a sketch of the most material point, and, for fuller information, we subjoin an extract of the whole passage. A report upon the cause of Sickness in Government ships had been required from a Board, of which Mr. Pinnock was Chairman. The first question referred to them was whether due care had been exercised in the selection of Emigrants of proper health and constitution. Beginning by suggesting a distinction between ships filled by Home Agents, and ships filled by the Surgeons who took them out, the Report proceeded to say that the Board had no means of ascertaining whether proper vigilance had been exerted by the former, and then added the following sentence as to the latter, "with respect to those Surgeons, who have had the privilege of exercising their own judgment in selecting and bringing out their people, we are not aware that there is an instance of one of their ships arriving in a sickly state, unless it might be urged that the 'John Barry' came under that denomination." The implication in these words plainly was that the plan of allowing each surgeon to select his own Emigrants was the best, and that the result in
practice had been the most successful. What was the reply of the Agent General? Of the ships so favourably mentioned by the Report, without the least hint of any sickness or mortality during the voyage, the first had Twenty six deaths on board; the Third had Fifty eight; the fourth ship had Seventy two deaths; the fifth ship Thirty five deaths; the sixth ship had Thirteen deaths; and the seventh ship Twenty three. This List was made without including the "John Barry" which the Report, with so much apparent regard for accuracy, expressed a wish to except. The deaths in that ship were nearly Thirty. The Report stated that there were no means of judging of the degree of care as to healthiness, exercised by the Officers under the Agent General, and so dismissed the subject. But there were Returns in the Colony of the deaths in both kinds of ships; and the effect was to show that the mortality in ships filled under the Agent General was much less than in the others. The most material circumstance of the whole, however, and we mention it with much concern, is that all these facts were derived from Returns compiled and subscribed by the same gentleman, who was Chairman of the Board, and the reputed author of the Report in its name, which endeavoured to convey so different an impression.

Considering how important it is to be able to place reliance on the statements of the Individual acting as Agent for immigrants at the place where they arrive, we cannot but think it to be lamented that he should be found to lend himself to purposes of Party, or to indulge in representations in Public Reports, and in Evidence before the Legislature of the Colony, inconsistent with facts of which it was not merely his duty not to be ignorant, but which previous and recent Returns under his own name shew to have been directly within his knowledge.

Returning, however, from this digression on some of the evidence upon the first management, we proceed with the more important question what means each System, when best administered, may afford for securing the eligibility of the Immigrants. Under the Bounty System, the check upon the fitness of the Candidates is administered in the Colony, and under the other it is administered in this Country. In the former case, the scheme proposed is that every Immigrant should appear before a Board of Inquiry, and, if he be not found to conform to the Regulation, the Bounty for his introduction be refused to the person who has afforded him a passage. It is supposed, and very justly, that, if the Bounty be resolutely refused for every unsuitable Emigrant, the operation of private interest will prevent a free passage from being offered to those who are ineligible. When, however, it is asserted by the Committee that no possible Regulation could be conceived, which would surpass the efficiency of this for its peculiar end, and that it does not appear to them that the Agency of a Board in the service of Government, however earnest and faithful the Members may be, can ever be expected to exercise so scrupulous a care, we think it has been overlooked that the check, though well devised in itself, yet derives all its value from the mode in which it is administered, and that the administration of it must after all be vested in a Board in the service of Government. To the same security, therefore, it comes at last, for there is no reason why an Emigration Board in this Country should fail in its duty more than one in the Colony.
There are indeed some difficulties in the performance of their duties, which would be peculiar to the latter body. For example, it appears in evidence that the first step in the inquiry before this Board relates to the character of the Immigrants; and, in order to establish this, he is required to produce written Testimonials from some respectable parties in England. But who is to find out in the Colony what parties in this Country are respectable, and whether the signatures are genuine. The person, who freights the vessel, will of course have taken care to provide all his Bounty Passengers with such documents as he has learnt to know will prove sufficient to pass them; but we would submit that any attempt at verifying them is utterly out of the question from a place at the distance of a four months' voyage. Next the names, ages, and occupations of the parties are taken down as detailed by themselves, and we cannot discover that any efficient check beyond some improbability apparent in the person of the applicant provided against misstatements in all these respects.

The immigrants are also asked if they have complaints to make of their treatment during the voyage, and the Water and Provisions are inspected. In these respects, although it is by no means certain that persons, when once they were out of the ship, and had no longer any evil to remedy, would be eager in preferring complaints for past ill treatment; yet we think that searching inquiry into all particulars connected with the voyage should be made upon the arrival of an Emigrant ship, and that the accounts should never be settled in full until a satisfactory report had been made. But this need not be peculiar to the Bounty system. It should be done under whatever system the Immigrants had been conveyed.

As connected with the selection of Immigrants in this Country to be taken out on the Bounty, we would remark that we should by no means feel sure that, if tried on an extensive scale, or even as it is, many evils might not arise in this country which the Colonial Emigration Board would never attempt to check, nor have the means of doing so. For instance, the greatest desire is manifested by the persons, who select for the Bounty Emigration, to diminish the number of Children taken out. It appears in the evidence sent Home with this Report (James, Q. 46) that, though children are not positively prohibited, yet the person who regulates the selection has announced that all young children, if allowed to go, must be entirely paid for by the parties themselves. There is no denying that this Regulation, though founded on a sound principle, might lead to a danger of the separation of families, or of the desertion of Children. And it appears to us exceedingly improbable that any Board of Inquiry at Sydney could discover this evil when it had occurred, and certain that it could not have the same strong motive, as one acting in this country, to remedy it if discovered.

Another evil, which we think might result from the selection of the Emigrants upon the Bounty system, is that, by taking those only who can pay a portion of their fare, many might obtain a free passage who were not really of the class of Labourers, and yet not sufficiently above it for a Board of Examiners, looking at them when they came off their voyage, to decide that they were not proper objects for the Bounty. We are not aware whether this evil has actually occurred, for, although the greatest praise is
bestowed upon the superior appearance of the Bounty Immigrants, yet of the mode in which they disposed of which would inform us if they were hired for wages, we know nothing. Of the disposal of the Immigrants in Government ships, the most accurate accounts are sent home.

In considering, moreover, the difficulties which must attend the performance of some of its duties on the part of the Sydney Emigration Board, we cannot overlook the amount of pecuniary loss which their decisions, when they refuse the Bounty, would inflict upon a definite individual standing before them; while, if they grant it on insufficient grounds, the loss is of a nature far more remote and indefinite. Frequent appeals to their commiseration would be made. The Immigrant, about whom they doubt, would probably not be wholly useless, and the agent, who had introduced him, would probably have deserved well of the Public by introducing many valuable Labourers. If the Colony moreover were wholly dependent for its Immigration upon the Bounty System, it would be attended with considerable risk to the Public good, that much discouragement should be caused to persons engaged in freighting ships upon this enterprize. If Immigrants were rejected in any numbers, the speculation would be considered too hazardous to be engaged in. In the Report of the Committee for 1838, we find it recommended that, in deciding on the qualifications of parties to receive the benefit of the Bounties, attention should be paid rather to the equity of the case than to a rigid literal application of the Regulations (page 6), and the Bounty Agent, in his evidence before the Committee for the past year, alludes to this, and says (James, Q. 15) "of course Emigration agents would not be disposed to send out Emigrants, unless, on the faith of a liberal construction on the part of the Colonial Government of the spirit of the Regulations, they were assured of the Bounty." In regard also to the practical operation of the system as hitherto pursued, we find it stated that not above One in a hundred has been rejected by the Board, although it can hardly be supposed that so nearly every individual has really conformed to the letter of the Regulations; and we observe that the Bounty agent states in his evidence (James, Q. 11) that there were cases in which the Governor had not confirmed the report of the Board, when their opinion had been expressed in favour of allowing the Bounty. Having now, therefore, described as far as we have been able to collect, from the evidence before us, what is the operation of the Colonial Check upon the eligibility of Immigrants, what it can effect, and what it cannot, we shall now briefly detail the system which we conceive our Board ought to pursue, if entrusted with the selection of Emigrants for New South Wales.

There would be fixed agents in different Districts throughout the Country, who would send up the Certificates of applicants to be examined at this office. These Certificates would contain a full description of the age, calling, family, and circumstances of the parties. The statements would also have been verified by our agents, and attested by respectable neighbours. If any doubt arose as to the signature of any person, whose name appeared on the Document, the fact would be ascertained by an immediate reference through our agent, or direct from this office. These District agents would be paid by the Head, according to the number of applicants eventually selected. They would, therefore, have an
interest in procuring as great a number as possible of Candidates, from whom the selection would have to be made; when a certain number of Certificates had been approved at this office, we should send down an Inspector, who would make personal observations upon the parties, and, if any did not conform to the Regulations, or if their Certificates had been falsely made out, they would be rejected even at the last moment. The Inspector would be paid a fixed salary and consequently would have no interest in increasing the number selected beyond those who were really eligible. In exercising the right of rejection, a Board in this Country would be free from the influence of many feelings, which might naturally be appealed to after the voyage was over. No expense would have been incurred in making the application, and no loss be occasioned to any one by its refusal.

The system, we have described, is at present in operation at this office; and we have found no reason to doubt that it supplies a selection of useful Labourers and secures well authenticated Certificates of their character.

Among some of the subordinate points in which we think the Necessity for Bounty Emigration is capable of improvement, we would mention that it was originally the practice on board Emigrant ships freighted in expectations of Bounty not to set apart a distinct portion of the vessel for the use of the sick. We do not know how far this practice may have been altered. But the use of distinct male and female Hospitals on board the Government ships may be considered as one of the very remarkable healthiness, which is made the subject of comment even in the Report before us. In the five last Government ships which had arrived at the date of the Report, there had been 497 children, out of whom only 25 had died, or very little beyond one in Twenty; and, in One of the ships, 73 children had been conveyed out without the occurrence of a single death. In the course of the nine preceding months, there had died on board the Government ships of adults, 1 in 95½; of Children, 1 in 17½; while, on board the Bounty ships during precisely the same period, there had died:

- of adults, 1 in 83½; of Children, 1 in 9½.

Another point to which we would advert is the practice of taking intermediate passengers on board the Bounty ships. As regards the health and convenience of the steerage passengers, this is found decidedly objectionable. The Health officer in Sydney, when examined before the Committee, stated (Dobie, Q, 23) that he objected to intermediate Passengers "because they encroached so much upon the comfort of the Passengers for whom Bounty is paid, in preventing a free circulation of air fore and aft on the Deck in which they are living. There are both Cabins and Bulkheads built up for their accommodation abaft, which must totally interrupt air circulating by the Stern Ports." On board the Government ships, no such Passengers were ever taken. Although it does not appear that the evidence, which on this point was unfavourable to a practice prevailing on board the Bounty ships, had attracted the attention of the Committee, yet we cannot but think it well deserving the notice of the Authorities in the Colony responsible for the working of this system.

We have already alluded to the objection to the arrangement now sanctioned by the Colonial Authorities, by which the Immigrants...
Advantages of barracks for immigrants at Sydney.

are not to be landed at once, and maintained, but are to be kept on board their ship for Ten days, or any period within that time until they obtain employment. The most judicious course, as it appears to us, would be to continue to use the Barracks, which have already been made for a Depot, to maintain the Immigrants without work for four or five days, while they recovered from the effects of the voyage and treated with persons anxious to engage them, and then to employ them on the Government works at wages below the average rate in the Colony. A longer time for maintaining them without labour appears to enable them to stand out for exorbitant wages; a shorter time would not give them a full chance of making an advantageous bargain.

There is one more point connected with the operation of the Bounty system in this Country, which it is incumbent upon us to notice, and the more so because it is to this Country that it relates, and, therefore, is less likely to attract attention in the Colony. We allude to the incorrect statements and exaggerations which are put forward by persons engaging Emigrants under this system. We fear that many of the poor are prevailed upon to Emigrate by very false expectations being created in them of the advantages which await them; and many induced to select the Colony to which they go by false and injurious statements, which are circulated respecting all other Colonies indiscriminately. There is no part of our first Instructions, which it has appeared to us to be our duty more strictly to follow than the emphatic direction to be careful to supply the “ignorant and unwary with authentic and unexaggerated intelligence”; and it has been our earnest endeavour successfully to promote the object, which Lord John Russell informed us he had in view, of putting a stop to rivalries on the part of our Agents, and checking “the evil of exaggerated appeals to the Public upon the merits of different settlements.” So long, however, as the Bounty system continues, we never shall entirely effect this end. The Bounty agent in this Country is a Private person, responsible to no authority, and yet possessing all the weight and influence, which the virtual administration of large sums of Public Money cannot fail to confer on him. We feel the evil against which our attention was so particularly directed, inseparable from the employment in managing Emigration of Colonial Agents who are under no official responsibility, and the whole spirit as well as the letter of our Instructions compels us to notice this fact. Complaints are continually reaching us both from our agents and from private parties of the system of extravagant eulogies of one Colony, and unfounded calumnies on all the others, which is now pursued by the Bounty Agents, or rather by the agents of the one Individual in London who has in fact hitherto secured to himself all the Bounty Emigration that has hitherto taken place, and who is in consequence looked to throughout the Country as the authorized agent of the Colony. Books have been occasionally sent to us, which are circulated by his agents, and which are certainly of such a nature that we should dismiss any agent of our own who made use of them. In various other ways also, irregularities have been represented to us, but, having no power of testing the allegations by evidence, we forbear from entering into them. We will only say that many of them seemed to us too probable, if not certain to arise, out of the employment of authorized, yet irresponsible, agents, looking to nothing but their own pecuniary profit.
We have now offered such observations as the perusal of the Report of the Committee, and the evidence taken before it, have suggested, and we have endeavoured in no spirit of partiality to compare the merits of the two systems of Emigration. We certainly incline to think that, although a check upon the treatment and management of the Emigrants during the voyage should be exercised at the other end of the passage, yet it will probably be found after sufficient experience that the selection of the Emigrants and the preliminary arrangements for their conveyance could be more efficiently executed by our Board, and perhaps with nearly equal cheapness. We are not, however, prepared to recommend at this moment the abolition of the Bounty System. The Committee of the Legislative Council have reported in its favour; and it is at present being tried upon a far more extensive scale than it has ever been hitherto. Indeed the Emigration to New South Wales has been entirely removed from the management of any Government Department in this Country. For, as it is announced in the Report before us that the only available Funds for the Emigration of this year amounted to £23,458, and yet we know that private ships have been conveying Emigrants throughout the season to an extent very far exceeding what these limited Funds could meet, the profusion with which the Bounty orders thus appear to have been issued, joined to our knowledge of the deficiency of Funds, have completely paralyzed the Department at home, and precluded them from sending out even one ship. We think it best, therefore, that the result of this large and exclusive experiment should be seen before any further change. If successful, we shall be very glad of its good issue. If unsuccessful, we shall be prepared to endeavour to supply its place by some such methods as we have above sketched. But, in the meanwhile, our only object in the present letter has been to examine the general view suggested by the Council's Report respecting different modes of conducting Emigration, without recommending any immediate interference with the measures now in operation.

We have, &c.,

T. FREDK. ELLIOT.
E. E. VILLIERS.

[Sub-enclosure.]

EXTRACT from Parliamentary Paper of 1839. No. 536, I.

"But, in reference to this point of a comparison between different systems, I must now enter a little more into the detail of the Board's Report.

"After observing that they did not possess the means of ascertaining the degree of caution exercised by the Agents at home in their selections, they proceed to the following Remarks on the Parties made up by their own separate surgeons: 'with respect to those Surgeons, who have had the privilege of exercising their own judgment and selecting and bringing out their people, we are not aware that there is an instance of one of their Ships arriving in a sickly state, unless it might be urged that the 'John Barry' came under that denomination.'

"I must confess that I read with no inconsiderable surprize this statement by J. D. Pimnck re sickness on immigrant ships.
expected, to the healthiness or unhealthiness of the Passengers during the voyage, nor to the Mortality however great which might have occurred amongst them since they left home, but to the single, and as it were accidental and comparatively insignificant circumstance, whether or not, on the day the ship cast anchor at Sydney, she was deemed to be in a sickly state. I shall, therefore, supply some of the facts, which with the point of view chosen by the Board of Officers excludes from notice.

"Whatever else may be argued respecting the 'John Barry,' it is certain that she sailed long before the Institution of this office, or the adoption of any of the rules which have been established by it for the good of the service. The deaths of her Passengers were nearly thirty. But the Board propose to set aside the case of this ship, because, although filled by the officer selected for the purpose in the Colony (and to the excellence of that selection I beg to offer my Cordial Testimony), he was at the last moment prevented by indisposition from taking the people out. I am willing then to omit the 'John Barry' as wished; and the case in regard to the ships filled by their own Surgeons will stand as follows:—

"The first ship had Twenty six deaths on board; the third ship had Fifty eight; the fourth ship ('Layton') had Seventy two deaths; the fifth ship Thirty five deaths; the sixth ship had Thirteen deaths; and the seventh ship Twenty three. Of twenty-four ships in all (excluding 'John Barry'), of which from the beginning of 1837 up to the present time the arrival in the Colony has been heard of, I find that Twelve were filled by their own Surgeons and Selecting officers at home. The Proportion of Deaths in the ships filled by their own Surgeons was 8\% per cent, and the proportion in the others 5\% per cent. The numbers of deaths in this statement are taken from the official returns made as agent for Emigrants, by the same gentleman who acted as Chairman of the present Board of Officers. I enclose an abstract I have prepared on the subject.

"I have not mentioned these facts* to draw any general inference from them, still less do I mention them for the purpose of casting any imputation on the officers who superintended the vessel adverted to. But it seemed to me not altogether immaterial to the prevention of error to supply some of the foregoing particulars respecting ships, on which the Board have observed in their Report, that they do not know an instance of one which arrived in a sickly state.

"It should be added, however, that the Board do proceed to notice the deaths in the 'Layton,' altho' I cannot say that I find the smallest allusion to the mortality in any of the others of this class of ships, the 'John Barry' excepted. They state that there certainly were seventy Deaths in the 'Layton,' but that this they may venture to assert arose from the measles having been imported into the ship; a circumstance which they add that it must be apparent is not at all times under human controul. I quote the words of the Report, and I beg leave entirely to subscribe to the justice of the last remark. There is no doubt that the difficulty of conveying in safety parties of Emigrants, consisting of married People and their Families, must be enhanced by the fact that children are

*Marginal note.—Argument of the Board, as to inference to be drawn from Infectious Disorders among the children.
liable to infectious disorders which cannot be detected till they actually break forth, but then are liable to spread to the Passengers of all ages, and commit great destruction. But when I find the Board go on from this consideration to mention, respecting Two sickness on of the Ships filled by the Agents at home, that in the 'Palmyra' Scarlet Fever broke out early in the voyage, and in the 'Maitland' almost immediately on departure, and to point to these instances as proofs of the 'absolute necessity which exists for a previous acquaintance, on the part of the Surgeon Superintendent, with the Constitution and previous habits of the people,' I cannot but feel at a loss how to understand the same circumstance can with justice be adverted to at one moment as beyond Human controul and a sufficient exculpation of the officer whom it concerned from all its consequences, and at the next moment be brought forward as indicative of a radical defect in the system under which it happened, and as a proof of the absolute necessity of recurring to the other practice under which the very same misfortune had been just before (though so leniently) mentioned to have taken place."

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**Lord John Russell to Sir George Gipps.**

(A circular despatch, received* 11th March, 1841.)

Sir,

Downing Street, 7th October, 1840.

I transmit to you herewith a copy of Instructions which have been prepared by the Commissioners of Audit for the guidance of the Governors of Her Majesty's Colonial Possessions, in respect to the Security to be required from Parties in the temporary charge of Offices of pecuniary Trust in the Colonies; and I have to desire that you will cause these Rules to be observed as far as they may be applicable to the Colony under your Government.

I have, &c,

J. RUSSELL.

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**Instructions to the Governors of Crown Colonies in regard to the Security to be required from Parties appointed to the temporary charge of Offices of pecuniary Trust in the Colonies that may be vacated by the absence of the Established Officer on leave or otherwise.**

1. In the event of the Colonial Treasurer or any other Established Officer, who has been called upon to give Security to the Crown in respect of pecuniary responsibility attaching to his office, obtaining leave of absence under circumstances which require the interposition of the authority of the Governor for the appointment of a Substitute, the Governor will call upon the Party, whom he may select to act in the absence of the Principal, to give Security in his personal Bond to the Crown with the Bonds of two or more Sureties, to such an amount, with reference to the Security of the Principal, as it may be reasonable to require; or to furnish in lieu of the Bonds of Sureties such other collateral Security

*Note 1.*
1840. 7 Oct.

Instructions received from officials in temporary charge of offices of pecuniary trust.

1. In case the Governor should find that the Party, whom he may propose to appoint to the temporary charge of an Office of pecuniary trust, cannot furnish the amount of collateral security required from him, the Governor will consider whether such other arrangement can be made for reducing the amount of the floating balance under the charge of such Officer, by limiting the same to the smallest amount necessary to meet the current expenditure for ordinary Contingent Services, and by depositing all surplus beyond such reduced average Balance in a separate Chest under the joint Charge of two or more Officers holding separate Keys, or by placing the Office in Commission, as may render so large an Amount of Collateral Security unnecessary.

In the event of the employment of a Commission, the personal Bonds of the Officers joined in Commission are to be taken, as to their separate Acts, and a full report of all the circumstances relating to any such special arrangement is to be immediately made to Her Majesty’s Secretary of state for the Colonies, for the information of the Lords Commissioners of Her Majesty’s Treasury.

2. As all Security required from Parties appointed to the temporary Charge of Offices vacated in consequence of leave of Absence, or from any other Cause, is to be independent of, and unconnected with any Security which may have been given by the established Officer, the Governor is particularly cautioned that the Bonds or other Instrument, which may be prepared with a view of giving effect to the Security required from the acting parties, should have no reference to the Bonds of the Established Officer or of his Sureties, and should not contain any Clause which might be construed as interfering with, or affecting in any manner the original Bonds of the Principal, either during his absence or in his return to duty. At the same time, it is not intended that this precautionary Instruction should prevent the Governor from accepting the additional Security of the Principal, who may be about to absent himself on leave, should he be willing to enter into a new Bond for his Substitute or to join in the Security to be given by such Substitute.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 149, per ship Eliza Francis; acknowledged by lord John Russell, 27th February, 1841.)

My Lord,

Government House, 7th Oct., 1840.

I have the honor herewith to forward to Your Lordship an address of Congratulation to Her Majesty, on Her Majesty’s late happy Nuptials, very numerously signed by the Inhabitants of the District of Port Phillip in this Colony; and I have to request that Your Lordship will favor the persons, who have signed the same, by presenting their address to Her Most Gracious Majesty.

I have, &c.,

GEO. GIPPS.
[Enclosure.]

ADDRESS.  

To Her Majesty Victoria, By the Grace of God of the United Kingdoms of Great Britain and Ireland, Queen, Defender of the Faith.

We, the undersigned Inhabitants of the Town of Melbourne and District of Port Phillip, beg leave with Sentiments of profound respect to present to Your Majesty our sincere and heartfelt congratulations on the Event of Your Majesty's Marriage, Intelligence of which has but lately reached these distant Shores. Although situated at such a remote extremity of Your Majesty's Dominions, We beg leave to assure Your Majesty that our veneration for the institution of our Parent Country remains unabated and our affectionate attachment to the Royal Person and Family of Your Majesty Glows with undiminished ardor in our Breasts.

With such feelings We beg leave to express a fervent hope that the alliance Your Majesty has been pleased to form may prove auspicious both as regards Your Majesty's domestic Relations, and also as regards the varied interests of the vast population of Your Majesty's Extensive Empire.

signed by four hundred and thirty-five persons.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.  

(Despatch No. 161, received* 11th March, 1841; acknowledged by Sir George Gipps, 7th April, 1841.)

Sir, Downing Street, 8 October, 1840. 8 Oct.

I transmit to you, herewith, a Copy of a Report which I have received from Captain Grey, late Commandant of an Expedition into the Interior of Australia, containing some valuable suggestions with regard to the treatment of the Aborigines. Captain Grey's suggestions appear to be founded principally on his observation of the Natives in Western Australia; but they appear to me fit for adoption generally within your Government, subject to such modifications as the varying circumstances of the Colony may suggest.

You will communicate Copies of the enclosed Report to the Lieut. Governor of New Zealand and the Superintendent of Port Phillip.

I am, &c.,

J. RUSSELL.

[Enclosure.]  

CAPTAIN GREY TO LORD JOHN RUSSELL.  

My Lord, Mauritius, 4th June, 1840.  

I have the honor to submit to Your Lordship a report upon the best means of promoting the civilization of the Aboriginal Inhabitants of Australia, which report is founded upon a careful study of the language, prejudices and traditional customs of this people.

SER. I. VOL. XXI—O  * Note 1.  † Note 9.
Feeling anxious to render this report as complete as possible, I have delayed transmitting it to Your Lordship until the latest possible period; portions of it have in the interim been laid before some of the Local Governments in Australia, and a few of the suggestions contained in it have been already acted upon.

But as so small a portion of Australia is as yet occupied, and the important task of so conducting the occupation of New Districts, as to benefit the Aborigines in the greatest possible degree, yet remains to be performed, I have thought that it would be agreeable to Your Lordship to be put in possession of all such facts relating to this interesting subject as are at present known.

None but general principles equally applicable to all portions of the Continent of Australia are embodied in this report; and I am particularly solicitous that that portion of it, which commences at the 21st paragraph, should receive consideration from your Lordship, as the whole Machinery required to bring this plan into operation now exists in the different Australian Colonies, and its full development would entail no expense whatever upon either the Home or Local Government.

I have, &c.,
G. Grey, Capt., 83 Regt.,
Comdg. Australian Exp.

Report upon the best means of promoting the civilization of the Aborigines of Australia.

1. The Aborigines of Australia having hitherto resisted all efforts which have been made for their civilization, it would appear that, if they are capable of being civilized, it can be shewn that all the systems, on which these efforts have been founded, contained some common error, or that each of them involved some erroneous principles; the former supposition appears to be the true one, for they all contained one element, they all started with one recognized principle, the presence of which in the scheme must necessarily have entailed its failure.

2. This principle was that, although the Natives should, as far as European property and European subjects were concerned, be made amenable to British Laws, yet, so long as they only exercised their own customs upon themselves and not too immediately in the presence of Europeans, they should be allowed to do so with impunity.

3. This principle originates in Philanthropic motives and a total ignorance of the peculiar traditional laws of this people, which laws, differing from those of any other known race, have necessarily imparted to the People subject to them a character different from all other races: and hence arises the anomalous state in which they have been found.

4. They are as apt and intelligent as any other race of men I am acquainted with; they are subject to the same affections, appetites and passions as other men, yet in many points of character they are totally dissimilar to them; and, from the peculiar code of laws of this people, it would appear not only impossible that any nation subject to them could ever emerge from a savage state, but even that no race, however highly endowed, however civilized, could in other respects remain long in a state of civilization if they were submitted to the operation of such barbarous customs.
5. The plea generally set up in defence of this principle is that the natives of this Country are a conquered people, and that it is an act of generosity to allow them the full power of exercising their own laws upon themselves: but this plea would appear to be inadmissible for, in the first place, savage and traditional customs should not be confounded with a regular code of laws: and secondly, when Great Britain ensures to a conquered country the privilege of preserving its own laws, all persons resident in this territory became amenable to the same laws, and proper persons are selected by the Government to watch over their due and equitable administration, nothing of this kind either exists, or can exist with regard to the customs of the Natives of Australia: between these two cases then, there is no apparent analogy.

6. I would submit, therefore, that it is necessary from the moment the Aborigines of this Country are declared British Subjects, they should, as far as possible, be taught that the British Laws are to supersede their own, so that any native, who is suffering under their own customs, may have the power of an appeal to those of Great Britain, or, to put this in its true light, that all authorized persons should in all instances be required to protect a native from the violence of his fellows, even though they be in the execution of their own laws.

7. So long as this is not the case, the older natives have at their disposal the means of effectually preventing the civilization of any individuals of their own tribes, and those among them, who may be inclined to adapt themselves to the European habits and mode of life, will be deterred from so doing by their fear of the consequences that the displeasure of others may draw down upon them.

8. So much importance am I disposed to attach to this point, that I do not hesitate to assert my full conviction that, whilst those tribes, which are in communication with Europeans, are allowed to execute their barbarous laws and customs upon one another, so long will they remain hopelessly immersed in their present state of barbarism; and, however unjust such a proceeding might at first sight appear, I believe that the course pointed out by true humanity would be to make them from the very commencement amenable to the British Laws, both as regards themselves and Europeans; for I hold it to be imagining a contradiction, to suppose that Individuals, subject to savage and barbarous laws, can rise into a state of civilization which those laws have a manifest tendency to destroy and overturn.

9. I have known many instances of Natives, who have been almost or quite civilized, being compelled by other natives to return to the bush, more particularly girls who have been betrothed in their infancy, and who on approaching the years of puberty have been compelled by their husbands to join them.

10. It is difficult to ascertain the exact effect the Institutions of a country produce upon the character of its Inhabitants: but it may be readily admitted that, if two savage races of equal mental endowments and with the same capacity for civilization were subject to two distinct sets of laws, the one mild and favorable to the development of civilization, the other bloodthirsty and opposed to it, the former race might gradually be brought to a knowledge of Christianity and Civilization, whilst precisely similar efforts made with regard to the latter might be attended with no beneficial result.
1840.
8 Oct.

Report by
G. Grey on
method for
promoting
civilization
of aborigines.

11. Again it would be unfair to consider the laws of the Natives
of Australia as any indication of the real character of this People;
for many races, who were at one period subject to the most bar­
barous laws, have, since new institutions have been introduced
amongst them, taken their rank among the civilized nations of
the earth.

12. To punish the Aborigines severely for the violation of laws,
of which they are ignorant, would be manifestly cruel and unjust;
but to punish them in the first instance slightly for the violation
of these laws would inflict no great injury on them, whilst by
always punishing them when guilty of a crime without reference to
the length of period that had elapsed between its perpetration and
their apprehension, at the same time fully explaining to them the
measure of punishment, that would await them in the event of
a second commission of the same fault, would teach them gradually
the laws to which they were henceforth to be amenable, and would
show them that crime was always eventually (although it might
be remotely) followed by punishment.

13. I imagine that this course would be more merciful than that
at present adopted, viz., to punish them for the violation of a law
they are ignorant of, when this violation affects a European, and
yet to allow them to commit this crime as often as they like when
it only regards themselves. For this latter course teaches them not
that certain actions, such for instance as murder, etc., are generally
criminal, but only that they are criminal when exercised towards
the white people; and the impression consequently excited in their
minds is that these acts only excite our detestation when exer­
cised towards ourselves, and that their criminality consists not in
having committed a certain odious action, but in having violated
our prejudices.

14. In the vicinity of Towns, where there is a certain judicial
force and where on account of the facility of obtaining food the
Natives always congregate, it would, by a steady and determined
line of conduct, be comparatively easy to enforce an observance of
the British laws; but even partially to attain this object in the
remote and thinly settled districts, it is necessary that each Colony
should possess an efficient mounted police, a portion of whom should
be constantly in movement from district to district, whilst another
portion resident in a central situation should be ready to act in­
stantly in any direction where their presence was required. I do
not apprehend that this body need be numerous, for their utility
would depend more on their activity and efficiency than on their
numbers. It is absolutely necessary for the cause of humanity and
good order that such a force should exist, for so long as distant
settlers are left unprotected and are compelled to take care of and
avenge themselves, so long must great barbarities necessarily be
committed, and the only way to prevent great crime on the part
of the Natives and massacres of these poor creatures as the punish­
ment of such crimes is to check and punish their excesses in their
infancy; it is only after becoming emboldened by frequent petty
successes that they have hitherto committed those crimes which
have drawn down so fearful a vengeance upon them.

15. The greatest obstacle that presents itself in considering the
application of the British Law to these Aborigines is the fact that,
from their ignorance of the nature of an Oath, or of the obligations
it imposes, they are not competent to give evidence before a court
of Justice, and hence in many cases it would be extremely difficult if not impossible to obtain evidence on which a prisoner could be convicted.

16. One mode of evading this difficulty would be to empower the Court to receive evidence from the Natives in all causes relating solely to themselves without the witness being sworn, only allowing testimony of this nature to hold good when borne out by very strong circumstantial evidence.

2ndly. To empower the Court always to receive evidence from natives, called on by a native prisoner in his defence, such evidence being subject to the before named restrictions.

17. The fact of the Natives being unable to give testimony in a Court of Justice is a great hardship on them, and they consider it as such; the reason that occasions their disability for the performance of this function is at present quite beyond their comprehension, and it is impossible to explain it to them. I have been a personal witness to a case in which a native was most undeservedly punished from the circumstance of the Natives, who were the only persons who could speak as to certain exculpatory facts, not being permitted to give their evidence.

18. There are certain forms in our Colonial Courts of Justice as at present conducted, which it is impossible to make a savage comprehend. I attended one Quarter Sessions at which a number of Natives were tried on a great variety of Charges. Several of them were induced to plead guilty, and, on this admission of their having committed the crime, sentence was pronounced upon them. But when others denied their guilt and found that this denial produced no corresponding result in their favor, whilst at the same time they were not permitted to bring forward other natives to deny it also, and to explain the matter for them, they became perfectly confounded; I was subsequently applied to by several intelligent natives to explain this mystery to them, but I failed in giving such an explanation as would satisfy them.

19. The Natives being ignorant of our laws, of the forms of our Courts of Justice, of the language in which the proceedings are conducted, and the sentence pronounced upon them, it would appear that but a very imperfect protection is afforded them by having present in the Court merely an Interpreter (very often an ignorant man), who knows nothing of legal proceedings and can be but very imperfectly acquainted with the Native language; it must also be borne in mind that the natives are not tried by a jury of their peers, but by a jury having interests directly opposed to their own, and who can scarcely avoid being in some degree prejudiced against Native offenders; from these considerations, I would suggest that it should be made binding upon the local Government in all instances (or at least in such instances as affect life) to provide a counsel to defend Native prisoners.

20. Some other principal preventives to the civilization of the Aborigines, in addition to those I have already stated, are:

1stly. The existence of an uncertain and irregular demand for their labour; thus they may have one day sufficient opportunity afforded them for the exertion of their industry, whilst the next day their services are not required, so that they are compelled once more to have recourse to their former irregular and wandering habits.
2ndly. Their generally receiving a very inadequate reward for the services they render; this combined with their natural fondness for the bush induces them to prefer that mode of subsistence, which, whilst it is infinitely more agreeable and less laborious, procures for them nearly as great a reward as hiring with white people.

3rdly. Their not being taught that different values are attached to different degrees of labor, as well as to the skill and neatness with which it is performed.

21. These impediments might all either be removed or modified in some Districts by the establishment of Native Institutions and Schools; but, in forming a general plan for their removal which would be equally applicable to all parts of a Colony, a very novel difficulty presents itself.

22. Imagining that a Native child is perfectly capable of being civilized, let it also be granted that from proper preventive measures having been adopted this child has nothing to fear from the vengeance of the other natives, so that it stands in these respects nearly or altogether in the position of a European.

23. If this Native child is a boy, who is to pay the Individual, who undertakes to teach him some calling, the fee usually given with an apprentice? who will indemnify this person for the time he spends in instructing the boy, before he can derive any benefit from his labor, or for the risk he incurs of the boy's services being bestowed elsewhere, as soon as they are worth having.

24. Until this difficulty is got over, it appears evident that the natives will only be employed in herding cattle or in the lowest order of manual labor, which requires no skill, and for which the reward they receive will be so small, as scarcely to offer an inducement to them to quit their present wandering mode of life.

25. The remedy, I would suggest for this evil, would have another advantage besides a tendency to ameliorate it, for it would give the settlers a great and direct interest in the aborigines without entailing any expense upon the Government. It is founded on the following fact.

26. The Government, in order to create a supply of labor in the Colonies, have been in the habit of giving certain rewards to those individuals who introduced laborers into them. Now it would appear that he, who reclaims one of the Aborigines, not only adds another laborer to those who are already in the Colony, but further confers such a benefit on his fellow settlers by rendering one, who was before a useless and dangerous being, a serviceable member of the community, that this circumstance alone entitles him to a reward.

27. I would therefore propose that, on the production of the hereafter named documents, a settler should receive a certificate entitling him to a certain sum, which should either be allowed to reckon towards the completion of location duties, or else as a remission certificate in the purchase of land; or in lieu of this a grant of land; and that this sum or grant should be regulated according to a table specifying the various circumstances that are likely to occur, and drawn up by the Local Government of each place where such regulation should be introduced.

28. The documents to which I allude are these:

1stly. A Deposition before the nearest Magistrate to such settler's house, that a Native or Natives have been resident with him
constantly for the last six months, and have been employed in stated species of labor.

2ndly. A Certificate from the Government Resident of the district that to the best of his belief such statement is true, for that, on his visiting this settler's house, the stated numbers of natives were there, and were respectively occupied in the kinds of labor described.

3d. A certificate from the Protector of Aborigines that he has visited this settler's house, that the stated number of Natives were resident there and appeared to be progressing in the knowledge of that branch of industry, in which they were respectively stated to be employed.

20. It would be further necessary that any settler, who intended to endeavour to reclaim natives, should give a short notice to the Protector of Aborigines, previously to the commencement of the first six months.

30. Could this plan be brought into operation the work of the civilization of the aborigines would at once be commenced upon a great scale; it would not be confined to a single Institution, but a variety of Individuals, endowed with different talents and capacities for this work, would at once be employed on it; it is indeed rather suited and intended for the outskirts of civilization, thinly populated by settlers, than for towns; yet it is applicable to both situations, whilst its direct operation would be to induce the settler adequately to remunerate the native for, as well as to provide him with, a constant supply of labor, and to use every exertion by kind and proper treatment to attach him for as long a period as possible to his Establishment.

31. In considering the kinds of labour in which it would be most advisable to engage natives, it should be borne in mind that, in remote districts were the European population is small, it would be imprudent to induce many natives to congregate at any one point, and the kinds of labour in which they should be there engaged ought to be of such a nature as to have a tendency to scatter them over the country, and to distribute them amongst the separate establishments.

32. Whilst, in the well peopled districts where a force sufficient both to protect and control the aborigines exists, they should be induced to assemble in great numbers, for they work much more readily when employed in masses; and, by thus assembling them on one point, their numbers are diminished in those portions of the Colony which have a small European population, and they are concentrated at a spot where proper means for their improvement can be provided.

33. The first of these principles has been strictly attended to in the plan proposed in the 27th and following paragraphs of this report; the second has been carried into successful operation in Western Australia.

34. In order that the work, on which the Natives are employed in the vicinity of towns, should be of the most advantageous nature, it is necessary that it should be productive of benefit both to themselves and the Government which employs them, so that it cannot be complained of as a useless expense, whilst at the same time it should be of such a kind as to accord with that love of excitement and change which is so peculiar to this people.
35. Both of these ends would be attained by employing the Aborigines either in opening new roads or in repairing old lines of communication; indeed this mode of employment is singularly suited to the habits of this people; they might be kept constantly moving from post to post, thus varying the scene of their operations; one portion of the party might be employed in hunting with kangaroo dogs or fishing, in order to supply the others with fresh meat; and the species of labor, in which the main body were engaged, might, if they wished it, be changed once or twice in the course of the day to prevent their being wearied by the monotonous character of their employment.

36. Among other enactments, which I believe would have a tendency to promote the civilization of the Aborigines, and which are applicable to those districts in which for some time great intercourse has existed between the natives and Europeans, are the following:—

37. “That any Native, who could produce a Certificate (from the Protector of Aborigines) of having been constantly employed at the house of any settler for a period of not less than three years, should be entitled to a grant of land, the extent of which should be fixed by the Local Government of the Colony, to which such Native should belong, and that, if possible, this grant should be given in that district to which this native by birth belonged.”

“That, in addition to this grant, he should receive a sum of money, the amount of which should also be fixed by the Local Government, and which should be drawn from the funds raised by the sale of Government Lands, and which sum should be expended in goats, poultry, etc., so as to enable the native in some manner to stock his land.”

“That any native having only one wife, who produced a certificate of the civil marriage contract have been performed between himself and her by the Resident of the District to which he belonged, should be entitled to a small reward.”

“That any Natives, who registered duly the birth of any of their children, should be entitled to a small reward.”

“That some competent person should be paid to instruct two native boys in such a manner as to qualify them to act as Interpreters in Courts of Law, and that, as soon as they are found competent, they should be employed for this purpose.”

I believe that many other regulations similar to these would be found to produce a very beneficial effect.

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SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 150, per ship Eliza Francis.)

My Lord,

Government House, 8th Octt., 1840.

I have the honor herewith to forward to Your Lordship Copies of three Resolutions, which, on the motion of Mr. James MacArthur, were yesterday adopted by the Legislative Council of this Colony, again expressing the opinion of the Council that one half of the expenses of the Police and Gaol Establishments of this Colony ought in justice to be defrayed by the Mother Country, the same being principally required for the
preservation of order among the persons sent hither under sentence of transportation.

Having had such frequent occasion to address Your Lordship on the subject to which these Resolutions relate, I feel that any further remarks must on the present occasion be unnecessary.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[Copies of these resolutions, dated 7th October, 1840, will be found in the "Votes and Proceedings" of the legislative council.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 151, per ship Eliza Francis; acknowledged by Lord John Russell, 23rd April, 1841.)

My Lord, Government House, 8th Okt., 1840.

With my Despatch of this day's date, No. 150, I transmitted to Your Lordship Copies of three Resolutions, which were yesterday adopted by the Legislative Council of this Colony on the subject of the payment by the Mother Country of a portion of the expenses for Police and Gaols incurred in the Colony.

I have now further the honor to forward to Your Lordship, Resolutions of Copies of two other Resolutions, which were on the same day unanimously agreed to by the Council on the motion of the same Member (Mr. James MacArthur), expressing a very decided opinion against the introduction into the Colony of Convicts from Norfolk Island, after Transportation direct from Europe to New South Wales shall have ceased.

On this subject, I beg leave to refer Your Lordship to my Despatch marked "Separate" of the 23rd Novr., 1839, and particularly to the following paragraph contained in it:—

"That part of the proposed plan however was very loudly denounced, both in the Council and out of doors, which seems 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 Convicts, and therefore will in no way be freed from the stain which Transportation has impressed on it, though it will be deprived of all the benefit, which it has hitherto derived from the forced labour of the Convicts."

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[Copies of these resolutions, dated 7th October, 1840, will be found in the "Votes and Proceedings" of the legislative council.]
SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 152, per ship Eliza Francis.)

My Lord,

Government House, 9th Oct., 1840.

I have the honor to report to Your Lordship that, agreeable to the powers vested in me by the Act which was transmitted with my Despatch to Your Lordship of the 16th Augt. last, No. 110, I have appointed the undermentioned gentlemen to be Commissioners for enquiring into claims to Grants of Land in New Zealand: Francis Fisher, Esq.; Matthew Richmond, Esq.; Edward Lee Godfrey, Esq.; and I have further the honor to enclose to Your Lordship, a Copy of the Commission under which these gentlemen have been appointed; and also a Copy of the Instructions which I have caused to be addressed to them.

Trusting these measures will meet Your Lordship's approval,

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[Copies of these papers, dated 30th September and 2nd October, 1840, will be found in a volume in series III.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch marked "Separate," per ship Eliza Francis.)

My Lord,

Government House, 9th Octt., 1840.

Having, in my Despatch of this day's date, No. 152, reported to Your Lordship the appointment of three gentlemen to be Commissioners for enquiring into claims to land in New Zealand, I think it right in a separate Despatch to put Your Lordship in possession of some particulars respecting each of the gentlemen so appointed; as also of the views by which I have been guided in the selection of them.

Mr. Francis Fisher is the gentleman, who was formerly Crown Solicitor in this Colony, and who resigned under the circumstances which were detailed in my Despatch No. 176 of the 18th Decr., 1839.

It may perhaps appear extraordinary that I should have selected a gentleman for this important employment in New Zealand, of whose insufficiency in another office I had had frequent occasion to complain; I would however beg to point out to Your Lordship that neither Mr. Fisher's professional ability, nor his integrity in the discharge of his duties, was ever in the smallest degree impeached; the complaints against him being solely founded on the delays which occurred in his office.
Mr. Fisher's principal fault, or misfortune rather, was that he was physically unequal to the discharge of the very laborious duties which he had to perform; and his physical incapacity to perform them principally arose from his health being greatly affected by the sedentary occupations of his office.

Feeling therefore a full confidence in the integrity and ability of Mr. Fisher, I did not consider that the circumstances, under which he had resigned his former situation, ought to prevent his appointment to one for which he is in my opinion better qualified than any other person who presented himself as a Candidate.

The second Commissioner is a Captain in the 96th Regt. of M. serving in this Colony; he was most strongly recommended to my notice (upon official grounds alone) by Sir Howard Douglas, the Lord High Commissioner of the Ionian Islands, under whom he served in a Civil capacity as Resident in the Island of Paxo. Captn. Richmond was an entire stranger to me on his arrival in New South Wales about six months ago; and I have been guided by his high character alone in selecting him for this duty.

The third Commissioner, Mr. Godfrey, is a gentleman who arrived in New South Wales about a year ago for the purpose of settling in it; he was formerly a Captain in the 73d Regt., under the command of Sir Maurice O'Connell, and he has more recently held some Military appointments under the Governments both of Spain and Portugal.

Mr. Godfrey (or Coll. Godfrey as he is generally called) was first introduced to my notice by Sir Maurice O'Connell (now Commanding Her Majesty's Troops in New South Wales); but I should not have appointed him, had I not by my personal knowledge of him felt satisfied of his fitness.

I have, &c.,

Geo. Gipps.

In 1840, on 12 October, an amendment was proposed. The decision was suspended.

Mr. Tidd Pratt's Report.

MR. F. MAULE TO UNDER SECRETARY STEPHEN.

Sir, Whitehall, 6th October, 1840.

With reference to your letter of the 8th August last, I am directed by the Marquess of Normanby to transmit to you the enclosed Report by Mr. Tidd Pratt, the Barrister appointed to certify the rules of Savings Banks, on an Act (therewith returned), passed by the Legislative Council of New South Wales, entitled "An Act to consolidate and amend the Laws relating to the Savings Bank"; And I am to request that you will submit the same to Lord John Russell.

I am, &c.

F. MAULE.

[Sub-enclosure.]

MR. J. TIDD PRATT TO MARQUESS OF NORMANBY.

My Lord,

I have the honor to return the enclosed copy of an Act, passed by the Legislative Council of New South Wales, intituled, "An Act to consolidate and amend the Laws relating to the Savings Banks in New South Wales" with the following observations thereon:—

By section 2, The Governor of New South Wales is appointed the President; to have the control he is to nominate and remove the Trustees. By section 6, The Accountants and their salaries are to be approved of by the Governor; section 8, the Trustees with the approbation and consent of the Governor are to appoint Clerks, etc., with salaries. By Section 9, the power of adopting and confirming the Rules or making new ones is vested in the Trustees, subject to the adoption, confirmation and allowance under the hand of the Governor. By section 19, The Trustees by order of the Governor may receive from any prisoner any sum (without limit) and to pay back to such prisoner the sum deposited, in such sum or sums, and at such times as the Principal Superintendent of Convicts by writing under his hand with the approbation of the Governor shall direct. By Section 20, any other Savings Bank or Friendly Society can only invest their funds by order of the Governor. By Section 29, the appointment of District Trustees is vested in the Governor.

It appears to me very objectionable that the Governor should be the President of an Institution of the nature of a Savings Bank, particularly when he has, by the Act, the whole control and management, as the parties, by whom the deposits are received and invested, are appointed and removable by him; as, in the event of any deficiency or loss, the depositors would naturally, though they could not legally expect to be indemnified by the Government, I would submit to your Lordship that at New South Wales the Governor should stand in the same position (except as to the investment of funds) as the Commissioners for the reduction of the
National Debt do in this Country with respect to Savings Banks, vizt., that the Rules and the signature, etc., of every Trustee, etc., should be deposited with him; that monthly and yearly accounts of the transactions should be submitted to him, in such form as he should direct; and that he should in fact stand between the Depositors and the Trustees to protect the interests of the Depositors as far as can be done by exercising a controlling power over the Trustees in seeing that the accounts of receipts and investments are regularly kept.

With respect to the appointment of the Trustees, it appears to me that it might take place at a public meeting held for that purpose, and that the vacancies might be filled up in the same manner or by allowing (as is generally the case in this Country) in case of a vacancy the remaining Trustees to fill up such vacancy, and that the officers should be appointed by the Trustees. The Rules should I think be approved by the Attorney or Solicitor General of the Colony with power of appeal to the Chief Justice.

I would also suggest the propriety of a clause being inserted (similar to 9 George 4, c. 92 and 45th) for the settlement of disputes by arbitration; without this, every Depositor will be obliged to bring an action for the recovery of his deposits however small at the risk of costs; and no person will I think fill the gratuitous office of a Trustee, if he is exposed to the hazard of expensive and numerous suits at Law.

The clauses, contained in the 9 Geo. 4, 92, and 3 Wm. 4, c. 14, respecting security to be given by Treasurer, etc., and a privity of payment in case of the insolvency, etc., of any officer, it would in my opinion be advisable to adopt.

I beg to enclose Your Lordship a copy of my publication on the Law relating to Savings Banks as well as the Rules and Forms applicable for such an Institution in England.

I have, &c,

JOHN TIDD PRATT.

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SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(My Despatch No. 154, per ship John Renwick; acknowledged by Lord John Russell, 2nd May, 1841.)

My Lord,

Government House, 12th Oct., 1840.

I have had the honor to receive Your Lordship's Despatch, No. 60 of the 18th May last, informing me of the arrival of a Box, containing four Acts passed by the Legislative Council of this Colony, but unaccompanied by any communication from me.

My Despatch No. 159 of the 28th Novr., 1839, in explanation of these Acts, must have arrived in Downing Street early in the month of June, and have relieved me from any imputation of neglect in respect to them.

The Box containing the Acts evidently ought to have been forwarded by the same vessel (the Royal Admiral) that conveyed the Despatch; by what accident it was forwarded by the "Royal George," which sailed some days before the "Royal Admiral," I cannot now discover.
I must however esteem it very unfortunate that the vessel, by which I forwarded Bags of important Despatches in December and January last, namely, the “Bardaster” and the “Royal Admiral,” should each have had passages of very unusual duration, the former of 184 days, the latter of, I believe, upwards of 150.

To the other imputations of neglect, to which the long passages of these vessels in part exposed me, I have already replied in my Despatch to Your Lordship, marked “Separate,” of the 16th July last.

I have, &c,

GEO. GIPPS.

13 Oct.

Error in transmission of duplicate assignment lists.

14 Oct.

Despatch acknowledged.

Sir George Gipps to Lord John Russell.

(Despatch No. 156, per ship John Renwick; acknowledged by Lord John Russell, 3rd May, 1841.)

My Lord,

Government House, 14th Octt., 1840.

I have had the honor to receive Your Lordship’s Despatch of the 30th April last, No. 51, informing me that, as the creation of the office of Harbour Master at Port Phillip had never been reported to or sanctioned by Her Majesty’s Government, Your Lordship was unable to express an opinion on the propriety of the appointment to that office of Mr. C. M. Lewis, which was reported in my Despatch of the 21st Octt., 1839, No. 139.

On referring to the previous correspondence in respect to Mr. Lewis, and particularly to Lord Normanby’s Despatch of the 27th March, 1839, No. 29, I find that, although Mr. Lewis applied to Lord Normanby for the situation of Harbour Master at Port Phillip, and His Lordship’s desire was expressed to me that Mr. Lewis should be appointed to any situation for which he
was eligible, no express authority was conveyed to me by that Despatch to create the office of Harbour Master at Port Phillip.

Whilst I lament that I was led by the terms of the above mentioned Despatch to overlook the necessity of reporting the creation of this office, I trust Your Lordship will believe that I did not create it for the sole purpose of providing for Mr. Lewis; but that, on the contrary, the appointment was absolutely required by the increasing importance of the Settlement, and the number of ships resorting to the Port of Melbourne.

As a proof that, in the opinion at least of the Legislative Council of this Colony, the appointment was necessary, it is important for me to state that, when the Estimates for Port Phillip were before the Council on the 2nd of Septt. last, 35 days before the receipt of Your Lordship’s Despatch of the 30th April, complaint was made of the smallness of Mr. Lewis’ salary by several of the unofficial Members; and, at their express desire, I allowed his salary to be increased from £200 to £250 per annum, this being the only instance in which an increase was made in any salary either on my own proposal or on that of any Member of Council.

I have consequently now the honor to request that the creation of the office of Harbour Master at Port Phillip, with a salary of £250 per annum, may be sanctioned by Her Majesty’s Government, and that the appointment of Mr. Lewis to the office may be approved by Your Lordship.

I have, &c.,
Geo. Gipps.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 157, per ship John Renwick; acknowledged by lord John Russell, 8th June. 1841.)

My Lord, Government House, 15th Octt., 1840.

With reference to Lord Glenelg’s Despatch, No. 110 of the 18th May, 1838, and the previous correspondence which had taken place respecting compensation to Mr. Moore, a Magistrate of this Territory, for losses occasioned by his acting in the year 1812 on an authority from Governor Macquarie in some matters concerning the guardianship of Minors, I have the honor to report that the sum of £2,500 was voted by the Legislative Council of this Colony to Mr. Moore on the 22nd Septt. last, the numbers on a division of the Council being 7 in favor of the grant and 4 only against it.

I should perhaps explain to Your Lordship that I refused to allow this matter to be brought before the Council during the
Session of 1839, from an apprehension that a decision of the Council in favor of Mr. Moore might act prejudicially on the interests of Government in the case then about to come under discussion, which was reported on in my Despatch of the 7th August of that year, No. 115.

I have, &c.,

GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 158, per ship John Renwick.)

My Lord,

Government House, 16th Oct., 1840.

With reference to Lord Glenelg's Despatch No. 161, of the 19th July, 1838, and to Your Lordship's Despatch, No. 29 of the 9th March last, extending the Leave of Absence to Sir Thomas Mitchell, Surveyor General of this Colony, I think it my duty to inform Your Lordship that, when the Estimates for the Surveyor General's Department were last under the consideration of the Council, many strong objections were made by several Members of the Council to the payment of the half salary of this Officer on the ground of his long continued absence from his duties.

Sir Thomas Mitchell, I should add, left the Colony on Leave of Absence in the month of March, 1837.

I have, &c.,

GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 159, per ship John Renwick; acknowledged by lord John Russell, 19th May, 1841.)

My Lord,

Government House, 17th Octr., 1840.

Your Lordship is doubtless aware that great difficulty exists at all times in finding fit persons for employment in the Surveyor General's Department in this Colony.

The demand for additional Surveyors caused by the occupation of New Zealand has now so increased this difficulty, that I think it right especially to bring the subject before Your Lordship, in the hope that it may be possible to engage in England or Ireland some persons competent to serve in the Survey Department either here or in New Zealand.

Persons, trained in the service of the Board of Ordnance either on the English or Irish Survey, would be preferred; and I should hope that the advantages, which this Colony holds out to all persons resorting to it, would, if properly made known, be sufficient to induce many competent persons to become Candidates for employment in it.
I subjoin a statement of the present pay and allowances granted to persons of different ranks in the Department of the Surveyor General of this Colony:

Surveyors from £325 to £400 per annum.
Assistant Do. £200 to £300 Do.

GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

My Lord,
Government House, 18th Oct., 1840.

With reference to my Despatch No. 91 of the 24th July last, in which I informed Your Lordship that Major Bunbury of the 80th Regt. had been employed on a Mission to the Southern Chiefs of New Zealand, I have now the honor to forward Copies of the Reports, which were addressed by that officer to the Lieutt. Governor of New Zealand, detailing the course of his operations.

I beg to explain to Your Lordship that these reports reached me only on the 15th instant.

GEO. GIPPS.

[Enclosures.]

Copies of these reports will be found in a volume in series III.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

My Lord,
Government House, 19th Oct., 1840.

In my Despatch of the 23d Sept., last, No. 135, I communicated to Your Lordship such information as had reached me (in an unofficial manner) respecting the landing of some French Emigrants at Akeroa, or Banks’ Peninsula, in the Middle Island of New Zealand (Lat. about 43° 50’); I have now the honor to forward to Your Lordship a Copy of the Report, which was made on the same subject by Capt. Stanley of Her Majesty’s Sloop “Britomart” to the Lieutt. Governor of New Zealand.

I trust I may be allowed to express the sense I entertain of the zeal and discretion with which Capt. Stanley carried the wishes of the Lieutt. Governor into effect on this occasion.

GEO. GIPPS.

[Enclosures.]

A copy of this report, dated 17th September, 1840, will be found in a volume in series III.
SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 102, per ship John Renwick; acknowledged by lord John Russell, 25th May, 1841.)

My Lord,

Government House, 20th Octt., 1840.

At the urgent request of the Collector of Customs for this Colony, I venture again to ask the consideration of Her Majesty's Government to the condition of the Clerks in his Department. On this subject, a Despatch was addressed by Sir Richard Bourke to Lord Glenelg on the 5th Septt., 1837 (No. 82); the application however was not favorably entertained by the Lords of the Treasury, as I was informed by Lord Glenelg's Despatch of the 9th May, 1838, No. 105.

The Collector of Customs now represents to me that, during the three years which have elapsed since the date of Sir Richard Bourke's application, no less than eleven clerks have left his Department; and that two more have given him notice of their intention to resign their situations.

In bringing the subject again before Your Lordship, I would suggest whether the objections of the Lords of the Treasury might not be obviated by distributing yearly among the Clerks gratuities for good conduct, instead of raising their salaries, subject however to the condition that no gratuity should exceed £75 per annum to any individual Clerk, and that the salary and gratuity together should in no instance exceed £300 per annum, which is the maximum salary of a second class clerk in the service of the Local Government.

I have the honor to enclose a Copy of a letter, which I have received from the Collector of Customs on this subject, in which are set out the present salaries of the Clerks in the Department of Customs, as well as the proposed additions.

I have, &c,

GEO. GIPPS.

[Enclosure.]

MR. J. GIBBES TO COLONIAL SECRETARY THOMSON.

Sir,

Customs, Sydney, 8th October, 1840.

His Excellency the Governor having so far coincided in what fell from me respecting the insufficiency of the Salaries of the Clerks in this Department, when the Estimates for the ensuing year were before the Legislative Council, as to express his willingness to bring the matter under the notice of the Secretary of State for the Colonies, I request that you will have the goodness to call the circumstance to his recollection in the hope that He will be pleased to take an early opportunity of doing so.

In 1836, so great a change had taken place in the price of provisions, House rent, etc., that Sir Richard Bourke found it necessary to increase the salaries of the Clerks in the Several offices of the Colony: but, at that particular moment, orders were
GIPPS TO RUSSELL. 51

received from the Lords of the Treasury to reduce those of the Customs to so grievous an extent as to take off eighty pounds a year out of £200 from the Junior Clerk, and £50 from those above him.

Between that and the present time no less than Eleven clerks have resigned their appointments (as might be expected when nearly double the amount of the present Salaries can be procured in any counting House or Shop in Sydney) ; and, as these changes in an office, where much experience is required to conduct its duties properly, wholly derange the System, and render it almost impossible for the Head of the Department to carry on the business in a manner satisfactory to himself or to the Public, I trust that His Excellency will urge the necessity of a change being made and that He will recommend the undermentioned Scale.

I know of no office where respectability in the clerks is more necessary than in my own.

One Hundred and sixty thousand pounds pass annually through their Hands, and yet in all others they are better paid.
The Colonial Secretary's seven Senior Clerks range from £200 per annum to £400; The Colonial Treasurer's First clerk has £320; Second clerk £300; and Third clerk, £220; The Auditor General's First clerk has £300.
The first Clerk in the Post Office has £340.
The first Clerk in the Surveyor General's Office has £360, and all these increase annually.

It may possibly be thought that the time of attendance for the clerks of this Department is Short, viz., from 9 o'Clock till three; but such is only nominal and they are prohibited from entering into any other Business.

The Chief Clerk does, and is, obliged to come at 9 o'Clock; and, although the office closes in regard to taking money at 3, it requires a considerable time after that to count his day's receipt, post it in his book, and carry it to the Bank.
The other clerks do not come before ten, but they are frequently obliged to remain until four or even five o'clock to clear Vessels, and bring up their accounts.

The Scale of Salaries recommended is:

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I have, &c.,
J. GIBBES.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 163, per ship John Renwick.)

My Lord,


I had the honor on the 8th instt. to receive Your Lordship's Despatch No. 45, of the 21st April last, enclosing a correspondence with the Board of Ordnance respecting projected

Necessity for increased salaries to retain competent clerks.
Salaries of clerks in public offices.
Duties of clerks in customs department.
Scale of salaries recommended.

1840.
29 Oct.
Works of Defence in New South Wales, by which I learn that the Lords of the Treasury have declined to sanction the outlay of £5,000 proposed by the Commanding Engineer (Major Barney), or rather have declined to enter on the consideration of the subject, until the Plans and Estimates of the projected Works shall be received by the Board of Ordnance.

I lost no time in communicating the contents of this Despatch to Major Barney; and I have the honor to enclose herewith a Copy of a letter which I have since received from that Officer. Your Lordship will gather from this letter that I had, previously to the receipt of your Lordship’s Despatch, put at the disposal of Major Barney two bodies of Convicts (in all 140 men) for the purpose of placing in Battery the Guns received in April last from England; and that these men are now actually established (hutted, that is to say) on the two spots named in Major Barney’s letter, and engaged in levelling and preparing the ground or rather the rock (for it is all hard rock) for the reception of the Guns.

In my Despatch No. 122 of the 31st Augt., 1839, I mentioned the anxiety, which exists in Sydney for the execution of some Works of Defence; and Your Lordship will be able therefrom to estimate the disappointment, not to say alarm, which would be created, if the Works, which have been just commenced, were to be abandoned.

I would further observe that the Work, on which these men are employed, is in its nature peculiarly fitted for Convicts; that the Convicts employed on it must be maintained at the expense of the Home Government, even though their labor be bestowed elsewhere; that there can be no question as to the necessity of occupying the two points, on which they are employed, whatever may be the form ultimately given to the general Works of Defence for the Harbour, so that in no case will the labor expended in the levelling of the ground be thrown away; and lastly that, if this Work be not performed whilst yet the Government has some Convict labour at its disposal, it must ultimately be executed by free labor at an expense of from 10 to 20 times the amount of what it will now cost.

Having passed the greater part of my life in the service of the Ordnance, I am well aware of the strictness with which officers of Engineers are forbidden to undertake any Work without the express authority of the Master General and Board; I am also well aware that, as Governor of New South Wales, I have no authority to direct any expenditure of public money to be made upon Works of Defence; but nevertheless so intimately am I convinced of the disadvantage which would arise from the
stoppage of these Works, that I feel it would be in me a dereliction of public duty, if I were to hesitate to take upon myself the whole responsibility of continuing them, including of course the pecuniary liability to which I shall be exposed, if the expenditure be disallowed; and I beg leave to report to Your Lordship that I have made an intimation to this effect to Major Barney.

The whole outlay, which will be required before an answer can be received from Your Lordship or the Board of Ordnance, will not exceed £300.

GEO. GIPPS.

[Enclosure.]

MAJOR BARNEY TO SIR GEORGE GIPPS.


YOUR EXCELLENCY having placed at my disposal the Prisoners "per Maitland" for the purpose of being employed upon the Defences of Sydney Harbor, I lost no time in preparing the necessary accommodation on Bradley's Head and the Island of Pinchgut* (two of the most important points within the Harbor), under the impression that I could not be acting wrong in clearing the ground and making other necessary preparation for commencing work on the (daily expected) receipt of authority from England. I, however, now learn with regret, from a Despatch received by Your Excellency, that no funds have been appropriated to this Service. It is needless for me to point out to your Excellency the importance of placing Sydney in security against desultory attacks from Enemy's cruisers. The attention of the People of this Country has been particularly directed to the subject by the late probability of a rupture with America; the consequences of a visit from a single cruiser, in the absence of the small Naval Force in this Command, are not to be calculated. Contributions may be enforced, by the partial destruction of Sydney by distant fire, and this may be done without the possibility of an hour's warning. Under such circumstances, I take the liberty of again bringing the subject before your Excellency, in the hope that some means may be devised for meeting the small expense (£300) necessary to prepare Bradley's Head and Pinchgut, to receive any works hereafter approved, and which will also admit of Batterys being established at those points without delay in case of necessity. I would further bring to the notice of Your Excellency the policy and saving of expense arising from the present employment of Prisoners of the Crown, which, in all probability, it will hereafter be impossible to obtain.

I have but little doubt that an explanation from Your Excellency would lead to the approval of the expenditure of the small sum required. The current duties of the Department leaves me but little time to devote to the preparation of Plans; they are however in a state of forwardness, but cannot be received in England in time to admit of any sum being introduced in the Parliamentary Estimate 1841-2.

GEO. BARNEY,

*Note 11.
Proposals for steam navigation on coast of Australia.

Consideration by B. Boyd re development of Australia.

Steam vessel sent to colony.

Proposed extension of steam navigation.

Request for concessions re land at harbours.

1840.
24 Oct.

1840.
24 Oct.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 164, received 11th March, 1841.)

Sir,

Downing Street, 24 October, 1840.

I transmit to you, for your information and guidance, a Copy of a letter which I have received from Mr. B. Boyd relative to a project, which he has formed of establishing communication by steam Vessel round the Coasts of Australia, together with a Copy of the reply which has been returned to that communication; and I have to request that, in the event of Mr. Boyd applying to you, you will afford him such assistance in carrying out his useful project, as he has been informed would be granted to him by the Government. I also enclose a Copy of a letter from the Secretary to the Board of Trade expressing the opinion of the Lords of the Committee in favor of Mr. Boyd's enterprise.

I have, &c,

J. RUSSELL.

[Enclosure No. 1.]

MR. B. BOYD TO LORD JOHN RUSSELL.

4 New Bank Buildings.

London, 8th October, 1840.

I beg to acquaint your Lordship that I have, for a considerable time past, devoted my best attention towards the means of further developing the resources of Australia and its adjacent Islands, with the view also of aiding and assisting at my own personal expense in carrying out those measures for Colonization, which have recently received both the patronage and support of Her M. Govt, at the different places which have been selected as Settlements in that vast and rapidly improving portion of the Globe.

From the information I have received respecting the dangers attendant on the Navigation of the Seas and Coasts of that part of the World, and in order to effect as a primary object "a regular communication between those settlements already formed, and any which may from time to time grow into Commercial and Social Importance," I feel satisfied that this object can only be effected by Steam Vessels of large dimensions; and, acting under this impression, I have within the last few weeks despatched a Vessel of nearly 600 tons burthen and 250 horse power (which Vessel is entirely my own at a cost of £30,000) for the purpose of trading in those parts.

It is further my intention shortly to send another Steam Vessel to the same destination, and afterwards to proceed thither in my own Yacht at an early period; but, before I do so, it is extremely desirable, in order to prevent any risk of the non accomplishment of so important an object as this, that Government, as far as may be consistent with existing Regulations, should meet my views in endeavouring to carry out such a measure.

To ensure success, it will therefore be necessary, that I should be allowed to select in sailing along the Coast of New Holland, say from 5 to 6 places, where I may form Stations for the deposit of Coal, repairs of Machinery, or for Harbours of Refuge; and the only departure I solicit from the present regulations is that I may be

* Note 1.  † Note 12.  ‡ Note 13.
allowed to purchase in the first instance at the Government Price from 100 to 300 Acres of land at each place with the right of ultimate priority of purchase of any further portion up to the full extent fixed by Government, viz., 5,000 Acres at each respective locality.

When it is considered that I as a private Individual am willing to risk so much for the sake of endeavouring to facilitate and increase the Channels of intercourse in those parts of the World, I trust that H.M. Govt. will feel themselves justified in such a departure from the Established Regulations as an encouragement to the undertaking.

It is also my intention to visit the Islands in the Pacific Ocean Settlements and, should I find the resources of any of them sufficiently inviting, proposed on having ample means of my own, I propose to make arrangements with the Natives to form Settlements upon one or more of them. This last point however involves a question of no small importance, namely, as to whether in the event of any such British Settlements being made on any such new Island, its produce would be admitted into the United Kingdom and its Colonies upon the same terms as if from a British Possession, H.M. Sovereign Rights of course to be acknowledged from the first moment of settling. And lastly that, when the time shall arrive at which H.M. Govt. may deem any such Settlements of sufficient importance to take them under their charge, that my Titles as Proprietor of the Soil shall not in any way be questioned or disturbed. I have, &c.,

B. BOYD.

[Enclosure No. 2.]

UNDER SECRETARY VERNON SMITH TO MR. B. BOYD.

Sir, Downing Street, 19 October, 1840.

I am directed by Lord John Russell to acknowledge the receipt of your Letter of the 8th Instant, and to acquaint you in reply that his Lordship will be very happy to afford you, in the prosecution of your very useful undertaking, every facility and assistance which it is in the power of H.M.'s Govt. to give with a due regard to the general interests of The Queen's Subjects. His Lordship will, therefore, direct the Governors of the Australian Colonies, should they find no unforeseen objection to the measure, to appropriate as the Sites of Public Wharfs and Landing Places any opposition on the Coasts of those Settlements, which you may point out to them as peculiarly adapted to promote the success of Steam Navigation in the adjacent Seas. But it is not in his power to accord to any Individual to the Exclusion or disadvantage of the Public a large the right of purchasing such localities for his own use.

With regard to the more remote and less definite objects to which you refer towards the close of your Letter, Lord John Russell does not feel that he can enter into any engagement on behalf of H.M. Govt. at present.

I am, &c.,

R. VERNON SMITH.

[Enclosure No. 3.]

MR. J. MACGREGOR TO UNDER SECRETARY VERNON SMITH.

Office of Committee of Privy Council for Trade.

Sir, Whitehall, 21st Octr., 1840.

I am directed by the Lords of the Committee of Privy Council for Trade to state to you, for the information of Lord John
Russell, that Mr. B. Boyd has addressed a Letter to my Lords relative to the Trade and Navigation, which he has commenced and intends to carry on at New Holland and the Islands of the Pacific; and stating that he has addressed a copy of that Letter to Lord John Russell.

My Lords are of opinion that every facility, consistent with the Public Interest, should be afforded to Mr. Boyd, as well as to all others, who may embark their Capital in the British Trade and Navigation of New Holland and those Islands; but that Her Majesty's Government cannot pledge itself at present to any measure relative to priority of purchase, or to any diminution of Duties on Goods the produce of those Islands in the Pacific not actually British Possessions.

With Respect to stations for Deposits for Coal, Repairs of Machinery, etc. My Lords are of opinion that such encouragement, as may in like manner be consistent with Public Interests, and as may be necessary for establishing steam and other Navigation in those parts, should be extended to Mr. Boyd, and in like manner to him or to other British Subjects in regard to any Trade, or to any settlement in those Islands of the Pacific by British Subjects.

I am, &c.,

J. MACGREGOR.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(My Despatch No. 164, per ship John Renwick.)

My Lord,

Government House, 24th Octt., 1840.

I have the honor to report to Your Lordship that the Session of the Legislative Council of this Colony was yesterday brought to a close, and the Council adjourned sine die.

The progress of business in the Council has been, in all matters of importance, reported to Your Lordship from time to time in the Despatches named in the Margin,* and with those Despatches, some of the most important Acts or Ordinances have been submitted for Her Majesty's approval.

The remaining Acts will be forwarded as soon as they can be prepared in the proper form.

The only important Act, which has not as yet in any manner been brought under Your Lordship's notice, is one for the Establishment of a Water Police in Port Jackson and other principal harbours of the Colony. The Act was brought before the Council at the earnest request of the Merchants and Masters of Vessels, engaged in the trade of the Colony; and the expence of carrying it into effect is to be defrayed by a Tonnage duty.

The usual appropriation Act has been passed, with the objections and protests, which I may now also call the usual

* Marginal note.—1840: 29th May, No. 66; 1st August, No. 98; 16th August, No. 110; 16th August. Separate (No. 1) ; 16th August, Do (No. 2); 17th August, No. 113; 29th August, No. 115; 26th August, No. 120; 26th August, No. 121; 9th September, No. 129; 2nd October, No. 148; 3rd October, No. 144; 8th October, No. 150; 8th October, No. 151.
ones, against the payment by the Colony of the whole ex-
pence of the Police and Gaols.

With the exception of the subject of the Police, and the tem-
porary excitement produced by the Municipal Bill, reported in
my Despatch of the 26th Aust. last, No. 120, the Session has
passed over in a manner extremely satisfactory.

I have, &c.,
GEO. GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 165, per ship John Renwick; acknowledged by
lord John Russell, 19th April, 1841.)

My Lord,

The Session of the Legislative Council being now closed,
as reported in my Despatch of this day's date, No. 164, I think
it right to inform Your Lordship that nothing has been done in
it towards establishing a system of general Education in the
Colony. My Despatch of the 9th Decr., 1839, No. 168, will have
put Your Lordship in possession of the reasons why I abstained
during the Session from bringing forward any measure con-
Nected with it, and only noticed the subject of Education in a
short minute attached to my Financial Statement, presented to
the Council on the 29th July last; of this Minute, I have now
the honor to enclose a Copy.

There is one matter however connected with Public Education
in the Colony, which I think it desirable to bring to Your Lord-
ship's knowledge, as it seems to me not improbable that some
representation respecting it may be made to Your Lordship from
another quarter. It is an application (which I did not deem
fit to comply with) from the Local Committee of the Societies
for the Propagation of the Gospel and for the Promotion of
Christian Knowledge in Foreign Parts, that contributions from
the Societies might be regarded as the contributions of private
individuals, which would entitle them to be met by sums of equal
amount from the Government.

In my Despatch above alluded to of the 9th Decr., 1839, I
explained that our Schools are now, for the most part, sup-
ported on what is familiarly called the half and half system, half
of the expence being defrayed by local contributions, and half by
the Government. The essential feature of this plan is that the
local contributions, consisting as they do of donations from indi-
viduals interested in the welfare of any Town or Village, and of
payments from the Parents or Friends of the children, form a
test of the want of a School in the place where it is either
1840. 34 Oct.

Advantage of system.

Application from diocesan committee.

School ordered at Wollongong under Irish system.

School commenced by diocesan committee.

Subsidy claimed.

Applications for further subsidies.

Reason for refusal of application.

Criticism of contributions from societies.

established or proposed, and a security, or at least some degree of security, to the Government against its being called on to contribute to the erection or support of a School, where it is not wanted or where a School already exists, to which, though perhaps it may be not exclusively of their own religious denomination, persons would, if left to themselves, be quite satisfied to send their Children.

A detail of one of the cases comprehended in the application, made to me by the Committee above mentioned (commonly called the Diocesan Committee), will however put the matter in a plainer point of view.

In 1836, the sum of £2,000 was voted by the Legislative Council for establishing Schools upon the Irish system; and a School of this nature was in consequence ordered by my Predecessor to be erected at Wollongong, a place about 60 miles from Sydney, and at that time very free from any religious dissention; Under the auspices of the Diocesan Committee however, another School was shortly afterwards commenced, for the erection of which £50 only was raised by private contributions, whilst £150 was supplied by the Committee; and it was under these circumstances that I was called on by the Diocesan Committee to contribute £200 towards the erection of the School, the establishment of which would render useless the School that was then building by the Government, or at any rate defeat the object which the Government had in view in undertaking it.

At the same time applications were sent in from the Diocesan Committee for assistance in the erection of other Schools, so that the amount demanded of the Government was in the whole £931 8s. 11d.

If the subject be regarded only in a financial point of view, I think it must be allowed that the Government cannot in reason be called on to expend its funds at the discretion of large public Bodies, or of Incorporated Societies. This however is only one of the grounds on which I declined to accede to the application, my other and equally serious objections being those already alluded to.

The contributions of such Societies form no test of the wants or wishes of the inhabitants of the place or district in which they are to be expended. They are not collected for the special purpose of Education, but for the general purpose of the Societies; they proceed in great measure from persons not even resident in the Colony, and are in part at least obtained by highly colored, not to say exaggerated statements of the religious destination of the Colony, and of the vice and immorality prevailing in it.
If moreover the contributions of one Society of this nature be received as the contributions of private individuals, so also must those of others of a similar nature; and such a Society has already been formed in the Colony under the name of the Catholic Institute.

The establishment of the School by the Diocesan Committee in Wollongong was quickly followed by that of a Roman Catholic one; and preparations are I believe being made for a Presbyterian School, which will be probably followed by a Wesleyan one; and religious animosities, formerly unknown in the place, have lately manifested themselves to such a degree that I have preferred to leave the Government School empty, rather than by appointing a Master to it of any denomination to give fresh cause for dissention.

I should not conclude without informing Your Lordship that, notwithstanding my first refusal, I ultimately sanctioned the conditional payment of the sum of £931 8s. 1¼d. above alluded to, on a representation from the Committee that the sum had actually been advanced by them; but in so doing I intimated to the Committee that in future the contributions of the Societies could not be regarded as private ones.

I have, &c,

GEO. GIPPS.

[Enclosure.]

[Note 14.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(My Lord, Government House, 25th Oct., 1840.)

With my Despatch of the 9th Septt. last, No. 129, I forwarded to Your Lordship the Immigration Report of the Committee of the Legislative Council for the present year. I have now the honor to inform Your Lordship that the Report was taken into consideration by the whole Council on the 23rd inst., and that the Resolutions* were then passed unanimously, of which I have the honor to enclose a Copy.

I beg very respectfully to join with the Council in an earnest request that these Resolutions, as well as the Report on which they are founded, may be published in such manner as Your Lordship may deem proper, in order, as far as possible, to counteract the effect of the misrepresentations respecting New South Wales, which, ever since the publication of the Report of the Transportation Committee of the House of Commons, have been so industriously circulated in the United Kingdom.

* Note 14.
In preferring this request, I feel it especially incumbent on me to report to Your Lordship that, during the discussion which took place on the passing of these Resolutions, the spirit, in which statements injurious to New South Wales were made under the authority of the Archbishop of Dublin at a meeting held in Dublin on or about the 22nd September, 1839, was most strongly and earnestly deprecated, and the correctness of the statements themselves emphatically denied by the Lord Bishop of Australia. Of His Lordship's speech on this occasion, I hope shortly to be able to forward to Your Lordship an authenticated copy.

I have, &c.,

GEO. GIPPS.

P.S.—I enclose a Newspaper (the "Colonist" of the 27th inst.), in which a report* is given of the Bishop of Australia's speech, which appears to me to be very correct.

[Enclosures.]

[Copies of these resolutions will be found in the "Votes and Proceedings" of the legislative council.]

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SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 167, per ship John Renwick; acknowledged by lord John Russell, 18th April, 1841.)

My Lord,


I have the honor herewith to forward to Your Lordship an Address of Congratulation to Her Most Gracious Majesty, on Her Majesty's late Providential escape from assassination, unanimously adopted on the 23rd inst. by the Legislative Council of this Colony.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

ADDRESS.

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,

We, your Majesty's most dutiful and loyal Subjects, the Governor and Legislative Council of New South Wales in Council Assembled, beg leave humbly to lay before your Majesty's Throne the expression of the universal abhorrence entertained by this Council and the Colony at large at the traitorous attempt upon Your Majesty's sacred life, the intelligence of which has but lately reached this distant part of your Majesty's Dominions.

We hasten unanimously to express to Your Majesty our heartfelt congratulations that it has pleased the Almighty Disposer of events to avert from the Nation the calamity with which it was threatened; That, under a continuance of the Divine favor and protection, Your Majesty may be long preserved for the happiness and welfare of a loyal and affectionate People, and that Your Majesty,

* Note 14.  † Note 15.
GIPPS TO RUSSELL.

My Lord,

Government House, 25th Octt., 1840.

I beg leave to report to Your Lordship that, in the Appropriation Act of the present year, the sum of £300 has been included towards the formation of a Library* for the use of the Legislative Body of the Colony, the want of Books and particularly of Books of reference having been greatly felt, and very generally complained of, by the Members of the present Council.

A Committee of the Council was subsequently named to take into consideration the best means of spending the sum voted; and I have herewith the honor to forward a copy of the Report made by the Committee, and signed by its Chairman, the Lord Bishop of Australia.

I beg leave on the part of the Council to request that Your Lordship will sanction the purchase of the Books recommended and allow them to be forwarded to the Colony by the Agent, Mr. Barnard; and should it be necessary, on account of the extent of the List forwarded, to postpone the acquisition of some of them, I trust that the Librarian of the Colonial Office will favor myself and the Council by affording his assistance in the selection of the Books, which it may be advisable to purchase in the first instance.

A full set of Parliamentary Papers is very much desired by the Council, as also Copies of the Acts of different Colonial Legislatures; and I am not without hope that these, or at least some of them, may by Your Lordship's kind interference be obtained for the Council without expence.

I have, &c,

GEO. GIPPS.

[Enclosure.]

REPORT.

The Committee, appointed to take into consideration and to report upon the means of most advantageously applying the sum voted during the present Session towards the formation of a Library, have the honor to report as follows:

They consider it advisable that attention should be in the first instance directed to procure such Books of Reference of Established Repute, as may furnish Members with means of ascertaining facts

* Note 16.
and principles connected with the most ordinary Subjects of Legislation, also with the most authentic Records and Documents of an historical Character; and with information regarding Parliamentary History, Precedents and Proceedings; national, Colonial and Commercial Law; Political Economy; Statistics, and such Branches of General Information as combined with the foregoing may enable members to find within their own Walls that Information concerning the various Questions in Debate, which they are now under the necessity of deriving from widely scattered Sources, and generally difficult of attainment.

Your Committee have the honor to annex a list of Books which they consider likely to promote the above objects, and to Serve as the foundation of a more extended Collection which may be formed hereafter.

W. G. Australia, Chairman.

Council Chambers, 23rd October, 1840.

LIST OF BOOKS.

REPORTS and Returns printed by order of both Houses of Parliament.

Public Records Printed under the inspection of the Commissioners; Annual Register; State Trials, by Howell; Hansard's Parliamentary History and Debates; Puffendorf law of Nature; Grotius Rights of War and Peace; Vattel; Chitty on the Law of Nations; Chitty on Commercial Law; Clarke's Colonial Law; Dwarris' Ditto; Buke's Ditto; Baron's Abridgement; Addington's Penal Statutes; Hume's Law of Customs; Martin's compendium of Law of Nations by Cobbe; Dwarris' Treatise on the Statutes; Montesquieu, Spirit of Laws; Story's Commentaries; Bent Ditto; Gabbett's comparative view of Stat. law Engl. and Ireland; Erskine's Institutes of the Law of Scotland; Howard's Laws of British Colonies in the W. Indies; Code Napoleon; Selection of Private acts of Parliament (as precedents); Plunkett's Australian Magistrate; Hertzlett's Collection of Treaties; Debrett's State Papers, from 1791 to 1803; Martin's History of British Colonies; Adam Smith Wealth of Nation, by MeCulloch; Lord Lauderdale on Ditto; McCulloch's Dictionary of Geography; Ditto Statistical Account of the British Empire; Ditto Dictionary of Commerce; Malte-Brun's Geography (Translation of); Todd's Johnson's Dictionary; General Atlas; Collection of charts.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 165. received* 11th March, 1841; acknowledged by Sir George Gipps, 21st April, 1841.)


Downing Street, 26th October, 1840.

I transmit to you herewith a Copy of an application from Mrs. Holland for information as to the fate of a young man named "Samuel Delhunt," who is stated to have been on board a ship named the "Dispatch," when she was destroyed by fire on her way from Sydney to England; and I should be glad if you should be able to furnish any information on the subject.

I have, &c.,

J. RUSSELL.

* Note 1.
GIPPS TO RUSSELL.

[Enclosure.]

MRS. E. HOLLAND TO LORD PALMERSTON.

38 Bridge Place, Harrow Road.
Caddington, 6th Octr., 1840.

The friends of a youth named Saml. Delhunt, who was Educated at the Blue Coat School and Apprenticed in 1839 to a Mr. Street, Owner of the Dispatch, which was Laden with Cotton and Oil and destroyed by Fire in returning from Sydney to England, are extremely anxious to know if he was saved along with part of the Crew, who escaped and supposed to have been driven back to Sydney; as early an answer as possible will greatly oblige.

Your Lordship's Most Obedt. Serv.

ELIZA HOLLAND.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 169, per ship John Renwick; acknowledged by lord John Russell, 21st April, 1841.)

My Lord,

Government House, 26th Oct., 1840.

Herewith I have the honor to transmit to Your Lordship Submission of Five Private acts, passed by the Legislative Council of this Colony in the Session which has just ended; As these Acts cannot come into force until allowed by Her Majesty, I have respectfully to request that Her Majesty's pleasure on them may be signified to me as early as convenient.

1. "An Act to render Shares in the Australian Subscription Library* not transferable."

This Act was introduced to the Council at the request of the Members of the Institution, in order to give to it a less exclusive character than that which it has hitherto possessed. Considering the assistance which it received from the Government, I am decidedly of opinion that the Institution should be made as open as possible to the Public. The present is the first step towards an extension to the Public of the advantages, which may be derived from it.

2. "An Act to simplify proceedings at Law or in Equity by or against the General Steam Navigation Company, and for other purposes therein mentioned."

This Act is passed in the form that is usual to enable Companies, not incorporated by Charter or Act of Parliament, to sue and be sued in the Colony.

3. "An Act to simplify proceedings at Law or in Equity, by or against the "Sydney Banking Company," and for other purposes therein mentioned."

This is an Act of precisely the same nature; With respect to the increase of Banks in the Colony, I would beg to refer to what I stated in respect to a similar Act for the "Union Bank of Australia," in my Despatch of the 28th Novr., 1839, No. 159.

* Note 17. † Note 18.
4. "An Act for facilitating proceedings at Law or in Equity, by or against the Banking Company of Melbourne, called the Port Phillip Bank, and for other purposes therein mentioned."

This is an Act precisely of the same nature for a Bank at Port Phillip.

5. "An Act to enable to Proprietors of a certain Joint Stock Company carried on in the Town of Melbourne, in the Colony of New South Wales, under the name, style and firm of the Melbourne fire and Marine Assurance Company, to sue, and be sued in the name of the Chairman of the said Joint Stock Company for the time being, and for other purposes therein mentioned."

This is a similar Act for a Joint Stock Company formed at Melbourne for the purposes of Insurance.

I beg to take this opportunity of stating that such of the Public Acts of the Session, as have not yet been brought under Your Lordship's notice, will be forwarded as soon as they can be prepared in the proper form.

I have, &c.,

GEO. GIPPS.

27 Oct.

Despatch acknowledged.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 166, received* 11th March, 1841.)

Sir, Downing Street, 27 October, 1840.

I have received your Dispatch No. 50 of the 30 March last, enclosing a return of three Sales of religious Books, which had been received in New South Wales by Convict Ships, and informing me that for the future you had directed that all Books of that Class so received should be placed at the disposal of the Clergyman appointed to afford religious instruction to the Convicts at Sydney in order that they might be distributed by him according to his discretion.

Having referred that Dispatch for the consideration of the Lords Commissioners of Her Majesty's Treasury, I have now to inform you that Her Majesty's Government see no objection to the method which you have again adopted with regard to the disposal of such books.

I have, &c.,

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 170, per ship John Renwick.)

My Lord,


In my Despatch of the 11th April last, No. 56, I detailed to Your Lordship (whilst reporting on the case of the Messrs. Henty) the circumstances under which I considered that it would

* Note 1.
shortly be necessary to form a Government Establishment at Portland Bay; and in that part of my Despatch of the 28th Septt. last, No. 139, which relates to the South Western parts of this Colony, I alluded to the circumstances under which a Town had been laid out at Portland Bay, and the first allotments of land advertised for sale on the 15th of the present month. As an appendix to the last mentioned Despatch, I also forwarded the report, which was made to me on Portland Bay and the adjoining Country by the Surveyor (Mr. Charles Tyers), who had been employed there.

As the sale of these allotments took place at Melbourne on the 15th inst., I have not yet received an official account of it; but I learn from authentic sources, that the 337 acres, offered for sale, produced the sum of £17,245 10s. 5d., being at the average rate of more than £50 per acre;

The sale included,

20 Acres of Building Land in the proposed Town, which sold at the rate of £551 6s. per acre;

50 Acres of Land, fit for gardens or the erection of Villas in the immediate neighbourhood of the Town, which produced £64 per acre; and 267 acres of Land fit for cultivation, within the distance of two miles from the Town, which sold for £11 7s. per acre.

When it is borne in mind that as yet only one house (that of Mr. Henty) exists in the place, and that the nearest Government Establishment is 150 miles distant, this result will I doubt not be considered by Your Lordship as highly satisfactory; at any rate I trust it will be taken as a proof that the measures, which I adopted for opening the District were not premature.

I have further to report to Your Lordship that I have appointed Mr. James Blair to be Police Magistrate at Portland Bay, with the same salary and allowances as were granted to Captn. Lonsdale at the first opening of Port Phillip, and reported in Sir Richard Bourke's Despatch, No. 101 of the 15th Septt., 1836.

I have also appointed Mr. F. A. Powlett to be Commissioner of Crown Lands for the District between Portland Bay and Port Phillip, in which grazing Stations are rapidly increasing, and where unfortunately collisions between the Stockmen and the Aborigines have been frequent.

Mr. Blair has been for some time a Police Magistrate in a District situated between Sydney and Bathurst, and from his experience and intelligence is likely to give satisfaction in the performance of his duties.

Mr. Powlett, being personally unknown to me, has been appointed on the recommendation of Mr. La Trobe.
HISTORICAL RECORDS OF AUSTRALIA.

1840.
27 Oct.

Comparison of land sales under South Australian principle.

I cannot abstain from remarking to Your Lordship that, had Portland Bay been opened on the South Australian principle,* the produce of the sale of land now reported would have been £337, instead of £17,245 10s. 5d.

I have, &c.,

GEO. GIPPS.

28 Oct.

Repayment to military chest of advances to colonial agent.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 171, per ship John Renwick.)

My Lord, Government House, 28th Octt., 1840.

I have the honor to report to Your Lordship that the sum of £12,274 has been paid by this Government into the Military Chest, agreeably to the directions contained in Lord Normanby's Despatch, No. 119 of the 16th August, 1839.

The following payments have also been made into the Military Chest, since the date of my last Despatch (No. 149 of the 11th Novr., 1839), namely:—

£21,000 on the 3rd Feby., 1840.
£4,275 on the 15th Octt. instant.

Directions for the payments of the last of these sums were transmitted to me by Your Lordship's Despatch of the 11th April last, No. 40, and directions for payment of £10,000, stated to be in part of a Warrant for £21,000, were conveyed to me in Your Lordship's Despatch of the 5th Octt., 1839, No. 8.

I received no positive instructions to repay the remaining £11,000 due upon this Warrant; but, as the receipt of it has been acknowledged by Mr. Barnard, I did not hesitate to make the repayment.

I will take this opportunity of stating that all the advances from the Lords of the Treasury, of which any information has been received, are now repaid.

I have, &c.,

GEO. GIPPS.

29 Oct.

Transmission of decision re land of settlers at Port Nicholson.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 172, per ship John Renwick; acknowledged by Lord John Russell, 20th April, 1841.)

My Lord, Government House, 29th Octt., 1840.

I have herewith the honor to forward to Your Lordship a Copy of the communication which was made to the Deputies from Port Nicholson on the 20th inst., pursuant to the intention announced to Your Lordship in my Despatch of the 6th instt., No. 147; and I further transmit a Copy of a communication received from the Deputies, under date of the 23rd instt., as well as of the answer which was returned to it by my direction on the 28th instant.

* Note 19.
GIPPS TO RUSSELL.

Your Lordship having directed in Your Despatch of the 4th Decr., 1839, No. 53, that these Settlers should be treated with "consideration and kindness," I trust Your Lordship will approve of the way in which I have disposed of their claims.

I should add that the letter of the Colonial Secretary to the Deputies of the 20th inst., was written with the advice and concurrence of my Executive Council.

The Deputies have announced to me their intention of leaving Sydney for Port Nicholson on Saturday next.

I have, &c.,
Geo. Gipps.

[Enclosures.]

[Copies of these papers, dated 20th, 23rd and 28th October, 1840, will be found in a volume in series III.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 173, per ship Louisa.)

My Lord, Government House, 1st Novr., 1840.

In forwarding to Your Lordship the accompanying Schedule* of Appointments for the quarter ended the 30th Septt. of the present year, I find it necessary to ask Your Lordship's sanction to some appointments and disbursements, which I regret to find I omitted to report at the time they were either made or incurred;

1. The appointment of a Pilot at 3s. per diem at Wollongong; Wollongong is the only harbour as yet in use in the fertile district of Illawarra, which forms part of the County of Camden to the Southward of Sydney; a Breakwater is in progress for the improvement of the harbour, and, when sufficiently advanced to warrant such a measure, I propose to charge a small tonnage duty on Vessels, and to discontinue the present salary to the Pilot, which may be considered only as an aid given to him temporarily by the Government.

2. The appointment of two Clerks, one of the 2nd and the other of the 3rd Class, to the Sub-Treasurer at Melbourne.

In my Despatch No. 84 of the 14th July last, I reported the appointment of Capt. Lonsdale as Sub-Treasurer; the appointment of Clerks necessarily followed. The gentlemen appointed are Mr. Willm. McVitie, Mr. Henry Buckley.

3. Entertainment on board Her Majesty's ship "Favorite" of Mr. W. Cunningham, Vice Consul for the South Sea Islands £63.

Mr. Cunningham came to Sydney in consequence of the murder of the Revd. John Williams in Novr., 1839; when I

* Note 20.
1840.
1 Nov.
Request for approval of expenditure on visit of W. Cunningham to Erumango.

solicited the late Capt'n. Croker to visit the Island of Erumango, at which Mr. Williams had been murdered, and to endeavour to obtain his remains, it was considered both by myself and Capt'n. Croker very desirable that Mr. Cunningham should accompany him; I consequently authorized his embarkation in the "Favorite," and the sum charged for his entertainment on board that vessel is according to the Regulations of the service.

On the subject of Capt'n. Croker's visit to Erumango, and the recovery of the remains of the Revd. Mr. Williams, I beg to refer to my Despatches of the 4th and 5th August last, Nos. 100 and 101.

I have, &c.,
Geo. Gipps.

3 Nov.
Despatch acknowledged.

Refusal of retired allowance or land grant for J. W. Willis.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 168, received* 11th March, 1841.)

Sir, Downing Street, 3 November, 1840.

I have to acknowledge the receipt of your Dispatch No. 63 of the 13 of May last, transmitting Copies of two communications addressed to you by Mr. Justice Willis on the subject of his claim to a retiring Pension in the event of his being compelled from ill health to relinquish his seat on the Bench.

You will acquaint Mr. Willis that the difficulty of making any provision for a retired allowance for him is unfortunately not diminished by the statements which he has now made, and that it is impossible to provide for him by a grant of Land.

In each of the two Precedents to which Mr. Willis refers in his letter of the 6th of May, there were peculiar circumstances which do not exist in his case; but it is not necessary to justify those precedents. They may have been unadvisedly made, and the weight, which is attached to them, necessarily suggests to me the importance of extreme caution in sanctioning any new grant, which of course would be hereafter insisted on as a precedent for all subsequent cases.

I have, &c.,
J. Russell.

5 Nov.
Salaries for commissioners for land claims in New Zealand.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 175, per ship Louisa: acknowledged by Lord John Russell, 28th May, 1841.)

My Lord, Government House, 5th Novr., 1840.

With reference to my Despatch of the 9th Octt. last, No. 152, reporting the appointment of three gentlemen to be Commissioners for enquiring into claims to Grants of Land in New Zealand, I now beg leave to report the salaries which I have respectively assigned to them.

* Note 1.
I have consequently now to report to Your Lordship, that to each of them I have allowed the sum of 30s. per diem; and to Mr. Fisher, the additional salary of 10s. per diem, as Law Adviser to the Commission.

I considered it not only desirable, but almost indispensably necessary, that one Member at least of the Commission should be a Lawyer, there being no Law Officer of any description in the Colony of New Zealand; and in former Despatches (particularly that of the 18th Decr., 1839, No. 176), I have sufficiently I hope shown that in this Colony no man of any reputation as a Lawyer could be found to serve the Government at a lower rate of remuneration than that which I have allowed to Mr. Fisher.

The extra remuneration of 10s. a day was granted to Mr. Fisher under the denomination, which I have mentioned, of Law Adviser to the Commission, in order to avoid on the one hand giving him an avowed superiority over the other Commissioners, or on the other admitting a claim on their part to be placed in regard to salary on an equality with him.

I have further to add that the salaries of all the Commissioners are to be exclusive of travelling expenses.

I have, &c.

GEO. GIPPS.

1840.

5 Nov.

Necessity for legal member of commission.

Extra allowance for F. Fisher.

Travelling expenses for commissioners.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 169, per ship Abberton.)

Sir,

Downing Street, 9 November, 1840.

I have to acknowledge the receipt of your Dispatch of the 28th of February last, No. 31, transmitting Plans and Reports, prepared under the direction of the Commanding Royal Engineer, for the erection of a Prison at Norfolk Island.

I referred these Papers for the consideration of the Secretary of State for the Home Department, by whom it was forwarded for the Report of the Home Inspectors of Prisons. A Copy of that Report is herewith inclosed.

On a consideration of the arguments of the Inspectors, and of your opinion, expressed in the Dispatch now before me, "that, if Captain MacAulay's system is to be tried at all, it should be tried as a whole, and not parts of it only be adopted," I recommended to the Lords Commissioners of the Treasury to sanction the erection of the Prison on the Plan proposed by that Officer. Their Lordships having signified that they are prepared to sanction the admission of this Expenditure, you are at liberty to commence this and the other Minor Works provided for in the Estimate submitted by Major Barney.

I have, &c.

J. RUSSELL.
We beg to acknowledge the receipt of your letter dated the 7th Instant, transmitting by direction of the Marquis of Normanby, for our Report, a Letter from Mr. Stephen, with the several Documents therein referred to relative to the erection of Prisons at Norfolk Isld.

In reply, we beg to state that we have carefully examined the Documents and plans transmitted to us; and we submit to his Lordship our opinion that, as Directions have already been given for carrying Captain Maconochie's Plan into effect at Norfolk Island, and as that officer is now engaged in doing so, it would not be advisable at present to build a prison at that Island on any other principle of construction, than that which he has recommended, and least of all on the separate system to which Captain Maconochie has so strenuously objected.

Should Captain Maconochie's mode of treating Convicts prove unsuccessful, the failure would most probably be attributed to his not having had placed at his disposal the means which he states to be necessary for success, and also to his having had forced upon him a Prison upon a principle of construction, to which he has declared himself strongly opposed, both in principle and detail. We therefore venture to suggest that, if Captain Maconochie's views are to be adopted, he should be allowed to work them out fairly and fully in the experiment now to be tried in Norfolk Island, and it appears to us that in no other way can it be determined whether the plan of Convict management, which he recommends, is or is not one of practical utility. We find that our opinion on this point is also entertained by Sir George Gipps, who states in the Despatch transmitted to us that he "cannot help feeling anxious that, if Captain Maconochie's system is to be tried at all, it should be tried as a whole, and not parts of it only be adopted."

In support of this view of the Case, we beg further to observe that the character of the Separate System of prison discipline might receive serious injury in this Country as well as abroad, if the enforcement of it were entrusted to an Officer so avowedly hostile to it as is Captain Maconochie, and in a prison so modified (and divested of arrangements indispensable to the carrying out of the separate system) as that described in the Plans transmitted by Sir George Gipps.

The first of the proposed modifications, viz., "that the lower Cells are to be as dark as they can be made consistently with the free admission of air, and of so contracted a size as eight feet by five feet" appears to us to be highly objectionable.

In proof of this, we need only refer to the mischievous and even fatal consequences which attended the first Experiments of the separate system in the United States, and which were entirely owing to their having been made in cells of this description, in which neither Employment nor Instruction could be carried on, and where the mind and Health sustained serious injury.

By the second modification, it is proposed to dispense with the required warming and ventilating apparatus as being unnecessary in a climate where the external air may be freely admitted in all
seasons of the year. Although this remark may be just as regards
the warming of the Cells, it is certainly not correct in respect to
their ventilation.

Experience has proved that a cell, which is to be constantly
occupied, cannot be thoroughly ventilated without a regular current
through the Cell, an advantage which can only be secured by a
Ventilating apparatus on the principle which we have adopted. At
periods when the air is stagnant, or when the wind blows in a
course opposite to that in which the apertures for ventilation are
placed, no current can be maintained through the Cell, and the air
immediately becomes vitiated and unwholesome. We are strongly
impressed with the opinion that the enforcement of even short sen-
tences in Cells, such as those proposed, would be productive of
injurious consequences.

From an examination of the Plan No. 2, we observe a further
modification, although no distinct reference is made to it in the
Despatch of Sir George Gipps.

It appears that, in the Cells on the upper floors, the length of
the Cell is parallel with the Corridor (instead of being at right
angles). By this arrangement a complete inspection of the Cell
is rendered impracticable; this difficulty is increased by the position
of the Cell doors.

For the reasons which we have stated, we consider it advisable
that, if Captain Macarthur's views of Convict treatment are to
have a trial, he should be permitted to build a prison in conformity
with those views: at the same time we feel particularly desirous
to guard ourselves against the supposition that we approve in any
degree of the Plan for a Prison (No. 3) which he has recommended;
a plan which is entirely at variance with those principles of con-
struction which we deem essential to an efficient system of prison
discipline.

We herewith return the several enclosures of your letter.

We are, &c,

WM. CRAWFORD,
WHITWOETH RUSSELL,
Inspectors of Prisons.

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SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 176, per ship Louisa; acknowledged by
lord John Russell, 4th July, 1841.)

My Lord,

Government House, 9th Novr., 1840.

I beg leave to report to Your Lordship that, whilst the
Bill, mentioned in my Despatch of the 2nd Octt. last, No. 143,
for increasing the ad valorem duties on goods imported into the
Colony, was under discussion in the Legislative Council, a pro-
posal was made by one of the unofficial Members, and readily
supported by all, that Military officers serving in the Colony
should be allowed to import their Wine duty free; and that,
though no enactment of the sort was introduced into the Bill,
an application was made to me on behalf of the Officers, so to
be allowed to import their Wine immediately on the passing of it.
I enclose a Copy of the answer which I caused to be returned
to this application, by which Your Lordship will perceive that,
subject to the approbation of Her Majesty's Government, I have
granted the permission that was asked for; and, as the whole
amount for the three Regiments stationed in New South Wales
will probably not exceed £100 per annum, I trust the sanction of
Her Majesty's Government to this indulgence will not be with­
held.

At the same time I feel it my duty to state that, since I granted
the permission in question, I have accidentally fallen on two
Despatches from Sir George Murray to General Darling, dated
as in the margin,* by which I find that a similar indulgence was
permitted in the year 1829 and subsequently revoked.

The duty on Wine was then, and continued to be until the
passing of the Act to which I have alluded, 5 per cent. only
ad valorem, but is now raised to 15 per cent. I have, &c.,

GEO. GIPPS.

MR. T. C. HARINGTON TO THE ASSISTANT MILITARY SECRETARY.

Colonial Secretary's Office,

Sir, Sydney, 29th October, 1840.

I am directed by the Governor to request that you will inform
the Major General Commanding that, having had under considera­
tion the representations which have been forwarded through His
Excellency from the Commanding Officers of the different Regi­
ments serving in New South Wales, He has given directions to the
Collector of Customs to admit free of duty any wine that may be
imported or taken out of Bond by the officers or for their use, on
a certificate from the Commanding officer that such wine is for the
use of the officers of his Regiment. I have,

T. C. HARINGTON.

LOV S. HESS S. GIPPS.

(Despatch No. 170, per ship Abberton.)

Sir, Downing Street, 10th November, 1840.

I have had under my consideration your Dispatch No. 56
of the 11th of April last with a letter addressed to me by the
Sons of the late Mr. Henty of Van Diemen’s Land, requesting
either that possession may be confirmed to them of some Land,
which they have occupied at Portland Bay, or that compensation
may be made to them for the loss of it.

The reasons, which you have assigned for declining to recog­
nize the claims of the Messrs. Henty, appear to me to be conclu­sive. You will have the goodness, therefore, to inform those
Gentlemen that I do not feel justified in complying with their
application. I am, &c.,

J. RUSSELL.

* Marginal note.—1829: 4th Feby., No. 89; 1830: 7th April, No. 17.
LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 171, per ship Abberton.)

Sir,
Downing Street, 11 November, 1840.

I have received your Dispatch No. 59 of the 14th of May last, in which you state your opinion that any interference on the part of Government in the establishment of Steam-Boat Communication in the Eastern Coast of Australia is unnecessary, a Company with a large Capital having been formed for that purpose.

I beg to assure you that the receipt of this intelligence has given me much satisfaction.

I am, &c,

J. RUSSELL.

LORD JOHN RUSSELL TO SIR GEORGE GIPPS.
(Despatch No. 172, per ship Abberton.)

Sir,
Downing Street, 12 November, 1840.

I have received your Dispatch No. 76 of the 27th of June last, inclosing Copies of a Correspondence which you have had with Captain Maconochie relative to the system of Convict Discipline which he had been pursuing at Norfolk Island.

I regret that the experiment, which was entrusted to the management of Captain Maconochie, should have been so materially injured in its Execution by the manner in which he has attempted to work it out. Under the circumstances which appear in the Correspondence now before me I see no alternative but to direct that Captain Maconochie should not be entrusted with the management of any Convicts, who have more than three years' time to serve before, under the ordinary Regulations, they may obtain a Ticket of Leave. The rest of the Convicts at Norfolk Island should be gradually removed from under his Control. You will, therefore, make the necessary arrangements with Sir John Franklin for the reception of such Convicts in Tasman's Peninsula.

I have already authorized you to remove Captain Maconochie from Norfolk Island, if you should consider it necessary. The Correspondence now before me convinces me of the necessity of leaving you full discretion to supersede that Officer, if it should appear to you that the good of the Public Service required such a measure.

I am, &c,

J. RUSSELL.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 178, per ship Louisa; acknowledged by lord John Russell, 26th May, 1841.)

My Lord,
Government House, 16th Novr., 1840.

Agreeably to the desire expressed in Your Lordship's Circular of the 23d April, 1840, I have called on Mr. Alured
HISTORICAL RECORDS OF AUSTRALIA.

1840.
16 Nov.

Request by A. T. Faunce for payment of costs and damages in lawsuit.

Reasons for renewal of request.

Previous decision endorsed.

Memorial of A. T. Faunce requesting payment of costs and damages in lawsuit.

Memorial of Alured Tasker Faunce, formerly a Captain in Her Majesty's Fourth Regiment of Foot, lately Police Magistrate of Brisbane Water in the Colony of New South Wales, and now holding a Commission as a Justice of the Peace for the District of Queanbeyan in the said Colony.

To the Right Honorable Constantine Henry Phipps, Marquis of Normanby, Her Majesty's principal Secretary of State for the Colonies.

Sheweth,

That your Memorialist forwarded through the late Governor Sir Richard Bourke a Memorial (prepared at his recommendation) praying for relief from certain Damages amounting to Nine hundred pounds and Four hundred and fifty pounds costs, which your Lordship regrets cannot be repaid for the reasons stated in the annexed paper marked A.

That your Memorialist is thankful for your Lordship's already favourable consideration, which leads him to imagine that, but for those expressed objections, his request would have been granted, as Your Memorialist feels satisfied he can remove the same.

GEO. GIPPS.

[Enclosure.]
That your Memorialist begs leave to renew his appeal and transmit in support thereof copies of Documents marked A and B, which he fears were before mislaid, as he feels that the objections raised in the annexed paper marked A are satisfactorily met by the explanatory paper marked B hereunto annexed.

That your Memorialist would beg leave to explain that on his being served with a notice of action he considered he was, as the head of his department, made a mere nominal Defendant, and that he applied, as is usual in such cases, to the Governor for leave to be defended by the Crown, and that, on reference being made to the Attorney General, that officer reported that your Memorialist had a good case and thereupon the then Governor instructed the Crown officer to act on his behalf and your memorialist considered the Government would pay any damages that might be awarded.

That, upon such instructions, the defence was conducted by the Crown officers, who felt satisfied that the putting on of the Irons was the act of the Chief constable and not of your Memorialist and therefore could not offer any tender of amends (one of the objections raised by the Home Government for not granting to your Memorialist the relief prayed for).

That your Memorialist would explain the difficulty under which he laboured in having as a witness against him the Chief Constable, who himself committed the act of placing on Irons for which alone damages were given, and also that memorialist had no witness to contradict this person, being unable to give testimony himself.

That, with regard to the verdict being substantially right, this point may explain itself from the nature of the evidence. The testimony of the constable, who put on the Irons in consequence as he stated of orders received from your Memorialist, was totally unsupported; and it is submitted he was a biased witness, inasmuch as he wished to relieve himself from all blame or legal liability.

That, with regard to amends not having been tendered, your Memorialist could not, with truth take upon himself the act of the constable, and thereby contradict himself; therefore the Crown officers did not tender amends, it being considered that the Magistrate would not be held responsible for the unauthorized act of a constable.

That an application for a change of the Jury was not made by the Crown Counsel, it being contrary to the Rules of the Supreme Court, which declare that a certain number only shall be empanelled to try the issues in each Term.

That, as to new trials, your Memorialist begs to explain that an application to that effect was made, but that the Judges would not interfere inasmuch as they considered it was entirely a matter with the Jury whether they would act upon the unsupported statement of the constable, which, however correct in law, is the great hardship your memorialist complains of.

That, as stated in the Attorney General's Letter marked B, the public supposed that the Government would pay the damages, so your Memorialist rested secure in the same idea, and left the Crown to deal with the case as if he were merely the nominal Defendant.

That your Memorialist would draw your Lordship's attention to this public opinion, supported by a strong Memorial from the Inhabitants of Brisbane Water, and begs your Lordship will Grant
the request therein contained, the subscribers feeling disappointment at this temporary denial.

That, if your Lordship would not pay the whole amount of One thousand three hundred and fifty pounds in money, that part may be in money and part in land, or all in land, your Memorialist being considered as a Claimant before the increased price of land which will agree with the date of the former Memorial. Your Memorialist may be relieved in some measure as through loss of time and capital the injury to Memorialist far exceeds the amount claimed.

Your Memorialist therefore pray, that your Lordship will take the whole of the Circumstances into your Consideration and make such order as to your Lordship shall seem meet, and the Justice of the case require.

And your Memorialist as in duty bound will ever pray, etc.

A. T. FAUNCE.

Sydney, New South Wales, 13th November, 1840.

[Appendix A.]

SIR GEORGE GREY TO SIR RICHARD BOURKE.

Sir, Downing Street, 24th July, 1838.

I am directed by Lord Glenelg to acknowledge the receipt of your letter of the 14th instant, enclosing a Memorial from Mr. A. T. Faunce, a Police Magistrate of New South Wales, praying to be indemnified from the costs arising out of certain legal proceedings instituted against him for acts performed in his character of Magistrate.

Lord Glenelg extremely regrets that he finds himself unable to interfere in this matter, first, because, in the absence of any contrary opinion from the Judges, he must assume that the verdicts pronounced in this case were substantially right, and, secondly, because the Defendant does not appear to have availed himself of the course open to him of anticipating the verdicts by a tender of amends or of preventing the second and third by a Special application for a change of the Jury or of reducing the amount by applying for New Trials.

Lord Glenelg has transmitted copies of this correspondence to Governor Sir George Gipps.

I have, &c,

GEO. GREY.

[Appendix B.]

OPINION OF ATTORNEY-GENERAL PLUNKETT.

Sir, Attorney General's Office, 2nd December, 1837.

I have the honor to acknowledge the receipt of your letter of the 21st ultimo informing me that, in compliance with the application of Capt. Faunce, the Governor proposes to lay his case before the Secretary of State, from whom he solicits some relief from what he considers excessive damages given in the actions brought against him by Messrs. Moore, Bean and Donnison, and requesting by the directions of his Excellency that I would furnish a full statement of my opinions in the matter, in order that it may accompany Capt. Faunce's application when transmitted to the Secretary of State.

The three actions brought against Capt. Faunce by Messrs. J. Moore, W. Bean, and H. Donnison respectively were founded on the same circumstances. The pleadings were precisely similar in each action and were supported by the same testimony. They were all for False imprisonment with one count in the Declaration for putting on Irons while in Prison. It was on this Count alone that a verdict was returned in each case against Capt. Faunce. On all the other Counts, the Juries found in his favor. Malice was urged against him in the opening statement of Counsel in the first ease tried; but, as it was negatived by the Jury in that case, it was entirely abandoned, even in statement, in the two other trials. The Damages given in each case were as follows:—Moore v. Faunce, £250; Bean v. Faunce, £350; Donnison v. Faunce, £350.

I apprehend His Excellency the Governor will not consider it necessary for me to make a detailed statement of the charges, which were preferred before Captain Faunce against the Plaintiffs in these actions, and upon which they were committed by him to take their trials, because the depositions were very voluminous, and as they were given in evidence on the trials and were held by the Court and Jury in each case to be a full justification for the apprehension and committal of the parties. It may perhaps be sufficient to state that, upon the sworn Depositions of credible witnesses, Messrs. Bean and Donnison were committed by Captain Faunce on the 4th day of January, 1837, for Cattle Stealing, and John Moore was committed on two charges of cattle Stealing in the month of October, but admitted
GIPPS TO RUSSELL.

1840.

OPINION OF

A. T. Faunce.

J. H. PLUNKETT.

to bail; and, on the second Charge on the 4th day of January last, Captain Faunce was not assisted by a second Magistrate during the investigation. Mr. Warner, the late Police Magistrate of Brisbane Water, was the only one residing in the district whose assistance he could have had in those cases, and, his residence being 50 miles distant from the Police Office, was too far for Mr. Warner to attend it. However after the Committal of Moore, Moore, Bean and Donnission at the request of Captn. Faunce, as one Magistrate could not admit the parties to bail, Mr. Warner attended at the Police office on the tenth day of January, and, on perusal of the Depositions, he was of Opinion that they could not be admitted to bail. The second Magistrate being of this opinion, Capt. Faunce alone had no power to admit them to bail, and they were consequently kept as prisoners at Brisbane Water until the 19th day of January, as no Vessel sailed from that place to Sydney until that day. It was on the 14th of January, that the Irons were put on, for which Damages were given in the three cases. It appeared in evidence that, on the Morning of the 14th, Mr. Donnission was anxious to be permitted to go to his residence (which was a few miles from the place of confinement) in order to see his family. To this, Captain Faunce said they should be ironed, which was the only evidence given to fix it on Captn. Faunce.

The words of Captain Faunce, as sworn to by the Chief Constable, were "Those people must be ironed." After this conversation took place, Capt. Faunce went to his own residence, which was some miles from the Police Office, and, about two hours after he went away, the Chief Constable put on the Ions. It was contended that Capt. Faunce did not accompany the expression concerning the Irons with such a condition. He only swore that he understood it as an order to put the Irons on. There being no third person, it rested entirely on the evidence of the Chief Constable whether the absolute order was given by Capt. Faunce to put on the Irons. It appears that Capt. Faunce was not aware that the Ions were put on until the morning of the 15th, and, when he saw the Chief Constable then, he observed to him "that he was very hasty in putting on the Ions," which was strong evidence to show that he did not on the 14th intend to put them on. However, an Attorney for the prisoners had an interview with Capt. Faunce on the 15th, and he did not on that occasion repudiate in direct terms the act of the Chief Constable. To this, it was contended that Capt. Faunce did not wish to implicate the Chief Constable unnecessarily, when speaking to an Attorney. Upon this evidence, the Jury found that the act of the Constable was the act of the magistrate; and, although Capt. Faunce ordered the Ions to be taken off, as soon as he heard of the fact on the morning of the 15th, the damages were given for having them on from 4 or 5 o'Clock P.M. on the 14th January, until about 9 o'Clock a.m. on the 15th. The first case was tried by one and the same Jury, and of course the same verdict was given in the second, because the Circumstances were the same; and the third case was tried before seven of the same Jurors, only five fresh Jurymen being sworn, so that the same observation applies as to the last Jury. In the third case, as the former cases could not consistently with the former verdicts return any other verdict in the third case. Having the same Jurors in these cases could not be prevented, because the Judges of the Supreme Court lately made a rule, for the case of Special Jurors, that one set of Jurors should try all the cases for trial in the same term, a rule which it is obvious must have operated injuriously to Capt. Faunce in those cases. The verdicts were given, as already stated on the count in the Declaration for putting on Ions, and, although the Chief Constable swore that he took the expression of Capt. Faunce before mentioned as an order, I am myself quite convinced that Capt. Faunce did not intend to give such an order until he was more satisfied of the truth of the rumours affecting Captain Faunce, that he acted throughout the entire investigation under a strong sense of duty, and that the act for which alone Damages were given was not authorised by him, but was entirely the act of the Chief Constable, a person who had a Strong interest to relieve himself from it in giving evidence and to fix it on Capt. Faunce.

For some time before the trials came on, and while the proceedings were pending, it was industriously circulated, through the medium of a violent Anti Government press, that the Government was in some way connected with the acts complained of, and would as a matter of course pay any amount of damages given.
As your Excellency is aware that the Government was not in the remotest way either directly or indirectly connected with the cases of those individuals, it is unnecessary for me to do more than state the fact; but these falsehoods, thus put forth day after day by an unprincipled press, must have had their influence in the Jury box, and I make no doubt swelled the amount of damages in each case.

Your Excellency is aware that the duties of Gaolers do not properly belong to the Police Magistrate; and this, in my opinion, makes it a greater hardship on Captain Faunce, if he should be left to pay the amount of these damages, given against him for an act which (even if there was no doubt about its being done by his order) did not belong to his proper duties, it being merely for the convenience of the Government and the saving of expense to the public that he took upon himself the care of the gaol in question.

I have, &c.

A true copy:—John H. Plunkett.

[Appendix C.]

MEMORIAL.

To His Excellency Major General Sir Richard Bourke, Captain General and Governor in Chief in and for the Territory of New South Wales and its dependencies and Vice Admiral of the same.

We, the undersigned residents and landholders of the District of Brisbane Water, beg most respectfully to communicate by Memorial to your Excellency the great surprise and regret which we have all felt at the result of the recent actions brought by Messrs. Bean and Moore against the Police Magistrate whom your Excellency was pleased to appoint to that office in September last.

It may be in your Excellency's recollection that this appointment succeeded the resignation of Mr. Warner, and brought with it the re-hearing of certain charges of cattle stealing which, in consequence of protests on the part of Mr. F. Cape and Mr. Donnison, had been handed over to the Crown officers nine months previously, and finally committed to Captain Faunce's sole management and responsibility.

The whole District being at that time in a state of considerable alarm from the seeming impunity in the delay of those proceedings.

Your Memorialists cannot presume to reflect upon the peculiar nature of the evidence, in which the parties themselves were alternately admitted in support of their prosecution, nor to discuss the unexpected disregard to those previous facts, which, had they not been deemed by the Court to be irrelevant, would unavoidably have made their due impression upon the Juries who tried the cases in question.

Your Memorialists however most respectfully assure your Excellency of their thorough conviction that considerable public feeling had been most industriously excited to the prejudice of their Magistrate, from the circumstance of his being a military officer as well as from the insinuations of certain of the colonial journals affecting not only this gentleman, but others recently appointed to the magistracy in testimony of which opinion they venture to refer to certain articles specially written on the subject in the Herald, Gazette, and Times colonial newspapers.

Your Memorialists are further assured that, from the general temper and impartiality, added to the well known calm and deliberative habits of their Magistrate, the insecure state of the watch house and the general reports of the contemplated escape of the parties after the committal, that no needless intentional severity was exercised towards them, but that on the contrary, as repeatedly proved in evidence, "they were allowed to sleep and mess in the court room and freely enjoy unrestrained exercise in the front of the building throughout the day, and that at an early stage of the proceedings two of them went home on their parole."

Your Memorialists are more particularly satisfied that "the putting on of irons" was not a direct order from their Magistrate, but erroneously taken as such by the Chief Constable, when, in consequence of his report as to the probability of rescue, the insecurity of the watch house and the likelihood of the parties escaping in the Laura, a vessel belonging to Mr. Donnison, he was authorised to use further security if required.

In support of these impressions, your Memorialists again respectively advert to the evidence before the court that the irons were on Messrs. Bean and Donnison for only one night, and were removed early the next morning, immediately after a Mr. Plaistowe, their Solicitor (who proved to be their chief evidence), had conferred with the Magistrate on the subject.

From the few circumstances to which your Memorialists have confined themselves, having avoided even allusion to those which led to the committal of the parties and their subsequent trial at the instance of the grand jury or the attorney general, when the Chief Justice occupied two hours in addressing the jury, your Memorialists most earnestly hope that it may please your Excellency to consider
this their humble appeal on behalf of their conscientious and upright Magistrate, and to order his entire indemnification, that neither himself nor other such officers of Public Justice may be discouraged in the discharge of their arduous and important duties nor their character and property subjected at any period (without due protection) to the prosecutions of men, who may have escaped the vengeance of the laws either through their own ingenuity or the Merciful interpretation of their acts; And as in duty bound your Memorialists will ever pray.

Signed by all the Inhabitants of the District, with the exception of Ten or Twelve.

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LORD JOHN RUSSELL TO SIR GEORGE GIPPS.

(Despatch No. 173, per ship Abberton.)

Sir, Downing Street, 18 November, 1840.

I transmit to you herewith, for your information and guidance, the Copy of a Letter from the Secretary to the Board of Treasury inclosing a Copy of a Report of the Director General of the Army Medical Department and of a letter addressed by that officer to the Principal Medical officer in New South Wales, on the subject of the Expenditure incurred for the maintenance of Patients in the Convict Hospitals.

You will have the goodness to take such steps as may be necessary for enforcing the due observance of the precautions and regulations to which the Director General refers.

I am, &c,

J. RUSSELL.
Sir J. McGrigor to Deputy Secretary at War

Sir, Army Medical Dept., 25th Sept., 1840.

I have the honor to acknowledge the receipt of your Letter of the 16th Inst. No. 103502, with the Copy of a Communication from the Treasury and Enclosures, relative to the Diet in the Convict Hospitals in New South Wales, and requesting to be furnished with my Report thereon for the information of the Lords Commissioners of Her Majesty’s Treasury. In reply, I beg leave to submit to the Secretary at War, for the consideration of the Lords Commissioners of Her Majesty’s Treasury, that there is much particular information required to enable me to offer more than a general opinion on the subject brought under my consideration; and as one instance I may state that a few serious cases may make a great alteration in the general Abstract of the issues for any one Hospital, thus precluding the person examining the Accounts from knowing whether a sound judgment has been exercised by the prescribing Medical Officer or not; but, while I am fully sensible of this fact, I do not deny that a general Abstract of the total food, including Extras, etc., may form a prima facie case for investigation; and I therefore am willing to believe that Mr. Irvine has made out so far his case. Still I am inclined to think there is more irregularity in the mode in which the contractors furnish their supplies than in the appropriation as shown by the number of Patients on full, half and low Diets; to me these appear to have no unusual proportion relatively to each other, than is observed in Military Hospitals generally abroad, unless in the number of Men on full Diet; but I should have been glad to know more particularly in what instances extras are apportioned. The Rule in the Army generally is to allow Extras only to the two lower Diets, sparingly to the half Diet, and rarely, certainly only specially, to those enjoying a full Diet. It may be that in Convict Hospitals there are more cases of Scurvy or Fevers of a Typhoid character (arising from local and particular circumstances) than are generally found in the Army, and such, from the debilitating influence of their Diseases, would require a more generous Diet than others; but this as well as the proportioning of Extras to particular cases must I apprehend mainly depend on the discretion of the prescribing officer, controlled by the superintending Medical officer, who, if suspicion arises, has the power to call for detailed histories of each case. In regard to the incidental remark of Mr. Irvine that the Contractors, like all other dealers, have a manifest interest in getting off as large a portion as possible of the Articles they deal in, etc., without regard to casual or possible savings, thereby setting aside exactitude as to the quantities actually needed, and in a paragraph above the one last quoted “and thus put it out of the power of the contractors to demand or receive payment at their prices per head for each Patient whatever may be the actual quantities consumed.”

In regard to these two paragraphs, if I rightly understand Mr. Irvine, there does appear an irregularity which ought to be changed. The Clear understanding and meaning of the Diet Tables and Extra Tables to shew the actual quantities, and no more, thought proper by the prescribing officer for each Patient, and which quantity and no more should be daily supplied by the Contractor; if such