SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 218, per ship Helvellyn.)

My Lord, Government House, 10th Nov., 1841.

I have the honor to report to Your Lordship that I returned on the 1st instt. from a visit to Port Phillip, having availed myself of the first and only opportunity of visiting that District, which has presented itself to me during the time I have had the honor to administer the affairs of this Government.

I am happy to be able to report to Your Lordship that I found the progress, made by the settlement of Melbourne and Geelong, to be fully equal to my expectations. I was struck with the beauty of the Country at both places, and with the quantity of land already brought into cultivation on the River Yarra Yarra.

My passage from Sydney to Melbourne in the "Seahorse," Steamer, occupied four days, my return in the same vessel three, and I remained there six entire days, making in the whole an absence from Sydney of thirteen days.

My visit appeared to be satisfactory and gratifying to Her Majesty's Loyal Subjects of the Province; and every demonstration of attachment to Her Majesty's Person and Crown was manifested on the occasion.

I have, &c.,

Geo. Gipps.

[Enclosure.

A copy of this letter, dated 2nd November, 1841, will be found in a volume in series III.]
LORD STANLEY TO SIR GEORGE GIPPS.
(Despatch No. 33, per ship Honduras.)

Sir,
Downing Street, 15 November, 1841.

I have to acknowledge the receipt of your Dispatch No. 101 of the 27th April last, reporting that Sir Maurice O'Connell, on the part of the Heiresses of the late Governor Bligh, had formally abandoned their claim to certain Lands in the Town of Paramatta upon receiving at the same time a confirmation of their Title to other Properties which had only been put in suit in order to defend the right of the Crown to the first named Lands.

I approve of the course, which you adopted for the final settlement of this Claim on the assurance that no possible opening has been left for the revival of it at any future time.

I have, &c,
STANLEY.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 221, per ship Helvellyn.)

My Lord,
Government House, 16th Novr., 1841.

In my Despatch No. 134 of the 4th July, 1841, I reported that no tidings could be obtained in this Colony of a man named William Fisk (or Fish) respecting whom an enquiry was made by Your Lordship's Despatch No. 41 of the 14th April, 1840.

I have now to report to Your Lordship that William Fish has been discovered in a distant part of this Colony beyond the boundaries of Location; and I transmit herewith a Copy of a statement made by him to the Commissioner of Crown Lands for the District of Peel's River, otherwise called Liverpool Plains, about 200 miles to the North West of Sydney.

I have, &c,
GEO. GIPPS.

[Enclosure.]

[A copy of this statement is not available.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 222, per ship Helvellyn.)

My Lord,
Government House, 17th November, 1841.

I have had the honor to receive Your Lordship's Despatch No. 221 of the 14th March, 1841, in which was enclosed a letter from Charles Hayes, complaining that his son William Hayes,
sentenced to transportation at Limerick in 1836, was still re­tained a Prisoner in New South Wales, notwithstanding that a Free Pardon had been forwarded to my Predecessor for him by Lord Glenelg on the 21st July, 1837.

I lost no time, on the receipt of Your Lordship's Despatch, in enquiring into the truth of the complaint of Charles Hayes, and I regret very much to have to report to Your Lordship that I found his statement to be correct.

Before I proceed further, it seems to me proper that I should detail to Your Lordship the course of proceeding, which it is usual in this Government to follow on the receipt of a Pardon for any Prisoner.

The receipt of the Pardon is notified in the Government Gazette of the Colony by the Colonial Secretary, and at the same time a notification of its receipt is sent to the Principal Superintendent of Convicts, with a request that he will transmit to the Colonial Secretary the personal description of the Prisoner in order that it may be endorsed on the Copy of his Pardon, which is to be issued to him.

On the receipt of this communication, it is the duty of the Principal Superintendent of Convicts to make the Gracious intentions of the Crown known to the Prisoner, and to transmit to the Colonial Secretary the personal description of the Prisoner that the proper identification of him may be secured. The Colonial Secretary having endorsed the personal description of the prisoner on a Copy of the Pardon, this Copy is sent to the Principal Superintendent of Convicts to be issued to the Prisoner, the Original Pardon under the Sign Manual being kept with the records of the Colony.

In the case of William Hayes, it appears that the Pardon was received in Sydney on the 2nd Decr., 1837, Colonel Snodgrass then being Acting Governor.

For some reason, however, which cannot now be ascertained, the letter, informing the Principal Superintendent of the receipt of it, was not written until the 7th Febry. following, nor the notification of the receipt of it made in the Government Gazette before the 14th of the same month; and I regret further to have to report that there is no proof whatever that any direct communication of its receipt was made by the Principal Superintendent of Convicts to Hayes. As William Hayes was then in the assigned service of Mr. C. L. Brown of the Williams River (distant about 100 miles from Sydney), this communication ought to have been made by letter; but there is nothing to shew that any such letter was written either to Hayes himself,
or to his Assignee, or to the Magistrate of the District; and, as
the Principal Superintendent of Convicts states that the Clerk,
whose duty it was to prepare the letter, was some time after­
wards dismissed for neglect in a somewhat similar case, I fear
it must be concluded that no communication of the receipt of his
Pardon was ever made to the Prisoner except through the medium
of the Gazette. His Pardon, however, was notified a second
time in the Gazette of the 27th Feby., 1839, and the Principal
Superintendent of Convicts has observed that as such notifica­
tions are always copied into the ordinary Newspapers and are
eagerly looked for by Convicts, they are more likely even than
direct communications to reach the persons for whom they are
intended.

I have no reason, however, to suppose that the notice of his
Pardon ever reached William Hayes.

He continued in the service of Mr. Brown on the Williams
River until the 5th Octr., 1840, when he was committed for trial
for theft, and, on conviction of the charge, was sentenced to
serve a year in Irons on the public roads, which sentence he
was serving when I received in August last Your Lordship's
Despatch respecting him. He was also I find punished (that is
to say flogged) twice as a Convict, whilst in the service of Mr.
Brown, having received 40 lashes on the 3rd of May, 1839, for
telling a wilful falsehood, and 36 lashes on the 27th March, 1840,
for disobedience of orders.

To these punishments, he of course could not have been sub­
jected, if his free Pardon had been issued in due time; neither
would he have been subject to trial in a summary manner and
without a Jury for the offence of theft, subsequently committed
by him, though of course he might have been tried for it in the
ordinary manner either at Quarter Sessions or in the Supreme
Court, and have received such sentence as the Court might award;
such sentence, however, would not have been hard labour in Irons.

On the receipt of your Lordship's Despatch, I lost no time in
taking Hayes out of the Ironed Gang, and giving him the full
benefit of his Pardon; and I charged the Police Magistrate of
the District of Maitland to take care of him until he could pro­
vide himself with suitable employment.

I have also taken measures to satisfy myself that there is no
other case in the Colony, in which a Prisoner may have failed
to receive the benefit of the Pardon intended for him.

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

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 223, per ship Helvellyn.)

My Lord,

Government House, 19th Novr., 1841.

I have had the honor to receive Your Lordship's Despatch, No. 249 of the 24th April, 1841, transmitting to me Copies of certain Papers received from the Foreign office, respecting a claim against the French Government of £49 2s. 6d. made by me in my Despatch No. 172 of the 13th Decr., 1839, and in particular a copy of a Note addressed by Monsr. Guizot to Mr. H. Lytton Bulwer on the 16th April, 1841, wherein certain further information is required respecting Francois Rougier.

I have the honor to inform Your Lordship that Francois Rougier was a Civilian; and I enclose a document which I conceive to be of the nature of that described by Monsr. Guizot, as, "Un etat indigent l'objet de la depense, et certifie par l'autorite qui la fait." I have, &c.,

GEO. GIPPS.

[Enclosure.]

[A copy of this paper is not available.]

LORD STANLEY TO SIR GEORGE GIPPS.
(Despatch No. 34, per ship Honduras; acknowledged by Sir George Gipps, 4th July, 1842.)

Sir,

Downing Street, 20th November, 1841.

The Lords Commissioners of the Treasury having intimated to me that they have authorized an advance to the Agent General for New South Wales on account of the Colonial Government to the amount of £6,000, I have to request that you will take the necessary measures for the repayment of that sum into the Commissariat Chest.

I am, &c.,

STANLEY.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 224, per ship Helvellyn.)

My Lord,

Government House, 21st Novr., 1841.

In my despatch No. 207 of the 13th Octr. last, I reported to Your Lordship the measures, which I had adopted in order to carry into effect the orders of Her Majesty's Government for discontinuing the transportation of doubly convicted (or any other) offenders from New South Wales to Norfolk Island;
1841.
21 Nov.

Reasons for despatch.

Inability to remove doubly convicted convicts from Norfolk Island.

and I stated in the 1st paragraph but one of that Despatch that the principal object of it was to solicit from Your Lordship an authority to send to Van Diemen’s Land a portion of the Prisoners, who would otherwise be sent to Norfolk Island, it being proposed to confine the rest on Cockatoo Island in Port Jackson.

That Despatch Your Lordship will perceive was written in the expectation that, as the Lieutt. Governor of Van Diemen’s Land had objected to receive doubly convicted Prisoners from Norfolk Island, he would equally object to receive persons of the same class from New South Wales; but Sir John Franklin having, I am happy to say, since my Despatch No. 207 was written, consented to receive a limited number of these latter, I have to request that the paragraph, referred to in my Despatch of the 13th Octt. last, may be considered as cancelled.

But, although the difficulty, which stood in the way of my discontinuing transportation to Norfolk Island, is thus got rid of, Your Lordship will perceive that I am still unable to remove the doubly convicted, already at Norfolk Island; and I beg leave to remark that, though all the Despatches, which I have received on the subject of Norfolk Island, seem to be written in the understanding that these men (nearly 1,200 in number) are to be removed, in order that the Island may be appropriated exclusively to Prisoners from England under Captn. Maconochie’s own system of management, there is no positive order for their removal in any Despatch which I have received.

Under these circumstances, I shall wait Your Lordship’s further orders respecting them.

I have, &c.,

Geo. GIPPS.

22 Nov.

Approval by treasury of instructions re bounty orders.

LORD STANLEY to SIR GEORGE GIPPS.
(Despatch No. 35, per ship Honduras.)

Sir,

Downing Street, 22nd November, 1841.

Having communicated to the Lords Commissioners of the Treasury a Copy of the Dispatch which I addressed to you on the 14th Ultimo on the subject of the embarrassment arising from the excessive issue by you of Bounty Orders for the Introduction of Emigrants into New South Wales, I have to acquaint you that the Lords Commissioners have signified their entire concurrence in the Instructions which were conveyed to you in that Dispatch.

I am, &c.,

STANLEY.
STANLEY TO GIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 225, per ship Helvellyn.)

My Lord, Government House, 24th Novr., 1841.

Referring to the long correspondence which has taken place on the subject of the compensation granted to the extent of £7,000 to the persons who formed the "Port Phillip Association," and particularly to Lord Normanby's Despatch, No. 36 of the 8th April, 1839, I have the honor to report to Your Lordship that this business has been brought to a final settlement, on the principle laid down in Lord Glenelg's Despatch, No. 34 of the 10th July, 1837, and that the lands (being 10,416 acres), purchased by the Members of the Association at Port Phillip to the amount of £7,000, have been granted in trust to Mr. S. A. Donaldson, a Merchant of Sydney, he having been duly authorized to receive the same as Trustee by the parties interested.

I have, &c.,

Geo. Gipps.

LORD STANLEY TO SIR GEORGE GIPPS.
(A circular despatch, per ship Honduras.)

Sir, Downing Street, 30th November, 1841.

It is my pleasing duty to announce to you that, on the morning of the 9th instant, at twelve minutes before Eleven o'clock, The Queen was happily delivered of a Prince, to the great joy of the Nation and of all the Royal Family. Her Majesty and the Infant Prince have, through Divine Mercy, continued to do well up to the present time.

I have, &c.,

Stanley.

LORD STANLEY TO SIR GEORGE GIPPS.
(A circular despatch, per ship Honduras.)

Sir, Downing Street, 1st December, 1841.

I transmit to you the Form of a List with which I wish you should hereafter accompany every series of Despatches, or indeed any single Despatch which you may have occasion to address to me. The List should, of course, be detached from the Despatch to which it refers. The object, with a view to which I call for it is, that, on the arrival of official Documents at this Department, I may at once have before me a brief notice of the contents and objects of each, and may thus be apprised, without delay, of any question which you may have occasion to propose for the decision of Her Majesty's Government. In the very extensive correspondence in which I am engaged, great convenience results from the regular observance of Forms of this nature,
and from an uniformity of proceeding respecting such Forms by the Governors of all the British Colonies; you will therefore have the goodness to pay exact attention hereafter to this instruction.

To prevent, as far as possible, any misunderstanding of my meaning, I enclose a specimen of such a List as I desire to receive from you.

I have, &c,

STANLEY.

[Enclosure.]

[This form was in four columns for the "number of despatch"; "date of despatch"; "subject of despatch"; and "number of enclosure."

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 226, per ship Ann; acknowledged by lord Stanley, 29th July, 1842.)

My Lord, Government House, 1st Dec., 1841.

In my Despatch No. 212 of the 2nd ulto., I reported to Your Lordship the measures which I had in contemplation in order to meet the expences of Immigration into this Colony from the United Kingdom; and I have now the honor to enclose a Copy of a Minute on the subject, which I yesterday laid before the Legislative Council.

I cannot but deeply lament that a necessity should have arisen for the measure* which I propose; but, in my Minute to the Council, I have so fully explained the causes which have led to it, that it seems to me unnecessary to dwell further on them in this Despatch.

I regret to have to state that the commercial embarrassment of the Colony, and the consequent depression of all Interests in it, continues unabated.

I have, &c,

GEO. GIPPS.

[Enclosures.]

[Copies of these papers were printed in the "Votes and Proceedings" of the legislative council.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 227, per ship Jack; acknowledged by lord Stanley, 1st June, 1842.)

My Lord, Government House, 2nd Decr., 1841.

I have the honor to forward herewith a Copy of a letter which I have received from Mr. Felton Mathew, the gentleman whom I selected to accompany Capt'n Hobson to New Zealand

* Note 82.
as Surveyor General, and whose appointment as such was reported by me to Your Lordship on the 9th Feb., 1840, in my Despatch No. 14, and which I was led, by Your Lordship's Despatches of the 17th July, and 1st Augt., 1840, Nos. 111 and 120, to hope had been approved and confirmed.

Mr. Felton Mathew now represents to me that he has been superseded in the appointment of Surveyor General; and that even the inferior office of Deputy Surveyor General has been filled up from England.

Under these circumstances, I feel it due to Mr. Mathew to recommend him to Your Lordship's notice, unless indeed there should be any misconduct attributed to him, since his departure from this Colony, of which I am uninformed.

The character, which Mr. Mathew bore in this Colony, was that of an active, able, and zealous officer; and he at my request gave up a respectable situation (that of Surveyor of the Town of Sydney, with a salary of £400 a year, and a forage allowance for two horses) in order to proceed with Capt'n Hobson to New Zealand.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[A copy of this letter, dated 27th September, 1841, will be found in a volume in series III.]

LORD STANLEY TO SIR GEORGE GIPPS.

(Despatch No. 36, per ship Honduras.)

Sir, Downing Street, 4 December, 1841.

I have received your dispatch, No. 113 of the 14 of May last, reporting the result of an Expedition undertaken by several private Individuals of Melbourne for the purpose of exploring Corner Inlet.

You also report having complied with a demand for two Special surveys in that neighbourhood, measures being taken for reserving a Site for a Town.

I trust that the discontinuance of the system of Special Surveys, which was notified to you in the month of February last, will have prevented the inconvenience you anticipate from the necessity of forming Police and other Establishments at Corner Inlet, and that the proper precaution you have taken of reserving a Site for a Town will have diminished the disadvantages of the admission of the Demand for the Special Surveys in question.

I am, &c.,

STANLEY.
1841.
4 Dec.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 228, per ship Jack; acknowledged by Lord Stanley, 16th June, 1842.)

My Lord,

Government House, 4th Decr., 1841.

I have the honor herewith to transmit to Your Lordship a Copy of a Notice which has been issued by this Government, extending the Bounties on Emigrants to persons between the ages of 40 and 50, provided they bring with them adult children in proportions which are fixed by the Notice.

I beg leave to state to Your Lordship that the issue of a Notice of this nature was in contemplation, before I received Your Lordship's Despatch of the 4th March, 1841, No. 214, which conveyed to me documents, wherein a similar proposal was made by Messrs. Carter and Bonus, and supported by the Land and Emigration Commissioners.

With respect to the other proposal contained in the letter of Messrs. Carter and Bonus to the Land and Emigration Commissioners of the 5th Feb., 1841, and in the letter from the Commissioners to Mr. Stephen of the 19th of the same month, namely, that the List should be extended of Tradesmen who are now eligible for the Colonial Bounty, I beg to report to Your Lordship that, in my own opinion and in that of the majority of the Immigration Committee of the Legislative Council, such an extension is not desirable.

It is considered that Tailors, Shoemakers, and all artizans of the higher class can find their way to the Colony in sufficient numbers without the assistance of the Bounty; and the inconvenience, arising out of the disposition which the Immigrants have to linger in the Towns, would probably be increased, were the Bounties to be extended to Tradesmen not entitled to them under the existing regulations.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[This notice, dated 11th October, 1841, was printed in the "Government Gazette."]

LORD STANLEY TO SIR GEORGE GIPPS.
(Despatch No. 37, per ship Kelso; acknowledged by Sir George Gipps, 8th September, 1842.)

Sir,

Downing Street, 6 December, 1841.

I transmit to you, herewith, Copies of a Correspondence which has passed between this Department and the Board of Treasury on the subject of the claims preferred by Lt. Colonel Sir Thomas Mitchell and the other Officers employed on the
Stanley to Gipps.

Expedition into the Interior of Australia in the years 1835 and 6 to some special remuneration for their Services on that occasion.

In compliance with the recommendation of the Lords Commissrs. I have to direct you to propose to the Legislative Council of New South Wales to grant to Sir Thomas Mitchell and the surviving Officers of his Party on that Expedition such a Sum respectively as will make up their Pay, while absent from the Colony, to double what it would have been if they had remained in the discharge of their respective duties.

I am, &c.,

Stanley.

[Enclosure No. 1.]

Mr. E. Gordon to Under Secretary Stephen.

Sir, Treasury Chambers, 28 Augt., 1840.

I have submitted to the Lords Commissioners of Her Majesty's Treasury your letter of the 26th Inst. enclosing one from Mr. Goulburn, in which he urges the Claim of Sir Thomas Mitchell, the Surveyor General of New South Wales, and of the other Officers employed on the recent Expedition into the interior of Australia to some special remuneration for their services on that occasion; and I have it in command to request you will state to Lord John Russell that, before my Lords can form any opinion as to the expediency of acceding to the proposition recommended in your said letter, their Lordships wish to be informed of the particulars of the service for which Sir Thomas Mitchell and the Officers, who accompanied him, are considered to be entitled to Special remuneration.

My Lords also wish to be apprized of the circumstances under which that Service was undertaken, whether undertaken by previous direction of the Colonial Government, and likewise of the Public Situation and Emoluments at the time held by the Parties engaged in it, and if any arrangement was made for the performance of their ordinary duties while they were occupied by the Special Service for which extra remuneration is claimed.

My Lords at the same time request to be informed by what authority and to what extent special remuneration or reward had been assigned to the subordinate Persons employed under Sir Thomas Mitchell on the occasion in question. I am, &c.,

R. Gordon.

[Enclosure No. 2.]

Under Secretary Stephen to Mr. C. E. Trevelyan.

Sir, Downing Street, 28 July, 1841.

I am directed by Lord John Russell to acknowledge the receipt of Mr. Gordon's Letter of the 28th August last, requesting certain information to enable The Lords Commissioners of the Treasury to form an Estimate of the Claims of Sir Thomas Mitchell and the Officers, who accompanied him on his Expedition into the interior of New South Wales, to reward for their services.

In reply, I am directed to transmit to you, for the information of the Lords Commissioners, the enclosed copies of Despatches from the Governor of New South Wales shewing the Circumstances under which that service was undertaken and the particulars attending the execution of it.

* Note 83.
I am directed further to state that Sir Thos. Mitchell held the office of Surveyor General with a Salary of £1,000 a year, and was accompanied by Mr. Stapylton, since deceased and at that time a Member of the Survey Department, and by the Colonial Botanist, who was killed by the Natives on an early expedition. There were also Convicts who received rewards for good behaviour. The duties of the Surveyor General, and the assistant Surveyor by whom he was accompanied, were performed during their absence by other Members of the Survey Department.

JAS. STEPHEN.

MR. C. E. TREVELYAN TO UNDER SECRETARY STEPHEN.

Sir, Treasury Chambers, 23d Augt., 1841.

With reference to your letter of the 28 Ulto. on the claim of Sir Thos. Mitchell and the Officers who accompanied him on his Expedition into the interior of New South Wales to reward for their services, I have it in command from the Lords Commissioners of Her Majesty's Treasury to request you will state to Lord John Russell that my Lords are perfectly satisfied with the information contained in the despatches from the Governor of New South Wales, forwarded in your Letter, so far as they relate to the Service performed and the nature of the expedition.

Their Lordships, however, cannot but advert to the minute of the Council and the opinion expressed by them in that minute. Their Lordships do not consider that Sir Thos. Mitchell is a proper object for a special reward, unless Lord John Russell is perfectly satisfied with the explanation of Sir Thos. Mitchell, as to the transaction to which the Minute* of the Council related. Their Lordships therefore must withhold their sanction to the Grant until they receive from Lord John Russell a further communication on the subject.

I have, &c.,

C. E. TREVELYAN.

UNDER SECRETARY HOPE TO MR. C. E. TREVELYAN.

Sir, Downing Street, 13 Novr., 1841.

With reference to your letter of the 23d August, in which you stated that the Lords Commissioners withheld their sanction to the grant of a special reward to Sir Thomas Mitchell, though satisfied as to the service performed, until they should receive a further Communication from Lord John Russell on the subject of the transaction to which the Minute of the Council of New South Wales referred to by you related, I am directed by Lord Stanley to state to you that he finds, on investigating this case, that the circumstances of the transactions to which you allude were fully before his predecessors, Lord Glenelg and the Marquis of Normanby, and that Sir Thomas Mitchell was notwithstanding recommended by Lord Glenelg to his Successor, and by him to Her Majesty, as deserving the honor of Knighthood for the very same service in the performance of which it occurred.

Lord Stanley, therefore, feels that it would be unnecessary, if not improper, for him to enter again upon the merits of a case

* Note 84.
in which two of his predecessors have given so strong a proof of their conviction of the propriety of Sir Thomas Mitchell's conduct, and desires me to state that he considers that the Lords Commissioners may rest satisfied respecting it upon that ground.

I have, &c,
G. W. Hope.

[Enclosure No. 5.]

Mr. C. E. Trevelyan to Under Secretary Stephen.

Sir,
Treasury Chambers, 27th Nov., 1841.

With reference to your letter dated 13th Inst. respecting the Grant of a Special reward to Sir Thomas Mitchell on account of his services in New South Wales.

I am commanded by The Lords Commissioners of Her Majesty's Treasury to acquaint you, for the information of Lord Stanley, that, as the value of Sir Thos. Mitchell's discoveries has not been questioned and as the preceding Secretaries of State have, by recommending him for the honor of Knighthood and for pecuniary remuneration, marked in the strongest manner their opinion of the imputations which had been thrown upon him, My Lords think it right that the reward due to successful exertion should not be withheld from him and the Officers employed under his Command in the Expedition into the Interior of New South Wales in the years 1835 and 1836. They, therefore, recommend to Lord Stanley to authorize the Governor of New South Wales to propose to the Council the Grant to Sir Thomas Mitchell and the Surviving Officers of the Party on those Expeditions such a Sum respectively as will make up their pay, while absent from the Colony, to double what it would have been, if they had remained in the discharge of their respective duties.

I have, &c.,
C. E. Trevelyan.

Lord Stanley to Sir George Gipps.

(Despatch No. 38, per ship Kelso.)

Sir,
Downing Street, 7 December, 1841.

I have received your dispatch, No. 124 of the 15 of June last, enclosing a Requisition for Leg Irons to be supplied on account of the Colonial Government of New South Wales for the service of the Police and Gaols.

I think it right to enclose, for your information and guidance, Copies of a Correspondence which has taken place on the subject of this requisition, from which you will perceive that, although the Inspectors of Prisons for the Home District have reported that Irons, such as those which you have described, are not used even for Punishment in a well regulated Prison in England, I have still authorized a compliance with the Requisition, on the recommendation of the Secretary of State for the Home Department, it being always understood that the use of Irons is from necessity, and for security against escape.

I am, &c.,
Stanley.
[Enclosure No. 1.]

MR. E. BARNARD TO UNDER SECRETARY STEPHEN.

Sir,

No. 2 Parliament Street, 13th November, 1841.

I have the honor to acknowledge the receipt of Your Letter of the 22d ultimo, enclosing a Despatch from the Governor of New South Wales, forwarding a Demand for Leg Irons for the use of the Police and Gaols in the Colony; and to acquaint you, in reply, that, having transmitted the correspondence to the Inspectors of Prisons for the Home District, I have received a letter from those Gentlemen, a copy of which is enclosed, stating their opinion that Irons such as those described are not used, even for Punishment, in a well regulated Prison in England.

I have therefore to request that you will lay the same before Lord Stanley, and favor me with his Lordship's further Instructions, before I make application to the Board of Ordnance on the subject of this Requisition.

I have, &c,

EDWD. BARNARD.

[Sub-enclosure.]

INSPECTORS OF PRISONS TO MR. E. BARNARD.

Sir,

Raymond Buildings, 9th November, 1841.

We beg to acknowledge the receipt of your letter dated the 1st Instant (but which only reached us on the 5th), transmitting a copy of a letter from the Under Secretary of State for the Colonial Department, enclosing a demand for one thousand Leg Irons for the use of the Police and Gaols of New South Wales; and requesting our opinion whether these articles are such as, consistently with the existing system and principles of Prison discipline, would be employed in a well regulated Gaol in this Kingdom.

In reply, we beg to remark that the use of Irons of any description in the ordinary discipline of Prisoners in this Country is expressly prohibited by Law; and that no Prisoner can be put in Irons except in case of urgent and absolute necessity, nor kept therein for more than twenty four hours without an Order in writing from a visiting Justice (4 Geo. 4, C. 64, S. 10, rule 12 and 2 and 30 Vic., C. 56, S. 6, rule 6).

We are of opinion that Irons, such as those described in the demand which has been transmitted from New South Wales, are not used, even for punishment, in a well regulated Prison in England.

As your letter is addressed generally to "the Inspectors of Prisons," we think it right to observe that the Prisons more immediately confided to our Inspection are those situated in the Home District only. There are three other Inspectors of Prisons in England, whose names we annex.

We have, &c,

W.M. CRAWFORD,  
WHITWORTH RUSSELL,  
Inspectors of Prisons for the Home District.

P.S.—We return the enclosures of your letter.

CAPTAIN WILLIAMS, Northern and Eastern District.
DR. BISSETT HAWKINS, Southern and Western District.
F. HALL, Esqr., Northern and Scotland.
GIPPS TO RUSSELL.

[Enclosure No. 2.]

UNDER SECRETARY STEPHEN TO MR. E. BARNARD.

Sir, Downing Street, 7th December, 1841.

I am directed by Lord Stanley to acquaint you that he transmitted, for the consideration of Secretary Sir Thomas Graham, your letter of the 13th Ultimo with a Report from the Inspectors of Prisons for the Home District of their opinion as to the propriety of complying with the demand for Leg Irons for the use of the Police and Gaols in the Colony of New South Wales.

Lord Stanley directs me to enclose to you a copy of the reply which has been received from the Home Department, and to convey to you his Lordship's authority for procuring and sending out to the Colony the Irons specified in the Requisition forwarded to you on the 22d of October last.

I am, &c,

JAS. STEPHEN.

[Sub-enclosure.]

MR. S. M. PHILLIPPS TO UNDER SECRETARY HOPE.

Sir, Whitehall, 25th November, 1841.

I have laid before Secretary Sir James Graham your letter of the 23rd Instant, with its enclosed Copy of a Dispatch from the Governor of New South Wales, forwarding a demand for Leg Irons for the use of the Police and Gaols in the Colony, and a copy of a letter from the Colonial Agent upon the subject.

I am now directed to acquaint you, for the information of Lord Stanley, that Sir James Graham is of opinion that in England the Report of the Inspectors of Prisons would be conclusive against the use of such Irons. But it is possible that in New South Wales the state of Prisons may be very different, and the safe Custody of Convicts may require coercive discipline not permitted here. Upon such a subject, Sir James Graham would be disposed to pay considerable deference to the opinion of the Governor, who must be presumed to be the best judge; it being always understood that the use of Irons is from necessity and for security against escape.

I am, &c,

S. M. PHILLIPPS.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 229, per ship Jack.)

My Lord, Government House, 8th Dec., 1841.

I beg leave respectfully to represent to Your Lordship that I am labouring under some inconvenience from not having received Your Lordship's commands on the points connected with the establishment of Municipal Corporations in this Colony, which were submitted to Your Lordship in my Despatch No. 120 of the 26th Augt., 1840.

I hoped to have been able to bring the Municipal Corporation Bill again before the Legislative Council in the course of the present year; but the annual Session of the Council is now drawing to a close, and I fear it will not be in my power to do so.
I regret this the more, as one of the objects of the Bill is to
relieve the Government of some part of the local charges for the
Town of Sydney, now borne by the general revenue of the Colony.
The Inhabitants of Melbourne are very anxious to have a
Corporation; and, as no question, respecting the class of persons
called "Emancipists," exists in that Town, I should proceed at
once to pass an Act for the Incorporation of it, somewhat in the
nature of the Acts which I find have recently been passed in
Canada for the Incorporation of Quebec and Montreal; but that
I think it would be ungracious, and scarcely expedient, to give
to Melbourne a precedence over Sydney.

I beg at the same time to represent to Your Lordship that I
am equally anxious to receive Your Lordship's instructions re­
specting the "Police and Public Works Bill," which was brought
under Your Lordship's notice by my Despatches of the 1st and
26th August, 1840, Nos. 98 and 121, this Bill being even more
calculated than the Municipal Corporation Bill to relieve the
Local Government from some of the charges, which now press
so heavily on our finances.

I have, &c,

GEO. GIPPS.

LORD STANLEY TO SIR GEORGE GIPPS.
(Despatch No. 40, per ship Kelso.)

9 Dec.

Despatches acknowledged.

Sir,

Downing Street, 9 December, 1841.

I have to acknowledge the receipt of your dispatch, No. 92
of the 13 of April last, on the subject of the condition, which,
according to the practice of the Colony, is inserted in Free or
Absolute Pardons granted by the Governor of New South Wales,
that condition being that the person receiving the Pardon should
leave the Colony whenever called upon to do so, and more par­
ticularly referring to the case of Thomas and Charlotte Hindes.

I have also received your dispatch, No. 93 of the same date, in
which you bring under my notice the whole subject of Pardons,
with reference to doubts and apparent anomalies existing in
respect to the granting of Pardons, and the effect which Pardons
carry with them.

I transmit to you herewith Copies of a Correspondence which
has passed between my Under Secretary and the Under Secretary
for the Home Department, including a Free Pardon which Her
Majesty has been graciously pleased to grant to Charlotte Green
(now Hindes) and Thomas Hindes.

The various other points on the subject of Pardons, adverted
to in your Dispatches, are still under the consideration of H.M.
Government.

I am, &c,

STANLEY.
[Enclosure No. 1.]

UNDER SECRETARY STEPHEN TO MR. S. M. PHILLIPPS.

Sir,
Downing Street, 30th September, 1841.

I am directed by Lord Stanley to transmit to you the enclosed Copies of a Correspondence with the Governor of New South Wales, relative to the condition, which, according to general practice, is inserted in what are termed Free or Absolute Pardons granted by the Governor of that Colony, that Condition being that the person receiving the Pardon should leave the Colony whenever called on by the Governor to do so. I also enclose a copy of a further Dispatch from Sir George Gipps bringing under the review of Her Majesty's Government the whole subject of pardons, with reference to doubts and apparent anomalies existing in respect to the granting of pardons and the effect which pardons carry with them; and I am to request that you will lay these Dispatches before Secretary Sir James Graham and move him to favor Lord Stanley with such remarks as he may have to make upon the suggestions of Sir George Gipps.

I have, &c,

JAS. STEPHEN.

[Enclosure No. 2.]

HON. H. MANNERS SUTTON TO UNDER SECRETARY STEPHEN.

Sir,
Whitehall, 15th Oct., 1841.

I am directed by Secretary Sir James Graham to acknowledge the receipt of your Letter to Mr. Phillipps of the 30th Ulto., enclosing Copies of a Correspondence with the Governor at New South Wales, relative to the Condition, which, according to general practice, is inserted in what are termed Free or Absolute Pardons granted by the Governor of that Colony, and transmitting also a copy of a further Despatch from Sir George Gipps, bringing under the review of Her Majesty's Government the whole Subject of pardons with reference to doubts and apparent anomalies existing in respect to the granting of Pardons, and the effect which pardons carry with them.

With regard to Thomas and Charlotte Hindes, the pardon in which case is more particularly referred to by Sir George Gipps, I am directed to acquaint you that Sir James Graham is of opinion that the Queen may be advised to grant a Free Pardon under Her Sign Manual to these two persons; and that, unless Lord Stanley should offer an opinion to the contrary, Sir James Graham will advise Her Majesty to take that course.

The various other points adverted to by the Governor require mature deliberation; and Sir James Graham is not prepared to offer an immediate opinion upon them.

I am, &c,

H. MANNERS SUTTON.

[Enclosure No. 3.]

UNDER SECRETARY STEPHEN TO HON. H. MANNERS SUTTON.

Sir,
Downing Street, 22nd October, 1841.

Having laid before Lord Stanley your Letter of the 15th Inst., I am directed to request that you will acquaint Secretary Sir James Graham that His Lordship has no objection to the Grant of a Free Pardon under the Sign Manual to Thomas and Charlotte Hindes.

I am, &c,

JAS. STEPHEN.
MR. S. M. PHILLIPPS to UNDER SECRETARY STEPHEN.

Sir, Whitehall, 1 December, 1841.

With reference to your letter of the 22nd October last, I am directed by Secretary Sir James Graham to transmit to you the enclosed Free Pardon, which Her Majesty has been graciously pleased to grant to Charlotte Green (now Hindes) and Thomas Hindes; and I am to request you to move Lord Stanley to forward the same to the Governor of New South Wales.

I am, &c.,
S. M. PHILLIPPS.

10 Dec.

Irregularity of G. W. Earl in drawing salary.

LORD STANLEY to SIR GEORGE GIPPS.

(Despatch No. 41, per ship Kelso.)

Sir, Downing Street, 10 December, 1841.

I transmit to you herewith, for your information and guidance, Copy of a Correspondence which has passed between this Department and the Board of Admiralty on the subject of an irregularity on the part of Mr. G. W. Earl, the Linguist and Draftsman of the Expedition for the Establishment at Port Essington, in regard to the manner in which that Gentleman has drawn on the Lords Commissioners of the Treasury for his Salary.

I am, &c.,
STANLEY.

[Enclosure No. 1.]

MR. C. E. TREVELYAN to UNDER SECRETARY STEPHEN.


The Lords Commissioners of Her Majesty's Treasury having had before them a Bill drawn by Mr. George Windsor Earl, of which no advice has been received, dated Victoria, Port Essington, 20th July, 1840, for the sum of £50 on account of the nett pay due to him as Linguist and Draughtsman to the expedition for the establishment of a settlement on the North Coast of Australia between 5th April and 5th July, 1840, I am directed by their Lordships to request, with reference to the former correspondence on the subject of Mr. Earl's employment on the expedition to Port Essington, that you will move Lord Stanley to cause my Lords to be informed whether the service of the expedition in question continued between 5th April and 5th July, 1840, and whether His Lordship would recommend that the Bill should be paid.

I am at the same time to request that you will bring under the notice of Lord Stanley the circumstance of the Bill having been drawn at three days' sight instead of at thirty days' sight, in disregard of the instructions given for Mr. Earl's guidance when he was first engaged to accompany the expedition, and I am to request that the attention of the acting commandant at Port Essington may be called to the irregularity.

I am, &c.,
C. E. TREVELYAN.
GIPPS TO RUSSELL.

[Enclosure No. 2.]

UNDER SECRETARY STEPHEN TO SIR JOHN BARROW.

Sir, Downing Street, 30 Nov., 1841.

I am directed by Lord Stanley to transmit to you the enclosed copy of a Letter from the Assistant Secretary to the Board of Treasury on the subject of a Bill drawn by Mr. G. W. Earl, dated Victoria, Port Essington, 20th July, 1840, for the sum of £50 on account of the pay due to him from the 5th April to the 5th July, 1840, as Linguist and Draughtsman of the Expedition for the establishment of the settlement in the North Coast of Australia. Lord Stanley has recommended to the Lords of the Treasury that the Bill in question should be paid; but his Lordship requests that the Lords Commissioners of the Admiralty will direct the Commandant at Port Essington to call the attention of Mr. Earl to the irregularity pointed out, in the enclosed Letter, of drawing for his Salary at three days sight instead of thirty, and to the necessity of observing in future the form prescribed to him in drawing such Bills.

JAS. STEPHEN.

[Enclosure No. 3.]

SIR JOHN BARROW TO UNDER SECRETARY STEPHEN.

Sir, Admiralty, 2d Decr., 1841.

I have received and laid before My Lords Commissioners of the Admiralty your letter of the 30th Inst., and am Commanded by their Lordships to acquaint you, for the information of Lord Stanley, that the Senior Officer at Port Essington has been directed to call Mr. Earl's attention to the Instructions he has received for drawing Bills for his pay at 30 days' sight. I have, &c.,

JNO. BARROW.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 230, per ship Jack; acknowledged by lord Stanley, 29th July, 1842.)

My Lord, Government House, 14th Decr., 1841.

As I am informed that no vessel is likely to proceed to England direct from this Port during the course of the next few weeks, I avail myself of the opportunity of a ship, about to sail for Madras, to forward to Your Lordship by the overland Mail from India* Copies of my Despatches of the 2nd ulto. and 1st inst., Nos. 212 and 226, and to report to Your Lordship that it is probable the Bill, which I presented to the Legislative Council on the 30th ulto., will not be proceeded with, but that other means will be resorted to for procuring the money, which may be required by the Government to meet the expenses of Immigration during the next few months.

The Committee of the Legislative Council, to which the Deben- 

ture Bill was referred, has not yet reported; but their proceedings have led to an offer of money from the Banks, which I understand the Committee will recommend me to accept.

* Note 86.
1841. 14 Dec.

Proposed relief for financial stringency.

The Committee will also, I believe, press me very earnestly to draw upon Her Majesty’s Government for the sum due to us for advances to New Zealand (about £40,000) and to proceed to sell the reserved lands at Port Phillip, and to open the Clarence River and Moreton Bay.

Notwithstanding the continuance of great commercial distress and the consequent scarcity of money in the Colony, I am happy to state that I think our prospects during the last ten days have improved.

Intelligence has reached the Colony (which, though not official, I have reason to believe authentic) that, in consequence of directions from the Commissioners of Land and Emigration, the Emigration from England for the present year was to end on the 31st Oct.; and I have, for the purpose of trying the market advertised the sale of some land in Sydney in the months of February and March next, though at upset prices sufficient to guard against their being sold too cheap.

The Season has, I am happy to say, been on the whole a favorable one; the Hay and Wheat Harvest is nearly complete; the Maize promises well; and there is generally an abundant supply of Grass for Sheep and Cattle.

The last accounts from England (down to the 20th Augt.), having brought better reports of the price of Wool, have tended also to revive confidence in the Public; and I am glad, in conclusion to say, that the Country was never more free from party spirit or from any desire to oppose or thwart the Government.

I have, &c,

GEO. GIPPS.

15 Dec.

Inclusion of Prince of Wales in prayers for royal family.

LORD STANLEY TO SIR GEORGE GIPPS.

(A circular despatch, per ship Kelso.)

Sir,

Downing Street, 15 December, 1841.

I have the honor to acquaint you that The Queen was pleased, on the 10th Instant in Council, to declare Her Royal Will and Pleasure that, in all Prayers, Litanies, and Collects for the Royal Family, the words “The Prince of Wales” be inserted after the words “The Prince Albert.”

I have therefore to instruct you to signify Her Majesty’s Pleasure to the Lord Bishop of Australia, in order that his Lordship may give to the Clergy of his Diocese the necessary Instructions that such additional Forms of Worship be observed in all Churches and Chapels of the United Kingdom of England and Ireland within his Diocese.

I have, &c,

STANLEY.
STANLEY TO GIPPS.

LORD STANLEY TO SIR GEORGE GIPPS.

(Despatch No. 43, per ship Kelso.)

Sir,

Downing Street, 19 December, 1841.

I have to acknowledge the receipt of your dispatch of the 13th of July last, No. 135, forwarding Copy of an application, which you had received from Mr. Andrew Lawrence Pasche, a Native of Denmark, for Letters of Denization, in order that he may be enabled to hold Land in New South Wales.

In conveying to you my authority for issuing to Mr. Pasche Approval of Letters of Denization, under the Local Act of the Colony, 9 Geo. 4, c. 16, No. 6, I transmit to you, for your information, a Copy of a Report from Her Majesty's Attorney and Solicitor General, in the case of M. Adam at Mauritius, which will be found to embrace some general principles of great importance on the subject of Colonial Laws of Naturalization.

I am, &c.,

STANLEY.

[Enclosure.]

THE ATTORNEY AND SOLICITOR GENERAL TO LORD JOHN Russell.

My Lord,

Doctors' Commons, 25th May, 1840.

We are honored with your Lordship's Commands, signified in Mr. Stephens's Letter of the 12th of March last, stating that he was directed to transmit for our consideration Copies of a Correspondence, which has passed between your Lordship's two immediate predecessors and the Governor of Mauritius, including the Draft of an Ordinance for the Naturalization of Mr. Adam.

Mr. Stephen also states that he is directed to request that, in consultation, we would report to your Lordship our joint opinion whether it is competent to the Local Legislature of Mauritius to impart to Mr. Adam any more extensive or unqualified privileges of Naturalization than those with which the proposed Ordinance would invest him, and, if so, in what respects such privileges could be lawfully enlarged, and whether there are any legal considerations, which should either induce or prevent the assent of the Crown being given to any such more comprehensive privilege of British Birth as Mr. Adam is desirous to receive, and as the Local Legislature may be competent to bestow.

In obedience to your Lordship's Commands we have taken the papers into consideration, and have the honor to report that We are of opinion that, under the Royal Instructions to the Governor of the Mauritius, dated the 30th of July, 1838, it is not competent to the Local Legislature of the Mauritius to impart to Mr. Adam any more extensive or unqualified privileges of Naturalization than those with which the proposed Ordinance would invest him.

The 25th Article of those Instructions expressly forbids the Governor to assent to any Ordinance for establishing a Title, in any person, to Land or other immovable property acquired by any Alien before his Naturalization.

The difficulty with respect to Mr. Adam's real property may be obviated by the revocation or modification of this Article; And we see no reason why the Crown should not assent to an Ordinance for Naturalizing Mr. Adam in the Mauritius, with a Clause...
1841. 
19 Dec._
Legal opinion re problems of naturalisation in case of M. Adam.

recognizing his Title to Real property before acquired in the Island, for in the old form of Letters of Denization power was given to hold Lands before acquired by the Alien in England; And there need be the less scruple with respect to the Mauritius, as there seems strong reason to think that, according to the old French Law, Aliens might hold Lands in that Colony.

But we do not think that the Crown can assent to an Ordinance, naturalizing Mr. Adam in the Mauritius, without a Clause disqualifying him to take any office, or place of trust, civil or Military, or to have any Grant of Lands or Tenements from the Crown. The Statutes, 12 and 13 Wm. 3, C. 2, and 1 Geo. 1, C. 4, expressly forbid any Foreigner to be Naturalized even by Act of Parliament without such restriction, and the Statute 13 Geo. 3, C. 25, and the other Statutes respecting our American Colonies do not apply to the Mauritius.

We have, &c.

J. DODSON.  
J. CAMPBELL.  
THOS. WILDE.

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LORD STANLEY TO SIR GEORGE GIPPS.  
(Despatch No. 44, per ship Kelso; acknowledged by Sir George Gipps, 17th June, 1842.)

Sir, Downing Street, 20th December, 1841.

I have to request that you will communicate to me, for the information of the Writer of the enclosed letter, any tidings which it may be in your power to procure respecting “Edward Houldsworth,” who it appears was transferred from the 80th Regiment of Foot to the Mounted Police of New South Wales in the month of September, 1840. I have, &c.,

STANLEY.

[Enclosure.]

MRS. HOULDSWORTH TO SECRETARY OF STATE.  
Macclesfield, 14 December, 1841.

I shall feel particularly grateful by your letting me know if my son Edward Houldsworth is living, as I understand by the inclosed letter from the War office that he was transferred from the 80th Foot to the Mounted Police on the 30th September, 1840; by so doing you will confer a lasting favor on Your very Humble servant, &c.,

ELIZ. HOULDSWORTH.  

[Sub-enclosure.]

MR. E. MARSHALL TO MRS. HOULDSWORTH.  
War Office, 25 November, 1841.

You are informed, in reference to your application regarding Edward Houldsworth of the 80th Foot, that it appears he was transferred to the New South Wales Mounted Police on the 30th September, 1840.

Any further application respecting him should be addressed to the Secretary of State, Colonial Department, London.

No further enquiry respecting him can be attended to, unless this letter is returned with such further enquiry when it is made.

E. MARSHALL.
STANLEY TO GIPPS.

LORD STANLEY TO SIR GEORGE GIPPS.

(Despatch No. 45, per ship Kelso.)

Downing Street, 20 December, 1841.

Sir,

I have received your Dispatches, Nos. 128 and 154 of the 24th June and 12th August last, inclosing Copies of a Correspondence which you had had with the Governor of South Australia, and reporting that, under the circumstances therein stated, you had made arrangements with the Major General Commanding Her Majesty's Troops on the New South Wales Station for detaching to South Australia a full Company of 80 men, and that directions had been sent by the Major General to Lt. Coll. Elliot, Commanding in Van Diemen's Land, to detach from thence a Company of the 96th Regt. to South Australia with as little delay as possible.

You also report that you had honoured Bills drawn on you by Governor Grey for the service of South Australia to the amount of Three Thousand Pounds, paying them from the Crown Revenues of New South Wales.

In reply, I have to acquaint you that the pressing exigencies of the Colony of South Australia appear to H.M.'s Government to justify your compliance with the request of Governor Grey that those Troops should be furnished, after having ascertained, as you most properly did, that they could be adequately accommodated. At the same time, I shall think it my duty to impress most strongly on Governor Grey that this Detachment of Troops to South Australia should be looked upon only as a temporary measure. The detachment of small Bodies of Troops to distant points causes great irregularity in carrying on that Branch of the Public Service, is productive of great expense, and is most injurious to the discipline of the Army.

I am led particularly to refer to this subject from observing in the Report of Captain Frome, R.E., addressed to Governor Grey, which forms one of the Inclosures to your Dispatch No. 154 of the 12th of August, that the Establishment of "permanent Barracks" in South Australia appears to have been in contemplation.

With regard to the issue from the Revenues of New South Wales of the Sum of Three Thousand Pounds to meet the Bills drawn by Governor Grey, I have to acquaint you that I have recommended to the Lords Commissioners of the Treasury to sanction this arrangement, and will communicate with you further on the subject when I shall have received their Lordships' decision.

I am, &c.,

STANLEY.
21 Dec. 1841

Submission of rules of court.

My Lord,

Government House, 21st Decr., 1841.

I have the honor herewith to transmit to Your Lordship various Rules of Court, which have been established by the Judges of this Colony, and which are in continuation of those transmitted with my Despatch, No. 155 of the 13th Ault., 1841.

These Rules, in pursuance of the 16th Section of the 9th Geo. IV, C. 83, I have the honor to submit for Her Majesty's Most Gracious approval, though, at the same time, it may be proper for me perhaps to observe that they will continue to be in force until disallowed.

Your Lordship will perceive that one set of these Rules relates to the Court, established at Port Phillip, by the Local Act 4th Vict., No. 22.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[Copies of these rules will be found in a volume in series IV.]

22 Dec. 1841

Transmission of "blue book" and general report.

My Lord,

Government House, 22nd Decr., 1841.

I have the honor to forward herewith the Blue Book for the year 1841, which agreeably to the instructions, contained in Your Lordship's Despatch No. 240 of the 10th April, 1841, is made up to the 30th Sept. only.

I also enclose a general Report on the state of the Colony, required by the same Despatch from Your Lordship, and by the Book of Rules and Regulations, Chapter 5, Sect. 6.

I have, &c.,

GEO. GIPPS.

[Enclosure No. 1.]

[This was a copy of the "Blue Book" for 1841.]

[Enclosure No. 2.]

General Report on Colony.

This was a repetition of the report transmitted with the despatch, numbered 176 and dated 14th September, 1841, with the following alterations:—

At the conclusion of the first section the following was added:—

The question has recently been agitated whether or not the Aborigines be amenable to the Law of the Colony for offences
committed on each other; and, on this subject, I shall shortly have occasion to address myself to the Secretary of State.

In the section on "Public and Private Wealth," the last paragraph began:

During the latter part of the year 1840 and the whole of 1841.

In the section on "Immigration," the following was added:—

The Immigration of 1841 has been far more extensive, and, when the year is concluded, will probably exceed 20,000 Souls.

The cost of this extensive Immigration, amounting to between £300,000 and £400,000, is entirely defrayed by the Colony; and though so large a drain on the Colonial funds may occasion some embarrassment to the Government, and perhaps create some alarm in England, the effect of it cannot fail to be highly beneficial.

The following was added at the end:—

The accounts for the present year (1841) are not yet made up; and the exact amount of Revenue cannot therefore be stated. The Land Revenue will exhibit a very great deficiency; but the ordinary Revenue will, it is hoped, be not less than that of 1840. There will be a considerable falling off in the amount of duties on spirits but an increase in nearly every other branch of Revenue. The decrease in the duty collected on Spirits is to be attributed in part to a decrease in the consumption of them, and in part it is feared to an increase in Smuggling.

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LORD STANLEY TO SIR GEORGE GIPPS.
(Despatch No. 47, per ship Kelso.)

Sir,

Downing Street, 23 December, 1841.

I have received your dispatch of the 13 of August last, No. 155, forwarding additional Rules of Practice promulgated by the Judges of the Supreme Court of New South Wales.

Before taking The Queen's Pleasure with regard to the disposal of those Rules, I should wish to receive a Report from the Judges of the Court of their opinion of the Working of those Rules after they shall have been a year in operation.

I am, &c.,

STANLEY.

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 236, per ship Jack; acknowledged by Lord Stanley, 29th July, 1842.)

My Lord,

Government House, 23rd Decr., 1841.

With my Despatch of the 1st inst., No. 226, I transmitted to Your Lordship a Copy of the Minute which I laid before the Legislative Council on the 29th ult., with a Bill to authorize the issue of Debentures secured upon the ordinary Revenue of the Colony; and, in my Despatch of the 11th inst., No. 360, I informed Your Lordship that the Debenture Bill would probably not be proceeded with, as the Committee, to which
1841.
23 Dec.

Resolutions by council re repayment of advances to New Zealand and issue of debentures.

Objections to issue of debentures in England.

Withdrawal of debenture bill.

Inability to agree to terms with banks.

Proposed bills on treasury.

it had been referred, was likely to report in favor of raising the necessary funds in a different manner.

I have now the honor to forward to Your Lordship the Report of the Committee, as also a Copy of the Resolutions, which were passed on the subject by the whole Council on the 21st inst., from which Your Lordship will perceive that I am strongly urged by the Council to draw on the Lords of the Treasury for the money advanced out of the funds of New South Wales for the service of New Zealand, and to issue Debentures, bearing interest in the Colony at 8 per cent. rather than an interest of 6 per cent. payable in London.

Your Lordship will perceive that the principal reasons assigned by the Committee for the advice contained in their report are that the issue of Debentures, such as I proposed, would probably have an injurious effect on the exchange between the Colony and England, and might also act prejudicially on the larger measure, proposed by the Committee, of raising in England a Loan for the support of Immigration, on the principle which was discussed in the years 1838 and 1839, and detailed in my Despatch to Your Lordship of the 22nd Nov., 1839, No. 157.

Public opinion in the Colony being greatly in favor of the proposal of the Committee, I have not thought it right to oppose myself to it, and have accordingly withdrawn the Debenture Bill.

In my Despatch of the 11th instant, I mentioned that the Committee would probably recommend me to accept an offer of money which had been made by the Banks; but it subsequently appeared that the Banks demanded terms, which I could not on the part of the Government comply with.

I cannot but be sensible that the Lords of the Treasury may object to my drawing on them for the amount due to the Colony from New Zealand; but, when the equity of the claim is considered, and the manner in which I am urged to the measure as well as our own necessities, I trust that I shall not seriously incur the displeasure of their Lordships, should I be forced to do so.

I shall of course report to Your Lordship the amounts and dates of any Bills that I may draw.

I have, &c.,

GEO. GIPPS.

[Enclosures.]

[Copies of these papers were printed in the "Votes and Proceedings" of the legislative council.]
SIR GEORGE GIPPS TO LORD JOHN RUSSELL.
(Despatch No. 237, per ship Jack.)

My Lord, Government House, 24th Decr., 1841.

I have had the honor to receive, by the Ship "William Jardine," which arrived yesterday, Despatches from Your Lordship of various dates from the 29th May, to the 2nd August, 1841, and numbered from 279 to 323, with the exception of numbers 278, 282, 292, 302, and 322, which are absent from the series.

Among the Despatches which have thus come to hand, there is one, namely, that of the 16th July, No. 307, which has occasioned me such extreme pain, that I can suffer no delay to take place in offering such an explanation of my conduct, in the matter wherein it has been censured, as I may be able to submit to Your Lordship.

I cannot, My Lord, but freely admit that, to any person having the knowledge of events which was possessed by Your Lordship in July, 1841, it must have appeared that I had been glaringly imprudent in entering, during the course of the year 1840, into engagements on the part of this Government, which might by possibility amount to nearly one million sterling; and I will also acknowledge that I cannot now entirely acquit myself of the charge of having given way too readily, during the great apparent prosperity of that year, to the demands of parties by whom I was surrounded and solicited, or of having trusted too much to chances, which could not be correctly calculated or with safety relied on.

What I desire to shew is that, though I, for the attainment of an object of the highest possible importance to the People confided to by Government, consented to run a considerable risk, the risk was one rather of personal or official responsibility to myself than of detriment to any Interest in the Colony or at Home.

I have already transmitted to Your Lordship the Minute, which I laid before the Legislative Council on the 30th Novr. last. This Minute contained an exposition of what I then considered to be the state of our affairs (and a far more unfavorable one than I should now have occasion to make); but I did not in it enter into any laboured justification of myself, as no justification was necessary in a quarter, whence, if any complaint had ever been made, it was of the insufficiency rather than of the excess in the number of our Immigrants.

In order to form a judgment of the extent to which I acted imprudently, it is necessary that many circumstances should be taken into consideration, which I shall now proceed to advert to.
During the year 1840, our Finances were in the most flourishing condition; the Land Revenue alone promised to yield for some time to come a sum of nearly £300,000 per annum applicable to Immigration; and the propriety of resorting to a Loan, in the event of any failure in that Revenue, had not then been questioned.

Complaints against Her Majesty's Government of the loudest and most reproachful nature had long prevailed amongst all classes of the Colonists, in consequence of the charge for maintaining the Police and Gaols of the Colony having been thrown on the local funds, by which it was alleged that the Government had deprived the Colony of the means of obtaining labour at the very time when it was most wanted, namely, when Transportation was about to cease; and I have repeatedly stated to Your Lordship that nearly every difficulty, which I have had to encounter in the administration of this Government, may be traced either immediately or remotely to this constant source of complaint.

After having by great exertions, aided by some fortunate coincidences, succeeded in bringing the ordinary expenditure within the ordinary Revenue, and thus leaving the produce of the Land Fund almost entirely applicable to Immigration, if I had hesitated to take on myself the responsibility of expending that fund, or if I had in any way attempted to stint the introduction of Emigrants, I cannot doubt that any evil, which might have befallen the Country, and all the evils which have fallen on it during the last 15 months would have been charged upon my imbecility, and, among those evils, would have been either the introduction of Coolies from India, or (if they could not have been obtained) of labourers of some inferior caste from places in the Pacific or China Seas, which are not dependencies of the British Empire.

I feel even now perfectly assured that, if at the present moment, instead of having an abundant and, perhaps for the moment, more than an abundant supply of Emigrants at Sydney, the supply had been in any way stinted, neither my position nor that of the Colony would now be better than it is, even though the balance in the Treasury exceeded by £100,000 its actual amount.

I must further humbly submit to Your Lordship that the Commercial embarrassments, which exist in the Colony, have not been in any way occasioned by the proceedings of my Government.
The excessive speculation and overtrading, which led to these embarrassments, were at their height, before I issued these permissions to import Emigrants; and, if occasioned or encouraged by any act of the Government, it was rather by the retention in the Banks of large funds belonging to Government* than by the expenditure of these funds, for the Banks, having these balances in their hands and knowing they would not very suddenly be called for, might have been led to discount more freely than they otherwise would have done, and thus have increased the practice of dealing on extended credit.

I can also appeal to my own Despatches to prove that the proposal for raising a Loan, wherewith to carry on Immigration, did not arise with nor receive in the first instance any encouragement from me.

A Loan was asked for by the Legislative Council in 1838; and I was told by the Lords of the Treasury that a specific proposal respecting it must be brought forward by myself; and accordingly I did bring forward such a proposal in my Despatch of the 22nd Novr., 1839, No. 157. To that Despatch, I have never had an answer, nor has it in any way been even noticed by Your Lordship. During the whole of the year 1840, and for some time afterwards, I remained under the full persuasion that no objection to a Loan would be offered by Her Majesty's Government. The official documents, which I received from England, and the general course of events were calculated to strengthen me in that persuasion. The first reports of the Land and Emigration Commissioners abounded in proposals for Loans in the Colonies; and a leaning seemed everywhere to prevail in England towards the South Australian system, which was one essentially founded on the principle of colonizing with borrowed money. The failure of that system, when it became known in 1841, caused, it is true, a natural distrust in it, and a consequent dislike to Loans; but I must crave permission to remark that the first intimation, I had of Your Lordship's disapproval of Loans for the purpose of Immigration, was contained in a Despatch dated the 10th Feby., 1841 (No. 199), which did not reach me until the 7th Septt. last.

The previous Despatches from Your Lordship, inculcating on me the necessity of economy, had reference to the Ordinary Revenue, and the chief object of such economy was to allow of a greater expenditure on Immigration.

I have stated on a former occasion to Your Lordship that, when I granted in 1840 the numerous permissions to import Emigrants which have drawn upon me the censures of Your Lordship, I was under the impression, as well from former experience as from the
1841.
24 Dec.

Opinions held on issue of bounty orders.

Expectations of financing of emigration.

Characters and pursuits of many of the persons applying for such permissions, that only a small portion of them would be acted upon.

That apprehensions of a contrary nature did sometimes present themselves to my mind, is undoubtedly true; but I quieted them, perhaps too easily, by reflecting that there were persons in England, first, an Agent General, and afterwards a Board of Commissioners, especially appointed to watch over Emigration; and I trusted that any evils, which might be likely to arise out of a redundant supply of Emigrants, would be warded off from us by them, an expectation which has in fact been justified by the event.

The Notice, issued by the Commissioners under Your Lordship's directions on the 31st July last, will I trust relieve us from any very serious embarrassment; and I feel a full confidence, that our own resources will suffice to get us out of our difficulties without any permanent charge whatever to the Mother Country; and I hope even without any temporary aid beyond that of the repayment of the money borrowed from the Colony for the service of New Zealand.

I have, &c.,

GEO. GIPPS.

28 Dec.

Confirmation of suspension of R. Dixon.

Lord Stanley to Sir George Gipps.

(Despatch No. 48, per ship Kelso.)

Sir,

Downing Street, 28 December, 1841.

I have to acknowledge the receipt of your dispatch of the 16th August last, No. 156, in which you report to me the circumstances under which you had felt it necessary to suspend Mr. R. Dixon from the discharge of his duties as an Assistant Surveyor in New South Wales, and you further request my authority to remove him altogether from the Surveyor General's Department.

In reply I have to acquaint you that, under the circumstances which you have represented, I have no course open to me, but that of confirming the suspension of Mr. Dixon from his Office.

You will, therefore, apprise him that he is so removed.

At the same time, you will inform Mr. Dixon that I am prepared to receive any Statement, which he may think fit to make in explanation of the charges which have been preferred against him, Such statement of course being forwarded thro' yourself.

I am, &c.,

STANLEY.
GIPPS TO RUSSELL.

(Sir George Gipps to Lord John Russell.

(Despatch No. 238, per ship William; acknowledged by Lord Stanley, 26th August, 1842.)

My Lord, Government House, 28th Decr., 1841.

In my Despatch of the 1st Jany., 1841, No. 4, I reported to Your Lordship that I had appointed Dr. Kinchela, LL.D., once Attorney General of this Colony, to the newly created office of Master in Chancery.

I have received no Despatch in reply - either confirming or disallowing this appointment; but I am sorry now to have to report to Your Lordship that Dr. Kinchela was, in the month of Septt. last, attacked by Paralysis, from which he has not sufficiently recovered to enable him to return to his duties; and that, consequently, I was obliged on the 1st of the present month to appoint another person to perform the duty of Master, subject to the approval of Her Majesty.

The gentleman, whom I selected for this duty, was Mr. William Carter, the person who first held the appointment of Master in the Court, but who was removed from it in consequence of his having become Insolvent, as reported to Sir George Murray in General Darling’s Despatch, No. 26 of the 19th Febry., 1831.

Mr. Carter, though still far from being a rich man, has recovered from his pecuniary embarrassments, and is now living near Sydney, highly respected by persons of all classes; he has also during the last seven years been one of the Commissioners appointed under a Local Act (5th Wm. IV, No. 21) to decide on claims to Grants of Land, of which claims more than 1,000 have been disposed of by Mr. Carter and his colleagues.

Mr. Carter was recommended to me by the Chief Justice, as the person in the Colony best fitted for the appointment; and I should be much gratified, if he were by Your Lordship’s kindness confirmed in it.

From the time when Dr. Kinchela was removed from the office of Attorney General (1836) to that at which I appointed him Master in Chancery (1841), he received a Pension from this Government of £500 a year, as authorized by Lord Glenelg and reported by my Despatch, No. 164 of the 13th Octt., 1838; greatly therefore though I regret the necessity of adding to the Pension List of the Colony, I feel that I cannot, with justice to Dr. Kinchela, avoid soliciting from Your Lordship permission to propose to the Legislative Council that his Pension should be restored to him.

I have, &c.,

Geo. Gipps.
SECRETARY OF STATE TO SIR GEORGE GIPPS.

The following despatches,* written in the year 1842, have been omitted:—

<table>
<thead>
<tr>
<th>Despatch dated</th>
<th>Numbered</th>
<th>Transmittting</th>
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<tbody>
<tr>
<td>28th February</td>
<td>70</td>
<td>warrant for reduction of sentence on Edward Barr.</td>
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<tr>
<td>8th April</td>
<td>79</td>
<td>petition and report re sentence on Alphonso James.</td>
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<tr>
<td>8th April</td>
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<td>commutation of death sentence on John Kelly.</td>
</tr>
<tr>
<td>22nd April</td>
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<td>four absolute and one hundred and twenty-nine conditional pardons.</td>
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<tr>
<td>23rd April</td>
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<td>approval of tickets of leave.</td>
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<tr>
<td>28th April</td>
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<td>refusal to mitigate sentence on John McAuliff.</td>
</tr>
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<td>authority for conditional pardon for Richard White.</td>
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<tr>
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<td>121</td>
<td>three absolute and seventy-eight conditional pardons.</td>
</tr>
<tr>
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<td>authority for conditional pardon for Archibald Turnbull.</td>
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<tr>
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<td>do for free pardon for George Bailey.</td>
</tr>
<tr>
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<td>do for conditional pardon for Osborne Bush.</td>
</tr>
<tr>
<td>18th February</td>
<td>155</td>
<td>request for report re Susannah Barnett or Roberts.</td>
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<tr>
<td>28th April</td>
<td>168</td>
<td>do re Henry Rose, private, 28th regt.</td>
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<td>24th August</td>
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<td>authority for pardon for Patrick Neal.</td>
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<td>178</td>
<td>approval of nine absolute and one hundred and twenty-eight conditional pardons.</td>
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<tr>
<td>10th October</td>
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<td>request for report re John O'Neill, emancipist.</td>
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<tr>
<td>1st October</td>
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<td>do re John Giddy alias Johnstone, convict.</td>
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<tr>
<td>20th October</td>
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<td>do re John Breakey, convict.</td>
</tr>
<tr>
<td>20th October</td>
<td>205</td>
<td>reduction of sentence on John Murray.</td>
</tr>
<tr>
<td>21st November</td>
<td>211</td>
<td>commutation of death sentence on Hugh Bannon.</td>
</tr>
<tr>
<td>6th December</td>
<td>217</td>
<td>approval of four absolute and forty conditional pardons.</td>
</tr>
<tr>
<td>7th December</td>
<td>218</td>
<td>approval of four conditional pardons.</td>
</tr>
<tr>
<td>12th February</td>
<td>229</td>
<td>refusal to authorise passages for families of convicts.</td>
</tr>
</tbody>
</table>

SIR GEORGE GIPPS TO SECRETARY OF STATE.

The following despatches,* written in the year 1842, have been omitted:—

<table>
<thead>
<tr>
<th>Despatch dated</th>
<th>Numbered</th>
<th>Transmittting</th>
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<tbody>
<tr>
<td>5th January</td>
<td>2</td>
<td>report re ticket of leave for John Widdows.</td>
</tr>
<tr>
<td>9th January</td>
<td>3</td>
<td>do re free pardon for Isaac Clay.</td>
</tr>
<tr>
<td>13th January</td>
<td>4</td>
<td>do re conditional pardon for Richard Whiting.</td>
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<tr>
<td>24th January</td>
<td>16</td>
<td>do re conditional pardon for Frederick Ward.</td>
</tr>
<tr>
<td>29th January</td>
<td>17</td>
<td>schedule of appointments to public offices and of special payments from colonial funds.</td>
</tr>
<tr>
<td>2nd February</td>
<td>21</td>
<td>list of convicts recommended to have their families sent to them.</td>
</tr>
<tr>
<td>6th February</td>
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<td>quarterly return of sums paid into colonial treasury.</td>
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<tr>
<td>9th February</td>
<td>29</td>
<td>schedule of appointments to public offices and of special payments from military chest.</td>
</tr>
<tr>
<td>11th February</td>
<td>31</td>
<td>report re Thomas Forre, convict.</td>
</tr>
<tr>
<td>16th February</td>
<td>36</td>
<td>returns of pardons issued in 1841.</td>
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<tr>
<td>18th February</td>
<td>37</td>
<td>recommendation for commutation of death sentence on Patrick Neal.</td>
</tr>
<tr>
<td>22nd February</td>
<td>39</td>
<td>five land and emigration returns.</td>
</tr>
<tr>
<td>23rd February</td>
<td>41</td>
<td>report re conditional pardon for William Dodd.</td>
</tr>
<tr>
<td>25th February</td>
<td>43</td>
<td>nine absolute and one hundred and twenty-eight conditional pardons.</td>
</tr>
<tr>
<td>15th March</td>
<td>55</td>
<td>report re conditional pardon for David Dundas.</td>
</tr>
<tr>
<td>18th March</td>
<td>58</td>
<td>do do do for William Smith.</td>
</tr>
</tbody>
</table>

* Note 33.
The following despatches,* written in the year 1842, have been omitted—continued.

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<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5th April</td>
<td>65 recommendation for commutation of death sentence on Hugh Bannon.</td>
</tr>
<tr>
<td>8th April</td>
<td>69 quarterly schedule of appointments to public offices and of special payments from military chest.</td>
</tr>
<tr>
<td>10th April</td>
<td>70 ditto from colonial funds.</td>
</tr>
<tr>
<td>26th April</td>
<td>76 four absolute and forty conditional pardons.</td>
</tr>
<tr>
<td>1st May</td>
<td>77 quarterly return of sums paid into colonial treasury.</td>
</tr>
<tr>
<td>6th May</td>
<td>81 list of convicts recommended for tickets of leave.</td>
</tr>
<tr>
<td>7th May</td>
<td>82 do recommended to have their families sent out to them.</td>
</tr>
<tr>
<td>8th May</td>
<td>83 report re Francis or Frederick Bigg, convict.</td>
</tr>
<tr>
<td>1st June</td>
<td>99 printed acts of council for year 1841.</td>
</tr>
<tr>
<td>25th June</td>
<td>112 annual returns of medical department.</td>
</tr>
<tr>
<td>6th July</td>
<td>115 do of assignments of convicts revoked.</td>
</tr>
<tr>
<td>12th July</td>
<td>118 schedule of appointments to public offices and of special payments from colonial funds.</td>
</tr>
<tr>
<td>20th July</td>
<td>127 list of convicts recommended for tickets of leave.</td>
</tr>
<tr>
<td>21st July</td>
<td>128 do do recommended to have their families sent to them.</td>
</tr>
<tr>
<td>19th August</td>
<td>148 fourteen absolute and one hundred and twenty-eight conditional pardons.</td>
</tr>
<tr>
<td>11th September</td>
<td>164 requisitions for medicines and stationery.</td>
</tr>
<tr>
<td>12th September</td>
<td>165 do for medicine and stationery for convict department.</td>
</tr>
<tr>
<td>16th September</td>
<td>169 requisition for stationery.</td>
</tr>
<tr>
<td>23rd September</td>
<td>179 do for stores and stationery for convict department.</td>
</tr>
<tr>
<td>13th October</td>
<td>189 report re acquittal of Thomas Capper of murder on ground of insanity.</td>
</tr>
<tr>
<td>23rd October</td>
<td>190 report re acquittal of Michael Molloy of murder on ground of insanity.</td>
</tr>
<tr>
<td>14th October</td>
<td>192 list of convicts recommended to have their families sent to them.</td>
</tr>
<tr>
<td>15th October</td>
<td>193 report re detention of pardon for William Hayes.</td>
</tr>
<tr>
<td>20th October</td>
<td>195 quarterly schedule of appointments and special payments by commissariat.</td>
</tr>
<tr>
<td>21st October</td>
<td>196 quarterly schedule of appointments and special payments by treasury.</td>
</tr>
<tr>
<td>1st November</td>
<td>205 report re issue of pardon to Richard White.</td>
</tr>
<tr>
<td>3rd November</td>
<td>206 do do to George Bailey.</td>
</tr>
<tr>
<td>6th November</td>
<td>209 commutation of death sentence on John Connolly.</td>
</tr>
<tr>
<td>22nd November</td>
<td>221 requisition for convict clothing.</td>
</tr>
<tr>
<td>25th November</td>
<td>222 ten absolute and one hundred and forty-one conditional pardons.</td>
</tr>
<tr>
<td>13th December</td>
<td>234 report re correction of sentence on John Canty.</td>
</tr>
<tr>
<td>15th December</td>
<td>235 requisition for police clothing.</td>
</tr>
<tr>
<td>16th December</td>
<td>237 report re William Denmark, convict.</td>
</tr>
</tbody>
</table>

**Note 33.**

Lord Stanley to Sir George Gipps.

(A circular despatch, per ship Wilmot; acknowledged by Sir George Gipps, 20th July, 1842.)

Sir,

Downing Street, 1st January, 1842.

In a Circular Despatch addressed to the Governors of the North American and Australian Colonies by Mr. Secretary Spring Rice on the 20th of August, 1834, they were informed that Free Grants of Land were no longer to be made to discharged Soldiers.

The reasons for dis-continuing that practice were fully stated in the correspondence between this Department and the War Office, a copy of which accompanied that Circular Despatch.
I have recently been led to observe that the full extent of that measure is not correctly understood in the Australian Colonies, and that an idea exists that the allowance of a remission of Purchase money is still in force.

I again transmit to you the correspondence, which accompanied my Predecessor’s Instructions of 1834, and you will understand that it was the intention of His Majesty’s Government that those Instructions should equally apply to a remission of Purchase money as to free Grants; and that discharged Soldiers can therefore no longer be allowed to enjoy exclusive privileges in the acquisition of Land.

I am, &c.,

STANLEY.

[Enclosures.]

[These were copies of letters from under secretary Hay to L. Sullivan, dated 12th July, 1834, and from L. Sullivan to under secretary Hay, dated 31st July, 1834, with extracts from a report of the commissioners of emigration, dated 15th March, 1832, and from a notice published by the commissioners of emigration respecting the British Colonies in North America.]

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 1, per ship William; acknowledged by Lord Stanley, 2nd August, 1842.)

My Lord, Government House, 1st Jan., 1842.

I have had the honor to receive Your Lordship’s Despatch, No. 311 of the 20th July, 1841, enclosing a Copy of a letter from Lord Fitzroy Somerset to Mr. Stephen, respecting an application for a Grant of Land which was made to this Government by a discharged Soldier of the 74th Regt. named Alexr. Stewart; and, in compliance with Your Lordship’s directions, I enclose copies of the application of Alexr. Stewart, and of the answer which was returned to it.

Your Lordship will perceive that Alexr. Stewart was simply told, in reply to his application, that, as he was not discharged in the Colony, he was not entitled, under the orders of the 15th Feb., 1840, to any Grant of land or remission in the purchase of land.

There is no trace of his having been directed (and it is scarcely possible that he could have been directed) by the Secretary of this Colony to apply to Lord Hill on the subject, or told that he was considered by the Colonial Secretary to be entitled to a Grant of Land.

I have, &c.,

GEO. GIPPS.
Mr. A. Stewart to Sir George Gipps.

Wollongong, 26th October, 1840.

I beg leave to inform you that I have served in Her Majesty's Application 74th Regiment for 17 years, 282 days; was discharged in the Island of Antigua, West Indies, on the gratuity Act of £18 5s. and a Grant of Land in any of Her Majesty's Colonies; having arrived in this Colony as an Emigrant on board the Lord Western Ship, and not being able to ascertain how I am to get the Land and being directed to this Colony for it, I beg your Excellency will be so good as to give me directions how to proceed; by so doing you will much oblige your obedient humble servant,

ALEXR. STEWART.

P.S.—Please to direct to the care of James Crawford, Esq., for Alexr. Stewart, Wollongong.

Mr. T. C. Harington to Mr. A. Stewart.

Colonial Secretary's Office, Sydney, 14th November, 1840.

With reference to your letter of the 26th ultimo, requesting Refusal of information as to the proper mode of applying for remission in the application for purchase of Land as a discharged Soldier, I have to inform you that, as you were not discharged in this Colony, you are not entitled to any indulgence under the Regulations of the 15th of February, 1840, in force here; therefore neither remission in the purchase of Land nor Land can be granted to you.

I am, &c.,

T. C. HARINGTON.

Lord Stanley to Sir George Gipps.

(Despatch No. 49, per ship Kelso; acknowledged by Sir George Gipps, 13th November, 1842.)

Downing Street, 4 January, 1842.

I have to request that you will communicate to me, for the information of the Writer of the enclosed letter, any tidings it may be in your power to afford respecting Michael Cassidy, who it appears was transferred from the 80th Regiment of Foot to the Mounted Police of New South Wales in the Month of Sept., 1840.

I am, &c.,

STANLEY.

Enclosure.

Mr. E. Cassidy to Secretary of State.

Fluery Bridge, 30th December, 1841.

Referring to the accompanying letter from the War Office, I request may I beg to solicit such information touching my son Michael Cassidy, stating whether he is living and where, etc.

I am, &c.,

EDWARD CASSIDY.
HISTORICAL RECORDS OF AUSTRALIA.

[Sub-enclosure.]

MEMO. FROM WAR OFFICE.


You are informed, in reference to your application regarding Michael Cassidy of the 80 foot, who was transferred to the mounted Police of New South Wales on the 1st Sept., 1840, that you should address yourself to the Secretary of State, Colonial Department, London.

No further enquiry respecting him can be attended to, unless this letter is returned with such further enquiry when it is made.

E. MARSHALL.

Lord Stanley to Sir George Gipps.

(Despatch per ship Kelso.)

Sir, Downing Street, 4 January, 1842.

I have the honor to transmit to you a copy of a letter, which has been addressed to me by the Revd. J. Rolleston respecting his Sons, who are settled in New South Wales, and for one of whom he is anxious to obtain some official employment.

I should be glad if you could take an early opportunity of introducing one of Mr. Rolleston’s Sons into the Public Service of the Colony in any situation for which he may appear to be qualified.

I have, &c.,

STANLEY.

[Enclosure.]


My Lord, Burton, near Nottingham, 27th Decr., 1841.

At the suggestion of Sir Robert Peel and in compliance with your Lordship’s expressed desire, I write to inform you of the situation and circumstances of my Sons in Australia for the Governor’s information that you may the likelier, if so pleased, be enabled to serve them; they are situated about 150 miles above Sydney, as settlers, and through the failure of a Friend, to a large extent, have nearly failed themselves!

The elder of them, from having served his time in Liverpool in the Merchantile House of Messrs. Lodge and Prichard, thinks he might be able to fill an appointment under Government in the Colonies, could his Friends at home be so fortunate as to obtain one for him, whether in or about Sydney, Moreton Bay, Port Philip, South Australia or wherever there might be a vacancy. This wish of his for a situation under Government induced me to write to Sir Robert Peel in the first instance, whose kind attention I cannot fail to acknowledge, and now induces me to obtrude this upon your Lordship’s kindness, in the hope that, under Providence, something may be obtained for him.
STANLEY TO GIPPS.

As to the younger I can speak but little as to his qualifications for business, having never been tried, and can only speak as to his character and conduct which I believe to be unexceptionable.

I am, &c.,

JOHN ROLLESTON.

P.S.—Their agents in Sydney are Messrs. Aspinal and Browne through whom any communication might be made, and any information had.

LORD STANLEY TO SIR GEORGE GIPPS.

(Despatch No. 50, per ship Kelso.)

Sir, Downing Street, 5 January, 1842.

In my Despatch No. 45 of the 20th Ultimo, you were informed that I had recommended to the Lords Commissioners of the Treasury to sanction the advance of £3,000 from the Crown Land fund of New South Wales, which you had made in aid of the Government of South Australia.

I have now to acquaint you that the Lords of the Treasury have stated that, under the very peculiar circumstances of the application as detailed in your Despatch of the 12th of August last, they are prepared to approve of that temporary advance.

You will shortly receive further instructions relative to the manner in which that advance shall be reimbursed to the Land fund.

I am, &c.,

STANLEY.

LORD STANLEY TO SIR GEORGE GIPPS.

(Despatch No. 51, per ship Kelso.)

Sir, Downing Street, 8 January, 1842.

I have to acknowledge the receipt of your Despatch Refusal of No. 147, of the 29th of July last, forwarding an application from Major C. Newman, late of the East India Company Service, for a remission of the Purchase money of Land in New South Wales.

Having referred this claim for the consideration of the Colonial Land and Emigration Commrs., I transmit to you the copy of a Report which they have furnished on the subject.

I concur in the opinion entertained by the Commrs. that, for the reasons stated in your Despatch, the claim of Major Newman is inadmissible.

I am, &c.,

STANLEY.
LAND AND EMIGRATION COMMISSIONERS TO UNDER SECRETARY STEPHEN.

Colonial Land and Emigration Office,
9 Park Street, Westminster, 27th December, 1841.

We have the honor to acknowledge the receipt of your Letter of the 21st Inst., respecting the claim of Major C. Newman, late of the East India Company's Service, for a remission of the purchase money of Land in New South Wales.

The former Letters, in which Major Newman had set forth the claim, are not forwarded from the Colony, but the case is stated by Sir George Gipps; and, from his report, it would appear that Major Newman did not make his first application in New South Wales until nearly 5 years after leaving the Company's Army. The established rules, as the Governor correctly observes, requires that Officers should arrive in the Colony within one year of quitting the Service. Major Newman therefore would plainly appear not to have come within the regulations, which we may add are always construed as strictly as possible, such being the course considered to be required by the public Interest.

We have, &c.,
T. FREDK. ELLIOT.
EDWARD E. VILLIERS.

LAND AND EMIGRATION COMMISSIONERS TO UNDER SECRETARY STEPHEN.

Colonial Land and Emigration Office,
9 Park Street, Westminster, 6th January, 1842.

We have the honor to acknowledge the receipt of your Letter of the 24th Ultimo, transmitting for any observations, we might have to offer, a Memorial and other documents relative to a claim preferred by Mr. James Black of Sydney to an additional Grant of Land in New South Wales.

The former Letters, in which Major Newman had set forth the claim, are not forwarded from the Colony, but the case is stated by Sir George Gipps; and, from his report, it would appear that Major Newman did not make his first application in New South Wales until nearly 5 years after leaving the Company's Army. The established rules, as the Governor correctly observes, requires that Officers should arrive in the Colony within one year of quitting the Service. Major Newman therefore would plainly appear not to have come within the regulations, which we may add are always construed as strictly as possible, such being the course considered to be required by the public Interest.

We have, &c.,
T. FREDK. ELLIOT.
EDWARD E. VILLIERS.

LORD STANLEY TO SIR GEORGE GIPPS.
(Despatch No. 52, per ship Kelso.)

Sir, Downing Street, 9 January, 1842.

I have received your Despatch of the 27th July last, No. 146, reporting on the claims which had been advanced by Mr. James Black to a secondary Grant of Land in New South Wales.

Having referred your Despatch for the consideration of the Commissioners of Colonial Land and Emigration, I transmit to you, herewith for your information, copy of a Report which those Gentlemen have furnished on Mr. Black's case.

I concur with the Commissrs. in opinion that Mr. Black has failed to substantiate his claim to a Secondary Grant of Land.

I am, &c.,
STANLEY.

[Enclosure.]

LAND AND EMIGRATION COMMISSIONERS TO UNDER SECRETARY STEPHEN.

Colonial Land and Emigration Office,
9 Park Street, Westminster, 9th January, 1842.

We have the honor to acknowledge the receipt of your Letter of the 24th Ultimo, transmitting for any observations, we might have to offer, a Memorial and other documents relative to a claim preferred by Mr. James Black of Sydney to an additional Grant of Land in New South Wales.

The former Letters, in which Major Newman had set forth the claim, are not forwarded from the Colony, but the case is stated by Sir George Gipps; and, from his report, it would appear that Major Newman did not make his first application in New South Wales until nearly 5 years after leaving the Company's Army. The established rules, as the Governor correctly observes, requires that Officers should arrive in the Colony within one year of quitting the Service. Major Newman therefore would plainly appear not to have come within the regulations, which we may add are always construed as strictly as possible, such being the course considered to be required by the public Interest.

We have, &c.,
T. FREDK. ELLIOT.
EDWARD E. VILLIERS.
of Land under the Regulations for the disposal of Land in New South Wales, which were issued from the Colonial Office in April, 1826.

In his Memorial, Mr. Black states that he emigrated at the end of 1826 on the faith of the Land Regulations, dated from Downing Street in April of that year.

That, in virtue of the Capital he imported, he received and took possession of a maximum grant of 2,560 acres on the Hunters River, and subsequently purchased other lands from the Crown and from an individual.

That he spent in improving the consolidated estate more than the amount required by the Regulations of April, 1826, and that he has sufficient capital in hand to cultivate an additional grant.

That, at the end of seven years, he did not apply for the additional grant to which he had then become entitled, because he thought, in common with the other Colonists, that the Regulations of 1831 annulled the Regulations of 1826 and all rights under them.

That from this notice he was not undeceived until he saw a Colonial Government Notice dated 27 June, 1837, on the subject of Additional Grants, founded upon instructions from the Secretary of State, from which it appeared that the Regulations of 1831 were not intended to prejudice rights accruing under the Regulations of 1826.

By this Notice, all applications for a free grant were directed to be lodged with the proper Officer before the 1st of January, 1838.

Mr. Black left the Colony for England in March, 1837, three months before the promulgation of the Notice in question, and states that he became aware of the notice for the first time on his return to the Colony in January, 1840, when he immediately applied for an additional Grant but was refused on the ground that his claim had not been submitted previously to the 1st of January, 1838.

We have the honor to report that we think this was the proper decision. The system of making gratuitous grants of Land was intended not for the private benefit of the individuals, but for the benefit of the Colony; and, as the continuance of the System has been universally admitted to be injurious to the general welfare, it is very expedient that the Regulations, fixing a period within which all claims of the kind must be finally closed, should be enforced strictly. If any fortuitous circumstance such as absence from the Colony, or defective information, were allowed to be sufficient dispensation from the rule, the objects which it was intended to secure would be frustrated, and there would in fact be no limit beyond which such claims could be ascertained to be extinguished.

With respect to the delay of which Mr. Black complains in reporting upon a former Memorial from him dated the 20 March, 1840, and on which the Governor's explanations will be found in his dispatch now under consideration, we have merely to remark that no expedition, in reporting on an application made in the month of March, 1840, would have cured what we consider to be the radical defect that it had not been made previously to the 1st January, 1838.

Under these circumstances, we have the honor to submit our opinion that Mr. Black's claim cannot be admitted.

We have, &c.,

T. Fredk. Elliot.
Edward E. Villiers.
SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 5, per ship William; acknowledged by lord Stanley, 11th June, 1842.)

My Lord,

Government House, 16th January, 1842.

I am sorry to have to report to Your Lordship that I have been under the necessity of suspending from office Mr. John Edye Manning, Registrar of the Supreme Court, in consequence of a representation made to me by the Chief Justice that he is a defaulter to a considerable amount in his capacity of Administrator of the Estates of persons dying Intestate in the Colony.

Mr. Manning was appointed Registrar of the Supreme Court in 1828, the notification of his appointment having been made to the Governor of the Colony, General Darling, in Sir George Murray's Despatch No. 25 of the 29th August, 1828.

In the years 1828, 1829 and 1830, a correspondence took place respecting the Security, which should be demanded from Mr. Manning and other officers of the Government; and a reference to the Despatches, dated and numbered as in the margin,* will shew that security was taken in England to the amount of £2,000 for the due performance of Mr. Manning's duties, his Father, the Revd. Mr. Manning of Exeter, and his Brother, Mr. Serjt. Manning, being his Sureties.

In 1838 (the first year of my Government), the amount of monies belonging to Intestate Estates having considerably increased, an Act of Council was at the suggestion of the Judges passed, authorizing the Judges to direct that all monies belonging to Intestate Estates should be invested in the Savings Bank of the Colony; and the Judges, having immediately on the passing of that Act, given directions by a Rule of Court that the monies should be so invested, I remained under the full assurance that the rule had been complied with up to the day on which I received a letter from the Judges, dated the 6th Decr., 1841, informing me that Mr. Manning had failed to invest in the Savings Bank sums amounting altogether to more than £9,400.

The Act of Council, which I allude to, 1st Vict., No. 4, was transmitted by me to Lord Glenelg with my Despatch, No. 22 of the 26th Jany., 1839; and the notification of the allowance of it by Her Majesty was conveyed to me in Lord Normanby's Despatch, No. 110 of the 10th Augt., 1839.

The Papers, which I enclose, will explain the measures which I adopted on the receipt of the Judges' letter; the contents of them however I will briefly recapitulate.

* Marginal note.—General Darling: No. 25, 28th Augt., 1828; No. 21, 13th April, 1829. Sir George Murray: No. 6, 12th April, 1829; No. 80, 25th Septt., 1830.
I first called on Mr. Manning, as the Judges had suggested, for security for the monies due from him, but found that he had no sufficient security to offer. Mr. Manning upon this tendered his resignation, which however I refused to accept, not considering the case to be one, in which the mere vacation of office should be looked on as a sufficient punishment for the fault committed.

I then, with the advice and concurrence of my Executive Council and of the Attorney General, informed the Chief Justice of my having refused to accept Mr. Manning's resignation; and I requested to be informed, whether there was any feature in Mr. Manning's case, or in the position in which he stood to the Judges, which should prevent my suspending him from Office; and to this the Chief Justice replied that the effect of my suspending Mr. Manning would be to release him for the time being from any control, which the Supreme Court might otherwise have over him; and the Chief Justice consequently recommended that Mr. Manning should be allowed to retain office, until the signification of Her Majesty's pleasure could be procured on his case.

Feeling extremely doubtful of the propriety of such a course of proceeding, a letter was written by my direction, after consultation with the Council, to the Chief Justice, intimating such doubt, whereupon the Judges proceeded to take more summary measures against Mr. Manning than those which they at first contemplated; and, these measures being completed, it was intimated to me by the Chief Justice that the Judges no longer imposed any obstacle to his suspension.

The measures taken by the Judges against Mr. Manning were as follows:

By a Rule of Court, Mr. Manning was ordered to pay over instanter all monies in his hands to the Chief Clerk of the Court; and, on Mr. Manning's failing to do so (an order of Court having in New South Wales the effect of a Judgment), the Chief Clerk was able to obtain Writs of fieri facias against Mr. Manning's Estate and effects, and forthwith to place them in the hands of the Sheriff for Execution.

Mr. Manning has property in the Country to the estimated amount of three or four times the sum due by him to the estates of Intestates; and, though there are liens (in the nature of Mortgages or Settlements) on several portions of his property, having of course a priority over the Executions, still I have no doubt of there being a residue more than sufficient to satisfy these latter.

It is rumoured indeed that Mr. Manning's Creditors will endeavor to set aside the Executions, and to force the Intestate Estates to come in only as concurrent with them; but I do not apprehend that they will succeed in their object.
Your Lordship will readily believe that the defalcation of Mr. Manning, following so closely as it has done on the default and subsequent suicide of the Sheriff (reported in my Despatch No. 211 of the 31st Oct., 1841), has produced a considerable sensation in the Colony, and has given rise to the question of how far the Executive Government is answerable for the default of these Functionaries.

I have contended, and I believe correctly, that, as they were the Servants of the Supreme Court and acted entirely under the orders of the Judges, the Government is not responsible for their misconduct; the Government had no control over them, and nothing is plainer than the principle that, where responsibility is, there also should be control.

In the levying of Executions by the Sheriff, and in the administration of Intestate Estates by the Registrar, Government neither exercised nor was it entitled to exercise any control whatever. The Act of Parliament, 9th Geo. IV, C. 83, and the Charter of Justice, placed the Sheriff and Registrar entirely under the control of the Judges; and it cannot be doubted that any attempt on the part of the Executive to exercise control, or even to institute enquiry, would have been regarded by the Judges as an infringement upon that most essential principle of the British Constitution which secures their independence.

The Government, I must contend, had in both cases, and especially in Mr. Manning's, done all that it could with propriety do.

On his appointment (or very shortly afterwards), the Judges, being consulted as to the security which should be demanded of him, proposed the sum of £600, but the Government took £2,000.

Subsequently, the Government procured, on the application of the Judges, the passing of the Act of Council alluded to, under which Mr. Manning was forbidden to keep any monies whatsoever belonging to Intestate Estates in his own hands, and required to place them all in the Savings Bank. If Mr. Manning failed to comply with what was required of him by this Act, it was not the fault of the Government.

No doubt whatever existed on my part of his having complied with it; and the expression of any doubt, or any enquiry on the subject (even if a doubt had been suggested), would have appeared to me offensive to the Judges.

I have, &c.,
Geo. Gipps.

[Enclosures.]

[Copies of these papers will be found in a volume in series IV.]
SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 6, per ship William; acknowledged by lord Stanley, 26th August, 1842.)

My Lord,

Government House, 16th Jany., 1842.

With reference to my Despatch of this day's date, No. 5, in which I reported to Your Lordship the defalcation and consequent suspension of Mr. John Edye Manning, Registrar of the Supreme Court, I have further to acquaint Your Lordship that I have, subject to Her Majesty's approval, appointed Mr. William Macpherson, Clerk of the Executive and Legislative Councils, to act as Registrar of the Supreme Court; that I have appointed Mr. Francis L. S. Merewether, now agent for Immigration, to act as Clerk of the Councils; and I propose to appoint, agreeably to the instructions contained in Your Lordship's Despatch, No. 206 of the 24th Feb., 1841, a Naval Surgeon to succeed Mr. Merewether.

In my Despatch No. 162 of the 24th Augt., 1841, I reported to Your Lordship the reasons why I did not deem it expedient, at that moment, to displace Mr. Merewether; and I may now further add that, had I displaced him, I should not then have known whom to appoint in his stead. It has since come to my knowledge that Dr. Hampton of the Royal Navy is the person whom the Commissioners of Colonial Lands and Emigration wished to recommend for the situation; and, as this gentleman is shortly expected in New South Wales from Van Diemen's Land, to which Colony he lately proceeded from England in charge of a Convict ship, I propose to nominate him agent for Immigration on his arrival.

Your Lordship will recollect that Mr. Merewether is the gentleman whom I selected in the first instance, being then a Clerk in the Colonial Treasury, to fill the office of Deputy Registrar at Port Phillip, as reported in my Despatch No. 78 of the 24th March, 1841. My subsequent appointment of him to the Office of Agent for Immigration, and my nomination of him now to the Clerkship of the Councils, will I trust sufficiently prove to Your Lordship my estimation of his ability; and I venture to express a hope that these successive changes may not be prejudicial to his interests.

Mr. Macpherson was appointed Clerk of the Councils on the 1st Jany., 1837, having been previously Collector of Internal Revenue. I beg to refer to Sir Richard Bourke's Despatch (Separate) of the 1st Augt., 1835, as to his character and ability, adding that I consider him in a peculiar manner fitted for the situation to which I have appointed him; and his appointment is, I believe, very acceptable to the Judges.
1842.
16 Jan.

Salaries for registrar, clerk of councils, and agent for immigration.

The Salaries of the respective offices are:
Registrar of the Supreme Court, £800 a year; Clerk of the Councils, £600 a year; Agent for Immigration, £500 a year.

But Mr. Macpherson has been informed by me of the nature of my Despatch of this day's date, No. 7, wherein I have proposed an alteration, which, if adopted, will reduce the salary of the Registrar to £650.

I have, &c.,

GEO. GIPPS

SIR GEORGE GIPPS TO LORD JOHN RUSSELL.

(Despatch No. 7, per ship William; acknowledged by Lord Stanley, 28th August, 1842.)

My Lord,

I beg leave to forward herewith to Your Lordship Copies of letters, which have passed between the Chief Justice of this Colony and myself on the proposed appointment of a Prothonotary in the Supreme Court, and on the subject generally of the Establishment of that Court.

The expences, incidental to the administration of Justice in New South Wales, are already so very great that I have not thought it right to sanction, in the absence of any order from Your Lordship, the creation of a New Office with a salary attached to it of £800 a year; and, in bringing the matter forward, I think it right to lay before Your Lordship a statement of the increase, which has already taken place in the expences of the Judicial Department within the course of the last 18 months.

This increase is as follows:

In Sydney—Master in Equity, £800; Clerk to Do., £100; Additional Clerk (Supreme Court), £160.

At Port Phillip—Resident Judge, £1,500; His Clerk, £150; Deputy Registrar, £450; Deputy Sheriff, £400; Clerks, etc. (about) £300; Travelling and other expences, incidental to the Establishment of Circuit Courts (about) £1,000—£4,860;

and, as the Salaries of the Clerks increase for length of service, the total increase may be considered as not less than in round numbers £5,000 a year; And this is exclusive of the increase in all incidental expences, such as the supply of furniture, fuel, stationery, and the very heavy expence of providing New Buildings; exclusive also of the increase which has taken place in the establishment of the Law Officers of the Crown by the revival of the Office of Solicitor General.
On the other hand, it is but fair to state that there has been in the present year a most remarkable increase in the fees taken in the Court, and carried to the public account (including the Departments of the Sheriff and Registrar).

These fees, on the average of the years 1838, 1839 and 1840, amounted only to £6,117 17s.; and during the year 1841, including Port Phillip, they reached the large amount of £18,783 7s. 9d.

The increase however is in great measure to be attributed to the increase of litigation, and especially to the increased number of Insolvencies and Executions, which have arisen during the last year out of the pecuniary embarrassments under which the Colony has been labouring; it is not therefore to be either hoped or expected that the increase will be maintained; but, even though the amount taken for fees be considerably reduced, the sum will still be so large as to warrant and require the maintenance of the Court in a high state of efficiency.

I have laboured to establish the principle that the administration of Civil Justice ought to maintain itself, or, in other words, that the fees taken in Civil Suits ought to be sufficient to defray the expenses of the Civil Jurisdiction of the Court, leaving the administration of Criminal Justice only a charge upon the public revenue; and, on the recent passing of a New Insolvent Act, shortly to be submitted for Her Majesty’s approval, I resolutely acted upon this principle, though, in doing so, I had unfortunately to differ in opinion from the Judges.

The Charter of Justice, issued on the 13th Octt., 1823, ordained that there should be in the Supreme Court a Prothonotary, a Registrar, a Master, and a Keeper of Records, with such other Clerks or inferior officers as occasion might require.

This array of Officers was so unnecessary that few of them have ever been appointed; and, notwithstanding the great increase of business in the Court, I cannot consider them now necessary, especially if they are all to be in the enjoyment of high salaries.

A Master was appointed at the creation of the Court, but was discontinued at the first opportunity as unnecessary.

A Registrar was also appointed, and has been continued; but the duty, he has performed, has been rather that of Registrar for the Supreme Court; and, from 1828 up to 1840, the whole of the duties appertaining to the Supreme Court were performed by a Chief Clerk, who had a salary of £550 a year.

When, in 1840, the Office of Master was revived, the Chief Clerk expected to be appointed to it; and, not receiving it (it

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Increase in fees taken in court.

Reasons for increase in fees.

Principle adopted in administration of civil justice.

Court officials authorized by charter of justice.

Past officials of supreme court.

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Duties proposed for prothonotary and registrar.

being provided in the Act of Council that none but a Barrister could hold it), he resigned, and began to practice in the Court as an Attorney.

The footing, on which I have proposed to place the Supreme Court Office, is detailed in my letter to the Judges of the 13th Decr., 1841.

I proposed that a Prothonotary should be substituted for the Chief Clerk, but should do the same duties, that is to say, that he should be the real head of the Office, and that his salary should be £650 a year.

The Registrar, I proposed, should do the same duties as he now performs, but be separated from the Supreme Court. His duties are precisely those of a Registrar General, that is to say, he enrolls all grants from the Crown, and records all conveyances of or incumbrances on real property, as well as Births, Deaths, and Marriages, and a number of special deeds, in the nature of Charters of Incorporation, directed by various Local Acts to be either enrolled or recorded; also, under the 22nd Clause of the 9th Geo. IV, C. 83, he enrolls all acts or ordinances passed by the Legislative Council; but this is a provision, which in all probability will not be repeated in the Act which is to give to the Colony a New Constitution.

The Decrees, Judgments and Orders of the Court are not recorded by the Registrar, but by the Chief Clerk.

The Registrar's Office is one, which ought, in my opinion undoubtedly to support itself, or ought even to do more, as, in a Country where there are no Stamp duties, the fees on the Registration of such Instruments as Conveyances of land or Mortgages should, I think, be fixed high enough to be made in some small degree a source of revenue; and, in an Act very recently passed by the Legislative Council for registering Deeds at Port Phillip, and which will speedily be submitted for Her Majesty's approval, this principle has been acted upon.

What I propose to do, if sanctioned by Your Lordship, is to pass a Local Act separating the office of Registrar from the Supreme Court, and authorizing the registration in it of Grants from the Crown and various other Instruments, which are now directed to be recorded in the Supreme Court.

The Judges have certified that they consider a Registrar will still be required for the Supreme Court; but the reason, which they assign for so thinking, is that various Instruments are now required by law to be registered in it; but these Instruments, I need scarcely observe, are the very ones which I propose to register elsewhere.
At the present moment, there is not a single deed or instrument registered in the Registrar's office that relates to the business of the Court, all these being, as I have already said, recorded in the office of the Chief Clerk. The separation therefore of the office of Registrar from the Supreme Court will be effected without the smallest inconvenience; and even though it be necessary to have (which I cannot think it will be) a Registrar for the Supreme Court, there can be no reason for his receiving a salary of £800 a year, one half of this would, I consider, be very ample.

The administration of Intestate Estates, which has hitherto been in the hands of the Registrar, may, under the Charter of Justice, be transferred to the Prothonotary or any other officer of the Court. Indeed, as this is a very increasing administration, and the labour of it is remunerated by a percentage (5 per cent.) on all monies passing through his hands, I am doubtful whether it should be held by an Officer receiving a high salary from Government. The percentage is supposed to amount at present to about £300 a year.

The report made to Your Lordship of the Insolvency, defalcation and suspension of the present Registrar, in my Despatch of this day's date, No. 5, will I trust sufficiently shew that the present is a most favorable opportunity for making such alterations in the office, as to Your Lordship may seem proper.

I have, &c.,

Geo. Gipps.

[Enclosure No. 1.]

SIR JAMES DOWLING TO SIR GEORGE GIPPS.

Sir,

Supreme Court House, Sydney,
3rd December, 1841.

Sir,

Having received intimation from Mr. Henry Burton Bradley that he intends, at the close of the present year, to resign the Office of Chief Clerk of the Supreme Court, it becomes my duty to bring under your Excellency's consideration the necessity of a different arrangement from that, which has for some years past obtained for the despatch of the important duties of his department.

By the ninth Section of the Charter of Justice granted to the Supreme Court, in pursuance of the Statute, 4 Geo. 4, Cap. 96, the Crown ordained that there should be certain Ministerial Officers for the despatch of business therein, and amongst others by name (to be appointed by the Crown) a Registrar, a Prothonotary, a Master, and a Keeper of the Records. At the Institution of the Supreme Court in 1823, the only Officers thus named, deemed necessary to be appointed, were a Registrar and a Master, and they were appointed accordingly. By the same Section of the Charter, the Chief Justice, for the time being, was empowered to appoint such and so many other Officers, as should, from time to time, appear to him to be necessary for the administration of Justice,
and the due execution of the powers granted by the Charter. In pursuance of this latter authority, the late Chief Justice appointed a number of Clerks, sufficient for the despatch of business in the then infant state of the Court. In the year 1828, the late Chief Justice proposed to the Home Government a different arrangement for the ministerial duties of the Supreme Court Office, and recommended the abolition of the Offices of Master and Registrar, there being in fact at that time no sufficient employment in the Court for Officers with such names, and, in lieu thereof, urged the appointment of a number of Clerks, in rotation, upon the principle of succession and promotion for meritorious services. The scale of salaries proposed was extremely moderate, and more than covered by the receipt of Office Fees. This Plan met with the approbation of the Home Government, and was carried out with the exception of the appointment of the present Registrar, who happened to have been nominated to his present Office, before the late Chief Justice's plan had received the approbation of the Crown. It was on this occasion that the Office of Master was abolished, which remained vacant until its revival on the occasion of Dr. Kinchela's recent appointment.

It has now been found by experience that the benefit, anticipated from the plan alluded to of always securing the services of an efficient Chief Clerk, has not been accomplished by reason of the inadequacy of the salary payable to that Officer, to induce him to remain, and the temptation held out to him to become a practising Attorney. This is now the second instance of resignation from these causes, and the cases of the two second Clerks, who also resigned from the little prospect of promotion, further illustrate the inexpediency of continuing the present system.

In order therefore to remedy the evil, I venture to recommend, with the concurrence of my brother Judges, that the Office of Prothonotary contemplated by the Charter of Justice be now filled up with a Salary of £800 per annum to the incumbent, in lieu of that of Chief Clerk, who now receives a salary of £550. The name of the Office and the salary proposed will, I hope, secure the efficient and permanent services of a Gentleman of professional standing to be appointed by the Crown.

This arrangement will of course diminish the patronage of the Chief Justice, a consequence, to which I cheerfully yield, in the hope that the public interests will be served by guaranteeing the respectability and permanency of the Office of Prothonotary, and render this department of the Supreme Court more agreeable to the practice and usages of the Courts at Westminster. The additional expence of this appointment will be nothing in comparison with the necessity of putting this important department on a proper footing, and will be found amply provided for out of the large and increasing revenue derived from the Fees of the Court.

Should this arrangement meet with the sanction of Your Excellency, I would respectfully suggest that the appointment be offered to Mr. John Gurner, the late Chief Clerk, who, from his long services, indefatigable industry, ability and experience, is admirably qualified for the Office, and that, should he accept it, Your Excellency would be pleased to recommend his appointment for the confirmation of Her Majesty.

In the event of Mr. Gurner declining the appointment, I entertain considerable doubt whether there is a Gentleman in the Colony of
GIPPS TO RUSSELL.

16 Jan.

In my opinion it should be filled either by a Barrister of the Courts at Westminster, or an attorney; and, if the power of appointment be exercised in England, I respectfully but most earnestly urge that regard should be had not merely to the respectability and character of the Candidate but also to his habits of business, experience, acuteness, and untiring zeal for the service. He must be a Gentleman in the prime of life, with unbroken Physical and mental aptitude, and not be led to suppose that the Office, honorable as it is in station, is exempt from laborious occupation and responsibility.

I have, &c,

JAMES DOWLING, C.J.

[Enclosure No. 2.]

COLONIAL SECRETARY THOMSON TO SIR JAMES DOWLING.

Colonial Secretary's Office, Sydney, 13 December, 1841.

I am directed by the Governor to acknowledge the receipt of the Letter addressed to His Excellency by your Honor on the 3d instant, reporting Mr. Bradley's intended resignation; and proposing that, in lieu of a Chief Clerk with £550 a year, there should be a Prothonotary with £800 per annum.

Referring to the conversation which Sir George Gipps had with your Honor on this subject on the 6th instant, the Governor desires me to repeat to you that His Excellency thinks the present a fit occasion to reconsider the Establishment of the Supreme Court, especially as a Bill\(^*\) now before the Legislative Council will probably render necessary some alteration in the Department of the Registrar.

There is not, the Governor regrets to say, a copy in the Colonial Secretary's Office of the Letter respecting the Establishment of the Supreme Court referred to by your Honor as having been written in the year 1828 by the late Chief Justice to General Darling. His Excellency has to invite you to cause Him to be furnished with a Copy of it; and He cannot do so without explaining that the reason why there is no record of this letter, nor of several others for which He has recently had to apply to the Judges for Copies, appears to be that General Darling was in the habit of corresponding personally with the Judges instead of through the Official organ of the Government.

The conduct of Business in the Supreme Court is, I am to observe, entirely in the hands of the Judges; and it is with the financial part of any arrangement connected with the Court that the Governor has any concern. The proposed arrangement is however essentially a financial one, and therefore His Excellency feels it right to represent to your Honor that the difficulties, in which the Judges have recently been placed by the Successive resignations of the Chief Clerks, appear to Him principally to have arisen from the two following causes, First, that after a period of Service (which is by no means a long one) any Clerk in the Supreme Court may claim to be admitted an Attorney; and Secondly, that the best paid Officer of the Court is not charged with the most arduous duties of it, nor considered as the Head of the Office. With a Salary of £800 a year, the Registrar has very little to do, whilst the Chief Clerk with a Salary of only £550 is the real Head of the Office.

\(^*\) Note 88.
1842.
16 Jan.

Identity of duties of registrar, prothonotary and chief clerk.

Office of registrar to be separated from supreme court.

Salary for proposed prothonotary.

Proposals re clerks in supreme court.

Conditional approval of appointment of prothonotary.

The Duties of the Registrar, Prothonotary or Chief Clerk are, if the Governor is rightly informed, nearly identical, and may at any rate all be performed by one Officer; whether, therefore, that Officer be called by one or the other name appears to His Excellency to be a matter of little importance; but it is, He considers, important that the Officer, who receives the best Salary, should be the Chief Officer of the Court; and, so long as there remain an Officer receiving a high salary under the name of Registrar, The Governor cannot, His Excellency regrets to say, with a due regard to that economy which it is so necessary in the present State of the Colony to preserve, consider that it would be proper to give to the Chief Clerk the title of Prothonotary and a large increase of Salary, especially so soon after he has by the appointment of a Master been relieved from nearly one half of his duties.

The Registrar, the Governor is aware, performs other duties, which do not properly belong to the Court, and which should be performed by an Officer of the Executive Government. The Registrar should therefore, His Excellency is of opinion, be charged with these duties only; and at the first convenient opportunity cease to be an Officer of the Court.

The present Registrar, I am to state, was appointed at a time when New South Wales was far from holding amongst the Colonies of the Crown the reputation which it now enjoys, and when it was consequently necessary to attach high Salaries to Officers in order to induce competent persons to accept them. Whenever there may be occasion to appoint a Registrar for the Colony, distinct from the Supreme Court, the Governor has no doubt that a very competent person may be found to accept the Office at a Salary of £600 a year, which would put him on a par with the Clerk of the Councils, or at the very utmost at £650 which would make him equal in point of Salary to the Auditor General.

The same comparative Station, and the same Salary would, His Excellency thinks, be reasonable for the Prothonotary, supposing him to enjoy no other emolument; but, if he be charged with the duty of administering Intestate Estates, and allowed to derive a profit from them, the Salary at present enjoyed by the Chief-Clerk would the Governor considers be an ample one.

A Registrar with £650 a year, and a Prothonotary with the same, would jointly make up £1,300; a Saving therefore of £50 a year in their Joint Salaries would be effected, or of £150 if the Prothonotary be the Administrator of Intestate Estates, which saving might not improperly go to the augmentation of the Salaries of the present 2d and 3d Clerks, provided they give up their claim ever to practice as Attorneys. These two Senior Clerks might obviously be called Keeper of the Records and Registrar of the Supreme Court without any increase of their Salaries, if it be thought desirable to keep up the Office named in the Charter; for, though the Charter certainly seems to contemplate the possible appointment of all the Officers named in it, it does not at all follow that they are all to be of equal Rank or enjoy equal Salaries. It will however in all probability be more convenient to continue them in the denomination of Clerks, in order to Secure their Subordination to the Prothonotary.

Should your Honor be of opinion that the arrangement herein proposed is a practicable one, The Governor, I am desired to inform you, will Sanction it immediately as far as the appointment of a
Prothonotary is concerned; and His Excellency will be happy to receive your Honor's Suggestion as to the person to be appointed (subject to Her Majesty's pleasure) provided only that it be not the Gentleman who has last resigned the Office of Chief Clerk.

With respect to the Clerks generally in the Office, Your Honor will, the Governor believes, agree in the expediency of abolishing the Rule which authorises them, after a certain period of Service, to have the honor of Attorneys; and, if this be done, it would seem to be only fair to place them on a footing with Clerks in the different departments of Government.

The five Clerks at present in the Office might then be placed as follows:

1 in the 1st Class; 2 in the 2d; 2 in the 3d; and such a number of Extra Clerks be allowed as may be necessary for the despatch of Business, with the understanding however that the hours of attendance of all the Clerks are not to be less than those which are required by the General Regulations of the Government.

I have, &c.,

E. DEAS THOMSON.

[Enclosure No. 3.]

SIR JAMES DOWLING TO SIR GEORGE GIPPS.

Sir,

Court House, Sydney, 28th December, 1841.

I have the honor to acknowledge the receipt of the Colonial Secretary's letter of the 13th inst. written by your Excellency's command in reply to mine of the 3rd inst. recommending the appointment of a Prothonotary of the Supreme Court in pursuance of the Charter of Justice, in consequence of the proposed resignation of the present Chief Clerk.

I have the honor to inform your Excellency in reply that I have had a conference with my Brother Judges on the Subject of the Colonial Secretary's Letter, drawing attention to the future establishment for the despatch of the Ministerial duties of the Supreme Court Office.

With every desire to co-operate with your Excellency in the reduction of unnecessary expences incident to the establishment of the Supreme Court, we regret to find that your Excellency contemplates a diminution of the Strength of the Supreme Court, at a time when it requires an accession.

The conduct of the business of the Court being as your Excellency candidly observes, entirely in the hands of the Judges, we must respectfully dissent from some of the arrangements proposed by your Excellency.

The measures in contemplation, by which the Supreme Court is to be no longer an Office for the Registration of Deeds, is one which has our entire concurrence; but we are of opinion that, if such arrangement shall take effect, the abolition of the Office of Registrar of the Supreme Court ought not to be a consequence.

It may be proper to observe that the fact of the Chief Clerk of the Supreme Court having become in effect the head of the department has arisen from circumstances over which the Judges had no control. At the first institution of the Supreme Court, according to the plan of the Charter of Justice, the Offices of Registrar and of Master were filled up in England; and, in the infant State of the Colony, it was found that these Officers had comparatively Speaking nothing to do. The first Registrar (Colonel
Galway Mills) was a decayed Gentleman, without the knowledge or habits of business suited to such an Office, and there was no Equity business sufficient to occupy the time of the Master. On the abolition of what was called the "King's Bench," Mr. Garner, the Registrar and Chief Clerk of that Court, was transferred to the Supreme Court, and, from his habits and aptitude for business, the Ministerial duties of the Court in its several branches of Jurisdiction insensibly devolved upon that Gentleman to an overwhelming amount. It was this State of things which induced the late Chief Justice to recommend the abolition of the Offices of Registrar and of Master, and Substitute the appointment of a succession of Clerks. Acting upon this suggestion, the Home Government abolished the Office of Master, but the recommendation came too late as it respected the Office of Registrar, and Mr. Manning was appointed. He assumed Office at a time, when Sir Francis Forbes's plan was in operation, which could not then be altered without causing great confusion in the department. The duty of Registering Deeds and enrolling Grants of the Crown and other public Instruments devolved upon him. He had also the collection and distribution of Intestates Estates committed to him. He was called upon to act as Clerk of Arraigns added to his other occupations. It seems that, in consequence of the vast accumulation of business under these heads, this Gentleman's time has been fully occupied, so much so indeed as to cause a lamentable arrear in the recording of Grants and the entry of Memorials of Deeds. Assuming that the Supreme Court is no longer to be a Registry Office for Deeds, it appears to us that, in consequence of the great increase of business in the various branches of the Court's Jurisdiction, since its establishment now upwards of eighteen years, there will be sufficient occupation, if his duties are properly performed, for an Officer still to be called the Registrar of the Supreme Court. His duties should be to receive and record all Crown Grants, Acts of Council, and other Instruments of a public nature or otherwise, which by law are required to be enrolled in a Court of Record. He should have the collection and charge of Intestate Estates, and he should be the Ministerial Officer in the Ecclesiastical Jurisdiction of the Court, which has now attained to a large amount, and from the constant accession to the population of the Colony is likely to increase every year. The mode of remunerating this Officer will of course be matter of financial arrangement with the person to be appointed, and the probable advantage arising from his duties as Curator of Intestate Estates (viz., a Commission on the Assets realized of five per cent.) may very properly be taken into consideration; but we are decidedly of opinion that such an Officer cannot now be dispensed with. The important duty of collecting and accounting for Intestate Estates ought not, in our opinion, to be committed to a Subordinate Clerk, who might not be able to find the Security, which ought to be required of the Officer performing this duty.

We have already pointed out the cause why it has happened that the Chief Clerk should seem to be considered as the head of the Office, a consequence which inevitably arose from the laborious and responsible duties cast upon him as the Chief Ministerial Officer of the Common Law Department, the business in which has exceeded in modern times all anticipated calculation. Your Excellency labours under a misapprehension in supposing that the respective
GIPPS TO RUSSELL.

1842.  
16 Jan.

Duties of Registrar and Prothonotary.

In principle and in practice in the Courts of the Mother Country, they are in fact distinct and separate. We have no hesitation in certifying that, in the present state of the Supreme Court, it is utterly impossible for the Prothonotary or Chief Clerk to perform the duties of Registrar, in addition to those properly belonging to his own department, which has cognizance solely of Common Law business, and so to attempt to arrange the business would cause inextricable confusion. The Office of Registrar and of Prothonotary being distinct in their nature, there is no reason why they should not be kept distinct, if there be business sufficient to employ the time, which should be appropriated for each; and, as we are of opinion that there is sufficient occupation for each, we cannot with a due regard to the administration of justice recommend the abolition of the office of Registrar.

With respect to the difficulties in which the Judges have recently been placed by the successive resignations of the Chief Clerks, these, we fear, are to be attributed more to the inadequacy of their salaries to the important duties which they have been called upon to perform, and the great temptation to employ their time at a higher remuneration in other pursuits, than to the rule, laid down by the Judges, allowing the Clerks to be admitted at Attorneys after five years' service in the Supreme Court Office. This Rule was ordained many years since, with the subsequent sanction of the Crown, in order to encourage young men to qualify themselves by study and reading to perform the duties of Clerks of Court with efficiency. There is this distinction between the Clerks of the Supreme Court and Clerks in other departments that the former require an education and a fitness, comprehending some knowledge of the law and not merely aptitude for labour as Copying Clerks. We are not impressed with the expediency of abolishing this Rule, being persuaded that the effect of it would be to introduce into the Office persons of an inferior class, who, having no ambition to exert themselves and nothing to look to after years of drudgery but a defined salary, would fail of that energy and zeal, which are essential to the due despatch of business in a public Office.

Being of opinion that the time has now arrived for carrying out the plan devised by the Charter of Justice, which in the early history of the Supreme Court had been departed from for the causes already explained, we beg respectfully to reiterate the recommendation that the Office of Registrar and Master in Equity be continued, and that the Office of Prothonotary should be filled up on behalf of the Crown. Each of these Officers will have full duties to perform. The mode of remunerating, being matter of financial arrangement, is respectfully submitted to your Excellency's determination; but we confess that we are not aware of any gentleman in this Colony, who, being recommended by his fitness, would be induced to accept the responsible Office of Prothonotary at the Salary proposed to be attached to it by your Excellency. Should your Excellency not feel yourself justified in filling it up on the terms I have suggested in my letter of the 3rd inst., I have the honor to request that the question may be submitted for the consideration of the Right Honorable the Secretary of State; and, in the meantime, I shall with the concurrence of my Brother Judges
16 Jan.
Office hours for clerks.

Inability to submit copy of letter of Sir F. Forbes.

make the best arrangement for the duties of the Office that circumstances will allow.

With reference to the hours of attendance of the Clerks in the Office, we have no objection to extend them, although we are not convinced that any greater advantage to the public Service will arise from their extension, than is now obtained. Although the hours now appointed are from Ten till three in vacations, and from Ten till Four in Term time, continuing throughout the year, yet we cannot forbear noticing that these hours are frequently exceeded by the press of business and the late Sittings of the Court.

Having a Sincere and anxious desire to promote economy on the one hand, and Stimulate the Officers of the department to unwearied diligence on the other, we respectfully trust that the mere arrangement of the business of the Court may be left to that province, which has been pointed out by the Act of Parliament instituting the Supreme Court.

I have, &c.,

JAMES DOWLING, C.J.

P.S.—The Letter, of which your Excellency desires to have a Copy, written by Sir Francis Forbes in 1828 relating to the Supreme Court Office, has not, it seems, been recorded in the Letter Book of the Office, and at this moment cannot be found; but I have directed a search to be made for it amongst the papers of the late Chief Justice, and, if found, I shall without loss of time cause a Copy of it to be sent to your Excellency.

J.D.

[Enclosure No. 4.]

COLONIAL SECRETARY THOMSON TO SIR JAMES DOWLING.

Colonial Secretary's Office, Sydney,

Sir,

5 January, 1842.

Referring to a letter, dated 17th July last from their Honors the Judges of the Supreme Court, I am directed by the Governor to inform your Honor that this communication has remained unanswered up to the present time, as until within the few last days He entertained the hope that it would be practicable to Separate altogether the Office of Registrar from the Supreme Court, and to make him an Officer of the Executive Government; but that the measures, which He contemplated and which were detailed in my letter to Your Honor of the 13th Decr. last, not having appeared satisfactory to the Judges, His Excellency finds it necessary to refer the whole question to the Secretary of State according to the intention communicated to your Honor in the letter addressed to you to day in answer to one from your Honor of the 28th Decr., 1841.

The question respecting the Separation of the Registrar's Office being thus deferred, the only portion of the letter from their Honors, which seems to require a reply from the Governor, is the part of it wherein he was informed that the process of Entry in the Registrar's Office has fallen greatly into arrear whilst that of indexing has been totally omitted.

So long as the Office of Registrar may remain under the Control of the Judges, His Excellency does not claim any right to interfere in the details of it. He feels it nevertheless a duty incumbent on Him to remark that a Register without an Index appears to Him to be a Record of Scarcely any utility; and, with respect to
the bringing up of arrears, His Excellency must refer to what He has had occasion in a former communication to State to your Honor, namely, that He is prohibited by the Instructions of Her Majesty's Government from granting any assistance in bringing up arrears, until the Clerks in the Department wherein the arrears have accumulated work nine hours a day, and He is informed that in the Supreme Court the ordinary attendance of Clerks is only five hours a day in Term and Six hours out of Term.

I have, &c,

E. Deas Thomson.

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LORD STANLEY to SIR GEORGE GIPPS.

(Despatch No. 53, per ship Kelso; acknowledged by Sir George Gipps, 14th July, 1842.)

Sir,

Downing Street, 17 January, 1842.

In the Schedule of Special payments, etc., which accompanied your dispatch No. 100 of the 25 of April last, there is one item to which I have to call your attention. I allude to the charge of £289 12s. 6d. for the passage and freight of Luggage of Judge Willis and other Judicial Officers consequent on their removal to Port Phillip.

It does not appear to me that the despatches, to which you refer, afford the explanation necessary to justify that Expenditure. The payments in question are referable to one of two classes, that is, they are either payments made to persons who for the first time obtained Public employment in a part of the Colony remote from the Capital, or of persons who have exchanged their former employments for others, which they regarded as desirable promotions. In neither of those cases have the Public hitherto been charged with expenses of this kind, and to make such a charge would be to establish a precedent, and to introduce a principle pregnant with a serious burthen on the Local Treasury. If the case of Mr. Willis be regarded as a peculiar one, and, as falling within neither of the Classes already mentioned, it must be borne in mind that the transfer of his Services to Port Phillip was a measure, forced on the Local Government in order to terminate dissensions* in which Mr. Willis had become involved with the other Judges, from the blame of which dissensions you were not able to acquit Mr. Willis himself. It is not, therefore, apparently reasonable that the Public should sustain the charge of Mr. Willis's removal to Port Phillip, as the necessity for that removal was created partly at least by himself, and was but an escape from other consequences of the contests of the Judge which might have been much more disadvantageous to him. If, however, the expense is to be justified on the ground that Mr. Willis was blameless in those unfortunate controversies,

* Note 89.
1842.
17 Jan.
Senator, By Sc, By.

and was compelled to quit Sydney by the misconduct of others, that is an opinion which you have not yet expressed, and which, if you really entertain, it would be proper that it should be so expressed in vindication of the charge now made for Mr. Willis's advantage.

I am, &c.,

STANLEY.

LORD STANLEY TO SIR GEORGE GIPPS.

(Despatch No. 54, per ship Wilmot; acknowledged by Sir George Gipps, 4th September, 1842.)

18 Jan.
Transmission of memorial.

Sir, Downing Street, 18 January, 1842.

With reference to the correspondence* which has passed between my Predecessors and yourself on the subject of certain charges brought against Mr. Gray, Police Magistrate at Port Macquarie by Mr. H. F. White, who formerly held the office of Assistt. Surveyor in New South Wales, I transmit to you, here­

with, Copy of a Memorial addressed to me by Mr. White, in which he impugns the proceedings in the enquiry which you were directed by Lord Glenelg to institute into those charges, and states that he has not been allowed an opportunity of proving them.

I have to request that you will furnish me with an early report on the Statement contained in Mr. White's Memorial.

I am, &c,

STANLEY.

[Enclosure.]

THE MEMORIAL OF HENRY FANCOURT WHITE.

To the Right Honble. Lord Stanley, H.M. Secretary of State for the Colonies, etc., etc., etc.,

Sheweth,

That, in January, 1838, he was a Surveyor in the Surveyor General's Department, and a Commission of Crown Lands in the Colony of New South Wales:

That he had been at that time eleven years in that Department; that he was then stationed in the District of Macquarie; and that while there he marked out a line of road as a public thoroughfare by order of the Deputy Surveyor General Lieutt. Perry, then at the head of the Department in the absence of Sir Thomas Mitchell on leave of absence.

That the police Magistrate of the District, a Mr. Wm. N. Gray, who had charge of the road parties, caused part of that line of Road to be made in a direction different from that marked by your Memorialist, in order to avoid its passing through an enclosure the property of a Major Innes.

That your Memorialist represented this deviation, as he con­

considered his duty, to the head of his Department.

That, in consequence of this representation, Mr. Gray, on the 5th February, 1838, wrote a private Note to the Deputy Surveyor

* Note 90.
General, containing certain charges against Memorialist, and also denied having altered the road.

A Copy of these charges was transmitted to Memorialist, who replied to them.

This reply, the Deputy Surveyor General expressed himself satisfied with; and that the Matter would have rested there, were it not for an allusion made to it in a Letter from the Colonial Secretary.

In consequence of that allusion he forwarded the correspondence to the Governor, without blaming or reflecting on the conduct of Memorialist in any manner.

Memorialist then preferred certain charges against Mr. Gray, the police Magistrate, in a Letter to the Colonial Secretary, dated 18th January, 1838, requesting also that an investigation might be instituted in order that he might be able to prove them, and also the alteration of the Road.

A month after this, Memorialist received a Letter, dated 20th February, 1838, from the Deputy Surveyor General, containing a Copy of the “decision” of the Acting Governor on the charges preferred against Memorialist, although there had been no investigation whatever into them.

This decision of the Acting Governor declared the charges against Mr. Gray to be groundless; and, with respect to those preferred against Memorialist, he would have considered it his duty to have suspended him from his appointment, but that, in consideration of the high Character given him by the head of his Department, of his zeal and activity, and the general satisfaction he had given, he refrained from doing so at that time, and required the charges against Mr. Gray to be withdrawn by Memorialist. The letter of the Deputy Surveyor General, as before stated, was dated the 20th February, 1838. On the 22nd February, two days after, the Deputy Surveyor General wrote instructions to Memorialist to proceed to Port Philip, a District about 700 Miles from that in which Memorialist then was. On the 27th Feby., five days after these instructions were written, the Deputy Surveyor General addressed a Letter to Memorialist, informing him that the acting Governor had suspended him from his appointment on account of the charges made against him by Mr. Gray; the same charges which he had previously stated he would not suspend him for on account of high character, etc.

The reason assigned by the Acting Governor for suspending him being because he had not withdrawn the charges against Mr. Gray.

It must therefore be evident that the sole reason of Memorialist's suspension was because he had not withdrawn his charges against Mr. Gray, which charges had not been investigated, and not on account of those preferred against himself.

The harmless of the latter must be manifest from the fact that Memorialist never, after admitting them to be true, received the slightest censure from the head of his Department, and also by the fact of his having been recommended for an increase of pay.

Upon the correspondence being received by Lord Glenelg, then Secretary of State for the Colonies, he addressed a Despatch to Sir George Gipps, the Governor of New South Wales, in which, although His Lordship confirmed the suspension of Memorialist in consequence of its having been represented to him that the Acts
done by Your Memorialist were contrary to the established regulations and orders of the Department and Government, he directed that an enquiry should be instituted into the charges preferred against Mr. Gray, either before the Executive Council or other competent and impartial persons, as "there might be a failure of impartial justice, if Memorialist were not allowed an opportunity of proving his charges."

A Copy of this Despatch was forwarded to Memorialist by Sir Geo. Gipps, requesting him to state whether he desired the enquiry to take place, and informing him that the result of it would have no bearing on his own case. Memorialist replied by requesting the enquiry, and, notwithstanding His Excellency's assertion to the contrary, he conceived the proving his charges not to be groundless would bear upon his Case, when his removal from his Office was for their being groundless.

Instead of the enquiry taking place before the Executive Council, His Excellency decided that it should take place before two Commissioners; one a police Magistrate, an appointment at the disposal of the Governor, the other a Major Montgomery of the 50th Regiment, holding also a Colonial Appointment.

His Excellency then wrote to Memorialist requesting him to transmit a List of the Witnesses he intended to call at the enquiry, which Memorialist did; and was then informed that he must produce them himself at the enquiry.

Memorialist informed His Excellency and the Commissioners that the Witnesses would not come forward at his solicitation, and urged their being requested to attend by the Government; but this was refused.

The Commissioners then selected some of the Witnesses, those entirely under the control of Mr. Gray, but positively refused to request the attendance of private individuals.

Memorialist declined entering into the Case with these picked Witnesses. The Commissioners, then entered on the enquiry themselves, and Wrote to every one of the Witnesses, whom they had previously refused to summon.

Memorialist on learning this hastened to them and expressed his astonishment at finding they had done so, and that, as they had nearly all the Witnesses in attendance, he was most anxious to examine them.

This they refused, without Memorialist would consent not to examine those already examined by them, and would agree not to enter on charges Nos. 4, 7 and 8.

Memorialist declined consenting, because the Witnesses he was debarred from examining were those whose evidence was of the most importance, and because the enquiry, directed to be instituted by Lord Glenelg, was into the whole of his charges.

Memorialist then offered to defray the whole of the expense of the enquiry (that having been advanced as a reason for not allowing it), if he were allowed to examine the Witnesses then in attendance; but this was not allowed; and Memorialist was compelled to be a silent Spectator (not being allowed to speak) in a Court instituted for the Sole purpose of affording him an opportunity of proving his charges.

Memorialist then determined to proceed to England in order to submit his case to your Lordship's consideration.
Unavoidably long delays at Sea are the cause of the lapse of time.

Memorialist now begs to state that, although there has been an investigation, still he has not had an opportunity of proving his charges, which were the object for which Lord Glenelg caused it to be instituted, and that, in the words of His Lordship, "there may be a failure of impartial justice."

The enquiry directed to be instituted by His Lordship was one to afford Memorialist an opportunity of proving his charges, whereas the object of that instituted by His Excellency Sir Geo. Gipps was, as he informed Memorialist by letter, "simply for the satisfaction of the Government."

It must be evident that an enquiry having for its professed object the satisfaction of the Government (Colonial) was not one likely to afford a fair opportunity for those charges being proved, which it had already decided to be groundless.

The Executive Council therefore was named by Lord Glenelg, the persons forming it not holding their appointments from that Government (Colonial) and not being under His Excellency's Control.

Besides the loss of his Appointment, the pay and allowances of which were equal to £400 a year, Memorialist has been put to the expense of several hundred pounds, besides a great loss of time, and would therefore beg to impress on your Lordship the extreme hardship of his Case, and to the following circumstances connected with it.

It was stated by Coll. Snodgrass, and has been so represented to your Lordship's predecessor, that the acts done by Memorialist, and which are assigned as the cause of his removal from Office, were contrary "to the established regulations of the Department and orders of the Government."

Memorialist begs to assure Your Lordship that there were no Orders or Regulations on the subject before his suspension from Office; and that, after that circumstance, a Circular Letter was addressed to each Member of the Department, warning him against doing those irregularities for which Memorialist was suspended. Memorialist applied to the Deputy Surveyor General for a Copy of this Circular, for the purpose of forwarding it to your Lordship, as it was evidence in itself that no Orders on the subject existed previously; but the Deputy Surveyor General refused without an Order from the Governor, which His Excellency would not grant.

Memorialist would also submit that he ought not in justice to have been removed from his appointment, on which he was solely dependent, for Acts which he knew not to be irregular, without having had notice to that effect, and a warning of the consequences, as every other Member of the Department had after his suspension, for, had he ever received such Notice, he certainly should have attended to it.

Even admitting the Causes of Memorialist's removal from Office to be unjustifiable, he would submit that, after having been once overlooked, as can be seen by Coll. Snodgrass' decision, by the Deputy Surveyor General's instructions to proceed to Port Phillip after that decision, and by the fact that he was recommended for an encrease of pay, it was not just that he should have been suspended for those identical acts.
Memorialist begs your Lordship's attention to the appended testimonials of the value of his services during the eleven years he served the Government, and to the admission of the Acting Governor of his high character, zeal and activity, and the general satisfaction he had given.

The Deputy Surveyor General also testified that he had always found Memorialist to be a most intelligent Officer, ardently attached to his profession, and giving general satisfaction in whatever District he had been employed.

Memorialist, having from his youth been in Her Majesty's Service for which he learnt his profession, and never having contemplated leaving it, was, when that occurrence took place, unable to follow any other pursuit.

Under these circumstances, he solicits your Lordship's consideration of his case, that he may be reinstated in Her Majesty's Service, either in an appointment requiring the exercise of his profession, or in such other as your Lordship may consider the length (eleven years in one Department) and value of his Services, the rank of his previous appointment, and testimonials of ability and zeal may merit.

And Your Memorialist will ever pray,

H. F. WHITE.

[Sub-enclosure.]

SUMMARY of the Correspondence relating to the suspension of Memorialist.

Copy of the Letter of the Deputy Surveyor General forwarding one of the "decision" of Colonel Snodgrass on the charges against Memorialist by Mr. Gray.

Sir, Surveyor General's Office, 20th February, 1838.

In obedience to the Commands of His Excellency the Acting Governor, communicated to me in the Colonial Secretary's Letter No. 38-76 of the 10th February, 1838, I have the honor to transmit herewith a Copy of His Excellency's decision on the charges, which you have brought against the Police Magistrate at Port Macquarie, as well as on the charges preferred against yourself by that Officer; and I am further directed to add, in forwarding to you a Copy of Mr. Gray's defence, that he does not admit of having altered the line of road as complained of, which fact is corroborated by Mr. Innes.

I have, &c,

S. A. PERRY, Deputy Surveyor Genl.

THAT the Governor in this decision had looked over the complaints against Memorialist will be evident from the circumstance of the Deputy Surveyor General having written afterwards the following Copy of instructions to Memorialist to proceed to the performance of duties 700 Miles distant.

FROM THE DEPUTY SURVEYOR GENERAL TO ASSISTANT SURVEYOR WHITE.

Sir, Surveyor General's Office, Sydney, 22d Feb., 1838.

As I have no further occasion to employ you in the District of Port Macquarie, I have to request that you will immediately make arrangements to proceed to Port Phillip by Sea, and that you will acknowledge the receipt of this Order at your earliest convenience.

The charge of the Port Macquarie district devolves upon Mr. Surveyor Finch, who has been instructed to direct his course to that Settlement.

I have, &c,

S. A. PERRY, Deputy Surveyor Genl.

MEMORIALIST was now recommended for an increase of pay by the Deputy Surveyor General, after which the following Letter, suspending him for those identical acts which took place previous to that recommendation and to the above instructions, was sent to him:—

Sir, Surveyor General's Office, 27th February, 1838.

Having received a Letter from the Colonial Secretary's Office during the 23rd instant, informing me that His Excellency the Acting Governor waited until the Upton Castle, with Sir George Gipps on board, had been signalized without your reply to that part of the Colonial Secretary's Letter of the 16th instant, which
STANLEY TO GIPPS. 641

relates to your withdrawing the charges you brought against the police Magistrate of Port Macquarie, in retaliation but in no way vindicatory of what had been alleged against yourself; and having understood also that you have declined or complained against being removed to another District as ordered by me; His Excellency had no alternative left but to direct that you be suspended from your situation for having, while at Port Macquarie, made use of Government Cattle and Men on a Farm you had purchased for your own private benefit, and against the established rules of the Service and orders of the Department and Government; for bringing your party, in consequence of their being so allowed to work for yourself and others, in a disorderly state of discipline; and for bringing forward charges against the Police Magistrate at Port Macquarie of a frivolous, vexatious and groundless nature; and you are hereby suspended accordingly.

I have, &c.

S. A. PERRY, Deputy Surveyor Genl.

By this Letter, it appears that the reasons which actuated Coll. Snodgrass in suspending Memorialist for those Acts, which by the instructions to proceed to Port Alleged causes Phillip he had previously overlooked, viz., the making use of Men and Oxen to convey some of his private property, was because he had not replied to a Letter which did not call for one, as is manifest by that of the Deputy Surveyor General to Memorialist of the 20th February, 1838, transmitting it (above inserted) not demanding an answer, and by the instructions to proceed to Port Phillip not expressing that duty to be contingent on any reply.

As to Memorialist's Men being in a disorderly state, as mentioned by Coll. Snodgrass, he has only to observe that it was the first time he had ever heard of such a complaint, the head of his Department never having had on any occasion found any fault of that nature with him.

That such a disorderly state of discipline existed not from any mismanagement on the part of Memorialist will be seen on referring to the following Memorial from the Inhabitants of the district.

The last reason assigned for Memorialist's removal is because Memorialist had brought "frivolous, vexatious, and groundless" charges against Mr. Gray; that they were not "frivoulos or vexatious" may he presumed from the fact of Lord Glenelg, the Secretary of State, having directed their investigation by the Executive Council, the highest tribunal in the Colony. As a proof that they are not "groundless," Memorialist would submit the following Copy of a Letter from Mr. Steele, a Magistrate in the Colony, and which was forwarded to Colonel Snodgrass the Acting Governor:

Sir, Sydney, 13th February, 1838.

I have received your Letter of the 12th instant, requesting me to state if Opinion of I know certain complaints made by you against the Police Magistrate of Port C. Steele re Macquarie, contained in a letter of yours to the Colonial Secretary (a Copy of which charges against Mr. Gray; that is forwarded with your Letter) to be true.

As I have been accused by the Government of having a personal feeling towards the individual in question, I reluctantly address you on the subject; but, at the same time, I conceiv I am bound to say that I can testify on oath to the truth of part of these complaints; and, as to the rest which have not come under my notice, I have heard respectable people speak of them as facts.

I am, &c.,

CHARLES STEELE, J.P.

The following Copy of a Memorial from the Inhabitants of the District of Port Macquarie was sent to His Excellency the Governor after Memorialist's suspension, and is evidence that the conduct of Memorialist did not merit removal from his appointment, as the persons, whose names are attached to it, were acquainted with all the particulars of his Case, and are of that rank and respectability as to make it improbable that they would have attached their names to it, if Memorialist's conduct had been such as to merit his removal from Her Majesty's Service.

COPY of a Memorial from the Inhabitants of the District of Port Macquarie to His Excellency the Governor.

To His Excellency Sir George Gipps, Knight, Governor of New South Wales, etc., etc., etc.

UNDERSTANDING that it is contemplated to remove from this District Mr. Assistant Surveyor H. F. White, we beg to express our regret at hearing of his removal, and to bear testimony to the ability, zeal, and attention shewn by him in the performance of the duties entrusted to him; to the readiness with which he has at all times given information to Applicants for land; to the interest he has at all times shewn for the public, generally, in the marking of roads, or in any other duties connected with his Office; to the general satisfaction he has given in every respect; and to the correctness of his conduct while in this district.
1842.
18 Jan.

**Memorial from residents in district of Port Macquarie.**

We therefore venture to hope that under these circumstances Your Excellency will be pleased to retain in this district the Services of Assistant Surveyor White, the Commission of Crown Lands.

CHARLES GEO. GRAY, J.P., Lt. C.I. E. W. RUDDER.

J. C. P. MORTON, Lieut., R.N.

H. EVANS, Lt. or Cameronians, Lieut.

FEAR, P. TRAPANTH, late Lieut., 28th Regt.

QUEEN SWIFT, late Ensign, 28th Regt.

H. OAKES, Commissioner of Crown Lands.

HENRY BETTS, C.R. HYNDMAN, late Lieut., 11th Hussars.

CHARLES STEELE, J.P., Lieut., 11th Regt.

E. L. ADAMS, Honble., E.I.C.S.

Benjamin R. Sullivan.

Henry St. J. CARNAC.

Port Macquarie, 16th April, 1838.

**Testimony to services of H. F. White by A. C. Innes.**

"Having heard it reported that Mr. White our Surveyor is likely to be removed from the district, I have to assure you that, during the period Mr. White has been here, I consider him to have discharged his duties in an efficient manner, and hesitate not to say that all the Settlers in this district would greatly regret his removal. Under these circumstances, I hope I may ask the favor of you not to deprive the district of Mr. White's Services." - Archibald Clunes Innes.

**Extract from a letter from Major Innes, formerly Brigade Major of the Colony, to the Deputy Surveyor General.**

"Having heard it reported that Mr. White our Surveyor is likely to be removed from the district, I have to assure you that, during the period Mr. White has been here, I consider him to have discharged his duties in an efficient manner, and hesitate not to say that all the Settlers in this district would greatly regret his removal. Under these circumstances, I hope I may ask the favor of you not to deprive the district of Mr. White's Services."

ARCHIBALD CLUNES INNES.

**EXTRACT from a letter from Sir Thomas Mitchell, the Surveyor General, to the Colonial Secretary of New South Wales, written when it was proposed to reduce the number of the Officers of the Department, by leaving out the names of those not appointed by the Right Honorable the Secretary of State for the Colonies.**

"With respect to Mr. H. F. White, he has such superior talents both as a Draughtsman and Surveyor that I think he ought to be retained under almost any circumstances. His first Survey, the Razor-back ranges, was equal to some of my finished productions after years of practice and experience."

T. L. MITCHELL, Surveyor General.

**19 Jan.**

**Confirmation of A. Cheeke as crown prosecutor.**

My Lord, Government House, 19th Jany., 1842.

Authentic information having reached the Colony, of the delivery of the Seals of the Colonial Department by Her Majesty to Your Lordship, I beg leave to state that my future Despatches will be addressed to Your Lordship, instead of to Lord John Russell.

I have, &c.,

GEO. GIPPS.

**LORD STANLEY TO SIR GEORGE GIPPS.**

(Despatch No. 55, per ship Wilmot.)

Sir, Downing Street, 20 January, 1842.

I have received your dispatch of the 18 of July last, No. 139, reporting the death of Mr. Francis Moore, Crown Prosecutor of New South Wales, and your nomination of Mr. Alfred Cheeke to that Office; and I transmit to you, herewith, a Warrant under the Royal Sign Manual confirming that Appointment.
I have directed the Colonial Agent to pay to the Chief Clerk of this Office the Fees chargeable on this Warrant, amounting to Eleven Pounds Five Shillings and Six Pence, which you will recover from Mr. Cheeke.

I am, &c.,

STANLEY.

SIR GEORGE GIPPS TO LORD STANLEY.

(My Lord, Government House, 20th Jan., 1842.

I have had the honor to receive Lord J. Russell’s Despatch, No. 281 of the 2nd June, 1841, directing me to repay into the Military Chest a Sum of £5,000 issued to Mr. Barnard for the service of this Government.

I beg leave to represent to Your Lordship that I am quite unable to acquaint with the reasons, which may have induced Mr. Barnard to apply to the Lords of the Treasury for the advance of this sum of £5,000, when he must have had in his hands more than that sum, paid by Mr. Dendy for a special Survey, and, I believe, several other sums paid to him for Land Orders issued on this Colony by the Land and Emigration Commissioners.

Not having received any reply to my Despatch No. 91 of the 11th April, 1841, in which I requested that Mr. Barnard might regularly report to this Government the sums which he received on account of Land Orders, I hope Your Lordship will not disapprove of my deferring the repayment of this sum of £5,000 into the Military Chest, until I either receive further instructions from Your Lordship, or the accounts which I have asked for from Mr. Barnard.

I trust I may be excused if I also add that, by the accounts last received from Mr. Barnard, it appears that considerably more than half of the sum, which I am now called upon to repay, was advanced not for the service of this Colony, but for that of New Zealand.

I have, &c.,

GEO. GIPPS.

LORD STANLEY TO SIR GEORGE GIPPS.

(Sir, Downing Street, 23 January, 1842.

I referred, for the consideration of the Lords Comrns. of the Treasury, your dispatch of the 20th of July last, No. 141, enclosing Copy of new Regulations, which you had issued on the subject of Rewards for the Apprehension of Runaway Convicts;
and I have received a communication from that Board, in reply, stating that, with the understanding that those Regulations apply only to Rewards for ordinary cases of Convicts absconding, and not to rewards for the apprehension of Perpetrators of other offences, which would properly be matter of Police Expenditure, their Lordships approve of the provisions therein contained, and that they have caused the Commissary in the Colony to be so apprized, and to be instructed as to the nature of the Vouchers he is to require for the payments he may be called upon to make for the purposes to which the Regulations refer.

I am, &c,

STANLEY.

SIR GEORGE GIPPS TO LORD STANLEY.

(Despatch No. 10, per ship Cumberland.)

My Lord,

Government House, 23rd January, 1842.

I have had the honor to receive Lord J. Russell's Despatch No. 260 of the 5th May, 1841, enclosing a Copy of a Memorial, which had been addressed to His Lordship by Lieutt. General Sir Thomas Brisbane, praying that his former Grant of 10,000 acres of land in this Colony may be relieved from the charge of Quit Rents, and an additional Grant of equal extent made to him; in respect to which Memorial, His Lordship was pleased to direct that I shall report whether there be anything set forth in it, which would lead me to alter the opinion expressed in my Despatch of the 22nd Septt., 1838, No. 170.

Having attentively perused the Memorial of Sir Thos. Brisbane, and again gone through all the documents which exist, respecting the Grant which the Government of this Colony was authorized by Lord Bathurst in 1826 to make to Sir Thos. Brisbane, I feel myself bound to certify to Your Lordship that I can see no reason whatever to alter the opinion which was expressed by me in the Despatch above mentioned.

The Memorial seems to rest, principally if not entirely, upon the two following assumptions:—

1st. That the delay, which occurred in making the selection of the first 10,000 acres, and consequently in the occupation and improvement of them, was chargeable on the Government;

2ndly. That, though the conditions were not literally fulfilled in respect to the first Grant so as to entitle the Grantee to a second Grant of equal quantity, they were fulfilled as far as the nature of circumstances would permit, or at least might be construed to have been fulfilled according to Colonial usage.
With respect to the first of these two points or the delay in making the selection, it is obvious, from a mere perusal of the Memorial, that the delay rested entirely with the Agents of Sir Thos. Brisbane, and not with the Government.

The first agent, Mr. Murdoch, settled in Van Diemen's Land in lieu of New South Wales, and appears to have neglected altogether the interests of his Principal.

The second agent explained to Sir Thos. Brisbane the reason of his delay, which was, that he was waiting for the opening of better land than any that he could select in 1828; shortly after which, he went to India and, equally with the first agent, thought no more of the interests of Sir Thos. Brisbane further than that he transferred to another person, Mr. Stephen, the power of Attorney which he held.

This third agent, not having any instructions from his Principal, applied to the Government to know how he ought to proceed, and received an answer, informing him not where he was to make his selection, for with that the Government had nothing to do, but letting him know (which was all he could or did expect) that the Government would recognize him as the Agent of Sir Thos. Brisbane, and otherwise comply with the directions which had been sent from home respecting the intended Grant. This answer is dated the 20th Augt., 1830.

This same third agent, however, instead of making a selection, removed, as his Predecessor had done, from the Colony and thought no more of the matter.

A fourth agent, Mr. Furlong, was appointed, who it is said made considerable progress towards a selection, but died before he had effected it.

The fifth agent (who was the Son of the fourth and bore the same name) at length actually in 1832 made a selection, but in a spot where notoriously no selection could be confirmed; the land asked for was beyond the Borders of Location, and the selection was consequently very properly disallowed.

At length in 1833, after a delay of more than six and a half years, an unobjectionable selection was made by this same fifth agent, Mr. Furlong, and confirmed by the Government. The only irregularity, committed herein by the Government, was the confirmation of the Grant after so great and unusual a delay in the selection of it. I find that, in 1831, General Darling left a record of his opinion, that the order should be considered obsolete.*

*This opinion is quoted at length in my Despatch of this day's date on Dr. Douglass' land claim; as it applied to the first Grant of 10,000 acres, and not to the second, it is unnecessary to give it here.
I can see nothing in any of the papers to lead to the conclusion, sought to be established in the Memorial, that it was the duty of the Government to assign land to Sir Thos. Brisbane, instead of allowing his Agent to choose the land where he pleased. The universal practice of the Colony was to allow the intended Grantee or his Agent to select land, subject of course to the approval or disallowance of the Government; and, had this course been departed from in this particular case, a doubt can scarcely exist that such a departure from established practice would have been made a ground of complaint against the Government.

Sir Thos. Brisbane, or rather his Agent, obtained possession of the land in 1833, and he sold it in 1836. What quantity of Stock or cattle was ever placed upon the land during the three years that it was held by the agents of Sir Thos. Brisbane, it is quite out of my power to ascertain; but it is admitted that the land was in a state of nature, two years after Sir Thos. Brisbane sold it; yet it is contended in the Memorial that the condition was fulfilled, which was to entitle the Grantee to a second Grant of equal extent, that condition being that the first Grant should have been brought into full and successful cultivation.

I readily concede that, in the early days of this Colony, and before land had acquired a marketable value, no very rigorous performance was exacted of the conditions on which lands were alienated from the Crown; but, in later times, a very different practice had been established; and in the very numerous instances, in which second grants have been demanded of me, in consequence of the decision communicated to my Predecessor in Lord Glenelg's Despatch, No. 180 of the 31st July, 1836, I have invariably required the most satisfactory proof of the performance in respect to the Primary Grant of the conditions, which were to entitle the Grantee to a second one, and have rejected many applications in consequence of the failure of such proof.

Whether the condition of bringing 10,000 acres of land, in a remote part of New South Wales, into "full and successful cultivation" was in itself a reasonable one to impose on any Grantee, is not the question; it was perhaps as reasonable as to propose to give to any individual, resident in England, 20,000 acres of land for his own use in New South Wales. The party, which calls on the Government for the exact performance of a very improvident engagement made sixteen years ago, is at least, I must submit, bound to shew that his part of the engagement has been performed; whilst himself contending for an extreme right and for one injurious to the public interests, he cannot justly complain, if his claim be subjected to a rigorous investigation.
It might be difficult to define the quantum of improvement, which would justify any one in declaring that any given 10,000 acres of land in New South Wales or elsewhere, were in full and successful cultivation; but there can be no difficulty I think in deciding that lands, confessedly in a state of nature, are not fully and successfully cultivated.

With respect to the other claim, contained in the Memorial, that the first 10,000 acres should be exempted from the payment of Quit rents, I can only report that I see nothing in the Papers, which I have examined, to shew that the lands should be exempted from the charges, which it was usual to impose on all lands alienated from the Crown at the time they were granted.

The original promise made to Sir Thos. Brisbane, in Mr. Hay’s letter of the 14th Augt., 1826, was in the following words:—

“Lord Bathurst will direct a Grant of 10,000 acres of land in the Colony of New South Wales to be assigned to you upon the usual conditions, subject to your sending out at your own expense resident Agents, and employing Capital to the extent that may be required by the regulations at present in force in the Colony; and His Lordship will also direct that a further Grant of 10,000 acres, adjoining the other property, may be reserved, with a view to Your obtaining that addition so soon as the first Grant shall have been brought into full and successful cultivation.”

I have, &c,

GEO. GIPPS.
The Certificate furnished by Sir Thos. Brisbane, is certainly a strong one; and, to persons unacquainted with the process of granting land peculiar to the Colony, it might appear incontrovertibly to establish Dr. Douglass' right to the land which he claims; but, to a person acquainted with that process, the result will be very different.

Sir Thos. Brisbane says that he granted to Dr. Douglass 2,000 acres of land, and gave the same gentleman, at his request, permission to select and occupy such Grant at Narriga.

I feel bound to observe, in reply, that Sir Thos. Brisbane assuredly did not grant, in the strict or legal acceptation of the word, any land to Dr. Douglass, for land can only be granted by Letters Patent under the Seal of the Colony and the hand of the Governor; and such Letters Patent were certainly never issued. Had they been issued, they must have been recorded; and Dr. Douglass could, on proof either of their issue or their record, eject any person from his land, whom he might find in possession of it.

But, unfortunately in the times of Sir Thos. Brisbane and of all Governors of this Colony down to the year 1832, the practice prevailed of issuing not Grants, but only promises of Grants, or more correctly speaking permissions to select land, to be afterwards confirmed by Grants; and the difference is very essential, inasmuch as land granted becomes the immediate and unquestioned property of the Grantee, whereas, a promise of a Grant, or a permission to select, confers only an inceptive right, to be confirmed on the performance of certain conditions by the person receiving the promise.

These conditions varied at different times; but there were some which were never dispensed with; and, amongst these indispensable conditions, were the following:—

1st. That the intended Grantee should select his land, and report his selection to the Surveyor General or Colonial Secretary;

2ndly. That he should, through the Colonial Secretary on the recommendation of the Surveyor General, receive an authority to take possession of the land so selected.

It never was the practice of this Government to point out to an intended Grantee the land, which he was to receive; it was the invariable custom to give him permission to select land, and, until his selection was approved, his Title was incomplete.

The following Memorandum, which I have before me in Governor Darling's own writing, dated the 10th Septt., 1831, bears
strongly on this point; and is remarkable as having been made in
Sir Thos. Brisbane's own case, Sir Thomas having obtained
permission from Lord Bathurst to receive 10,000 acres, but not
having then selected them.

"I cannot enter into the consideration of these papers at pre-
sent; but I think it a matter for the consideration of Govern-
ment whether these Orders are not obsolete. It is contrary to
the principle laid down by the Local Government to admit them;
and it never could be intended that an order for a Grant of Land
was to remain for ever in force, and that it might be brought
forward at any time when convenient to the person receiving it.
There are authorities to Lord Sligo and Mr. Brown of long
standing for large Grants, which they will perhaps claim, when-
ever the price of land rise so as to render it worth their while."

General Darling speaks positively in this Minute as to what
was the rule and practice of the Local Government; the doubt,
which he entertains, is merely whether the rule would apply in
a case, where the promise had been made not by the Local Gov-
ernment but by the Secretary of State; this doubt did not apply
to Dr. Douglass' case, as he derived his promise from the Local
Government only, not from the Secretary of State.

Dr. Douglass however maintains that he did select his land,
and that his selection was approved. In proof of it, he refers to a
letter from the Colonial Secretary, in which he received permis-
sion to rent 5,000 acres adjoining to his Grant. This letter, dated
the 6th June, 1827, is however of no importance whatsoever.

Dr. Douglass asked to be allowed to rent some land, contigu-
ous to his (supposed) Grant; and, as such applications were
acceded to almost as a matter of course, it was quite unnecessary
for the Colonial Secretary, in reply to it, to make any reference
to the Surveyor General, in order to ascertain whether Dr. Doug-
lass had a Grant or not; besides which, the time was not then
elapsed, within which he might have obtained a Grant if he had
proceeded properly in the business.

Sir Thos. Brisbane however certifies that he gave Dr. Douglass
permission to select and occupy such Grant of 2,000 acres at
Narriga; and that Dr. Douglass did, to his (Sir Thos. Bris-
bane's) certain knowledge, occupy such Grant.

In order to judge of the importance of this Certificate, it is
essential to bear in mind that Dr. Douglass did confessedly
occupy land at Narriga. It is scarcely to be supposed that the
Governor of the Colony would, even at the time, have known,
without a reference to the Surveyor General's office, whether he
occupied it as a Grant or as a purchase; or whether, if having
selected it as a Grant, he had taken the necessary measures to
1842.
23 Jan.

Certificate proposed by Sir T. Brisbane.

Probable error of Sir T. Brisbane.

Necessity for regular confirmation of selection of land.

Opinion of commissioners for land and emigration.

have it confirmed; still less is it to be expected that any Governor's recollection can serve him on such points after a lapse of 17 years.

Sir Thos. Brisbane, however, further and lastly declares that he is prepared to certify, if required so to do, that the Grant and occupation of such lands were perfectly regular and legal; and that he is willing to make such Certificate of the granting, the selecting and the occupation of such lands, as having been within his knowledge.

From what I have already observed, it must be clear that the very essential difference between a Grant and a promise of a Grant has altogether escaped Sir Thos. Brisbane's recollection. It is not improbable that he may have equally failed to remember the difference between actual selection and selection in the official sense of the word.

That Dr. Douglass made an actual selection of the land may be admitted, that is to say, he found land at Narriga vacant, and took possession of it; but that he ever complied with what the Government required, that is to say, notified his selection and obtained official confirmation of it, is still in no manner proved; and I must even contend that, in such a case, the verbal confirmation of the Governor or even a confirmation through his Private Secretary would not be sufficient.

The Regulations of Government imperatively required that the selection and confirmation of the selection should be recorded in the office of the Surveyor General; nor were this selection and the subsequent confirmation of it, mere forms of office that could be dispensed with; they were indispensably necessary, as they formed the only record of the situation of the land, which the intended Grantee was authorized to claim, and the only document which could be referred to, in order to settle which of two parties, claiming the same land, had the priority of right to it, for the mere permission to select conferred no priority of right whatever.

This was perfectly well known to everyone settling in the Colony, and must or at any rate might have been known to Dr. Douglass; and I must submit to Your Lordship that the Commissioners of Colonial Lands and Emigration, in their report on this case, touched the true merits of Dr. Douglass' claim, when they said,

"If these free grants of land were, at the time they were lavished on the Settlers, of so little value that the grantees, after fulfilling the conditions attached to them, did not secure for themselves a proper official Deed of Conveyance, nor ascertain that a proper record was made of the transaction, we think that
there is no just ground of complaint against the Government, if, when the property has lain neglected or abandoned and no assumed grantee comes forward, it may be, when the progress of settlement is giving value to the Waste, they subject every doubtful claim to the severest scrutiny."

Of claims such as these, all of them more or less doubtful, it may surprise Your Lordship to hear that more than 2,200 have been disposed of during the four years that I have held this Government; and that, of them, no less than 780 have undergone a regular investigation in the Court of Commissioners established under the Local Act, 5th Wm. IV, No. 21.

All these claims had their origin under the Governments of General Macquarie, Sir Thos. Brisbane, and General Darling; and the difficulty, which has attended the settlement of them, is entirely to be attributed to the practice, which prevailed in those days, of allowing persons to take possession of unsurveyed lands on a promise of a Grant being at some future time issued to them.

The labour and expence, which has fallen on the Government of the present day in investigating such claims, has been, I assure Your Lordship, very serious, as well as in completing the Survey of Lands which were thus promised without being measured.

Of the boldness with which Dr. Douglass can advance and support a claim, I am well aware, since he claimed in 1839, through his agent Mr. Gaffney, a portion of land near Sydney, which was knocked down to him at an auction in the year 1828, though he could not pretend that he had ever paid for any portion of it, nor even the deposit which was required by the conditions of sale to be paid on the fall of the hammer. The land was at the time the property of the Church and School Corporation, but the unsold portions of it reverted in 1833 to the Government by the dissolution of that Body.

I need scarcely inform Your Lordship that, being in the immediate neighbourhood of Sydney, this land had increased, between 1828 and 1839, ten or twenty times in value.

In conclusion, I think it right to certify to Your Lordship that, exclusive of every other consideration, one objection, and I submit an insurmountable one, exists against Dr. Douglass receiving any favor from Her Majesty's Government, which is that he has been for the last 17 years in debt to the Crown.

I find that, when he left the Colony, he owed to the Commissariat 1,317 Bushels of Wheat, valued at £263 8s., which debt remains unpaid to the present day.
1842.
23 Jan.

Over-issue of salary to H. G. Douglass.

I find also that Dr. Douglass is in debt to the Government £100 for an overissue of salary made to him in the year 1828. On this latter subject, a letter may be found in Your Lordship's office, which was addressed to Dr. Douglass by Mr. Horace Twiss, on the 8th Jan., 1830, as also Dr. Douglass' answer, dated the 4th Feb., in the same year. Dr. Douglass promised in this latter letter to repay the money; but he has never done so.

These two debts, with local interest for 14 years, amount to £770 4s. 8d.; and, if Dr. Douglass had any property in the Colony, I should proceed against him immediately for the recovery of the money.

I enclose to Your Lordship copies of various orders, issued by this Government during the years that Dr. Douglass was in the Colony, that is to say, between 1825 and 1828; and they clearly establish the points which I rely upon, namely, that selection by an intended Grantee was necessary, as well as confirmation of it by the Government, or (as it was generally called) an order to take possession; and I have only further to add that these orders are to be found at Pages 14 to 17 of a Parliamentary Paper, No. 394, printed by order of the House of Commons on the 13th April, 1832, and headed, "New South Wales Land Regulations."

I have, &c.,

Geo. Gipps.

[Enclosures.]

[These orders were dated 3rd October, and 21st December, 1826, 5th April and 3rd October, 1827, and 19th February, 1828.]

24 Jan.

Refusal to authorise bills on treasury for payments on account of New Zealand.

LORD STANLEY TO SIR GEORGE GIPPS.
(Despatch No. 57, per ship Wilmot.)

Sir,

Downing Street, 24 January, 1842.

I have to acknowledge receipt of your Despatch of the 17th of July last, No. 138, enclosing a Return of all Monies paid out of the Treasury of New South Wales on account of New Zealand up to that date, and requesting to be informed whether you may draw on the Lords of the Treasury for the amount.

I referred your Despatch for the consideration of the Lords Commissioners of the Treasury; and I transmit to you herewith, a copy of a letter from the Secretary to that Board, from which you will perceive that you are not at liberty to draw on that Board on account of the advances in question, without having previously obtained the express authority of Her Majesty's Government.

I am, &c.,

Stanley.
GIPPS TO STANLEY.

[Enclosure.]

MR. C. E. TREVELYAN TO UNDER SECRETARY STEPHEN.

Sir,

Treasury Chambers, 12 January, 1842.

With reference to your letter of the 27th Ultimo, enclosing a statement of Advances and Disbursements made from the Revenues of New South Wales, on account of the Government of New Zealand, I have it in command from the Lords Commissioners of Her Majesty's Treasury to acquaint you, for the information of Lord Stanley, that, as the Documents transmitted in your letter, afford no information regarding the amount of Revenue realized at New Zealand either by the sales of Land, to which allusion is made or otherwise, or the purposes to which such Revenue has been applied, My Lords are not enabled to form an opinion as to the steps it may be proper to take, with respect to the reimbursement of the advances made from the Colonial funds of New South Wales, for the service of the Government of New Zealand; but my Lords request that the Governor of New South Wales may be apprized that he is not to consider himself at liberty to draw on this Board, on account of the said advances, without having previously obtained the express authority of Her Majesty's Government.

I am, &c.,

C. E. TREVELYAN.

SIR GEORGE GIPPS TO LORD STANLEY.

(Despatch No. 12, per ship Cumberland; acknowledged by lord Stanley, 2nd July, 1842.)

My Lord, Government House, 24th Jan., 1842.

In my Despatch to Lord J. Russell No. 89 of the 7th April, 1841, I offered various observations on a report, which had been addressed to His Lordship on the treatment of the Aborigines of New Holland by Captn. Grey, the present Governor of South Australia, and, in the course of those observations, I pointed out Denial of that the practice, animadverted upon by Captn. Grey, of allowing the Aborigines to be considered a conquered People governed by their own Laws, did not prevail in this Colony.

A circumstance has lately occurred at Port Phillip, which renders it necessary that I should recur to this subject, and offer some further explanation of it to Your Lordship.

In the month of Septt. last, an Aboriginal Native was brought to trial before the Supreme Court of the Port Phillip District for the murder of another Aboriginal in the immediate vicinity of Melbourne.

The Counsel employed for the accused raised a question as to the jurisdiction of the Court; and Mr. Justice Willis, though he decided that the trial should go on, expressed very strongly his doubts of the competency of the Court to try the Aborigines for offences committed inter se, and stated that, in the event of the accused being found guilty, he would reserve the point.
Had the trial proceeded and the man been found guilty, the point would have been brought solemnly for discussion before a full Court in Sydney; but, as the Crown Prosecutor on the failure of some expected evidence entered a *nolle prosequi*, the trial did not go on; consequently there has been no case for argument before the full Court; and the opinions expressed by Mr. Justice Willis have produced a very general impression in the Colony, and especially at Port Phillip, that the Aborigines are not amenable to our Courts of Justice for offences committed *inter se*, though they may be, as Mr. Willis (I believe) admits, for offences committed on the persons of white men, or of any others not being Aboriginal Natives.

Considering any such uncertainty as to the state of the Law to be very inconvenient, it occurred to me that it would be proper to remove all doubt by passing an Act of Council, declaring the Aborigines to be amenable to our Laws in all cases wherein those Laws could be applied; but, before I adopted such a measure, I thought it right to consult the Judges as to the necessity and propriety of it. I accordingly caused the letter, of which a Copy is enclosed, to be written to the Chief Justice; and, in reply, I received one from His Honor, of which I also enclose a copy, conveying to me the opinion of the Judges that the Aborigines are amenable to our Laws; and, pointing out the occasion on which, after a solemn argument, it was decided that they were so amenable in the year 1836; further also stating that, in the opinion of their Honors, no declaratory Law upon the subject is necessary.

I beg further to state that I have been requested by Mr. Justice Willis to bring the subject under Your Lordship’s consideration, with a view to its being referred to the Attorney and Solicitor General of England; and I transmit a Copy of Mr. Justice Willis’ letter on the subject, enclosing the Newspaper alluded to in it.

I have, &c.,

Geo. Gipps.

[Enclosure No. 1.]

**COLONIAL SECRETARY THOMSON TO SIR JAMES DOWLING.**

Colonial Secretary’s Office, Sydney.

4th January, 1842.

Sir,

I am directed by the Governor to inform you that a Case has recently attracted His attention in the Supreme Court at Port Phillip, on which it will, His Excellency considers, be necessary for Him to refer for instructions from the Secretary of State; but, before He does so, He is anxious to have the benefit of any advice or opinion which Your Honor or your learned Brethren on the Bench may be kind enough to afford Him.
The Case is that of an Aboriginal Native "Borijon," who was arraigned before the Supreme Court at Melbourne in September last for the Murder of another Aboriginal, and in the course of which the Resident Judge delivered a very strong opinion that the Aborigines in New South Wales are not amenable to the Law of the Colony for offences committed amongst themselves.

You are probably aware that some Months before Borijon was arraigned, His Excellency had, in a Despatch to the Secretary of State, and also in a Minute addressed to a Committee of the Legislative Council, which last had been published in the Colony, expressed a contrary opinion to that delivered by the learned Judge at Port Phillip; and, if His Excellency is rightly informed, the Judges of the Supreme Court in Sydney decided also, in the case of an Aboriginal named "Jack Congo Murral," about 5 or 6 years ago, that the Aborigines of this country are amenable to British Law, even for offences committed inter se.

As it is extremely desirable that the Law in this respect should be rendered definite, the Governor intends to propose to the Secretary of State to introduce into the Legislative Council a Bill to declare that the Aborigines are amenable to our Courts of Law like any other of Her Majesty's subjects, although His Excellency is desirous, as has been already observed, before He does so, of having the benefit of any advice that the Judges may be kind enough to favor Him with.

Sir George Gipps desires me to add that He thinks it right (although not with any view ofiasing the opinion of the Judges) to state briefly the grounds, on which He considers the Aborigines to be in all respects amenable to our Laws.

1. The Sovereigns of Great Britain have for more than half a Century assumed unqualified dominion over the parts of New Holland forming the Territory of New South Wales, and have exercised unqualified dominion wherever their authority has been established.

2. It has been ordained by an Act of Parliament, 9 Geo. IV, c. 83, that, within the Colony of New South Wales, British Law shall be established without reference to any other Law or Laws, save such as may be made by the Local Legislature.

3. That, in numerous official documents issued under the immediate sanction of Her Majesty, the Aborigines of this Country are called Her Majesty's subjects, and declared to be entitled to the same protection as any other Class of Her Majesty's subjects.

4. That, upon British Territory, no Law save British Law can prevail, except by virtue of some Treaty or Enactment; and no such Treaty or Enactment has ever been made, either with or in respect to the Aborigines of New South Wales.

5. That, even if the Aborigines be looked upon as a conquered people, and it be even further admitted that a conquered People are entitled to preserve their own Laws until a different Law be proclaimed by the Conqueror, still no argument in favor of a separate Code of Laws for the Aborigines of New South Wales can be drawn therefrom, first, because the Aborigines never have been in possession of any Code of Laws intelligible to a Civilized People, and secondly, because their Conquerors (if the Sovereigns of Great Britain are so to be considered) have declared that British Law shall prevail throughout the whole Territory of New South Wales.
In conclusion, His Excellency directs me to state to your Honor that, although He thus contends that British Law alone exists in the Colony, He entirely admits that, in putting the Law in force against the Aborigines, the utmost degree of Mercy and forbearance should be exercised.

I have, &c.,

E. DEAS THOMSON.

[Enclosure No. 2.]

SIR JAMES DOWLING TO SIR GEORGE GIPPS.

Sir,
Sydney, New South Wales, 8th January, 1842.

I have the honor to acknowledge the receipt of the Colonial Secretary's letter of the 4th instant, written by Your Excellency's directions, soliciting the opinion of the Judges upon the question, whether the Aborigines of New South Wales are, in our opinion, amenable to the Laws of the Colony for offences committed amongst themselves, in consequence of Your Excellency's attention having been recently attracted to this question by a very strong opinion in the negative delivered by Mr. Justice Willis, the Resident Judge at Port Phillip, in the case of an Aboriginal Native, arraigned before His Honor at Melbourne for the Murder of another Aboriginal, which opinion, in Your Excellency's Judgment, renders it necessary for you to refer for instructions to the Secretary of State, to authorize the introduction into the Legislative Council of a Bill to declare that the Aborigines are amenable to Our Courts of Law like any other British subjects.

Having had a conference with my Brother Judges on this subject, I have the honor to inform your Excellency that the question submitted for our consideration has already been judicially determined by the Supreme Court, after solemn argument on a Plea to the Jurisdiction, the Judges holding that the Aborigines of New South Wales are amenable to British Law in the Courts of this Colony for offences against the Public peace committed on each other.

It is true that, soon after my arrival in the Colony in 1828, I found an opinion prevailing that the Supreme Court could not take cognizance of offences committed amongst the Aborigines, and, in one or two instances, the Court, from the difficulty of administering Justice between them according to the Rules of English Law, forbore trying those individual cases. The question of Jurisdiction was not however argued at the Bar, and from the great infrequency of such cases, the course taken was silently adopted from conformity, rather with the impression prevailing, than as the result of deliberate Judgment.

In the Month of April, 1836, however, the question was solemnly raised before the Supreme Court in the Case of an Aboriginal named Jack Congo Munral, arraigned for the Murder of another Aboriginal named Jubinguy. The Court having assigned Counsel and Attorney for the defence, a Plea to the Jurisdiction was put on the Record, to the effect that the Prisoner was not bound to answer the Information, for that the Territory of New South Wales, before and until the occupation thereof by His Majesty George III, was inhabited by Tribes of Native Blacks, who were governed by usages and customs of their own from time immemorial practised, and recognized amongst them, and not by the Laws of Great Britain; that the Prisoner was a
native Black, belonging to one of such Tribes, and that he was not then nor at any time theretofore a subject of the King of Great Britain, nor was subject to any of the Laws of Great Britain; that the deceased Jubinguy was, at the time of the supposed Murder, a Native Black belonging to one of such Tribes as aforesaid, and not a subject of the King of Great Britain, nor subject to any of the Laws of Great Britain, or under the protection of the same. And averring that, agreeably to the usages and customs of this Tribe, if suspected of Murder, Prisoner could be made to stand punishment for the same, and could be exposed to such and so many Spears, as the friends and relatives of the said Jubinguy, with the Murder of whom he stood charged, might think proper to hurl and throw against his body, whereby the Life of Prisoner might be endangered and brought into jeopardy for the said supposed Murder. And Prisoner further averred that no proceeding, which might be had against him in the Supreme Court, nor any Verdict of Acquittal for the supposed Murder, would be a bar to any Proceedings, which might be had against him by the relatives and friends of the deceased for the supposed Murder. The Attorney General demurred to this Plea, which brought the question of Law fully before the Court, and it was solemnly argued by Counsel before Sir Francis Forbes, then Chief Justice, and the Puisne Judges Dowling and Burton. The Court took time to advise on the Case; and, on a subsequent day, the united opinion of the Judges was publicly delivered in full Court by Mr. Justice Burton, by which the Plea to the Jurisdiction was overruled, obliging the Prisoner to plead to the charge.

On the 13th May following, the Prisoner Pleaded "not guilty" and was tried before me and a Jury of Twelve civil inhabitants; but, from the difficulty of proving that the mortal blow was struck by the Prisoner, he was acquitted.

In the Month of May, 1838, another Aboriginal Black named Long Jack was tried in the Supreme Court before His Honor Mr. Justice Burton for the Murder of an Aboriginal woman, named Mary, and found "Guilty"; but, under the peculiar circumstances of the Case, the Sentence of Death was only recorded, and the Prisoner recommended for a Pardon on condition of Transportation for Life (Letter of Mr. Justice Burton to His Excellency the Governor 10th May, 1838). The question of Jurisdiction was not doubted, it being considered that it was finally decided in Jack Congo Mural's Case. Since then no doubt seems to have been entertained on the point, until in the Case which has arisen at Melbourne, to which your Excellency has called the attention of the Judges.

After the question has been solemnly argued, and determined on a Special Plea to the Jurisdiction, it appears to my Brother Judges and myself to be scarcely necessary to introduce any Legislative enactment on the subject.

Your Excellency is aware that by the Local Ordinance No. 22, passed on the 16th October, 1840, an appeal both in Civil and Criminal matters is allowed from the decisions of the Resident Judge at Port Phillip to the Supreme Court at Sydney, and that at Port Phillip, by the 11th Section of the Local Ordinance, 5 Victoria, No. 9, the mode of appeal is so far regulated, that the Resident Judge may at any time, if he thinks fit, bring any doubtful question before the full
Court at Sydney for decision, so that, in any case judicially decided, in which any point of difficulty arises at the Port Phillip Court, it may be brought under the review of the Judges at Sydney. In the Case alluded to as having recently arisen at Melbourne, I do not collect that the question was distinctly raised at the Bar, so as to come before the Court for solemn adjudication, and for ultimate decision by way of appeal to the Court at Sydney. Should a case, however, arise at Melbourne, justifying this course of proceeding, it may thus be brought under the review of the full Court.

I have, &c.

JAMES DOWLING, C.J.

[Enclosure No. 3.]

MR. JUSTICE WILLIS TO SIR GEORGE GIPPS.

Supreme Court Office, Melbourne, Port Phillip,

Sir, 22nd September, 1841.

I have the honor most respectfully to enclose a Newspaper containing a tolerably correct report of the Proceedings in the Case of Borijon, an Aboriginal accused of the Murder of another Aboriginal which recently took place before me. What fell from me is printed from my Notes; having but one Clerk in the Supreme Court Office, I was induced to adopt this mode of multiplying Copies. I regret to find, by an Official paper which I have just received, containing a minute by Your Excellency of the 8th July, 1841, that Your Excellency is not of my opinion, and that you seem to consider the Aborigines as Subject to the English Law, Whether the Offence be committed against one of themselves or against white men. The matter seems to me of so much importance that I trust I shall not be asking too much, in begging your Excellency to Submit it not only to the Legal Authorities in the Colony, but also to Her Majesty's Secretary of State, and the Law Officers of the Crown in England.

With much respect, I have, &c,

JOHN WALPOLE WILLIS, Residt. Judge.

Mem.—A Duplicate Copy of the Newspaper alluded to in the foregoing letter could not be obtained in Sydney.

LORD STANLEY TO SIR GEORGE GIPPS.

(Despatch No. 58, per ship Wilmot.)

Sir,

Downing Street, 26 January, 1842.

I transmit to you, herewith, Copy of a letter addressed to my Under Secretary by the Chairman of the Court of Directors of the Bank of Australasia, notifying the appointment by that Court of Mr. William Hamilton Hart to be the Superintendent of all their Establishments in the Colonies of New South Wales, Van Diemen's Land and South Australia, in the room of Mr. George Richard Griffiths, resigned.

I am, &c,

STANLEY.

* Note 91.
[Enclosure.]

MR. WILLIAM BROWN TO UNDER SECRETARY STEPHEN.

Bank of Australasia, London Office.

Sir,

2 Moorgate St., 26 January, 1842.

I beg leave, as Chairman of the Court of Directors of the Bank of Australasia incorporated by Royal Charter, to acquaint you, for the information of Lord Stanley, that the Court have been pleased to appoint Mr. William Hamilton Hart to be the Superintendent of all their Establishments situated in New South Wales, Van Diemen's Land, and South Australia, in room of Mr. George Richard Griffiths, who has resigned.

Mr. Hart having already sailed for Sydney to relieve Mr. Griffiths, I have respectfully to beg that you will request Lord Stanley to cause an official notification of his appointment to be made to the respective authorities in the above Colonies.

I am, &c.,

WM. BROWN, Chairman.

SIR GEORGE GIPPS TO LORD STANLEY.

(Despatch No. 13, per ship Cumberland; acknowledged by Lord Stanley, 2nd July, 1842.)

My Lord,

Government House, 26th Jan., 1842.

I am sorry to find that I omitted to report to Lord J. Russell that I appointed, on the 1st Novr., 1841, the Honble. Wm. Hy. Pery to be Superintendent of Agriculture at Norfolk Island, in the place of Mr. Ormsby, whose removal was reported to His Lordship in my Despatch No. 167 of the 29th August of the same year.

Mr. Pery had been previously employed for seven years at Norfolk Island as Clerk to the Superintendent; and Lord J. Russell's desire to have him advanced, whenever an occasion might present itself, had been notified to me by His Lordship.

The salary attached to the office is £200 a year; and I trust that Your Lordship will confirm Mr. Pery in the appointment.

I have, &c.,

GEO. GIPPS.

LORD STANLEY TO SIR GEORGE GIPPS.

(Despatch No. 59, per ship Wilmot; acknowledged by Sir George Gipps, 17th July, 1842.)

Sir,

Downing Street, 27 January, 1842.

Having referred for the consideration of the Lords Commrs. of the Treasury your dispatch of the 23d of July last, forwarding a Schedule of Appointments to Public Offices and of payments of a Special nature by the Deputy Commissary General...

1842.

26 Jan.
of New South Wales during the Quarter ended the 30th of June, 1841, I transmit to you, herewith, copy of a Communication which has been received from the Secretary to that Board; and, in compliance with the request of the Lords Commrs., I have to direct that you will explain the grounds upon which you authorized the payment from the Commissariat Chest of the Rewards for the Capture of the Bushranger “Paddy Yellall” and “Curran,” and of the Murderer of the Constable “Dunn.”

I am, &c.,
STANLEY.

[Enclosure.]

MR. C. E. TREVELYAN TO UNDER SECRETARY STEPHEN.


In reply to your letter of the 31st Ultimo, enclosing a Return from the Governor of New South Wales of all appointments to Public Offices, and of all payments of a special description (by the Deputy Commissy. General) during the Quarter ended the 30th June, 1841,

I have it in command from the Lords Commissioners of Her Majesty’s Treasury to acquaint you, for the information of Lord Stanley, that my Lords have authorized the admission in the Audit of the Accounts of the Commissariat Chest at New South Wales, of the charges specified in the said Return with exception of £20, £25 and £20, as rewards for the capture of the Bushrangers, “Paddy Yellall” and “Curran” and of the Murderer of Constable “Dunn,” which appear to be properly Police charges, and, as such, payable from the Colonial funds.

My Lords therefore request the Governor may be called upon to explain the grounds upon which he had directed payment of those sums from the funds of the Commissariat Chest.

I am, &c.,
C. E. TREVELYAN.

SIR GEORGE GIPPS TO LORD STANLEY.

(Despatch No. 14. per ship Childers: acknowledged by Lord Stanley, 9th July, 1842.)

My Lord, Government House, 27th Jany., 1842.

In my Despatch to Lord J. Russell, No. 236 of the 23rd Decr. last, I transmitted Copies of the Resolutions passed by the Legislative Council on the 21st of that month, wherein I was requested to draw on the Lords of the Treasury for the sums advanced by their order out of the funds of this Colony for the purpose of establishing Her Majesty’s Authority in New Zealand; and I have now the honor to enclose to Your Lordship a Copy of a Minute on the same subject, made by the Executive Council on the 21st instant.

I beg further to report to Your Lordship that I have, in pursuance of the advice of both Councils, drawn my first Bills upon the Lords of the Treasury this day to the amount of £5,354.
The Bills are numbered as follows, and are all drawn in favor of the Colonial Treasurer, by whom they of course will be endorsed before they are issued:—

Nos. 1, 2, 3, 4, 5, for £200 each, £1,000; Nos. 6, 7, 8, 9, for £500 each, £2,000; Nos. 10, 11, for £1,000 each, £2,000; No. 12, for £354—£5,354.

I beg leave to solicit Your Lordship's attention to the portion of the Minute of Council, in which it is stated that, in the opinion of the Council, this Government will be able to meet all its engagements in respect to Immigration, provided no greater number of Immigrants arrive than are now expected.

I have, &c.,
GEO. GIPPS.

[Enclosure.]

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

SIR GEORGE GIPPS TO LORD STANLEY.
(Despatch No. 15. per ship Cumberland.)

My Lord,
Government House, 27th Jany., 1842.

With reference to my Despatch of this day's date No. 14, I have the honor herewith to transmit to Your Lordship a statement, which I believe may be considered a final one, of the whole of the sums advanced by this Colony for the service of New Zealand, and which Your Lordship will perceive amount collectively to £43,347 ls. 4d.

I have, &c.,
GEO. GIPPS.

[Enclosure.]

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

LORD STANLEY TO SIR GEORGE GIPPS.
(Despatch No. 60. per ship Wilmot.)

Sir,
Colonial Office, 30th January, 1842.

I transmit to you, herewith, the inclosed Copies of a Correspondence which has passed between the Commissioners of Colonial Land and Emigration and my Under Secretary, explaining the circumstances under which I have acceded to an application of Mr. Forsyth, a Settler in New South Wales, who has obtained the sanction of the Colonial Government to introduce on Bounty 20 Emigrants with their Families, for a relaxation in his favor of the recent Regulations with regard to such Emigration.
1842.
30 Jan.

In compliance with the recommendation of the Commissioners, I have to convey to you my authority for paying the bounty on these Emigrants if they arrive in the Colony at any period within the first nine Months of the present year.

I have, &c.,

STANLEY.

[Enclosure No. 1.]

LAND AND EMIGRATION COMMISSIONERS TO UNDER SECRETARY.

STEPHEN.

Colonial Land and Emigration Office.

Sir,

9 Park Street, Westminster, 4th August, 1841.

We have the Honor to submit to Lord John Russell's Notice the enclosed Copy of a Letter from Mr. Forsyth, and request that we may be favored with his Lordship's instructions as to the reply which we shall make to the application contained in it.

It will be seen that Mr. Forsyth considers that the effect of the Regulations, which we have recently been directed to publish, will be to stop all Bounty Emigration to New South Wales from the 1st November to the 1st March, and that he then states the inconvenience he will experience, if he is not allowed to take out in the intermediate time the few Labourers, for whom he has orders. He requests, therefore, that the Rule may be relaxed in his favor.

Under ordinary circumstances, We should not have troubled Lord John Russell with the Reference of such an application because our Instructions in this matter have been peremptory; and we should, therefore, have required from every one a strict compliance with the Regulations.

We think, however, that the circumstances of Mr. Forsyth's case are peculiar, and it is not very likely that there would be other persons similarly situated with him, who would make a similar claim.

Mr. Forsyth is not engaged in what has now become the Trade on the part of Shipowners, and others in this Country, of carrying out Emigrants on Bounty. But according to the intention of the original Framers of the Bounty system, being a Settler in the Colony, he has obtained an order for the introduction of a certain number of Labourers, whom he intends to select, and to place upon his own Estate in the Colony. He has made all his arrangements on faith of the expectations held out to him by the Colonial Government, and by his statement it appears that the inconvenience and loss, to which he will be exposed, is considerable. The number of his Emigrants is limited, not exceeding as he states 20 Labourers and their families, and the sum, which would be required to pay for their introduction, would be trifling in comparison with the large sums which will doubtless have been provided to meet the extensive Emigration for which orders have been issued.

The chief danger, we conceive, therefore to be apprehended from an exception to the rule in this case is that it may be drawn into a precedent upon which other claims to similar indulgence may be founded. But, as we before stated, it does not appear likely that there will be other applications resting upon precisely similar grounds; moreover should there be, we might in such cases, as well as in the present, require that the Emigrants should be sent out
subsequently to the 31st December, and we could then deduct the number of Emigrants so sent out between the 1st January and the 1st of March from the whole number of those whose Emigration during the year we should on the Latter day be authorized to sanction.

We, therefore, take the liberty of recommending the present application to Lord John Russell’s favorable consideration.

We have, &c.,

Edward E. Villiers.
John Geo. S. LeFevre.

[Sub-enclosure.]

MR. W. Forsyth to Commissioners of Emigration.

Guildhall Coffee House,

Gentlemen, Cheapside, 2 Augst., /41.

I beg to inform you that I am a settler in New South Wales, and that, in May, 1840, I obtained the sanction of the Colonial Government to introduce on Bounty 20 Emigrants with their families according to certain regulations published in the Colony, 3d March, 1840.

I have this day learned with concern that you have just published certain additional Regulations, which will render it impossible for me to avail myself of the permission which I received from the Colonial Government, and upon which I have all along calculated for a supply of labor in the Colony.

These Regulations prevent any Bounty Emigrants from leaving Britain between the 1st of November and the 1st of March.

I intend to leave this country at the end of the year, so as to arrive in the Colony before the middle of April, 1842, to take possession of my property there, which is now let upon a Lease which expires at that time. I intended to take out the Emigrants in the same Vessel with myself, and to place them upon my Establishment upon their arrival in the Colony.

The Regulations lately made will make it impossible for me to accomplish this. They will also prevent me from taking out any Emigrants at all without incurring a great loss.

If I send them away before the 1st of November, they will arrive a considerable time before I have any employment for them; and, if they do not leave before the 1st of March, they will be too late for my purposes; they will not arrive before I shall have been obliged to employ other servants to carry on my Agricultural and pastoral pursuits; and, as, servants there are generally engaged for half a year or a year, this will cause a great deal of useless expence.

As therefore the New Regulations will be productive of great hardship in my case, and as they are obviously unfair, being a direct interference with the promises of the Colonial Government, I hope you will consent to such a relaxation of them as to allow my Emigrants to leave England at a time which will enable me to avail myself of their services without incurring any unnecessary loss.

As I shall only be detained in London waiting for an answer to this letter, I trust you will favor me with your decision at your earliest convenience.

I am, &c.,

Wm. Forsyth.
Compliance with request of W. Forsyth.

Proposed extension of time for emigrants of W. Forsyth.

HISTORICAL RECORDS OF AUSTRALIA.

[Enclosure No. 2.]

UNDER SECRETARY STEPHEN TO LAND AND EMIGRATION COMMISSIONERS.

Gentlemen, Downing Street, 18th August, 1841.

I have laid before Lord John Russell your letter of the 4th inst. submitting an application from Mr. Forsyth, a Settler in New South Wales, who has obtained the sanction of the Colonial Government to introduce on Bounty 20 Emigrants with their families, for a relaxation in his favor of the Regulations lately published by Your Board with regard to such Emigration.

I am directed to acquaint you, In reply, that, under the peculiar circumstances of Mr. Forsyth's case, Lord John Russell will not object to the Emigrants in question being sent out after the 1st January next, so that they may be included in the Emigration of the year 1842.

I am, &c.,

J. STEPHEN.

[Enclosure No. 3.]

LAND AND EMIGRATION COMMISSIONERS TO UNDER SECRETARY STEPHEN.

Colonial Land and Emigration Office, 9 Park Street, Westminster, 21st January, 1842.

We have the honor to transmit for the consideration of Lord Stanley the enclosed application respecting a party of Emigrants and their families, who are to be sent to New South Wales on bounty for Mr. Forsyth.

On reference to the correspondence named in the Margin,* it will be observed that Mr. Forsyth's is a special case. In consideration of the circumstances submitted in our Report of the 4th August last, it was decided by the Secretary of State that this Gentleman might send out his laborers subsequently to the general cessation of Bounty Emigration upon the 1st November last, provided that they should not embark until after the 1st January, 1842. They are now about to sail in the Earl of Durham; but, as the order for their introduction will expire in May, it is almost certain they must arrive too late to have a valid claim, unless the time be extended; considering that the delay in their departure until the present month was not only permitted, but even required, by the Secretary of State, we apprehend there cannot be any doubt of the propriety of granting the required extension of time; and we would therefore beg leave to recommend that a Despatch be addressed to Sir George Gipps authorizing him to pay the Bounty on these people, if they arrive at any period within the first nine months of the year. If a Despatch to this effect should be transmitted to us, we will take the necessary measures for forwarding it by the Captain of the Ship by which the Emigrants Sail.

We have, &c.,

T. FREDK. ELLIOT.
EDWARD E. VILLIERS.

* Marginal note.—Letter to Col. Office with Letter from Mr. Forsyth; Letter from Col. Office.
MESSRS. CARTER AND BONUS TO MR. S. WALCOTT.

Sir, No. 11 Leaden Hall Street, 13th January, 1842.

We beg to hand you herewith Copy* of a Letter from the Colonial Secretary, dated Sydney, 5th May, 1840, to Mr. Forsyth, authorizing him to import 20 Emigrants and their Families on Bounty; also Copy of a Letter from Mr. Forsyth to the owner of the Ship Earl of Durham, requesting him to take out the Emigrants in that Ship; and a printed prospectus containing the scale of Victualling, which we propose to use for them.

In consequence of the suspension of the Bounty Regulations by Government at the time Mr. Forsyth intended to embark his Emigrants, and the authority then granted by your Letter to Mr. Forsyth having required that they should embark after the 1st January last, it will not be possible for them to arrive at Sydney before the expiration of the time allowed by the Bounty Regulations, viz., two years from the date of the authority; and we therefore request that such an extension of time may be authorized as will meet the justice and the necessity of the case.

We are &c.,

CARTER AND BONUS.

UNDER SECRETARY STEPHEN TO LAND AND EMIGRATION COMMISSIONERS.

Gentlemen, Downing Street, 30 January, 1842.

Having laid before Lord Stanley your letter of the 21st Instant, I am directed by his Lordship to transmit to you to be forwarded to the Governor of New S. Wales by the Ship conveying the Emigrants to be introduced by Mr. Forsyth the enclosed Dispatch, which, on your recommendation, his Lordship has addressed to that Officer, authorizing him to pay the Bounty on these Emigrants, should they arrive in the Colony at any period within the first nine months of the present year.

I am, &c.,

J. STEPHEN.

SIR GEORGE GIPPS TO LORD STANLEY.

(Despatch No. 18, per ship Cumberland; acknowledged by lord Stanley, 30th July, 1842.)

My Lord, Government House, 30th Jan'y., 1842.

I had the honor on the 13th Decr. last to receive Lord John Russell's Despatch, No. 295 of the 26th June last, enclosing a copy of a letter from Mr. Trevelyan to Mr. Stephen of the 12th of that month on the subject of the continued delay of Mr. Lithgow, in forwarding to the Commissioners of Audit the accounts of this Colony; and I beg to report to Your Lordship that, in transmitting these documents to Mr. Lithgow, I

* Marginal note.—The enclosures being not required for practical purposes are not forwarded.
1842.
30 Jan.

informed him that I should feel it my duty to suspend him from office, should he not very shortly furnish the accounts which were required of him.

In reply I have received a letter from Mr. Lithgow, of which I enclose a Copy.

I have, &c.,

Geo. Gipps.

[Enclosure.]

MR. W. LITHGOW TO COLONIAL SECRETARY THOMSON.

Sir, Audit Office, Sydney, 15th January, 1842.

I have the honor to acknowledge the receipt of your letter of the 30th ultimo, enclosing the Copy of a Despatch from the Right Honorable the Secretary of State, dated 26th June, 1841, together with Copies of the Enclosures therein referred to, on the Subject of the delay in forwarding the Colonial Accounts and answering Queries; and calling upon me for an immediate Report of the progress which has been made in forwarding the Accounts alluded to. In reply, I have the honor of acquainting you that the Accounts for the three last Quarters of the Year 1836 have been forwarded by the “William Broderick,” and those for the Year 1837 are now ready for transmission, and will be despatched by the Ship “William”; and, further, that considerable progress has been made in preparing for transmission the Accounts for the Year 1838, which will be forwarded by the next Ship for England after the “William”; and, should no unfavorable casualty occur, I hope to despatch those for the Year 1839, 1840 and 1841, in about three months from this date.

Reasons for delay. The State and multifarious nature of these Accounts, the great accession to the Current Business of this Office, which has been constantly increasing since 1836 in consequence of the new Settlements formed at Port Phillip and New Zealand, and the establishment of the Border Police, which, on the formation, naturally required an unusual degree of attention and correspondence; joined to the extension of the older Establishments and the great Expenditure for Immigration, as well as the anxiety I felt that the Accounts should be prepared for transmission in as Satisfactory a manner as practicable, will, I trust, in some degree exonerate me from much of the blame, which without explanation might naturally be imputed for the delay which has arisen.

This delay, I can confidently aver, has been to me a Source of most painful anxiety, and would not have occurred had it been in my power to avoid it without sacrificing the more urgent duty of attending to the pressing Current Business, and taking care that the Accounts were properly examined before being placed in Warrant for payment.

The inconvenience, however, of the delay has, I trust, to a certain extent been obviated by the full and faithful Statements of the Revenue and Expenditure annually submitted to the Council, and no doubt forwarded for the information of the Home Authorities; and, at all events, I pledge myself that my best energies and devoted zeal will continue to be employed to transmit the remaining portion of the Accounts in arrear, with all possible despatch.

I have, &c.,

WM. LITHGOW, Aud. Genl.
LORD STANLEY TO SIR GEORGE GIPPS.
(Despatch No. 1, per ship Wilmot.)

Sir,

Downing Street, 31st January, 1842.

With reference to my despatch No. 45 of the 20th Ulto., signifying my approval of the arrangements, which you had made with the concurrence of the Major General Commanding Her Majesty's Troops in Australia, for detaching a Company of 80 Men of the 96th at Van Diemen's Land to South Australia, I now transmit to you, for your information and guidance, an extract of a letter from the Military Secretary to The General Commanding in Chief, relating to the efficient state in which regiments, proceeding from stations on the Australian Colonies to India, ought to arrive in that Country. I have, &c.,

STANLEY.

[Enclosure.]

EXTRACT of a letter from Lord F. Somerset to Jas. Stephen, Esqr., dated Horse Guards, 27th December, 1841.

"LORD HILL has also directed me to offer one more observation in confirmation of Lord Stanley's opinion upon this serious matter, that the Regiments employed in New South Wales are each of them so far on their way to their ultimate destination India, and that, taking into consideration the nature of the Military service in that country together with the Climate, and uncertain how soon after their arrival there they may be called into the Field, it becomes of the greatest importance, whether considered in regard to their Military character or to the interests of the public service, that each Regiment should be disembarked in India in a state of the most complete efficiency."

SIR GEORGE GIPPS TO LORD STANLEY.
(Despatch No. 19, per ship Cumberland.)

My Lord, Government House, 31st Jan., 1842.

I have had the honor to receive Lord J. Russell's Despatch, No. 286 of the 12th June, 1841, enclosing Copies of a correspondence between the Consul General of Her Majesty at Chili and Lord Palmerston on the subject of the Trade, which has been allowed since the year 1837 to be carried on between New South Wales and the Republic of Chili, which trade appears to Her Majesty's Consul General to be illegal.

In reply, I have the honor to report to Your Lordship that the trade in question has been sanctioned by the Authorities of New South Wales, not on account of any misapprehension of the political relations which exist between the Government of Her Majesty and that of the Republic of Chili, but simply because Chili is a country within the limits of the Charter of the
With respect to the statement made by Mr. Rugg, Master of the Brig "Friends," in a letter to Coll. Walpole of the 5th March, 1840, complaining of the difficulty which he had experienced in obtaining the means of refitting his vessel in New South Wales, I beg to submit the following particulars:—

The "Friends," though British property, was an American built vessel. She was navigated by British Seamen, and had a sailing Licence from Coll. Walpole, but such Licence did not confer on her the right of trading with New South Wales. She arrived in Sydney on the 9th Feb'y., 1840; and on the 12th, Mr. Rugg made an application to the Collector of Customs to be permitted to sell a portion of her Cargo, in order to purchase provisions and pay for repairs; and, on the next day, the 13th a similar application was made to me by Mr. A. B. Spark, a Merchant of Sydney, the agent of Mr. Rugg; and it was stated by Mr. A. B. Spark that it would be necessary to sell cargo to the value of £800. Mr. Rugg in his letter to Coll. Walpole states that he had no cargo to trade with, and evidently wishes to create the impression that he had been prohibited from purchasing supplies out of his ordinary funds.

I find that, immediately on the receipt of Mr. Spark's letter of the 13th Feb'y., I gave permission to Mr. Rugg to sell as much cargo as might suffice for the purchase of provisions; and that four days afterwards, namely, on the 17th Feb'y., I authorized him to sell a further quantity, sufficient to pay for such repairs, and to purchase such stores as the Harbour Master of Sydney considered necessary.

The Collector of Customs seems to have understood that the cargo, thus authorized to be sold, was to be sold for exportation; and this produced a further application to me for permission to sell the same for consumption in the Colony, which too I granted, though not I find until the 26th Feb'y., 13 days after the first application had been made to me by Mr. Spark.

Mr. Rugg never complained to me of a want of courtesy on the part of any of the authorities in Sydney, nor can I find the least trace of discourtesy in the correspondence which took place on the subject.

The case of the "Justine" was as follows:—

She was a French vessel out of Havre, and, after touching at Rio Janeiro, she took in a cargo of Horses at Valparaiso. Colonel Walpole appears to consider that she was allowed to land these horses in New South Wales; but such was not the case, the
STANLEY TO GIPPS.

horses having been all sold at Tahiti or other of the South Sea Islands. The only articles of cargo, which she was allowed to sell in Sydney, consisted of 176 bags either of Beans or Barley, and 10 Tons of Potatoes, for the landing and sale of which a special authority was granted by myself solely on account of the great dearth of all articles of agricultural produce, which prevailed in the Colony at the time of her arrival, namely, the month of April, 1839.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

COMMISSIONERS OF CUSTOMS TO COLLECTORS OF CUSTOMS.


Having had under consideration your letter dated the 25th August last, No. 41, Stating that, the Chili Barque "Esperanza," having arrived at your Port with a Cargo of wheat from the Port of Talcahuano, you had with the Sanction of His Excellency the Governor admitted the Cargo to entry, there being at the time a great Scarcity of Wheat in the Colony.

We approve of your proceedings in having with the Sanction of His Excellency the Governor admitted the Cargo in question to entry, notwithstanding the Vessel was not navigated in conformity with the 15th Section of the Act, 3rd and 4th Willm. IV, Ch. 54.

With respect to your observations as to Chili not being mentioned in the Order in Council of the 12th October, 1832, as a Country entitled to trade with His Majesty's Possession in New Holland, We acquaint you that the said Order in Council does not apply to the present question; but, Chili being a State within the limits of Trade permitted the East India Company's Charter, vessels belonging to that State are entitled to import the produce thereof into His Majesty's Settlements of New Holland under the provisions of the Order in Council of the 18th July, 1827.

R. B. DEAN.
J. G. LUSHINGTON.
D. M. BINNING.

LORD STANLEY TO SIR GEORGE GIPPS.

(Despatch No. 61, per ship Wilmot; acknowledged by Sir George Gipps, 27th July, 1842.)

Sir,

Downing Street, 1st February, 1842.

It has been represented to me that a Mr. Charles Ford proceeded to New South Wales in 1838 or 1839, that he is supposed to have bought a Farm at Goulburn in that Colony, but that he has not ever since been heard of by his Relatives in this Country.

At the request of the friends of Mr. Ford, I have to desire that you would communicate to me, for their information, any intelligence which you may be able to procure respecting him.

I am, &c.,

STANLEY.
HISTORICAL RECORDS OF AUSTRALIA.

SIR GEORGE GIPPS TO LORD STANLEY.
(Despatch No. 20, per ship Cumberland.)

My Lord,

Goverment House, 1st Feb'y, 1842.

I have had the honor to receive Lord J. Russell's Despatch, No. 306 of the 10th July, 1841, enclosing a letter from Ann Williams, and making at her request inquiry respecting her Brother, William Davis, formerly Schoolmaster and Parish Clerk of Liverpool in this Colony; and I beg to inform Your Lordship in reply that Willm. Davis is still living at Liverpool, and that a Copy of his Sister's letter has been sent to him.

I have, &c.,
GEO. GIPPS.

LORD STANLEY TO SIR GEORGE GIPPS.
(Despatch No. 62, per ship Wilmot.)

Sir,

Downing Street, 2d February, 1842.

I have to acquaint you, with reference to your dispatch No. 8 of the 5th of January, 1841, that, on an application from the Revd. John Espy Keane, Assistant Chaplain of New South Wales, I have granted an extension to two Years of the Leave of Absence, which you had given to that Gentleman to enable him to visit England.

I am, &c.,
STANLEY.

SIR GEORGE GIPPS TO LORD STANLEY.
(Despatch No. 22, per ship Cumberland; acknowledged by Lord Stanley, 9th July, 1842.)

My Lord,

Government House, 3rd Feb'y, 1842.

Agreeably to the directions contained in Lord J. Russell's Despatch of the 21st May, 1841 (not numbered) I have called for and received from Mrs. Stuart the copy here with transmitted of her letter to His Lordship of the 4th Novr., 1840, requesting that her application for a Grant of Land might be reconsidered, the same having been refused by Lord Normanby's Despatch to myself No. 85 of the 4th July, 1839.

Mrs. Stuart's claim to a Grant of Land rests upon the admitted fact that, at the time when she was married, namely, in July, 1830, it was the custom of the Government to give Grants of land, in the nature of Marriage Portions, to young ladies marrying in the Colony.

I am bound however to state that it was not customary for the Governor of the day to offer these Grants of land, unless indeed in peculiar cases, where the young ladies might be personally
known to the Governor; in all other, and in the great majority of cases, they were applied for by the parties wishing to obtain them; and I have now before me the application which was made by Mrs. Duguid, the lady to whom Mrs. Stuart alludes, as having been married on the same day that she (Mrs. Stuart) was.

Whether Mrs. Stuart might or might not have been deemed eligible for a Grant, had she applied for one, it is impossible for me to say; being the daughter of an Officer of the Government, I think it probable that she might have been so considered; but, as she made no application for a Grant, and as it certainly was by no means incumbent on the Governor to offer her one, I regret that I can see no reason to advise Your Lordship to depart from the decision in her case, which was given by Lord Normanby.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

[A copy of this letter is not available.]

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SIR - GEORGE GIPPS TO LORD STANLEY.

(Despatch No. 23, per ship Cumberland; acknowledged by lord Stanley, 1st July, 1842.)

My Lord,

Government House, 4th Febry, 1842.

At the request of Mr. Ralph Mansfield, who is I believe principal Editor of the "Sydney Herald," a daily Newspaper published in this Colony, I transmit to Your Lordship herewith a copy of a Work* recently published by him, containing some curious and interesting deductions from the Census taken of this Colony in the year 1841.

I transmit also a copy of the letter from Mr. Mansfield, wherein I am requested to forward his work to Your Lordship.

I have, &c.,

GEO. GIPPS.

[Enclosure.]

REVD. R. MANSFIELD TO COLONIAL SECRETARY THOMSON.

Sir,

Sydney, 17th January, 1842.

I do myself the honor to enclose herewith two Copies of a little work I have recently compiled, under the title of "Analytical View of the Census of New South Wales for the year 1841, with Tables shewing the progress of the Population during the previous Twenty years," respectfully requesting that His Excellency the Governor will be pleased to forward the same to the Right Honorable the Secretary of State for the Colonial Department.

The consideration, which leads me to make this request, is that some of the combinations and deductions exhibited in the pamphlet appearing to me to place the Population Statistics of this Colony

* Note 92.
in a point of view in which they have never been presented before. His Lordship may probably do me the honor to accept them as an humble endeavour to elucidate the constitution, the progress, and the prospects of our Colonial Society. I have, &c.,

R. MANSFIELD.

P.S.—Permit me to add that, although the work, as stated in its title page was "originally written for the Sydney Herald," yet, to a view to its republication in the present form, it was entirely written anew, the calculation being all carefully worked over again, and considerably enlarged; whilst the additional Statistics contained in the appendix were collected and arranged for the pamphlet exclusively.

R.M.

LORD STANLEY TO SIR GEORGE GIPPS.

(Despatch No. 63, per ship Wilmot.)

Sir, Downing Street, 5 February, 1842.

I transmit to you, herewith, copy of a letter, with its enclosure, which has been addressed to the Secretary of State for the Home Department by Mrs. Ann Hornby, on the subject of a Power of Attorney which it appears she sent out to New South Wales in the Year 1840 with a view to receiving from the Supreme Court the Balance of the produce of the Effects of the late David Hornby, a Prisoner of the Crown, who died an Emancipist.

I have to direct that you will communicate these Papers to the Chief Justice, with a request that he would adopt any measures which may be in his power, and which, compatibly with his Judicial duties, he can properly adopt, to promote a speedy answer being returned by the Registrar of his Court.

I am, &c.,

STANLEY.

[Enclosure.]

MRS. ANN HORNSBY TO SECRETARY OF STATE.

Bolton le Moors,

May it please your Honor, Sir, 30 January, 1842.

Annexed you will find a copy of a letter received from the Supreme Court, Sydney, New South Wales. A Power of Attorney went away on the 23d of April, 1840, receiving no answer is the reason of my being thus troublesome to you. I therefore request you will be pleased in causing a letter to be wrote to the Secretary and Registrar of the Supreme Court, to know the reason of the delay.

I am the Widow, was left with four small children to bring up and no one to look to for any assistance; the money would be of great service to me at this present; the Power was regularly executed, and for which £1 15s. was paid: there can be no error in the execution of it, or there would have been a letter from the Court, saying so.
GIPPS TO STANLEY.  

Your goodness in doing me this favour, addressing to me, Sweet Green, Bolton le Moors, Lancashire, will entitle you to my everlasting gratitude.  

May it please, &c.,  

ANN HORNBY.  

I request you will be pleased in returning me an answer.  

[Sub-enclosure.]  

MR. H. MANNING TO REV. J. SLADE.  

Sir,  
Supreme Court, Sydney, 6 August, 1839.  

Some time ago I received from England the enclosed Document remitted to me with a view to the taking out of Court the balance of the produce of Effects of the late David Hornby, formerly a Prisoner of the Crown, and who died here an Emancipist.  

This document is of no value here, because it is informal, not legalized by any of the local authorities, and is not upon an English Stamp.  

If the poor People, who are interested in the fund, can afford it, or can find any humane friend to assist them, a regular Power should be addressed to some one here (not myself, but my Son Mr. Edye Manning, a Merchant and Bank Director here, will do the needful for them on the usual commission) upon the English Stamp, and executed by the Widow or next of Kin before the Chief Magistrate of the Town or a District, and supported by affidavits of credible Persons, substantiating the identity of the deceased as a transported Prisoner, with Husband or Father of the next of kin.  

The Professional Gentleman, who prepares the Instrument, will know what is regular and requisite in such cases; for Colonial use the marriage of the Parents, the Baptism of the deceased, and his family, etc., should be proved.  

The funds of the Estate were reduced by payments of Debts to £109 6s., which is the balance of the account of receipts and payments in the Estate, passed by the Judges of the Supreme Court, and now invested in the Savings Bank of this Town. The Party, who would be employed to act here, would have to take out letters of administration, on behalf of the next of kin, at an expense of £7 or £8.  

I have, &c.,  

H. MANNING.  

SIR GEORGE GIPPS TO LORD STANLEY.  

(Despatch No. 25, per ship Cumberland; acknowledged by lord Stanley, 30th July, 1842.)  

My Lord,  
Government House, 6th Febry., 1842.  

With reference to my Despatch, No. 18 of the 30th ulto., respecting the delay which has occurred on the part of the Auditor General of this Colony in forwarding his accounts to England, I beg herewith to transmit a Copy of a letter from Mr. Lithgow, the Auditor General of yesterday's date, by which Your Lordship will perceive that Mr. Lithgow has forwarded to England the accounts for the year 1838.  

I have, &c.,  

Geo. Gipps.
[Enclosure.]

MR. W. LITHGOW TO COLONIAL SECRETARY THOMSON.

Sir,
Audit Office, Sydney, 5th February, 1842.

I do myself the honor to inform you, with reference to my Letter No. 13 of the 15th Ultimo, that I have now forwarded to the Postmaster General, at Sydney, the Accounts for the Year 1838, for the purpose of transmission, by the earliest opportunity, to the Right Honorable the Lords Commissioners of Her Majesty's Treasure in England, and that considerable progress has been made in preparing for transmission those for the Year 1839.

I have, &c.,
WM. LITHGOW, Audr. Genl.

[Enclosure.]

SIR GEORGE GIPPS TO LORD STANLEY.

(Despatch No. 26, per ship Cumberland; acknowledged by Lord Stanley, 1st July, 1842.)

My Lord,
Government House, 6th Febry., 1842.

I have herewith the honor to forward a Copy of an application from Monsr. Auguste de Guerry de Lauret, a native of Pondicherry, to be admitted to the privileges of a free Denizen of this Colony.

Monsr. de Lauret was introduced to my notice on his arrival in New South Wales by letters from the Marquiss of Normanby and Lord Beresford, to the latter of whom he became, I believe, known through Mr. Hope; and I have respectfully to request that I may be furnished with Your Lordship's authority to issue to him Letters of Denization under the Local Act of this Colony, 9th Geo. IV, No. 6.

I have, &c.,
GEO. GIPPS.

[Enclosure.]

THE Memorial of Auguste, Pierre, Clement, de Guerry Chevalier de Lauret of Sydney,

To His Excellency Sir George Gipps, Knight, Captain General and Governor in Chief of the Territory of New South Wales and its Dependencies, etc., etc.,

Humbly Sheweth,

That your Memorialist was born at Pondicherry in the East Indies on the 12th day of October, 1811, of French Parents.

That, in the year 1816, your Memorialist went to France, and resided there, until the Month of December, 1830, when he went to reside chiefly in Great Britain, from which Country he sailed for New South Wales where he arrived on the 27th September, 1839.

That your Memorialist is informed that he cannot legally acquire Landed Property in this Colony, and is subject to other disabilities on account of his being an Alien.

Your Memorialist therefore prays that your Excellency will be pleased to order that Letters of Denization shall be issued in his favor.

And your Memorialist will ever pray, etc.

Auguste de Guerry de Lauret.

Sydney, 1st February, 1842.
SIR GEORGE GIPPS TO LORD STANLEY.

(Despatch No. 27, per ship Cumberland; acknowledged by lord Stanley, 4th August, 1842.)

My Lord,

Government House, 7th Feb., 1842.

I have the honor herewith to transmit to Your Lordship a Copy of a Report, which has been made to me by Captn. Maconochie of the progress of his system at Norfolk Island up to the conclusion of the year 1841; and of the prospects which he then considered he had before him.

In submitting this report to Your Lordship, I trust that few observations will be expected from me, as I must confess myself unable to offer them with any degree of confidence, except on one or two very prominent points.

I shall accordingly select only two, the first of which is the proposed union of the two systems, which have hitherto been kept up separately under Captn. Maconochie's management; the second is the decrease in the agricultural produce of the Island, since Captn. Maconochie has been in the command of it.

The inconvenience of keeping up two distinct systems of management on so small an Island is indisputable; the only question therefore seems to be, whether this inconvenience can be got rid of without incurring a greater. On the difficulties which stand in the way of a removal of the men to any other place, I have frequently reported, and particularly in my Despatches Nos. 207 and 224 of the 13th Octt. and 21st Novr. last.

Transportation from New South Wales to Norfolk Island having ceased, no further increase in the number of the doubly convicted on the Island can occur, whilst a very rapid decrease must take place, as well by the removal of well conducted Prisoners to New South Wales under the Act of Council, 2nd Vict., No. 1, as by inevitable causes, such as death and the expiration of sentences.

Supposing these agencies to be left in operation four or five years longer, the number of doubly convicted, which at present amounts to 1,100, may be reduced to 200 or 300; but these will in all probability consist of men whom it would be unsafe and improper to exempt from the strictest control, unless indeed we can reckon on the efficacy of Captn. Maconochie's system being such as thoroughly to reform them.

In Paragraph 14 of his Report, Captn. Maconochie proposes that the doubly convicted Prisoners shall be all immediately transferred to what we distinguish as his new Establishment; this would certainly overcome the difficulty, which is now felt, of having two very distinct systems of management on the Island; but it would, I must submit, lead to difficulties of a far higher
nature, unless it be settled beforehand, how the men are to be disposed of when they may have accumulated the number of Marks assigned to them by Capt'n Maconochie, or have attained the state in which Capt'n Maconochie would consider them fit to receive Conditional Pardons. Against their return to this Colony, I should feel it my duty to enter my protest, were it not that I consider Her Majesty's Government to stand pledged that they shall not be returned to it by Lord J. Russell's reply, No. 248 of the 23rd April, 1841, to the Resolution of the Legislative Council which was communicated to His Lordship in my Despatch No. 151 of the 8th Octr., 1840.

I of course am not authorized to speak for the Lieutt. Governor of Van Diemen's Land; but I have every reason to believe that he would object in equal, or even in stronger terms, to their being sent to that Colony as holders either of Tickets of Leave or Conditional Pardons, after the short period of probation which Capt'n Maconochie would subject them to.

I therefore venture to submit that the question of their ultimate destination should be settled, before any alteration be sanctioned in the management to which they are now subject.

On the second point or the decrease in the Agricultural produce of the Island, I am induced to speak, because it has been represented to me by the Deputy Commissary General as very considerable, and likely, in no small degree, to add to the expense of victualling the men on the Island.

On the other hand, however, it is only fair to state that Capt'n Maconochie attributes the decrease in the Crops partly to the badness of the Seasons during the two years he has been on the Island, and in part to the bad management of Mr. Ormsby, the late Superintendent of Agriculture.

I transmit herewith a Copy of a letter from Capt'n Maconochie, in which he reports the failure of the Wheat Crop in the present year; also of a letter from the Deputy Commissary General, commenting on this failure and on the general decrease in the agricultural produce of the Island; and a Copy of a reply sent to Capt'n Maconochie's letter by my desire; and I consider this a proper opportunity to enclose also a Copy of a Report made to me by Capt'n Maconochie on the 1st Octt. last, in disproof of the idleness which it has been alleged he allows to exist at Norfolk Island.

Your Lordship will observe that this latter Paper was written by Capt'n Maconochie, shortly after the removal of Mr. Ormsby from the Island and the occurrence of those extraordinary proceedings, which form the subject of my Despatch No. 167 of the 29th Augt., 1841.
I think this a fit occasion to state to Your Lordship that I am very anxious myself to visit Norfolk Island; and that I propose to do so, if I possibly can absent myself for a sufficient period from my other and more immediate duties. I hope that my so doing will meet Your Lordship's approval. I have, &c., Geo. Gipps.

[Enclosures.]

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

LORD STANLEY TO SIR GEORGE GIPPS.

(Despatch No. 64, per ship Wilmot.)

Sir,

Downing Street, 8 February, 1842.

I have received your dispatch, No. 137 of the 17th July last, containing a Report of the amount of Revenue actually received into the Treasury of the Colony in the half year ending the 30th of the preceding Month.

On the receipt of that dispatch, I called on the Colonial Land and Emigration Commrs. for an Estimate, as far as might be practicable, of the State of the Land Revenue of the Colony for the year 1841, and of the probable balance which would remain applicable to Emigration in the succeeding year, without having recourse to unusual measures.

I enclose, for your information, a Copy of the Report, which I have received from the Commissioners upon that point.

On a full consideration of all the circumstances, I consider it necessary to suspend for the present further Emigration on Bounty Orders. However desirable it may be to keep up a continued supply of Emigrants to New South Wales, I cannot consent to anticipate its Land Revenues for that purpose, and looking to the very large addition which will have been made to its population in the course of the past and the commencement of the present year, I am strongly inclined to believe that the Supply of Labour furnished will have been at least equal to the demand, or at all events to such a demand as would realize the fair expectations of the Emigrants.

I am, &c.,

STANLEY.

[Enclosure.]

LAND AND EMIGRATION COMMISSIONERS TO UNDER SECRETARY STEPHEN.

Colonial Land and Emigr. Office,

9 Park Street, Westminster, 12 January, 1842.

Sir,

We have not failed duly to attend to the subject of your letter of the 20 Ulto., enclosing Sir George Gipps's despatches
1842.
8 Feb.

Method for estimating funds available for emigration.

HISTORICAL RECORDS OF AUSTRALIA.

Nos. 137 and 138 of the 17 July, 1841, and containing Lord Stanley's directions that we should furnish an Estimate, as far as may be practicable, of the state of the Land Revenue of New South Wales for the year 1841, and of the probable balance which will remain applicable to Emigration in the succeeding year, without having recourse to unusual measures. We have also adverted to the further information contained in Sir George Gipps's dispatch of the 8th July last, enclosed in your letter of the 4th instant.

In obedience to the directions conveyed to us, we propose to take the actual balance in hand, and the actual rates of Revenue and Expenditure for the latest periods to which the authentic Returns extend, and, comparing these with the known amount of Emigration on Bounty, to exhibit the inferences which may be drawn, unless any considerable change should occur as to the financial state of the Colony this year. Without attempting to foretell fluctuations that may or may not arise, our endeavour will be to point out the results which a continuance of the existing data would produce.

With this preliminary remark we have the honor to report as follows:—annexing, for convenience of reference, a tabular statement of the principal amounts that will appear in figures.

By Sir George Gipps's dispatch of the 17th of July, it is reported that at that date there was a sum in the Colonial Treasury of about £240,000. From the nature of the terms in which it is mentioned, we suppose it may be taken for granted that this was a net balance in hand up to the date at which it was reported.

The Land Revenue for the first half of the year had been £66,482 17s. 6d., a sum, however, it is right to remark, very much less than the receipts for the corresponding part of the previous year. Supposing that the second half of the year would not be more productive than the first, it would at any rate yield £66,482. But we observe in the Estimate of the Ways and Means for 1841, laid before the Council by Sir George Gipps, and printed at page 32 of the Parliamentary Paper No. 81 of 1841, that a sum of £28,000 per annum was assumed as chargeable on the Land Revenue of the year to meet the expences of Sales, Surveys, and Aborigines. One half, therefore, or £14,000 must be deducted from the second half year's Land Revenue, reducing it from £66,482 to £52,482. This sum, added to the previously existing balance of £240,000, will constitute a Total of £292,482.

Now there appears reason to consider this Total as free of any demands on account of ordinary Expenditure.

In order to arrive at this conclusion, we refer to the Estimates above cited, and find the following items in Sir George Gipps's list of the Ways and Means by which he provided for the expected Expenditure:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinary Revenue as collected in 1839</td>
<td>£244,777</td>
</tr>
<tr>
<td>Expected increase in 1841</td>
<td>50,000</td>
</tr>
<tr>
<td>Then after some other Items, which seem to fall under other denominations than Ordinary Revenue,</td>
<td></td>
</tr>
<tr>
<td>Increase in the ad valorem Duties, and in Duties on Spirits</td>
<td>31,659</td>
</tr>
<tr>
<td></td>
<td>£326,436</td>
</tr>
</tbody>
</table>
These, then, are the only Items which we should understand to come under the description of ordinary Revenue, as distinguished from Crown Revenue; and their Total, as will be seen, is £326,436.

But by Sir George Gipps's present dispatch, No. 137 of 17 of July, the actual Revenue for the first half year of 1841, from corresponding sources, appears to have been £161,433, being at a rate of only £3,570 less than the previous Estimate. In so general a view therefore, as is here taken, it will probably be thought that the ordinary Revenue and Expenditure may for practical purposes be deemed equal, and that the amount of £292,482, arrived at in the preceding part of this letter, may be assumed to be entirely available for Emigration Services.

Next is to be considered the amount of Liabilities under that Head.

It is usual to allow four months for the passage to the Colony. The number of Emigrants on Bounty, who, according to this calculation, would arrive between the middle of July (when the Governor's despatch was written) and the 31st December, 1841, would be 13,870. Taking the cost per Head at the general average of £16 8s. 1d., which would appear from the particulars in the Immigration Agent's annual Report to have been the actual rate of expense in 1840, the disbursements to be made for these People would amount to £224,058.

Deducting this from the available sum of £292,482, as above computed, there would remain, at the end of the year 1841, a Balance of £68,424 in the Colonial Treasury.

We now proceed to the year 1842.

The Land Revenue for this year at the same rate as the first half of 1841, which is the latest period reported, would be £132,964, subject, however, to a deduction for the probable expenses of Sale, Surveys and Aborigines, chargeable on the Land Revenues.

We do not find a distinct Estimate under these heads for 1842, but in the accounts of 1840, included amongst the enclosures of Sir George Gipps's despatch of 8 July, 1841, which was communicated to us in your recent letter of the 4th Inst., we observe that the actual expenditure for 1840 was £41,063, and we therefore assume a similar sum as the charge for 1842.

Deducted from £132,964, it leaves an available Land Revenue of £91,901, which, added to the Balance of £68,424 at the end of 1841, constitutes a total disposable sum of £160,325.

Such being the resources, it remains to state the demands.

The Emigrants, who have sailed since the 1st September last, and may be expected therefore to arrive during the first three or four months of 1842, were 7,317. Their cost at the above mentioned average of £16 8s. 1d. per head would be £118,200. Compared with the amount just shewn to be available, it will leave a Surplus, but one that will only accrue in the course of the year, and not be wholly available until the end, to the amount of £42,125.

Sir George Gipps, in his despatch No. 138 of 17 July, has forwarded a statement showing that £40,274 is due to New South Wales for advances made to New Zealand. Whenever this sum may be repaid, it will of course form an addition to the general resources of the Colony; but, as there is no reason to doubt that these have been advances from the Revenue at large, and not specially out of the Land fund, it would not appear that, when recovered, they would increase the amount of the Fund specifically applicable to Immigration.
Such are the data, as far as existing materials will supply them, for determining at what time and to what extent Emigration to New South Wales can be renewed. We have, &c.,

T. Fredk. Elliot.
Edward E. Villiers.

[Sub-enclosure.]

**TABULAR Statement in Illustration of Report from Commissioners of Land and Emigration.**

12 January, 1842.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance in Colonial Treasury, July, 1841 (a)</td>
<td>240,000</td>
</tr>
<tr>
<td>Land Revenue of Last 6 months of 1841 estimated same rate as first 6 months (a)</td>
<td>66,482</td>
</tr>
<tr>
<td>Deduct, however, for 6 months the expenses chargeable on Land Revenue, taken in Sir George Gipps’s Estimate at £28,000 pr. annum (c)</td>
<td>14,000</td>
</tr>
<tr>
<td>Estimated amount available to meet liabilities for Emigration during last 6 months of 1841</td>
<td>52,482</td>
</tr>
<tr>
<td>Liabilities being the probable cost of Emigrants arriving before the 31st of December, 1841</td>
<td>224,058</td>
</tr>
<tr>
<td>Estimated Balance in hand, 1st Jan., 1842</td>
<td>268,424</td>
</tr>
<tr>
<td>Balance in hand as above</td>
<td>68,424</td>
</tr>
<tr>
<td>Land Revenue for 1842, estimated at same rate as first half of 1841</td>
<td>132,964</td>
</tr>
<tr>
<td>Deduct, however, expenses chargeable on Land Revenues, accordg. to actual amount in 1840 (b)</td>
<td>41,063</td>
</tr>
<tr>
<td>Total</td>
<td>160,325</td>
</tr>
<tr>
<td>Liabilities for Emigration, being supposed cost of the Emigrants who will arrive during the first 3 or 4 months of 1842</td>
<td>118,200</td>
</tr>
<tr>
<td>Total</td>
<td>242,125</td>
</tr>
</tbody>
</table>

(a) Sir G. Gipps, No. 137 of 17 July, 1841.
(b) Sir G. Gipps, encl. 1 to desp. 132 of 8 July, 1841.
(c) Sir G. Gipps’s estimate for Council, 20 July, 1840 (House of Commons, paper 81 of 1841, p. 39).

**LORD STANLEY TO SIR GEORGE GIPPS.**

(A circular despatch, per ship Wllmot.)

Sir, Downing Street, 8 February, 1842.

I have the honor to acquaint you that the Queen was pleased on the 2nd Inst. in Council to declare Her Royal Will and Pleasure that, in all Prayers, Litanies and Collects for the Royal Family, the following Form and Order should be observed, vizt.:

“Adelaide the Queen Dowager,” “The Prince Albert,” “Albert, Prince of Wales, and all the Royal Family.”

I have, therefore, to instruct you to signify Her Majesty’s Pleasure on this subject to the Lord Bishop of Australia, in order that His Lordship may give to the Clergy of his Diocese the necessary instructions that such Form of Worship be observed in all Churches and Chapels of the United Kingdom of England and Ireland, within his Diocese.

I am, &c.,

Stanley.