of our Laws from the violence of his own fellow Subjects as well as from all others, and that on the other hand the person charged was under obligation to respect and observe those Laws whilst voluntarily within this Territory. We do not think it necessary to refer to general authorities upon this point; but will content ourselves with observing that the Jurisdiction in question appears to be fully conceded by Mr. Justice Story, an American Jurist in his "Conflict of Laws" and by Mr. Webster in his correspondence with Lord Ashburton in 1842, respecting the case of the Creole, etc.

J. H. PLUNKETT, Attorney General.
W. M. MANNING, Solicitor General.

[Enclosure No. 2.]

MR. J. H. WILLIAMS TO COLONIAL SECRETARY THOMSON.

Consulate of the United States,

Sir, Sydney, New South Wales, 14th August, 1846.

I have the honor to acknowledge the receipt of your letter of the 4th Instant, covering an opinion of the Crown Law Officers as to the right of the Sydney Magistrates to adjudicate in cases arising between the Officers and Seamen of American Ships, while lying in the harbour of Port Jackson, from which opinion I must dissent for the following reasons:—

To quote the language of Mr. Webster in the correspondence alluded to by the Crown Law Officers, "It is true that the jurisdiction of a nation over a vessel belonging to it, while lying in the Port of another, is not necessarily wholly exclusive. We do not so consider or assert it. We do not so consider or assert it. No complaint can be entertained from within. This is clearly deducible from what Mr. Webster further says, "But nevertheless the law of nations, as I have stated it, and the Statutes of Governments founded on that law, as I have referred to them, show that enlightened nations in Modern times do clearly hold that the jurisdiction and laws of a nation accompany her ships not only over the high seas but into ports and harbours, or wheresoever else they may be water borne for the general purpose of giving and regulating the rights, duties and obligations of those on board thereof, and to the extent of the exercise of this jurisdiction they are considered as parts of the territory of the nation herself." Wheaton in his "Elements of International Law" lays down the rule, "That the judicial power of an independent state extends to the punishment of all offences against its municipal laws by its subjects wheresoever committed." These seem not only to be reasonable but necessary rules for regulating intercourse between commercial Countries.

1846.

31 Aug.
believe) in the British Merchant Service while it is allowed in certain cases in the American Merchant Service. The practice of the Sydney Bench has heretofore been in conformity with these views. I have in several instances applied for assistance to restrain insubordination on board American Ships in Port, and in one case where a seaman set the Master and Crew at defiance with deadly weapons, and have been refused that assistance upon the plea of no jurisdiction, although I consider that I had a claim to it as an act of international amity, and the cases are numerous in which seamen have been remanded on board their Ships by the Sydney Bench for want of jurisdiction. I will also state a case, which happened in the United States, illustrating the inapplicability of local laws to foreign Ships and the persons on board of them. By a law of the State of South Carolina, every Ship coming into her ports having aboard persons of Color must deliver them up to the custody of the authorities until the Ship sails. It was attempted to enforce this law in the case of British ships visiting the Port of Charleston, but the attempt was successfully resisted by the British Consul through the British Minister at Washington. For all acts committed on shore, there can be no doubt that both Officers and men belonging to Foreign Ships are amenable to the local laws. Therefore, while I am prepared to admit the jurisdiction of the Sydney Magistrates in all cases arising from without the Ship, I should consider any attempt to enforce a Warrant on board an American Ship for any act happening between the Officers and Crew as an unjustifiable interference and entitling whoever might suffer to indemnification.

I have, &c.

J. H. WILLIAMS.

[Enclosure No. 3.]

MESSRS. PLUNKETT AND MANNING TO COLONIAL SECRETARY THOMSON.

Sir, Attorney General's Office, 21st August, 1846.

We have the honor to acknowledge the receipt of your letter of the 19th Instant, enclosing for our perusal and remarks thereon a letter addressed to you by Mr. Williams, the Consul for the United States of America, relative to the complaint, made before the Bench of Magistrates at Sydney by an American Subject (S. B. Gifford) against another American Subject (George Downer) an officer of the United States Whaler "Ocean" of assault.

In reply, we beg to state that we do not desire to offer any observations upon the letter of the American Consul or on the view taken by him upon the subject in question, further than to acquaint you that our former opinion, in which we confined ourselves to matters of a Criminal character, remains unchanged.

We take the liberty, in returning Mr. Williams' letter, to suggest for the consideration of His Excellency the Governor that the case and correspondence should be reported to Her Majesty's Secretary of State for the Colonies, in order that we may learn the policy of the British Government in such cases, and guide ourselves and advise the Magistrates accordingly.

We have, &c.,

J. H. PLUNKETT, Att. G.L.

W. M. MANNING, Solr. G.L.
SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 9, per ship Emerald Isle; acknowledged by earl Grey, 24th March, 1847.)

Sir,

Government House, 31st August, 1846.

I have the honor to acknowledge the receipt of your despatch No. 7 of the 17th March last, transmitting a copy of a letter from the Secretary of the Board of Admiralty urging the necessity for the construction of Light Houses in Bass Straits.

My Predecessor’s despatches named in the Margin* will have already informed you of the liberality with which the Legislative Council, on hearing of the disastrous Wreck of the Ship “Cataraque” anticipated the wishes of the Board of Admiralty by voting a sum £9,000 for the purpose of erecting four Light Houses at the following points in the vicinity of the Straits:

1. Northern extremity of King’s Island.
2. Kents Group.
3. Cape Otway.

The latter Despatch will also have made known to you the state of the arrangements with respect to these Light Houses up to the 9th of June last.

I have now to report the steps which have been taken subsequently to that date.

Cape Otway. On the 30th June a communication was made to the Superintendent of Port Phillip, informing him that instructions had been given to the Colonial Architect, to prepare a Plan and specification for a Light House, and requesting him to make known the intention of the Government to call for tenders for its erection. The Plan, etc., having been transmitted to Port Phillip, Mr. La Trobe advertised for Tenders on the 11th of August, 1846, and they are to be received on the 5th of next month.

Gabo Island, Cape Howe. Tenders for the erection of this Light House according to the Plan of that for Cape Otway were called for on the 29th of June, 1846; received on the 17th of this month, and a Tender accepted on the 21st.

The Plan, Elevation and Sections, together with specification prepared by the Colonial Architect, are annexed to this Despatch.

The Light House on Kent’s Group has been already commenced by the Government of Van Diemen’s Land.

The question as to the propriety of placing a Light House on King’s Island appears to have been left to the decision of the Admiralty.

I have, &c.,

CHS. A. FITZ ROY.

* Marginal note.—"Executive," No. 194, 21st December, 1845: No. 44, 10th February, 1846: No. 119, 9th June. 1846.
1846.
31 Aug.

Form for tender for masons' work and excavation for lighthouse at Gabo Island.

Sir,
In pursuance of Advertisement in the Government Gazette, the undersigned do hereby tender to perform the Services and Works necessary for the performance of the Diggers and Masons' Works required in erection of a Light House on Gabo Island, near Cape Howe, and to complete the same in full accordance with the plans and specification on or before the rates or prices affixed to the Items in the annexed Schedule. And, should this Tender be accepted by the Government, do hereby agree to fulfil all the terms and conditions of the said Schedule, and perform the work in accordance with the plans and Specification, or in default thereof to forfeit and pay to Her Majesty, Her Heirs or Successors, the penalty of Pounds.

Dated this day of , 1846.

Witness:

<table>
<thead>
<tr>
<th>Names of Persons proposed as sureties.</th>
<th>Occupation or Profession.</th>
<th>Residence.</th>
</tr>
</thead>
</table>

[Sub-enclosure.]

Schedule of Contract for Masons' Work required in erection of a Light House on Gabo Island, near Cape Howe.

<table>
<thead>
<tr>
<th>No. of Items</th>
<th>z. d.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Excavating to the requisite depth for obtaining a Solid Foundation, and removing the Soil, as hereafter be directed ………… at per Yard Cube.</td>
</tr>
<tr>
<td>2</td>
<td>For all hammered or close picked Masonry that may be required in building, in foundations, including all materials in accordance with the plan and specification — at per perch.</td>
</tr>
<tr>
<td>3</td>
<td>For all Knitted Masonry above Foundations — at per ditto.</td>
</tr>
<tr>
<td>4</td>
<td>For Stone Steps including materials, all workmanship and fixing as per plan and specification —…………… at each.</td>
</tr>
<tr>
<td>5</td>
<td>For Landings, ditto ditto ditto —……… at each.</td>
</tr>
<tr>
<td>6</td>
<td>Mason as may be ordered for Cutting holes, etc., etc., for fixing Iron work —…………… at per day.</td>
</tr>
<tr>
<td>7</td>
<td>Laborer, ditto —…………… at per ditto.</td>
</tr>
<tr>
<td>8</td>
<td>All other work not enumerated above to be included in the Cube Measurement.</td>
</tr>
</tbody>
</table>

[Enclosure No. 2.]

(This was an elevation and sectional plan for lighthouses at Cape Otway and Gabo Island.)
FITZ ROY TO GLADSTONE.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 10, per ship Emerald Isle.)

Sir, Government House, 31st August, 1846.

I have had the honor to receive your Despatch No. 9 of the 20th March, 1846, enclosing a Memorial which had been addressed to you by Maria Armstrong and Bidilia McTernan, relative to some property which had been bequeathed to them by their brother, the late Dr. P. McTernan, formerly a Surgeon in the Royal Navy, but which they allege to have been retained by Mr. Therry, one of the Judges of this Colony.

Having referred to Mr. Therry a copy of the Memorial, according to the directions contained in your despatch, I have the honor to enclose the explanation with which that Gentleman has furnished me on the subject, by which it would appear that he has made arrangements for the liquidation of the claim referred to; but that the complaint had been forwarded before sufficient time had elapsed to enable the parties interested to receive the Account after they had authorized Mr. Therry to remit it through the hands of Dr. Rutherford, a resident in this Colony.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure No. 1.]

MR. JUSTICE THERRY TO PRIVATE SECRETARY FITZ ROY.

Sir, Sydney, 2 Lyon's Terrace, 26th August, 1846.

I beg leave to request you will lay the accompanying letter before The Governor with a request that His Excellency will transmit it and the papers, annexed to it, to the Secretary of State for the Colonies.

From the reading of these documents, His Excellency will perceive that, at the time the Secretary of State's Despatch reached me, arrangements had been made for the liquidation of the claim referred to in the Memorial, to a person in this Colony, whom Dr. James McTernan, the Executor in England, authorised to receive payment, and that agreeably to that authority and in conformity with these arrangements the claim has been liquidated.

In addition to the facts I have fully brought under His Excellency's notice, I beg leave to invite His Excellency's attention to this important additional one, that the authority from Dr. James McTernan to Dr. Rutherford in this Colony, to receive the payment from me which I have made to him, is dated London, November 28th, 1845, and that the Memorial of His two Sisters, the legatees, is transmitted by a Despatch dated the 20th March, 1846, a date at which it was quite impossible an answer could have reached England conveying information whether or not I had paid the amount in conformity with the authority given to Dr. Rutherford to receive it.

I deem it right to notice this circumstance prominently, because I think the perusal of my letter will satisfy His Excellency that, if
the reasonable delay had been allowed of postponing this Memorial until it was possible to have received an answer from Dr. Rutherford as to the result of the authority delegated to him, the presentation of any Memorial would have been wholly unnecessary.

I have, &c.,

R. THERBY.

[Enclosure No. 2.]

MR. JUSTICE THERBY TO SIR CHARLES FITZ ROY.

Sir,

Sydney, 26th August, 1846.

I beg leave to offer the following explanation for the information of the Secretary of State, in reply to the Memorial of Maria Armstrong and Bidilla McTernan, respecting certain property in the Colony of N. S. Wales, which they allege to have been bequeathed to them by their Brother, the late Dr. P. McTernan, Surgeon in the Royal Navy.

In the first place, I deem it right to notice some remarkable misstatements which the memorialists contain. It is an incorrect statement of the Memorialists to allege that their brother bequeathed any property to them specifically in New South Wales. They are two among several other general legatees named in the Will, whose legacies are chargeable on no particular property either here or in England, but generally chargeable on the Assets of the Estate of the Testator. I know nothing of any property belonging to the late Dr. P. McTernan in England. If he had any there, the duty devolved upon his brother and my co-executor, Dr. J. McTernan, to collect it. This misstatement, however, is only so far of importance as it shows that the Memorialists lie under some misapprehension of the nature of their rights, and that they have not an exclusive claim, as their Memorial would indicate, to any portion of the testator's property in N. S. Wales.

It is a less excusable misstatement in the Memorialists to allege that the Mortgage debt is unaccounted for, and that the communication, marked B annexed to the Memorial, "is the only one respecting that Mortgage which has been received from me." To show the inaccuracy of that statement, I need only refer to a copy of the settlement (see annexure marked C) that took place between Dr. J. McTernan and myself, in which he acknowledges to have received from me £302 on account of his Brother's Estate, of which the second item of £90 is interest due on the Mortgage, which the Memorialists state "is unaccounted for by me, up to the date of their Memorial." And to this I have to add that the balance, for which I am accountable to this Estate (and which from considerations I need not here explain far exceeds what I have actually received) has been paid to Dr. Rutherford as Agent of Dr. P. McTernan and was in course of payment before I received your Excellency's communication. Dr. Rutherford, moreover, being the only person who has arrived in this Colony with proper authority from Dr. McTernan since the date of my last settlement.

As to the partial statement of the intervening correspondence, I confess I have not kept copies of my own part of it; and I feel therefore that I should be at a disadvantage in entering into a detailed statement on this head, and for which there is now no necessity. But the evidence of the recent circumstances is under
my control; and, as some significance may be attached to the settlement being made without any knowledge on my part of the representations of the Memorialists, I must beg to trouble your Excellency with the following details, with respect to which I beg to invite Your Excellency's attention to a few dates. Your Excellency is aware that I did not receive a copy of the Memorial transmitted by the Secretary of State, until the 20th of August. Therefore, up to that date, I was an utter stranger to its contents. Now, I beg to explain the steps I had taken, previous to that communication to me, towards the liquidation of the claim of Dr. J. McTernan's Estate upon me. Early in last July, I met Dr. George Rutherford, a Surgeon of the Royal Navy, in Sydney. As he was a mutual friend of Dr. J. McTernan and myself, and as he had just then arrived from England, the first enquiry I made of him was whether he had recently seen Dr. J. McTernan. I told him I felt much annoyed at letters I had received, threatening legal proceedings against me, and that I was anxious to bring my connection with the late Dr. P. McTernan's Estate to a close. Dr. Rutherford informed me that he brought an authority with him from Dr. J. McTernan to receive any moneys of the Estate for which I was accountable, at which I expressed my satisfaction and promised to enter into an early and final arrangement with him. In pursuance of this undertaking, I immediately transmitted a copy of the settled account, marked C, already referred to, to Mr. George Miller, the highly qualified accountant of the Savings Bank, and requested him to prepare the account, charging me with the rate of Interest for which I was chargeable under the Mortgage deed, until it was cleared off; and from that date with such interest as the Estate would be entitled to, if the principal had been from that date deposited in the Savings Bank. I deemed this proper reference to make, as the Savings Bank is, by the law of the Colony, the place of deposit of the moneys of intestate Estates. This account was furnished to me by Mr. Miller on the 11th instant, from which date up to the end of last week Dr. Rutherford was in Maitland, and I could not communicate with him. I saw him, however, immediately on his return, and on Wednesday early in the present week I handed him a Bill in favor of Dr. J. McTernan on the Union Bank in London for £417 14s. 10d., being the amount according to the account prepared by Mr. Miller (of which I also handed him a copy for transmission to my co-executor) of principal and interest, due to the 31st Ultimo, on the Mortgage referred to in the Memorial.

Your Excellency may thus perceive that I made arrangements towards the liquidation of this claim previous to the arrival of Mr. Gladstone's Despatch in the Colony, and that it was only owing to the accident of Dr. Rutherford's absence from Sydney that it was not actually liquidated before a copy of that Despatch reached me. To my co-executor Dr. J. McTernan, the Memorialists must be now referred for any claim they may have on their Brother's Estate. In conclusion, I deem it advisable to avail myself of the presence of Dr. Rutherford and Mr. Miller in Sydney to confirm (see Annexure D) those parts of the above statement in which their names are introduced.

I have, &c.,

R. Therry.
HISTORICAL RECORDS OF AUSTRALIA.

[Annexure C.]

COPY of my Settlement with Dr. James McTernan, the 12th of March, 1836.

Received on account of Dr. James McTernan's Estate—
To Cattle sold by Auction on 22nd April, 1835 £212 16 0
Interest on Parker's Mortgage 90 0 0
Due to James McTernan, Esqr., on account of Sheep of Himself and Dr. Nesbitt 100 0 0

£402 16 0

Paid by Bill remitted to England 154 0 0

£248 16 0

Received the above amount in Treasury Bill.
12th March, 1836.

James McTernan.

* NOTE.—This item was introduced into this account related to the sale of sheep belonging to Dr. Nesbitt and Dr. James McTernan, and was not connected with Dr. P. McTernan's Estate; this note is not in the Original, but is necessary to explain why this item appears here.

[Annexure D.]

STATEMENTS by Messrs. G. Miller and G. S. Rutherford.

I beg to state, at the request of Mr. Justice Therry, that, on the first week of August, 1846, I received a letter from him requesting me to prepare an account of the claim of the Estate of the late Dr. P. McTernan upon him, according to certain data furnished to me, and according to the terms stated in his letter dated 26th August, 1846, to His Excellency Sir Charles FitzRoy, and that in his letter to me he urged an early preparation of the Account for the purpose, as he then stated, of paying the amount to Dr. George Rutherford, who was in Sydney and authorized to receive payment of it on behalf of Dr. James McTernan.

George Miller, Accountant, Savings Bank.

I have read, at his request, the letter addressed by Mr. Justice Therry to His Excellency Sir C. A. FitzRoy, respecting the Memorial of Maria Armstrong and Bidilia McTernan. I am enabled to declare that all the circumstances set forth in Mr. Justice Therry's letter as to conversations with me, the date at which they were held, and the arrangement for closing his connexion with the Estate of the late Dr. P. McTernan, are in every respect correctly and accurately stated.

Sydney, 26th August, 1846.

G. S. Rutherford, M.D., Surgeon, R.N.

SIR CHARLES FITZROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 11, per ship Emerald Isle: acknowledged by Earl Grey, 25th March, 1847.)

Sir,

Government House, 31st August, 1846.

Lord Stanley, in a despatch No. 93 of 28th August, 1845, intimated to my Predecessor that, under a communication from the Secretary to the Destitute Sailors' Asylum, he had authorized the Colonial Agent to provide a passage to New South Wales for Henry Hovenden, a disabled Seaman, who represented himself to be a Native of this Colony. Lord Stanley also remarked that it was not usual to withhold such assistance from the Colonial Revenues in cases of extreme distress like the present; and a Passage was accordingly provided for Hovenden by the Colonial Agent at an Expense of £24 4s., and on the 21st of January last he arrived in the Colony by the "Golden Spring."
Since his arrival, it has been ascertained that he is not a Native of the Colony, but that he came here as an Emigrant with his parents in the Year 1839 from Cork in the Ship "Navarino." The matter has in consequence been referred to the Crown Law Officers to ascertain whether he could not be punished for the fraud he has committed; and they have given it as their opinion that it is legally possible to procure his punishment, but that practically it would be quite otherwise, and that the offence would be properly cognizable and provable in England.

The sum of £24 4s. was included in the Estimates for the present Year; but it is proposed to withdraw the item, as it is probable that the Legislative Council will not deem the Expense as properly chargeable on the General Revenue of the Colony.

Under these circumstances, I deem it my duty to submit the case for your favorable consideration, in the hope that you may see fit to direct that the money advanced out of the Colonial funds may be refunded by the Home Government.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure No. 1.]

MR. W. A. MILES TO COLONIAL SECRETARY THOMSON.

Sir, 10th June, 1846.

In reply to your letter of the 5th Instant, requesting information concerning the man named in the margin* with a view to its being ascertained whether he is a native of New South Wales, I have the honor to state that he arrived in this Country as an Immigrant with his parents and four brothers in the year 1839 from Cork per Ship "Navarino."

I have, &c.,

W. A. MILES.

[Enclosure No. 2.]

LEGAL Opinion on case of H. Hovenden.

We are of opinion that it is legally possible to procure the punishment of William Hovenden for the fraud of which he has been guilty, supposing the facts necessary to establish that fraud to be capable of proof; but we think that practically it would be quite otherwise, and that the offence would be properly cognizable and provable in England, only, where it was committed, and where alone the necessary evidence would be procurable to prove the Petition: the falsehood of this pretence (for immigration to the Colony in 1839 does not sufficiently negative the Man's Statement that he is a native of Sydney) and the fact that the free passage was granted in reliance upon the false pretence in question.

J. H. PLUNKETT, Attorney General.

W. M. MANNING, Solicitor General.

11th August, 1846.

* Marginal note.—Henry Hovenden.
190

HISTORICAL RECORDS OF AUSTRALIA.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 13, per ship Emerald Isle; acknowledged by earl Grey, 24th March, 1847.)

Sir,

Government House, 1st September, 1846.

An application (of which I have the honor to transmit a Copy herewith) having been recently submitted to me, requesting free passages to be granted to the Wife and children of Bryan Veech, a Ticket of leave holder under this Government, I feel it my duty to bring under your notice the great hardship of the decision of Her Majesty's Government as communicated to my Predecessor, Sir George Gipps, in Lord Stanley's despatch, No. 220 of the 9th December, 1842, relative to the discontinuance of free passages for the Wives and families of Convicts to this Colony, on account of its being no longer a place of Transportation, and the increased expenditure that would be thereby incurred.

It appears that Sir George Gipps conceived the decision to be so peremptory as to preclude any remonstrance against it; but, as I cannot but think that Her Majesty's Government in coming to this decision had not given due weight to the fact that, although Transportation to this Colony has been discontinued, there still remains a large number of Convicts (especially Male Convicts) who are working out their sentences, I venture to bring the subject once again under consideration, in the earnest hope that a Regulation, which bears so hard upon this unfortunate class, may be speedily rescinded.

Without affecting any undue degree of compassion for Men who are undergoing a just punishment for their offences against Society, I feel confident you will concur in my opinion that every means, which humanity combined with Justice can devise, should be applied with a view to their reformation; And I know of none more likely to promote this object than the prospect formerly held out to them, that those, who proved themselves deserving of such a reward, might ultimately be rejoined by their Wives and families.

I have good reason to believe, indeed, that the abolition of the Regulation in question created, at the time, a grievous disappointment to many well conducted men, whose chief inducement to behave well had been the expectation of entitling themselves to this indulgence; and it is but reasonable to suppose that it has caused others to become careless of their conduct, who might, with such a reward to look forward to, have striven to regain characters, and to become useful Members of the Community. It has also doubtless been the source of bitter disappointment to many unoffending Wives and families; and viewing it simply
in a moral point of view, as to the influence of the presence of
the Wives and children of the men in a Community where the
disparity of the Sexes is so great, I cannot believe that Her Ma-
jesty's Government would think the question of expense worthy
of consideration in comparison with the good that would result
from reverting to the former humane practice.

But, even if the increased Expenditure in such a case were
deserving of consideration, and it should be deemed advisable that
the Wives (however well conducted themselves) of Criminals
should not be provided with passages in Emigrant Ships, it would,
I presume, still be practicable to send out these women and their
families in Female Convict Ships to Van Diemen's Land, whence
they might be conveyed at little expense to Sydney, or they might
be provided with passages in the Vessels which will convey the
Female Exiles to the New Colony of North Australia, and which
will, necessarily, have to touch at Sydney on their way. In the
meantime, I shall of course be careful that the step I have now
taken, in urging a reconsideration of the Regulation of 1842,
shall not become known.

I have, &c.,

CHS. A. FITZ ROY.
Sir Charles Fitz Roy to Right Hon. W. E. Gladstone.

(Despatch No. 17, per ship Emerald Isle; acknowledged by earl Grey, 6th March, 1847.)

Sir,

Government House, 1st September, 1846.

With reference to my Predecessor's despatches to Lord Stanley of the dates and numbers noted in the Margin, I have now the honor to report to you the payment into the Military Chest of the following additional sums under the dates and for the Services specified, and to request that a corresponding Credit may be given to Mr. Barnard, the Colonial Agent General, to enable him to comply with the several Requisitions, which have been sent to him by this Government, namely—

10th August, 1846, to meet the expense of purchasing a supply of Arms, Ammunition, and implements required to replace issues made to the Government of New Zealand and for the Exploring expedition under Sir Thomas Mitchell £311 16 5

10th August, 1846, to make up, with the sum of £2,111 17s., which Mr. Barnard had been requested to recover from the Government of South Australia, Van Diemen's Land, and New Zealand, the sum of £4,500, estimated in a letter from him of the 5th of March last, as likely to be required for the service of this Colony to the end of the year 2,085 6 4

1st September, 1846. It appearing, by your Despatch of 5th March, 1846, that the sums owing to the Colony by the Van Diemen's Land and New Zealand Government will not be paid in England, it has become necessary to make good the amount to Mr. Barnard to meet the requisitions included in his above-mentioned Estimate 2,055 6 4

1st September, 1846, to meet the purchase of certain books for the library of the Legislative Council, under the circumstances which are fully explained in a letter of this date to Mr. Barnard from the Colonial Secretary of this Colony 250 0 0

Total £3,035 5 9

Making in all the sum of Three thousand and thirty five pounds, five shillings and nine pence.

* Marginal note.—No. 34 of 31st January, 1846; No. 45, 21 February, 1846; No. 69, 27 March, 1846.
GREY TO FITZ ROY.

It may be proper to explain that, although Warrants have been ordered for the two last mentioned Sums, the actual payments have not yet been made to the Military Chest; but, as the Mail by the Monthly packet is just about to close, I have thought it better not to delay making this report, lest it might create disappointment in complying speedily with the Requisitions which have been sent to Mr. Barnard.

I have, &c.,

CHS. A. FITZ ROY.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 31, per ship Sydney; acknowledged by Sir Charles Fitz Roy, 6th April, 1847.)

Sir, Downing Street, 5 September, 1846. 5 Sept.

I herewith enclose a Copy of a letter which has been received from Patrick Keane, containing an application relative to a sum of money stated to have been left to him by his son, lately deceased in New South Wales, and I have to request that you would transmit to me such information as you may be able to obtain on the subject of the enquiry.

I have, &c.,

GREY.

[Enclosure.]

P. AND E. KEANE TO UNDER SECRETARY.

Honble. Sir,

Patrick Keane, of Kilcolan, Co. Clare, Ireland, humbly sheweth, That his son John Keane of the same place Emigrated to Sydney in the autumn of 1841 on the Government Grant, and that, by a letter which he received from John Keane, a first cousin, he learnt that his son died at Goulburn Plain, and left a sum of money, which sum was to be given to his parents; and, in consequence of their indigence and inexperience, they are unaware how they should recover the same money, and humbly pray that your honour will take their case into consideration, letting them know how they should obtain the said money; and, if your honour would condescend to forward their claim to the Governor for enquiry into the state of their son’s effects, they are confident from your well known regard to justice that you will give them every information as to the recovery of the money; and they as in duty bound will ever pray.

PATRICK KEANE.

Ennis, Clare.

ELEANOR KEANE.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 32, per ship Sydney.)

Sir, Downing Street, 8 September, 1846. 8 Sept.

With reference to my Dispatch No. 11 of the 6th ultimo, I have now to acquaint you that I have laid before The Queen the Act of the Legislative Council, which accompanied your Dispatch No. 204 of the 23d of November last, entitled “An Act
1846.  
8 Sept.
Confirmation of harbours act.

HISTORICAL RECORDS OF AUSTRALIA.

(No. 13 of 27 Oct., 1845) to amend an Act entitled 'An Act for the better preservation of the Ports, Harbours, Roadsteads, Channels, Navigable Creeks and Rivers in New South Wales and the better regulation of Shipping in the same.'"

I have received The Queen's commands to acquaint you that Her Majesty has been pleased to confirm and allow this Act; and you will communicate Her Majesty's decision to the Inhabitants of the Colony under your Government by a Proclamation to be published in the usual and most authentic manner.

I have, &c.

GREY.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.
(Despatch No. 18, per ship Ganges; acknowledged by earl Grey, 25th September, 1847.)

Sir,
Government House, 24th September, 1846.

I have the honor to request permission to issue Letters of Denization to the person named in the Margin* who emigrated to this Colony in the year 1833, and who is now residing at Picton in this Colony, where he carries on the Trade of a Farrier and Blacksmith.

His application, which I enclose, is recommended by three Justices of Peace† for the District in which he resides.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

Petition of John George Goette of Picton, Blacksmith.

Unto His Excellency Sir Charles Augustus Fitzroy, Knight, Captain General, and Governor in chief, in and over the Territory of New South Wales, and its Dependecies.

Humbly and respectfully Sheweth.

That Your Petitioner was born in the Village of Rusebeck, Westphalia, in the Year 1802. and is by trade a blacksmith and farrier.

That, in 1829, Your Petitioner went to London, where he followed his trade for four Years: and from whence he emigrated to this Colony by the ship "Warrior" in the Year 1833.

Your Petitioner, having made this the land of his adoption, is anxious to have the disadvantages and disabilities, attending upon his being an alien, removed, and enjoy as far as possible the privileges of a British subject; and begs to subjoin testimonials of Character from the Magistrates and other respectable inhabitants of the District in which he lives, some of whom have known him from the time of his arrival in the Colony, to shew that he is not unworthy of the boon he asks.

* Marginal note.—John Goette, Native of Rusebeck, Westphalia.
† Marginal note.—John Wild, J.P.; M. McAlister, J.P.; Richd. Blackwell, J.P.
Your Petitioner therefore prays that Your Excellency would take his case into Your favourable consideration, and grant him letters of Naturalization, that he may enjoy the Protection of the Laws of his adopted country. And Your Petitioner, as in duty bound, shall ever Pray.
Picton, 13th August, 1846. [Unsigned.]

CERTIFICATE.

We, the undersigned Justices of the Peace, acting in and for the District of Picton, Testimony in do hereby certify that we have known the Petitioner John George Goette for upwards favour of seven years, and during that period he has conducted himself with much propriety. He is an honest, sober, industrious mechanic, and we beg to recommend the Prayer of his Petition to His Excellency the Governor's favorable consideration.

J. W. W. J. P. M. McALISTER, J. P. RICH. BLACKWELL, J. P.

Court House, Picton, 22nd August, 1846.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 34, per ship Sydney.)

Sir, Downing Street, 25 September, 1846.

In reply to Sir George Gipps' Dispatch of the 30th of March last, No. 73, and to the letter by which it was accompanied from the Commandant at Port Essington, reporting that supplies had been furnished to Dr. Leichhardt and his party, on their arrival there from Sydney, to the amount of Four Pounds Four shillings and Five Pence, which Sir George Gipps had authorized to be charged to the Public Accounts of the Settlement, I have to convey to you the necessary sanction for that expenditure.

I have, &c.,
GREY.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 36, per ship Sydney.)

Sir, Downing Street, 25 September, 1846.

I herewith transmit to you copies of a correspondence, which has taken place between Mr. Holmes and this Department relative to an undue amount of Quit Rent which his Son has been called upon to pay for certain land occupied by him in New South Wales.

I also enclose a Copy of a letter from the Colonial Land and Emigration Commissioners in reply to a reference which was made to them by my desire on the subject; and I have to request that you will cause the necessary enquiries to be made respecting Mr. J. B. Holmes' allegation that the claim of Quit rent has been enforced upon him with regard to Lands, which do not really belong to him, and that you will report to me the result.

I have, &c.,
GREY.
Protest re quit rent demanded from J. B. Holmes.

[Enclosure No. 1.]

MR. J. J. HOLMES TO EARL GREY.

My Lord,

Baring Crescent, Exeter, 31st August, 1846.

I venture to address your Lordship, as the head of the Colonial department, on behalf of my Son, who has purchased 1,300 Acres of Land, near Maitland, New South Wales. When he purchased the Land referred to in the inclosed paper, it was not expected that any quit rent would be required by the Colonial Government, which had previously neglected to demand them. These rents are, however, now required, which is a great hardship upon a new purchaser, who did not expect to be called on for them. But this is not all. Your Lordship will perceive from the inclosed paper that the Colonial Government require my Son to pay for 700 Acres of Land, which form no part of his purchase, which never belonged to him. My Son has sent a Copy of the inclosed paper to the Colonial Treasurer, but the latter has not condescended to reply and has thus left my Son without redress or remedy. My Son paid £17 last year, instead of £10, and expects to be called on for double the amount this year; and, if compelled again to pay for the 700 acres which are not his, his Estate may be saddled with a much larger quit rent than is due. In the present depressed state of the Colony, such an unjust demand is a serious evil to young Colonists, and is degrading to the Government, which makes it. I earnestly entreat your Lordship to interfere, and to afford that protection to Her Majesty's Colonial subjects which they have sought in vain from the local Government.

I have, &c,

J. J. HOLMES.

[Sub-enclosure.]

MR. J. B. HOLMES TO COLONIAL TREASURER.

Sir,

The Wilderness, 12th Novr., 1845.

I beg to call your attention to some facts relative to my Quit rent in the hope that it may be in your power to remedy the hardships of which I have to complain.

I am the owner of 1,300 Acres of Land in the County of Northumberland, viz., 300 in the Parish of Allandale, a grant to R. Coulion, and 1,000 in the Parish of Rothbury, being a portion of a grant of 2,000 Acres to Jane Coulion, the remaining 1,000 Acres being in the possession of other parties, 600 I understand are in Chancery being the property of a Minor and 400 divided among small settlers; the Quit rent Collector requires me to pay the amount due on the 2,000 acres, as I hold the original grant, which I cannot but feel is unjust. I am ready to pay the amount due on my own land, and am induced to make this statement, trusting you will be able to direct the Collector to receive my portion and look to the real possessors of the property to pay their share. I only purchased the land about two years and a half ago; till some months after I had been in possession, was ignorant of my liability for Quit rent on land, from which I derived no benefit and am in no way connected with; trusting the justice of my case will recommend it to your consideration.

I have, &c,

J. B. HOLMES.

[Enclosure No. 2.]

UNDER SECRETARY HAWES TO MR. J. J. HOLMES.

Sir,

Downing Street, 24th September, 1846.

With reference to your Letter and its enclosure of the 31st August, respecting the undue amount of Quit rent which it was there stated your Son had been called upon to pay for certain land occupied by him in New South Wales, and especially to that portion of it wherein you advert to the practice of claiming payment of the above mentioned charge, which attaches to all Lands granted in the Colony, I am now directed by Earl Grey to acquaint you that, by Instructions addressed to the present Governor before
he left England, he possesses authority to endeavour to settle the general question on reasonable terms.

With regard to your Son’s Letter to the Colonial Treasurer at Sydney, to which it appears he had received no answer, and wherein he alleges that the claim of Quit rent has been enforced upon him in respect of Lands which do not really belong to him, I am to observe that, in accordance with the opinion which Lord Grey has received from the Commissioners of Colonial Land and Emigration on this subject, his Lordship considers the case is one which calls for enquiry on its separate merits; he will, therefore, transmit Copies of your communication and its enclosure to the Governor of New South Wales for his consideration and report.

I have, &c.,

B. Hawes.

[Enclosure No. 3.]

LAND AND EMIGRATION COMMISSIONERS TO UNDER SECRETARY Hawes.

Colonial Land Emigration Office,

Sir, 12th September, 1846.

We have the honor to acknowledge your Letter of the 5th instant accompanied by a Letter from Mr. Holmes, enclosing one from his Son relative to an undue amount of Quit Rent, which he has been called on to pay for certain Land occupied by him in New South Wales.

With respect to some remarks thrown out by Mr. Holmes against the propriety of claiming payment of the charge of Quit Rent which attaches to all Lands granted in New South Wales, it may be enough to observe that, by Instructions addressed to the New Governor before he left England, he holds authority to endeavour to settle the general question on reasonable terms. But, in so far as the Letter, which Mr. Holmes’s Son addressed to the Colonial Treasurer at Sydney and to which he states that he received no answer, alleges that the claim of Quit Rent has been enforced upon him in respect of Lands which do not really belong to him, his case appears to be one that calls for enquiry on its separate merits; and we would submit therefore our suggestion that the Paper be forwarded to the Governor for his consideration and report.

We have, &c.,

T. Fredk. Elliot.

Frederick Rogers.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 19, per ship Ganges; acknowledged by earl Grey, 18th March, 1847.)

Sir, Government House, 25th September, 1846.

I have the honor to enclose herewith a Copy of the Speech* with which, on the 8th instant, I opened the Session of the Legislative Council of this Colony.

I also enclose a Copy of the Address presented to me by the Council in reply, and my rejoinder. I have, &c.,

Chs. A. Fitz Roy.

[Enclosures.]

[Copies of these papers will be found in the “Votes and Proceedings” of the legislative council.]

* Note 21.
1846.
29 Sept.

Despatch acknowledged.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 22, per ship Ganges.)

Sir,

Government House, 29th September, 1846.

In reply to Your Despatch, No. 4 of the 10th March, 1846, enclosing Copy of a letter from Mrs. Frances Besley, requesting to be furnished with information respecting a Person named Jane Bailey, who emigrated to this Colony in the month of November, 1842, I have the honor to enclose the copy of a letter from the Chief Commissioner of Police, by which it appears that the individual in question is still alive and residing near Sydney.

I have, &c.,

CHS. A. FITZ ROY.

MR. W. A. MILES TO COLONIAL SECRETARY THOMSON.

Police Department,

Sir,

Sydney, 16th September, 1846.

In reply to your letter of the 25th August, 1846, together with its enclosure, namely, a copy of a letter from Mrs. Frances Besley to the Secretary of State for Colonial Affairs, bearing date 27th February, 1846, relative to the individual named in the margin* and requesting information respecting her.

I have the honor to state that a person calling herself Jane Bailey, and who I have every reason to believe to be the party, came before me in company with her Brother, George Bailey. In order to satisfy the parties in England, I caused Jane Bailey to write a letter relative to her arrival in the Colony, which letter I have the honor to enclose.

On questioning George Bailey why he wrote to his nephew announcing the death of his Sister, Jane Bailey, he positively denied having written any letter to that effect.

I have, &c.,

W. AUG. MILES,
Chief Commissioner of Police.

[Sub-enclosure.]

JANE BAILEY TO MR. W. A. MILES.

Sir,

North Shore, 7th September, 1846.

I beg to inform you that I left London for this Colony in or about the month of July, 1842, by the Ship "Eden," Boyce Commander, as Cabin Passenger, and arrived here in the Month of November, 1842. My Brother's children, I believe, reside in Devonport, England.

I am, &c.,

JANE BAILEY.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 23, per ship Ganges; acknowledged by ear! Grey, 31st July, 1847.)

Sir,

Government House, 29th September, 1846.

At the request of the Legislative Council of this Colony, I have the honor to transmit the Copy of an Address presented to me by that body.

* Marginal note.—Jane Bailey.
FITZ ROY TO GLADSTONE.

The object of this Address is to induce me to move Her Majesty to be graciously pleased to disallow the Act of the Legislature of Van Diemen's Land, which imposes an Ad Valorem Duty of 15 per Cent. on the produce of New South Wales imported into that Colony; and, in forwarding it, I feel justified in recommending it to your favorable attention, as I conceive it to be extremely desirable that the Colonies in this portion of Her Majesty's Dominions should not be permitted to pass hostile or retaliatory measures, calculated not only to interrupt their Commercial intercourse with each other, but to create feelings of jealousy and ill-will among them, which if not checked may lead to mischievous results.

I am informed that the excuse, alleged by the Legislature of Van Diemen's Land for passing the measure now referred to, is their desire to conform to the Rules respecting discriminating duties, laid down in Lord Stanley's Circular Despatch of the 28th June, 1843, by assimilating the duties levied on articles of produce from this Colony with those levied on similar articles imported from the Mother Country; but I have read that Despatch with attention, and I do not consider that it is intended to apply to the inter-Colonial trade of these Colonies, or that it warrants the interpretation which is said to have been put upon it.

I feel much diffidence in offering an opinion so soon after my arrival in this part of the world; but it appears to me that, considering its distance from Home and the time that must elapse before the decision of Her Majesty's Government upon measures passed by the Legislatures of these Colonies can be obtained, it would be very advantageous to their interests, if some superior Functionary were to be appointed,* to whom all measures adopted by the Local Legislatures, affecting the general interests of the Mother Country, the Australian Colonies, or their inter-Colonial trade, should be submitted, by the Officers administering the Several Governments, before their own assent is given to them.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.] [This address will be found in the "Votes and Proceedings" of the legislative council.]

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 24, per ship Ganges.)

Sir, Government House, 29th September, 1846.

With reference to your Despatches No. 19 of the 17th February, addressed to my Predecessor, and No. 13 of the 30th

* Note 22.
March last, addressed to myself, relative to the distribution of the Ecclesiastical Fund in this Colony, I have now the honor to transmit the Copy of a letter, which I have received from the Bishop of Australia, containing some further suggestions on certain points noticed in your Despatch of 30th March, which His Lordship has requested me to submit for your consideration, before the arrangements respecting the proposed partition of the Diocese of Australia into three Bishopricks are finally closed.

I have also the honor to submit copies of the several documents to which the Bishop refers, viz.:

- The Grant of forty acres of Land in the vicinity of Sydney for the maintenance of the Bishop of Australia, and his successors, Bishops of Australia.
- The opinion of the Crown Law Officers as to the power of the Bishop to grant leases of this Land.
- The Deputy Surveyor General's communication as to the Rent that might be derived from the same.

Adverting particularly to the fourth section of the Regulations laid down in Your Despatch of the 30th March, under which the division of the See of Australia into three Sees is to be carried into effect, I beg to call your attention to the Bishop's explanation of the circumstances, under which it has not been deemed expedient to apply the surplus of the Fund, remaining over in the years 1844 and 1845, to the purpose specified in that Section.

You will observe that his Lordship had already proposed, and that my Predecessor had sanctioned the appropriation of this Surplus "towards the erection of additional Churches in places now destitute, and in part payment of stipends of Clergymen beyond the Boundaries of Location." And, as the Bishop still wished the appropriation to be adhered to, I considered that I should best meet the general tenor of your instructions (which I may be permitted to say entirely coincide with my own wishes) regarding my intercourse with the Bishop on all Church matters by leaving it undisturbed; and I accordingly confirmed it by a Minute of my Privy Council (a copy of which is annexed) on the 12th Ultimo.

I have, &c.,

Chs. A. Fitz Roy.

[Enclosures.]

Copies of these papers will be found in a volume in series VII.]
FITZ ROY TO GLADSTONE.

EARL GREY TO SIR CHARLES FITZ ROY.

(A circular despatch, per ship Bermondsey.)

Sir, Downing Street, 30th September, 1846.

On the 15th June last, Mr. Gladstone addressed to you a despatch pointing out the inconvenience which might arise from the supposed want of a Law in each of Her Majesty's Colonies authorizing the arrest and delivery of individuals charged with having committed Offences in other of Her Majesty's Colonies or in the United Kingdom. To remedy this defect, Mr. Gladstone directed you to suggest to the Legislature of the Colony under your Government the enactment of the necessary Law, to provide for the intercolonial restitution of fugitive Criminals, so far as the local limits of their jurisdiction might enable them to do so.

It appears not to have been brought to Mr. Gladstone's notice, when his despatch was written, that the Act of Parliament, 6 and 7 Vict., c. 34, had already remedied the defect, which formerly existed in the Law in this respect, and that, consequently, no further legislation was necessary by the local Legislatures of Her Majesty's Colonies. You will, accordingly, consider Mr. Gladstone's Despatch of 15th June last as withdrawn.

I have, &c.,

GREY.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 26, per ship Ganges; acknowledged by Earl Grey, 23rd March, 1847.)

Sir, Government House, 30th September, 1846.

With reference to my Despatch,* North Australia No. 1 of this date, and especially to the return annexed thereto of live stock, the property of the Crown now at Moreton Bay, I have the honor to report that I have authorized the Deputy Commissioner General to deliver over to Dr. Leichhardt ten Bullocks to be selected by him out of the Government Herd.

Dr. Leichhardt, whose success in his first attempt to reach Port Essington by land was communicated to you by my Predecessor,† is about to proceed on a fresh expedition,‡ with the object of proceeding from Moreton Bay, Northward, until he gets within the Tropic, and then turning, as nearly as he may find it to be practicable, westward through the central portion of Australasia, until he reaches the Western Coast about Swan River. This hazardous enterprise is to be undertaken entirely on private

* Note 23.
† Marginal note.—Vide Sir George Gipps' Desp., No. 72, 29th March, 1846.
‡ Note 24.
1846. 
20 Sept.

Value of bullocks.

funds, contributed within the Colony; and very sanguine hopes are entertained of its success, from Dr. Leichhardt's known energy, endurance and courage, combined with activity and physical powers. I therefore trust you will not disapprove of the small assistance I have afforded him on the part of Government, amounting in value to about Fourteen Pounds.

I have, &c.,

CHS. A. FITZ ROY.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Address from Legislative Council requesting vote for synagogue and stipend for Jewish minister.)

Sir, Government House, 1st October, 1846.

I have the honor to transmit the Copy of an Address presented to me by the Legislative Council of this Colony on the 22nd Ultimo, praying that I would place the sum of One thousand Pounds upon the Estimates for the ensuing year, for the purpose of liquidating a debt due for the erection of the Jewish Synagogue in Sydney; and that I would also place on the Estimates a sum not exceeding Two hundred Pounds for the support of a Jewish Minister.

You will perceive by my reply to this Address (copy of which is annexed) that I considered it advisable to accede to the former request, the members of the Jewish Religion being a numerous, respectable and influential class in this Community, contributing largely to the Public Revenue; but with regard to the latter (the Stipend of the Minister), I deemed it my duty to reserve it for your consideration.

It was asserted in the debate upon this address that Her Majesty's Government have not objected to Legislative Aid being afforded in support of the Jewish Religion in Jamaica, and the impression on my own mind is that this assertion is correct.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosures.]

[Copies of the address and reply will be found in the "Votes and Proceedings" of the Legislative Council.]

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 28, per ship Ganges; acknowledged by Earl Grey, 12th April, 1847.)

Sir, Government House, 2nd October, 1846.

I have the honor to transmit the Copy of an Address from the Legislative Council, requesting that I would forward to you,
for Her Majesty's information, certain Resolutions thereunto appended, expressing the opinion of the Council relative to the present upset price of Crown Land in this Colony.

I also enclose a local Newspaper containing a Report of the Debate which occurred when these Resolutions were proposed, from which you will perceive that the argument, adduced by the Gentlemen who opposed them, was not founded on the assumption that the present minimum Upset price of one Pound per Acre was sufficiently low, but that any diminution of that price would operate disadvantageously to the Squatting Interests by opening the door to public competition, and thereby destroying the monopoly which, owing to the high minimum price, is now virtually conceded to them.

I have no reason to believe that the Mover of the Resolutions (Mr. Lowe) had the remotest intention of eliciting any premature expression of my opinion on the subject to which they refer; nor do I consider that I shall be in a position to offer any to Her Majesty's Government, until I have acquired a sufficient practical acquaintance with the value of Lands in this Colony.

I have, &c.,

Chs. A. Fitz Roy.

[Enclosures.]

[A copy of this address will be found in the "Votes and Proceedings" of the legislative council; the newspaper was the "Sydney Morning Herald," dated 26th September, 1846.]

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 37, per ship Fyfeshire.)

Sir, Downing Street, 3 October, 1846.

I herewith transmit to you the copy of a letter from the Council office, enclosing the copy of an order in Council, dated the 1st of August, 1846, regarding the case of Mr. John Walpole Willis.

I further enclose a copy of correspondence on the subject of that order, which has passed between Mr. Willis and this office. Finally I enclose an order made by Her Majesty for revoking the appointment of Mr. Willis as Puisne Judge of New South Wales and as Resident Judge at Port Phillip.

You will cause that order to be communicated to the Chief Justice, and to the other Judges of the Supreme Court for their information.

I have, &c.,

Grey.
MR. W. L. BATHURST TO UNDER SECRETARY STEPHEN.

Sir, Colonial Office, Whitehall, 1st August, 1846.

I am directed by the Lord President of the Council to transmit to you for the information of Earl Grey a Duplicate of Her Majesty's Order in Council of this day, approving the Report of the Judicial Committee upon a Petition of Mr. Justice Willis against an Order of the Governor and Council of New South Wales, whereby this Gentleman was removed from his Office of Judge in that Colony. You will perceive that the Lords of the Judicial Committee have recommended Her Majesty to reverse this Order of amotion of the 17th June, 1843, on the ground that some opportunity of being previously heard against the amotion ought to have been given to Mr. Willis by the Governor and Council; but their Lordships have likewise reported to Her Majesty as their opinion that the Governor in Council had power by law to amove Mr. Willis under the authority of the 22d Geo. III. and that, upon the facts appearing before the Governor in Council and established before their Lordships in this case, there were sufficient grounds for the amotion of Mr. Willis. The Queen in Council has been pleased to approve of this Report, and to direct that Earl Grey is to give the necessary directions, which devolve upon the executive Department of Her Majesty's Government in conformity with this decision.

I have, &c.

WM. L. BATHURST.

[Sub-enclosure.]

ORDER-IN-COUNCIL.

At the Court at Buckingham Palace, the 1st day of August, 1846.

Present:—The Queen's Most excellent Majesty: His Royal Highness Prince Albert; Lord Chancellor; Lord President; Lord Privy Seal; Duke of Norfolk; Marquis of Abercorn; Marquis of Clanricarde; Lord Steward; Lord Chamberlain; Earl Grey; Earl of Clarendon; Earl Grey; Earl of Auckland; Lord John Russell; Viscount Palmerston; Lord Campbell; Sir George Grey; Mr. Chancellor of the Exchequer.

Whereas there was this day read at the Board a Report of the Judicial Committee of the Privy Council, dated the 8th day of July, 1846, in the words following, viz:—

Your Majesty having been pleased, by your Order in Council of the 4th March, 1844, to refer unto this Committee the Humble Petition of John Walpole Willis, Esquire, setting forth that by the Act of Parliament, passed in the ninth year of the reign of His late Majesty King George the fourth " for providing for the administration of Justice in New South Wales and Van Diemen's Land," it was enacted that the Judges of the Supreme Court of New South Wales should from time to time be appointed by His Majesty, His Heirs and Successors, and that it should be lawful for His Majesty, his Heirs and Successors, from time to time as occasion might require to remove and displace any such Judge, and in his place and stead to appoint another fit and proper person, provided that, in case of the absence, resignation or death of any such Judge, or in case of any such disease or infirmity as should render any such Judge incapable of discharging the duties of his Office, it should be lawful for the Governor of the said Colony to appoint some fit and proper person to act in the place and stead of any Judge, so being absent, resigning, dying or becoming incapable, until such Judge should return to the execution of his Office or until a Successor should be appointed by His Majesty as the case might require. That, subsequently to the passing of the said Act, viz:—

Your Majesty having been pleased, by your Order in Council of the 1st August, 1845, to refer unto this Committee the Humble Petition of John Walpole Willis, Esquire, setting forth that by the Act of Parliament, passed in the ninth year of the reign of His late Majesty King George the fourth "for providing for the administration of Justice in New South Wales and Van Diemen's Land," it was enacted that the Judges of the Supreme Court of New South Wales should from time to time be appointed by His Majesty, his Heirs and Successors, and that it should be lawful for His Majesty, his Heirs and Successors, from time to time as occasion might require to remove and displace any such Judge, and in his place and stead to appoint another fit and proper person, provided that, in case of the absence, resignation or death of any such Judge, or in case of any such disease or infirmity as should render any such Judge incapable of discharging the duties of his Office, it should be lawful for the Governor of the said Colony to appoint some fit and proper person to act in the place and stead of any Judge, so being absent, resigning, dying or becoming incapable, until such Judge should return to the execution of his Office or until a Successor should be appointed by His Majesty as the case might require. That, subsequently to the passing of the said Act, viz:—
Grey to Fitz Roy.

A few days after the said twenty-fourth day of June, the Petitioner received from the said Charles Joseph La Trobe a paper purporting to contain a letter and other documents than is furnished by the statement thereof, hereinbefore quoted from the said Minutes of Council.

The Petitioner anxiously laboured during his tenure of office in the said Colony to discharge his judicial duties faithfully and honestly and to the best of his abilities and the petitioner is (notwithstanding the allegations in his petition) wholly unconscious of any misbehaviour whatsoever in his said office, and humbly appealing to Your Majesty against his arrest as a Judge of the Supreme Court of New South Wales, and requesting Your Majesty to reverse the said order and proceedings of the said Governor and Council in such an action, and to grant to the Petitioner such redress and relief as will make him happy in Your Majesty's service.

Resignation of J. W. Willis.

Request for payment of arrears of salary and legal expenses.

Interpretation of decision of privy council.

1546.
3 Oct.


1546.
3 Oct.

in the premises as to Your Majesty may seem meet. The Lords of the Committee in obedience to Your Majesty's said Order of Reference have taken the said Petition into Consideration, and, having heard Council on behalf of the said Petitioner and likewise on behalf of Sir George Gipps, late Governor of New South Wales, their Lordships agree humbly to report to Your Majesty as their opinion that the Governor in Council had power by law to amove Mr. Willis from his office of Judge under the authority of the 22nd George III, and that, upon the facts appearing before the Governor in Council and established before their Lordships in this case, there were sufficient grounds for the amotion of Mr. Willis; but their Lordships are of opinion that the Governor and Council ought to have given him some opportunity of being previously heard against the amotion, and that the Order of the 17th June, 1843, ought therefore to be reversed.

Her Majesty, having taken the said Report into consideration, was pleased by and with the advice of Her Privy Council to approve thereof, and to Order, as it is hereby Ordered, that the said Order of the Governor and Council of the Colony of New South Wales of the 17th June, 1843, be and the same is hereby reversed for the reason in the said report stated, and the Right Honorable Earl Grey, One of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

WM. L. BATHURST.

[Enclosure No. 2.]

CORRESPONDENCE between Mr. J. W. Willis and the Colonial Office.

My Lord,
Old, near Northampton, 7th August, 1846.

Her Majesty in Council having been pleased to reverse the Order of the Governor and Council of New South Wales, for my amotion from the office of a Judge of that Colony, I beg leave to repeat the desire which my relative, Mr. G. A. Hanrilton (member for Dublin University) expressed to Lord Stanley on my behalf to retire from office as soon as I could do so consistently with honor, in consequence of loss of health occasioned by my long service abroad, especially in British Guiana; I feel that this period has now arrived, and I beg most respectfully to tender my resignation of office.

I venture to hope, that my length of service and loss of health will be taken into Her Majesty's favourable consideration, as well as to solicit that the necessary directions may be given for payment of the arrears of my salary, and for my being reimbursed the expenses I have been put to in obtaining the reversal of the Order of the Governor and Council.

I have, &c.,

JOHN WALPOLE WILLIS.

The Right Honourable The Earl Grey, etc., etc., etc.

Sir,
Downing Street, 25th August, 1846.

I am directed by Earl Grey to acquaint you that, on the 1st instant, a communication was made to this Department for his Lordship's Information, by the direction of the Lord President of the Council. It enclosed a copy of an Order of the same date, by which Her Majesty in Council approved the Report of the Judicial Committee of the Privy Council on your Petition of appeal against the Order of the Governor and Council of New South Wales, removing you from your office as a Judge in that Colony. It was stated in the same communication that Her Majesty in Council had been pleased to direct "that Earl Grey should give the necessary directions which devolve upon the Executive Department of Her Majesty's Government in conformity with this decision."

From the Order in Council thus transmitted to him, Lord Grey ascertained that the Judicial Committee had reported to Her Majesty their opinion—First, that the Governor in Council had power by Law to amove you from your office of Judge, under the authority
of the Statute 22nd Geo. the 3rd. Secondly, that upon the facts appearing before the Governor and Council, and established before their Lordships in this case, there were sufficient grounds for your amotion. But—Thirdly, that the Governor and Council ought to have given you some opportunity of being previously heard against the amotion. And Fourthly, that the Order of the 17th of June, 1843, ought therefore to be reversed.

In deliberating what under such circumstances were the directions which it devolved upon the Executive Department of Her Majesty's Government to give in conformity with this decision, the first conclusion drawn by Lord Grey was, that according to the established rule in Her Majesty's Civil Service in the Colonies, the reversal of the Order of the Governor and Council entituled you to receive from the Treasury of New South Wales the full salary of your office, computed from the date of the latest payment to you on account of that salary, down to the present time.

But, while thus giving effect to that part of the Report which advises the reversal of the Order of amotion, Lord Grey was of opinion that it had also become his painful duty to give effect to that part of the Report (and of the consequent Royal Order) which ascertains that your conduct in New South Wales had been such as to merit the penalty of removal from Her Majesty's Service there; for although the Order of the Governor and Council was reversed, on the ground that they had omitted to afford you the opportunity of being heard in your own defence, yet, after that opportunity had been fully afforded you by the Judicial Committee, that high tribunal reported to the Queen their opinion that the facts established before them furnished sufficient grounds for your amotion. The practical inference from such a judgment appeared to Lord Grey inevitably to be, that Her Majesty ought now to be advised to remove you from your office.

It was not until His Lordship had reluctantly adopted this conclusion that he received your letter of the 7th instant. It would be a great relief to his feelings if he could avert the necessity for your actual dismissal from office, by advising the Queen to accept the resignation which you have tendered in that letter; but, after mature and anxious reflection, Lord Grey finds himself compelled to instruct me to inform you that (for the following reasons) he is unable to yield to that inclination.

First.—If, before any judgment of the High Court of Appeal had been pronounced, you had offered to resign your office, the offer would have stood on very different and on much more favorable grounds; but you demanded and obtained a judicial decision. It now appears that the judgment so invoked by yourself involves a serious condemnation of your conduct; and Lord Grey apprehends that, after such a censure, pronounced at your instance, by such an authority, it is too late for you to avert by a resignation the penal consequences involved in, and resulting from, such an adjudication.

Secondly.—The terms in which your resignation is tendered appear to His Lordship to enhance the difficulty of accepting it. Your letter refers to the reversal of the Order of the Governor and Council, as though that reversal were unaccompanied by any censure on yourself. You account for your retirement from office exclusively by referring to the state of your health, and you observe that it is now in your power to retire "consistently with
Reasons for refusal to accept resignation of J. W. Willis.

Warrant to revoke commission of J. W. Willis.

Arrears of salary to be paid.

Refusal of legal expenses.

1846.
3 Oct.

HISTORICAL RECORDS OF AUSTRALIA.

honor.” Your deliberate use of such expressions on such an occasion imposes on Lord Grey the unwelcome duty of observing that he is unable to give any sanction or countenance to the assumptions on which you thus write; and that he cannot admit, by a tacit though inevitable inference, that no obstacle has been raised, by your own conduct, to the resumption, should such be your pleasure, of your judicial duties.

Thirdly.—The acceptance of your resignation would, as it appears to Lord Grey, not “be in conformity with the decision” of the Judicial Committee. It would, on the contrary, as he conceives, appear to give to that decision a construction of which the Governor and Council would be justly entitled to complain; the construction, namely, that their Order for your amotion had been made without sufficient grounds. Whereas the Report of the Judicial Committee expressly negatives that supposition, and reverses the Order, not as unjust in itself, but only as having been made in an improper manner.

Lord Grey therefore directs me to inform you, that for these reasons your resignation is not accepted, but that a Warrant under the Queen’s Sign Manual, commanding the Governor of New South Wales to revoke your Commission as one of Her Majesty’s Judges for that Colony, will be sent to that Officer by the earliest opportunity.

Lord Grey further directs me to state that, by the same opportunity, the Governor will be ordered to instruct the Treasurer of New South Wales to pay to you, or to your order, the full salary of your office, computed from the date of the latest payment to you on account of that salary, down to the date of the Warrant for revoking your Commission. I am to add that there is no fund, belonging to the Colony, in this country, which could lawfully be appropriated to this service.

In answer to your application to be reimbursed the expenses you have been put to in obtaining the reversal of the Order of the Governor and Council, I am directed by Lord Grey to state that he must decline to comply with your respect, because that reversal was accompanied by so grave a censure of your own conduct, and because the Report of the Judicial Committee is entirely silent on the subject of costs and expenses.

I have, &c.,
B. Hawes.

Mr. Under Secretary Hawes, etc., etc., etc.

Sir,
Bognor, 4th September, 1846.

I take leave most respectfully to ask, if by refusing to accept my resignation, and insisting on the revocation of my Commission (especially with reference to the terms in which this is conveyed to me, by your letter addressed to me at “Old.” on the 26th ultimo), any imputation is intended to be cast upon my personal honor and integrity, or on the purity of the motives by which I was actuated? If so, I most earnestly solicit that the specific reasons for any such imputation may be at once made known to me; I am, as yet, ignorant of the precise grounds on which the Report of the “sufficiency of cause for my amotion” is founded.

I also, with all deference, venture to inquire, whether my former acknowledged services, loss of health, and pecuniary sacrifices, are to be denied all further consideration.

I have, &c.,
John Walpole Willis.
Sir,

Downing Street, 15th September, 1846.

I have laid before Earl Grey your letter of the 4th instant, and in reply to the question you have there addressed to me, with reference to the letter which was written to you by His Lordship's desire, on the 25th ultimo, I am directed to state, that Lord Grey did not intend by that communication, to throw any imputation upon your personal honor.

With respect to your remark, that you are as yet ignorant of the precise grounds on which the Committee of the Privy Council reported that there was sufficient cause for your amotion from office, Lord Grey desires me to observe that he knows nothing on the subject beyond what is stated in the Order of Her Majesty in Council, of which a copy has already been transmitted to you, and which it was his duty to carry into effect. 

J. Walpole Willis, Esq., etc., etc., etc.

B. Hawes.

Post Office, Bognor, Sussex.

My Lord,

On the 4th instant I did myself the honor to write to Mr. Under Secretary Hawes, requesting that I might be informed if, by your Lordship's refusal to accept my resignation of office, and insisting on a revocation of my Commission, or in the terms in which this was conveyed to me by the official letter of the 25th ultimo, any imputation was intended to be cast on my personal honor and integrity; and in such case I most respectfully entreated that the precise grounds, on which any such imputation rested, might be immediately made known to me. I further ventured most respectfully to inquire, if my former long and acknowledged services, pecuniary sacrifices, and loss of health, would meet with any consideration? To this letter I have not hitherto been favored with any answer.

The Judge Advocate General when at the Bar was of Counsel for me throughout my appeal, and has kindly written to say that "he thinks I have a perfect right, when removed from office, to ask for a declaration that it is not on account of anything derogatory to my honor and integrity; he thinks if I were to write to Lord Grey, or Mr. Hawes, asking for the expression of such an opinion, I should undoubtedly get it in such a form that I might make use of it." Mr. C. Buller adds, "as thoroughly conversant with your whole case, I am bound to give my assurance that nothing in the course of the charges against you attached any stain to your honor and integrity."

Under these circumstances I beg leave to solicit from your Lordship such information as I have already asked for from Mr. Under Secretary Hawes, on both the points submitted to him in my letter of the 25th of August.

John Walpole Willis.

The Right Honorable the Earl Grey, etc., etc., etc.

Sir,

Downing Street, 19th September, 1846.

I am directed by Earl Grey to acknowledge the receipt of your letter of the 12th instant, and to state that my letter of the 15th instant will be found to comprise the only answer which it is in his Lordship's power to make to the enquiry which you have now repeated. I regret that in consequence of my absence for a short time from this Office the transmission of my last letter to you was retarded till the 15th instant.

J. Walpole Willis, Esq., etc., etc., etc.

B. Hawes.
1846.
3 Oct.

Sir,

Bognor, 17th September, 1846.

It gives me the greatest satisfaction to find, by your letter of the 15th instant, that no imputation was intended to be thrown on my personal honor, by your communication of the 25th of August.

As my inquiry, whether my former acknowledged services, pecuniary sacrifices, and loss of health, will now meet with any consideration? seems to have escaped your observation, I take leave, most respectfully, to recall this subject to your notice.

On the hearing of my appeal it was distinctly and emphatically declared, “that I sought not restoration to office”; but on the contrary, the circumstances I have alluded to were most strongly urged with a view to some provision for the future. Some recognition of my former services would indeed be most grateful to me. I regret exceedingly that Earl Grey knows nothing of my case beyond what is stated in the Order of Her Majesty in Council of the 1st of August; for without presuming to question or to impugn any decision of so high a Court as that of the Judicial Committee of Her Majesty’s Privy Council, it does appear to me not to be in accordance with the general usage of other tribunals, that a party should be kept in ignorance of the precise grounds for his condemnation and punishment. more especially as in the present case it is admitted by the late Governor of New South Wales, in his Despatch of the 19th of June, 1843, that my amotion from office was not for any specific act, nor for any precise number of (what he terms) improper acts. The cumulation treason, insisted upon in Lord Stafford’s case, has ever since met with merited reprobation; and in the recent case of Mr. O’Connell, the judgment of the Court of Queen’s Bench, in Ireland, was reversed by the House of Lords, because the counts in the indictment on which the punishment was awarded were not precisely specified. Many of the charges (such for instance, as the first and most prominent, that of punishing Mr. Arden for contempt) brought forward to justify my illegal amotion from office, by the Governor and Council of New South Wales, appeared to be admitted by the Court, on the hearing of my appeal, to be altogether futile: and yet the Report does not contain, nor have I been able to obtain, any specification of the grounds for my condemnation.

Under these circumstances I very humbly trust I may yet venture to hope my former long and faithful services will not be entirely disregarded.

I have, &c.,

JOHN WALPOLE WILLIS.

Mr. Under Secretary Hawes, M.P.

Sir,

Downing Street, 3rd October, 1846.

With reference to my letter of the 21st ultimo, I am now directed to acquaint you that Earl Grey has had his consideration the note which you addressed to him on the 17th, wherein you refer to your recent amotion from the office held by you in New South Wales, and express a hope that your former long and faithful services will not be entirely disregarded.

Lord Grey understands your application as, in effect, a request that some pension, or retired allowance, should be assigned to you on account of your past public services. It is with regret that His Lordship has directed me to state that he can hold out to you no prospect of a compliance with that request.
For services rendered by Her Majesty's Officers to any Colonial Government, it is impossible to grant any retired allowance payable out of the Revenue of this Kingdom; your services in Guiana were too short to entitle you to any such allowance from the Treasury of that Colony; your services in Upper Canada and in New South Wales were, unfortunately, brought to a close under circumstances which must absolutely prohibit the attempt to subject such a payment the Revenue of either of those Colonies. Without advancing further into topics which it might be painful, and must be now unprofitable, to discuss, Lord Grey is constrained by the reason I have mentioned, to conclude, that no fund exists which could be charged with a pension in your favor.

I have, &c.

John Walpole Willis, Esq.

B. HAWES.

[Enclosure No. 3.]

COPY of Warrant revoking the Appointment of John Walpole Willis, Esquire, as Puisne Judge of New South Wales, and Resident Judge of Port Phillip.

To Our Trusty and well beloved Sir Charles Augustus Fitz Roy, Knight, Our Captain-General and Governor in Chief in and over Our Territory of New South Wales, and its Dependencies, or in his absence, to Our Lieutenant Governor, or the Officer administering the Government of Our said Territory and its Dependencies.

TRUSTY and well beloved We greet you well. Whereas by an Act of Parliament, made and passed in the ninth year of the Reign of His late Majesty, King George the Fourth, intituled, "An Act to provide for the Administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual Government thereof, and for other purposes relating thereto"; it was amongst other things enacted, that it should be lawful for His said Majesty, His Heirs and Successors, by Charters or Letters Patent, under the Great Seal of the United Kingdom, of Great Britain and Ireland, to erect and establish Courts of Judicature, in New South Wales and Van Diemen's Land, and that each of such Courts respectively should be holden by one or more Judge or Judges, not exceeding three: And it was further enacted, that the said Judges should, from time to time be appointed by His said Majesty, His Heirs and Successors, by Charters or Letters Patent, under the Great Seal of the United Kingdom, of Great Britain and Ireland, to erect and establish Courts of Judicature, in New South Wales and Van Diemen's Land, and that each of such Courts respectively should be holden by one or more Judge or Judges, not exceeding three: And it was further enacted, that the said Judges should, from time to time be appointed by His said Majesty, His Heirs and Successors, from time to time, as occasion might require, to remove and displace any such Judge. And whereas, in pursuance of the said recited Act, and by virtue of the power thereby in Us vested, We did by a Warrant under Our Sign Manual, bearing date at Kensington Palace, the twenty-sixth day of June, One thousand eight hundred and thirty-seven, in the First year of Our Reign, authorize and require Our trusty and well beloved Sir Richard Bourke, Lieutenant-General of Our Forces, Knight Commander of the Most Honorable Military Order of the Bath, then Our Captain-General, and Governor in Chief, of Our Territory of New South Wales, to cause Letters Patent to be issued, under the Seal of Our said Territory,
constituting and appointing Our trusty and well beloved John Walpole Willis, Esquire, to be a Puisne Judge of the Supreme Court in Our said Territory, during Our Pleasure, which Letters Patent as aforesaid, were accordingly issued, bearing date the seventh day of November, One thousand eight hundred and thirty-seven, in the First year of Our Reign. And whereas by an Act of the Governor of Our Territory of New South Wales, by and with the advice of the Legislative Council thereof, passed in the Fourth year of Our Reign, intituled, "An Act to provide for the more effectual Administration of Justice in New South Wales and its Dependencies," it was amongst other things enacted, that for the better and more effectual Administration of Justice throughout the said Colony and its Dependencies, in addition to the three Judges of the Supreme Court of the said Territory, already appointed, there should and might be appointed, and might Judges, not exceeding two, of the said Court, as the same should be deemed necessary by Us, and that until the Pleasure of Us, Our Heirs and Successors, should be duly signified in that behalf, it should and might be lawful for the said Governor by Commission or Commissions under the Great Seal of Our said Territory, in Our name and behalf to appoint such Judge or Judges as aforesaid: And it was further enacted, that it should be lawful for the Governor of the said Territory for the time being to appoint from time to time one of the Judges of the Supreme Court of the said Territory, not being the Chief Justice, to reside in the District of Port Phillip, in the said Territory. And whereas, in pursuance of the said last recited Act, and under and by virtue of the authority thereby vested in the Governor of Our said Territory, Our trusty and well beloved Sir George Gipps, Knight, then Our Captain-General and Governor in Chief of the said Territory, did, under the Seal of Our said Territory, on the eighth day of February, One thousand eight hundred and forty-one, appoint the said John Walpole Willis, during the pleasure of the Governor of the said Territory for the time being, to be Resident Judge in the said District of Port Phillip. And whereas We are now minded to remove the said John Walpole Willis, from the office of Judge in Our Territory aforesaid: Now, therefore, in pursuance of the said recited Act of the Ninth year of the Reign of His late Majesty, King George the Fourth, and under and by virtue of the authority thereby vested in Us, or of any other power and authority in Us, in that behalf vested, We do hereby authorize and require you, to cause Letters Patent to be passed, under the Public Seal of Our said Territory, revoking and recalling in Our name, and on Our behalf, the appointment of the said John Walpole Willis, to be a Puisne Judge of the said Supreme Court, in Our said Territory, and removing and displacing him from the said office. And in further pursuance and exercise of all powers and authorities in Us in that behalf vested, We do further authorize and require you to revoke and recall the appointment, so made by the Governor aforesaid, of the said John Walpole Willis, to be Resident Judge in the said District of Port Phillip; and for so doing, this shall be your Warrant.

Given at Our Court, at Osborne House, Isle of Wight, this twenty-first day of September, 1846, in the Tenth year of Our Reign.

By Her Majesty’s Command,

[Signature]

Copy of warrant revoking appointment of J. W. Willis as puisne judge.
Earl Grey to Sir Charles Fitz Roy.

(Despatch No. 38, per ship Bermondsey; acknowledged by Sir Charles Fitz Roy, 11th July, 1847.)

Sir,

Downing Street, 3 October, 1846.

The attention of Her Majesty's Government having been recently given to the subject of the Observatories at present maintained in Her Majesty's Colonial Possessions at the expense of the Public, it has been determined that reports, for the information of the Lords Commissioners of the Admiralty, should in future be annually drawn up by the officers in charge of those establishments, which are to embrace the following points:—The state of the buildings and adjacent Grounds, the library of Books and Manuscripts, the condition of the instruments, Clocks and chronometers, the nature of the observations in which the preceding year has been chiefly occupied, the progress which has been made in the reduction of those observations, the general conduct of the Assistant Astronomers, together with any suggestions which may be thought conducive to the efficiency of the observatory and to the interests of science.

It is intended that the preparation of these annual reports should be completed, so as to ensure their arrival in this Country by the Month of April.

You will, therefore, call upon Mr. Dunlop, the Superintendent of the observatory at Paramatta, to commence such a Report for the current year immediately; and, although it will of course be impossible to receive it here within the prescribed period, I have to request that it may be forwarded to me with the least possible delay.

I herewith enclose a Copy of the annual Reports made by the Astronomer Royal to the Board of Visitors; and it will be your duty to appoint a Commission for the purpose of examining once in every year the inventory of all the instruments, books, etc., belonging to the observatory in New South Wales in the same manner as is practiced in the Royal observatory in this Country.

I should also wish to receive with the least possible delay a Report from the Astronomer at the observatory at Paramatta of the observations he has made since the date of his last report, or since the date of his appointment, if, as I am given to understand, no such reports have from that time been transmitted by him to Her Majesty's Government in this Country. The great importance of the station he occupies with a view to a scientific survey of the heavens in the Southern hemisphere must impart peculiar interest to the result of that Survey; and I should wish to be placed in possession of them as fully and minutely as may be consistent with his prompt compliance with this Requisition.
214 HISTORICAL RECORDS OF AUSTRALIA.

1846.

3 Oct.

Observatory to be inspected by Sir C. Fitz Roy.

You will also endeavour yourself to inspect the observatory and report to me in what state it appears to be, and whether you find reason to believe that the observer pays proper attention to his duties.

I have, &c.,

[Enclosure.]

GREY.

[This consisted of the annual reports of the astronomer-royal for the years 1836 to 1846, both inclusive.]

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 29, per ship Ganges.)

Sir,

Government House, 3rd October, 1846.

I have the honor to acknowledge the receipt of your Despatches of the numbers and dates noted in the Margin.*

I have, &c.,

CHS. A. FITZ ROY.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 39, per ship Bermondsey.)

Sir,

Downing Street, 7 October, 1846.

I have received your Predecessor’s Dispatch addressed to Lord Stanley No. 88 of the 27th of April last, enclosing a Memorial from the Mayor and Town Council of Melbourne, who pray that a portion of the Land Fund may be made applicable to the forming and repairing of the Streets in that Town.

Although the formation of Good Streets and Roads in a Town, which is at once the Capital and Principal Port of so considerable a District as Port Phillip, is undoubtedly an important and desirable object, and might even under certain circumstances warrant an appropriation from the General Revenue, yet the fitness of such an appropriation can only be properly judged of and decided by the local Legislatures.

Of the moiety of the Land Fund not devoted by the Act of Parliament to Immigration, a certain per centage has, it is true, been left at the disposal of the Governor by the Lords Commissioners of the Treasury to be expended in such a manner as he may deem expedient on “Roads, Bridges, and other means of

* Marginal note.—Addressed to Sir G. Gipps: No. 38, 28th February, 1846; No. 39, 5th March, 1846; No. 40, 5th March, 1846. Addressed to Sir C. Fitz Roy: No. 1, 6th March, 1846; No. 2, 7th March, 1846; No. 3, 9th March, 1846; No. 4, 10th March, 1846; No. 5, 14th March, 1846; No. 6, 16th March, 1846; No. 7, 17th March, 1846; No. 8, 17th March, 1846; No. 9, 20th March, 1846; No. 10, 22nd March, 1846; No. 11, 28th March, 1846; No. 12, 29th March, 1846; No. 13, 30th March, 1846; No. 14, 17th April, 1846; No. 15, 20th April, 1846; No. 16, 24th April, 1846; No. 17, 25th April, 1846; No. 18, 29th April, 1846. Military No. 1, 6th March, 1846; Military No. 2, — March, 1846; Military No. 1, 27th April, 1846. Circular, 12th March, 1846; Ditto, 13th April, 1846. Private and Confidential, 30th April, 1846.
GREY TO FITZ ROY.

communication for the purpose of opening and making more easily available Lands, which it may be desirable to offer for Sale.”

It cannot, however, be supposed that these words had reference to the making or improving the Streets of a Town. Indeed I find that Lord Stanley, in a Despatch conveying to Your Predecessor the intentions of the Government with regard to the disposal of Funds acquired from the Sale of Crown Lands, distinctly states “that the discretionary power thus given to the Governor to incur expenditure in opening Roads applies of course to main lines of communication only, and that the Funds thus placed at his disposal are on no account to be diverted to purposes of partial, local or Individual Interest.”

Whilst, therefore, I concur in the importance of effecting any improvements required in the Communications with the Town of Melbourne, I am of opinion that Sir George Gipps judged rightly in declining to apply the Land Fund by Executive authority to that object.

You will acquaint the Gentlemen, who signed the Memorial, that, for the reasons assigned, I have not felt at liberty to comply with the prayer which it contains. I have, &c.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 40, per ship Bermondsey; acknowledged by Sir Charles Fitz Roy, 28th April, 1847.)

Sir, Downing Street, 7 October, 1846.

I transmit to you herewith the Copy of a Letter, addressed to me by the Publishers of Hansard’s Parliamentary Debates, stating that they have some Copies of that Work to dispose of, which they are prepared to sell at a very reduced price. It is possible that the Colony under your Government may not be in possession of a Copy of this Work, and that the Legislature may wish to avail themselves of this opportunity of procuring it at a comparatively small price. I have, therefore, thought it my duty to communicate to you Mr. Gye’s letter, leaving you to exercise your discretion as to the manner of acting upon it.

I have, &c.

[Enclosure.]

MR. J. GYE TO EARL GREY.

Hansard’s Parliamentary Debate Office.

My Lord, 32 Paternoster Row, 17th Sept., 1846.

I beg leave with much respect to inform your Lordship that, having come to the determination of selling off the remaining Copies of Hansard’s Parliamentary History, 36 Vols., Royal 8vo., at a very reduced price, I should be obliged if Your Lordship would

* Note 26.
Offer of sets of history at reduced price.

have a few Copies for the principal Colonies, where it would be useful in the Libraries of the Government Officers. a few years ago when Your Lordship's revered Father was at the Head of the Administration, no less than 26 Copies of the Parliamentary Debates were supplied to the Colonies, but which have gradually dropped off. The present work was published at £70, and we are enabled to dispose of it at Ten Guineas per Copy, 36 Vols. No doubt your Lordship is conversant with the work, but it is decidedly the most valuable of Historical Collections ever published, containing the Proceedings of the British Parliament from the Conquest in 1072 to 1803. The great bulk of Debates, which are fast accumulating, has induced us to make this sacrifice, and I should consider it a personal favor, if Your Lordship would instruct that a number of Copies may be taken for the chief Colonies.

I have, &c.,

JAMES GYE.

EARL GREY TO SIR CHARLES FITZ ROY.

(A circular despatch, per ship Bermondsey.)

Sir,

Downing Street, 7th October, 1846.

With reference to Lord Stanley's Despatch of 24th September, 1845, I transmit to you, herewith, a Copy of the Annual Reports from Her Majesty's Colonies, transmitted with the Blue Books for the year 1845, which, in conformity with the intention announced to you by Lord Stanley, were presented by Her Majesty's Command to both Houses of Parliament, and were ordered by them to be printed.

I have, &c,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY.

(A circular despatch, per ship Bermondsey.)

Sir,

Downing Street, 8th October, 1846.

With reference to Mr. Gladstone's Despatch of the 19th January last, I transmit to you, herewith, a Copy of Instructions issued by the Lords Commissioners of the Treasury to Commissariat Officers on Foreign Stations, making certain alterations in the General Regulations and Instructions for conducting the duties of the Commissariat Department, promulgated by their Lordships on the 1st December last.

I have, &c.,

GREY.

[Enclosure.]

INSTRUCTIONS to Commissariat Officer in Charge.

Sir,

Treasury Chambers, 25th August, 1846.

The Lords Commissioners of Her Majesty's Treasury having signified to the Officers of the Commissariat, by the seventh paragraph of my Letter of the 1st Dec., 1845, their intention to apprise you of any additions or amendments, which it might be found necessary to make in the General Regulations and Instructions for conducting the Commissariat Service, in order that the same might be inserted in manuscript on the fly-leaf opposite the
Article to be amended, I am commanded by their Lordships to desire that the following alterations and additions may be made in the Instructions relating to—

The payment of Chelsea and Greenwich Pensions.

The granting of Certificates in lieu of Negotiable Bills for Public Monies deposited in Commissariat Chest abroad.

The Issues of Field Allowance to the Officers of the Commissariat; and

Supplies and payments for Military Prisons.

From the date of the receipt of the present communication you are to consider the Articles Nos. 287 to 305 of the Instructions regarding the payment of Chelsea and Greenwich Pensioners, with the following modifications, as in force and superseding the Instructions, by which you have been hitherto guided in the payment of the Pensions in question:

**Article 293.**
After the word "Greenwich" in the first line insert "who is already on the Establishment."
After the word "charge" in the fourth line insert "and a Transfer Certificate in the following form regarding the Pensioner will, at the same time, be forwarded for the Commissariat Officer's information and guidance."
Erase the word "has" in the fifth line, and after the word "notification" in the same line insert "and Transfer Certificate have."
After the word "Certificate" in the sixth line insert "giving some of the particulars contained."

**Article 294.**
Erase the word "This" in the first line and insert "The."
After the word "Certificate" in the first line insert "in possession of the Pensioner."

**Article 295.**
Erase the words "in question" and "likewise" in the first line, and after the word "Certificate" insert "containing the full particulars."

**Article 297.**
At the commencement of this article insert the following:

"In the cases both of newly admitted Pensioners and of Pensioners already on the Establishment, to which latter class only the Transfer Certificates apply, numbered lists will be furnished from this Board to the Commissariat Officers in charge on Foreign Stations as heretofore."

Some of the Greenwich Pensioners have heretofore received their Pensions through the Commissariat, while others have been paid by Naval Cash Accountants, and, as it is intended that all of them should hereafter be paid by the Officers of the Commissariat, the Naval Cash Accountants have been directed to furnish you with any information which it may be in their power to afford regarding the latter class of Greenwich Pensioners.

The annexed list contains the names of Greenwich Pensioners at present residing .................., who have hitherto been paid by Naval Cash Accountants.

You will of course consider the 296th Article of the Instructions as applying to any Greenwich Pensioner, who may have removed from this Country to the Colonies without giving due notice thereof.
You will receive herewith a supply of the forms of Chelsea and Greenwich Pensioners' Declarations and Receipts, and a form of the Transfer Certificate, which will be given to Pensioners about to emigrate to the Colonies; and will observe that it is intended that the latter document should furnish the necessary information to enable you to adjust with the Pensioners the charge for rations supplied to them and their families while on their passage to .............

You will make a special requisition for any further number of the above Forms which may be required, before your next annual requisition for printed Forms can be complied with.

It having been determined that the Rule which applies to Public Departments of granting Certificates, in lieu of Negotiable Bills, for Sums deposited under competent authority in Commissariat Chests abroad, should be extended to Sums, so deposited, on account of a Colonial Government, it becomes necessary to make the following alterations in the 238th Article of the Regulations, in conformity with this view.

After the word "Troops" in the third line add, "And, in lieu of Negotiable Bills, Certificates are to be granted by the Commissariat Officer of all Sums so received by him as remittances to this Country for public purposes."

Erase the word "any" in the fourth line and substitute the word "every."

Erase the word "Bills" in the fourth line and substitute the word "Certificates."

I am further to acquaint you that, as the necessary information regarding the rate of Exchange at which Bills upon this Board are negotiated or paid away is given in the reports of negotiations and in the advices of Bills drawn, their Lordships consider it to be unnecessary that the rate of Exchange should be noted upon the face of the Bills; and you will therefore discontinue making this notation, and, until Bill Books are provided in which the words "Exchange at" are omitted, you will strike your pen through those words.

I am to enclose, for your information and guidance, copies of two Royal Warrants recently published, regulating the issues of Field Allowance, and fixing the rates of Indemnification for losses; and, in conformity with the provisions of the Field Allowance Warrant, the following is to be substituted for the last column of the statement annexed to Article 33 of the Regulations:—

<table>
<thead>
<tr>
<th>Field Allowance.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinary.</td>
</tr>
<tr>
<td>Per Diem.</td>
</tr>
<tr>
<td>Commisary General</td>
</tr>
<tr>
<td>Deputy Commissary General (if second in his Department or in charge of a distinct Corps of the Army.)</td>
</tr>
<tr>
<td>Deputy Commissary General (if otherwise)</td>
</tr>
<tr>
<td>Assistant Commissary General</td>
</tr>
<tr>
<td>Deputy Assistant Commissary General</td>
</tr>
<tr>
<td>Commissariat Clerk (holding a Treasury Appointment)</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
The following Articles, relating to Supplies and Payments for Military Prisons, are to be inserted on the fly leaf opposite page 78 of the Regulations:

Military Prisons.

"When Military Prisons are established, under competent authority, in any Garrison abroad, all such Supplies as may be required, either for the use of the Prisoners, or of the Officers and Servants of the Establishment, are to be obtained upon Requisitions, approved by the Visitors of the Prison, from the Officers in charge of the Commissariat, who will enter into Contracts for the Supplies, or purchase them, or issue them from the Stores in his custody.

"The Commissariat Officer will furnish, monthly, to the Visitors of the Prison, an Account of the cost of the Supplies, and the Visitors, after having satisfied themselves of its accuracy, are instructed to add thereto Statements, with proper Vouchers, of the Pay of the Officers and Servants, and the contingent Expenses of the Establishment, and obtain the covering Warrant of the Officer Commanding the Troops at the Station, for the advance of the total Sum from the Commissariat Chest, which Warrant and Vouchers are to be annexed to the Commissariat Accounts.

"Articles of Food in Commissariat Depots, or supplied by Contractors for the general service of the Army, which may be required for the use of Prisoners in Barrack or Garrison Cells in charge of Provost Serjeants on Foreign Stations, are to be furnished, under the authority of the Officer Commanding on the Station, and the actual cost of any such supply is to be paid for monthly by the Provost Serjeant."

I am, &c.,

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 41, per ship Bermondsey.)

Sir,

Downing Street, 9 October, 1846.

I have to acknowledge the receipt of Your Predecessor's Despatch, No. 87 of the 26th April last, enclosing a Memorial Addressed to the Queen by the Mayor and Town Council of Melbourne, in which they pray that measures may be adopted for securing a larger Supply of Labour in the District of Port Phillip.

You will acquaint the Memorialists that I have laid their Petition before the Queen and that Her Majesty was pleased to receive it very graciously.

Upon the Statements contained in the Memorial, I have to observe that, in the large Emigration effected under Bounty Orders from the Government of New South Wales in the years 1840 and 1841, the proportion of people sent to Port Phillip amounted to about One third of the whole numbers; and that, in the Emigration which was undertaken by H.M.'s Government in the two following years, it was thought advisable to aim at the same proportion which was, however, in point of fact somewhat exceeded in favour of Port Phillip.
I concur with the Memorialists in their opinion of the importance of an adequate supply of labour; but it must rest with the Legislature of New South Wales to determine whether any other portion of the Public Revenue, apart from those necessarily set aside for Emigration purposes, can be spared for that object, there being no means at the disposal of H.M.'s Government for effecting the large and steady Emigration prayed for in the Memorial.

I am, &c.,

GREY.

1846.
9 Oct.
Supply of labour at discretion of legislature.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 43, per ship Bermondsey.)

Downing Street, 10 October, 1846.

I have to acknowledge the receipt of your Predecessor's Despatch, No. 97 of the 18th of May last, enclosing a Copy of the Speech with which, on the 12th of that month, he opened the Session of the Legislative Council of New South Wales, together with a Copy of the Address which was presented to him, in reply, by that body.

I am, &c.,

GREY.

10 Oct.
Despatch acknowledged.

1846.
10 Oct.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 44, per ship Bermondsey.)

Sir,

Downing Street, 17th October, 1846.

In my Despatch, No. 37 of the 3d Instant, I transmitted to you a Copy of an Order in Council regarding the case of Mr. John Walpole Willis, together with an Order made by Her Majesty for revoking the appointment of Mr. Willis as Puisne Judge of New South Wales and as Resident Judge at Port Phillip.

In the Correspondence with Mr. Willis, which also accompanied that Despatch, he was informed that you would be directed to instruct the Colonial Treasurer to pay to him or to his Order the full Salary of his Office, Computed from the date of the latest payment to him on account of that Salary down to the date of the Warrant for revoking Mr. Willis's Commission. You will accordingly give the necessary directions for that payment. It will be made from the Civil List Fund provided by the Constitutional Act under Schedule A. As the Queen in Council has reversed the Order of the Local Government amoving Mr. Willis, he has clearly a valid Claim to his full Salary until the date of the Warrant revoking his Commission.

I am, &c.,

GREY.
GREY TO FITZ ROY.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 45, per ship Bermondsey.)

Sir,

Downing Street, 17 October, 1846.

I have received Your Predecessor's Despatch, dated the
30th May, 1846, and numbered 107, with the accompanying
Address to the Queen from the Legislative Council of New
South Wales, praying that Her Majesty would take such steps
for relieving the Sufferers by Mr. Manning's defalcation as to
Her Majesty shall seem meet.

I have laid this Address before the Queen, and I have received
Her Majesty's Commands to direct you to acquaint the Legisla­
tive Council that Her Majesty has bestowed on it the attention
so justly due to every representation, which may reach Her Ma­
jury, of the opinions and wishes of the Legislature of New
South Wales on any subject affecting the welfare of any class
of H.M.'s Subjects inhabiting that important part of Her
Dominions.

I am further to state that, for the reasons assigned in the
Despatch of Lord Stanley to Sir George Gipps of the 28th of
June, 1843, No. 94 (of which I enclose a Copy), I have found
myself unable to advise Her Majesty to accede in this instance
to the recommendation of the Legislative Council.

The Queen Commands me to signify through you to that Body
the regret with which, under these Circumstances, Her Majesty
finds Herself precluded from taking any measures for the relief
of the persons to whom the Address of the Legislative Council
refers.

It will appear from Mr. Gladstone's Despatch of the 4th of
July last, No. 46, that, subsequently to the date of Lord Stanley's
Despatch, the Lords of the Treasury discovered and enforced pay­
ment of the Security given by Mr. Manning on his Appointment
to Office in the year 1828, and that, therefore, as far as respects
that Security, Lord Stanley's information was defective. But the
fact strengthens, instead of impairing his Lordship's conclusion.
It demonstrates that no loss at all would have occurred, if the
Judges of the Colony had with greater punctuality acted on and
enforced their own Rules of Court, drawn up in the year 1838
for the express purpose of preventing the irregularities in Mr.
Manning's Accounts and proceedings.

I am, &c.,

GREY.

[Enclosure.]

[This was copy of lord Stanley's despatch to Sir George Gipps,
dated 28th June, 1843, and numbered 94; see page 798 et seq.,
volume XXII.]
EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 46, per ship Bermondsey; acknowledged by earl Grey, 29th May, 1847.)

Downing Street, 18 October, 1846.

Sir,

I have received your Predecessor's Despatches of the numbers and dates enumerated in the margin,* on the subject of the Judicial Arrangements contemplated and recommended by him in New South Wales. The removal of Mr. Willis from his Office as one of Her Majesty's Judges in that Colony in consequence of the report addressed to Her Majesty in his case by the Judicial Committee of the Privy Council was communicated to you in my Despatch of the 3rd Instant, No. 37.

In accordance with the advice of Sir George Gipps, Her Majesty has been pleased to appoint Mr. A'Beckett to fill the Office thus vacated by Mr. Willis. In further pursuance of the advice of your Predecessor, The Queen has also been pleased to appoint Mr. Therry to the Office of a Puisne Judge of the Supreme Court, to which he has been provisionally appointed by the late Governor.

Mr. Therry's promotion vacating the Office of the Commissioners of the Court of Requests, the Queen has been pleased to approve the selection of Mr. Cheek as his Successor in that Capacity.

The advancement of Mr. Cheek creating a Vacancy in the Office of Crown Prosecutor in the Court of Quarter Sessions, Her Majesty has been pleased to confer that Appointment on Mr. Callaghan.

The necessary Instruments for carrying into effect Her Majesty's gracious intentions in favour of the Gentlemen, I have mentioned, will be transmitted to you as soon as they shall have been Completed.

I am, &c,
GREY.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.
(Despatch No. 30, per ship Berkshire; acknowledged by earl Grey, 10th April, 1847.)

Government House, 19th October, 1846.

I have the honor to forward, herewith, Addresses of congratulation to Her Most Gracious Majesty the Queen and Her Royal Consort Prince Albert from the Legislative Council of this Colony, which were adopted by that Body on receipt of my Message transmitting a Copy of Your Despatch announcing the birth of a Princess on the 25th of May last; and, on the part of the Council, I have the honor to request that you would present the same to Her Majesty and His Royal Highness.

I have, &c,
CHS. A. FITZ ROY.

* Marginal note.—No. 500, 5 March, 1846; "Separate," 16 Mar., 1846; No. 62, 16 Mar., 1846.
Sir CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.
(Despatch No. 31, per ship Berkshire.)

I have the honor to inform you that the Colonial Secretary Requisition for Stationery and other articles required for the use of the Public departments of this Colony, and of which the total estimated amounts to Two thousand, two hundred and Eight pounds, fourteen shillings and eightpence. I have further to report that I have caused that sum to be paid from Colonial funds to the Military Chest; and I, therefore, request that you will be so good as to give the necessary instructions for an equal sum being paid from the British Treasury to Mr. Barnard, to enable him to execute the Requisitions in question.

I have, &c.,

CHS. A. FITZ ROY.
SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.
(Despatch No. 32, per ship Berkshire.)

Sir,
Government House, 20th October, 1846.

I have the honor to inform you that the Colonial Secretary to this Government has, by my desire, transmitted, by the present opportunity, to the Colonial Agent General a Requisition for certain articles consisting of Paper and two Pier Glasses for the Public Rooms in the Government House,* of which the total estimated expense amounts to two Hundred and forty five Pounds.

I have caused this sum to be paid from Colonial Funds to the Military Chest; and I would, therefore, request that you will have the goodness to give the necessary instructions for an equal sum being paid from the British Treasury to Mr. Barnard, to enable him to execute the Requisitions in question.

I have, &c.

CHS. A. FITZ ROY.

Despatch acknowledged.

Inability to report re T. Gibson.

MR. W. LONSDALE TO COLONIAL SECRETARY THOMSON.
Superintendent's Office.

Sir,
Melbourne, 20th October, 1846.

In acknowledging the receipt of your letter of the 13th October, No. 414, requesting any information respecting Mr. Thomas Gibson, I have the honor to state that, should any information reach me in consequence of the notice which I caused to be inserted in the local Government Gazette of the 11th July last, with reference to him, I shall not fail to communicate the same to you for His Excellency's satisfaction.

I have, &c.

W. LONSDALE.

* Note 27.
SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 34, per ship Berkshire.)

Sir, Government House, 21st October, 1846.

In reply to Your Despatch of the 29th April last enclosing a letter from Lord Lurgan requesting information concerning a Mr. E. C. MacNeil, formerly Junior Clerk in the Office of the Principal Superintendent of Convicts of this Colony. I have the honor to enclose the Copy of a letter which has been recorded in the Colonial Secretary’s Office, by which it appears that Mr. MacNeil died on the 18th October, 1845.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

CAPTAIN MCLEAN TO COLONIAL SECRETARY THOMSON.

Principal Superintendent of Convicts’ Office.

Sir, 21st October, 1845.

It is my painful duty to report, for the information and commands of His Excellency the Governor, that Mr. E. C. McNeil (an extra Clerk in this Office) died on the 18th instant.

I have, &c.,

— J. MCLEAN.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 35, per ship Berkshire.)

Sir, Government House, 21st October, 1846.

In reply to the enquiry contained in Your Despatch No. 2, of the 2nd May last, I have the honor to enclose Copy of a letter from the Commandant of the Mounted Police in this Colony, reporting that James Graves, who was formerly a Private in Her Majesty's 28th Regiment, is now a Sergeant of the Mounted Police, commanding the Station of Horsley, and that he is in good health.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

[A copy of this letter is not available.]

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 48, per ship Bermondsey.)

Sir, Downing Street, 23 October, 1846.

I have to acknowledge the receipt of your Predecessor’s despatch, No. 105 of the 26th of May, reporting the appointment made by him of Mr. Henry Watson Parker to be a non-elective Member of the Legislative Council of New South Wales, in the room of Mr. Edward Hamilton, who has resigned his seat.

Warrant for appointment of H. W. Parker to legislative council.

SER. I. VOL. XXV—P
in the said Council; and I herewith transmit to you a Warrant under Her Majesty's Sign Manual, counter-signed by myself, ratifying and confirming the appointment of Mr. Parker.

[Enclosure.]

[A copy of this warrant is not available.]

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 49, per ship Bermondsey.)

Sir, Downing Street, 24th October, 1846.

I have received your Predecessor's Despatch, dated the 23rd November, 1845, No. 197, accompanied by the copy of a Bill passed by the Legislative Council of New South Wales on the 3rd of October, 1845, intituled "An Act for auditing and regulating the Accounts of the Ordinary Revenue of New South Wales."

Sir George Gipps reports himself to have reserved this Bill for the signification of Her Majesty's pleasure, on account of the doubts which he entertained whether it was not repugnant to the 36th clause of the Statute 5 and 6 Victoria, cap. 76, for the Government of New South Wales. The view which I take of this subject renders it needless for me to express my opinion on the mere question of Law. I am willing, for the sake of argument, to assume that the Act of Parliament would not be expressly contravened by the proposed enactment; and that it would, therefore, be competent to the Queen to ratify and confirm it. But, even on that assumption, there are what appear to me insuperable objections to such an exercise of Her Majesty's authority.

However obscurely or imperfectly the intentions of Parliament on this subject may have been expressed, it cannot reasonably be doubted that their intention really was, to entrust to the Executive Government of New South Wales the necessary powers for collecting the Public Revenue, and for defraying all costs and charges incident to the collection of it. I ascribe that intention to the Legislature, first, because it corresponds with the usages of this Kingdom in all corresponding cases; secondly, because it is in harmony with the customs prevailing, with scarcely any exception, in the other British Colonies; and thirdly, because, if we adopt the opposite supposition, we must suppose that Parliament designed to render the Executive Government of New South Wales incapable of the discharge of one of its most important functions.
Of the two first reasons, no proof is requisite. The third may be easily established.

The effect of the reserved Bill is that no expense in collecting the Revenue may be incurred by the Executive Government for which the express authority of some antecedent Act cannot be quoted. Now, under such a restriction, it is evident that the collection would not lawfully take place at all. Such expenses must always be varying in amount, and uncertain in kind. They must depend on casualties which no human foresight can predict, and in defraying, or refusing to defray them, there is a constant demand for promptitude of decision, and for a consequent freedom of action.

But under the contemplated law there could be no such freedom or promptitude. As each case arose, the Local Government would be reduced to the dilemma of either allowing the Public Revenue to be lost by the exact observance of the law, or of raising the Revenue at the peril of a direct breach of the law. Any Government, worthy of their office, would indeed take the course of preferring the interest of society at large, to their own safety; and the practical result would be, that each Session of the Local Legislature must open with a Bill for indemnifying the Government against acts at once indispensable and illegal.

I cannot believe that Parliament contemplated such a system as this. I cannot think that any useful end would be answered by creating it. I can see no public advantage which could be promoted by the refusal to the Executive Government of New South Wales of the powers which Parliament and the Legislatures of other Colonies so invariably confide to the Executive Officers of the Crown; but I can clearly foresee from such a refusal a result fatal to real economy and to constitutional freedom.

If such a law should take effect, the Legislative and the fiscal functions of Government must gradually, though surely, pass into the same hands. The Legislative Council itself must ultimately assume the duty of collecting the Revenue. Every check on waste and all effective responsibility would thus be at an end, for the same body would, in effect, direct and review, and sanction their own expenditure of the Public Revenue.

The Act of Parliament for the Government of New South Wales has indeed contemplated the enactment of local Laws for the regulation and auditing of the costs, charges, and expenses of collecting, managing, and receiving the Public Revenue.

There can therefore be no valid objection to the enactment by the Colonial Legislature of general regulations, judiciously calculated to check waste and improvidence in such outgoings, nor
to their establishment of an office for the audit of the accounts of such costs, charges, and expenses; the object of the audit being, of course, only to determine whether for each expenditure a competent legal authority could be adduced. But such legislation is perfectly compatible with the exercise by the Executive Government of the requisite freedom of discretion to determine, in the first instance, what costs are necessary, and what expenses are prudent, and what charges are fit to be incurred in each successive case, with a view to insuring the punctual receipt by the Local Treasury, of what may be really owing by the debtors or accountants to the Crown.

To any law which shall reconcile these objects, and sufficiently provide at once for both, the Queen will cheerfully give her assent.

But Her Majesty cannot be advised to confirm this Bill, which would, however unintentionally, establish a system leading to losses far more considerable, or to inconveniences far more serious, than those which it is designed to obviate. I am, &c.,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY.

(A circular despatch, per ship Alexander; acknowledged by Sir Charles Fitz Roy. 20th May, 1847.)

Sir,

Downing Street, 24th October, 1846.

I transmit to you, herewith, the Copy of an Address to Her Majesty from the House of Commons, dated the 26th of August last, praying that Her Majesty will be graciously pleased to direct to be laid before the House the Information therein described respecting the Revenue and Expenditure, and Form of Government of the British Colonies.

Her Majesty having been pleased to order that the Information prayed for should be furnished to the House of Commons, I have to desire that you will cause these Returns to be immediately prepared, and transmit them to me when completed.

I apprehend that the term "Executive," which is used in the third paragraph of the Address, is intended to apply to the Executive Council. Your Return should, therefore, be prepared on that understanding of the meaning of the Order.

As the Resolutions of the House of Commons, which are referred to in the fourth paragraph of the Address, appear never to have been transmitted to the Colonies, no reference to this is necessary in the return which you will cause to be prepared.

I have, &c.

GREY.
FITZ ROY TO GLADSTONE.

[Enclosure.]

ADDRESS.

House of Commons,

Resolved, Mercurii, 26 die Augusti, 1846.

That an humble Address be presented to Her Majesty that She will be graciously pleased to give directions that there be laid before this House a Return, in a tabular form, for the last year in which they can be made up, of the gross Revenues under their different heads of each of Her Majesty's Colonies, exhibiting the costs of collection and any deductions made in their progress to the Public Treasury;

Similar Return of the disbursements of each Colony under their separate heads; showing the authority on which such disbursements are made;

Returns showing which Colonies have Representative Assemblies, and which not, and by whom the Executive is nominated, and of what number of Members it consists, and also whether and in what cases the Members of the Executive have seats or votes in the Legislature.

Of the Colonies which have adopted the Resolutions of the House of Commons for the Return of the Colonial Accounts.


SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 39, per ship Berkshire; acknowledged by earl Grey, 13th April, 1847.)

Sir,

Government House, 24th October, 1846.

I have the honor to acknowledge the receipt of Your Despatch, No. 18 of the 7th May last, transmitting an extract of a communication which you had addressed to Mr. La Trobe, directing him to proceed immediately to assume the temporary administration* of the Government of Van Diemen’s Land.

Mr. La Trobe will doubtless have informed you that he lost no time in complying with your instructions, having left Melbourne on the 9th instant within a few hours of the receipt of your despatch.

I have now the honor to report that, in compliance with your further directions, I have appointed Captain Lonsdale, Sub Treasurer of Melbourne (who I have every reason to believe fully competent) to undertake the duties of Superintendent at Port Phillip during Mr. La Trobe’s absence. The duties of Sub Treasurer will be performed by Mr. Macrae, the Chief Clerk in that Office; and I have explained to both these Gentlemen that, in conformity with the General Regulations of the Colonial Service, p. 21, par. 3, during the time they may be in the performance of these duties, they will be entitled to half of the salary attached to their temporary Offices, together with half the salary of their own Offices.

* Note 6.
Testimony in favour of C. J. La Trobe.

Return transmitted of trials of aborigines at Port Phillip.

Necessity for admission of evidence of aborigines.

In conclusion, I trust I may not be considered presumptuous in saying that, having obtained a pretty accurate acquaintance with Mr. La Trobe's character and sterling good qualities, during a month that he passed in this house soon after my arrival here, I do not believe that you could have selected a person more worthy of your confidence or one better adapted to perform the difficult task which you have assigned him.

I have, &c.,

CHS. A. FITZ ROY.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 40. per ship Berkshire; acknowledged by earl Grey, 25th June, 1847.)

Sir, Government House, 25th October, 1846.

With reference to my Predecessor's despatch No. 140 of the 2nd July last, and to the Report, therein enclosed, of the Superintendent of Port Phillip, on certain cases of collision which had occurred between the Police of that District and the Aboriginal Natives, I have now the honor to transmit a further communication from Mr. La Trobe, enclosing a Return of all cases of note which have occurred in his District during the last five years, in which the attempt has been made to bring aboriginal Natives to Justice for alleged acts of violence, together with a Paper giving an outline of the cases adverted to in the Return, and a statement of the case of Kourt Kirrup.

Mr. La Trobe's object would appear to be to shew the necessity of some alteration in the Law by the Imperial Parliament, so as to admit the evidence of the Aboriginal Natives under certain restrictions.

I have, &c.,

[Enclosure. 1 CHS. A. FITZ ROY.

[A copy of C. J. La Trobe's letter, dated 4th July, 1846, with its enclosures will be found in a volume in series III.]

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 41. per ship Berkshire; acknowledged by earl Grey, 30th April, 1847.)

Sir, Government House, 26th October, 1846.

I have the honor to transmit a Petition which has been placed in my hands by the Acting Superintendent of Port Phillip, addressed to you by a Mr. W. Willoughby, praying for employment under the Colonial Government.

Mr. Willoughby's claims to your consideration appear to be based upon his having married the widow of a Mr. Bateman,* who, in the year 1835, is stated to have chartered a Vessel at his own

* Note 28.
FITZ ROY TO GLADSTONE.

expense in Van Diemen's Land, whence he proceeded to and explored a portion of Country, now known as the District of Port Phillip.

It appears, also, that Mrs. Willoughby addressed a Petition to Her Majesty in July, 1845, praying for a Grant of Land which was refused.

I have, &c.,

[Enclosures.]

CHS. A. FITZ ROY.

[Copies of W. Lonsdale's letter, dated 14th October, 1846, and of the petition will be found in a volume in series III.]

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 42, per ship Berkshire.)

Sir, Government House, 27th October, 1846.

In accordance with the instructions conveyed to me in your Despatch No. 17 of the 25th April last, I have the honor to return herewith the Warrant, under the Royal Sign Manual, H.- H.- Browne, authorising the appointment of Mr. Hutchinson Hothersall Browne to the Office of Registrar of the Court of Requests in New South Wales.

I have, &c.,

CHS. A. FITZ ROY.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 43, per ship Berkshire; acknowledged by earl Grey, 24th May, 1847.)

Sir, Government House, 28th October, 1846.

I have the honor to transmit the Copy of an Address from the Legislative Council of this Colony, the purport of which is to request me to obtain a reversal of the decision of the Lords Commissioners of Her Majesty's Treasury, respecting a deduction which their Lordships ordered to be made from the Pension of £750 a year, granted by the Home Government in 1815 to Mr. A. McLeay (recently Speaker of the Legislative Council) upon the abolition of the Transport Board in London, at which Mr. McLeay then held the Office of Secretary.

I have obtained a precis of his case from Mr. McLeay himself, a Copy of which is annexed; but it may save trouble if I briefly state the main facts requiring your consideration.

It would appear that, ten years after the abolition of the Transport Board, Mr. Macleay was appointed Secretary to this Government, when his retiring pension of £750 a year for his services at the Transport Board was imposed by Lord Bathurst, then Secretary of State for the Colonies, upon the Funds of this Colony, from whence it continued to be paid, in addition to the...
Salary attached to the Office of Secretary, until Mr. MacLeay’s retirement from that Office in 1836. Mr. Macleay then reverted to his English Pension of £750 payable from the British Treasury, in addition to a further sum from Colonial funds of £250, which he subsequently commuted for a sum of £1,750, that being the estimated value of his then period of Life.

In 1843, Mr. Macleay was elected Speaker of the Legislative Council of this Colony, to which Office a salary of £750 a year is attached, subject, however, to deduction to the amount of any Colonial Allowance, the Individual holding it may be in receipt of.

Therefore, in the case of Mr. Macleay, the sum of £250 was deducted from his Salary as Speaker; and, a deduction of £250 having also been made by directions of the Lords Commissioners of the Treasury from his English Pension, the emolument he derived from the Speakership of the Legislative Council was virtually reduced to £250 a year.

I have only further to add that Mr. Macleay is highly respected in this Community; that he is upwards of Eighty years old; and that a favorable consideration of his case will, I believe, give much satisfaction.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosures.]

[A copy of the address will be found in the "Votes and Proceedings" of the legislative council; a copy of A. Macleay’s statement is not available.]

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 44, per ship Berkshire: acknowledged by earl Grey, 30th April, 1847.)

Sir,

Government House, 29th October, 1846.

I have the honor to transmit the Copy of an Address presented to me by the Legislative Council of this Colony, requesting that I will "place on the Estimates for the year 1847 such sum not exceeding one year’s salary in each case, as I may deem advisable for the purpose of affording compensation to the Public Officers, holding Office under the Colonial Government only, whose Offices were abolished in the years 1843 and 1844."

On reference to Lord Stanley’s Despatch of the 8th December, 1844, No. 177, you will perceive that, in reply to an Address to the Queen from the same body of a precisely similar nature, his Lordship received Her Majesty’s Commands to convey to my Predecessor the expression of Her regret at not being able to accede to this request, on account of the increased expenditure
that Her Majesty's assent to it would impose upon the Colony; and I have, therefore, not felt myself at liberty to comply with the desire of the Legislative Council on the present occasion.

In consideration, however, of the improved state of the Finances of the Colony, and of the great hardship attending the case of the Public Officers, whose Offices were abolished in the years 1843 and 1844, many of whom, I have reason to believe, have thereby been reduced to very straitened circumstances, I venture to bring this renewed request under your favorable consideration.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

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

Sir CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 45, per ship Berkshire; acknowledged by earl Grey, 3rd June, 1847.)

Sir,

Government House, 30th October, 1846.

A question having arisen as to the future payment of the Salaries of the persons employed as Meteorological Recorders in this Colony, in consequence of one of the Prisoners of the Crown on that service having recently obtained a Conditional Pardon, I have the honor to request your instructions on that Subject.

On reference to my Predecessor's despatch, No. 144 of the 7th July last, you will perceive that he, therein, entered into a full explanation of the circumstances under which a certain class of Prisoners, termed here "Specials," were employed by him to act as Meteorological Recorders at a salary of 1s. 6d. per diem, without Rations or Clothing, at South Head (the entrance to Port Jackson), Port Macquarie, and Melbourne; and the question now is from what funds are the expenses of these Establishments, hitherto defrayed from Convict Funds, to be defrayed, when the persons now employed shall become free?

The total annual expense at present amounts to no more than ninety seven pounds, two shillings and sixpence; but it will of course be necessary to increase it, if free persons are to be engaged to keep these records; and, as the object of keeping them is for General and not for Colonial purposes (the Journals as you are aware, not being preserved here, but periodically transmitted home), it appears to me that it cannot, with propriety, be charged upon the Colonial Revenue, and some difficulty might arise, were it to be submitted to the Legislature as an Item on
SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 46, per ship Berkshire; acknowledged by earl Grey, 24th July, 1847.)

Sir, Government House, 31st October, 1846.

I have the honor to submit for your consideration copies of a correspondence that has recently passed between the Accountant of the New South Wales Savings Bank and the Secretary to this Government, on the subject of the accumulation of a large amount in the hands of the Trustees of the Bank, in consequence of there being no legal mode of investing it at interest.

On perusal of the documents annexed to the Accountant's letter, you will perceive that the uninvested deposits in the Bank, on the 10th August last, amounted to £39,000; that the average increase of accumulation per month is £1,200, affording fair grounds for assuming that, at the close of the present year, there will be an accumulation of uninvested and therefore unproductive cash in the Bank to the amount of Forty five thousand pounds; and that the Trustees express their conviction that (although considerable relief* was afforded to the Institution by the local Act, 9th Victoria, No. 25), nothing short of the more extensive measure recommended by them, in certain Resolutions passed at a General Meeting of the Trustees on the 3rd June, 1845 (Copy annexed) will afford effectual relief.

The recommendation alluded to is, as you will observe, to the effect that the accumulated funds should be invested in Government Debentures for the purpose of being laid out in public Works; and, on reference to my Predecessor's Despatch of the 23d November, 1845, No. 203, wherewith he forwarded the Act, 9th Victoria, No. 25, for the Royal Allowance, you will perceive he reports that, while he saw "no objection to investment of the funds of the Bank in Loans raised for the purpose of carrying on public works by Corporate bodies (like the Town Councils of Sydney and Melbourne)," he considered that "there ought, in all cases, to be an intermediate and responsible body interposed between the Bank and the Government, or rather between the Bank and the Legislature."

* Note 29.
As I feel compelled to state that I do not exactly understand the reasoning of the later part of the foregoing proposition, and also as I do not concur in that part of it which approves of the borrowing of the funds in question by the Corporations of Sydney or Melbourne, I feel bound to place before you my reasons for thus differing in opinion with my Predecessor.

In the first place, I conceive that the funds of an Institution of such material consequence to the interests of the poorer classes of the Community should, on no account, be permitted to be invested in any other than in Government security, or Security over which the Government can exercise a direct and immediate control. But the Government has no control over the Corporations of Sydney and Melbourne, or over their expenditure; and, therefore, I do not consider that it would be expedient to sanction a loan to any large amount to either of these bodies. The other Corporate bodies of this Colony, the District Councils, are so entirely inoperative that it is unnecessary to take them into consideration.

Secondly, Even assuming the Corporations of Sydney and Melbourne to be in a position to give security for the whole or a large proportion of the money required to be invested, this money, according to the Savings Bank Act (7th Victoria, No. 6), could only be invested by the Trustees under the approval and authority of the Governor; and, therefore, in the event of either of the Corporations becoming insolvent, the Legislature or the Government would scarcely be relieved from the responsibility of securing the Bank from loss. And I presume there can be no doubt that, whenever the Government is either directly or indirectly liable for monies raised under its sanction, it must be more advantageous to the public interests that such Monies should be expended under its immediate supervision, rather than under that of any intermediate body, whose acts it has not the power of controlling. It would be superfluous to advert to the sound policy and humanity of encouraging and fostering by every legitimate means, especially in a community situated as this is with regard to the lower orders of its population, the Institution of Savings Banks, and, thereby, affording the poorer classes an inducement to frugality, by enabling them to deposit on good security and at fair profit such small sums as they may become possessed of, beyond what they may require for their immediate wants; and I cannot but think that the amount (nearly £5,000) deposited weekly in the New South Wales Savings Bank is a creditable proof that the lower orders of the population of the Colony are not of that debased and disorderly character, generally, as by many persons in England they are supposed to be.
It is obvious, however, that poor and ignorant people will not be inclined to deposit their surplus money in Savings Bank for mere safe custody alone, or unless they can get some encouragement for so doing in the shape of interest; and it is equally obvious that no Savings Bank can afford to pay interest on deposits, without it has within its power some profitable means of investing its accumulated funds.

On these grounds, therefore, I feel justified in recommending the suggestion of the Trustees, that the funds now accumulated should be invested in Government Securities with a view to their being applied to permanent public works of general utility, provided that the Legislative Council shall, as I have no doubt it will, pass a Bill authorising the investment of the Money in the manner proposed, and securing on the faith of the Revenue the payment of Interest to the Bank at the rate of 5 per Cent. Should Her Majesty be graciously pleased to allow such an Act to be passed, many works of great public utility may be executed, such as Light Houses, Roads and Bridges which may be made to contribute to the Revenue not only a sufficient Return to guarantee the payment of the Interest of the Capital borrowed, but also to form a fund for the ultimate repayment of the Capital itself; While the savings of the people, thus borrowed, will be applied to their profitable employment.

For any further information as to details of the proposal of the Trustees, I take the liberty of referring you to the Fourth and concluding Pages of the "Report from the Select Committee" of the Legislative Council, printed by their order on the 23d October, 1845, Copy of which I have the honor to append to this Despatch; but I deem it my duty to call your attention to the fact that, by the Resolution of the Trustees, it is expressly intended that the amount received for the Debentures is to be expended under the same regulations in all respects, in its application, issue and Audit, as funds the produce of taxes, rates, duties and imposts, under the Provisions of the Act of Parliament, 5th and 6th Victoria, Cap. 76. This I consider to be an indispensable principle to be adopted in any measure that may be proposed, as affording the Government a proper control over any Expenditure which may be undertaken out of the Moneys arising from this source.

I have, &c,

Chs. A. Fitz Roy.

[Enclosure No. 1.]

MR. G. MILLER TO COLONIAL SECRETARY THOMSON.

Savings Bank Office,
Sydney, 18th August, 1846.

I have the honor to enclose to you an Extract from the Minutes of a Meeting of the Trustees of the Savings Banks, with the
Return of the Deposits and Investments therein referred to, which I am instructed to request you will be pleased to lay before His Excellency Sir Charles Fitz Roy, drawing the Governor's attention to the large amount of the funds uninvested, and to the Resolutions of the Trustees on the Subject, already before the Government.

I have, &c.,
Geo. Miller, Accountant.

[Sub-enclosure.]

Extract from the Minutes of a Meeting of the Trustees of the New South Wales Savings Bank, held 11th August, 1846.

Present:—The Honorable the Vice President in the Chair; Mr. Elwin; Colonel Shadforth; Mr. H. H. Browne; Mr. Merewether; Mr. Lithgow; and Mr. Gilchrist.

Resolved;

"That, with reference to the Resolutions of the Trustees of the 3rd June, 1845, a communication be addressed to The Honble. the Colonial Secretary, requesting him to bring under the notice of His Excellency Sir Charles Fitz Roy, the increasing difficulty in which the Trustees are placed in the management of the affairs of the Institution by the large accumulation of funds, for which there is no legal mode of investment at interest. The amount uninvested at the commencement of the year was £30,000 and has now increased to £39,000 or at the rate of £1,200 per month. Assuming a similar increase during the remainder of the present year, the amount uninvested, and consequently lying wholly unproductive, will at its close have reached the sum of £45,000."

The Trustees have felt it their duty to bring this subject so frequently under the notice of the Executive Government, that they trust they will not be considered importunate in thus soliciting an early consideration of it by His Excellency Sir Charles Fitz Roy. The circumstances, under which they have been induced to apply for the assistance of the Government, are so fully set forth in their previous communication to the Colonial Secretary, and to which they would beg to refer, that they deem it unnecessary to trouble His Excellency with a repetition of them.

They thankfully acknowledge the relief which was afforded to the Institution by the passing of the Act of Council, 9 Victoria, No. 25; but it will be perceived from the subjoined Return that it is quite inadequate to meet the present exigency of the case; and they are strongly impressed with the persuasion that nothing short of the more extensive measures, recommended in their Resolutions of 3rd June, 1845, will afford to the Institution that degree of relief which its welfare requires, and which it is so desirable to afford in reference to the important interests involved.

Resolved also: That a return of the amount of Deposits in the Bank, and the State of its present Investments be at the same time laid before His Excellency the Governor.

Return of the Deposits and Investments of the New South Wales Savings Bank on 10th August, 1846—

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loans on Mortgage</td>
<td>£93,400</td>
</tr>
<tr>
<td>Do on Bills</td>
<td>5,500</td>
</tr>
<tr>
<td>Do on Government Debentures</td>
<td>26,000</td>
</tr>
<tr>
<td>Cash in the Bank</td>
<td>39,000</td>
</tr>
<tr>
<td><strong>Total Amount of Deposits</strong></td>
<td><strong>£159,700</strong></td>
</tr>
</tbody>
</table>

Resolutions forwarded by the Colonial Secretary Thomson to Mr. G. Miller.

Sir,

Sydney, 21st September, 1846.

I have the honor to acknowledge the receipt of your letter of the 18th ultimo forwarding, by direction of the Trustees of the New South Wales Savings Bank, the copy of a Resolution passed at their meeting on the 11th of last month, stating the increasing difficulty in which the Trustees are placed in the management of the affairs of the Institution by the large accumulation of funds, for which there is no legal mode of investment at interest, and expressing their persuasion that nothing short of the measure,
Desire of Sir C. Fitz Roy to assist bank.

Papers to be referred to England.

Transmission of extract from minutes.

Extract from minutes re investment of funds of Savings bank.

**1846.**

31 Oct.

Desire of Sir C. Fitz Roy to assist bank.

Papers to be referred to England.

Transmission of extract from minutes.

Extract from minutes re investment of funds of Savings bank.

**238 HISTORICAL RECORDS OF AUSTRALIA.**

**1846.**

31 Oct.

Desire of Sir C. Fitz Roy to assist bank.

Papers to be referred to England.

Transmission of extract from minutes.

Extract from minutes re investment of funds of Savings bank.

Recommended in their Resolutions of the 3rd of June, 1845, for the investment of the funds in Government Debentures for the purpose of being laid out in Public Works, will afford effectual relief to the Institution.

Having submitted your communication to the Governor, I am directed to request that you will inform the Trustees that His Excellency has attentively gone through the whole of the documents, which have been laid before the Government on the subject of the employment of the funds of the Savings Bank, and that He is extremely desirous of forwarding the interests of the Institution by every means in his power; but the Royal Instructions positively forbid the Governor's assenting to any Bill for the issue of Debentures, unless it has a clause attached to it suspending it from coming into operation until it receives Her Majesty's allowance.

It, therefore, appears to the Governor to be the more simple and preferable course, and one which would cause no great delay, to refer the proposal to introduce to the Legislative Council a Bill to give effect to the wishes of the Trustees of the Savings Bank home, and to endeavour to obtain the sanction of Her Majesty's Government to such a measure. This, His Excellency desires me to add, He will take an early opportunity of doing.

I have, &c.,

E. Deas Thomson.

[Enclosure No. 3.]

**MR. G. MILLER TO COLONIAL SECRETARY THOMSON.**

Sir, Savings Bank Office, Sydney, 4th June, 1845.

I have now the honor to enclose to you, by desire of the Trustees of the Savings Bank, an Extract from the Minutes of their Meeting of the 3rd Instant, with reference to the Investment of the funds of the Bank for the information of His Excellency the Governor.

I have, &c.,

Geo. Miller, Accountant.

[Sub-enclosure.]

**EXTRACT from the Minutes of a Meeting of the Trustees of the Savings Bank held 3rd June, 1845.** The Honble. the Vice President in the Chair.

The letter from the Colonial Secretary of the 15th May, 1845, stating that His Excellency the Governor knew of no means by which the funds of the Bank could be employed unless in the purchase of Government Debentures at the Market price, but that, if the Committee could point out the means of employing the Funds now at their command, His Excellency would be happy to receive their suggestions, having been read, it was resolved unanimously, that a communication be made to the Colonial Secretary in reply, for the information of His Excellency the Governor, to the following effect, namely:

1st. That the Trustees have already purchased Land and Immigration Debentures at the market price to as large an extent as has been found practicable; but notwithstanding that they have applied to all the Banks which are the principal holders, as well as to the Agents employed in the negotiations of securities of this nature, stating their willingness to make further purchases at a premium of 2½ per cent., the whole amount which has been procurable from private sources has only been £1,600.

The Trustees are of opinion that it would scarcely be expedient to offer more favorable terms to the holders, as, after providing for the necessary expenses of the Institution, and considering the reduced period for which the Debentures now have to run, the available interest to be distributed amongst the Depositors would be so materially reduced as to render the investment almost profitless, even if the necessary amount could be procured by this means, of which, especially prospectively, the Trustees entertain strong doubts.
2nd. That the present investments consist of £24,600 in Government Debentures, £98,000 in Mortgages of real property, £29,500 in Bills discounted, and £20,500 lying without fructification at the Banks.

That by the Act of Council, Victoria, No. 6, the Trustees are prevented from further investing the Funds of the Institution in Mortgages until the sum so invested shall fall below one third the amount of deposits.

That the discount of new Bills has by the same Act been wholly prohibited, and the Trustees consider that it would be very inexpedient to revert to that mode of investment.

That the whole of the Banks have discontinued allowing any interest whatever on sums deposited therein.

That there are, as has been shown, no available Government Securities which can be purchased for this purpose.

That under these circumstances there being no present legal means of investment, unless His Excellency the Governor and the Colonial Legislature consent to some measure which will enable the Trustees to place the funds of the Institution at interest, its beneficial operation on the interests of the industrial classes must be most materially curtailed, if not entirely annihilated.

This will appear more clearly, if it be borne in mind that the uninvested balance, which amounted to £8,300 on the 1st of January, 1845, has increased to £20,500, or a rate of £2,500 per month, and if the same ratio of increase continues, of which there is much probability from the general improvement in the prospects of the Colony, the discontinuance of Immigration, and the consequent increase in the free labour market, the amount at the close of the present year will have reached the sum of £35,000 to £40,000, lying in a wholly unproductive state.

That, by the provisions of the Act referred to, parties withdrawing the amount of their Deposits before the termination of the year are entitled to claim interest for the broken period it has remained in the Bank since the 1st of January at the rate of £3 6d. per cent. It is evident that, if the uninvested balance increase in the ratio referred to, it will be impossible even to allow them this moderate rate. The Trustees are aware that, in Institutions of this nature, it is not so much a high rate of interest, as the rate investment of the funds and the facilities of deposit and withdrawal that render them beneficial to the interests for which they are established. The Trustees do not, therefore, desire that they should be enabled to invest the funds at any high rate of interest. At the same time, they consider it advisable that the rate to be distributed should bear some relation to the general rate current in the Colony, and that consequently it is not expedient that even for the broken periods of the year the rate should be reduced below that now authorised by law, whilst, as an inducement to Depositors to allow the profits of their industry to remain in the Bank, the rate for the Balance for the whole of the year should be somewhat higher.

3rd. That, in conformity with His Excellency the Governor's request that the Trustees would submit for his consideration any suggestions for the investment of the funds of the Bank, and in the confident hope that an Institution will not be allowed to languish, which is calculated to confer such extensive benefits on a large and important class of the community under a proper system of management, which they are most desirous of carrying out, if the requisite means are placed at their disposal, the Trustees now respectfully lay before His Excellency the following proposal, namely:

That application be made to the Colonial Legislature for an Act to authorise the issue of Debentures not exceeding a sum to be fixed, secured upon the General Revenue of the Colony, and bearing interest at the rate of Five per cent. per annum, that such Debentures should be confined exclusively to the investment of the funds of the Savings Banks of New South Wales and Port Phillip respectively, from time to time as the Trustees of these Institutions with the concurrence and approval of His Excellency the Governor may deem expedient.

That the funds thus accruing should be placed to a separate account in the public Treasury to be termed the "Savings Banks Public Work Fund," and be expended in the prosecution of such public Works as may be determined upon, subject in every respect to the same rules in the application, auditing and issue, as funds the produce of taxes, rates, duties and imposts are liable to under the provisions of the Act of Parliament, 5 and 6 Victoria, cap. 76.

In making this proposal, the Trustees would particularly advert to the fact that, for the benefit of similar Institutions in the Mother Country and in the other principal States of Europe, laws have been passed which free them from any risk in the validity of the Security on which the funds are invested, or changes in the rate of interest to be distributed. It is true that, from the existence of public debts in some countries, it is not necessary there to create a mode of investment especially for this purpose; but, if the amount be judiciously laid out in the formation of public Works under the control of the Legislature, it will operate not only for the benefit of the particular class referred to, who will thus be afforded the means of a profitable investment of their deposits in the Bank, but also will promote the best interests of the Colony at large. The Trustees take the liberty of suggesting that, with the view of preventing any ultimate charge upon the public from
the measure now proposed, it would be desirable to undertake such work only as may be calculated by means of a Toll or otherwise to provide for payment of the current interest and for the redemption of the principal thus invested. If this be done, the means would be placed at the disposal of the Executive Government and Legislature of prosecuting many public works of great utility without having recourse to raising funds by taxation or in any other way except from the parties immediately benefitted, or receiving a fair equivalent for the sum expended.

[Enclosure No. 4.]

(This was the report of the select committee of the legislative council on "Bills to enable the Savings Banks to grant certain Loans" which will be found in the "Votes and Proceedings").

1 Nov.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 47, per ship Berkshire; acknowledged by earl Grey, 9th June, 1847.)

Sir, Government House, 1st November, 1846.

I have the honor to transmit the accompanying Copy of an Address from the Legislative Council of this Colony, together with a printed Copy of the Report of a Committee of the Council appointed, during its late Session, to consider the best means of establishing a Steam Communication between England and Port Jackson.

The importance of the object, which I am requested to submit for the favorable consideration of Her Majesty's Government, is fully set forth in the Report, to which I take the liberty of referring you for the details of the scheme* which is proposed for carrying the recommendations of the Committee into effect.

A Route to join the China Line at Singapore is deemed "the least expensive, the most expeditious and the most convenient and advantageous" on the valuable authority of Captain King. And the Committee advise that a sum of £500 a Month, or £6,000 a year for a period of three years, should be contributed from the funds of this Colony towards the expenditure which will be necessary beyond the Postage receipts for carrying the Plan, if approved of, into operation.

As the ready adoption of this Report by the Council affords a convincing proof of the anxiety felt in this Colony that the great advantages of Steam Navigation should be extended to it, and as I cannot conceive that Her Majesty's Government could confer a greater benefit on the Australian Colonies, generally, than by acceding to this request, I venture earnestly to recommend it for favorable consideration. I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

(Copies of the address and report will be found in the "Votes and Proceedings" of the legislative council.)

* Note 30.
FITZ ROY TO GLADSTONE.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE. 1846.
(Despatch No. 49, per ship Berkshire; acknowledged by earl Grey, 22nd April, 1847.)

Sir, Government House, 2nd November, 1846.

I have the honor to enclose the copy of a letter which has been addressed to the Colonial Secretary of this Government by Mrs. Green, the facts of whose case are I believe as follows:—

Captain Green, formerly Pay master of the 57th Regiment, arrived in this Colony from India in February, 1836, having previously applied to retire from the Service by the sale of his Commission; being, however, in a very infirm state of health, this was refused; but it was intimated that he might retire on half pay. Captain Green died on the 12th December, 1836, having prior thereto sent Home, through the Commanding Officer then in India, the necessary application for his retirement; before, however, the papers could reach home, a knowledge of his death had arrived (probably direct from this Colony), and consequently such permission was totally unnecessary; and, being therefore on full pay at the time of his death, he was not considered entitled to the benefit of the Regulations with respect to Officers retiring from the service, and receiving a certain remission in the purchase of Land.

The Widow subsequently brought forward the matter and solicited the indulgence of the remission to which she considered her husband to have been entitled; but the Secretary of State negatived the request, perhaps not considering a Widow to have any claims under the regulations.

Mrs. Green now begs a more favorable consideration of the case, urging the necessary delay which took place in sending her husband's application for retirement through the authorities in India as being the sole reason that prevented his having received the usual indulgence; and further that, previously to his death, he was allowed to select Land conditionally for purchase.

With regard to the first point, it may be remarked that, had not the delay referred to taken place in sending Home his application to retire on Half pay, Captain Green would undoubtedly have been permitted to obtain the remission, and, by precedent since established, the widow in case of his death might perhaps have obtained it in lieu.

In the second place, Capt'n. Green appears to have been allowed, on the 29th April, 1836, to select land at 5s. per Acre, the result to await the reference Home. A selection for purchase was accordingly made, but at the Sale he was outbid.
242 HISTORICAL RECORDS OF AUSTRALIA.

1846.
2 Nov.

Under these circumstances, I beg to recommend Mrs. Green's request to your favorable consideration.

I have, &c.,

[Enclosure.]

CHS. A. FITZ ROY.

MRS. GREEN TO COLONIAL SECRETARY THOMSON.

Sir,

Sydney, 7th October, 1846.

I beg leave to submit the following circumstances with a request that you will have the goodness to forward the same with your favorable report thereon to His Excellency the Governor.

My late husband, Paymaster Green, Her Majesty's 57th Regiment, after a Service of Twenty nine years in several Regiments, and being then in India, applied for permission to be allowed to retire from the service receiving the usual commutation allowance; in the interval he obtained leave of absence for the purpose of Settling in this Colony obtaining the usual remission in the purchase of Land.

We accordingly arrived here at the commencement of the year 1836; in consequence however of his ill health, the Secretary at War could not authorise Captain Green's receiving the commutation, but intimated that he might retire upon half pay.

This communication was received after my husband's arrival in this Colony, and under certain peculiar circumstances he was compelled to accept of the alternative offered and accordingly sent home his papers; but, before his retirement was duly authorised, he unfortunately died, the great delay having occurred in consequence of his papers having to be forwarded thro' the Commanding Officer of his Regiment then in India.

It may however be necessary to mention that previously to his death Captain Green was authorised to obtain the Remission money in Land conditionally and acted upon the same by making a Selection, in which however he was outbid at Auction.

Upon these facts I beg to submit that the authority so given by Sir Richard Bourke may be renewed in my favor.

I have, &c.,

HONOBIA GREEN.

3 Nov.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 50, per ship Berkshire.)

Sir,

Government House, 3 November, 1846.

In reply to your Despatch No. 20 of the 7th May last, covering a letter which had been addressed to you by Mr. G. A. Labatt of Dublin, containing an enquiry respecting Mr. H. R. Labatt.

I have the honor to report that Mr. H. R. Labatt is now employed as an Assistant Surveyor in charge of the road from Sydney to Parramatta, Windsor and Liverpool in this Colony.

I have, &c.,

CHS. A. FITZ ROY.
SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 51, per ship Berkshire.)

Sir,

Government House, 4th November, 1846.

In reply to your Despatch of the 14th March last, No. 5, covering the copy of a letter from Viscount Courtenay, making enquiry as to the Will and effects of the late Hugh O'Donnell, Innkeeper, Bungonia, on behalf of his relations in Ireland, I have the honor to enclose a copy of the Will of O'Donnell, which I have procured from the Prothonotary and Registrar of the Supreme Court, from which it appears that he left the whole of his real estate and property, consisting of 45 Acres of land, 5 allotments in the Township of Bungonia, and his House and Offices attached to his Wife Elizabeth for her life, on condition that she should pay off the debt due upon the said house and offices to the Executors of the late William Futter, amounting to £662; the above property after her death to be inherited by his eldest surviving brother at the time, or, failing him, by his heir at law. His furniture, horned Cattle and Horses were bequeathed to his Wife absolutely; and she was authorised to collect any sums due to him and apply the same to pay his debts.

Mr. John Murphy, one of O'Donnell's executors, in answer to the enquiry made of him, states that that person willed the life use of his house and premises (the Hope Inn) to his Wife (his only relative in the Colony) to revert at her death to his eldest brother. His furniture and live stock were left to his Wife.

Mr. Murphy adds that the house was a purchase from the Estate of the late Robert Futter, whose Trustees hold a Mortgage on it for an amount equal to what it is worth at present.

I have, &c.,

[Enclosure.]

CHS. A. FITZ ROY.

WILL OF H. O'DONNELL.

I, HUGH O'DONNELL, of Bungonia in the County of Argyle and Will of Colony of New South Wales, Innkeeper, being in sound mind though infirm in body, do make this my last Will and Testament: and I do hereby will, devise, and bequeath, to my dear Wife Elizabeth for her sole use and benefit during her life time, the whole of my real estate and Property in the Township of Bungonia, consisting of Forty five acres of Land, Five Allotments of Land in the Township of Bungonia, and the House and Offices attached, in which I carry on my business, on the condition that she will pay off the debt now due upon the said House and Offices to the Executors of the late Mr. Futter and amounting to the Sum of Six hundred and Sixty two Pounds or thereabouts. And I do further will that my said Wife Elizabeth do have absolutely and entirely, to appropriate as she may think fit, the furniture of my house and whatever Horned Cattle and Horses I may be possessed of at the time of my Death. And I do Will that, after the death of my Wife
Elizabeth aforesaid, that my real Property and Estate as aforesaid shall be inherited and held by my eldest surviving Brother at the time; and, in case none of my Brothers may be living at the period of my Wife's Death, then, that the Property shall go to my nearest relative who may be the Heir at Law. And I do appoint as my Executors to see the provisions of this my Will carried into effect the following Gentlemen, viz., Francis Murphy, Esqr., of Jacques in the County of Argyle. John L. Murphy, Esqr., of Lumley, in the County of Argyle, and Andrew Badgery, Esqr., of Braidwood, in the County of St. Vincent. In witness whereof I have this day, the Twenty Second day of July, One thousand, eight hundred and forty three, in my own house at Bungonia, signed this my last will with my own hand and sealed it with my own Seal.

HUGH O'DONNELL.

Witnesses present:—EDWARD HUGHES, THOMAS ARMSTRONG, JOHN REEDY.

Codicil to this Will, not having made provision in the above Will for the collection of my Debts, I further do Will that my Wife Elizabeth is entitled to collect the outstanding Debts due to me and to apply them to the liquidation of my Debts.

22 July, 1841. HUGH O'DONNELL.

9 February, 1844. Probate granted of the Will only, the three Executors in it named, Dated the 11th March, 1844.


SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 52, per ship Berkshire.)

Sir, Government House, 4th November, 1846.

With reference to my Predecessor's Despatches numbered and dated in the Margin,* I do myself the honor to inform you that, in order to enable the Colonial Agent General, Mr. Barnard, to receive an equal amount from the British Treasury to enable him to pay off certain Land and Emigration Debentures, payable in London, which have been sent from the Colony, the sum of Nine thousand seven hundred and twenty three pounds, eleven shillings and eight pence has been issued to the Deputy Commissary General on this Station from the Crown Revenue of New South Wales; and I request, therefore, that you will be pleased to move the Lords Commissioners of Her Majesty's Treasury to transfer an equal amount to Mr. Barnard on account of this Colony.

The necessary instructions for the guidance of the Colonial Agent General in paying off these Debentures have been conveyed to him in a letter from the Colonial Secretary of this Government of this day's date, accompanied by a Statement of the Debentures

* Marginal note.—No. 3, 3 Jan., 1845; No. 124, 6 Augt., 1845; No. 12, 11 Jan., 1846; No. 145, 3 July, 1846; No. 148, 10 July, 1846.
referred to, specifying the number, dates of issue, to whom issued, amount, date on which they become payable, and the Interest which will be due up to those dates; of this statement I do myself the honor to transmit a Copy for your information.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

STATEMENT shewing the outstanding Land and Immigration Debentures payable in London, which have been sent from the Colony; specifying the number, dates of issue, amount, dates on which they became payable, and the interest which will be due up to those dates.

<table>
<thead>
<tr>
<th>No. of Debentures</th>
<th>Date of issue</th>
<th>No. of Debentures</th>
<th>Amount</th>
<th>Date on which they become payable</th>
<th>Interest which will be due on the debentures when payable</th>
<th>To whom issued</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>17 Feb.</td>
<td>1 5</td>
<td>£ 20.00</td>
<td>16 Feb.</td>
<td>£ 15.00</td>
<td>Mrs. Jane Newport.</td>
</tr>
<tr>
<td>19</td>
<td>19 April.</td>
<td>19 61</td>
<td>£ 1,600</td>
<td></td>
<td></td>
<td>Sir George Gipps.</td>
</tr>
<tr>
<td>20</td>
<td>29 May.</td>
<td>52 111</td>
<td>£ 2,000</td>
<td></td>
<td></td>
<td>A. B. Smith and Co.</td>
</tr>
<tr>
<td>3</td>
<td>24 June.</td>
<td>161 153</td>
<td>£ 300</td>
<td></td>
<td></td>
<td>Mrs. Mary Harkness.</td>
</tr>
<tr>
<td>13</td>
<td>25 July.</td>
<td>174 159</td>
<td>£ 1,800</td>
<td></td>
<td></td>
<td>Mrs. Mary Harkness.</td>
</tr>
<tr>
<td>12</td>
<td>2 Aug.</td>
<td>197 188</td>
<td>£ 200</td>
<td></td>
<td></td>
<td>Messrs. Larkins and Co.</td>
</tr>
<tr>
<td>1</td>
<td>31 Aug.</td>
<td>189</td>
<td>£ 100</td>
<td></td>
<td></td>
<td>Mrs. Mary Harkness.</td>
</tr>
<tr>
<td>17</td>
<td>29 July.</td>
<td>198 214</td>
<td>£ 1,700</td>
<td></td>
<td></td>
<td>Thomas Larkins.</td>
</tr>
<tr>
<td>95</td>
<td></td>
<td></td>
<td>£9,500</td>
<td></td>
<td></td>
<td>Mrs. Mary Harkness.</td>
</tr>
</tbody>
</table>

Colonial Treasury, Sydney, 4th November, 1846.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 53, per ship Berkshire.)

Sir, Government House, 5th November, 1846.

With reference to my Predecessor's Despatch No. 19 of 20th of January, 1845, I have the honor to report that the Legislative Council have voted the sum of £150 as salary for the Agent General of this Colony for the year 1847, being the same amount as that voted in a previous Session of the present year, when a reduction was made in the Salary of that Office.

I conclude, therefore, that, in accordance with the instructions contained in your Despatch No. 4 of 24th December, 1845, I shall be at liberty to make provision for the payment to Mr. Barnard of £100 from the funds arising from the sale of Lands belonging to the Crown.

I have, &c.,

CHS. A. FITZ ROY.
EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch marked "Military No. 1," per ship Alexander; acknowledged by Sir Charles Fitz Roy, 20th August, 1847.)

Sir,

Downing Street, 6 November, 1846.

I have to acknowledge the receipt of your Predecessor's despatch, No. 121 of the 20th of June last, with the Memorial therein enclosed, which has been addressed to me by the Mayor and Town Council of Melbourne, in the district of Port Phillip, on the subject of the defenceless state of that Town.

You will inform the Mayor and Town Council that Her Majesty's Government cannot undertake to propose to Parliament that a grant should be made from the revenue of this Country, upon which there are already so many and such heavy demands, for the object recommended by their petition; but that, as I concur with them in thinking that the important town of Melbourne ought not to be left in its present defenceless condition, I conceive that the early attention of the Colonial Legislature should be called to the subject, and, if that body should be prepared to furnish the necessary funds, Her Majesty's Government will be ready to direct the Master General and Board of Ordnance to erect such works as may appear to be requisite in order to secure the town against any sudden attack. I have, &c,

GREY.

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 54, per ship Berkshire: acknowledged by Earl Grey, 30th April, 1847.)

Sir,

Government House, 6th November, 1846.

I have the honor to report that the Session of the Legislative Council of this Colony, which I opened on the 8th September, terminated on the 31st Ultimo. A Copy of the Speech, which I addressed to the Council on this occasion, is transmitted herewith.

It does not appear necessary that I should trouble you with any lengthened remarks on the general events of the late Session; but I cannot deny myself the pleasure of stating that it was characterized throughout in progress by a marked spirit of improvement (judging from the official reports of my Predecessor in his reviews of former Sessions) in the intercourse between the Legislative body and the Executive.

In respect to some of the most prominent subjects of collision which have hitherto disturbed the harmony, which it is so desirable should exist between the Executive and Legislative Authorities, the policy which I have adopted has been attended with
the most satisfactory result; and I have sanguine hopes that a similar course will continue to operate beneficially in preserving the good understanding, which has thus been established between the Legislative Council and myself.

The most important change has consisted in submitting the Submission of Estimates of the Expenses for the administration of Justice and for certain other services, for which permanent appropriations had been made by local Acts, to the consideration of the Council.

The expense of the Courts of Request and the Insolvent Courts had latterly been defrayed under local Acts establishing those Courts; And the repairs of Roads in the County of Cumberland under the Toll Act had also been effected under the appropriation therein made. To the legality of these appropriations, the Council had, I find, expressed its dissent; and, although the course adopted by my Predecessor was borne out by the opinion of the Law Officers of the Crown, it may be questionable whether, as a matter of policy, it would be desirable to continue to act on this opinion in opposition to the wishes of the Legislative Council, more especially as, under the 34th clause of the Constitutional Act, 5 and 6 Victoria, Cap. 76, it seems to have been the intention of the Imperial Parliament to give to the Council the control of the whole of the Revenues arising from Taxes, Duties, Rates and Imposts, subject to deduction for the Services provided for in the Schedules.

Feeling, therefore, that, in conceding this point, I was giving effect to the Spirit and Intention of the Law, and that in doing so I ran no risk of embarrassing the Government in any way in which the public would not equally have suffered, and which, therefore, it was equally the duty of the Legislature to guard against, I cheerfully conceded to the principle contended for by the Council, as one to which I considered them in fairness entitled.

I have also to inform you that, on receiving an Address from the Council requesting me to place before them the whole of the Items, charged on Schedule A for the expenses of the Administration of Justice, in consequence of my having found it necessary to ask for a Supplement on the sum of £20,000, to cover the additional amount required, I did not hesitate to cause the necessary Estimate to be laid before them, the Council having expressly declared that, in asserting their right, under those circumstances, to review the whole of the items of the Schedule, they had no intention of proposing alterations in any of the Salaries to which the faith of Her Majesty's Government has already been pledged.
I have the gratification to announce that, in fulfilment of their assurance, not only did the Council abstain from proposing any alterations in the Salaries of the Offices referred to, but voted the whole amount of the Supplement asked for without demur or alteration of any kind. I considered it my duty to propose this supplement to the Council at the present time, in order to establish the principle for future guidance; but I am happy to say that the estimated Balance, which will remain unexpended at the close of the present year on Schedule B, will, I have reason to believe, place the necessary funds at my disposal to meet the Supplement; and I shall, therefore, not be required to avail myself of the liberality of the Council, a circumstance which I had the pleasure to announce to them in my closing address.

The Amount of £5,000 for the repairs of Roads in the County of Cumberland was also readily voted.

I have further the satisfaction of informing you that the necessary provision has been made by the Legislative Council for the Establishment of the Office of Registrar General, and for paying up the whole arrears for the same from the 1st January, 1845; so that this long pending and vexatious question has, at length, been brought to a satisfactory conclusion. This amount was voted as an ordinary charge upon the General Revenue, and not as forming a part of the expenses of the administration of Justice, chargeable on Schedule A or the Supplement to it.

The authentic transcript of the Acts passed during the Session, as well as of three reserved and of one which I deemed it my duty at once to disallow, shall be forwarded as soon as they can be prepared, with full reports upon such as require explanation.

In concluding this Despatch, I cannot omit the opportunity of bearing testimony to the admirable manner in which the Government business has been carried through the Council by Mr. Thomson, the Colonial Secretary. His sound and impartial judgment, long experience in the Colony and in the duties of his Office, upright private character, and evenness of temper have secured to him the respect of all classes in the Colony, and, what is perhaps more difficult of attainment, of every Member of the Council; and I am happy, at this early period of my administration, to feel justified in thus officially recording my opinion of his Merits.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

[A copy of this speech will be found in the "Votes and Proceedings" of the legislative council.]
SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 55, per ship Berkshire; acknowledged by earl Grey, 30th June, 1847.)

Sir,

Government House, 6th November, 1846.

I have the honor to transmit for your information the Letter transmitted from G. H. Barnes.

Sir, Government House, 6th November, 1846.

I have the honor to transmit the Copy of a Memorial, addressed to the Secretary to this Government by Mr. Barnes, Collector of Her Majesty's Customs in Van Diemen's Land, who has for some time past been employed under directions from the Lords Commissioners of Her Majesty's Treasury in investigating the Accounts of the Customs Department in this Colony.

Mr. Barnes, as you will perceive, reports that he has completed Surcharges upon the Accounts of the Collector of Sydney to the amount of Seventy five thousand, two hundred and sixty nine pounds, ten shillings and fourpence; but, as he states that he has made such arrangements in the Establishment as will afford a guarantee for the due and faithful collection of the Revenue for the future, and as he did not appear to consider it necessary that the Collector should be relieved from the charge of the Department, pending the decision of the Lords Commissioners of Her Majesty's Treasury, I have not deemed it necessary to interfere.

As an act of fairness towards the Collector, I deemed it my duty to direct that he should be furnished with a Copy of Mr. Barnes' letter, and I have now the honor to enclose the Collector's observations thereon. I have, &c.,

CHS. A. FITZ ROY.

[Enclosures.]

[Copies of these letters are not available.]

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 56, per ship Berkshire; acknowledged by earl Grey, 3rd September, 1847.)

Sir,

Government House, 6th November, 1846.

I have the honor to transmit the Copy of a Memorial which has been presented to me by the Gentlemen (persons of respectability in Sydney) whose signatures are attached to it, requesting me to forward Copies of Petitions, which were presented to the Legislative Council during its late Session against the renewal of Transportation into this Colony.

I avail myself of this opportunity of informing you that, in pursuance of the discretionary power which you assigned to me,
I submitted a copy of your Despatch, marked “Private and Confidential” of 30th of April last, to the Legislative Council, as the most legitimate mode of obtaining the expression of public feeling upon a subject of such importance to the inhabitants of the Colony.

The Despatch was laid on the Table of the House on the 7th Ultimo, and the Report of the Committee (a printed Copy of which I annex) appointed to take it into consideration was not brought up until the 30th October (the day before the Council was prorogued) when it was determined to defer any further consideration of the subject until the next Session.

That, on a measure of this character, there will be extremely conflicting opinions you will readily believe; but I am entirely unprepared, as yet, to say on which side the opinions of the generality of the more respectable and influential portion of the Community will preponderate.

The answer, that I returned to the deputation that presented the Memorial now transmitted, was a verbal one and to the following effect, namely; that “I will forward this Memorial and the Petitions to Her Majesty’s Ministers by the first opportunity. I cannot use any influence in the matter. Her Majesty’s Ministers have no wish to force transportation contrary to the will of the Colonists. My duty will be simply to report, as impartially as I can, all that I can ascertain respecting the opinions of the Colonists. You may rest assured that Government does not wish to force Transportation against the wishes of the Colonists, and that Mr. Gladstone’s Despatch was written in perfect good faith.”

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure No. 1.]

THE Memorial of the undersigned, Respectfully Sheweth,
To His Excellency Sir Chas. Augustus Fitz Roy, Kt., Governor of New South Wales, etc., etc., etc.

THAT great alarm has been caused to many of Her Majesty’s faithful and loyal subjects residing in Sydney and its vicinity, in consequence of a publication of a despatch from the Secretary of State (laid on the Table of the Legislative Council on the 7 October), in which it is proposed to renew Transportaion to this Colony, provided the Colonists are favorable to such renewal; and also from many members of the Legislative Council, having in opposition to the wishes of their constituents, expressed opinions favorable to such renewal.

That in consequence of such alarm a public meeting was held in Sydney on the 22nd of October last, when a petition to The Legislative Council was unanimously agreed to, a copy of which is appended to this memorial.
That the said Petition with 6,765 Signatures was presented to the Legislative Council by Charles Cowper, Esqr., one of the members for the County of Cumberland; That at the same time petitions from Liverpool and Parramatta, with the same prayer were presented by Mr. Cowper, and a similar petition from Maitland by Patrick Grant, Esqr., one of the members for the Northumberland Boroughs; and your memorialists represent that, had further time been allowed, many thousand additional signatures would have been obtained.

That, on Saturday last immediately before the prorogation of the Council, a report from a Select Committee of the said Council was presented by W. C. Wentworth, Esqr., one of the members for the city of Sydney, which report is in favor of the renewal of transportation.

That the motion of Chas. Cowper, Esqr., that the petitions presented by him be printed, in order that, with the said report, the petition and remonstrance of so many thousands Colonists might be transmitted to Her Majesty's ministers, was negatived.

That at a public meeting before mentioned your memorialists were appointed a Committee to carry out the objects of the said petitions, and as such Committee your memorialists respectfully but earnestly request that Your Excellency will be pleased by the earliest opportunity to forward Officially copies of the said petitions to Her Majesty's Ministers; and your memorialists also pray that Your Excellency will use the influence of Your high office, to prevent this Colony from being again made a Penal Settlement.

And your memorialists as in duty bound, etc.

John Grahame. B. S. Lloyd.

[Enclosure No. 2.]

The Humble Petition of the Undersigned Inhabitants of Sydney and other Colonists in public meeting assembled,

To the Honorable The Legislative Council of New South Wales.

Sheweth,

That your Petitioners have read a despatch from the Right Honorable the Secretary of State, from which they learn that Her Majesty's Government proposes to revive the system of Transportation to this Colony, provided such revival meet the general consent and approval of the Colonists.

That, from the proceedings of your Honorable House, your Petitioners learn that a Committee has been appointed to consider the said despatch; and your Petitioners, feeling convinced that the introduction of Convicts into this Colony would be injurious to the Morals, and destructive of the best interests of the Community, wish to express that opinion, and pray that your Honorable House will take such steps as will prevent this Colony from being again made a Penal Settlement.

And your Petitioners, as in duty bound, will ever pray.

[Here follow 6,765 signatures.]
[Enclosure No. 3.]

THE Humble Petition of the undersigned Inhabitants of the District of Maitland, and of other Parts of the Hunter River District,

To the Honorable the Legislative Counsel of New South Wales,

Sheweth,

That your Petitioners have learned with astonishment, and with sincere regret, that proposals have been made by the Home Government to renew direct Transportation to this Colony, and to perpetuate the practice which now prevails of affording facilities to prisoners conditionally pardoned to come from the neighbouring Penal Colonies to New South Wales. It is, however, a source of satisfaction to your Petitioners that her Majesty's Government has distinctly disclaimed the intention and the desire to take any proceeding in this matter except such as may be generally conducive to the interests, and agreeable to the inclinations of the Colonists.

That your Petitioners believe that both direct and indirect Transportation are opposed to the true interests and repugnant to the feelings of the Community.

That your Petitioners object to the renewal of direct Transportation to this Colony on the following grounds:—

Because it would be highly injurious to the moral and social welfare of the Community and would compromise their Civil and Political rights.

Because the progress the Colony has made during the last three years shows that it is not essential to the prosperity of the Colonists.

Because it would eventually entail upon the Community an amount of Taxation for Police purposes altogether beyond the pecuniary benefits it would confer.

Because these benefits would be confined to comparatively a few, while all would have to share in the evils and the cost.

Because it would check the marked improvement which is taking place in the habits of all classes of population and would again render life and property insecure.

Because it would revive distinctions in society, which are fast fading away and which it is desirable should be entirely and for ever obliterated.

Because there is less necessity for it now on the plea of want of labour, than at any period since Transportation ceased, as the land revenue is increasing, and is at present or will immediately be in a condition to meet all claims upon it, and to leave a considerable surplus to be at once applied to the introduction of Immigrants.

Because, if the public lands in future are managed with prudence and equity, they will supply an ample revenue for peopling the Colony with a free population.

And your Petitioners are opposed to indirect Transportation for similar reasons, as they consider that it is attended with many of the evils, and with only one of the benefits of direct Transportation.

Your Petitioners therefore pray that your Honorable House will not consent to the renewal of Transportation to this Colony on any terms, however advantageous they may appear to be in a
pecuniary sense; and that you will also be pleased to memorialise the Home Government to except New South Wales from the operation of the Conditional Pardons, which is now the practice to grant to Prisoners in the neighbouring penal Colonies.

And your Petitioners as in duty bound will ever pray.

[Here follow 1,210 signatures.]

[Enclosure No. 4.]

The humble Petition of the undersigned Inhabitants of the Borough and District of Liverpool,

To The Honorable the Legislative Assembly,

Humbly Sheweth,

That your Petitioners, feeling alarmed at the probability of returning again to a System of Transportation and thus retrograding into a Penal Colony, respectfully entreat Your Honorable House will not entertain any proposal calculated to revive a state of things which past experience teaches them to look upon with serious apprehension.

Your Petitioners consider this question includes not only the security of life and property, but likewise the reputation of the Colony, the integrity of Juries, the independence of the Honorable the Legislative Council, the purity of the Franchise, the Social, Moral and Religious condition of Society here.

Your Petitioners cannot but consider that any recommendation as to the revival of Transportation would be at variance with those solemn appeals made by influential Colonists against the continuance of a system opposed to the introduction of Free Institutions and calculated also to revive feelings of rancour and ill-will between the various Classes of the community which have happily subsided since the cessation of Transportation.

Your Petitioners cannot but further view such a revival as a virtual breach of faith with those Immigrants, who have been induced to leave their homes under the impression that Transportation should for ever cease to this Colony and as further calculated to check any tendency to a renewal of the same.

Your Petitioners hail with gratification the increasing evidence they have that, since the cessation of Transportation (although population has increased), Crime has decreased and that during a period of great pecuniary embarrassment.

Your Petitioners cannot but consider that the want of labour, which is the chief reason assigned for the revival of a System which must re-introduce all the harrowing Scenes of Convict Coersion, may be obviated by a reduction of the minimum price of land, thereby reviving Immigration, or by raising a loan on the land fund, by entering into compacts with the poor law Commissioners, or by following the honorable example of South Australia in encouraging Immigration from Germany, Prussia and other Continental States.

While some of Your Petitioners would have been inclined to concede to a limited number of Convicts for the roads and other Public works, all are unanimously opposed to any System of Assignment or indenture, which would in their apprehension appear little short of a System of legalized slavery, preferring if needs be to be poor, free, and virtuous to being opulent by a System
already designated by Your Honorable House as one "The evils of which are such as no mere pecuniary benefits could serve as a counterpoise to."

Wherefore Your Petitioners humbly pray that Your Honorable House, being fully aware of "all the Moral and Social evils of the Convict System," will as the guardians of their rights and the conservatives of their interests discountenance the revival of the Same.

And your Petitioners as in duty bound will ever pray.

[Here follow 47 signatures.]

[Enclosure No. 5.]

THE Humble Petition of the Undersigned Inhabitants of the Town and District of Parramatta,

Sheweth,

That your Petitioners have read a Dispatch from the Right Honorable the Secretary of State, from which they learn that Her Majesty's Government proposes to revive the system of Transportation to this Colony, provided such revival meet the general consent and approval of the Colonists.

That, from the proceedings of your Honorable House, your Petitioners learn that a Committee has been appointed to consider the said Dispatch, and your Petitioners, feeling convinced that the introduction of Convicts into this Colony would be injurious to the morals and destructive of the best interests of the Community, wish to express that opinion, and pray that your Honorable House will take such steps, as will prevent this Colony from being again made a penal settlement.

And your Petitioners as in duty bound will ever pray.

[Here follow 327 signatures.]

[An article on the "Revival of Transportation" from the issue of the "Sydney Morning Herald" newspaper, dated 6th November, 1846, was also enclosed.]

SIR CHARLES FITZ ROY TO RIGHT HON. W. E. GLADSTONE.

(Despatch No. 57, per ship Berkshire; acknowledged by earl Grey, 25th June, 1847.)

Sir,

Government House, 6th November, 1846.

I have the honor to transmit the Copy of a Memorial which has been addressed to me by Charles McLaughlan, a Pensioner from the Irish Constabulary Force, who it would appear from his statement left Ireland for the purpose of settling in this Colony, without procuring the documents or authority necessary to enable him to receive his Pension in it.

In addition to the certificates annexed to this Memorial, McLaughlan has submitted to me the printed Copy of a "Notice to Pensioners from the Constabulary and other Police Forces in Ireland, to be kept by them for their guidance," issued by Sir
William Gossett on the 14th July, 1834; and, as there appears to be no reasonable doubt as to his being the person he described himself to be, I venture to recommend that necessary instructions may be given for the future payment of his Pension, and of the arrears due to him in this Colony.

I have, &c.,

[Enclosure.]

CHS. A. FITZ ROY.

The Memorial of Charles McLaughlin,

To His Excellency Sir Charles Augustus Fitz Roy, Knight, Governor of New South Wales, etc., etc., etc.,

Most humbly sheweth,

That your Memorialist served upwards of eleven years as Constable in the Irish Constabulary Corps; That, in consequence of an injury received by a fall from his horse, he was discharged with a Pension of £8 4s. 6d. per annum, which will appear more fully to Your Excellency by the enclosed.

That your Memorialist only received two years and a half Pension up to 25th July, 1838, paid by Captain Wade, Sub Inspector of Constabulary, County Tyrone, Ireland; and, in consequence of the Vessel in which Memorialist had agreed for the passage of himself and family to this Country being ready for sea sooner than Memorialist expected, prevented him from making the necessary arrangement to have his Pension paid in this Colony. Your Memorialist most respectfully solicits your Excellency to take his case into your consideration, and to acquaint Memorialist in what manner he should proceed to obtain the arrear due, and the future payment of his Pension in Sydney.

And as in duty bound will,

CHAS. MCLAUGHLIN.

Sydney, 13th October, 1846.

[Sub-enclosure.]

Testimonial.

We, the Magistrates, resident Chairman of the District of Gortin, of large landed Estate, together with the Rector and Curate of Lower Badomy in the County aforesaid, together with the Merchants residing in Gortin, do hereby certify that Charles McLaughlin, together with his wife, who is perfectly eligible to perform the Housekeeper or Dairy Woman in Town or Country, and is of good repute, together with their children are of the Established Protestant Church, as were their Ancestors; and that, if quiet, orderly and peaceable conduct can at any time, or in any Country, claim or deserve patronage for a loyal man, he deserves it; he now intends to Emigrate with his family to Australia, as a General Farm Labourer, which is perhaps the least of his recommendations, which we shall be at all times happy to attest.

Given under our hands at Beltrim Castle, and elsewhere, this 21st day of March, 1838.

I believe the above to be true.

C. MCCOLL HAMILTON, J.P.
THOS. STUBT, Rector of Badomy.
MRVYN WILSON, Curate of the Parish of Lower Badomy.
CHS. MCFARLAND, Gortin, Merchant.
CHS. MCLAUGHLIN, Grocer.
ATOW. MCFARLAND, Gortin, Distiller.
DANIEL MCFARLAND, Gortin, Churchwarden.

Charles McLaughlin, who Memorialised His Excellency relative to his Pension, is Statements to our knowledge the identical person who served as Constable in the Irish Constabulary Force.

Given under our hands this 20th October, 1846.

WM. TUNNINGTON.

I knew the above named Charles McLaughlin and his family in Ireland, and can vouch for his being the person he states himself to be.

KING BARTON.
Sir Charles Fitz Roy to Right Hon. W. E. Gladstone.

(Despatch No. 58, per ship Berkshire; acknowledged by Earl Grey, 17th April, 1847.)

Sir,

Government House, 6th November, 1846.

I have the honor to transmit the Copy of a Despatch addressed by the Superintendent of Port Phillip to the Secretary of this Government, recommending for the reasons therein stated an increase of Salary to the Sub-Treasurer of that District, and to report that I have considered it right to accede to this request, subject of course to your approval; The additional Salary to be defrayed from Schedule B of the 5th and 6th Victoria, Cap. 76, and to commence with the present Quarter.

I have further to state that the Auditor General reports the actual Balance, unexpended on Schedule B on the 30th September last, was seven thousand and seventy three pounds two shillings and two pence, and that the Balance, which will remain unexpended on the 31st December ensuing of the sum of £5,000 appropriated under this Schedule for the Colonial Treasurer’s Department and for the Sub Treasury at Melbourne, is estimated at Three hundred and fourteen pounds, ten shillings and four pence.

I have, &c.,

[Enclosures.]

CHS. A. Fitz Roy.

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

Sir Charles Fitz Roy to Right Hon. W. E. Gladstone.

(Despatch No. 59, per ship Berkshire.)

Sir,

Government House, 7th November, 1846.

I have the honor to acknowledge the receipt of your Despatches of the numbers and dates noted in the Margin.*

I have, &c.,

CHS. A. Fitz Roy.

Earl Grey to Sir Charles Fitz Roy.

(Despatch No. 52, per ship Alexander.)

Sir,

Downing Street, 9 November, 1846.

I transmit to you herewith, for your information and guidance, copies of a correspondence with Lt. Colonel Kelsall on an application from him for a License of Occupation for a

* Marginal note.—No. 18, 7th May, 1846; No. 19, 7th May, 1846; No. 20, 7th May, 1846; No. 21, 13th May, 1846; No. 22, Not received; No. 23, 17th May, 1846; No. 24, 18th May, 1846; No. 25, 20th May, 1846; No. 26, 24th May, 1846; No. 27, 24th May, 1846; No. 28, 29th May, 1846; No. 29, 26th May, 1846; No. 30, 27th May, 1846. Circular, 1st May, 1846; Do, 6th May, 1846; Do, 27th May, 1846. Military, 2, 2d May, 1846; 3, 5th May, 1846. N. Australia, 7th May, 1846. No. 1, 7th May, 1846; No. 2, 8th May, 1846; No. 3, 14th May, 1846; No. 4, 14th May, 1846; No. 5, 28th May, 1846.
Term of eight years of a portion of Crown Lands at Port Phillip, which it appears that he now holds under Annual License of Occupation.

I am, &c.,

GREY.

[Enclosure No. 1.]

LIEUT.-COLONEL KELSA LL TO EARL GREY.

My Lord,

Chester, 8th October, 1846.

I beg leave respectfully to state that, by the Waste Lands Application by (Australia) Bill lately passed, brought in by Your Lordship, Her Majesty may devise to any person for a term of years not exceeding fourteen, or grant licenses of occupation for the same term of years, of any Waste Lands of the Crown in the Australian Colonies whether within or without the boundaries of location and by an Order in Council can make rules and regulations, respecting the occupation of the same, respecting the division of the said Colonies into Districts in which alone such devises or licenses may be made to take effect, and respecting any right of pre-emption which it may be proper to give any holder of any such devise or license, at the minimum price established, and certain powers to be delegated to Governors, etc.

This Act, and the regulations that will probably be adopted under its powers, will I am confident be received by the pastoral interest of New South Wales, including the Port Phillip District, with grateful feelings, as shewing Your Lordship's desire liberally to promote the interests of those Colonies, which are essentially pastoral; only I beg to observe with respect to the Port Phillip District that, as its settlement commenced so recently as 1836 and was principally of a pastoral character, the benefits to be conferred by this Act of lease, or license for term of Years, preference of occupation and right of pre-emption at minimum price, with repayment for improvements, will not be obtained and considerable loss inflicted on some of the first established and more enterprising of the Stockholders without any corresponding benefit to be derived to the Community, if that particular portion of the regulations that may be adopted relating to the division into Districts, in which alone the devises or licenses for term of years are to take effect is framed without some regard to the actual state of things at Port Phillip, and is made to exclude at once a whole country, or without allowing to the Governor discretionary power of devising, or granting licenses within the boundaries of location as well as without, in this very recently settled District, allowing a preference to the present holders of "Runs" under Government license, until the lands are sold.

With reference to the Runs, it may be observed they were formed since 1836 by individuals, importing at considerable expense, high prices and risk, their stock, supplies and free labour, and necessary buildings were erected: but little benefit has been as yet derived from them by the holders from the shortness of their tenure, although they have made and support the towns of Melbourne, Geelong, and Portland, founding the Colony of Port Phillip, without having entailed any expense on the Home Govt. and producing a Revenue. Very little Country land has been sold and within the last few years scarcely any: and labour continues scant and high priced; there are, in consequence, large tracts of Crown Waste Lands within the Counties, which are now held

1846.
9 Nov.
1846.
9 Nov.

Application by R. Kelsall for license of occupation for eight years of land at Port Phillip.

in "Runs" under Government, paying a license fee and assessment on the number of Stock they carry, pasturage being considered the best practicable mode of occupying these dry Crown lands, and the present occupant it is acknowledged ought to have a preference; whereas in the long established Counties round Sydney nearly all available land had been granted or sold.

My Lord, in consequence of the passing of this beneficial Act, and the existing state of things at Port Phillip, I beg respectfully to represent to Your Lordship, that I am one of those individuals who, at the commencement of that settlement in the beginning of 1838, at considerable expense, risk and high prices, imported stock, supplies and free men, establishing there a "Run" for Sheep, which I held and still hold under Government, and have incurred expense in erecting necessary buildings; that the land is dry, and nearly all fit only for sheep pasture; that none has been sold, or likely, judging from the past; that license fee and assessment on stock is paid and preference of occupation allowed; but, from the shortness of my tenure and revulsions of the Colony, etc., I have as yet benefitted little. Under these circumstances, I submit my claim to Your Lordship's kind consideration of this my application for a demise, or license of occupation, for a term of eight years, of the Waste lands of the Crown at Port Phillip (County Grant), Australia, which I now hold under Government (by yearly license fee and assessment) as a "Run" for Sheep with renewal if unsold on expiry, right of pre-emption of a portion at minimum price, and repayment of value of improvements by next occupant, should the same be within the regulations laid down by Her Majesty.

I have, &c.,
R. KELSALL,
late Lieut. Colonel, Royal Engineers.

[Enclosure No. 2.]

UNDER SECRETARY HAWES TO LIEUT.-COLONEL KELSALL.

Sir,
Downing Street, 9 November, 1846.

I am directed by Earl Grey to acquaint you that he has had under his consideration your Letter of the 5th Ultimo, enclosing an application for a license of occupation, for a term of eight years, of a portion of Crown Land at Port Phillip, which you state that you now hold under annual license of occupation from the Governor of New South Wales; and you express a fear that, unless attention be paid to the peculiar circumstances of the Port Phillip District, the early Settlers there will not reap the benefit, which you anticipate from the provisions of the recent Act of Parliament to amend the Land Sales Act.

In reply, I am directed to acquaint you that the peculiar circumstances, affecting the Port Phillip District to which you refer, have been under the notice of Government and have not been overlooked in considering what Rules should be adopted respecting the occupation of Lands for Pastoral purposes; but that individual cases cannot be dealt with separately; and consequently that no decision can be adopted in this Country on your present application. It will, however, be forwarded to the Governor of New South Wales to be disposed of on its own merits, in common with any others under the new Regulations, whenever they may come into operation.

I have, &c.,
B. HAWES.
EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 53, per ship Alexander.)

Sir,
Downing Street, 10 November, 1846.

With reference to Sir George Gipps' Despatch, No. 153 of the 15th September last, I have to acquaint you that I have, on the recommendation of the Rt. Revd. Dr. Polding, authorized the grant to the Revd. William McGinty and the Revd. Michael Corish of the usual allowance of £150 on account of their passage to New South Wales.

I am, &c.,
GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 55, per ship Alexander.)

Sir,
Downing Street, 11 November, 1846.

I have received your Predecessor's Despatch, No. 125 of the 24th of June last, enclosing a Petition Addressed to the Queen by various Inhabitants of the District of Port Phillip, praying that Her Majesty will adopt such Votes and Resolutions as should be best calculated, in the judgment of Her Majesty, to prevent the indiscriminate pledging of the Land Funds of the two Districts as Security for a joint debt, and obtain for the District of Port Phillip entire separation from the Government of New South Wales.

I have laid this Petition before the Queen, who was pleased to receive it very graciously; and you will inform the Petitioners that the subject, to which their Memorial refers, is at present under the consideration of Her Majesty's Government.

I am, &c.,
GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 57, per ship Alexander; acknowledged by Sir Charles Fitz Roy, 25th August, 1847.)

Sir,
Downing Street, 13th November, 1846.

I transmit to you herewith a copy of a Letter from the person described in the Margin,* containing an application for information relative to Thomas Sheerin, who is stated to have Emigrated to the Colony under your Government; and I have to request that you will transmit to me such information as you may be able to obtain on the subject of the enquiry.

I have, &c.,
GREY.

* Marginal note.—Redmond Sheerin.
[Enclosure.]

The humble Memorial of Thomas Sheering,
To The Honorable The Secretary for the Colonies, etc.,
Sheweth,
That Redmond Sheering, the son of Memorialist, sailed from Dublin on the 10th of July, 1841, as a Free Emigrant in the ship Albatross for Sydney, New South Wales.
Memorialist has since that period written several letters to his said son and received only one answer. Memorialist by the goodness of providence is now enabled to provide in a comfortable way for the said Redmond Sheering, and humbly solicits intelligence if he is still in existence, and if possible his residence, in order that Memorialist might pay for his passage back to his Native Country. And Memorialist as in duty bound will ever pray.

Residence:—No. 38 Ashe Street, Dublin.

THOMAS SHEERING.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 58, per ship Alexander.)

Sir,
Downing Street, 14 November, 1846.

With reference to my Despatch No. 28 of the 28th of August, I have the honor to transmit, herewith, the accompanying Additional Instructions to yourself under Her Majesty's Sign Manual and Signet, authorising the appointment of Her Majesty's Attorney General for New South Wales to be of the Executive Council instead of the Bishop. I have, &c.,

GREY.

[Enclosure.]
[A copy of these instructions is not available.]

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 59, per ship Alexander; acknowledged by Sir Charles Fitz Roy, 15th May, 1847.)

Sir,
Downing Street, 16 November, 1846.

I have to acknowledge the receipt of Sir George Gipps' Despatch of the 24th May last, No. 103, requesting authority to charge on the Fund created by Schedule B of the Act, 5 and 6 Vict., Cap. 76, a Pension of £73 per annum for Mr. Joshua Allott, Tipstaff or Crier of the Supreme Court in New South Wales.

Her Majesty's Government feel precluded from authorizing a larger retired allowance to Mr. Allott than would equal the half of his emoluments, that being the full amount sanctioned by the Superannuation Act for his period of Service.
In computing the allowance, however, H.M.’s Govt. are prepared to take into account the fees of which Mr. Allott was in receipt as forming part of his authorized emoluments. The amount of these Fees is not stated, but, at his great age, in order to prevent the delay which would arise from requiring a report on that point before the retirement is fixed, I have to convey to you the necessary authority for assigning to Mr. Allott an Allowance equal to one half his full emoluments on an average of the last ten Years. You will report to me the amount of such Allowance.

I am, &c.,

GREY.
With reference to the Resolutions brought forward by Mr. Lowe in the Legislative Council, and particularly adverted to in your Predecessor's Despatch, No. 128, as intended to throw on him the charge of the illegal Appropriation of a portion of the Public Revenue of the Colony, as those Resolutions were not carried in the Council, there is no point open for discussion; and I have only to add my Confirmation to the approval expressed by Lord Stanley of the course pursued by Sir George Gipps in the matter referred to. I have, however, perceived with satisfaction that the Amendment to the second Resolution, moved by Mr. Wentworth and adopted by the Council, virtually, as Sir George Gipps observes, recognizes the legality of his proceedings in that case.

I am, &c.,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 62, per ship Alexander.)

Sir,

Downing Street, 18 November, 1846.

Referring to the Correspondence enumerated in the Margin* respecting the New Settlement of North Australia, I have to apprise you that, on a full review of the subject, Her Majesty's Government have determined to abandon the design entertained by Lord Stanley, and carried into effect by Mr. Gladstone, for establishing in that part of New Holland a Colony for the reception of pardoned Convicts, who might be unable to find the means of maintaining themselves in Van Diemen's Land. I cannot conceal from you that Her Majesty's present Confidential Advisers dissent from the view taken of this subject by their immediate predecessors, even in reference to the state of facts under which they acted, and to the considerations by which they were guided. But I gladly pass from a discussion which might assume a Controversial aspect, and which has become entirely Superfluous. Since the decision was taken, there has been such a change in the state and Circumstances of Society in the Australian Colonies, as would, could it have been foreseen, have doubtless been regarded by the Authors of the project as conclusive against the adoption of it. I refer especially to the Cessation during at least two Years of Transportation to Van Diemen's Land. I refer also to the increased and increasing demand for Manual labour throughout the Australian Colonies. And I further refer to the methods which the New Governor of Van Diemen's Land is prepared to take for the employment of the Convict and the emancipated population there, aided by

* Marginal note.—No. 1, 7 May, 1846; No. 2, 8 May, 1846; No. 3, 14 May, 1846; No. 4, 14 May, 1846; No. 5, 28 May, 1846 (see note 23).
his extensive experience acquired in the discharge of analogous duties in this Country. Under such Circumstances, I should maintain that the Establishment of the projected Colony in North Australia had now become an impolitic and needless measure, even if I could acknowledge that it was originally the reverse.

Her Majesty will, therefore, be advised to revoke the Letters Patent* under which North Australia has been erected into a separate Colony, and the establishment formed there must immediately be discontinued. Colonel Barney and the subordinate Officers attached to him must immediately be re-called, and employed, as occasion may present itself, under the Government of New South Wales. I am happy to know that to Colonel Barney himself this change of purpose will not be a disappointment, as his engagement to serve in North Australia was, by his own desire, limited to a period of two Years.

I am, &c,
GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 63, per ship Alexander.)

Sir,
Downing Street, 20th November, 1846.

I have received Sir George Gipps' Despatch, No. 135 of the 30th June last, enclosing a Petition from Mr. Bell, late Storekeeper of the Female Factory at Paramatta, in which he prays for Compensation on account of his removal from his Office, and restoration to his former position, and for indemnification for the expenses which he incurred in the course of the legal proceedings instituted against him on behalf of the Government. He also claims an additional allowance, for which he had been recommended to the Secretary of State in the Year 1843.

In reply I have to request that you will acquaint Mr. Bell that, having had before me the whole of the Correspondence in his Case, including his Memorial on the one side and the Report and Opinion of your Predecessor on the other, I can see no ground for altering the judgment and the decision which Sir George Gipps had formed in the Case.

I am, &c,
GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch marked “Military, No. 2,” per ship Alexander; acknowledged by Sir Charles Fitz Roy, 30th April, 1847.)

Sir,
Downing Street, 24th November, 1846.

I have the honor to inform you that, in consequence of the information recently received from New Zealand, Her Majesty’s servants have determined that an increase of the Military

* Note 31.
Force now in that Colony should be effected with the least possible delay. With that view I have to instruct you to make immediate arrangements, in concert with the Officer commanding the Troops in New South Wales, for sending the whole of the disposable force now serving there to Wellington, with the utmost practicable dispatch. It will, I calculate, be in your power, without danger, to send at least 900 men for this service, still retaining a small force at Sydney, which, under the present circumstances of New South Wales, is all that I consider indispensable. New South Wales may be regarded as being perfectly safe, for the present at least, from any attack from a Foreign enemy; there are no native tribes capable of engaging in serious hostilities with the Colonists; and the convict establishment is now reduced so low, while so great an increase has taken place in the numbers of the free population, that there is no longer the necessity which some years ago existed for maintaining a considerable Military Force to guard against the risk of an attempt to rise on the part of the convicts. Under these circumstances, there is no part of Her Majesty's Dominions in which there is less occasion for a large body of Troops. Accordingly, I find that, with the exception of those at Sydney, the Troops now serving in New South Wales are broken up into small detachments, and obviously performing duties more analogous to those of a Police Corps than of a part of Her Majesty's regular Army; but these are duties which the heavy demands upon the services of the British Army do not admit that it should be called upon any longer to undertake. Her Majesty's confidential servants will consider it their duty to take care that Her Naval and Military Forces shall afford efficient protection from the attacks of any Foreign enemy to so important a part of Her Dominions as New South Wales; but for the maintenance of internal order and tranquillity, it is only reasonable that the Colonists should themselves be called upon to provide by the formation of an adequate force of Police, or, if necessary, of Militia. You will bring this subject under the immediate consideration of the Legislative Council; and under no circumstances will you consider yourself authorised to delay sending to New Zealand the force I have already named.

I do not propose that, for the present, there should be any alteration in the amount of force in Van Diemen's Land, including Norfolk Island, or in Southern or Western Australia, nor is the arrangement for sending the 96th Regiment to India to be disturbed.

I have, &c.,

Grey.
EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch marked "Separate," per ship Alexander; acknowledged by Sir Charles Fitz Roy, 26th August, 1847.)

Sir, Downing Street, 24th November, 1846.

I transmit to you herewith a Copy of a Letter from the person described in the margin,* containing an application for information relative to Mr. James Gaffney, who is stated to have Emigrated to the Colony under your Government, and I have to request that you will transmit to me such information as you may be able to obtain on the subject of the enquiry.

I have, &c.,

GREY.

[Enclosure.]

MR. P. GAFFNEY TO SECRETARY OF STATE.

Sir, No. 1 Barrack Street, Dublin, 18th Novr., 1846.

I most respectfully beg leave to state that my Brother Mr. James Gaffney resides at or near Sydney, New South Wales, and is possessed of property to a considerable amount, and I have not heard of or from him these many years; therefore, I would be particularly obliged to your honor to make enquiry after him in order to ascertain whether he be living or dead, and please to have the kindness to acquaint me accordingly, and for so doing I will be unfeignedly thankful; most respectfully submitted.

I have, &c.,

PETER GAFFNEY.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 64, per ship Alexander; acknowledged by Sir Charles Fitz Roy, 18th June, 1847.)

Sir, Downing Street, 25 November, 1846.

I have to inform you that the ship " Thomas Arbuthnot " has been chartered for the conveyance of 290 Exiles to Port Phillip. I am, &c,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 65, per ship Alexander.)

Sir, Downing Street, 26 November, 1846.

I have to acknowledge the receipt of your Predecessor's Despatch of the 26th June, 1846, No. 130, forwarding Transcripts of Four Acts passed by the Legislative Council of New South Wales, numbered 31, 32, 33, and 34 of 1846, and intituled,

No. 31, "An Act to continue for two years an Act to facilitate the apprehension of transported felons and Offenders illegally at large, and of persons found with Arms and suspected to be robbers."

* Marginal note.—Peter Gaffney, 18 Novr., 1846.
No. 32, "An Act to continue for a limited time an Act intitled 'An Act for regulating the Constitution of Juries and for the trial of Issues in certain Cases in the Supreme Court of New South Wales' and further to amend the Law relating to Trial by Jury."

No. 33, "An Act to amend an act intitled, 'An Act to amend the Laws relating to the Savings Bank of New South Wales, and Port Phillip respectively,'" And

No. 34, "An Act to amend an Act, intituled, 'An Act to make provision for the Safe Custody of and prevention of Offences by persons dangerously insane, and for the Care and maintenance of persons of unsound mind.'"

I have received the Queen's commands to inform you that Her Majesty has been pleased to confirm and allow these Acts.

You will Communicate Her Majesty's decision to the Inhabitants of New South Wales by a Proclamation to be published in the usual and most Authentic Manner.

I am, &c.,
GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 66, per ship Alexander.)

Sir, Downing Street, 27 November, 1846.

I have received Sir George Gipps' despatch No. 134 of the 29th June last, reporting the course which he had pursued in Consequence of the refusal of the Legislative Council to renew the Squatting Act 2 Vict., No. 27, and I have to express my approval of the arrangements which were adopted on that occasion.

I trust that the Act passed by the Imperial Parliament in its last Session, to which I have adverted in another Despatch,* will obviate any inconvenience which might otherwise have arisen from the Colonial Act having been allowed to expire.

I am, &c.,
GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 67, per ship Alexander.)

Sir, Downing Street, 28 November, 1846.

With reference to Sir George Gipps' Despatch, No. 58 of the 19th March, 1845. I have to acquaint you that, since the receipt of that Despatch, my Predecessors and myself have been in communication with the Directors of the Australian Agricultural Company on the subject of the issue to that Company of the Title Deeds for their Lands in New South Wales.

* Note 32.
In consequence of the stringent terms of their Charter, a difficulty was found to exist in conveying to them their Lands, or such portions as they had acquired a right to claim a title to, without the authority of a fresh Act of Parliament. The Act of which I enclose a Copy, was passed for that purpose towards the close of the last Session of Parliament. It is entitled (9 and 10 Vict., Cap. CCCLI) "An Act to amend an Act passed in the 5th year of the Reign of H.M. King George 4, for granting certain Powers and authorities to the Australian Agricultural Company."

I also enclose a copy of a Letter which I have received from the Governor of the Company, Containing a statement of the present position of the question as regards their Titles. You will perceive that the object of this present application is to obtain the removal of that restriction which prevented their disposing at present of more than 500,000 Acres of their Land, and which concession the Government are enabled by the recent Act to make. As I cannot perceive any practical advantage in continuing that restriction, I have assented to the application; and the difficulties being now removed which prevented the framing of the Instruments, I apprehend that they will now be completed without further delay.

I am, &c.

GREY.

[Enclosure No. 1.]
[This was a copy of the act 9 and 10 Vict., c. cccli.]

[Enclosure No. 2.]

MR. J. S. BROWNRIGG TO EARL GREY.
Australian Agricultural Company's Office.
My Lord,
12 King's Arms Yard, 4th November, 1846.

1. Being sensible of the great pressure upon your Lordship's time that would immediately follow the prorogation of Parliament, I have felt it to be respectful to allow a moderate time to elapse before I solicited your Lordship's attention to the present position of the Australian Agricultural Company consequent on the Act of Parliament recently passed, and pointed out the disadvantage under which that Company has long laboured, and must continue to labour, until your Lordship finally decides upon the only points touching their Title Deeds, not yet settled.

2. I am anxious in stating the case of the Australian Agricultural Company to avoid any recapitulation of previous Correspondence that can be avoided, and therefore for the present would respectfully request your Lordship's advertence to the letters named in the Margin,* together with the Minutes or Memoranda thereon left

* Marginal note.—Letter from J. S. Brownrigg, Governor Australian Agricultural Company, to Lord Stanley, dated 29th November, 1844; Do, Do, to G. W. Hope, Esq., dated 14 Decr., '44; Do, Do, to Lord Stanley, 26 Decr., 1844; Do, Do, to G. W. Hope, Esq., 14 July, '45; J. Stephen, Esq., to J. S. Brownrigg, 16 Sept., '45; J. S. Brownrigg to Lord Stanley, 17 Oetr., '45; Do, Do, 14 Novr., '45; Lord Lyttelton to J. S. Brownrigg, 2 May, '46; J. S. Brownrigg to Lord Lyttelton, 29 May, '46 (see note 33).
in the Colonial Office by your Lordship’s Predecessor; these, with
the Act of Parliament above mentioned, will put your Lordship in
possession of the present position of the Australian Agricultural
Company; and, if anything more should be wanting to a clear
apprehension of our case, I trust your Lordship will allow me to
furnish what may be necessary and to do which I have ample
means.

3. Your Lordship will gather from the Correspondence I have
mentioned and the Act of Parliament, the following facts:—
1st. That the Australian Agricultural Company, after having
been incorporated upwards of 22 years, has not yet been able to
obtain the Title Deeds to the Grant of Land made to them.

2ndly. That it has been proved to the satisfaction of Govern­
ment that, where practicable, the Australian Agricultural Company
has substantially fulfilled the terms of the Royal Charter under
which the Grant of Land was made to them, and that, where the
terms have not been fulfilled, a fulfillment is now impracticable
from lapse of time, changes in the policy of Government and other
causes.

3dly. That, in consequence, the right of the Australian Agricul­
tural Company to a declaration of exemption from all the stipula­
tions of the Charter, and to possess in fee simple, with free power
of alienation, 500,000 Acres of their original Grant, and of all
other Land subsequently acquired by purchase, have been fully
recognized.

4thly. That the only limitation, now existing to prevent the
Australian Agricultural Company dealing with the whole of their
Landed property in the Colony as they please, is that contained
in the 8th Condition in the Royal Charter,* which declares that
the Lands granted to the Australian Agricultural Company shall
be held in Mortmain, except 500,000 Acres to be manumitted on
certain conditions as above mentioned, the substantial performance
of which has already been recognized; and it was to authorize the
Crown at its discretion to release the remaining portion of the
Grant from this Condition of the Charter that the Act of 9th and
10th of Victoria, Cap. CCCLI was recently passed; and it is to
obtain this consideration and concession at Your Lordship’s hands
that I now, as Governor of the Australian Agricultural Company,
address you, all other points having been finally decided upon as
will be perceived by the Correspondence already mentioned.

4. The grounds upon which the Australian Agricultural Com­
pany claim this concession from your Lordship may be stated under
the following heads, and which I make as brief as possible. Vizt.:—

1st. Because, when the Grant was originally made to us 22 years
ago, Land was of no value to Government and was given freely and
gratuitously, and, if our Land has acquired any value since or
does hereafter, it has been, or will be, by the outlay of our Capital
and our long occupation and consequent improvement of it.

2ndly. Because our main inducement to involve our Capital in
the undertaking was the apparent certainty of our being amply
supplied with Convict labour; and, if such a prospect had not
been held out to us by Government, we never would have embarked
in it.

3rdly. That such supply of Convict labour has been inadequate
from the first; that, when the Assignment system prevailed, We
never got our fair proportion of Convicts; that for many years the

* Note 34.
supply was miserably deficient and the cause of repeated complaints from us, as the Records of Your Lordship's office will amply prove; while it was at all times compulsory upon us to maintain a large body of Convicts whether we wanted them or not, had it pleased the Colonial Authorities to order us to receive them.

4thly. That consequently we have been put to great expense in sending free Labourers from the Country and in hiring others in the Colony, an expense that we should not have been put to but from the altered policy of the Government.

5thly. That we have sent out to the Colony at our expense upwards of 650 Emigrants, and that the Bounty lately granted to all other Settlers on the importation of free Laborers has been refused to us by the Local Government.

6thly. That we have expended upwards of £300,000 in our undertaking and by the introduction of the finest breeds of Sheep, Oxen, Horses, Mules, etc., have benefited the Colony generally as is universally acknowledged.

7thly. Because, regardless of expense, we have done everything that was practicable to improve the moral and social condition of all our Servants, whether Free or Convicts. A Church has been built on our Grant. We have a Minister of the Church of England paid by us and exclusively devoted to our Establishments. We support Schools, and the result of all has been that our Establishments are remarkable for a degree of order and good conduct, not always found in the Colony. Many of those employed by us have been in our Service from our incorporation; many Convicts assigned to us have been reclaimed and are now industrious people settled on our Properties since their manumission; and we believe that we form a rare exception in having had for several years some of the Aborigines in our Service.

8thly. That we have done all this, with no assistance and but little encouragement from the Government either at home or abroad; but on the contrary have been compelled to press our complaints on the Home Government year after year while the Assignment system lasted, at the unfair manner in which we were supplied with Convicts in comparison with others, not having the claims that we had. While on the other hand, when the Policy of Government was altered and all further supply of Convicts withheld, we submitted without murmur or remonstrance, or troubling Government with any claims or complaints, notwithstanding the injurious effect which such a change had and continues to have on our prosperity.

9thly. That, from this failure to supply us with Convict Labour and the expense of free labour never calculated on when we embarked in our undertaking, we have only been able to pay 34½ per cent. on our paid up Capital to Our proprietors in 22 years, and that for 10 years we were unable to pay any Dividends.

10th. That, from the long delay in completing our Title Deeds arising from no omission or fault of ours, we have lost the opportunities which the high price of Land at one time afforded of selling advantageously such portions of our Grant as we could, and have since established our right to alienate.

11th. Because we have strong grounds to complain of the treatment we have received from Government with regard to our Coal Mines, the working of which we undertook reluctantly at the express desire of the Home Government upon the faith of certain
270  HISTORICAL RECORDS OF AUSTRALIA.

1846.
28 Nov.

Reasons for granting release of lands of A.A. company from conditions of charter.

Possible rivalry in sale of land with government.

Effects of sale of land by A.A. company.

privileges, which have not been maintained to us, which have been violated or evaded, and are so to this hour, while we have in vain sought for redress.

12thly. Because we challenge comparison with any analogous Colonial Corporate Body, as having more faithfully and un-deviatingly fulfilled the object, spirit, and letter, of our original Incorporation as far as the Colony is concerned, with so little support or encouragement from Government, but often having to contend with the reverse.

5. These, My Lord, are the outlines of the principal grounds on which the Australian Agricultural Company lay claim to the consideration of Government for any concession beyond our recognized rights. I have stated them as briefly as I could, being at the same time prepared, if your Lordship desires it, to afford ample proof in detail of all I have asserted.

6. It may and no doubt will, in the first instance, occur to Your Lordship that a compliance with our application might, as touching the late Land Sale Act, have the effect of making us appear as a rival seller of Land to the Government, and to a certain extent this cannot be denied; but, if your Lordship should see fit on the grounds I have stated to free the remainder of our Land from the only restriction now upon us, I respectfully submit that, if viewed in all its bearings, this should not form an objection sufficiently strong to overrule all that I have stated in support of our claims to consideration.

7. Because we should not be a Rival Seller more than any other Landed proprietor in the Colony; and it is notorious that, owing to the distress under which the Colony has laboured for the last three or four years, there are vast quantities of land that would now be sold, if there was any sale at all for such property, the present holders of which will be always ready to undersell the Government, should a demand for Land arise.

8. I further submit to Your Lordship's consideration whether it is likely that a Company, which has stood its ground under many great and pressing disadvantages for 22 years, would now rush heedlessly into the Market and sacrifice its property; on the contrary are we not more likely to uphold the value of Land, and, when we do sell small portions from time to time to settlers upon terms which only a Company like ours can give, to secure to the Colony a countervailing advantage by the encouragement and introduction of an increased Agricultural population, establishing themselves as it were under our protection, and fostered by our support, where industrious and deserving. While as we hope, when we do sell, that most of what we part with will be sold in this Country to parties contemplating emigration, who would be confirmed in their intention by the certainty that would attend their dealings with an established and responsible Company, able and willing to give them many facilities in stocking their Land and in easiness of payment, We should rather cooperate and promote than interfere with the object of the Land Sale Act in encouraging Immigration.

9. But, in truth, My Lord, we have no intention of precipitately selling our Land; it is obvious that it must be many years before we can hope to sell even a moiety of that Land to which our right to sell has been admitted; but it is natural, without any such intention, that we should desire to be in a position to be able to
deal with the property; which I must be permitted to say we have
very hardly earned, after the lapse of so many years, unfettered
even by a restriction that in the end might prove more nominal
than real; because, supposing your Lordship not to allow our
claims to the concession we now seek and to refuse us any con-
sideration, it may be fairly doubted whether the Colony would
be any gainer by keeping us tied up in Mortmain with regard to
half our Land, and compelling us to evade the restriction by long
leases of 999 years at a Pepper Corn Rent, which I apprehend we
shall have full legal power to do, a course it would be much more
agreeable to our feelings to avoid.

10. I venture confidently to anticipate that Your Lordship will
rather incline to the opinion that it will be better, by a fair and
liberal consideration towards us, to carry us with the Government
as willing and zealous co-adjutors in carrying out its plans, which
it is equally our desire and interest to do; to lower the value of
Land would be obviously suicidal on our part.

11. I will only further add that Your Lordship's compliance with
our application to have the Title Deeds to all our Grant completed
in Fee Simple will obviate a difficulty I apprehend of considerable
magnitude, that must attend their being drawn up on any other
basis. For, if we are to have one half of our Grant in Fee simple
as we have the right to, and the other half is to remain in Mort-
main, I apprehend the attempt at definition or division under these
two Tenures would be very difficult, if not impracticable; but I
forbear lengthening this letter by any attempt to describe what I
doubt not will readily occur to the mind of your Lordship.

I have, &c.

J. S. BROWNING.
Governor, Australian Agricultural Company.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch per ship Alexander.)

Sir,

Downing Street, 28 November, 1846.

I beg to recommend to your good offices Mr. George
Thomas Clarke, a Member of the College of Surgeons, who is at
present practising at Penrith in New South Wales.

His name has been brought under my notice by Lord Clarendon
at whose request I write this letter, and I should be glad if it
should be in your power to forward his views. I have, &c,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 68, per ship Alexander.)

Sir,

Downing Street, 29th Novr., 1846.

Upon entering on my present Office, one of the first ques-
tions, which appeared to me to require an endeavour to settle it
on some satisfactory footing, was that as to the terms on which
the inhabitants of New South Wales should be enabled to obtain
Problems re land for pastoral purposes.

Evils of liberal distribution of waste lands.

Land, either by purchase or by authorized occupation, for pastoral purposes. The conditions upon which the occupation of Land without purchase should be permitted, and the right which should be conceded to the occupiers, have for some years been the subject of much discussion, and I am well aware that, from the peculiar circumstances of the Colony, this is the part of the general question as to the management of the Crown Lands which is of the most immediate practical importance. But, as the rules to be enforced as to the temporary occupation of Land are of necessity closely connected with those respecting its permanent alienation, and as I also observe many signs that the policy which has been adopted by Parliament of prohibiting the sale of Land below its present price is still viewed with disapprobation by many of the Colonists, I am anxious to recall to your recollection some of the grounds upon which that policy was originally adopted, and upon which I must still think that it ought to be strictly adhered to.

When public inconveniences have been removed by suitable measures, they are apt to be forgotten, and the value of the remedial measures by which this has been effected to be brought into question, in consequence of any partial inconvenience with which they may be attended. If the evils which necessarily arise from too liberal a distribution of Waste Lands should have been thus lost sight of in New South Wales, I would refer you for a full exposition of their nature to the Despatches of the Earl of Ripon, which are referred to in the margin,* and of which, though they may be found in the Parliamentary Papers of the day, I think it may be of advantage that I should enclose you copies.†

You will find it to be shewn in these despatches that, if, in the settlement of Colonies, the Waste Lands are disposed of by Grant instead of by sale, their allotment to individuals must of necessity be left to the discretion of the Executive Government with great risk of abuse, and the certainty that, whether justly or not, abuse will at all events be suspected and complained of, that the Government must either suffer all desirable land to be appropriated long before it can be so with advantage to the public, or else establish regulations hardly possible to be enforced, and which at the same time greatly interfere with that free management of their own property by individuals, which is so essential for its improvement; and that on the other hand, by adopting the principle of selling land at somewhat a high

* The margin is blank.
† Marginal note.—These despatches being in the Colony, they are not transmitted.
price, all possibility of favouritism or abuse on the part of the Government is effectually put an end to, the most complete security is afforded that land will be appropriated only by those who really intend to make use of it, and that none who have the will and the means of improving it shall be prevented from obtaining it. By this system of management a check is also opposed to that tendency to an undue dispersion of the Inhabitants, which is found to be so strong in countries in the progress of settlement, and where the population is still very small in proportion to the extent of the Territory. Under such circumstances if left to themselves, men are generally disposed all to become occupiers of land upon their own account; the consequence is they become dispersed in single families over a large extent of country, deprived in a great measure of the advantages of mutual assistance and co-operation, and of the division of labour. Such a state of society is necessarily rude, and little favourable to improvement. The education of the young and the religious instruction of all can only be provided very imperfectly and at a vast expense for a population so scattered; there is little or no labour to be obtained for hire, so that even those who may possess capital cannot apply it with advantage in improving the land, and thus, though all may enjoy an abundance of food, they will be scantily supplied with the comforts and luxuries of life, and be strangers to all the chief advantages of civilization. The system of disposing of Land only by Sale at rather a high price, now established under the authority of Parliament in Australia, checks the tendency of Society to fall into this condition, not only by restraining the undue facility of obtaining land, but also by creating a large fund which may be applied to the increase of the population by emigration, and to the improvement of the Territory which they are to occupy. When the benefits, which N. S. Wales has derived from the employment in this manner of the money received from the sale of Land, are remembered, there can I think be little doubt of the advantages of this policy, especially if we contrast with its practical results those of acting upon the opposite policy, which is founded upon the opinion (still maintained by some) that it is better to leave as much of their funds as possible in the hands of settlers, instead of requiring from them a price for land. This last is the principle on which the Settlement of Swan River began so unsuccessfully, under which New South Wales itself so long made a tardy and imperfect progress, and the British Colonies in America suffered from so many abuses. The opposite system, as I see truly remarked in some of the discussions on the present subject, is the one under which New South Wales has in
ten or twelve years realized from land one million sterling, has increased its population by 50,000 souls, and has passed from the condition of a penal settlement into that of a great free Colony. It has I know been often alleged that many of those, by whose purchase of land so large a sum of Money has been brought into the public Treasury and applied to Emigration, have been heavy losers; and that, however the Colony may have gained in population and in wealth, much suffering and disappointment has been entailed upon individuals by their buying Land at a price far exceeding its real value. That there have been heavy losses and much disappointment to individuals in consequence of the over speculation in land which a few years ago was carried to so great a height in the Colony of New South Wales, it is impossible to deny; but I must observe that such losses from injudicious speculation are by no means confined to Colonies in which the policy of disposing of land by sale is acted upon. I doubt whether any British Colony has, in proportion to its wealth and population, suffered so heavy a loss of Capital from its misemployment upon land as Western Australia; and in this instance the loss to individuals has in no degree been compensated by any advantage to the community; whereas in New South Wales, though the losses of those who bought land injudiciously (so far as their own interests are concerned) are no doubt greatly to be lamented, still against this evil there is to be set the great and permanent benefit to the community, which has arisen from the expenditure of the money paid for land in bringing into the Colony a large free population. Again when it is complained that the price demanded for land in New South Wales has been more than it is really worth, I must direct your attention to the fact that land has in itself, and considered without reference to population, no value which is capable of being estimated. In this country, land by nature almost entirely unproductive, sterile moors for instance and swamps, which until improved by a large employment of labour and capital can yield little or nothing, sell for prices far higher than those which, under the existing regulations, are obtained for the best land sold in New South Wales for the purpose of cultivation; while, in many parts of the world, lands by nature of the very highest fertility are at this moment worth absolutely nothing. Hence it is clear that the value of land depends far less upon its intrinsic qualities than upon its being so situated as to be useful to a considerable and industrious population. The fact, therefore, that those, who have bought land in New South Wales at prices which, however high they may be there thought, are so very far below those which are habitually paid in more fully peopled countries.
find these lands too dear with the present amount of population, and, in the absence of a better supply of labour, would almost seem to lead to the inference that, instead of the present upset price of land being too high, it might have been really better for the purchasers to have paid a still higher price, so that a greater number of emigrants of the labouring class might have been introduced.

Such are some of the reasons (to which it would not be difficult to add many more of hardly inferior weight) which lead me to the conclusion that the policy, sanctioned by Parlt. with reference to the alienation of the public lands in Australia, is one to which, for the welfare of these Colonies, it is most important to adhere; but while I entertain this opinion I am also perfectly well aware that, in order to encourage the great staple produce of New South Wales, it is necessary that the occupation of land for pastoral purposes should be allowed on terms much easier than those of purchase at the minimum price now established by law. There is a universal concurrence of opinion as to its being indispensable that the sheep and cattle farmers of Australia should have the range over far wider tracts of land than they could possibly afford to purchase, not merely at the present price, but at any which could possibly be named for the fee simple. I assume therefore that it is necessary to provide for the temporary occupation of land for pasturage on much easier terms than those upon which its permanent alienation is permitted. Nor is this in any degree inconsistent with what I have already said as to the importance of maintaining the present minimum price of land sold in fee simple; on the contrary, I entirely agree in the opinion I find to have been expressed by Sir G. Gipps that the two systems of permanently alienating land only at a high minimum price, and that of permitting it to be occupied for pasturage "or what is termed the squatting system" will mutually sustain and support each other. By the combined operation of allowing a temporary right of occupying land to be obtained on easy terms, and of demanding a considerable price for that in which a permanent property is acquired, the sheep and cattle farmers are enabled to carry on the important branches of industry, in which they are engaged, to an extent and with advantages which they would not otherwise enjoy; while at the same time this does not occasion the loss to the Colony of the important source of revenue, which will hereafter be afforded by the sale of land, or any risk of depriving future settlers of the means of obtaining land by purchase at a reasonable price. This last consideration is I think of extreme importance; it is obvious that, if those who now occupy the large runs which
are required for the support of considerable flocks and herds, while the country remains in a state of nature, were allowed to acquire a permanent property in these vast tracts of land, there would very soon indeed be no land of moderately easy access available for new settlers. I am aware indeed that, even under the existing regulations, complaints have been made, and not without much apparent foundation, that a difficulty is experienced by persons who have accumulated small capitals, in finding the means of purchasing allotments of land of a size suitable to their circumstances, owing to the manner in which extensive tracts have been appropriated by the larger capitalists. In justice, therefore, to the poorer class of settlers, I consider it of vital importance that, in allowing wild lands to be occupied for pasturage, the property of the Crown in these lands should be effectually protected, so that, as they are wanted for settlement, they may be sold at a price, which, while it is too high to admit of large tracts being obtained possession of by grasping speculators, is yet sufficiently moderate to throw no difficulty in the way of the industrious settler who desires to purchase and to improve a farm of moderate extent.

But while I for these reasons consider it to be necessary that those, who occupy wild lands for pasturage, should not be permitted to acquire a permanent property in their runs until they can afford to purchase them at the price now established by law, I am by no means insensible to the force of the arguments which have been urged against the existing practice of allowing the occupation of these runs to be secured only for a single year at a time, by which the holders are discouraged from attempting improvements of which they have no assurance of reaping the benefit. I admit that both the interest of the public and of the individual occupiers of wild lands would be promoted by permitting such lands, when not wanted for settlement, to be held for longer periods than has hitherto been the practice, and by securing to the occupiers at the end of their tenancy the value of any improvements they may have effected. In this manner, I believe various improvements, and particularly those having for their object to secure a larger and more permanent supply of water, will be encouraged, by which a given extent of land will be rendered capable of supporting a very much larger amount of stock than it now does, thereby checking at least in some degree the present tendency of those engaged in pastoral pursuits to scatter themselves over an enormous extent of country.

It is upon these views that the Act passed in the last session of Parliament, of which a copy is enclosed in this Despatch, is founded. That Act, as you will perceive, proceeds upon the
principle of at once effectually asserting the property of the Crown to the vast tracts of land now occupied by the stockholders of Australia, and at the same time enabling Her Majesty to make regulations having the force of law, by which the holders of wild lands will be rendered secure in their occupation for terms of not more than 14 years, and will at the end of their tenure be assured the value of any improvements which they may have effected. I have not as yet been enabled to advise Her Majesty, under the authority of this Act, finally to establish by Order in Council the rules under which such lands are in future to be held. I have been compelled to postpone doing so by the necessity of obtaining such information, and communicating with various persons, before I could venture to propose for adoption regulations which must so deeply affect the future prospects of Australia. But, though I cannot as yet transmit to you regulations confirmed by Her Majesty in Council, I think it right to forward to you a printed Copy of the draft, which has been prepared of the regulations which it is in contemplation to establish. You will, however, understand that these regulations have by no means been as yet finally determined upon; they are to be regarded, as they purport to be, merely as a draft for further consideration, liable to be altered in consequence of the further information I may receive. With the view of obtaining such information, they have already been communicated to some of the stockholders of New South Wales at present residing in this Country, and will also be communicated, upon his arrival, to Sir G. Gipps, whose advice upon this subject I consider it so important to obtain, that I shall certainly defer submitting these regulations to Her Majesty until I can have that advantage.

In order however to obviate all unnecessary delay in bringing these regulations into operation, in case they should hereafter be sanctioned by Her Majesty, it is desirable that you should at once consider in what manner it will be best to proceed in performing the duty, it is in contemplation to impose upon you, of classifying the lands of the Colony, and defining the boundaries of the different districts which will require to be determined. There is, as you will observe, a very material difference between the conditions on which it is proposed that land should be held in the three different classes of districts, which it is intended to establish; and the nature of this difference is such as would make it necessary that you should act with extreme caution in classing the lands of the Colony in one or the other of these districts. Lands in the unsettled districts, according to these regulations, would be put absolutely out of the power of the Crown, and be rendered unavailable for settlement for the long period of 14
years; it would, therefore, be absolutely necessary that no lands should be so classed except those which, from the remoteness of their situation, you have reason to feel assured will not be required for sale to the public for the purpose of permanent occupation during the term for which the Leases will be granted. I have to instruct you to be most careful upon this point, since it would be a source of very serious injury both to the Colony and to the Mother Country if, at the end of eight or ten years, it should be found that the progress of Emigration were checked by the inability of the Crown to find lands to sell to intending Emigrants. You will recollect also that, as the proposed regulations with regard to intermediate Lands will secure to the actual holder a right of occupation for eight years, unless they are previously required for purchase, and will also assure to him, on giving up possession, a right to the whole of his improvements, there would be the less occasion for placing in the class of unsettled districts any lands as to which even a doubt can be entertained.

I have, &c,

[Enclosure No. 1.]
[This was a copy of the act 9 and 10 Vict., c. civ.]

[Enclosure No. 2.]
[A copy of the draft regulations is not available.]

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch marked "Separate," per ship Alexander: acknowledged by Sir Charles Fitz Roy, 30th July, 1847.)

Sir,

Downing Street, 30th November, 1846.

With reference to my Despatch, No. 46, of the 18th ultimo, I transmit, herewith, four Warrants under the Royal Sign Manual, authorising you to cause Letters Patent to be passed under the Public Seal of the Colony of New South Wales, appointing Mr. William A'Beckett and Mr. Roger Therry, to be Puisne Judges, Mr. Alfred Cheeke to be Commissioner of the Court of Requests, and Mr. Thomas Callaghan to be Crown Prosecutor in the Court of Quarter Sessions, in that Colony; and I have to desire that you will obtain from each of these gentlemen, and remit to Mr. Smith, the Chief Clerk of my Office, the sum of Eleven Pounds 5s. 6d., the amount of fees and stamp duties payable on Instruments of this nature. I have, &c,

GREY.

[Enclosures.]
[Copies of these warrants are not available.]
EARL GREY TO SIR CHARLES FITZ ROY.  

(Despatch marked “Military, No. 3,” per ship Alexander; acknowledged by Sir Charles Fitz Roy, 30th April, 1847.)

Sir,

Downing Street, 30th November, 1846.

With reference to my Despatch No. 2, Military, of the 24th Instant, I transmit to you enclosed an Extract of a Treasury Minute, dated the 27th Instant, setting forth the directions which the Lords Commissioners have given for carrying out the arrangements explained in my Despatch above mentioned.

I have, &c.,

GREY.

[Enclosure.]

EXTRACT of a Treasury Minute, dated 27th Novr., 1846.

"The Commissariat Officer in charge at Sydney should be desired to take the directions of the General Commanding for obtaining the required conveyance for the Troops intended to be transferred from New South Wales, and for providing such additional supplies of Provisions or stores and such amount of specie to be consigned to D.A.C.G. Turner at New Zealand, as the General may deem requisite to meet the immediate wants of this considerable reinforcement after the arrival of the Troops at the last mentioned Colony.

"My Lords desire that Mr. Ramsay may be directed to transfer with the Troops the two junior Assistants at present serving under his orders, instructing them to report themselves to D.A.C.G. Turner on their arrival at New Zealand.

"In attention to the suggestion of the Secretary of State with regard to the Imperial Buildings and Property in New South Wales, which will be left unoccupied by the removal of the Troops, desire that Mr. Ramsay will move the Officer commanding to nominate an Officer of the Ordnance Department in conjunction with an Officer of the Commissariat for the purpose of ascertaining the number and description of the Buildings that may thus become disposable and revert to the custody of the Ordnance, and Mr. Ramsay will ascertain the remains of Commissariat Stores that may revert to his charge.

"As the considerable reduction of the amount of the Military Force to be retained in New South Wales, and the adoption of the measures suggested by the Secretary of State in his Despatch to the Governor for the employment of the Police Corps at the detached Posts, from which the Military aid will be withdrawn, will materially diminish the duties to be performed by the Commissariat Department in New South Wales, my Lords desire that Mr. Ramsay will carefully consider what reduction can be effected in the establishment under his orders; and he will submit his views on the subject to the Governor with reference to the duties which may yet be required from the Commissariat in regard to Convict Services, and to the General Commanding with reference to the duties to be performed in connexion with the Military Service in order that my Lords may receive, with Mr. Ramsay's report, the opinion of those authorities respectively on the subject.
"Write the Secretary of the Admiralty for the information of the Board that my Lords have given directions to the Commissariat Officer in charge at Sydney, in conformity with the wishes of their Lordships as expressed in Mr. Ward's letter of this date.

" Transmit copy of the foregoing Minute with copies of the Papers alluded to therein (according to the memorandum on the Margin)* to Dep. Com. Gen. Ramsay and desire that he will take the necessary measures, so far as he is concerned for giving full effect to the intentions of H.M. Govt. on the several matters alluded to in this Minute.

"Write to the Officer in charge of the Commissariat at New Zealand, acquainting him that my Lords have laid before them copies of two Despatches, dated the 24th January, which have been addressed by the Secretary of State to the Lieut. Governor of New Zealand, apprising him of the measures which have been taken by the Home Govt. for increasing the Military Force with a view to the protection and safety of the Colony.

"These measures consist principally in the immediate transfer of 900 Men from the Regiments now serving in New South Wales and the formation of a Corps of 500 Men to be embodied in this Country under the designation of the Royal New Zealand Fencibles, and to be sent from hence direct to Auckland.

"Acquainting him that my Lords have instructed D.C.G. Ramsay to provide, under the direction of the General Commanding in New South Wales, the necessary shipping accommodation for the conveyance of the Troops to New Zealand and to provide also such Provisions, Stores and Money as the General may deem requisite to meet the immediate wants of this additional Force after its arrival at its destination.

"My Lords have also decided that two Officers of the Rank of Deputy Assistant, Junior to Mr. Turner, may be sent from N. S. Wales with the Troops, as a reinforcement of the establishment under Mr. Turner.

"Transmit to Mr. Turner Copy of the Despatch from Earl Grey to the Lieut. Governor, dated the 24th Instant, in order that he may be aware of the arrangements under which the Royal New Zealand Fencibles are to be provided for on their arrival, and Mr. Turner will consider himself at liberty to advance, upon the Warrants of the Officer Commanding, such sums as the Lieut. Governor may deem it necessary to require for establishing the location of the Fencibles.

"Mr. Turner will afford every facility in his power for giving effect to the intentions of H.M.'s Govt. with regard to this Corps, taking care to keep a separate Account of all expenses that may be defrayed from the Commissariat Chest for this particular Force, and transmitting to this Board monthly a statement of the advances which he may be called upon to make for this Service.

"Transmit to Mr. Turner for his more particular information copy of a printed paper, inscribed "Confidential," calling his attention to Paragraphs No. 12 to 16, and the concluding Paragraph No. 25."

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 69, per ship Bussorah Merchant; acknowledged by Sir Charles Fitz Roy, 16th July, 1847.)

Sir,

Downing Street, 4 December, 1846.

I transmit to you herewith copies of a correspondence with the Most Revd. Dr. Polding, relative to an application which he has made for a Grant of Land, to be appropriated to the use of the Roman Catholic Church in New South Wales, in aid of the education of Ministers for that Church, and of the conversion of the Aborigines of the Colony.

You will perceive, from the letter which I have caused to be addressed to Dr. Polding, what are the difficulties which appear to me to oppose a compliance with his application, and what are the questions on which I require the aid of a report from yourself and from the Executive Council of New South Wales. You will transmit to me such a report with as much promptitude as may be practicable.

I have, &c.,

GREY.

[Enclosure No. 1.]

RIGHT REVD. J. B. POLDING TO EARL GREY.

My Lord,

35 Golden Square, 20th Novr., 1846.

In an interview with which Your Lordship recently favoured me, I considered it to be my duty to mention the very great difficulty I have experienced in procuring duly qualified Clergymen for the Colony of New South Wales, the means I proposed to alleviate the difficulty as regards the future.

For some years, I informed your Lordship I have had under my own roof a number of young persons aspiring to the Ecclesiastical state, nearly one third of the Clergy in my diocese have been thus educated. But the increase in the number of Candidates, and the largely growing demand for Clergymen, compel me to use my utmost endeavours to establish a Seminary on a proper and permanent basis, which I trust will supply in some degree the means of providing for the spiritual wants of the Catholics being about one third of the entire Population of the Colony.

Thus the very considerable expense incurred in the defraying of the outfit and passage of the Clergy will be diminished. Thus many other inconveniences will be avoided. This undertaking, however, I cannot accomplish without assistance. I feel that there would be considerable difficulty in the way of obtaining assistance from Her Majesty’s Government, were an application to be made in the present circumstances of the Colony for pecuniary aid. I do not therefore make application. But, my Lord, it is most respectfully submitted that without inconvenience, assistance of a very substantial nature may be given in the shape of a Grant of Land. Nor do I consider that Land can be devoted to purposes more useful, more beneficial to the common weal than those which have for their object the spiritual and moral improvement of a large class of the Colonists in the first instance, and in the second, with the divine Blessing on our intentions and exertions, of the unfortunate aborigines of the Country. In this view for purposes
Application for land grant for education of R.C. clergy and for conversion of aborigines.

1846.
4 Dec.

less important, Governor Sir Richard Bourke gave land to the value of several thousands of pounds to the Trustees of the Australian library.

I would beg moreover permission to represent, and without the remotest feeling of invidiousness, that the Catholic portion of the Population have some claim for especial consideration on this subject. It is well known that, before the introduction of the Church Act, all the Churches of the Church of England with residences for the Clergymen were erected at the public Expense. Thus the Churches of St. Philip and of Saint James in Sydney, those of Paramatta, Windsor, Newcastle, valuable Glebes, of considerable extent were attached, to many of which possession is held. A large tract of land near Wellington Valley is also, I believe, under the control of the Bishop of Australia for Ecclesiastical purposes. King's School, a large and commodious Establishment in Paramatta, was built at the Public Expense and is also under his Lordship's control.

I beg furthermore to add that, at the request of the Revd. Dr. Lang, £3,000 of the Public money were allowed as a loan, and proved to be a gift for the purpose of aiding in the erection of the Australian College for the Education of Students and Ministers of the Church of Scotland.

My Lord, the Catholic portion of the population, though confessedly the least abounding in opulence, would be happy to have instances of this kind to record. We recollect with gratitude some assistance given towards the erection of St. Mary's Church, Sydney; but it forms a small item in the general cost. Of course I allude to the period antecedent to the Church Act. My confidence in Your Lordship gives me the conviction that, in acceding to a proposition in accordance with justice and tending to the accomplishment of great good, slight regard indeed would be had for the censure, which prejudice or ignorance might pass. Nevertheless, I will presume to remark that, if Your Lordship receive with favorable attention the application I have the honor to make, it is humbly conceived that other denominations cannot take offence, nor can the Grant be construed as a precedent; since the concession, which will entitle Your Lordship to Our grateful remembrance, can only be deemed an Act by which those, in favor of whom it is made, are at length placed on a level with their fellow Colonists, who at a former period received similar or greater advantages.

It is not apprehended, My Lord, that difficulty will occur in the selecting of the Grant.

In the vicinity of Sydney, Grosse Farm, formerly a Convict Station, is the property of Government. It is let annually. Near Paramatta is the Government domain, with the House in which his Excellency the Governor was wont to reside during a part of the Summer; it is not, since the erection of the new Government House in the domain of Sydney, any longer required. In February last, the Establishment at Paramatta was advertised to be let. There are other tracts of land in many respects advantageous. I have no doubt, under the sanction and direction of Your Lordship, the local Government and the Catholic Ecclesiastical authorities would make a satisfactory arrangement.

I have, &c.,

J. B. Polding.
Sir,
Downing Street, 1st December, 1846.

I am directed by Earl Grey to acknowledge the receipt of your letter of the 20th instant, in which you request that Lands in New South Wales may be set apart for the use of the Roman Catholic Church, in order to assist that Church in the Education of Clergy, and in the conversion of the Natives.

Lord Grey directs me to assure you of the deep interest he feels in the objects you have in view, and of the gratification which it would afford him to accede to your proposals for advancing them. His Lordship, however, fears that there may be very grave if not insuperable obstacles which do not appear to have attracted your own attention.

In making the proposed Grant, it appears to Lord Grey that he would not really be following existing precedents, but creating a precedent entirely new, and with it introducing a principle of very wide and questionable operation. The grants, to which you refer, were all anterior in date to the Church Extension Act of New South Wales, and to the Constitutional Act of Parliament, which has set apart from the Revenue of that Colony the large Annual Sum of £30,000 for the support of Public Worship. A similar Grant posterior to those Enactments would therefore be essentially a novelty. It would tacitly but distinctly admit that neither the Church Extension Act nor the Act of Parliament were to be considered as having fixed a limit to the provision to be made at the Public expense for this branch of the Public Service.

Lord Grey thinks it needless for his immediate purpose to deny or to admit that such ought to be the construction or the consequence of those Enactments. He confines himself to the remark that this is a very considerable question, on which he does not think him himself at liberty to act without first consulting the Governor and Executive Council of the Colony.

And this caution seems to him the more requisite because he cannot doubt that, if the proposed concession be made, the Colonial Legislature will discuss the wisdom and the lawfulness of it, and in that event that their opinions may be such as to lead to remonstrances to the Queen and to Parliament against the measure. Lord Grey cannot adopt it, therefore, without being first well assured that to any such remonstrance a good and conclusive answer might be returned.

An additional motive for thus pausing, before Her Majesty's Government are committed to this step, appears to Lord Grey to arise from the certainty (for it is nothing less) that other Christian Societies would demand from them similar concessions, and would invoke in support of that demand the precedent which would have been so recently made in the case of the Roman Catholic Church. The ultimate results of the proposed Grants might, therefore, prove of serious and embarrassing magnitude, and it appears to Lord Grey necessary that he should have from the highest local authority an estimate of these results, before the first step leading to them is irrevocably taken.

I am, therefore, directed to inform you that His Lordship, though reluctantly declining to assent at once to your request, will consult the present Governor of New South Wales, as to the practicability
and the probable consequences of acceding to it, and that it will be a source of sincere pleasure to him to learn that neither the difficulties which I have mentioned, nor any other which may have escaped his notice, need prevent the adoption of a measure of so much importance to the highest interests of so large a class of Her Majesty's Subjects inhabiting the Colony.

B. HAWES.

5 Dec.

Despatch transmitted from governor of Mauritius.

Possibility of trade in cattle and salt meat with Mauritius.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 70, per ship Bussorah Merchant.)

Sir,

Downing Street, 5th December, 1846.

I herewith transmit to you a copy of a Despatch from the Governor of Mauritius, together with an Address which had been presented to him in the name of certain Merchants, Planters, and others, complaining of the injury sustained by them in consequence of the cessation of Commercial Intercourse between that Island and Madagascar, and praying that measures may be taken for the re-establishment of friendly relations between the two Islands. A copy of the Governor's Reply is also enclosed. It has seemed to me of importance to the interests of the Colonists under your Government, that they should be made aware of the facts contained in these papers, in order that, during the suspension of the trade in question, they may, if so inclined, avail themselves of the opportunity thus presented to them of securing the Market of the Mauritius for the sale of their Cattle and Salt Meat.

I have, &c.

Grey.

[Enclosure No. 1.]

LIEUT.-GENERAL GOMM TO RIGHT HON. W. E. GLADSTONE.

Sir,

Mauritius, 15 August, 1846.

I have the honor to submit a copy of an Address presented to me in the name of certain Merchants, Planters, Shipowners, Proprietors, and Inhabitants of Mauritius, and also of my reply.

It is currently reported that the Hovas are making great exertions to impede the entrance to the Roads of Tamatave, by heaping up the Channel with rubbish, which, on however gigantic a scale undertaken, it is not expected will resist the undermining assaults of a disturbed sea; and that they are also erecting a considerable Fort at a point of the Coast some hundred miles south of Tamatave, from whence they are most apprehensive of a hostile attempt to approach the Capital.

These are indications of jealousy of French projects, which they are well acquainted with. In the meantime much inconvenience, and even distress, is said to prevail among the barbarous people through the stoppage of the usual intercourse, and the privation at Bourbon is certainly felt more gravely than by us, and leads me to hope that the French authorities will find it their policy to relieve the Hova Power of the apprehension that they are still aiming at
territorial possession, and this effected, by whatever means, I am persuaded the trade would gradually revive with the two Colonies.

With respect to our views, I need hardly apprize you, Sir, that the Madagascar authorities have no apprehensions akin to those entertained with regard to France.

I have, &c.,

W. M. Gomm, Lt. General.

[Enclosure No. 2.]

The humble Petition of the undersigned Merchants, Ship-owners, Proprietors, and Inhabitants of this Island of Mauritius,

To His Excellency Lieutenant-General Sir W. M. Gomm, K.C.B., Governor of Mauritius, etc., etc., etc.,

Most respectfully sheweth,

That your Petitioners, in common with the whole Colonial community, have, for more than twelve months past, been suffering great privation and loss, in consequence of the cessation of all intercourse with Madagascar.

That the value of the trade between that Island and this Colony annually amounted to no less than one million of dollars.

The articles principally imported were rice, salt meat, and oxen. Their price has been considerably augmented now that they have to be obtained from more distant countries, and in very small quantities. It is a notorious fact that a pound of fresh beef, of very indifferent quality, now sells at twenty pence sterling in the market of Port Louis; and meat of a better description has obtained the extravagant price of three shillings a pound. Fresh meat is therefore now beyond the reach of the poor, and even of small fortune.

Salt meat, which the inferior classes were in the habit of using with their rice, and which was obtained from Madagascar, of the best quality, and free from bones, at £3 per cask, has now to be brought from the Cape of Good Hope, where it is of an inferior kind, full of heavy bones, and it sells, notwithstanding, at £5 a cask.

Even that resource which the Colony resorted to, of importing oxen and salt meat from the Cape, is about to fail us, in consequence of the recent Caffer war, which has destroyed so large a quantity of cattle.

Draught oxen were likewise imported from Madagascar, for the purpose of agriculture. On their landing they were sold at five or six pounds sterling. Planters are now compelled to purchase Colonial bullocks, at £20, but these are so scarce that their number is quite insufficient, and mules have to be procured from France, at the present enormous price of £50. That price has to be paid in hard cash to the French importers, who thus remove a large amount of specie from the Colony, where its scarcity is severely felt already.

All the Colonial vessels formerly employed in the Madagascar trade are now a dead weight upon the hands of their owners. Some have been wrecked in attempting to open an intercourse with distant parts of Madagascar, not under the control of the Hovas; others have been sold at Port Louis to be broken up, at ruinous prices. All Colonial mariners and seamen are thrown out of employment.
It is very probable that such will soon be the dearth of oxen in the Colony, that it shall be found impossible to supply the troops, and the ships of war in the harbour, with fresh meat.

The natives of Madagascar, in exchange for their produce, received annually large quantities of British manufactured goods, which can now no more find their way to that Island, and a market of some importance has thus become closed to British industry.

It may therefore truly be said, that the suspension of the trade with Madagascar is a great public calamity for the Island of Mauritius.

Wherefore your Petitioners most respectfully and earnestly pray, that your Excellency may be pleased to take such measures as may seem most conducive to the early restoration of good understanding and commercial intercourse between the two countries.

Port Louis, 4th August, 1846.

LEMIÈRE GOUGES and Co.
CHANVIN FREBES and Co.
GUSTAVE BRONARD.
GONARD LE GALL and Co.
HY. BARLOW and Co.
V. LANOUAGÈDE.
Ed. BOUERAN and Co.
ROBERT BULLEN and Co.
E. DUPONT.

Reply to address by W. M. Gomm.


Gentlemen,

I have received your Address, inviting me to adopt efficacious measures for the speedy restoration of a trading intercourse with the Island of Madagascar, from the continued suspension of which the Colony experiences great and serious embarrassment.

The principal allegations set forth in your statement do not admit of a moment’s hesitation in acknowledging. I am as fully impressed as yourselves with the hardships to which the community is exposed through the privation of its intercourse with Madagascar, and the cessation of those regular supplies of provisions which it formerly derived from that quarter.

The effectual remedy for this state of things is not so easy of determining. It would not be difficult to aggravate the evil, and to defer the possible period of its termination by an ill-judged course of procedure.

Other considerations are also involved in the question, some of them, perhaps, not less important even than the renewal of the cattle trade with Madagascar.

The question is a very complicated and a very delicate one, and well deserving of the amplest consideration previous to acting in any way by Government; but such consideration I am most ready to afford it on my own part; and to take advantage of any opening that may present itself, that we can securely depend upon, for advancing the object that I have in view, in common with yourselves and the community at large a restoration of the facilities formerly enjoyed by the Island for obtaining its supplies of food from Madagascar.

I have, &c.,

W. M. Gomm, Lt. General.
EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 73, per ship Bussorah Merchant.)

Sir,

Downing Street, 7th Decr., 1846.

I have received Sir G. Gipps' Despatch, No. 112 of the 5th of June last, and I have, in reply, to signify to you my approval of the payment, which he there states had been made of a gratuity of £25 out of Convict funds to Alexander Cameron, through whose exertions the mal-practices which led to the removal of Mr. Bell and Mr. Hamilton from the Superintendence of the Female Factory at Paramatta had principally been brought to light.

I have, &c.,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 76, per ship Bussorah Merchant.)

Sir,

Downing Street, 9th Decr., 1846.

With reference to my Despatch No. 62 of the 15th ulto., I have to acquaint you that the Lords Comrs. of the Treasury have intimated to me that they have given the necessary directions to the Commissariat Officer in New S. Wales for bringing to a close the Commissariat proceedings, no longer necessary in consequence of the abandonment of the project of establishing a Separate Colony in North Australia.

I have, &c.,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 77, per ship Bussorah Merchant.)

Sir,

Downing Street, 10th Decr., 1846.

I have to acquaint you that the Lords Comrs. of the Admiralty have intimated to me that orders have been given to Captain Stanley of Her M.'s Surveying Vessel Rattlesnake to survey the Coast of Australia, in the immediate vicinity of Harvey's Bay. That order was issued in consequence of the project which was formed of establishing a new Colony in that part of North Australia; but the abandonment of that design has of course removed the immediate object with reference to which the Survey in question was directed to be executed.

I have, &c.,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 78, per ship Bussorah Merchant.)

Sir,

Downing Street, 13th December, 1846.

I have to acknowledge the receipt of your Predecessor's Despatch No. 124 of the 23rd of June last, reporting the
1846. 13 Dec.  
Approval of grant to L. Leichhardt and companions.

Earl Grey to Sir Charles Fitz Roy.  
(Despatch No. 79, per ship Bussorah Merchant.)

Sir, Downing Street, 17th Decr., 1846.

I transmit to you herewith a copy of a letter from the Assistant Secretary to the Board of Treasury, with an Extract from the Instructions issued in the Colony of Van D. Land to the Officers who are Accountants for Convict Stores, together with Blank Forms; and I have to request that you would give the necessary directions for their adoption and observance by the Convict Store Department in New South Wales.

I have, &c,  
Grey.

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

Sir, Treasury Chambers, 7th December, 1846.

I am commanded by the Lords Commissioners of Her Majesty's Treasury to request that you will state to Earl Grey that my Lords, having had under consideration a Report from the Commissioners of Audit on the subject of the regulations for the issue and accounting for of Convict Clothing and Stores in New South Wales and Van Diemen's Land, it has appeared to them that certain regulations adopted in the last mentioned Colony may be advantageously extended to New South Wales; and My Lords have accordingly directed an extract from the Van Diemen's Land Instructions, with accompanying Forms, to be transmitted with this communication, which they suggest should be forwarded to the Governor of New South Wales with directions for the adoption and due observance of them by the Convict Store Department in that Colony.

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

[Sub-enclosure.]  
Extract from Instructions at Van Diemen's Land to Superintendent, etc., Accountants for Convict Stores.

In the event of Men being detached to an Out station the Storekeeper or Accountant will forward a Bill of delivery, Form No. 8, to the Officer under whose charge the Party will be, of any Clothes or Stores they may take with them (under authority) requiring in return a Receipt, Form No. 9.

The issue of Clothing is to be accounted for and supported by Voucher, Form No. 12.

It is to be particularly observed that, upon every issue of new Bedding and Clothing, the whole is to be first marked and then issued to the Men in presence of the Superintendent, and the old Clothing and Shoes are to be taken from the Men and placed in store, in order that, when any claim for Clothing or parts of Clothing is preferred, an issue from the old should be made until it be ascertained that Clothing is due to the Party claiming. By strict adherence to this Instruction, many undue issues may be avoided andrender it impossible for Prisoners to traffic or make away with their new Clothing.
Sir Charles Fitz Roy to Earl Grey.

(My Lord)

Government House, 21st December, 1846.

I have the honor to acknowledge the receipt of Your Despatch Lordship’s Circular Despatch, dated the 7th of July last, informing me that Her Majesty had been pleased to entrust to your care, as one of the Principal Secretaries of State, the Seals of the Colonial Department.

I have, &c.,

Chs. A. Fitz Roy.
HISTORICAL RECORDS OF AUSTRALIA.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 62, per ship Trafalgar.)

My Lord,

Government House, 23d December, 1846.

I have had the honor to receive Your Lordship’s despatch of the 31st July, marked “Separate,” introducing Mr. George F. B. St. John, who now holds the appointment of Commissioner of Crown Lands for the County of Bourke in the Port Phillip District of this Colony, with regard to promotion in the Public Service.

Should a favorable opportunity offer, I shall not fail to attend to Your Lordship’s wishes with reference to Mr. St. John.

I have, &c.,

CHS. A. FITZ ROY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 80, per ship Bussorah Merchant: acknowledged by Sir Charles Fitz Roy, 20th June, 1847.)

Sir,

Downing Street, 24 December, 1846.

My attention has been called by the Lieut. Governor of Van Diemen’s Land to a charge which has been temporarily incurred by that Government at the rate of Five hundred and Twenty Pounds per annum for the remuneration of persons, whom it was necessary to employ in the Customs Department in that Colony in consequence of an order received by the Collector at Hobart Town, Mr. Barnes, to proceed to Sydney on special service taking with him such officers as he might require for that Service.

Having referred the question for the consideration of the Lords Commissioners of the Treasury, I transmit to you herewith, for your information and guidance, a Copy of a letter on the subject from the Assistant Secretary to that Board.

It is obviously unreasonable that the Colony of Van Diemen’s Land should be charged with any extra expense on account of an enquiry which it had become necessary to institute with a view to the due security of Revenues of New South Wales and which had reference entirely to the interests of that Colony.

It has appeared to Her Majesty’s Government that the correct and proper method of arranging this expenditure will be, that the three officers, who have been sent from Van Diemen’s Land on the service in question, should, during their absence, draw one moiety of the Salary of their respective offices in the same manner as if they had been under any other circumstances absent on leave, and that the other portion of the charge should be defrayed by the Government of New South Wales, as a charge incident to the collection and management of the Customs Department in that Colony.
GREY TO FITZ ROY.

You will, therefore, take the necessary measures for the payment of the amount so charged from the gross receipts of Customs in New South Wales; and I have directed the Lieut. Governor of Van Diemen's Land to call upon the officers in question, so soon as they shall have received that payment, to refund to the Treasury of Van Diemen's Land the amount of difference which they have drawn from that source during their absence from the Colony. That amount will be nearly equal to the extra charge, which has been incurred in the Customs Department of Van Diemen's Land for the remuneration of the persons employed in the performance of the duties of the absent officers.

I have, &c,

GREY.

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

Sir,

Treasury Chambers, 4th November, 1846.

Referring to that part of your letter of 30th September last, which relates to the payment by the Government of Van Diemen's Land of Salaries of certain persons temporarily employed in the Customs Department during the absence of the Collector, Senior Clerk, and Landing Waiter, who had been deputed to investigate and report upon the proceedings and accounts of the Customs Department in New South Wales, I am commanded by the Lords Commissioners of Her Majesty's Treasury to observe to you, for the information of Earl Grey, that it appears from Sir E. Wilmott's despatch, No. 55 of 18th March, 1846, that, in consequence of the absence of the Officers deputed to New South Wales, it became necessary to apply an amount nearly equal to a moiety of their Salaries to the remuneration of the Parties by whom the Duties of their respective Appointments in Van Diemen's Land were executed.

I am further to request you will state to Earl Grey that the Government of Van Diemen's Land ought not to be subjected to any extra expense on account of an inquiry which it had become necessary to institute with a view to the due security of the Revenue of New South Wales, and which had reference to the interests of this last mentioned Colony only; and My Lords conceive it will be proper that, during the absence from Van Diemen's Land of the Officers engaged in that enquiry, they should receive from the Government of that Colony a moiety only of their respective Salaries, in the same manner as in other cases of absence from duty, and that the portions of Salary of which they would thus be deprived in consequence of their temporary employment in the service of the Government of New South Wales should be made good to them by this last mentioned Government, as a charge obviously "incident to the Collision and Management" of the Customs Duties of the Colony.

I am further to request you will suggest to Earl Grey that Instructions should be conveyed to the Governors both of Van Diemen's Land and of New South Wales, to adjust the payment of the Officers employed in the enquiry in the last mentioned Colony upon the principle above mentioned; whereby the expense of the
remuneration of Acting Officers in Van Diemen's Land, referred to in Sir E. Wilmot's Despatch, will be defrayed from the moieties of Salary to be withheld or recovered from the absent parties without subjecting this Colony to extra charge.

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

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 65, per ship Trafalgar; acknowledged by Earl Grey, 26th November, 1847.)

My Lord, Government House, 27th December, 1846.

With reference to Your Lordship's Despatch No. 9 of the 27th July last, requesting me to communicate to Mr. J. A. Jackson, formerly Colonial Treasurer of South Australia, the correspondence which had passed between Your Lordship's Department and the Board of Treasury on the subject of his application for re-employment in the Colonial Service, I have the honor to inform your Lordship that Mr. Jackson left this Colony some time ago, and I am unable to procure his address.

I have, &c.,
CHS. A. FITZ ROY.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 66, per ship Trafalgar.)

My Lord, Government House, 28th December, 1846.

I have the honor to report that I have given directions for the transmission by the present Mail to the Colonial Department, through the hands of the Agent for this Colony in London, of two bound Copies of the Votes and Proceedings of the Legislative Council during the second Session of the current year.

I have, &c.,
CHS. A. FITZ ROY.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 67, per ship Trafalgar; acknowledged by Earl Grey, 26th June, 1847.)

My Lord, Government House, 29th December, 1846.

With reference to the correspondence which was transmitted to my Predecessor in Lord Stanley's despatch No. 137 of the 1st December, 1845, I have the honor to forward herewith a Petition addressed to Her Majesty by the Merchants and Colonists of the District of Port Phillip, pointing out the delay, inconvenience and expense, which are incurred by the present mode of transmitting the Mails from the United Kingdom to Port Phillip.
FITZ ROY TO GREY.

Phillip by the Sailing Packets to Sydney, and praying that, in future, the Mails be forwarded in Separate Bags direct to Melbourne, whenever opportunities may occur, otherwise by way of Hobart Town, and only through Sydney when there shall be no vessel sailing for those Ports. I have, &c.,

Chs. A. Fitz Roy.

[Enclosure.]

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

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch marked "Military, No. 4," per ship Bussorah Merchant; acknowledged by Sir Charles Fitz Roy, 20th August, 1847.)

Sir, Downing Street, 30 December, 1846.

Adverting to my Despatch No. 1 of the 6th Ultimo in which I have explained the reasons which preclude Her Majesty's Government from applying to Parliament for the means of placing the town of Melbourne in a defensible condition, I think it right to acquaint you that the same reasons have appeared to us to render it inexpedient to apply for a grant to defray the expense of certain works, which have been proposed for the purpose of protecting the entrance to Port Jackson. You will, therefore, call the attention of the Colonial Legislature to this subject, and to assure that Body that the Master General and Board of Ordnance will be ready to apply any funds which may be voted for the purpose of securing the entrance to the Port.

I am given to understand that the cost of such works as the Board of Ordnance consider proper for that purpose would probably amount to £12,322. I have, &c.,

Grey.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 68, per ship Trafalgar; acknowledged by earl Grey, 4th October, 1847.)

My Lord, Government House, 30th December, 1846.

With reference to Mr. Secretary Gladstone's Despatch No. 31 of the 26th June last, transmitting to me the Copy of a Despatch which had been addressed to the Acting Superintendent of Port Phillip, conveying instructions for his guidance in the disposal of a party of 299 Exiles proceeding by the ship "Maitland" from Milbank, Pentonville and Parkhurst Prisons, I have now the honor to forward Copies of two communications from
the Superintendent reporting the arrival of the "Maitland" at Port Phillip on the 9th of November, with 291 Exiles on board; and further reporting that the whole of these people found employment in the course of three days after their arrival, the wages of the Laborers averaging Twenty Pounds a year.

I also have the honor to transmit the copy of a Despatch, which was addressed to me by the Acting Superintendent previously to the arrival of the Exiles, enclosing a Return of men whose Sentences of Transportation had expired in Van Diemen's Land and who had been introduced into Port Phillip by local exertion.

This Despatch, I feel convinced, will be interesting to your Lordship, with reference to the questions of free immigration, and the re-introduction of Convicts into this Colony.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosures.]

Copies of these leters, dated 13th November, 13th November, and 30th October, 1846, will be found in a volume in series III.

SECRETARY OF STATE TO SIR CHARLES FITZ ROY.

The following despatches,* written in the year 1847, have been omitted:

<table>
<thead>
<tr>
<th>Dated</th>
<th>Numbered</th>
<th>Transmitting</th>
</tr>
</thead>
<tbody>
<tr>
<td>25th January</td>
<td>89</td>
<td>request for report re Richard Lowndes, convict.</td>
</tr>
<tr>
<td>16th February</td>
<td>94</td>
<td>approval of nine first class and five hundred second class conditional pardons.</td>
</tr>
<tr>
<td>18th February</td>
<td>96</td>
<td>instructions for free passages to England for James Cox and Bryan Roveen, emancipists.</td>
</tr>
<tr>
<td>26th February</td>
<td>97</td>
<td>approval of one hundred and sixty-nine conditional pardons.</td>
</tr>
<tr>
<td>27th February</td>
<td>100</td>
<td>request for report re conviction of James Lowe.</td>
</tr>
<tr>
<td>13th March</td>
<td>106</td>
<td>do re Matthew Hooper Borrow, alias William Barrell.</td>
</tr>
<tr>
<td>17th March</td>
<td>109</td>
<td>approval of general free pardon for George Smith.</td>
</tr>
<tr>
<td>24th March</td>
<td>116</td>
<td>notification of grant of free passage to wife and family of Bryan Veech, convict.</td>
</tr>
<tr>
<td>12th April</td>
<td>123</td>
<td>approval of estimate for repairs, etc., to convict buildings.</td>
</tr>
<tr>
<td>22nd April</td>
<td>133</td>
<td>inquiry re property left by Thomas Canny, convict.</td>
</tr>
<tr>
<td>23rd April</td>
<td>134</td>
<td>request for mitigation of sentence on John Edwards.</td>
</tr>
<tr>
<td>29th April</td>
<td>143</td>
<td>request for pardon for Henry Bridge.</td>
</tr>
<tr>
<td>4th June</td>
<td>165</td>
<td>refusal of pardon under great seal for Richard Edwards.</td>
</tr>
<tr>
<td>15th June</td>
<td>169</td>
<td>request for report re John Trarwicks, convict.</td>
</tr>
<tr>
<td>16th June</td>
<td>170</td>
<td>non-acceptance of confessions of murders by Thomas Purton, expiree.</td>
</tr>
<tr>
<td>21st June</td>
<td>171</td>
<td>refusal of absolute pardon for William King, convict.</td>
</tr>
<tr>
<td>6th July</td>
<td>184</td>
<td>authority for absolute pardon for Moses Joseph.</td>
</tr>
<tr>
<td>8th July</td>
<td>186</td>
<td>certificate re sentence on Michael Cushane.</td>
</tr>
<tr>
<td>9th July</td>
<td>187</td>
<td>approval of six hundred and sixteen conditional pardons.</td>
</tr>
<tr>
<td>10th July</td>
<td>189</td>
<td>inquiry re Henry Phantom, convict.</td>
</tr>
<tr>
<td>22nd July</td>
<td>192</td>
<td>free pardon for Philip Lacken.</td>
</tr>
<tr>
<td>30th July</td>
<td>199</td>
<td>request for report re Patrick Sheehan, convict.</td>
</tr>
<tr>
<td>7th August</td>
<td>205</td>
<td>approval of two hundred and eighty-two conditional pardons.</td>
</tr>
</tbody>
</table>

* Note 35.
The following despatches,* written in the year 1847, have been omitted—continued.

<table>
<thead>
<tr>
<th>Despatch dated</th>
<th>numbered</th>
<th>Transmitting</th>
</tr>
</thead>
<tbody>
<tr>
<td>15th August</td>
<td>207</td>
<td>authority for absolute pardon for William King.</td>
</tr>
<tr>
<td>3rd September</td>
<td>215</td>
<td>request for certificate of death of W. Stretch or Johnstone, convict.</td>
</tr>
<tr>
<td>17th September</td>
<td>222</td>
<td>inquiry re effects of William Goodenough, convict.</td>
</tr>
<tr>
<td>26th September</td>
<td>229</td>
<td>request for report re Woodley Boddle, convict.</td>
</tr>
<tr>
<td>17th October</td>
<td>235</td>
<td>report re grant of passage to Mary Mannion, wife of convict.</td>
</tr>
<tr>
<td>19th October</td>
<td>239</td>
<td>request for copy of pardon to Richard Kidman.</td>
</tr>
<tr>
<td>22nd October</td>
<td>242</td>
<td>authority for conditional pardons for William Carr and John Pearce.</td>
</tr>
<tr>
<td>23rd October</td>
<td>243</td>
<td>authority for three hundred and thirteen conditional pardons.</td>
</tr>
<tr>
<td>23rd October</td>
<td>244</td>
<td>instructions for report re Charles Ashby, convict.</td>
</tr>
<tr>
<td>30th January</td>
<td>254</td>
<td>request for report re Thomas Coffee, expiree.</td>
</tr>
<tr>
<td>30th January</td>
<td>255</td>
<td>recommendation of William King for absolute pardon.</td>
</tr>
<tr>
<td>30th January</td>
<td>259</td>
<td>report re conduct of John Sherwood, convict.</td>
</tr>
<tr>
<td>21st December</td>
<td>279</td>
<td>approval of two hundred and seventy-seven conditional pardons.</td>
</tr>
</tbody>
</table>

SIR CHARLES FITZ ROY TO SECRETARY OF STATE.

The following despatches,* written in the year 1847, have been omitted:—

<table>
<thead>
<tr>
<th>Despatch dated</th>
<th>numbered</th>
<th>Transmitting</th>
</tr>
</thead>
<tbody>
<tr>
<td>6th January</td>
<td>8</td>
<td>confession of two murders by Thomas Purton, expiree.</td>
</tr>
<tr>
<td>9th January</td>
<td>12</td>
<td>report re pardon for William Dodd.</td>
</tr>
<tr>
<td>30th January</td>
<td>25</td>
<td>recommendation of William King for absolute pardon.</td>
</tr>
<tr>
<td>30th January</td>
<td>29</td>
<td>report re conduct of John Sherwood, convict.</td>
</tr>
<tr>
<td>1st February</td>
<td>30</td>
<td>quarterly return of wages, etc., for immigration purposes.</td>
</tr>
<tr>
<td>21st February</td>
<td>35</td>
<td>half-yearly return of steam vessels.</td>
</tr>
<tr>
<td>21st February</td>
<td>43</td>
<td>report re free passage to England granted to P. H. Morin, emancipist.</td>
</tr>
<tr>
<td>22nd February</td>
<td>45</td>
<td>report re John Lewis, convict.</td>
</tr>
<tr>
<td>23rd February</td>
<td>46</td>
<td>recommendation of Moses Joseph for absolute pardon.</td>
</tr>
<tr>
<td>26th February</td>
<td>48</td>
<td>half-yearly return of intestate estates.</td>
</tr>
<tr>
<td>1st March</td>
<td>49</td>
<td>recommendations for pardons.</td>
</tr>
<tr>
<td>1st March</td>
<td>50</td>
<td>do</td>
</tr>
<tr>
<td>27th March</td>
<td>59</td>
<td>reply to inquiry re emancipist father of Rose Mallon.</td>
</tr>
<tr>
<td>29th March</td>
<td>61</td>
<td>rule of court for Port Phillip.</td>
</tr>
<tr>
<td>28th March</td>
<td>65</td>
<td>convict returns for 1846.</td>
</tr>
<tr>
<td>30th March</td>
<td>65</td>
<td>quarterly schedule of appointments and special payments by deputy commissary-general.</td>
</tr>
<tr>
<td>1st April</td>
<td>69</td>
<td>recommendation for free passage for wife of Patrick Manion, emancipist.</td>
</tr>
<tr>
<td>3rd April</td>
<td>77</td>
<td>report re grant of free passage to Samuel Newcomb, emancipist.</td>
</tr>
<tr>
<td>11th April</td>
<td>85</td>
<td>report re conditional pardon for William Dodd.</td>
</tr>
<tr>
<td>15th April</td>
<td>86</td>
<td>returns of persons treated in convict hospitals.</td>
</tr>
<tr>
<td>13th April</td>
<td>87</td>
<td>recommendations for seventy-one conditional pardons.</td>
</tr>
<tr>
<td>15th April</td>
<td>89</td>
<td>rules of supreme court.</td>
</tr>
<tr>
<td>15th April</td>
<td>92</td>
<td>extension of pardons granted to James and Isaac Cooper.</td>
</tr>
<tr>
<td>19th April</td>
<td>93</td>
<td>conditional pardon to be granted to Henry Besant.</td>
</tr>
<tr>
<td>21st May</td>
<td>101</td>
<td>report re will of Patrick Ross, convict.</td>
</tr>
<tr>
<td>23rd May</td>
<td>113</td>
<td>quarterly schedule of appointments and special payments by deputy commissary-general.</td>
</tr>
<tr>
<td>24th May</td>
<td>114</td>
<td>quarterly abstract returns for immigration.</td>
</tr>
<tr>
<td>30th May</td>
<td>120</td>
<td>recommendations for two hundred and eighty-three conditional pardons.</td>
</tr>
<tr>
<td>22nd June</td>
<td>125</td>
<td>recommendation of Anne Greenfield for absolute pardon.</td>
</tr>
<tr>
<td>23rd June</td>
<td>129</td>
<td>recommendations for two hundred and sixty-four conditional pardons.</td>
</tr>
</tbody>
</table>

* Note 35.
The following despatches,* written in the year 1847, have been omitted—continued.

<table>
<thead>
<tr>
<th>Despatch dated</th>
<th>numbered</th>
<th>Transmitting</th>
<th>Recommendation for free passage for family of John Brown, expiree.</th>
</tr>
</thead>
<tbody>
<tr>
<td>9th July</td>
<td>139</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10th July</td>
<td>140</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12th July</td>
<td>142</td>
<td></td>
<td>report re inability to trace emancipist father of Rose-Mallon.</td>
</tr>
<tr>
<td>14th July</td>
<td>144</td>
<td></td>
<td>rules of supreme court.</td>
</tr>
<tr>
<td>17th July</td>
<td>147</td>
<td></td>
<td>report re trial and conviction of James Lowe.</td>
</tr>
<tr>
<td>18th July</td>
<td>148</td>
<td></td>
<td>do re Richard Lowndes, expiree.</td>
</tr>
<tr>
<td>19th July</td>
<td>149</td>
<td></td>
<td>half-yearly return of steam vessels.</td>
</tr>
<tr>
<td>20th July</td>
<td>150</td>
<td></td>
<td>recommendations for one hundred and fifty-seven conditional pardons.</td>
</tr>
<tr>
<td>25th July</td>
<td>155</td>
<td></td>
<td>quarterly abstract returns for immigration.</td>
</tr>
<tr>
<td>16th August</td>
<td>162</td>
<td></td>
<td>requisition for stationery for convict departments.</td>
</tr>
<tr>
<td>18th August</td>
<td>164</td>
<td></td>
<td>recommendations for one hundred and seventy-nine conditional pardons.</td>
</tr>
<tr>
<td>21st August</td>
<td>167</td>
<td></td>
<td>quarterly schedule of appointments and special payments by deputy commissary-general.</td>
</tr>
<tr>
<td>22nd August</td>
<td>168</td>
<td></td>
<td>rules of supreme court.</td>
</tr>
<tr>
<td>25th August</td>
<td>174</td>
<td></td>
<td>recommendation of John Edwards for general free pardon.</td>
</tr>
<tr>
<td>29th August</td>
<td>175</td>
<td></td>
<td>do of Bernard Murray for absolute pardon.</td>
</tr>
<tr>
<td>15th September</td>
<td>181</td>
<td></td>
<td>report re proposed absolute pardon for John Edwards.</td>
</tr>
<tr>
<td>20th September</td>
<td>186</td>
<td></td>
<td>do re Mathew Hooper Barrow alias William Burrill, convict.</td>
</tr>
<tr>
<td>23rd September</td>
<td>189</td>
<td></td>
<td>returns of intestate estates.</td>
</tr>
<tr>
<td>24th September</td>
<td>190</td>
<td></td>
<td>estimates for repairs to convict buildings.</td>
</tr>
<tr>
<td>15th October</td>
<td>205</td>
<td></td>
<td>recommendations for one hundred and ninety-seven conditional pardons.</td>
</tr>
<tr>
<td>18th October</td>
<td>208</td>
<td></td>
<td>report re Henry Budge, convict.</td>
</tr>
<tr>
<td>19th October</td>
<td>209</td>
<td></td>
<td>recommendation of John Lane for absolute pardon.</td>
</tr>
<tr>
<td>23rd October</td>
<td>213</td>
<td></td>
<td>report re Thomas Ainsworth, expiree.</td>
</tr>
<tr>
<td>27th October</td>
<td>217</td>
<td></td>
<td>quarterly schedule of appointments and special payments by deputy commissary-general.</td>
</tr>
<tr>
<td>29th October</td>
<td>219</td>
<td></td>
<td>applications for free passages for families of convicts.</td>
</tr>
<tr>
<td>2nd November</td>
<td>222</td>
<td></td>
<td>request by Catherine Harrigan or Andrew, convict, for free passages for two sons.</td>
</tr>
<tr>
<td>17th November</td>
<td>227</td>
<td></td>
<td>quarterly abstract returns for immigration.</td>
</tr>
<tr>
<td>18th November</td>
<td>228</td>
<td></td>
<td>recommendations for three hundred and sixty-one conditional pardons.</td>
</tr>
<tr>
<td>21st November</td>
<td>231</td>
<td></td>
<td>report re compensation for Neil Patten for illegal detention.</td>
</tr>
<tr>
<td>22nd November</td>
<td>232</td>
<td></td>
<td>list of persons to whom permission has been granted to import foreign labourers.</td>
</tr>
<tr>
<td>25th November</td>
<td>235</td>
<td></td>
<td>requisition for police clothing.</td>
</tr>
<tr>
<td>26th December</td>
<td>251</td>
<td></td>
<td>recommendations for free passages for families of convicts.</td>
</tr>
<tr>
<td>21st December</td>
<td>252</td>
<td></td>
<td>request by Ann Lear and Garret Mallon, convicts, for free passages for families.</td>
</tr>
<tr>
<td>22nd December</td>
<td>254</td>
<td></td>
<td>recommendations for three hundred and two conditional pardons.</td>
</tr>
<tr>
<td>30th December</td>
<td>265</td>
<td></td>
<td>report re John Trarwicks, emancipist.</td>
</tr>
</tbody>
</table>

SIR CHARLES FITZROY TO EARL GREY.

(Despatch No. 1. per ship Trafalgar: acknowledged by earl Grey, 30th June, 1847.)

My Lord,

Goverment House, 1st January, 1847.

I have the honor to report to Your Lordship that, soon after my arrival in the Colony, I laid your predecessor's Despatch No. 2 of the 7th March, 1846, before my Executive Council, on the subject of the Quit Rents due to the Crown on lands:
granted under the former Regulations of the Government; and I now have the honor to enclose a Copy of the Regulations which, with the advice of the Council, after many sittings and much deliberation, I have established and published. It may be proper here to explain that I have delayed reporting my proceedings in this case, until I should have the advantage of ascertaining the practical operation of the Regulations as well as the reception which they met with from the public. More especially from those persons whose interests were affected by them. I have now the satisfaction to state that, in both respects, I have every reason to believe that they have fully answered the purpose contemplated by the Executive Council and myself. It is well known to Her Majesty's Government that the claims on this account were very generally regarded by the Colonists affected by them as extremely oppressive, more especially from the very heavy arrears which had been allowed to accumulate from the absence of coercive measures, on the part of the Government, to enforce the regular payment of this branch of the Revenue. It is not necessary now perhaps to enquire in what way this laches arose, but it may be admitted that, in many cases, it has practically operated as an injustice to the present possessors of the land. If, therefore, the terms of payment and redemption, offered by the Regulations which I have recently promulgated, should be considered as more liberal than, in the discretion which was given to the local Government by Mr. Secretary Gladstone's despatch, was intended, I must state my persuasion that no less favorable measure would have been considered equitable by the public, or would have tended to allay the discontent which, as already explained, appears to have been so generally felt in reference to these claims.

It will be perceived that the principle of the Regulations is founded on a payment of not less than Twenty years' Quit Rent, being the period fixed by the Deeds as that for which the redemption might be made by the Grantees. With a view, however, to effect the early and complete extinction of these claims, it has been laid down as a rule that the payment of 20 years' quit rent, whenever made, is to entitle the Grantee to the total satisfaction of the claim; and in this way, therefore, the vexatious questions, which have arisen by enforcing the payment of arrears, have been entirely got rid of. As a further means of extinguishing these claims, it has been thought advisable to give parties the benefit of an immediate payment in Cash, and accordingly a Scale has been introduced into the Notice, giving such as may desire to
redeem their Quit rents in this way the advantage of Compound Interest at the rate of 8 per Cent. per annum, being the rate now current in the Colony.

There is another point to which it seems necessary to advert, namely the offer made to such parties as may have paid more than 20 years' quit-rent of the return of the overplus. It is not possible to say, with precision, at the present time what is likely to be the sum required for this purpose, but I have no reason to believe that it will be considerable. The Notice was published in the 9th of October last, and, although upwards of two months and a half have since elapsed, the claims on this account, I am informed, have as yet been but very trifling.*

It does not seem necessary that I should trouble your Lordship with any further explanation of the principle which has guided the Executive Council and myself in establishing these Regulations. They have been framed with an anxious desire to do justice to the individuals concerned, without, at the same time, making an unnecessary sacrifice of the public interests. It is confidently believed that in both these respects they will answer the desired end, and as such, therefore, will be acceptable to Her Majesty's Government.

I have, &c.

CHS. A. FITZ ROY.

[Enclosure.]

[These regulations were published in the "Government Gazette." ]

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 2, per ship Trafalgar.)

My Lord,

Government House, 2nd January, 1847.

I have the honor to report that I have granted, with the advice of the Executive Council, Eighteen Months' leave of absence to Mr. William H. Kerr, Chief Commissioner of Insolvent Estates in this Colony, to proceed to England on urgent private business, and that Mr. Kerr has informed me that he has taken his passage in a vessel about to sail for England on the 8th of next month.

I have further to inform that I have appointed Mr. Edwin C. Sutton to perform Mr. Kerr's duties during his absence.

I have, &c.,

CHS. A. FITZ ROY.

* Note.—Up to this date there has been no claim for re-payment except from parties who had redeemed their Quit Rents, who are not claimants within the meaning of the Regulations of the 8th October.
FITZ ROY TO GREY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 3, per ship Trafalgar.)

My Lord, Government House, 3d January, 1847.

With reference to Sir George Gipps' despatch No. 184 of the 11th November, 1845, reporting the departure, under the Command of the Surveyor General of this Colony, of an overland expedition for the purpose of exploring a direct route from hence to Port Essington, I have the honor to transmit for your Lordship's information a copy of the Supplement to the New South Wales Government Gazette of the 4th Ultimo, wherein I caused to be published for general information two despatches recently received from Sir Thomas Mitchell, dated the 9th September and 9th November last, detailing the progress he had made up to those dates.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.

[This was the supplement to the "Government Gazette," dated 7th December, 1846.]

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 4, per ship Trafalgar.)

My Lord, Government House, 4th January, 1847.

With reference to my Predecessor's despatch to Mr. Secretary Gladstone of the 25th of June last, No. 129, transmitting printed Copies of the Financial Papers, which he had submitted to the Legislative Council on the 9th of the same Month, I have now the honor to report that, finding on my arrival here that the Council had adjourned and had subsequently been prorogued by Sir George Gipps without having voted the necessary supplies for carrying on the public Service, it became my duty to take the earliest opportunity to Reassemble the Council and to re-submit these Estimates, which I did with certain alterations and additions, which will be found detailed in the printed copies of the Message which I addressed to the Council on the occasion, and which are forwarded herewith.

The reasons that induced me to consider these alterations and additions desirable are so fully explained in my Despatch No. 54 of the 6th November, reporting the prorogation of the Council, and reviewing the proceedings of the Session, that I need not occupy your Lordship's time with a recapitulation of them.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

[A copy of this message and the financial papers will be found in the "Votes and Proceedings" of the legislative council.]

* Note 36.
1847.
5 Jan.

Memorial transmitted re claims of P. Simpson.

Previous reports and decisions on claims.

Proposed legal action.

Memorial of P. Simpson re claims for remuneration as commandant at Wellington Valley.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 5, per ship Trafalgar; acknowledged by earl Grey, 31st May, 1847.)

My Lord,

Government House, 5th January, 1847.

I have the honor to transmit the Copy of a Memorial presented to me by Mrs. Percy Simpson in the name of her husband, who is absent from the Colony, renewing an alleged pecuniary claim upon the Government arising out of the Appointment of Civil Commandant of Wellington Valley in this Colony, which Mr. Simpson held from the commencement of the year 1823 to the end of the month of June, 1826.

This Claim has been repeatedly urged upon successive Secretaries of State and Governors of New South Wales for several years past; and the facts relating to it are so fully and clearly reported upon by my Predecessor Sir George Gipps in his Despatch No. 80 of the 9th April, 1844, that I take the liberty of referring your Lordship to that Communication, merely observing that, as the question has already been decided against Mr. Simpson by three of your Lordship's Predecessors, the only practicable way, I can point out of setting it finally at rest, will be to allow that Gentleman to bring an action against the Government; and this is the course which I have informed Mrs. Simpson, I should recommend your Lordship to sanction.

I have, &c,

CHS. A. FITZ ROY.

[Enclosure.]

THE Memorial of Percy Simpson, Esquire, late Commandant at Wellington Valley,

To His Excellency Sir Charles Augustus Fitz Roy, Knight, Companion of the Royal Hanoverian Guelphic Order, Captain General and Governor in Chief of the Territory of New South Wales and its Dependencies, and Vice Admiral of the same, etc., etc., etc.,

Most respectfully sheweth,

That your Memorialist held the appointment of Capo di Governo (or Resident) at Pavo, one of the Ionian Islands for upwards of three years under the Lord High Commissioner, late General Sir Thomas Campbell, and Sir Thomas Maitland, when, owing to the reduction of the Regiment to which your Memorialist belonged (the Royal Corsican Rangers), he returned to England, bringing strong recommendations to Sir Henry Torrens, then Adjutant General, from Sir Thomas Maitland, High Commissioner of the Ionian Islands.

That your Memorialist shortly afterwards married and proceeded to New South Wales, strongly recommended by letters from Sir Wilmot Horton, Sir Henry Torrens, Colonel Blair of Blair, and several other influential persons, as likewise having an order for Two thousand acres of land as a Grant from the then Under Secretary of State.
That your Memorialist instead of taking advantage of his Grant of land was induced by the request of the Governor Sir Thomas Brisbane to undertake the formation of an Agricultural Depot Settlement in a remote and newly discovered part of the Colony called Wellington Valley, where your Memorialist was instructed to proceed with Drays, Stores, Prisoners and Military Guard, to form a Settlement, with compass in hand, the then Surveyor General having reported that he could not point out any practical road for Drays, and which, after much difficulty and hardships, your Memorialist successfully effected, as is proved by a letter from Major Goulburn, the then Colonial Secretary, complimenting him on his zeal and discretion in having accomplished an object of what he considered of such paramount interest to the welfare of the Colony.

That an agreement was made, by which it was stipulated, that your Memorialist was to receive for his services and as a remuneration for abandoning his own grazing and agricultural pursuits, then so lucrative in this Colony, 4 pounds each for as many Convicts as he should be able to maintain for the next year on the wheat raised under his Superintendence.

That, according to his agreement as a free Settler with Sir Thomas Brisbane, your Memorialist devoted the whole of his time to the formation of that distant Settlement, nor was he permitted to select his Grant of land or take advantage of the favorable opportunity that then presented of otherwise improving his means.

That the then Colonial Secretary, Mr. McLeay, applied to his predecessor, the late Major Goulburn, the day prior to the latter's departure from the Colony, to know by what authority your Memorialist claims per centage, when Major Goulburn stated that your Memorialist was entitled to draw per centage on all wheat raised by him at Wellington Valley, and not on the number of men rationed or fortuitously placed there by favor, as supposed by General Darling; that Mr. McLeay was satisfied, and added that the words "after which" in the agreement implied for succeeding years, and that were there any ambiguity of expression in the wording of it that the Government was too honorable to take advantage of any quibble whatever, and that your Memorialist would be paid on all the Wheat raised under his superintendence.

That, accordingly, the Draft of your Memorialist for £54 3s. 4d. in favor of Mrs. Percy Simpson was duly honored by Warrant of General Darling as such per centage, dated 16th Febly., 1826.

That your Memorialist sent in his account to the Colonial Secretary, Mr. McLeay, dated 16th March, 1826, claiming a balance of per centage then due to him by the Government of £3,720 19s. 4d., exclusive of Salary, and for his immediate use applied for the sum of £130 on account per centage. That General Darling, as on the former demand, recognized his claim by his Warrants for the payment of these Amounts, dated 21st March, 1826, and 29th July, 1826.

That afterwards General Darling disputed the terms of the agreement made by his Predecessor, General Sir Thomas Brisbane, dated 1st January, 1823, and refused to pay your Memorialist, except for the number of men that had been bona fide rationed by your Memorialist in 1824, and not on the quantity of wheat...
Memorial of P. Simpson re claims for remuneration as commandant at Wellington valley.

then in Stack in March, 1826, raised by your Memorialist under his only agreement of Sir Thomas Brisbane, and which Government were selling at 14s. 6d. per Bushel.

That General Darling expressed in extremely strong terms his displeasure and threat of dismissal to your Memorialist for having prayed that his claim to per centage might be submitted to the investigation of a Board of Claims instituted by General Darling then sitting in Sydney, which reasonable request was not complied with.

That His Excellency afterwards offered to stock and improve your Memorialist's Grant of Land, provided he would give up his claim to per centage beyond the number of men actually subsisted at Wellington Valley, 1824, and not on the quantity of wheat raised, which was declined by your Memorialist.

That a second proposal was made to your Memorialist by His Excellency to allow him £4 per annum for as many men as had been rationed by him during the whole term of his command at Wellington Valley, comprising a period of three years and a half; this proposal was also refused by your Memorialist.

That it was again proposed to your Memorialist that he should take Wellington Valley in lieu of his claim, which he likewise refused to accept.

That General Darling afterwards caused to be notified to your Memorialist that the Colonial Auditor had been ordered to prepare a Warrant in favor of your Memorialist, for the payment of £578 6s. 6d. on your Memorialist signing a receipt for the amount as being the balance of his pay as Commandant from 1st January, 1823, to the 26th July, 1826, at the rate of £300 per annum (the salary given to the Commandant at Bathurst in lieu of per centage).

That, on your Memorialist respectfully declining to sign such receipt or any one that would be prejudicial to his agreement with Sir Thomas Brisbane, General Darling ordered him the sum of £193 17s. 2½d., observing that your Memorialist, giving a receipt for the same as such balance, it was evident that no receipt so expressed would prevent your Memorialist's claim to per centage upon reference to General Sir Thomas Brisbane.

That, during the period of all this official correspondence between the Colonial Government and your Memorialist, he was unable to obtain possession of his Grant of land, or have assigned to him Convict Servants (no free persons being then to be procured).

That your Memorialist being thus placed in extreme distress was reluctantly obliged to sell his promised Grant of Land of 2,000 acres for a very inconsiderable sum of money, and subsequently his Commission for £700, on which he received as retired pay £136 per annum, which pay had been annually devoted for many years to keeping up Life Policies of Insurance for the benefit of his surviving family, but which Policy was forfeited on the sale of his Commission.

That, during the period of your Memorialist's superintendence at Wellington Valley, which lasted three years and a half up to June 30th, 1826, he was secluded from Society and made great sacrifices to personal comfort and convenience in that remote Establishment.

That your Memorialist is far from wishing to impute to General Darling an intention to do an act of injustice towards him; but he confidently asserts that he misconstrued the terms of the agreement
made with your Memorialist when he undertook the formation of an Agricultural Depot Settlement at Wellington Valley, as is now proved by Sir Thomas Brisbane's letter, dated 17th August, 1843, and which fully states that your Memorialist is entitled to claim per centage on the whole of the wheat grown at Wellington Valley from the period of its establishment up to the promulgation of an order published in the Government Gazette, 30th June, 1826, discontinuing the system in practice of remunerating by per centage on produce raised or on work performed under their superintendence, and that from that date a fixed Salary would be established in lieu of per centage, when your Memorialist gave up his appointment.

That, in July, 1828, some public works of great magnitude on the River Hawkesbury entrusted to a Military Officer gave way after much outlay of Public expense, when General Darling requested your Memorialist to take the superintendence thereof, under the denomination of Resident Magistrate and Surveyor of Roads and Bridges.

That your Memorialist, after completing that work and opening out the Great North line of Road to the Hunter, an undertaking of great difficulty from the broken nature of the country, removed to Head Quarters to take charge of the Road Department in the County of Cumberland, and continued as such until the arrival from England of Colonel Barney of the Royal Engineer Corps in 1836, when the Roads and Bridges were transferred from the Surveyor General to the Commanding Royal Engineer, and the following day your Memorialist was appointed to succeed Captain Forbes, 39th Regiment, as Police Magistrate at Patrick's Plains.

That such removal from the Surveyorship of Roads and Bridges was considered by the Surveyor General, Sir Thomas L. Mitchell, a great loss to the Colony, as he was pleased to express his opinion of your Memorialist's abilities as being most valuable in such Public Works.

That Your Memorialist's appointment of Stipendiary Police Magistrate at Patrick's Plains terminated on the 31st December, 1842, in common with several other Police Magistrates, in consequence of an order from Downing Street to Sir George Gipps to effect every possible reduction of Colonial expenditure in the Colony.

That, by regulations of the Right Honorable the Secretary of State for the Colonies, your Memorialist to a gratuity of Two years' salary after ten years' Services.

That Sir George Gipps promised to employ your Memorialist again under Government when in his power, as stated in the Colonial Secretary's letter of that date, but refused to grant your Memorialist any pecuniary compensation for the Twenty two years that he had devoted to the advantage of the Public Service under Government in New South Wales.

That your Memorialist, being left destitute of support for his large family consisting of a Wife and Seven children, was obliged to part with them, and proceed to England, to endeavor to obtain from his relations there a pecuniary loan for their subsistence during his absence, whilst he himself sought a fulfilment of his contract made with Governor Sir Thomas Brisbane, as likewise to prefer his claims to the retiring allowance guaranteed by the
Home Government, and which from his having been confirmed in his appointment in the Surveyor General's Department he feels he is more particularly entitled to.

That, in consequence of his representations, and Sir Thomas Brisbane's acknowledgment of having contracted the debt on the part of Government, Sir George Gipps was instructed to examine into his case as one of strict legal right and good faith, and that if failing in these high sounding words when tested, *even then* authorising *liberality* to be exercised by the then Colonial Government.

That your Memorialist most earnestly prays your Excellency will be graciously pleased to take these circumstances into favorable consideration, and afford such relief as the extreme hardship of them may to Your Excellency's sense of justice and good faith seem meet, and the unprovided and unprotected Situation of his family so urgently require.

And your Memorialist will ever pray. [Unsigned.]

---

**SIR CHARLES FITZ ROY TO EARL GREY.**

(Despatch No. 7, per ship Trafalgar.)

My Lord, Government House, 7th January, 1847.

I have the honor to transmit herewith the Printed Returns of the Census of the Population of this Colony taken on the 2nd of March last.

Your Lordship will perceive that an Educational Return, in a more detailed form than that given in the return now forwarded, is in progress and shall be transmitted to Your Lordship when completed.

I have, &c.,

[Enclosure.]

[These returns were published in the "Government Gazette" with a notice dated 4th November, 1846.]
SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 9, per ship Trafalgar; acknowledged by earl Grey, 5th June, 1847.)

My Lord,

Government House, 9th January, 1847.

I have the honor to transmit to your Lordship five Petitions, which have been placed in my hands for that purpose, addressed to the Queen and to the two Houses of Parliament, by certain of the Inhabitants of the Districts of Maitland and Paterson in this Colony, praying that the transportation of Criminals to New South Wales may not be renewed.

As the Petition to the House of Lords is addressed to Your Lordship for presentation, I have deemed it my duty to forward it with the despatches by this Packet; and I did not object to transmit the Petition to the House of Commons addressed to Mr. Ewart, trusting your Lordship will not disapprove of my forwarding it, although such a course is not strictly according to Regulations.

I annex a copy of the communications addressed to the Colonial Secretary with reference to these documents, which will explain the particulars relating to them.

Your Lordship will of course receive the Petition as expressing the feelings, with respect to the renewal of Transportation, of a portion of the inhabitants of the Colony. As I informed your Lordship in a previous despatch,* public opinion is much divided upon the subject, and I do not conceive that I shall be in a position to decide what is the opinion of the Majority until after the next Meeting of the Legislature. I have, &c.,

CHS. A. FITZ ROY.

[Enclosures Nos. 1 to 5.]

[Copies of these petitions are not available.]

[Enclosure No. 6.]

MR. R. JONES TO COLONIAL SECRETARY THOMSON.

Sir,

West Maitland, 19th December, 1846.

I have the honor to inform you that, at a public meeting held in Maitland on the 11th of November last, Petitions to Her Majesty and to both Houses of Parliament against the renewal of Transportation to this Colony were adopted. The Committee appointed to carry out the objects of that Meeting find a difficulty in sending home the Petitions to be presented to Parliament, and, feeling anxious that they should be transmitted safely, the Committee venture to request that His Excellency the Governor will be pleased to forward the Petitions to the Colonial Office. The Petition to the House of Lords is to be presented by the Right Honorable Earl Grey, that to the House of Commons by William Ewart, Esq.

* Marginal note.—Vide Despatch, No. 56 of 6 November, 1846.
1847.

9 Jan.

As the Petitions will be ready in about a week's time, the Committee would feel much obliged if you would let them know as early as convenient whether His Excellency will be pleased to comply with their request.

On behalf of the Maitland Anti-Transportation Committee,

I have, &c.,

RICHARD JONES, Secretary.

[Enclosure No. 7.]

MR. R. JONES TO COLONIAL SECRETARY THOMSON.

Sir, Maitland, 4th January, 1847.

I have the honor to acknowledge the receipt of your letter of the 16th December last, intimating that His Excellency the Governor had consented to forward to the Colonial Office the petitions from the inhabitants of this District against the renewal of Transportation; and I have been instructed to request that you will be pleased to convey to His Excellency the thanks of the Maitland Anti-Transportation Committee for his courtesy and kindness in deviating from the usual course of procedure to oblige them. The Petitions to the Houses of Parliament are forwarded herewith under cover to you, addressed respectively to the Right Honorable Earl Grey, Secretary of State for the Colonies, and to William Ewart, Esq. M.P. If His Excellency can conveniently forward them by the January Packet, the Committee will feel much obliged.

There are also forwarded herewith two Petitions to Her Most Excellent Majesty the Queen, one from the Male the other from the female inhabitants of Maitland and other districts of the Hunter against the renewal of Transportation to this Colony. The petitions were adopted at a public Meeting held in Maitland on the 11th of November last, and in the intermediate time they have been circulated for signature through a district containing a population of about 15,000 Souls. The Petition from the Males has, during this time, been signed by Two thousand, Nine hundred and forty (2,940) individuals, and that from the Females by Eighteen hundred and five (1,850). When the scattered state of the population and the consequent difficulty of obtaining signatures are taken into account, the number of persons, who have signed the petitions, will shew how general is the feeling against the renewal of Transportation.

Amongst the signatures to the Males' petition will be found those of the Wardens of the Maitland and Wollombi Districts, of several Magistrates, of most of the Clergy in the districts through which the Petition has been sent, of many land and Stock holders, of a very large number of the agricultural population, of nearly every one of the Merchants, Storekeepers and other Traders in the towns of the District.

A glance at the Ladies' petition will shew that it bears the signatures of persons in all ranks of Society.

At the public Meeting alluded to, a resolution was agreed to that the petitions to Her Majesty the Queen, when signed, should be forwarded to His Excellency the Governor, with a request that His Excellency would be pleased to transmit them for presentation to Her Majesty. In accordance with this resolution, the Committee venture to request that you will be pleased to lay these
petitions before His Excellency the Governor and convey to his Excellency the wishes of the Petitioners in respect to their transmission to Her Majesty.

We also forward a Petition addressed to the Queen by the inhabitants of the neighbouring district of Newcastle, which the Petitioners respectfully request His Excellency will be pleased to forward for presentation to Her Majesty. The petition was adopted at a public Meeting held in the town of New Castle, and bears 308 signatures, including those of all the resident Clergymen and of most of the leading Men of the town and district.

Respectfully acknowledging the courtesy and attention shewn to the Committee by the Government,

I have, &c,

On behalf of the Maitland Anti-Transportation Committee,

RICHARD JONES, Secretary.

[Enclosure No. 8.]

MR. G. WILKINSON TO SIR CHARLES FITZ ROY.

Sir,

I am directed by the Committee to transmit to your Excellency the petition to Her Majesty the Queen against the renewal of transportation to this Colony. The sheets contain the signatures of nine hundred and seventy three (973) Males, and five hundred and forty one (541) females, including the names of seven Magistrates and all the respectable inhabitants of this District.

The Committee for themselves and the petitioners respectfully request that Your Excellency will be pleased to cause the Petition to be laid before Her Majesty as early as possible; they desire permission to express a hope that Your Excellency will be enabled to support the prayer of their petition, believing that upon this subject depends the future welfare of the Colony, themselves and posterity.

I have, &c,

GEORGE WILKINSON, Secretary.

SIR CHARLES FITZ ROY TO EARL GREY.

(My Lord, Government House, 9th January, 1847.)

My Lord, Government House, 9th January, 1847.

I have the honor to transmit herewith authenticated Acts of council and in district of Paterson.

Transcripts of Seventeen Public and two Private Acts passed by the Legislative Council of this Colony during the last Session, intituled and numbered as in the annexed Schedule.

The Acts, numbered from 1 to 14 inclusive, and the two Acts assented to, having received my Assent, I trust will be found deserving of the Royal Allowance.

The Acts numbered 15, 16 and 17, I deemed it my duty to reserve for Her Majesty's consideration.

The whole of these Acts, with one exception, are accompanied by the Reports of the Crown Law Officers of this Government; it is not therefore necessary that I should enter at length into their merits, further than to observe that the Act No. 1, intituled,
“An Act to prevent for a limited time party processions and certain other public exhibitions in the Colony of New South Wales,” was submitted to the Council in consequence of the very serious riots that occurred in the Town of Melbourne on the 13th and 14th of July last, between the lower orders of the Catholic and Protestant Inhabitants, and which it was apprehended might be renewed both in Melbourne and Sydney on the 5th November; and I have the satisfaction of stating that the passing of this Act had the desired effect. As it was prepared and introduced to the Council by the Attorney General, it is not accompanied by the Official Report of the Crown Law Officers.

The Act No. 15, intituled,

“An Act to appoint the Honorable Francis Scott to be agent to the Colony of New South Wales for three years,”

I considered it right to reserve, as its provisions are not altogether in conformity with the terms of Lord Stanley’s Despatch No. 105 of the 1st September, 1845. As, however, I concur in the opinion of the Crown Law Officers that it is “in accordance with such parts of Lord Stanley’s despatch as relate to the appointment of the Agent,” and that with respect to the Committee of Correspondence the rights of the Crown are sufficiently protected, I would recommend that this Act should be allowed.

The Act No. 16, intituled,

“An Act to render certain persons, herein described, incapable of being elected, or of sitting and voting as Members of the Legislative Council, and to make void the election of certain Members,” was reserved by me under the advice of the Crown Law Officers for the reasons stated in their Report, in which I fully concur. I did not consider that it would be expedient to adopt the alternative of withholding my assent to this Bill, because it appears to me preferable that it should be submitted to Her Majesty in order that, if disallowed, any further attempt of the Council to legislate upon this question may be prevented.

The Act No. 17, intituled,

“An Act to amend the Laws incorporating the Town of Melbourne,” was reserved under the Report of the Crown Law Officers, as being contrary to the provisions of the Act of 5th and 6th Victoria, Cap. 76, Sec. 31. inasmuch as it “alters the extent of a Town represented in the Legislative Council.”

I annex a Copy of a Petition against the passing of this Act, which was addressed to me by the “Mayor, Aldermen, and Councillors of the Town of Melbourne.” Your Lordship will perceive that the grounds of objection urged by the Corporation are that, under a clause of this Act, the number of Town Magistrates will
be increased from thirteen to twenty-eight by the admission of
Electors of the Electoral district of the Town to be placed in the
Commission of the Peace. There does not appear to me, however,
to be any validity in this objection. The Bill itself was intro-
duced by one of the Members for Melbourne at the instance
of the Corporation; but the clause in question was appended to
it at the request of the Superintendent of Port Phillip, in conse-
quence of the difficulty that has hitherto been experienced in
obtaining the attendance of a full Bench of Magistrates from
among the present limited number.
I would therefore recommend this Bill for Her Majesty's favor-
able consideration.

P.S.—I also forward a printed copy of these Acts.

[Enclosures Nos. 1 to 19.]
[These were copies of the acts of council, 10 Vict., Nos. 1 to 17,
and of two private acts.]

[Enclosure No. 20.]

MR. W. MACPHERSON TO SIR CHARLES FITZ ROY.
Legislative Council Office,
Sir, Sydney, 28th December, 1846.
I have the honor to transmit herewith to Your Excellency, Transmission
for the purpose of being forwarded to the Right Honorable the °;p£f°°®s
Secretary of State for the Colonies, the Engrossed Duplicates of
the Acts passed by the Legislative Council, during the Second
Session of the present Year, intituled and numbered, respectively.
as follows:—
[Here followed the titles of acts, 10 Vict., Nos. 1 to 17, and of two private acts.]
I also forward herewith Six printed Copies of the Book Acts.
I have, &c.
WM. MACPHERSON,
Clerk of Legis. Council.

[Enclosure No. 21.]

MESSRS. PLUNKETT AND MANNING TO COLONIAL SECRETARY
THOMSON.
Sir, Attorney General's Office, 12th October, 1846.
In reply to your letter of the 6th instant, transmitting to us, by direction of His Excellency the Governor, the accompanying copy of a Bill passed by the Legislative Council on the 18th Ultimo, and presented to His Excellency for the Royal Assent, intituled "A Bill to amend the Act for regulating the Sale and delivery of Coal, in the City of Sydney and its vicinity," and requesting that we will carefully peruse this Bill with the view of ascertaining whether its provisions be in conformity with the Law of England, the Constitutional Act, 5 and 6 Victoria, Cap. 76, and the Royal Instructions issued in pursuance of the same, and whether in our opinion there is any objection to the Governor giving his assent to this Bill.
We have the honor to report that in our opinion there is no objection to the Governor giving his assent to this Bill, and that no amendments appear to us to be necessary to give legal effect to the intentions of the Legislative Council and to render the Bill in other respects unobjectionable.

We have, &c,

JOHN H. PLUNKETT, Attorney General.
W. M. MANNING, Solicitor General.

[Enclosures Nos. 22 to 32 and 35 to 37.]

[These were letters, similar to that in enclosure No. 21, reporting on the acts numbered 3, 4, 6 to 14, and 17, and the two private acts.]

[Enclosure No. 33.]

MESSRS. PLUNKETT AND MANNING TO COLONIAL SECRETARY THOMSON.

Sir,

Attorney General's Office, 26th October, 1846.

In reply to your letter of the 15th Instant, transmitting to us, by direction of His Excellency the Governor, the accompanying copy of a Bill, passed by the Legislative Council on the 9th of this month and presented to His Excellency for the Royal assent, intituled "A Bill to appoint the Honorable Francis Scott to be Agent for the Colony of New South Wales for three years," and requesting we will carefully peruse this Bill with the view of ascertaining whether, in our opinion, there is any objection to the Governor giving his assent to the Bill; We have the honor to report that in our opinion there is no objection to the Governor giving his assent to this Bill, and that no amendments appear to us to be necessary to give legal effect to the intentions of the Legislative Council and to render the Bill in other respects unobjectionable.

We have considered as well Lord Stanley's Despatch of 1st September, 1845, No. 105, as the General Instructions issued in pursuance of the Act of 5th and 6th Victoria, Cap. 76, and we have directed our attention particularly to those terms in His Lordship's Despatch in which he stipulates that the Committee of correspondence shall have the same proportion of Crown Nominees as the Council itself possesses, and that the Committee should not act during a prorogation or dissolution.

We were at first doubtful whether the Royal Assent could be given to the Bill, until the principles propounded had been clearly recognized by the Council; but we are now satisfied that, as the Bill is in accordance with such parts of Lord Stanley's Despatch as relate to the appointment of the Agent, the Governor's assent should not be withheld, and that the other stipulations above referred to can be regarded only as imposing Conditions precedent to the placing of the Agent's Salary upon the Estimates; and we think that, as the Government has this year proposed a vote of this Salary after the Council had negatived a proposition for altering the constitution of the Committee of correspondence, it is too late now to take an objection founded on the first of those stipulations, and that the Crown is sufficiently protected against the Committee being converted into a permanent body by the power to refuse its assent to the new Standing order which would be necessary for the purpose.

We have, &c,

JOHN H. PLUNKETT, Attorney General.
W. M. MANNING, Solicitor General.
Messrs. Plunkett and Manning to Colonial Secretary Thomson.

Sir,  
Attorney General's Office, 26th October, 1846.

In reply to your letter of the 21st Instant transmitting to us, by command of His Excellency the Governor, the accompanying Bill, passed by the Legislative Council on the 13th of this month, and presented to His Excellency for the Royal Assent, intituled, "A Bill to render certain persons herein described incapable of being elected or of sitting and voting as Members of the Legislative Council and to make void the Election of certain Members," and requesting we will carefully peruse this Bill with the view of ascertaining, whether in our opinion there is any objection to the Governor giving his assent to this Bill.

We have the honor to report that in our opinion there are clear objections to the Governor's giving his assent to this Bill, and that we cannot propose any amendments by the adoption of which those objections could be removed.

The Governor and Legislative Council are only authorised to make laws "for the peace, welfare and good government of the Colony," and which shall not be "repugnant to the law of England," or interfere with the Crown Lands; and we conceive it to be quite clear that the provisions of this Bill are not for "the peace, welfare and good Government" within the meaning of 5th and 6th Victoria, Cap. 76, Sec. 29, and that the Colonial Legislature has not, even with the Royal assent, power to enact laws, by which, on the one hand, particular classes of Her Majesty's Colonial Subjects would be deprived of that eligibility as members of Council, which the Queen and British Parliament have given them, and on the other the franchise of the Electors would be impaired by narrowing their choice of representatives, and by which also the legitimate influence of the Crown might be seriously prejudiced, both directly and indirectly.

With reference to the last consideration, we may observe that not only are Crown Officers, etc., not made ineligible by the Act of Parliament, but that the 12th Section, in preventing the Governor from appointing the nominees until after the return of the Writs for the Election of all the Elective members, appears to contemplate the probability of the Election by the people in this Country, as in England, of some of those who would otherwise be nominated by the Crown.

Upon full consideration of the provisions of this Bill and the Imperial Act by which the Colonial Legislature is constituted, we do not hesitate to advise that the Governor should withhold his assent to the Bill, unless, upon grounds which it does not fall within our province to consider, he should prefer to reserve it for the signification of Her Majesty's pleasure.

We have, &c.,

John H. Plunkett, Attorney General.

W. M. Manning, Solicitor General.
312 HISTORICAL RECORDS OF AUSTRALIA.

1847. 9 Jan.

Memorial from mayor, aldermen and councillors of Melbourne against incorporation amendment act.

[Enclosure No. 38.]

THE Memorial of the Mayor, Aldermen and Councillors of the Town of Melbourne,

To His Excellency Sir Charles Augustus Fitz Roy, Knight, Companion of the Royal Hanoverian Guelphic Order, Captain General and Governor in Chief of the Territory of New South Wales and its Dependencies and Vice Admiral of the same, etc., etc., etc.,

Sheweth,

That, by an Act of the Governor and Council, (4th Victoria, No. 7, to which Her Majesty was graciously pleased to signify Her Royal Assent, the inhabitants of Melbourne were incorporated by the name or style of "The Mayor, Aldermen, Councillors, and Burgesses of the Town of Melbourne."

That, by the said Act, it was provided that no unpaid Magistrate should be appointed for the said Town, unless the same should be qualified to be a Burgess of the said Town, and to vote as such on Elections.

That, without the cognizance of the Corporation or any opportunity having been afforded to the Burgesses of expressing their opinion on the subject, a clause was introduced at the instance of the local Executive of Port Phillip into the Act (8th Victoria, No. 12) promoted by the Corporation to amend the said Act, permitting Electors of the Electoral District of the said Town to be placed in the commission of the Peace for the said Town, although being neither rate Payers nor Burgesses of the same.

That your Petitioners learn that a Bill is now pending to arow Justices of the Peace for the Territory of New South Wales, residing within Ten Miles of Melbourne, to become Magistrates of the same, although such Persons shall neither be rate payers, nor Burgesses, nor Electors of the same.

That to interfere with or take away the Property, franchises or immunities of a Corporate Body (no inconveniency or Maladministration having been alleged) without an opportunity having been afforded of being heard in its defence is both contrary to usage and repugnant to common justice.

That, by the 11th Section of Her Majesty's Instructions to your Excellency on the subject of initiating and assenting to Colonial Ordinances, it is directed "that you do not propose nor assent to any private Act, whereby the Property of any individual may be aected in which there is not a saving of the rights of us, our heirs and successors, and of all Bodies politic and Corporate, and of all other Persons excepting those at whose instance, or for whose especial benefit such Act may be passed and those claiming by, from, through and under them," directions which your Memorialists submit apply with peculiar cogency in respect of the present Bill, which affects in so important a degree the privileges of the Corporation of Melbourne.

That the number of Town Magistrates is at present limited to Thirteen Persons, whereas by the present measure the number will be increased to Twenty Eight, the majority of whom will consist of Persons having no common interests with the inhabitants and Burgesses of Melbourne.

Your Memorialists, therefore, pray that your Excellency will be graciously pleased to withhold the Royal Assent from any Bill
FITZ ROY TO GREY.

Sir Charles Fitz Roy to Earl Grey.

(Despatch No. 11, per ship Trafalgar; acknowledged by earl Grey, 29th May, 1847.)

My Lord,

Government House, 9th January, 1847.

With reference to my Despatch No. 10 of this date, I have the honor to transmit the printed copy of a Bill intituled, "A Bill to declare void so much of all local Ordinances, now in existence, as assumes to vest the appropriation of the Ordinary Revenue elsewhere than in the Legislative Council."

Under the Report of the Crown Law Officers, I deemed it my duty to withhold my assent to this Bill. At the same time, as it appeared to me that the grounds of objection to this Bill related rather to its technical details than to its principle, I caused the Colonial Secretary to explain to the House that the reasons which had induced me to withhold my assent, did not arise from any objection to the principle of the measure, nor from any desire to withhold the appropriation of any part of the ordinary Revenues from the Council, but from having been advised by the Crown Law Officers that there were certain technical points in the Instruction, by which I am guided in assenting to Bills, which precluded me from giving my assent to this Bill. And therefore, if the Legislative Council should think proper to pass any Act repealing either wholly or in part any Act of the old Legislature, and specifying therein the Title of each Act as required by the Royal Instructions, I should be prepared to assent to it.

There was no time, however, before the close of the Session, for the introduction of any fresh measure; but it is probable that one will be brought forward during the next Session.

I have, &c.,

Chs. A. Fitz Roy.

[Enclosure No. 1.]

10 VICTORIA, 1846.

A Bill

To declare void so much of all local Ordinances now in existence, as assumes to vest the Appropriation of the Ordinary Revenue elsewhere than in the Legislative Council.

WHEREAS by an Act of Parliament passed in the fifth and sixth years of the reign of Her present Majesty, intituled, "An Act for the Government of New South Wales and Van Diemen's Land," it is among other things enacted that, with the deductions, and subject to the provisions thereafter contained, the whole of Her
Repeal of so much of all former local acts as perpetually appropriates any taxes, rates, duties or imposts.

1847. 9 Jan.

Preamble.

Majesty's Revenue within the Colony of New South Wales, arising from taxes, duties, rates, and imposts, levied on Her Majesty's subjects within the said Colony, shall be appropriated to the public service within the said Colony, by Ordinances to be for that purpose enacted by the Governor, with the advice and consent of the Legislative Council of the said Colony, and in no other manner; and whereas, by the fifty-third clause of the said recited Act, it is provided that nothing therein contained shall extend, or be construed to extend to repeal or abrogate any law or ordinance made in pursuance of a certain other Act of Parliament, passed in the ninth year of the reign of His late Majesty King George the Fourth, intituled, "An Act to provide for the Administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual Government thereof, and for other purposes relating thereto," or of the three Acts passed in the seventh year of His late Majesty King William the Fourth, in the first, and in the second years of the reign of Her present Majesty, by which the said last recited Act was afterwards continued with amendments, or of any of them, but that every such law or ordinance should thenceforth be as valid and effectual as if every part of the said six last recited Acts had been thereby made permanent: And whereas, by the said fifty-third clause of the said first recited Act, it is further provided, that it shall be lawful for the Governor and Legislative Council of the said Colony, in exercise of the powers to them respectively granted by that Act, and in the manner, and subject to the rules thereinbefore prescribed, to repeal, vary, or alter all or any part of the said six recited Acts, or any of them, or any law or ordinance made in pursuance thereof: And whereas, since the passing of the said last recited Act, and the said five recited Acts by which the same was successively continued, without and with amendments as aforesaid, divers laws and ordinances containing perpetual or other appropriations of certain portions of Her Majesty's Revenue within the said Colony, arising from taxes, duties, rates, and imposts levied on Her Majesty's subjects within the said Colony, have been passed: And whereas doubts have arisen whether such appropriations are not still in force, notwithstanding the thirty-fourth clause of the said first recited Act, and it is expedient to remove such doubts: Be it therefore declared and enacted, by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, That the sole and entire right of appropriating (with the deductions, and subject to the provisions in that Act contained) the whole of Her Majesty's Revenue within the said Colony, arising from taxes, duties, rates, and imposts levied on Her Majesty's subjects within the said Colony, to the public service within the said Colony, is vested in the Governor and Legislative Council thereof, by ordinances to be for that purpose enacted by the said Governor, with the advice and consent of the said Legislative Council, and in no other manner; and that so much of any law or ordinance passed in pursuance of any of the provisions of the said six recited Acts of Parliament, or any of them, as appropriates, or purports to appropriate perpetually or otherwise, any portion of Her Majesty's said Revenue arising from taxes, duties, rates, and imposts levied on Her Majesty's subjects within the said Colony, is, by virtue of the said thirty-fourth clause of the said Act, absolutely void, anything in any such law or ordinance to the contrary notwithstanding: Provided always.
that nothing herein contained shall extend to repeal any ordinance of the Governor and former Legislative Council, for applying sums arising from the Revenue receivable in New South Wales to the service thereof for the year then next ensuing, and for further appropriating the said Revenue. Provided always and be it enacted That nothing in this Act contained shall be deemed or construed *£"**actf to affect the validity of any appropriations, which have already been made, or shall, before the first day of January next ensuing, be made, under and by virtue of the provisions of any such Laws or Ordinances as aforesaid containing perpetual or other appropriations, but that all such appropriations, so made or to be made before the said first day of January next, shall be as valid and effectual in Law as if this Act had not passed.

[Enclosure No. 2.]

MESSRS. PLUNKETT AND MANNING TO COLONIAL SECRETARY

THOMSON.

Sir,

Attorney General's Office, 29th October, 1846.

In reply to your Letter of the 28th instant, transmitting to us a copy of a Bill passed by the Legislative Council on the 20th of this Month, and presented to His Excellency for the Royal Assent, intituled, "A Bill to declare void so much of all Local Ordinances now in existence as assumes to vest the appropriation of the Ordinary Revenue elsewhere than in the Legislative Council," and requesting we will carefully peruse this Bill with the view of ascertaining whether in our opinion there is any objection to the Governor giving his assent to it.

We have the honor to report that in our opinion it is incumbent on the Governor to withhold the Royal Assent to this Bill, or to reserve the same for the signification of Her Majesty's pleasure thereon.

The Bill is merely declaratory, and we entertain the strongest doubts of the possession by the Governor and Legislative Council of authority to remove doubts concerning, and thus to put their own construction upon, a Clause in an Imperial Act, especially one upon which their own powers in a most important particular depend. It is true that the object, which the Council had in view in this instance, might legally be effected by repealing so much of any Acts of the old Legislature as made permanent appropriations of Public Money; but this could only be done by direct enactment, and for such purpose it would be necessary under the Royal Instructions that the title of each act repealed wholly or in part should be set out in the Bill, before the Governor would give his assent to it.

Although sufficient grounds of objection are presented by the first principal clause of this Bill, we cannot overlook the circumstance that the second clause is inconsistent with the first, or altogether inoperative, inasmuch as it enacts that appropriations, made or to be made up to the 1st of January next under and by virtue of Acts of the former Legislature, "shall be as valid and effectual in Law as if this Act had not passed". Whereas, by the 1st Section, the Law is declared to be such as renders such appropriations illegal.

We have, &c,

JOHN H. PLUNKETT, Attorney General.

W. M. MANNING, Solicitor General.
HISTORICAL RECORDS OF AUSTRALIA.

1847.

9 Jan.

Return of Sir T. Mitchell from exploring expedition.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 13, per ship Trafalgar.)

My Lord,

Government House, 9th January, 1847.

With reference to my Despatch No. 3 of the 3d Instant, transmitting Copies of two Communications, which I had received from Sir Thomas Mitchell reporting the progress he had made in his Expedition to the interior of Australia, I have now the honor to transmit a copy of the N. S. Wales Government Gazette of the 31st Ultimo containing a copy of a further Report* from Sir Thomas Mitchell, who, I have further to inform Your Lordship, returned to Sydney on the 29th ultimo.

Upon a review of the Instructions† issued by my Predecessor to Sir Thomas Mitchell previously to his departure, Your Lordship will perceive that the main object which the Legislature had in view when they provided the funds for defraying the expense of this expedition, namely, "the discovery of a practicable overland route to Port Essington," has not been accomplished.

It cannot however be doubted that Sir Thomas Mitchell has made a valuable addition to the discoveries in the interior of New Holland.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

[This was the supplement to the "Government Gazette," dated 31st December, 1846.]

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 14, per ship Trafalgar; acknowledged by earl Grey, 4th June, 1847.)

My Lord,

Government House, 9th January, 1847.

I have the honor to inform Your Lordship that during the last session of the Legislative Council a Petition, of which I enclose a Copy, was presented to that body from certain Merchants, Ship-Owners, and others interested in the trade of Port Jackson, praying the re-establishment of a Separate Court for Shipping in the City of Sydney, or to be relieved from the dues levied on Shipping under the 12th Section of the Act of Council, 7 Victoria, No. 21. This Petition having been taken into consideration by the Council on the 6th October last, an Address was voted to me, praying that I would place on the Estimates for 1847 the sum of £400 for the establishment of a Police Court in the Northern part of the City of Sydney for the purposes of general and Water Police.

*Note 36.
† Marginal note.—Vide Enclo. 1 to Sir G. Gipps' Despatch, 10th Novr., 1845.
I accordingly caused an Estimate to be prepared and laid before the Council in conformity to the prayer of the Address, and, the amount having been voted and included in the Appropriation Act, it is now my duty to report to Your Lordship that I have appointed Mr. Hutchinson Hothersall Browne to perform the duties of Water Police Magistrate for the City and Port of Sydney at a Salary of £300 a year, the remaining £100 placed on the Estimates at the request of the Council, being required for the Salary of a Clerk in the Water Police Office.

It is necessary that I should inform your Lordship that Mr. Browne performed the duties of Water Police Magistrate for the City and Port of Sydney from its first establishment in 1840, until its discontinuance at the end of 1843 in consequence of the passing of the Act of Council, 7 Victoria No. 21, and, as I am informed, with great zeal and efficiency. In this appointment, he was confirmed by Lord Stanley's despatch No. 187 of 10th September, 1842.

Mr. Browne since that time has continued to hold the Office of Registrar of the Court of Requests in Sydney, with a salary of £350 per annum, in which appointment he was confirmed by Her Majesty, as notified in Lord Stanley's Despatch No. 19 of the 5th March, 1845. He has, however, requested to be reappointed to his former Office, even with the reduced Salary of £300 a year, as one more congenial to his habits and inclinations. I trust, therefore, that your Lordship will be pleased, under the circumstances represented, to recommend this appointment for Her Majesty's gracious allowance and confirmation.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

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

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 15, per ship Trafalgar; acknowledged by Earl Grey, 4th June, 1847.)

My Lord,

Government House, 9th January, 1847.

In reference to my Despatch No. 14 of this date, reporting the appointment of Mr. H. H. Browne to be Water Police Magistrate for the City and Port of Sydney, I have now the honor to inform your Lordship that I have appointed Mr. Alexander C. Maxwell to the vacancy created in the Office of Registrar of the Court of Requests in Sydney by Mr. Browne's appointment above referred to, and at the same salary as that Gentleman,
318 HISTORICAL RECORDS OF AUSTRALIA.

1847.
9 Jan.

Appointment of J. Stirling as chief inspector of distilleries;
and of W. H. Christie as serjeant-at-arms.

Mr. Maxwell having held the Office of Chief Inspector of Distilleries at a Salary of £250 and a forage allowance of £45 12s. 6d. per annum, in which he was confirmed by Mr. Gladstone's Despatch No. 34 of 4th June, 1846, it has become necessary to fill the vacancy created by his promotion above reported. I have accordingly appointed Mr. John Stirling to be the Chief Inspector of Distilleries with the same Salary and allowance as his Predecessor.

Mr. Stirling having held the appointment of Sergeant at Arms to the Legislative Council, I have nominated Mr. William Harvie Christie to be his successor in that Office, with the same rate of Salary, namely £100 a year. It is perhaps proper that I should point out that it is intended that Mr. Christie should hold the latter appointment in conjunction with that of Agent for the Church and School Lands, which he now fills. It is not conceived that the performance of the duties of the two Offices will be in any way incompatible with each other; And, as the Salary and allowances of both are not more than may be considered necessary to obtain the services of a competent Officer, I trust there may not be any objection to Mr. Christie's appointment on that ground. The Salary of Agent for Church and School Lands is £150 per annum with an allowance of 5 per Cent. on his actual collections, which have hitherto been of precarious amount, and only yielded to him an average allowance of about £150 per annum on £300 in the whole.

Recommending these several Appointments for Her Majesty's gracious allowance and confirmation, I have, &c.,

CHS. A. FITZ ROY.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 16, per ship Trafalgar.)

My Lord, Government House, 9th January, 1847.

I do myself the honor to inform Your Lordship that, by the present opportunity, Requisitions have been forwarded to the Agent General for Crown Colonies for certain Stores and Clothing necessary for the service of the Colonial Departments in New South Wales during the year 1848, which it is considered can be obtained of a better quality and on more advantageous terms in England than in the Colony.

The cost of the Stores has been estimated at £2,200, and of the Clothing at £800, making together the sum of £3,060; and,
as an order has been given for the payment of this amount to
the Deputy Commissary General on account of the British Treas-
ury, I beg to request that Your Lordship will be pleased to give
such instructions as may be necessary for the issue of an equal
sum to Mr. Barnard, to enable him to comply with the demands
which have been transmitted to him by the Colonial Secretary
to this Government.

Payment has also been made to the Deputy Commissary
General of the sum of £11 5s., being the amount of an account
for guaging Instruments sent out for the use of the Department
of Customs at Port Phillip, and which the Agent General has
been instructed to refund to the Receiver General of the Revenue
of Customs; and I have the honor to request that your Lordship
will likewise direct the payment of a similar amount on this
account to Mr. Barnard.

I have, &c.,

CHS. A. FITZ ROY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 17, per ship Trafalgar.)

My Lord,

Government House, 9th January, 1847.

I have the honor to acknowledge the receipt of Mr. Glad-
stone's and Your Lordship's Despatches as per margin.*

I have, &c.,

CHS. A. FITZ ROY.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 81, per ship Glentanner.)

Sir,

Downing Street, 10 January, 1847.

I have to acknowledge the receipt of Sir Maurice O'Con-
nell's Dispatch, No. 4 of the 24 of July last, reporting upon an
application which was addressed to my Predecessor by Mr. Ralph
Ruddell, of Melbourne, requesting that a small cattle run might
be allotted to him with permission to pay for the same by certain
annual instalments.

The Dispatch is also accompanied by a Report from the Super-
intendent at Port Phillip on the same subject.

You will inform Mr. Ruddell that I have enquired into the
grounds of his claims, and that in the result I find nothing to
require or which would justify my further interference.

I have, &c.,

GREY.

* Marginal note.—Mr. Gladstone's: Nos. 31 to 52 inclusive, unnumbered 23rd and
30th May, 1846; Circulars, 30th May, 1846. Military No. 4. Earl
Grey's: Nos. 1 to 30 inclusive. Circulars, 7th July, 22nd and 24th August; Separate,
31st and 31st July, 20th August.
Earl Grey to Sir Charles Fitz Roy.

(Despatch No. 82, per ship Glentanner.)

Downing Street, 11 January, 1847.

Sir,

I have received Sir Maurice O'Connell's Despatch, No. 1 of the 14th of July last, announcing the departure of Sir G. Gipps from New South Wales, and his own assumption of the Government as Senior Commanding Officer within the Territory.

That Despatch also encloses a Copy of the Supplement of the Government Gazette, containing the various Addresses presented to the late Governor on his retirement, together with the Answers which he had returned to them.

I have read these Addresses with much pleasure. They not only afford the most unequivocal proof of the high esteem in which the personal character of Sir G. Gipps was held by the Colonists, but likewise bear a high and well merited testimony to his distinguished public Services during the time he administered the Government of New South Wales.

Grey.

Details required in reports re vacancies in offices.

Earl Grey to Sir Charles Fitz Roy.

(A circular despatch. per ship Glentanner.)

Downing Street, 11th January, 1847.

Sir,

I request that in future, when you have occasion to report a Vacancy in any Office under the Crown, you will accompany the Report with a specification of the following particulars.

1st. Whether there is any Law establishing or regulating the Office, and, if so, what is the substance of its provisions in that behalf.

2nd. Whether the appointment to the Office is in the gift of the Crown, and whether the Secretary of State or the Governor has been practically accustomed to select the persons to fill the Office in question, or similar Offices in the same Colony.

3rd. What is the general nature of the Duties, and what the particular Qualifications required in a Candidate.

4th. What are the Salary, Emoluments and Advantages, and whence derived.

I have further to request that you will transmit to me, annually, two Copies of any Almanac printed in the Colony under your Government, and containing Lists of Office-holders.

Grey.
GREY TO FITZ ROY.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 83, per ship Glentanner.)

Sir,

Downing Street, 15 January, 1847.

With reference to my despatch, No. 62 of the 15th of No- vember, I transmit herewith Letters Patent under the Great Seal of the United Kingdom, revoking the Charter establishing the Colony of North Australia, and the Commission appointing you to be Governor and Commander in Chief in and over that Colony.

I have, &c.,

[Enclosure.]

[GREY.]

[A copy of these letters patent will be found in a volume in series III.]

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 84, per ship Glentanner.)

Sir,

Downing Street, 15 January, 1847.

I have referred to the Lords Commissioners of the Trea- sury a copy of Your Predecessor's Dispatch, No. 99 of the 20th of May last, relating to a Surcharge against Mr. Riddell, the Colonial Treasurer, on account of overpayments to the amount of £193 12s. 2d., which were made by him in the years 1836 and 1837.

I now enclose a copy of their Lordships' reply, with its enclo- sure, from which you will observe that, although they have con- sented, under all the circumstances of the case, to relieve Mr. Riddell from this Surcharge, their Lordships consider that the period, which was permitted to elapse before the overpayments in question were brought against the Treasurer, was solely attributable to the delay on the part of the Colonial Treasury and the local Auditors in rendering the Accounts for final audit, as well as to the neglect of the Colonial Authorities in omitting to send home those Accounts.

I have, &c.,

[Enclosure.]

[GREY.]

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

Sir,

Treasury Chambers, 6th January, 1847.

I am commanded by the Lords Commissioners of Her Ma- jesty's Treasury to transmit to you the accompanying copy of a Report from the Commissioners of Audit, respecting the Accounts of Mr. Riddell, Colonial Treasurer of New South Wales, for the year 1836-7, in order that it may be submitted for the information of Earl Grey, with reference to the communication from His Lord- ship's Department of the 20th October last, and to the Despatch from the Governor of New South Wales therein forwarded to this Board.

I am to request you will state to Lord Grey that, although it would appear that the double payments, which had given occasion
for the surcharge to which that Despatch has reference, had occurred entirely through remissness on the part of the Treasurer's Department; and that the confused state of the Accounts relating to the Treasury advances, which is assumed to have prevented the detection in the Colony of the erroneous issue, is solely attributable to that Department, or to the Local Officers entrusted with the duties of examining and checking the Treasurer's Accounts, my Lords will not withhold their sanction for the removal of the surcharge of £193 11s. 2d. as suggested by the Commissioners of Audit.

At the same time, however, I am to request that you will particularly point out to Lord Grey that the length of time, which elapsed before the overpayments constituting that amount were detected, and the surcharge notified to the Treasurer, is solely attributable to the delay on the part of the Colonial Treasury and the local department of Audit in rendering the Accounts for final Audit; and to the disregard on the part of the Colonial Authorities of the reiterated representations of the Commissioners of Audit respecting that delay, and the repeated injunctions doubtless given by the Secretary of State at the instance of this Board for the transmission of the Accounts.

I am, &c.,

C. E. Thevelyan.

[Sub-enclosure.]

AUDIT COMMISSIONERS TO LORDS COMMISSIONERS OF TREASURY.

My Lords,

Audit Office, 11th Dec., 1846.

We have considered, pursuant to Your Lordships' order of reference of 23rd October, a letter from the Colonial Office, dated 20th October, 1846, transmitting copy of a Despatch from the Governor of New South Wales and other papers (herewith returned) relative to a Surcharge made by us against the Colonial Treasurer, in respect of double payments included in his Accounts of the year 1837, amounting to the sum of £193 11s. 2d. and conveying Earl Grey's recommendation that, under all the circumstances of the case, Your Lordships should adopt the advice, which the Governor Sir George Gipps has offered to the Secretary of State, viz., that Mr. Riddell, the Treasurer, may be relieved from the Surcharge in question.

Upon the subject of these papers we have the honor of observing to Your Lordships that the sum above mentioned (as likewise another sum of £112 10s. to which we shall have occasion to advert) was provisionally surcharged by us in the state of Mr. Riddell's Account of the year 1837, in consequence of it being clearly established by Documents transmitted from the Colony, in reply to our queries on the subject, that double payments to that amount had been charged for Salaries of Persons to the Roads Branch, namely, first, by the Surveyor General, out of advances made to him under the Governor's Warrant for the purpose of paying such services (those Advances being subsequently adjusted with the Treasurer); Secondly, directly by the Treasurer himself by means of Cheques drawn on and paid by the Bank; the Governor having also, as shewn by the papers then before us, decided, after investigation and report of the Auditor General of the Colony, that the Surveyor General was duly entitled to allowance for the payments which had been made by him in adjustment of his Advances with the Treasurer, and that the latter was therefore the party responsible for the double payments.

It now appears that at Mr. Riddell's suggestion, upon his being apprised of our surcharge, the Governor appointed a Board of Officers to investigate the circumstances connected with these transactions, and their Report (among the referred papers) contains the grounds upon which Earl Grey and Sir George Gipps appear to have rested their recommendation in Mr. Riddell's favor.

That Report fully confirms the fact of the double payments and entirely exonerates the Surveyor General from all responsibility in regard to them. But, although it shews that the Cheques, which constituted the over payments, were issued direct from the Treasury and paid by the Bank, the Report fails to throw any light on the question as to whom the Cheques were actually paid; the Board at the same time observing that there appeared no ground for believing that the Parties, to pay whom the Cheques purported to be drawn, had received their Salaries a second time.

The Board of Enquiry further express their opinion that the system of advances and adjustment, at that time in operation in the Colony (but which has since been amended), was defective in not sufficiently providing the means of identifying the services for which the advance Warrants were granted with the actual payments to be allowed under the final Warrants. They annex to their Report a Statement...
shewing the great extent of the Advance Warrants during many years, and submit, that it could not be surprising, if some confusion in the Accounts has resulted, for which in their opinion the system rather than the Treasurer was to blame. The Board conclude their Report by recommending relief from the Surcharges in consideration of these defects in respect of the advances and the length of time (nearly seven years) which elapsed before a final Audit of the Accounts was accomplished, a delay which had put it out of the power of the Treasurer to recover from the Individuals, who might have occasioned, or who had received the double payments, the Parties being dead or insolvent, or having left the Colony. Previously to submitting to Your Lordships our own opinion upon this case, we deem it proper to observe that the delay adverted to in auditing the Accounts is not attributable to this Office; the Accounts of the last three quarters of the year 1836, and those for the whole of 1837, not having reached us until March, 1842, and then only after Your Lordships' directions upon our representations as per Margin, as to the delay in rendering them from the Colony. Immediately on their receipt by us, the Accounts were put in course of examination and our queries, which involve the surcharge, bore date 8th Feb., 1843, and reached the Accountant on 29th June, 1843.

Upon a careful review of the circumstances before us, we cannot but impute considerable want of caution to the Colonial Treasurer in drawing the Cheques which constituted the double payments, without as it appears having at all adverted to the question how far previous payment might have been made by the Surveyor General, whose duty (as the Treasurer must have been aware) it was to pay the Salaries in question out of the Advances made to him for the service. This view of the subject is borne out by the opinion of the Auditor General expressed in his Report to the Governor of 13th April, 1843 (transmitted from the Colony with the replies to our queries) wherein he observes that it appears to him “that had a due degree of caution been taken, the Cheques would not have been drawn.”

On the other hand, it may be considered that, as Mr. Wallace, who at the time held the situation of First Clerk, is dead, and that the persons, for whose salaries the Cheques purport to have been drawn, are either dead, or have quitted the Colony, all the means of further tracing the transactions have been cut off. Under these circumstances, we apprehend that Your Lordships will not dissent from the recommendation of Earl Grey and the Governor of New South Wales that Mr. Riddell should be relieved from the surcharge in question, amounting to the sum of £193 lis. 2d. Respecting the further surcharge of £112 10s. adverted to at the commencement of our Report, and considered also in the Report of the Board of Enquiry in the Colony, we beg leave to state that it consisted of a double payment to that amount made to Mr. Estall, a Contractor for Work, under circumstances (as observed by the Board of Officers) of much want of caution on his part if Estall's statement is to be relied on; Mr. Estall having fully admitted the double payment as made to himself, the Treasurer has taken proceedings against his Estate (he having become Insolvent), and therefore it appears unnecessary that we should offer any further remarks upon the subject.

It being stated at the conclusion of the Governor's letter to the Secretary of state that the Treasurer had informed His Excellency that he had communicated with us on the subject, we beg leave to state that it does not appear any communication direct from the Treasurer has reached this Office, beyond the replies and explanations to our queries.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 85, per ship Glentanner; acknowledged by Sir Charles Fitz Roy, 10th December, 1847.)

Sir,
Downing Street, 17 January, 1847.

I have received a letter of the 10th of July last, addressed to my Predecessor by Mr. Therry, one of the Judges of the Supreme Court of New South Wales, in which that Gentleman asks for leave of absence from the Colony for a period of 18 months.

* Marginal note.—No. 284, 3 May, 1838; No. 24, 10 Jan., 1839; No. 717, 9 Decr., 1839; No. 379, 9 July, 1840; No. 185, 15 April, 1841.
I enclose a copy of Mr. Therry’s letter for your information.

Under the circumstances which he has stated, I have to authorise you to grant to Mr. Therry the leave of absence he solicits, if you shall be of opinion that such an indulgence can be afforded him without detriment to the Public Service.

You will however recall to Mr. Therry’s recollection the fact that, when, on former occasions, any of the Judges of the Supreme Court of New South Wales have been absent on leave, it has been found impossible to procure a sufficient substitute, except by allowing him to receive the full Salary of the absent Judge, and that the ½ Salary paid to the Absentee, in respect of his period of absence, has therefore formed an addition of 50 per cent. during that period to the Public Expenditure for the Judicial Service.

I am not aware that there is any Fund at your disposal, which could be lawfully or properly applied for this purpose in the case of any future leave of absence. Consequently, Mr. Therry must accept that indulgence, only on the condition that the remuneration of his Substitute be entirely deducted from his own Salary, unless the Legislative Council shall see fit to devote a sum in aid of that charge.

[Enclosure.]

MR. JUSTICE THERRY TO RIGHT HON. W. E. GLADSTONE.

Sir, Sydney, 10th July, 1846.

I avail myself of the occasion of Sir George Gipps’ departure for England to request leave of absence from the Colony for Eighteen months. I am induced to avail myself of this occasion as His Excellency, if it be required, may probably have the goodness to testify to you, how far I may be entitled to the favor I solicit from the opportunities which His Excellency possessed of observing my conduct during his administration.

I respectfully rest this application on the ground of the long period of my Public Service, having been appointed to the Office of Commissioner of the Court of Requests so far back as April, 1829. Since that period, I have successfully filled (without interruption or Leave of Absence for any time) the Office of Commissioner of The Court of Requests for Eleven Years, the Office of Attorney General for (two years and a half) and that of Puisne Judge of the Supreme Court (inclusive of one year’s Service as Resident Judge of Port Phillip) for nearly two years.

As a further ground for granting the indulgence I solicit, I refer to the repeated and uniform testimony borne in my behalf by Sir Ralph Darling, Sir Richard Bourke, and Sir George Gipps, The Governors under whose administrations I have performed the duties of these respective Offices.

I am induced very earnestly to urge this request at present, as the state of my private Affairs at Home, after so long an absence, urgently requires my presence there. For the last fifteen years I have not been able to obtain any account of a small Property belonging to me in Ireland, and, unless I proceed to the spot, I do
not expect ever to obtain it. Moreover at this moment I have two
Daughters in England one 17, the other 15 years of age, whom when
children I sent to England for their education, and I am most desir-
ous to afford them the advantage of parental protection on their
long voyage back to this Colony.

I confidently rely on your giving to this application the attention
to which you may deem it entitled; I cannot support it; and I
am satisfied Your sense of Justice renders it independent of such
support by the interference of influential persons who might re-
commend me to Your favorable notice. In the lapse of years, I
have lost the friends whose kind interposition in my behalf I might
bespeak, as you may easily suppose when I state that I was first
appointed to office in this Colony at the instance of Mr. Huskisson,
to whose favorable consideration I was introduced by Mr. Canning.

I have, &c.,
R. THERRY.

I venture to transmit for Your perusal a copy of an address pre-
sented to me by the Solicitors of Port Phillip, on the occasion of my
retiring from the office of Resident Judge of that District.

[Sub-enclosure.]

ADDRESS TO MR. JUSTICE THERRY.

Yesterday the following address from the Solicitors of Melbourne was presented to
Judge Therry. As might have been expected, every Solicitor in Town appended his
name:

"To the Honorable Roger Therry, Resident Judge of the Supreme Court of New
South Wales for the District of Port Phillip.

"We, the undersigned Attorneys, Solicitors and Proctors of the Supreme Court
of New South Wales for the District of Port Phillip, beg upon the retirement of
Your Honor from the Port Phillip Bench to assume the duties of a Judge of the
Supreme Court at Sydney, to express the high sense of respect we entertain for
Your Judicial character, and to assure you that we deeply regret the loss of a
Judge who has ever upheld the dignity of the Bench.

"Although a short period has elapsed since Your Honor's first presiding in the
Supreme Court of this District, the proof of ability, research, energy, and industry,
you have uniformly displayed in the unaided discharge of your duties, make your
present separation from us a subject of deep regret.

"We cannot allow you to depart from this District without acknowledging the
kindness, and urbanity, which you have ever evinced towards us. And we beg on
your retirement to offer your Honor our warmest wishes for your future happiness
and prosperity.

"HENRY MOOD, J.P.
CHARLES LEIGH.
H. F. GONER (Crown Solicitor).
DAVID OSWALD.
JOHN DEERING.
RICHARD O'COCK.
GEORGE BARBER.
F. LORD CLAY.

His Honor returned the following reply:—

"Gentlemen,

"I thankfully acknowledge the address with which you have honored me.
Although I am conscious that Your flattering estimate of my Judicial conduct is
mainly attributable to your kindness and partiality, yet I am also conscious that I
should not have been honored with such a significant testimonial of your warm and
earnest approbation, if I had not by an assiduous devotedness to my Judicial duties
at least endeavored to deserve it.

"In the faithful fulfilment of that branch of our common profession to which
you belong, the Public have a vital interest, and I am glad to avail myself of the
opportunity which Your address affords of bearing testimony to the real, ability,
and integrity, by which your discharge of those duties is distinguished.

"It is gratifying to me to know, by friendly assurances from many quarters, that
the Sentiments of personal good will expressed in your address are shared by the
community, in which during the past year I have filled the responsible office of Resi-
dent Judge; I appreciate with grateful feelings those gratuitous attestations of
approbation, and I am duly sensible how much Your Professional Opportunities
enhance the value of your favorable opinion.

"I have, &c.,
R. THERMY."
EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 86, per ship Glentanner.)

Downing Street, 18th January, 1847.

Sir,

I have to acknowledge the receipt of your Predecessor's Dispatch, No. 138 of the 1st of July last, relating to a question which had been raised by the Assistant Commissary of Accounts in New South Wales, in regard to the continuance of certain allowances hitherto paid to Clergymen for the performance of religious duties to Convicts; and I have in reply to inform you that Her Majesty's Government have no present intention of withdrawing the allowances received by the several parties named in the Schedule, which accompanied Sir G. Gipps' dispatch.

I have, &c,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 87, per ship Glentanner.)

Downing Street, 19 January, 1847.

Sir,

I have to acknowledge the receipt of Your Predecessor's Dispatch, No. 147 of the 9th of July last, accompanied by a Public Notice explanatory of the conditions under which he had offered a Bounty on the Children, if sent out by the Land and Emigration Board, of married persons who have emigrated to New South Wales on or before the 7th of January, 1842, and on whose introduction Bounties were paid.

Having referred these papers to the Emigration Commissioners, they have informed me that they apprehend that the persons, who can claim the benefit of the above mentioned Notice, cannot amount to any inconvenient number. They will make every exertion to procure passages for as many of such persons as may be notified to them in the manner provided for by Sir G. Gipps; and they add the expression of their hope that, to this moderate extent, Shipowners would be very ready to supply them with accommodation, on the prospect of a Bounty to be received in the Colony.

I have, &c,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 88, per ship Glentanner; acknowledged by Sir Charles Fitz Roy, 21st July, 1847.)

Downing Street, 22 January, 1847.

Sir,

At the request of Sir W. M. Somerville, the Member for Drogheda, I herewith transmit to you the Copy of a Paper which has been sent to him by Mr. C. Magrane, relative to a person named Phillip H. Magrane, who formerly held the Appointments
of Clerk of the Session and Postmaster at E. Maitland, New S. Wales, but which, according to the Writer's Statement, he was compelled to relinquish, in consequence of a series of persecutions and annoyances which he met with from Mr. Cooke, the then Police Magistrate of the District.

I have to request that you would ascertain the particulars connected with Philip Magrane's case, and that you would report to me whether the circumstances referred to in the accompanying Paper have or have not been correctly stated. I have, &c.,

GREY.

[Enclosure.]

MR. C. MAGRANE TO SIR WILLIAM SOMMERVILLE, BART.

Sir,

In the year 1838 thro' the kind intervention of Sir William Summerville, Bart., M.P., Philip H. Magrane was appointed Clerk of Sessions and Post Master at Dungog, East Maitland, New South Wales. The emoluments of both Offices about £200 per annum. After holding the situation for about two years, during which no formal complaint or charge of any kind was brought against him, he was driven into a resignation of it by a series of annoyances and petty persecutions on the part of the Police Magistrate of the district, a Mr. Cooke, who appears to have been solely actuated by religious bigotry. Cooke's religious zeal and rage for Proselytism were intense and persecuting. He exerted himself to the utmost, both as a private individual and a public functionary, to induce and compel the Roman Catholics under him to assist on Sundays at the religious ministrations of Methodist persons, in violation of their conscientious conviction, and the inculcation of their own Pastors. Magrane's refusal to concur or countenance such proceedings gave much offence to Mr. Cooke, whose displeasure was still more inflamed by Magrane receiving at his house and exercising hospitality towards a few Roman Catholic Clergymen, his acquaintances, when they happened to visit his neighbourhood.

Cooke had further, on occasion of the dismissal of two Common Constables, caused a placard to be affixed to the Court House at Dungog, notifying that none but Protestants need apply. A statement of this intolerant proceeding found its way into the Newspapers at Sydney.

Mr. Cooke's conduct was canvassed and condemned in no measured terms. The Governor's attention was thereby attracted to it, and an inquiry instituted that drew drawn his Excellency's displeasure on the police Magistrate, and well nigh caused his dismissal forthwith. These transactions took place in April or May, 1840. Mr. Cooke, however, has been since dismissed. Magrane is fully convinced the circumstances before mentioned, and more especially Cooke's suspecting him of having been the individual who had been mainly instrumental in drawing the attention of the public and the Governor to the affairs of the placard, were the causes of Cooke's annoying and harrassing him so intolerably as drove him into a resignation of his Office.

Philip H. Magrane's friends, deeply grateful for Sir W. Summerville's former patronage, respectfully and earnestly solicit a renewal of his good Offices now that his friends are in the possession
of the Government, and pray him to bring this case under the favorable notice of the Colonial Secretary, Earl Grey, with a view to Magrane's re-appointment to such situation as that High Functionary may be pleased to honor him with an Appointment to.

I am not aware of the distance of Dungog from Sydney; but I consider it a great way.

C. MAGRANE, C.C., Dunshagulin.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 90, per ship Glentanner; acknowledged by Sir Charles Fitz Roy, 22nd July, 1847.)

22nd July, 1847.

Sir,

With reference to Your Predecessor's Despatch, No. 218 of the 30th of Decr., 1845, reporting that he had recently signed a Deed of Grant from the Crown to Mr. W. M. Manning, the Solicitor General of New South Wales, as Trustee for Patrick and Anthony Dwyer, for 60 Acres of land, the proceeds of which, when sold, were after certain deductions to be remitted to those persons, I now transmit to you the copy of a letter which has been received from the Dwyers, stating that no account of the Sale in question had ever reached them; and, although Mr. Manning appears to have acted as the private Agent for the parties, I have to request that you would inform me what may have been finally done in the matter.

I have, &c.,

GREY.

[Enclosure.]

P. AND A. DWYER TO SECRETARY OF STATE.

Cashel, 8 Jany., 1847.

We are in receipt of yours of the 23d June, 1846, enclosing the copy of a Despatch from Sir George Gipps to Lord Stanley, date 30th Decr., 1845, No. 218. In which it appears that the property we are entitled to at Sydney would be sold, and the money sent to us after deducting expenses. We earnestly request to know if Your Lordship has since received from the Governor of Sydney, or from Mr. Manning, the present Solicitor General of New South Wales, any account of it. It is now twelve months since the property was to be sold, and I have not received an account since.

We are, &c.

PATT. AND ANTHONY DWYER.

Please direct to Saml. Cooper, Esq., Killmore, Cashel, for P. and Anthony Dwyer.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 91, per ship Glentanner.)

29th January, 1847.

Sir,

I have referred to the Commissioners for the Affairs of India a copy of Your Predecessor's dispatch, No. 117 of the
16th of June last, relating to a charge incurred by the Government of New S. Wales in dispatching the Schooner "Frolic" to the rescue of some Shipwrecked Seamen belonging to the "Coringa Packet" on her passage from Sydney to Ceylon; and I now transmit to you copies of a letter and its enclosure, which have been received in reply to that reference, together with the Copy of a letter which I have caused to be addressed to the Board of Treasury on the same Subject. From these, you will perceive that the only portion of the above sum, for which the East India Company hold themselves accountable, is £240, charged for the hire of the "Frolic," which will accordingly be paid by them to Mr. Barnard; and that I have recommended that the remaining Balance of £54 19s. lid., which must be considered as chargeable to the Settlement of Port Essington, should be paid by the Board of Treasury to the Colonial Agent, who, if their Lordships should concur in that recommendation, will place the collective amount of £294 19s. lid. to the credit of Your Government.

I have, &c,

GREY.

[Enclosure No. 1.]

UNDER SECRETARY STEPHEN TO RIGHT HON. GEORGE S. BYNG.

Sir, Downing Street, 20 November, 1846.

I am directed by Earl Grey to transmit to you the enclosed Reference of copy of a Despatch* from the Governor of New South Wales, on the subject of a charge of £294 19s. lid. incurred by that Government in dispatching a Vessel for the rescue of 24 Lascar Seamen, who were wrecked on a desert Island in a Vessel called the "Coringa Packet" on her passage from Sydney to Ceylon; and I am to request that you will lay this Dispatch before the Commissioners for the affairs of India, in order that they may take such measures as they may consider proper in regard to the reimbursement by the East India Company of the amount in question to the New South Wales Government as proposed by Sir George Gipps.

I am, &c,

J. STEPHEN.

[Enclosure No. 2.]

RIGHT HON. GEORGE S. BYNG TO UNDER SECRETARY STEPHEN.

Sir, India Board, 14th January, 1847.

In reply to Your letter of the 20th November, respecting the charge of £294 19s. lid., incurred by the Government of New South Wales for the rescue of 24 Lascar Seamen who were wrecked on the Voyage from Sydney to Ceylon, I am directed to transmit to you, for the information of Earl Grey, the Copy of a Letter received from the Secretary to the Court of Directors of the East India Company, stating what portion of the expenses the East India Company are prepared to defray.

I have, &c,

GEORGE BYNG.

* Marginal note.—No. 117, 16 June, 1846.
Sir, East India House, 7th January, 1847.

I have laid before the Court of Directors of the East India Company Your Letter of the 23rd of November last and its enclosures, relative to a claim made on behalf of the Government of New South Wales to repayment of the sum of £294 19s. lid., expended in an attempt to rescue some Shipwrecked Lascars belonging to the late Barque "Coringa Packet."

It appears that the "Coringa Packet" was wrecked on a Sand Bank while on her voyage from Sydney to Ceylon, and that the Authorities at the former place, on receiving intelligence of the occurrence, Chartered the Schooner "Frolic" and despatched her to the relief of the Crew.

When the "Frolic" arrived at the place where the "Coringa Packet" was lying, the Crew had already been removed, and the "Frolic" in consequence pursued her voyage to Port Essington, where it was found that three of the Lascars, who are stated to have been Natives of Madras, together with the Mails and Officers' Luggage of the "Coringa Packet" had been landed some days previously from the Schooner "Heroine," one of the Lascars had joined the "Heroine," but the other two, with the Mails and baggage, were carried on by the "Frolic" to Singapore.

With reference to these circumstances, the Court desire me to state that they consider the Government of New South Wales entitled to reimbursement of all the expenses really incurred with a view to the relief of the Survivors from the "Coringa Packet," and they are accordingly prepared to direct repayment of £240, the sum charged for the hire of the "Frolic," a Warrant for which amount will with the sanction of the Commissioners for the Affairs of India be made out in favor of Mr. Barnard, the Agent in London for the Colony of New South Wales.

The balance of the claim, viz., £54 19s. lid., is for the value of provisions shipped on board the "Frolic" intended for the use of the Lascars of the "Coringa Packet," but, as the provisions were not actually applied to that purpose, but were landed at Port Essington and retained for the use of that settlement, it is clear that the East India Company are not accountable for them.

The Papers which accompanied your letter are herewith returned.

I have, &c.

JAMES C. MELVILL.

[Enclosure No. 3.]

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

Sir, Downing Street, 28th January, 1847.

I am directed by Earl Grey to transmit to you Copies of a Correspondence, which has passed between this Department and that of the Commissioners for the Affairs of India, arising out of a claim made on behalf of the Government of New South Wales to repayment of the sum of £294 19s. lid., which had been expended by them in despatching the Schooner "Frolic" to the rescue of some Shipwrecked Lascars belonging to the "Coringa Packet" on her passage from Sydney to Ceylon.

The Lords Commissioners will observe that the East India Company have undertaken to defray the larger portion of the sum in question, but that they do not hold themselves accountable for the remaining Balance of £54 19s. lid. incurred for Provisions shipped on board the Schooner, and intended for the use of the Lascars, but which were afterwards landed at Port Essington and retained for the use of that Settlement.

Under these circumstances, Lord Grey would recommend that the Lords Commissioners should give the necessary directions for paying to Mr. Barnard, the Colonial Agent, the sum of £54 19s. 1ld., on account of the Settlement at Port Essington, in reimbursement of the corresponding amount expended by the Government of New South Wales on the occasion above stated. I have, &c.

JAS. STEPHEN.
FITZ ROY TO GREY.

[Enclosure No. 4.]

UNDER SECRETARY STEPHEN TO RIGHT HON. GEORGE S. BYNG.

Sir,

Downing Street, 25th January, 1847.

I have laid before Earl Grey your Letter of the 14th instant, together with the Copy of one from the Secretary to the Court of Directors of the East India Company, from which it appears that, with reference to the claim made on behalf of the Government of New South Wales to repayment of the sum of £294 19s. 11d., which had been expended by them in an attempt to rescue some Shipwrecked Lascars belonging to the “Coringa Packet,” the East India Company consider that the Government in question are entitled to reimbursement of all the expenses really incurred with a view to the relief of the survivors from that Vessel, and that the sum thus due to them amounts to £240.

Lord Grey directs me to request you would move the Commissioners for the Affairs of India to give directions for the payment of the above mentioned sum to Mr. Barnard, the Colonial Agent, to be placed by him to the credit of the Government of New South Wales.

I have, &c.,

JAS. STEPHEN.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 92, per ship Glentanner.)

Sir,

Downing Street, 30th January, 1847.

I have to acknowledge the receipt of Sir G. Gipps’ Despatch, No. 141, of the 4th of July last, reporting the circumstances under which, in accordance with his previous recommendation of the 24th of May, he had caused Mr. Joshua Allott, Crier of the Supreme Court of New S. Wales, to be relieved from the performance of the duties of his Office, and had granted him a pension to commence immediately at the rate of 4s. per diem.

My dispatch, No. 59 of the 16th of Novr., will have explained to you the reasons, which prevented me from acquiescing in Sir G. Gipps’ recommendation in Allott’s behalf to its full extent. I need now, therefore, only refer you to that Instruction.

I have, &c.,

GREY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 18, per ship Hamlet: acknowledged by earl Grey, 7th July, 1847.)

My Lord,

Government House, 30th January, 1847.

I have the honor to acknowledge the receipt of your Lordship’s Dispatch, No. 19 of the 12th August, 1846, enclosing a copy of a letter from the Colonial Land and Emigration Commissioners, dated 31st July, 1846, pointing out, with reference to
the Returns relating to Land and Emigration, which accompanied the Despatch of Sir George Gipps of the 31st of January, 1846, No. 28, that, in the Statement of Land sold and let on Lease, the Port Phillip District is not included, and forwarding a Memorandum of some minor points which the Commissioners have noticed in the course of their inspection of the Returns.

In compliance with the Instructions of your Lordship, I have caused the necessary directions to be given to the Colonial Treasurer and to the Superintendent of Port Phillip for preparing the required returns for the Port Phillip District; and they will be transmitted to England by the earliest opportunity after their receipt.

The attention of the proper Officers has also been drawn to the points noticed in the Memorandum of the Commissioners, and I beg to enclose a Copy of a letter from the Colonial Treasurer, dated the 23d instant, furnishing the explanation required in the cases adverted to under the heads 2, 3, 4 and 5 of that Memorandum.

I have, &c,

CHS. A. FITZ ROY.

[Enclosure.]

[Ad copy of this letter is not available.]

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 19, per ship Hamlet; acknowledged by earl Grey, 30th August, 1847.)

My Lord,

Government House, 30th January, 1847.

I have the honor to enclose herewith a copy of a Petition addressed to me by certain Land holders, Bankers, Merchants, Graziers, Ship-Owners and Traders and others interested in the welfare of this Colony, pointing out the prevalent and increasing deficiency of labour and the urgent necessity for an immediate renewal of Immigration. This petition is numerously and respectfully signed and was presented to me by a deputation consisting of some of the most influential persons in the Community.

I also enclose a Copy of the answer which I gave to the Petition, from which your Lordship will perceive that, concurring in the opinion expressed by the Petitioners which is indeed fully borne out by the Official Returns of which I am in possession, as well as by the information which I personally obtained on my recent visit to the Western Districts of the Colony, I have undertaken to recommend to Your Lordship that an immediate Supply of Emigrants should be sent to this Colony to the extent of at least five thousand Statute Adults.
I have the honor also to enclose a Copy of a letter from the Immigration Agent, in which he enters very fully into the question relating to the present demand for labor and the supply which has been received during the last year, and also makes some very useful suggestions for conducting Emigration to this Colony in future, and which I beg to recommend to Your Lordship's attention. I do not by the present opportunity transmit to Your Lordship the Returns mentioned in Mr. Merewether's letter, as I await the receipt of the others required by Lord Stanley's Despatch of 22d March, 1845, which are in course of preparation, and will, I hope, be ready for transmission by the next Packet.

Your Lordship will perceive that, in the course of the last two years, the average Money wages of Agricultural labourers and Shepherds in this portion of the Colony have increased progressively from £15 to £21 per annum, and that the rate of increase during the present year will, the Immigration Agent fears, be nearly doubled, which would bring the average rate of wages to £27, a rate which, at the present low price of Wool in the English Market, cannot be paid without an undue encroachment on the reasonable profits of Capital in this the main branch of Colonial industry. It is, therefore, under circumstances which I consider most urgent for the interests of the Colony, that I am induced to press upon Your Lordship the earliest possible compliance with the Prayer of the Petition, of which I now forward a Copy.

I beg to point out that the most pressing want is felt for pastoral and Agricultural laborers and female domestic Servants, but that it is not necessary or desirable at present to introduce Artificers or Mechanics of any description at the public expense. It is advisable also that the Emigrants should be sent out in Ships sailing at short intervals between each, so as not to have too large a number seeking engagements at the same time. Such intervals should not however exceed a fortnight, in order that the necessary supply of labor may be received within as short a period as consistent with the Emigrant's speedily obtaining employment in the Country Districts. It is conceived that about the usual proportion of the 5,000 Statute Adults or about one third of the number should be sent to Melbourne. It will be advisable also to insert a condition in the Charter of each Ship, giving the option to the local Government to forward the Emigrants to any suitable Port in the Middle or Port Phillip District, according as their destination may be to one or other of these two portions of the Colony. In this way, the opportunity will be afforded of sending the Emigrants to those parts of the
Country where there may be the most urgent demand for them, without their landing at all at Sydney, which, for many reasons, is very undesirable.

It remains for me to apprise your Lordship of the means which I conceive to be disposable to meet the expenses of the Immigration here recommended.

The Debentures, hitherto issued in payment of bounties on Emigration and amounting to about £100,000, will be paid off during the present year, at the periods they respectively fall due, from funds now at the credit of the Crown Revenue of the Colony. This Revenue will be wholly unencumbered, and consequently available as an ample security for raising the necessary funds to meet the payment of bounties on the 5,000 Statute Adults now recommended to be sent out. Some diversity of opinion seems to prevail in the Colony as to the best mode of effecting this object. After much consideration, I am induced to bring under your Lordship's notice the following scheme, which I believe would be found practically to answer the purpose contemplated.

It is assumed that the same arrangements will be made by the Land and Emigration Commissioners as were entered into by them in respect to the Emigration to this Colony which took place in 1843 and 1844, and which I am informed were in every respect satisfactory. Instead however of engaging to pay the Affreighters in Cash, the option should be reserved to the Local Government, of making payment either in Cash or in Land and Immigration Debentures of the following description, namely Debentures of £100 each, having three years certain to run and determinable at the option of the Government, but not of the holder, after six Months' Notice in the London or New South Wales Gazette. That these Debentures should be secured as a primary charge on the Territorial Revenue of the Colony, and bear Interest from the date of their issue until the expiration of the time fixed by Notice for paying them off, at the rate of Five per Cent. per annum, payable half yearly. That the principal and interest should be payable at the option of the holder, either in Sydney or London, on a notice being given to that effect to the local Government and a registration made of the transaction in the Colonial Treasury in Sydney, and at the Colonial Agent General's Office in London. These Debentures should also be made receivable as Cash at the Colonial Treasury in Sydney or Melbourne in the purchase of land, or in payment of the license fee, rent or other debt due on account of the Territorial Revenue of the Colony.
It is not doubted that Debentures of this description would be readily negotiable both in the Colonial and London Markets at par, or in the latter even at a premium. There cannot be the slightest doubt, in my opinion, of the ample sufficiency of the Territorial Revenue as a Security for raising funds to a much larger amount than would be necessary to defray the expense of the emigration now contemplated. It is only, therefore, for more abundant caution that it is proposed to reserve the option to pay in Debentures, in order to prevent the possibility of any inconvenience to the local Government in having to meet engagements for which they were not in actual possession of the necessary funds. This appears to be the more requisite, as I understand, on the previous occasions to which I have referred, some inconvenience was experienced by the local Government in immediately raising funds on the Security of the Debentures.

There is one point connected with the subject to which I deem it my duty specially to call your Lordship's attention. By your Despatch No. 3 of the 16th July, 1846, your Lordship, in reply to the petition from the Town Council of Melbourne, praying that, in the event of a loan in aid of Immigration to New South Wales being sanctioned, the Revenue of the District of Port Phillip may not be pledged in conjunction with that of New South Wales generally, directs me to inform them that there is no intention on the part of Her Majesty's Government of sanctioning the loan which the Petitioners deprecate. In the event of Her Majesty's Government having determined, in pursuance of the recommendation\(^*\) of the Executive Council of this Colony, to erect the District of Port Phillip into a separate and distinct Dependency of the Crown, unconnected with that of other portions of New South Wales, I conceive that there will be no difficulty in making the Debentures to be issued for that portion of the Immigration, destined for the District of Port Phillip, dependent on the security of the Territorial Revenue locally raised therein, whilst the remaining portion of the Debentures may be secured on the Territorial Revenue raised in the Sydney or Middle District. By this means, any embarrassment, which might otherwise arise in the carrying into effect the important measure of separation, will be entirely avoided; and it appears to me that each of such Revenues will be fully sufficient to answer the purpose required.

It was my intention to have deferred recommending this measure until the receipt of the Regulations to be issued by Her Majesty in Council under the recent Land Sales Amendment Act, when it would have been more clearly seen what would be the available Revenue from Crown Lands applicable to the purposes

\(^*\) Note 37.
of Immigration; and this course would have been more satisfac-
tory to myself; but, convinced of the urgent necessity for as early
a resumption of immigration as possible, and pressed to bring this
subject immediately under your Lordship's consideration, I have
not thought myself justified in delaying to do so; and I beg to
urge it in the strongest manner in my power, as one deserving
of the earliest attention of Her Majesty's Government.

I have, &c,
CHS. A. FITZ ROY.

[Enclosures.]

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 22, per ship Urgent.)

My Lord,
Government House, 30th January, 1847.

I do myself the honor to acknowledge the receipt of your
Lordship's Despatch of the 31st July last, No. 10, requesting me
to take any measures which could be lawfully and properly
adapted for assisting Thomas MacGowan in recovering the
amount of money, standing in the Savings Bank of New South
Wales to the credit of the Estate of his late son, Robert McGowan
or Gowan, formerly of the vessel "Annie," and to state that I
have received from the Supreme Court an order on the Savings
Bank for the whole of the funds to the credit of the Estate of
McGowan, amounting to Seven pounds, ten shillings and eleven
pence, which sum I have caused to be paid to Deputy Commis-
sary General Ramsay, in order that a corresponding sum may
be issued from the British Treasury to the Colonial Agent
General to be paid under your Lordship's instructions to the
lawful representatives of the Deceased.

I have, &c,
CHS. A. FITZ ROY.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 23, per ship Urgent; acknowledged by
earl Grey, 29th May, 1847.)

My Lord,
Government House, 30th January, 1847.

I have the honor to acknowledge the receipt of your Lord-
ship's Despatch, No. 16 of the 12th August last, transmitting
an Extract of a letter from the Most Revd. Dr. Polding, in
which he calls your Lordship's attention to the form of Oath
administered to Solicitors and others on their admission to prac-
tise in the Supreme Court of this Colony.
FITZ ROY TO GREY.

Having made inquiry respecting this complaint in compliance with your Lordship's instructions, I have now the honor to transmit the copy of a letter addressed to the Colonial Secretary by the Chief Justice, covering memoranda from the other judges, from which your Lordship will perceive that the Oaths complained of are not of an unusual character, but merely those administered to all Public Officers on their admission to Office.

It would appear, however, that these Oaths were not administered to Solicitors of the Supreme Court until the arrival from England in 1843 of the present Prothonotary, Mr. Gregory; and that Mr. Justice Therry differs in opinion with the Chief Justice and Mr. Justice Dickinson as to the legal necessity of administering them.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

SIR ALFRED STEPHEN TO COLONIAL SECRETARY THOMSON.

Sir, Supreme Court, 21st January, 1847.

I have the honor to acknowledge the receipt of your letter, transmitting copy of a Despatch from the Secretary of State, with extract from a letter addressed to His Lordship by the Most Reverend Dr. Polding, on the 27th July last, on the subject of some oath administered to Solicitors and others, who seek admission to practice in the Supreme Court of this Colony.

It is represented by Dr. Polding, on behalf of the Roman Catholic Community, that the oath is objectionable as tending to keep alive an estrangement of feeling. He states that it is at variance with the religious feelings, as I understand his letter, of "several gentlemen connected with the Court," and, at their request, he entreats the Secretary of State's interference, that they may in future be relieved from the pain inflicted on them. Then, on their assurance, he states that the oath is not required, either by the law of England or the Colony; that its administration is entirely in the option of the Chief Justice, and that, by my Predecessor Sir James Dowling, it was never required.

Lord Grey accordingly desires this matter to be inquired into, and expresses a wish that the oath in question may be so altered as not to be offensive to individuals of any religious persuasion.

Few things have excited more my surprise, and few in my judicial career given me more pain than this occurrence. The complaint against me is that, since my accession to the post of Chief Justice, I have introduced into the Court an objectionable oath, not in any way required by law, calculated to inflict pain on the feelings of the Roman Catholic body. I cannot refrain from expressing my regret that such a representation has been made. Even if well founded, I conceive that the proper course was to have taken some step in the Colony, which would have enabled me to retrieve the error, or at least explain the grounds on which I had acted. To this end, several modes of proceeding were open; motion or petition to the Court, remonstrance to myself, or application to the local Government. No such course, however, has been taken. No remonstrance, representation or request has ever been made to me, or (so far as I know or have heard) to either of my Colleagues...
1847.
30 Jan.

Objections limited to terms of oath of supremacy.

Difficulty in removal of grievance.

Statement re oaths administered to attorneys on admission to supreme court.

on the subject; and I was actually ignorant, until the receipt of your letter, that the oaths administered to solicitors were obnoxious to any one.

This statement will account for the mistake into which I then fell, as to the oath objected to. The Secretary of State will be surprised to learn that it is not any oath tendered to Roman Catholics, but is simply the oath of Supremacy* administered to protestants. The objection is abstractedly, as the accompanying papers shew, to the terms of that oath; and obviously therefore, not as administered to Solicitors only, but as an oath administered to any one. It follows that the grievance really felt is too extensive for any authority in this Colony to remove. A partial remedy would be afforded no doubt by administering the oath to as few persons as possible. We should accomplish little, however, by ceasing to tender it to Solicitors, if the duty remain of administering it to Magistrates. The same reason, on the other hand, that shall have called for its abolition with respect to any class, will equally require it to be abolished altogether. I do not say that the oath of Supremacy may not safely be abolished or its terms much modified. But I could scarcely have suspected that an oath, certainly required to be taken by the Governor and by every Protestant Judge and Magistrate in the Colony, would then only become matter of complaint, when administered to a Protestant Attorney.

With respect to the administration of that oath, the facts are as follows:—Prior to the arrival of our present Registrar, Mr. Gregory (which was in the month of August, 1843), the only oath administered to Attorneys was the common oath of good conduct. Why or how this was, I am unable to explain, neither can I remember the circumstances which gave rise to or induced the change, which took place on the first occasion of that Gentleman's having, as Prothonotary, to administer the oaths to Attorneys. That occasion was the 17th day of February, 1844: a date which is fixed, not only by Mr. Gregory's statement to me, accompanying this letter, but by an angry article in a Roman Catholic newspaper, dated the 2d March following. On such an occasion, an enquiry was very naturally made by Mr. Gregory, whose professional experience had made him familiar with such matters, as to the usual and proper oaths, and it appears that some conversation then took place on the Bench, which ended in the administration of the oaths of allegiance, Supremacy, and abjuration, in addition to the oath of good conduct.

In Mr. Gregory's letter, this addition is imputed to Mr. Justice Burton. In the Newspaper article, I perceive that it is imputed to me. For myself I have no recollection whatever in the matter: and can only offer an opinion on that point from the probabilities of the case. As to that article I never saw or heard of it until last week, when a Roman Catholic Solicitor sent it me. And the absence of complaint or question on the subject, for so long a period, has rendered me equally forgetful. But I believe that the alteration originated neither with Sir William Burton nor myself. I believe it to have been the result, simply, of Mr. Gregory's inquiry, and of the discussion to which as a matter of course it gave rise. But in either case, the alteration was the Act of the Court, and not mine. And it took place (not as Dr. Polding's letter implies, since my accession to Office as Chief Justice), but in the time of Sir James Dowling, and when I was the least entitled to interfere of the three Judges present.

* Note 38.
On the expediency of altering or of continuing or abrogating the oath of Supremacy, now administered to Magistrates and others in this Colony, as in other parts of Her Majesty's Dominions, I offer no opinion. That object might however, I will remark, have been attempted by the Reverend Prelate or his Friends in this Colony without a representation injurious to me, made at the other end of the world. It is true that, of above one hundred practising Attorneys, there were only five Roman Catholics, and of twenty two Barristers there are but three Roman Catholics. But two of those five Attorneys, and all of those three Barristers, at the time of Dr. Polding's departure from Sydney, held office under the Crown, one being the Queen's Attorney General, and one a Judge of the Supreme Court.

As to the legality of the oath, or rather the duty imposed on the Judges by law of tendering it to Attorneys, as well as Magistrates, I was really not aware, until I received Mr. Justice Therry's Memorandum, that a question could have been made. If, however, after perusal of that memorandum, and of Mr. Justice Dickinson's and my own (of all which I annex copies), it shall be thought that we can dispense with the oath, the Judges will discontinue it. Or, if the Legislature shall think fit, the administration of the oath to Attorneys can be abolished by express enactment. Such a measure, however, as I have shewn, will remove the real ground and cause of offence, but very partially. I have, &c.

ALFRED STEPHEN, C.J.

List of Annexures.
1. Memorandum sent the other Judges.
2. Do from Mr. Justice Therry.
3. Do Mr. Justice Dickinson.
4. Letter to C.J. from same.

MEMORANDUM for their Honors Mr. Justice Dickinson and Mr. Justice Therry.

1. With reference to my former note, separately addressed to my brethren on the bench, as to oaths administered or tendered to Roman Catholic Solicitors, it has now occurred to me, on more attentive consideration of the terms of the Archbishop Polding's letter (and indeed I have this morning been satisfied from the tenor of a newspaper article which a Roman Catholic Gentleman, a Solicitor, has put into my hands, dated 2d March, 1844) that the complaint is not respecting any such oaths, but that oaths are administered to Protestants, being Solicitors, and to others, in the hearing of Roman Catholics.

2. Now, there never have been any oaths (the oath of office excepted) administered to Protestant Solicitors, other than those which are administered to the Governor, the Members of the Executive Council, the Judges, and to Justices of the Peace, viz., the ordinary oath of allegiance, Supremacy, and abjuration. It does appear (though I was not aware of the fact, or I had entirely forgotten it, if I was ever aware of it) that these oaths were not administered to Solicitors until the time of the present Prothonotary; according to him, the first instance being in November, 1843, when he first had occasion to tender oaths on admission of Attorneys, or (according to the Roman Catholic Newspaper of 2d March, 1844, and which I send you) the first instance being on the 17th February, 1844. But the same oaths were always administered in open Court to Solicitors as well as others on their taking any Office.

3. Both the dates given above were in the time of my predecessor Sir James Dowling; and no change has been introduced since. I was then the Junior Judge of the Court; and I have not the most distant recollection of the circumstance (stated in the newspaper) either of my having suggested the change, or even of having been cognizant of the fact of a change. I certainly never saw or heard of the newspaper article until now; nor have I ever been conscious that the subject of
MEMORANDUM by Mr. Justice Therry.

I have just received the Memoranda of the Chief Justice and Mr. Justice Therry; dated respectively 15th January and 18th January, 1847.

For the reasons stated in my letter to the Chief Justice, dated 15th January, 1847, to which I hereby refer, I think it highly desirable that the oath of Supremacy should not be administered in the Supreme Court to Magistrates, Solicitors and other Officers.

But, as I stated in that letter, I fear we cannot safely dispense with the oath, unless we are assisted by Act of Parliament or Council, I am strongly inclined to think that, after the making of the Charter, the Judges of this Court were bound to administer the same, and admit Attorneys in the same manner as in

[Sub-enclosure No. 3.]
MEMORANDUM by Mr. Justice Dickinson.

O'Connell Street, Monday, 15th Jan., 1847.

I have just received the Memorandums of the Chief Justice and Mr. Justice Therry; dated respectively 15th January and 18th January, 1847.

For the reasons stated in my letter to the Chief Justice, dated 15th January, 1847, to which I hereby refer, I think it highly desirable that the oath of Supremacy should not be administered in the Supreme Court to Magistrates, Solicitors and other Officers.

But, as I stated in that letter, I fear we cannot safely dispense with the oath, unless we are assisted by Act of Parliament or Council, I am strongly inclined to think that, after the making of the Charter, the Judges of this Court were bound to administer the same, and admit Attorneys in the same manner as

[Sub-enclosure No. 2.]
FITZ ROY TO GREY.  341

England. If that was the correct method of proceeding before the Statute 9 G. 4, c. 88, and the local Act 6 W. 4, c. 15, I see nothing in those Acts which directs or sanctions any proceeding repugnant to the practice of the Courts in England. To admit an Attorney (or Barrister) without oath, I consider repugnant to the British Courts; and, if this Court at its institution was by analogy to British practice bound to administer an oath, the same analogy indicated the imposition of the same oath as in England and Ireland.

Mr. Justice Therry's observations involve (and indeed virtually assert) the proposition that this Court ought never to have imposed any oath upon Attorneys on their admission, I beg leave (with great deference and respect) to dissent from his view. In the Memorandum of Mr. Justice Therry not easily susceptible of a convincing refutation.

As we shall not admit any Solicitors till the last day of next Term (viz., 30th April, 1847), and as the Legislative Council will probably ere then be in Session, all parties might be relieved from the present difficulty by an Act of His Excellency the Governor and Council, adopting the Statute, 7 and 8 Victoria, C. 73, mentioned in the Memorandum of Mr. Justice Therry.

J. N. DICKINSON.

[Sub-enclosure No. 4.]

MR. JUSTICE DICKINSON TO SIR ALFRED STEPHEN.

My dear Sir Alfred, O'Connell Street, 15th Jany., 1847.

Having been favored by you, since I wrote you on the subject of the oaths complained of by Archbishop Polding, with a perusal of Lord Grey's letter, and administration that of the most reverend Prelate to his Lordship, and having considered Mr. Justice of oath of Therry's construction of the latter, it appears quite clear to my mind that the supremacy Archbishop merely meant to say "that Roman Catholics heard an oath administered to Protestant Solicitors, the terms of which were painful to the loyal and religious feelings of members of the Church of Rome."

I do not at present see how we can do otherwise than administer the oath of Supremacy to Protestants, unless by the authority of an Imperial Statute or Colonial enactment. I must, however, for myself say that I have felt pain at hearing the oath administered to Magistrates, when those I knew to be Roman Catholics were sitting in Court before me. I must confess I think the oath is insulting to Roman Catholics; and its administration, I fear (among the ignorant and vulgar) tends to excite the remembrance of ancient animosities, and to keep up groundless prejudices. I sincerely believe that no class of the population of New South Wales is more loyal than the Roman Catholic body, or more attached to the connexion between this Colony and the British Islands; and I am sorry that any oath should be administered to any one, which I think imputes a disloyal spirit to their Religion.

As we all of us, I think, agree in the sentiments of this letter, I should like it (or the opinions contained in it) to be brought before the notice of Her Majesty's Secretary of State. Believe me, &c,

J. N. DICKINSON.

[Sub-enclosure No. 5.]

OPINION OF THE CHIEF JUSTICE.

The opinions of my learned Colleagues being in conflict, it becomes necessary for and by me to express my own, which is in accordance with that of Mr. Justice Dickinson, Sir A. Stephen, that the Judges of the Supreme Court are bound to administer to Attorneys, on admission, the same oaths as those which, by the laws in force in England on the passing of the 9 G. 4, c. 83, were administered to Attorneys in the Courts at Westminster. And since, of those oaths, the oath of Supremacy was at that time one (as indeed it continued to be, until the late statute referred to by Mr. Justice Therry consolidating the laws relating to Attorneys, which statute is not in force in this Colony), I am of opinion that we were and are bound to administer to Attorneys that oath.

By the said 9 G. 4, c. 88, s. 24, all statutes then in force in England, not being inconsistent with any Charter issued in pursuance thereof, shall be applied in this Colony, so far as the same can be applied; and it is made the duty of the Supreme Court, without reference to the Local Legislature, as often as any doubt shall arise, on any proceeding before it, to decide as to the application of any such Statute in the Colony.

I apprehend it can hardly be disputed that a doubt arises (within the meaning of that enactment) respecting the proper oaths to be taken by Attorneys on their admission, as often as any Attorney applies for admission. In the absence of any express adjudication on the point, that doubt (in other words, a question to be decided one way or the other) would necessarily arise in our very next Term.

According to the Prothonotary, however, and to the newspaper statement sent by me to my Colleagues (whichever of the two versions be correct), a question did arise, and was discussed as to the proper oaths to be administered in February, 1844; and that question too was by the then Judges at that time decided. Such, I conceive, was in effect the direction then given to the Prothonotary to administer the
HISTORICAL RECORDS OF AUSTRALIA.

342

1847.
30 Jan.

Opinion re administration of oath of supremacy by Sir A. Stephen.

Statement by G. P. F. Gregory administered.

oaths of allegiance, Abjuration, and Supremacy. The propriety of that direction, however, depends exclusively on the question, whether the English Statutes requiring those oaths from Attorneys were then in force (or, in the language of the 9 G. 4, c. 83, could be applied) in this Colony.

By the Charter, Clause 10, British and Irish Barristers and Attorneys may be approved and admitted in this Court; and, under certain circumstances, the Court may admit many other persons as may be necessary according to such General Rules and Qualifications as the Court may establish. Each class has to be "admitted." The right to admission, in the absence of any just cause of exception, may exist in the former class; but, until admission, it has never been supposed for a moment that they could practice. If they could, admission would be unnecessary. But, if they apply for admission, the question what oaths they must then take, if any, at once arises. As to the other class, that of Colonially instructed Attorneys, the question arises as much of necessity with respect to them. The "Rules and Qualifications" concern, as I take it, moral and professional fitness; the mode of examination; time of applying; and so on. The applicability of the Statutes requiring oaths from Attorneys on admission is a question which, I conceive, is independent of any such rules, and of the power of making them.

It is by no means my opinion that the 9 G. 4, c. 83, s. 24, is restricted or limited in its operation with regard to Attorneys by the Charter. I think that no power was given by the Charter, which could be construed as interfering with that enactment, or with the provisions of the 7 and 8 W. 3, requiring the Oath of Supremacy from Attorneys. I think that all, taken together, are in harmony. But, if they are not, the Charter, and not any Statute otherwise applicable, must give way. For the Charter was issued prior to the 9 G. 4; and therefore not in pursuance thereof. The Statute of 7 and 8 W. 3, consequently if inconsistent with the Charter, but applicable to the Colony, must be applied.

It is plain, from the preamble to the 31 G. 3, c. 32 (by which Statute, s. 22, Roman Catholic Attorneys are allowed to take another form of oath) that the provisions of the 7 and 8 W. 3, c. 24, are of general and not local application. But it appears to have been thought a difficulty that by these Statutes the oaths are to be taken in the Courts of Queen's Bench, Common Pleas, Exchequer, or Chancery; and so, inasmuch as there never has been a Court so named here, the enactments can have no application. If such an objection be worth anything, it should rather be put thus. As the Courts named are in England, persons must take the oaths there to comply with the law; which, as a preliminary to practising in New South Wales, would be absurd. But, by the Statute, all Barristers and Attorneys are to take the oath in question. To take it in England, when England was the place in which they designed to practise, was all that could have been intended. When a Court was erected here, Attorneys seeking admission were, as English subjects, under a corresponding obligation; that is, to take the oaths in that Court. By the 9 G. 4, c. 83, s. 3, the Supreme Court of New South Wales had jurisdiction in all cases, and for all purposes, as amply as all the Common Law Courts named. And by the Local Act, 6 W. 4, No. 12, passed to remove doubts as to the power of this Court to do things, which may be done in England by those Courts, it is enacted that, where any Statute in force at the time of the passing of the 9 G. 4, c. 83, shall direct any thing to be done by or before those Courts, the same shall or may be done by this Court. The words "or before" should, perhaps, have been here again introduced; and the Act is, undoubtedly, ill drawn. But looking at its manifest intention, I think that administering an oath is a thing to be done within the meaning of the said 6 W. 4; and so, that the Supreme Court here is, in respect of the oaths required from Attorneys, expressly put in the place of the Queen's Bench, Common Pleas and Exchequer.

Hyde Park, 20 January, 1847. ALFRED STEPHEN, C.J.

[Sub-enclosure No. 6.]

MR. G. P. F. GREGORY TO SIR ALFRED STEPHEN.

Sir,

Supreme Court Office, Sydney, 15th January, 1847.

On referring to the Roll of Attorneys, I find that I was in error respecting the third Term, 1843, in which Term no Attorneys were admitted. On the last day of the first Term 1844, seven Attorneys were admitted, whose names I send at foot. On that occasion, being informed that the practice of administering the oaths of Allegiance and Supremacy to Attorneys on their admission had been desisted from in the Colony, I administered the simple oath faithfully to demean themselves; upon which Mr. Justice Burton remonstrated, and required the oaths of allegiance and supremacy to be tendered to the Candidates, which was accordingly done, and they were taken without a syllable of remonstrance or complaint. From that era, they have continued to be so administered.

It will be observed that the seven gentlemen, whose names are at foot, are all of them Protestants; but why the Roman Catholics should quarrel with oaths, which they are not required to take, is singular enough. Had the Protestant Gentlemen objected, the only answer to be given to them would be that they are compelled by
Sir Charles Fitz Roy to Earl Grey.

(Despatch No. 24, per ship Urgent.)

My Lord,

Government House, 30th January, 1847.

In accordance with the Instructions conveyed to my Predecessor in Lord Stanley's Despatch of the 3rd February, 1844, I have the honor to transmit to your Lordship Copies duly certified of the Depositions, upon which Warrants were issued by this Government for the apprehension and subsequent surrender to the proper authority of certain fugitive Criminals, Citizens of the United States of America, under the provisions of the Act of the Imperial Parliament for giving effect to the 10th Article of the Treaty of Washington. And, with a view more fully to illustrate the facts of the case, I also forward Copies of the correspondence which took place with the Crown Law Officers and the Consul of the United States.

A few days previous to my arrival in the Colony, it was represented to the Provisional Government by the Consul of the United States that the American Ship "Canton Packet" had been compelled to put into the Port of Sydney, in consequence of an attempt made by four of the Crew* to burn the Vessel while at the Feejee Islands. It was further stated that it was necessary to remove the men, who were then confined on board the Ship, for the purpose of putting her into condition to proceed to sea; and the Consul therefore requested that the Men might be received into Gaol, until he could forward them to the United States for trial.

As it appeared doubtful whether this was a case coming properly within the scope of the Act of Parliament before adverted to, reference was made on that point to the Crown Law Officers. The Report received from these Officers stated in effect that the Requisition made by the Consul was insufficient, as it did not

* Marginal note.—John Remington; Samuel Chadwick; Miner Robinson; James Smith.
explicitly charge the Men with any of the Offences, specified in the Act of Parliament; and, upon that opinion being communicated to the Consul, he made a renewed Requisition to the Government, in which the prisoners are distinctly charged with having committed Arson and Piracy, which clearly brought the case within the terms of the Act. This being deemed sufficient by the Crown Law Officers, the necessary preliminary Warrant was issued by Sir Maurice O’Connell for the apprehension of these Men.

I have already enclosed Copies of the Proceedings taken in the Police Court of this City, which were brought to a close on the 14th of August, and which resulted in the discharge of one of the prisoners⁷ and the committal to Prison of the other three.

On the 1st October following, the Consul represented that the Men had been detained nearly the length of time provided for in such cases by the Treaty of Washington, and requested that they might still be kept in Custody, although he was not prepared to state any precise period, at which he would be able to send the prisoners to the United States. This communication was likewise transmitted to the Law Officers, and their opinion thereon and the additional Steps they advised should be taken by the Consul, are detailed in the Enclosure No. 3.

Finally, on the 13th December last, the United States Consul reported that an opportunity had occurred of forwarding the Prisoners to the United States by the American Ship “Merrimac.”

As soon, therefore, as the proper legal Instrument could be prepared, I issued a Warrant for the surrender of the Prisoners, and they were eventually placed on board the “Merrimac,” which vessel sailed from this Port on the 26th of December last.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosures.]  
[Copies of these papers are not available.]

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 26, per ship Urgent.)

My Lord,

Government House, 30th January, 1847.

I do myself the honor to transmit to your Lordship here-with the Returns relating to Land and Emigration, required by Lord Stanley’s Circular Despatch of the 22nd March, 1845, namely,

⁷ Marginal note.—John Remington.
Fitz Roy to Grey.

1. Return of all Land sold during the year ended 31st December, 1846.
2. Return of Land reserved or purchased for Public uses, or granted without purchase, and miscellaneous information respecting Crown Lands for the year ending 31st December, 1846.
3. Return relative to all Lands under Lease or License, or subject to Quit rents for the same period.
4. Return relative to Surveyors and Surveys for the year ending 31st December, 1846.
5. Return of Emigrants, who have arrived in the Colony (exclusive of the District of Port Phillip) during the year ending 31st December, 1846.
6. Return of Persons employed in the Emigration Services and Expenses of the Establishment in the Colony (exclusive of the District of Port Phillip) for the year ended 31st December, 1846.

The Returns Nos. 1 and 3, furnished by the Colonial Treasurer, do not include the District of Port Phillip; but instructions have been given for the preparation of Supplementary Returns containing the information for that District for the past year, as stated in my Despatch of this day No. 18.

The Returns from the Emigration Agent No. 5 and 6, your Lordship will also observe, do not include the District of Port Phillip, and additional returns will therefore be prepared and forwarded, as soon as the necessary information can be obtained for the purpose from Melbourne.

I have, &c,

CHS. A. FITZ ROY.

[Enclosures.]

[Copies of these returns are not available.]

Sir Charles Fitz Roy to Earl Grey.

(Despatch No. 27, per ship Urgent.)

My Lord,

Government House, 30th January, 1847.

Having, in accordance with the directions contained in your Predecessor's despatch of the 23rd June last, called upon Dr. Patrick Glissan, M.D., of Windsor in this Colony, for a Copy of the Memorial dated 1st December, 1845, which he had addressed to your Predecessor, expressing his desire to obtain some employment in the Service of Her Majesty's Government, I have the honor to transmit a copy of a letter which the Colonial Secretary has received from Dr. Patk. Glissan, stating his inability to furnish a copy of the Memorial, on account of its having been prepared and forwarded by his friends in England.

I have, &c,

CHS. A. FITZ ROY.
Inability of P. Glissan to supply copy of memorial.

[Enclosure.]

DR. GLISSAN TO COLONIAL SECRETARY THOMSON.

Sir, Penrith, 10th Decr., 1846.

In obedience with your communication of the 30th Ultimo, I have the honor to inform you for His Excellency's information that I am unable to furnish a copy of the Memorial therein mentioned, bearing date the 1st Decr., 1845, it having been prepared at home by my friends, but I confidently hope it may have the effect of procuring an appointment for me, which the pressing wants of a large and young family daily require, and which your kind advocacy will go far to obtain. I have, &c.,

P. GLISSAN, M.D.

CHS. A. FITZ ROY.

Requisition for clothing for police.

Payment to military chest.

Requisition for printers' furniture.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 28, per ship Urgent.)

My Lord, Government House, 30th January, 1847.

The Legislative Council having voted a sum of money to defray the expense of providing in England, for the service of the year 1848, Clothing for the Police of this Colony generally, a Requisition for the necessary articles of Dress, of the description worn by the Metropolitan Police in London, which it appears to me desirable to adopt in New South Wales, has been forwarded to the Agent General for Crown Colonies, with instructions to procure and send them out; and the sum of £1,900 has been paid into the Military Chest, in order that Mr. Barnard may receive an equal amount from the British Treasury to enable him to purchase the Clothing and provide for the freight. I have therefore the honor to request that your Lordship will be pleased to direct the necessary steps to be taken for the issue of the Money to the Agent.

A List has also been transmitted to the Agent General of Type and Brass Rule, which it is necessary to procure from England for the Government Printing Office in this Colony; and the sum of Two hundred and thirty three Pounds, Nineteen shilling and 5 pence (£233 19s. 5d.) having been ordered to be paid into the Military Chest here, out of the money voted by the Legislative Council for the purchase of New Type for that Establishment for the year 1847, I do myself the honor to request that an equal amount may likewise be paid to Mr. Barnard from the British Treasury for this Service. I have, &c.,

CHS. A. FITZ ROY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 29, per ship Urgent.)

My Lord, Government House, 1st February, 1847.

With reference to Mr. Secretary Gladstone’s Circular Despatch of the 15th June last, suggesting that, in Colonies where no law exists for the apprehension of persons who having
committed crime in one Colony may have escaped to another, a Colonial Law should be passed to remedy that defect.

I have now the honor to transmit the Report and Opinion of the Crown Law Officers of this Government with respect to this suggestion.

Your Lordship will observe that there is already a Law* in existence in this Colony, making such provisions with respect to the Colonies of Van Diemen's Land and South Australia, as are proposed by Mr. Gladstone; but that previously (instead of subsequently as proposed by Mr. Gladstone) to extending this Act to all the other Colonies, it would be desirable, with a view to its legal and practical efficiency, that the Imperial Parliament should make provision for the removal from Colony to Colony of parties when apprehended.

Under this opinion, I do not propose to take any steps for extending the Act referred to, until I am favored with Your Lordship's further Instructions. I have, &c.

CHS. A. FITZ ROY.

[Enclosure.]

MESSRS. PLUNKETT AND MANNING TO COLONIAL SECRETARY THOMSON.

Sir,

We beg leave to acknowledge the receipt of your letter of the 17th Ultimo, enclosing a Circular Despatch from the Secretary of State, suggesting the Enactment of a Law to prevent persons committing crimes in any one Colony and escaping to another from being suffered to remain at liberty in the latter, and requesting, by direction of His Excellency the Governor, that we will favor you with our opinion and report on the subject.

In reply, we have the honor to report that an Act of the Legislature of this Country was passed in 1838 (2 Victoria, No. 11) making with respect to the Colonies of Van Diemen's Land and South Australia such provisions as are now proposed by Mr. Secretary Gladstone to be made with reference to all the Colonies, and such Act might be extended accordingly; but we doubt whether its provisions would have proper legal force, inasmuch as the Legislature has not power to provide (although this is purported to be done in the above Act) for the transmission of the Criminal to the Colony from which he fled, unless, as in the case of South Australia, there happens to be no neutral ground intervening. Unless there be the power to transmit, the authority to apprehend would not only be ineffectual for the purpose intended, but the detention of the prisoner might be deemed unconstitutional.

We, therefore, feel that much difficulty exists in carrying out the plan of Mr. Secretary Gladstone, and we would respectfully suggest that, before the Colonial Legislature passes an Act which would be legally nugatory, the Imperial Parliament should be asked to make the provisions for the removal from Colony to Colony of parties where apprehended, which Mr. Gladstone appears to have contemplated as a subsequent measure; and we would further beg to remark that perhaps it might be more convenient that the

* Marginal note.—2 Victoria, No. 11.
1847.
1 Feb.

Opinion as to the appointment of two Magistrates for the Colony of South Australia, for the purpose of backing warrants.

There can be no objection to the appointment of the two Gentlemen mentioned in this Colony, as Magistrates of South Australia, but I think it cannot answer the purpose intended by the Governor of South Australia. I am not aware of any law that would give effect to warrants of the Justices for the two Colonies respectively by "backing them" in the way proposed, for I do not conceive that the English Statutes, 23 Geo. 2, Cap. 26, and 24 Geo. 2, Cap. 55, which authorise the backing of Warrants in England from County to County are applicable to the case. The two Governments are wholly distinct and independent of each other, and I am of opinion that it will require an act of Parliament to provide for the apprehension of persons who escape from one Colony to the other.

There is an Act of that kind, 13 Geo. 3, Cap. 31, which authorises the apprehension of such persons escaping from England to Scotland and vice versa, and one of the same description for Ireland the 44 Geo. III. C. 95.

A General Act of Parliament on the same principle as the two last mentioned Acts is much required, and difficulties have been experienced with respect to free persons charged with crimes who have escaped to Van Diemen's Land, the Isle of France, etc.

I think it is probable that Sir Richard Bourke has already recommended such an Act; but, if he has not, it is desirable that the notice of the Home Government should be directed to it.

26th March, 1838.

J. H. Plunkett, Attorney General.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 31, per ship Urgent; acknowledged by earl Grey, 5th June, 1847.)

My Lord,

Government House, 1st February, 1847.

With reference to my Despatch, No. 9 of the 9th Ultimo, I have now the honor to transmit the Copy of an address which has this day been presented to me by a Deputation from the Operatives of Sydney, requesting that I would forward to your Lordship the accompanying Petition from the same Body, addressed to Her Majesty, praying that Transportation to this Colony may not be renewed.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure No. 1.]

The Memorial of the Anti-Transportation Committee of Sydney,To His Excellency Sir Charles Augustus Fitz Roy, Knight, Companion of the Royal Hanoverian Guelphic Order, Captain General and Governor in Chief of the Territory of New South Wales and its Dependencies and Vice Admiral of the same, etc., etc.

Respectfully Sheweth, That Your Memorialists having been elected at a Public Meeting, held on the Race Course on the 22nd December last, to
act as a Committee to devise all the means possible from Transportation to this Colony being renewed, and that, in pursuance of the important duties confided to their care, Your Memorialists avail themselves of Your Excellency's presence and beg to present you with a Petition for Our most Gracious Sovereign, Signed by the Operatives in the City of Sydney to the Amount of 6,600 Signatures, and request you will favor Your Memorialists by despatching it to England at your Excellency's earliest convenience.

Your Excellency will perceive that the Petition was solely intended to have been from the Operatives, but others have signed it, wishing to give it as much weight as possible.

Your Memorialists received with heartfelt pleasure the reply Your Excellency was pleased to make on the subject of the revival of Immigration.

With every reliance on your Excellency's desire to promote the Welfare of the Inhabitants of this most important part of Your Excellency's Government, Your Memorialists leave the objects of this address in Your Excellency's hands.

And your Memorialists as in duly bound will ever pray,

STEPHEN S. GOOLD, Chairman.

WILLIAM W. WILKINS, Secretary.

On behalf of the Committee.

[Enclosure No. 2.

THE Humble Petition of the Undersigned Operatives of the City of Sydney, in the Colony of New South Wales, To Her Most Gracious Majesty the Queen, Most Respectfully Sheweth,

That Your Majesty's Petitioners the Operatives of Sydney, in approaching Your Majesty, beg to express our loyal and devoted attachment to Your Majesty's Person and Government and our reliance on Your Majesty's solicitude for the welfare of your Subjects in this Colony.

We venture most respectfully to address your Majesty in regard to a proposal which has recently been made to renew Transportation to this Colony, and, in doing so, we crave leave to state that the abolishment of Transportation has evidently been the cause of the improved state of Society in general, not only in the City of Sydney, but has also extended into the Interior; and taking into consideration the thousands of Immigrants, who have arrived here since the cessation of Transportation, were led to believe, previous to their departure from their Native Soil to this of their adoption, that the Stain, which this Colony had previously been labouring under, was gradually being removed and was greatly rising in the estimation of the Mother Country, have with energy and pride strenuously endeavoured to keep it so, and from the advantages of its being a free Colony to hold out inducements to those whom they had left behind them.

That your Petitioners further beg leave to state to Your Majesty that they fear severe consequences would result from the renewal of Transportation from the fact that many of the best Mechanics have already left the Colony through the depression of Trade, and others are making preparations to follow their example should such a measure be adopted. Your Petitioners likewise feel persuaded that it would be the means of contaminating the Moral,
1847.
1 Feb.

Petition from operatives in Sydney against revival of transportation.

Social and religious views of the present and rising generation, to such an extent that life and property would be at stake as in times back. The leniency proposed to be shewn to the Convicts on their arrival here by the Legislative Council of this Colony in dispersing them into the Interior will give them every facility of entering the larger Towns to commit depredations to the annoyance of the more peaceable Inhabitants.

That the free liberty of the working men would be immediately at Stake in as much that, at the period of this being a penal Colony, many poor Individuals, who have been in the Interior, have been apprehended as runaways and conducted to Sydney in Irons, the distance of some hundreds of miles to be identified, and, after establishing their innocence, left penniless and without the means of returning to their employment. There have also been instances of the like from Port Phillip, New Zealand and other distant places, and no satisfaction could be obtained.

Your Petitioners further wish to impress on your Majesty that it is their candid opinion that the principal argument, adduced by the Committee of the Legislative Council, is the demand for labour which Your Petitioners believe is required for a few weeks in the year during the harvest and shearing Seasons. The only description of labour required in the Interior to be of advantage to the Community is strictly speaking Agricultural Labourers and Shepherds, for, during the time of Immigration, hundreds landed in Sydney from the Mother Country, assuming the character of labourers, and passed the Immigration Board here as such, at the same time being Mechanics with their tools of trade, etc., thereby making an increase in the various branches of Trade when there was no demand for them.

Therefore Your Petitioners most humbly solicit your Gracious Majesty not to consent to the renewal of Transportation on any terms or condition whatever, so as to prevent English Capitalists and other so inclined to make the now flourishing Colony of Australia their land of adoption.

And your Majesty's Humble Petitioners will ever pray.

[Here follow 6,600 signatures.]

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 32, per ship Urgent.)

My Lord,

Government House, 1st February, 1847.

I have the honor to report to your Lordship that, on the application of Mr. R. T. Webb, Collector of Customs at Melbourne, Port Phillip, I granted in Council, on the 16th instant, leave of absence for Eighteen months to that Officer, to enable him to proceed to England for the purpose of expediting, if possible, the arrangement of his public accounts.

The duties of Collector will continue to be performed by Mr. Cassell.

I have, &c.,

CHS. A. FITZ ROY.
FITZ ROY TO GREY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 33, per ship Urgent; acknowledged by earl Grey, 14th September, 1847.)

My Lord,

Government House, 1st February, 1847.

I have the honor to forward herewith the copy of a Despatch which has been addressed to the Colonial Secretary of this Government by the Acting Superintendent of Port Phillip, covering a Memorial from certain inhabitants of the Town of Portland in that District, praying that it may be constituted a free Warehousing Port.

I also enclose a letter from the Acting Collector at Melbourne, reporting on the Memorial, which I beg to recommend to the favorable consideration of the Lords Commissioners of Her Majesty's Treasury.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosures.]

[Copies of these letters, dated 17th and 18th November, 1846, and of the memorial, will be found in a volume in series III.]

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 34, per ship Urgent.)

My Lord,

Government House, 1st February, 1847.

In reply to Mr. Gladstone's Despatch, No. 44 of the 18th June, enclosing an extract from a letter from the Army Medical Department requiring certain explanations from the Principal Medical Officer, respecting a requisition for the Convict Service, which was forwarded with Sir George Gipps' Despatch, No. 207 of the 25th November, 1845.

I have the honor to enclose the Copy of a Communication from the Principal Medical Officer containing the required information.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

DR. DAWSON TO COLONIAL SECRETARY THOMSON.

Principal Medical Officer's Office, Sydney, 4th November, 1846.

Sir,

I have the honor to acknowledge your letter of the 30th November, transmitting Copy of a Despatch from the Right Honorable the Secretary of State on the subject of the Requisition for Medicines, etc., for the Convict Service for the year 1847, and directing me to furnish you with an explanation (as pointed out in the Extract of an accompanying letter of the Director General of the Army Medical Department) of the data on which the Requisition for Vials is made.
By a reference to the Return accompanying the Requisition, and the Requisition itself, it will be perceived that the remaining 48 Gross on 31st March, 1845, were said to be Bottles and Vials. (It had been always here customary to include the two under one head.)

They were all large Bottles, and no Vials remained, and the Requisition was for Vials only, and particularly of the sizes under 4 Ounces.

The reason for asking for Vials was, they are not only more convenient in dispensing of Medicines; but that, in keeping and issuing Medicines from the Apothecary's Stores, there is a waste in the use of large bottles instead of Small Vials. I may instance that the Essential Oils and the Alkaline Salts and many of the most valuable Medicines cannot be kept or issued in large Bottles, or paper, without much waste.

The Supply required is undoubtedly large, and perhaps unnecessarily so; and I can only now remember that, in making Requisitions, I have always been influenced by the fact of the Article being perishable or otherwise; and therefore I have often made large Requisitions of imperishable articles to serve for two or three years, when I would have hesitated to require more moderate quantities of those which are likely to be injured by keeping.

I have, &c.,
W. DAWSON, M.D.,
Principal Medical Officer.
P. Wholehan to Secretary of State.

My Lord,

Dungowan, 27th January, 1847.

I beg leave to state to you that my Sister, her husband and family, Sydney, New South Wales, at Hinter, Hunter's River. My Lord I have wrote many times relative to their fate, can receive no answer. I am in hopes that your Lordship will cause a communication to be made with the Government of that Colony respecting the fate of Thomas McGuire and his family of Hinter, Hunter's River, Sydney, New South Wales, My Lord that Man and family is in existance, that the Government of that Colony will cause him to send me an answer. My Lord, when there is an Answer returned by the Governor of New South Wales to your Department from where there will be an answer returned to me on the subject.

I am, &c.,

Philip Wholehan.

Fair Lane, Dungowan, County Waterford, Ireland.

Earl Grey to Sir Charles Fitz Roy.

(A circular despatch, per ship Beulah.)

Sir,

Downing Street, 8th February, 1847.

I have lately had occasion to address a Despatch to the Governors and Lieutenant Governors of the West Indian Colonies, on the subject of the establishment of Industrial Day and Normal Schools. This communication originated in the desire which I felt to promote, to the utmost of my means, the extension of Education among the Coloured Races, being well convinced that by such means the welfare of the Labouring Population, and, indeed, of the whole Community would be largely increased. For this purpose, I addressed a Letter to the Lords of the Committee of Privy Council on Education in November last, stating my views upon the subject, and their Lordships in consequence caused a statement to be prepared, for my information, explaining the points which it was material to keep in view in establishing Industrial and other Schools. On perusing that statement, it has appeared to me that so many of the suggestions therein made are applicable to, and might be beneficial to all the Communities in the British Colonies, that I have determined not to restrict the information thus submitted to me to those Colonies only where Slavery existed, but to communicate it to the whole of the British Colonies. In the hope, then, that the suggestions, offered on this subject by the Lords of the Committee of Privy Council on Education, may be found susceptible of adoption, and prove of service in the Colony under your Government, I transmit to you several Copies of
EARL GREY TO SIR CHARLES FITZ ROY.

(A circular despatch, per ship Beulah; acknowledged by Sir Charles Fitz Roy, 10th January, 1848.)

Sir, Downing Street, 9th February, 1847.

I find that for many years there have been regularly transmitted to this Office, from the several British Colonies, Copies of the principal Newspapers published in each. I am happy to find this practice existing, and I attach much importance to its regular observance. You will not misunderstand me as implying any want of confidence in your own reports, or as attaching an undue and exaggerated weight to Newspaper statements, when I say that there are no means by which Her Majesty's Government may become acquainted with the general tone and temper of Colonial Society so readily as through the Colonial Press. There are many small circumstances connected with the feelings of those under your Government, and with the general leaning of public opinion with which daily habit has rendered you so familiar, that they pass unobserved before your eyes. Yet, to a person at a distance from the scene, such circumstances may be full of significance, and may merit deliberate attention in the decision on the policy to be followed by Her Majesty's Government.

Upon these grounds, I have made arrangements for ensuring a more regular examination than has hitherto been attempted, of the Newspapers which reach this Office from the several Colonies. But the weight to be attached to the statements of such Papers must of course depend on circumstances which I have no means of ascertaining in this Country, I mean the general character of the Paper, and among what classes and to what extent it circulates. On these points, and on any others which may occur to you, I would request you to furnish me with such information as you may possess, in respect to each of the principal Newspapers in your Government, and to correct that information from time to time, as the circumstances of the case may alter. I am well aware that precise and full information upon

[Enclosure.]

[This was a printed letter of ten folio pages from B. Kay Shuttleworth to under secretary Hawes, dated 6th January, 1847.]
these subjects is not to be expected; but I have no doubt that you will be able to procure all which is really necessary for practical purposes.

I have to add that Your Despatches upon this subject should be marked, and will be considered as confidential.

I have, &c,
GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 93, per ship Beulah.)

Sir,
Downing Street, 10 Feb., 1847.

I herewith transmit to you the Copy of a letter from the Board of Treasury, accompanied by a Memorial addressed to the Lords Commissioners by Mr. M. D. Niven, urging his claim to Compensation on account of the defalcation of Mr. Manning, Registrar of the Supreme Court and Curator of Intestate Estates at Sydney, who, it appears, had charge of the property and effects of the deceased son of the Memorialist. I have to desire that, in conformity with their Lordships' request, you will take the necessary measures for ensuring to Mr. Niven the benefit of any arrangement, which, with reference to the instructions contained in my Predecessor's Dispatch of the 4th and to mine of the 25th of July last, may be made for the liquidation of claims for effects lodged, by direction of the Supreme Court, in Mr. Manning's Custody.

I have, &c,
GREY.

[Enclosure.]

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

Sir,
Treasury Chambers, 2 February, 1847.

I transmit herewith by command of the Lords Commrs. of Memorial H. Majesty's Treasury a copy of a Memorial from Mr. Daniel Niven transmitted, urging his claim to compensation, on account of the defalcation of Mr. Manning, Registrar of the Supreme Court and Curator of Intestate Estates at Sydney, who had charge of the property and effects of the Memorialist's deceased son. And, with reference to the communication made to you by direction of this Board on the 18th July last, respecting the payment to the Colonial Government of New South Wales of the sum recovered from Mr. Manning's Surety, as well as to the previous correspondence relating to that person's default, I am to request you will move Earl Grey to cause Request for Mr. Niven's application to be forwarded to the Governor of New transmission of South Wales, in order that he may have the benefit of any arrange- chaim to colony. ment that may be made, upon the receipt of the money forfeited by the Surety, for the liquidation of claims for effects lodged, by direction of the Supreme Court in that Colony, in Mr. Manning's Custody.

I am, &c,
C. E. TREVELYAN.
Unto the Honorable the Lords Commissioners of Her Majesty's Treasury.

Humbly S蜗eth

That, on the 2nd April, 1845, Your Memorialist presented a Memorial to Your Lordships stating "That Hugh Niven the Memorialist's Son was killed by a fall from his horse at Geelong, Port Phillip, New South Wales, on the 23rd day of September, 1839.

"That the deceased had a friend on the spot who was willing and offered to take charge of his effects, but, he the Memorialist's Son having died intestate, J. E. Manning, Registrar of the Supreme Court at Sydney and Curator of Intestate Estates, appointed to that Office by the British Government, refused to allow any other person to interfere with the property, and he Mr. Manning, having sold the defunct's whole effects and uplifted the money belonging to him then lying in the Bank, wrote to the Memorialist on the 30th March, 1840, that the defunct's property amounted to £2,160 7s.

"That immediately on receiving Mr. Manning's letter, the Memorialist forwarded a power of Attorney first to Mr. Alston, Port Phillip, and thereafter to a Mr. Campbell at Sydney, with full evidence of the Memorialist's relationship to the defunct and powers to administer to the defunct and uplift the money; but in the mean time Mr. Manning became Bankrupt.

"That the Memorialist through his Attorney has made frequent application to Mr. Manning and to his successors in Office and to the Governor and Legislative Council of New South Wales for payment of the effects and property of his said deceased son; and, while they acknowledge the justice of the Memorialist's claim and the right the Memorialist has to be paid the money, yet they allege that, as Mr. Manning was appointed by the Home Government to the office which he held, they have no money in their hands to meet the Memorialist's claims, and that therefore they cannot pay the Memorialist, but referred the Memorialist to seek redress from Your Lordships.

"That, particularly on 3rd September, 1844, in reply to a general application by the Legislative Council of the Colony, dated 27th August, 1844, to His Excellency the Governor, requesting His Excellency to take such steps as might be requisite to obtain compensation to the sufferers by the defalcation of Mr. Manning, His Excellency stated that be did not feel authorized to propose a grant of money out of the public funds of the Colony for the compensation of these sufferers without the sanction of Her Majesty's Government, as may be seen from the printed proceedings of the Legislative Council in 1844.

"Under these circumstances, Your Memorialist is under the painful necessity of troubling Your Lordships with the present application.

May it, therefore, please Your Lordships to take this Memorial into your favorable consideration, and, on making inquiry into the facts above stated and on finding them to be true, grant such relief to Your Memorialist as the circumstances of the case require.

"And Your Memorialist will ever pray, to

"Greenock, 2d April, 1846.

That, in July thereafter, Your Memorialist was favored with the following answer from Your Lordship (viz.) " Downing Street, 16th July, 1845.—Sir, with reference to my letter of the 6th of May last relative to Your claims arising out of the defalcation of Mr. Manning, late Registrar of the Supreme Court of New South Wales, I am directed by Lord Stanley to acquaint you that the Lords Commissioners of the Treasury, having considered the memorial addressed to their Lordships through this Department, have requested that you might be informed that you must prefer your claims in the Colony, as the adoption of any proceedings in regard to the default of the Officer, who had been appointed by the Judges of the Supreme Court to administer the estates of Intestates must rest with that Court and the local Government, I am, Sir, Your obedient Humble Servant (signed) Geo. Hope."

That, in consequence of this answer, Your Memorialist again applied to the Colonial Government at Sydney; and, after a full discussion, the Legislative Council admitted the justice of Your Memorialist's claim, but at the same time averred that it is the British Government and not the Colonial Government, who ought to pay Your Memorialist's claims; and therefore they refused to pay Your Memorialist out of the Colonial Revenues, unless British funds are provided to them for that purpose, and referred Your Memorialist back to Your Lordships.

That Your Memorialist is thus subjected to grant hardships, loss and expense, and can find no means by which to enforce payment of what is admitted at all hands to be a just claim.

Under these circumstances, Your Memorialist humbly prays Your Lordships to adopt such measures as will ensure to Your Memorialist early liquidation of his admitted just claim, either out of the Public Revenues of this Kingdom or out of the Colonial Revenues of New South Wales, or otherwise as to Your Lordships may seem proper, According to Justice.

Daniel Niven.
Sir Charles Fitz Roy to Earl Grey.

(Despatch No. 37, per ship Sir George Seymour; acknowledged by Earl Grey, 7th July, 1847.)

My Lord,

Government House, 15th February, 1847.

I have the honor to transmit herewith for your Lordship's consideration the Copy of a letter addressed by the Assistant Military Secretary to the Lieutenant General, Commanding the Forces in this Station, to the Colonial Secretary, in reply to an application, which I had directed to be made to the Lieutenant General, requesting that he would authorise the payment from the Military Chest of the expense incurred, under my directions, for the hire of a Steam Vessel, despatched by me to the rescue of a Ship wrecked* on the 18th ultimo on the coast about 20 Miles to the Northward of Port Jackson, which turned out to be the "Sir Robert Peel" with Troops and Government Military Stores bound to Sydney.

Your Lordship will perceive that the Lieutenant General refuses to sanction this payment on the ground that it was incurred without his knowledge; in reply to which, I beg to state that the nature of the Service (the report that the vessel was on shore and in great danger having reached me in the middle of the Night) did not admit of the previous concurrence of the Military Authorities, even if it had been known that the Ship was employed for Military purposes.

The utmost promptitude was necessary to render the services of the Steam Boat available for the saving of human life and the recovery of property; and, although, from the circumstances under which the ship was stranded, no essential result attended the employment of the Steam Boat, this, it is submitted, should not invalidate the claim to the recovery of the amount from that branch of the Queen's Service which it was calculated to benefit.

I, therefore, take the liberty of suggesting that the sum of One hundred Pounds (the amount of expense incurred) may be directed to be refunded from the Military Chest to the Colonial Treasury, from which source, on the refusal of the Lieutenant General, I directed it to be defrayed. I have, &c.,

Chs. A. Fitz Roy.

[Enclosure.]

Captain O'Connell to Colonial Secretary Thomson.

Asst. Mile. Secretary's Office,

Sydney, 13th February, 1847.

I am directed by the Lieut. General Commanding to acknowledge the receipt of your letter of the 3rd Inst., addressed to the Deputy Adjutant General, with its enclosures, respecting a claim from the Hunter's River Steam Navigation Company of One

*Note 39.
1847.
15 Feb.
Payment refused from military chest.

Hundred pounds, for the hire of one of their Steamers in proceeding to the Wreck of the "Sir Robert Peel," and requesting that the same might be defrayed from the Military Chest.

In reply, I have it in command to acquaint you that, as this service was undertaken entirely without the knowledge or sanction of the Lieutenant General Commanding, and appears to Him to be totally unconnected with the Military, His Excellency regrets that it is not in His power to authorise such charge against the Military Chest, or either that claimed for Messrs. Moffitt and Bainbridge.

I have, &c.

W. B. O'Connell, A.M.S.

16 Feb.
Requisition for water beds for lunatic asylum.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 38, per ship Sir George Seymour.)

My Lord,

Government House, 16th February, 1847.

The Superintendent of the Lunatic Asylum in this Colony having suggested that Hydrostatic Beds should be provided, as it is understood they are in England, for Patients who may become bedridden, and it being found that they cannot be furnished here, I do myself the honor to inform Your Lordship that instructions have been forwarded to England to Edward Barnard, Esqr., the Agent General for Crown Colonies, to procure and forward to this Colony Four of these Beds made according to a description which has been given of them in a letter addressed to him by the Colonial Secretary of this Government.

The cost of these Beds is estimated at £13 each, or Fifty two pounds for the four required; and, as this amount has been ordered to be paid into the Military Chest in Sydney, I beg to request that Your Lordship will cause an equal sum to be paid to Mr. Barnard to enable him to comply with the requisition forwarded to him.

I have, &c.

CHS. A. FITZ ROY.

17 Feb.
Despatches acknowledged.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 39, per ship Sir George Seymour; acknowledged by earl Grey, 27th July, 1847.)

My Lord,

Government House, 17th February, 1847.

I have the honor to acknowledge the receipt of the Despatch from your Lordship's predecessor No. 51 of the 4th July, 1846, and of your Lordship's Despatch No. 4 of the 17th of the same Month; the former communicates to me Her Majesty's confirmation and allowance of the Acts of the Legislature of this Colony, 9th Victoria, Nos. 28 and 30, intituled respectively, "An Act to give to valid mortgages of Sheep, Cattle and Horses priority for a limited period, according to the date of the Registration thereof, and for other purposes therein mentioned," and
"An Act to repeal an Act, intituled, 'An Act to give a preferable Lien on wool, and to make Mortgages of Sheep, Cattle and Horses valid without delivery to the Mortgagee,' and to substitute for a limited time other provisions in lieu thereof."

The latter Despatch transmits an Order of the Queen in Council, disallowing the Act of the Legislature of this Colony, 7 Victoria, No. 3, intituled, "An Act to give a preferable lien on Wool from Season to Season, and to make Mortgages of Sheep, Cattle and horses valid without delivery to the Mortgagee," and directs the promulgation of the said Order in Council in the usual and most authentic manner.

It is now my duty to point out to Your Lordship that, in proceeding to carry out the Instructions referred to, it was discovered that an informality had arisen in respect to the confirmation and allowance by Her Majesty of the Act or rather Bill, 9 Victoria, No. 30. This being a Bill reserved for the signature of Her Majesty’s pleasure, it was necessary, under the 33d Clause of the Constitutional Act, 5 and 6 Victoria, Cap 76, that the Governor should signify by speech or Proclamation that the Bill had been laid before Her Majesty in Council, and that Her Majesty had been pleased to assent to the same. In the absence of any express intimation from Your Lordship’s Predecessor that the Bill had been laid before Her Majesty in Council, it became necessary to consult the Crown Law Officers as to the proper course to be pursued in giving effect to the instructions contained in the Despatch referred to; and I now have the honor to enclose a Copy of their opinion recommending, for the reasons assigned by them, the adoption of one or other of the two following courses, namely, that the Governor should issue a Proclamation reciting that the Bill had been laid before the Queen in Council, it being necessary, to give perfect validity to the Act, that such fact should be signified in the Proclamation, "Speech, or Message, or, should I feel a difficulty in proclaiming a fact not distinctly communicated to me, that I should declare in one of the prescribed modes that Her Majesty had been pleased to approve of the Bill, leaving it to the individuals affected by the Act to detect and take advantage of the want of exact conformity to the provisions of the Constitutional Act.

After much consideration, I declined acting on either of the Suggestions of the Crown Law Officers, as, notwithstanding the presumption in law that the necessary formalities had been observed unless the contrary were proved, I did not consider myself justified in asserting as a fact that which had not been expressly certified to me, and which, in the absence of such Certificate, I had such strong grounds for believing had been actually
1847.
17 Feb.

Suspension of publication of order-in council and proclamation.

New legislation proposed.

Reasons for deviation from official instructions.

omitted; nor could I consent to notify the Bill as approved by Her Majesty, as I might thereby induce parties, falsely relying on the validity of the Law, to enter into pecuniary engagements without that security which the law, if valid, was calculated to afford them.

Under all the circumstances of the case, I have come to the conclusion that the best course I can adopt is to suspend for the present the publication of the Order in Council, disallowing the Act, 7 Victoria, No. 3, and the issue of any proclamation confirming the Bill, 9 Victoria, No. 30. In this way, the Law will remain as at present, until a new Bill can be passed by the Council and assented to by me on Her Majesty’s behalf, to effect the objects contemplated by the reserved Bill, which has apparently been informally assented to by Her Majesty. So soon, however, as this has been done, I will lose no time in issuing the Proclamation and causing the other formalities necessary to be observed for disallowing the Act above referred to, which would otherwise become a permanent one.

In bringing this matter under your Lordship’s consideration, I think it proper to state that I have reason to believe that great inconvenience would be experienced by persons engaged in pastoral pursuits, especially in the present depressed state of the Wool Market in England, if such, as can offer an adequate security by the Mortgage of their Stock or of their Clip of Wool, were deprived even temporarily of the necessary facility of raising funds for carrying on their legitimate operations; whilst I am also given to understand that great importance is attached by the Banking and Commercial interests to the existence of a valid law of the nature in question. I have, accordingly, after due consideration, deemed the exigency of the case to be sufficient to warrant the responsibility I have taken in deviating from the more strict official course, which I should otherwise have thought it my duty to pursue. I cannot, therefore, doubt but that your Lordship will consider that I have only exercised a sound discretion in thus virtually giving effect to Her Majesty’s intentions, rather than by implicitly obeying the Instructions which I received, have tendered to produce a contrary result.

I have, &c,


Opinion by Messrs. Plunkett and Manning.

We are of opinion that the allowance of the Act of 9 Victoria No. 30, as notified in the Secretary of State’s despatch, would be sufficient, when proclaimed here, to render the Act valid; but we think that the terms of the proclamation should in strictness go further than those of the Despatch. Mr. Secretary Gladstone does not state as a fact that the Bill was laid before the Queen in
FITZ ROY TO GREY.

Council; but, in order to give perfect validity to the Act, it is necessary that such fact should be signified in His Excellency's proclamation, Speech or message, a circumstance which undoubtedly creates a difficulty, which however we think may be removed by the following considerations. The maxim of law, "omnia præsuntur rete et Solemniter esse acta donec probetur in contrarium," is constantly and regularly applied to the Acts of official persons; and we think the presumption must be applied in law, and may most reasonably be so in fact, to the Act of Her Majesty in giving Her assent to the Bill and that of the Secretary of State in communicating it. It is not unimportant also to observe that, though an "order in Council" and a formal certificate under the hand and Seal of the Secretary of State are necessary for the disallowance of an Act, which has received the Royal Assent at the hands of the Governor, no such formalities are required for the Assent to a reserved Bill. In the latter case, the bill is transmitted to England for the purpose of being laid before Her Majesty in Council, and for the signification of Her Majesty's Assent, independently, as it would rather seem, of Her Privy Council. Her assent is signified through the proper official channel to the Governor, and no presumption is required except of the fact that the bill was laid before Her Majesty in Council in the regular and usual course and in accordance with the duty of the Secretary of State, who must be taken, in the absence of proof to the Contrary, to have acted Constitutionally.

Should His Excellency, however, not feel himself justified in proclaiming a fact not distinctly communicated to Himself by Mr. Gladstone, still it will be incumbent on him to declare in one of the prescribed modes the fact that Her Majesty has been pleased to approve of the Bill, and to signify such approval through one of the Principal Secretary's of State; and it will then be for individuals affected by the act to detect and take advantage of the want of exact conformity to the provisions of 5 and 6 Victoria, Cap. 76, Sect. 33. J. H. PLUNKETT, Attorney General.

W. M. MANNING, Solic. Genl.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 40, per ship Sir Charles Seymour; acknowledged by earl Grey, 25th June, 1847.)

My Lord,

Government House, 18th February, 1847. 1847.

I have the honor to transmit to Your Lordship the copy of a Despatch which I have received from the Acting Superintendent of Port Phillip, covering the accompanying new Rules of Court promulgated by the Resident Judge of that District, to be forwarded to Your Lordship.

It appears that the practice, which was formerly customary of forwarding Copies of all Rules of Court to the Secretary of State, was discontinued in consequence of a correspondence on the subject between my Predecessor and Lord Stanley, and the intention of bringing these Rules under the control on revision of the Legislative Council.
As however, as the Law now stands, the Rules of Court framed by the Judges are subject to be disallowed by Her Majesty, and the transmission of all Rules of Court is distinctly enjoined by the 24th Section of the Colonial Act, 4th Victoria, No. 22, I deem it my duty to follow this course with respect to those now transmitted.

At the same time, I have to state that the subject is under the consideration of a Committee of the Legislative Council, and it is understood that it will be revived during the ensuing Session, with a view to some Legislative proceedings thereon.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]}

[A copy of this letter, dated 30th January, 1847, will be found in a volume in series III.]

SIR CHARLES FITZ ROY TO EARL GREY.

My Lord,

Government House, 19th February, 1847.

I have the honor to bring under your Lordship's Notice an application, which has recently been received by the Principal Superintendent of Convicts under this Government from one of the Pentonville Exiles, who were landed at Port Phillip in March, 1845, praying, on behalf of himself and others similarly situated, to have conceded to them the benefit of the Regulations relating to the prospective and retrospective extension of the terms of Conditional Pardons, published in this Colony under the authority of Mr. Secretary Gladstone's Despatch, No. 21 of the 13th of May last.

It appears to me that, as these Exiles are all persons holding Conditional Pardons, they come expressly within the terms of Mr. Gladstone's Despatch, and that it was the evident intention of Her Majesty's Government that they should derive, equally with the other Prisoners of the Crown within the Colony, the advantage of the Regulations extending the terms of Conditional Pardons; but a doubt having arisen whether, as the Pardons of the Exiles were issued by Her Majesty, the Governor of this Colony has the power, under the Act of Parliament, 7th Victoria, Cap. 6, to grant the extension prayed for, I deemed it my duty to submit the question to the Law Officers of the Crown; and, as their opinion is "that the Governor of the Colony cannot interfere to enlarge a Pardon granted by Her Majesty." I consider it incumbent on me to bring the subject under your Lordship's consideration, in order that, if I am right in supposing
it to be the intention of Her Majesty's Government that the Exiles should receive an extension of their Conditional Pardons, the proper course may be adopted for giving effect to Her Majesty's commands, as conveyed in the Secretary of State's Dispatch to which I have referred. I have, &c.,

CHS. A. FITZ ROY.

[Enclosure No. 1.]
G. JENKINS TO ————.

Conditional Pardons.

Sir, Melbourne, 15th December, 1846.

Will you please to inform me how far the Advertisement Request by herein, dated "Colonial Secretary's Office, Sydney, 2nd December, 1846," affects me, who was pardoned in England before I sailed "on condition that I quitied the United Kingdom and remained in the Australian Territories (whither I had been sent) during the remainder of my Sentence," I came direct from Pentonville Prison to this Colony (i.e. to Melbourne), and the Indent of Pardon was sent direct to His Honor C. J. La Trobe, Esq., who granted me my Certificate of freedom. I arrived here in March, 1845, per Ship "Sir George Seymour." I wish very much to avail myself of this further indulgence of Her Majesty; but I cannot find out the way to set about it; some say you will grant the further Certificate, others that His Honor here will (They at the Treasury here do not yet interfere); will you please to instruct me if I should send my present Certificate of freedom to you to be renewed in pursuance of the Advertisement, and also what do you require me to do in order to comply with the advertisement and prove to your satisfaction that "I have not disqualified myself for receiving this indulgence by any colonial offence subsequent to the issue of my former Pardon."

I can refer to Mr. D. C. Erskine, D. Commissariat of this District, for a character, also to F. A. Powlett, Esq., Crown Land Commissioner or rather to the Crown Land Office, for Mr. Powlett is just gone to England on leave for two Years. I can also give other references of the highest respectability in this District, if necessary.

I beg to tender my most humble request that you will pardon my thus trespassing on you; but, as the answer given to me will be a guide to many others similarly situated, I trust you will pardon me, and answer to this directed to me care of Messrs. "McCrae and Barber, Solicitors, Melbourne, Port Phillip," will greatly oblige,

Your obedient humble Servant,

GEOBGE JENKINS.

[Enclosure No. 2.]
G. JENKINS TO CAPTAIN MCLEAN.

Sir, In reply to your communication to me of the 15th instant Certificate of relative to my Pardon, and asking for an attested Copy, I have come to the conclusion of sending you the original Certificate, as, if it is not in your province to extend it, that communication will have to be made to me through your Office and it will be very little trouble to enclose it back. I beg to say that I know all the books and Indent, etc., is at the Treasury here, and came direct from

G. Jenkins re extension of terms of conditional pardons.
1847. 19 Feb.

London here. You will see my Pardon is dated in October, 1844, that was before I left England, as I did not sail from England until the 21st November, 1844.

I beg most sincerely to thank you for your prompt and kind attention to my letter.

Whatever fees may be payable I shall be very glad to pay. I have no friend in Sydney but I will through some source or other pay them, with the utmost respect.

I am, &c.,
Melbourne, 22 Jany., 1847. GEORGE JENKINS.

My address is—care of Messrs. McCrae and Barber, Solicitors, Melbourne, Port Phillip.

[Enclosure No. 3.]

CERTIFICATE NO. 109.

I HEREBY certify that George Jenkins, convicted at York, 4th March, 1843, and sentenced to transportation, is included in a general warrant of pardon under Her Majesty's sign Manual, dated the 10th October, 1844, wherein it is set forth that, in consideration of some circumstances humbly represented to Her Majesty, Her Majesty has been graciously pleased to extend Her Grace and Mercy to him and others, and to grant him Her Pardon for the crime for which he stands convicted, on condition that he do remove himself from the United Kingdom, and, after his arrival in the Australian Colonies, continue therein (whither he has been sent in pursuance of his Sentence) for and during the remaining term of such sentence.

It is further certified that it is Her Majesty's will and pleasure that the Pardon thus graciously bestowed on George Jenkins shall have the effect of a Free Pardon within the said Territories.

Given under my Hand, this sixteenth day of April, One Thousand, Eight hundred and Forty five. C. J. LATROBE.

Superintendent's Office, Melbourne, Port Phillip.

[Enclosure No. 4.]

MR. G. C. TURNER TO COLONIAL SECRETARY THOMSON.

Civil Crown Solicitor's Office,
Sir, Sydney, 15th February, 1847.

Referring to yours of the 10th instant, informing me that an application has been made to this Government by the Pentonville Exile named in the margin,* to have conceded to him the benefit of the Regulation, published on the 2nd December last, relative to the extension of the terms of Conditional Pardons now in existence, and further remarking that these Exiles are all persons holding Conditional Pardons, that they therefore come expressly within the terms of Mr. Secretary Gladstone's Despatch of the 13th May last, which directs the extension of the Conditions of these pardons, and at the same time gives a retrospective effect to the arrangement; and, as the Pardons to the Exiles were issued by Her Majesty, the Question arises whether His Excellency the Governor has any power to grant the extension, under the Act of Parliament. 7 Vic. c. 6, And requesting me to obtain the opinion of the Crown Law Officers, as to the proper course to be adopted for giving effect to Her Majesty's gracious intentions.

* Marginal note.—George Jenkins.
I have the honor to state for the information of His Excellency the Governor that I submitted a Case for the opinion of the Solicitor General and that officer makes the following remarks thereon:—

"It appears to me that the Governor of the Colony cannot interfere to enlarge a Pardon granted by Her Majesty, and that the Despatch of Mr. Secretary Gladstone must be taken to have reference to such Convicts as were originally transported to this Colony and who obtained their original pardon from Her Majesty's representative for this particular Territory."

I have, &c.,
G. Cooper Turner,
Civil Crown Solicitor.

[Enclosure No. 4.]
CAPTAIN MCLEAN TO COLONIAL SECRETARY THOMSON.
Principal Superintendent of Convicts Office,
Sir, Sydney, 4th February, 1847.

I have the honor to transmit for the information and commands of His Excellency the Governor, the accompanying applications from the Man named in the margin* (one of the Pentonville Exiles) praying that the Pardon granted to him, of which the enclosed Certificate of the Superintendent of Port Phillip sets forth the condition, may be extended in a similar manner as those granted to Persons transported to this Colony are under the Regulations recently promulgated; and, as I have been informed that the Pardons of some of the Pentonville Exiles, who arrived at a different period in the Colony, are in an extended form, of which I was not aware when I communicated verbally with the Governor on the case of Jenkins, I now beg to request that I may be favored with His Excellency's further instructions respecting the extensions prayed for by this Man.

I have, &c.,
J. McLean.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 96, per ship Beulah.)

Sir,
Downing Street, 20 February, 1847.

I have received your Dispatch and its enclosures, No. 8 of the 31st of August last, wherein, with reference to a charge which had been brought against an Officer of the American Whaler "Ocean" for having assaulted one of the Crew of that Vessel, while lying in Port Jackson, the question is raised as to the right of local Magistrates to exercise their authority in respect of Offences Committed between Master and Seamen of American Vessels, while living in a British Port.

Having referred these papers to Her Majesty's Secretary of State for Foreign affairs, Viscount Palmerston has informed me that the Queen's Advocate, whom he consulted on the subject, considers that the view taken by the Attorney and Solicitor General of New South Wales, in regard to the question at issue, is perfectly correct, and that the local Magistrates have an

* Marginal note.—George Jenkins.
1847.
20 Feb.

undoubted right to adjudicate upon all Crimes and Offences com-
mitted by the Masters or Seamen of Foreign Vessels lying in a
British Port.

I have to add that in this opinion Viscount Palmerston has
stated that he entirely concurs. I have, &c,

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 42, per ship Sir George Seymour.)

My Lord, Government House, 20th February, 1847.

With reference to my Despatch No. 26 of the 30th of last
month, transmitting a portion of the Returns relating to Land
and Emigration required by Lord Stanley's Circular Despatch
of 22nd March, 1845, I now do myself the honor to enclose the
following Returns, furnished by the Agent for Emigration, for
the District of Port Phillip, namely, No. 5, Return of Emigrants
who have arrived in the District of Port Phillip, during the year
ending 31st December, 1846.

No. 6. Return of Persons employed in Emigration Service and
expenses of Establishment at different Ports in the District of
Port Phillip, during the year ending 31st December, 1846.

I have also the honor to enclose Returns in the same forms
for the two Districts of Sydney and Port Phillip combined, which
have been prepared by the Agent for Emigration in case your
Lordship should desire to receive the information in that shape
rather than in separate documents. I have, &c,

[Enclosures.]

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

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 44, per ship Sir George Seymour.)

22 Feb.

My Lord, Government House, 22nd February, 1847.

I have the honor to report to Your Lordship that, on the
application of Mr. Cecil Byron, Coast Waiter at Geelong, Port
Phillip, I granted in Council, on the 17th instant, Leave of
Absence for Eighteen months to that Officer to enable him to
proceed to England for the settlement of some urgent private
affairs.

The Acting Collector of Customs at Melbourne has nominated
Mr. Frederick John Byerly to perform the duties of Coast Waiter,
and this arrangement has been sanctioned by me.

I have, &c,

CHS. A. FITZ ROY.
FITZ ROY TO GREY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 47, per ship Sir George Seymour; acknowledged by earl Grey, 25th June, 1847.)

My Lord,

Government House, 24th February, 1847.

With reference to my Despatch, No. 9 of the 9th ultimo, I have the honor to forward herewith Memorials addressed to the Queen and to the two Houses of Parliament by certain of the Inhabitants of the District of Dungog in this Colony, praying that the Transportation of Criminals to New South Wales may not be renewed.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure No. 1.]

PETITION to Her Most Excellent Majesty Victoria, by the Grace of God of Great Britain and Ireland, Queen, Defender of the Faith, etc., etc., etc. Dungog against revival of transportation.

We, the undersigned free inhabitants of the District of Dungog, in the Colony of New South Wales, in humbly addressing Your Majesty, beg to express our loyal attachment to Your Majesty's person and Government, and our reliance on Your Majesty's desire to promote the interests of Your Subjects in this Colony.

We most respectfully address Your Majesty, with regard to a proposition recently made for the renewal of transportation to this Colony, and, in doing so, beg to state:

That it is with deep regret we learn that Your Majesty's Secretary of State for the Colonies has proposed a renewal of transportation to this Colony, as Your Majesty's petitioners are of opinion that such a step would be most detrimental to the interests of those Colonists, who have determined on making this Colony their home.

That, since the cessation of transportation (about six years ago), the progress of the Colonists, in all that respects their highest interests, has been most satisfactory, and that all odious distinctions are now happily vanishing from Colonial Society, leading to the most happy results; and that the renewal of the System, against which your petitioners so loudly and earnestly lift their voices, can only be palatable to a few mercenary Colonists, whose individual aggrandizement (at the expense of Morality and everything sacred) seems the principal object of their temporary Sojourn in the Colony.

That Your Majesty's petitioners admit the great scarcity of labour in this Colony at the present time, but that the reduction in the price of Crown Lands would remedy this is obvious.

That Your Majesty's Petitioners, so far from agreeing with the recommendation made by the Committee of the Legislative Council, are strongly opposed to the renewal of transportation to this Colony on any terms.
Because they feel convinced from bitter experience that transportation in any form would be generally and permanently injurious to the highest interests of the Colonists, and that it would weaken the Security of Life and property; and

Because they are strongly opposed to their Country being degraded from a free to a Penal Colony.

That your Majesty's petitioners therefore most humbly and earnestly implore Your Majesty to withhold your sanction to the renewal on any terms of transportation to New South Wales.

And Your Majesty's petitioners will, as in duty bound, ever pray,

[Here follow 307 signatures.]

Dungog, N.S.W., December, 1846.

[The petitions to houses of parliament were similar.]
I have communicated fully on the subject with the Colonial Land Commissioners, and I transmit, for your information, a copy of a Report which I have received from that Board, and which enters into the various points involved in the consideration of the question.

I am fully sensible of the very great advantage which would result from the construction of Railroads in the Australian Colonies, and I am of opinion that, in order to obtain this advantage at an earlier period than would otherwise be possible, it might be greatly for the public interest to encourage the promoters of Such undertakings by allowing them to share in the increased value, which would be given to Lands through which the Lines' would pass.

I consider it to be very possible that a well considered arrangement of this sort might render the construction of a Railway a remunerative undertaking, even when the Traffic, of which there is an immediate prospect, would not be sufficient to make it so, and this not only without loss, but with positive advantage to the Public.

I am aware that, for the purpose of enabling the Government to grant such advantages, an alteration will be necessary in the present Land Sales Act of the Imperial Parliament. I shall, therefore, be prepared to propose Such an alteration, whenever I am informed that, by so doing, I may enable the projectors of any well matured plan of this description to carry it into effect.

I have, &c,
Grey.

[Enclosure.]

LAND AND EMIGRATION COMMISSIONERS TO UNDER SECRETARY STEPHEN.

Colonial Land and Emigration office,
3rd February, 1847.

With reference to your letter of the 10th of October, accompanied by a Despatch No. 98, 19th May, 1846, from the Governor of New South Wales, on the subject of the formation of Railways in that Colony, we have the honor to state that we lost no time in taking this subject into consideration; but that our Official Report has been suspended by reasons which are within Lord Grey's knowledge.

The Session of Parliament, however, having now arrived, it becomes necessary to advert to the more immediate practical question which the Governor's Despatch raises, viz., Whether a Bill should be brought in to amend the Land Sales Act, so as to admit of disposing of Lands for Railways at a minimum price of £1.

The formation of Railroads must be so important to the welfare of the Colony, and likewise so conducive to the value of Crown Lands, that we feel little doubt that Lord Grey will be favorably disposed to the principle of this proposal. But whether or not a
HISTORICAL RECORDS OF AUSTRALIA.

370

Bill should be introduced immediately for the purpose, and exclusive of any other amendments that time may shew to be requisite in the same Statute, would appear to depend partly on general views of Parliamentary Business, which lie beyond our knowledge, and partly on the probability that any scheme of a Railway in New South Wales will soon be brought to maturity, which in its present state of the money market in England is not, we presume, very likely; leaving, however, for the consideration of higher authority the question of the time when such a Bill, if approved, should be brought forward, we will proceed to the conditions on which we apprehend that it should be framed.

The proposed maximum allowance for constructing the Line of 50 acres to the Square Mile would give an average breadth of about 130 yards. This, we understand, would be a large average, and more than could be required, except in hilly Countries; but, considering that the Governor is merely to have power to give a quantity “not exceeding” that rate, we see no reason to object to the proposal.

With respect to Stations, we infer from inquiries, which we made at the Railway Department, that an allowance at the rate of an acre and a half, or at most two acres for each mile of the Railway, would be ample for the mere Station Houses and Buildings connected with them, and in fact, therefore, that this object might be deemed to be included in so liberal an allowance as that above described for the formation of the Road.

But, from Interviews which we have had with Sir George Gipps, since his return to this Country, we apprehend that his object, in recommending the large quantity of 640 acres for each Station, was to encourage the enterprise of Companies by the prospect of benefitting by the increased value which they might bestow on Lands at important Stations along their Line.

We readily admit that in a new Country, where a direct gain from Traffic must at first be very uncertain and limited, it may be desirable to give some additional encouragement of the above description. And admitting the principle, we think its application might be carried somewhat further. Instead of 640 acres to every 20 miles, we should have no objection to allowing 1,000 acres to that distance, which would be at the rate of 50 acres to each mile. We would prefer this course to fixing some quantity of land, which might be taken at intervals of 20 miles, but none between. It might put both the Company and the public to very unnecessary inconvenience thus to discourage intermediate Stations, and we do not see what would be the countervailing advantage. Within one distance of 20 miles, there might be 3 or 4 places very well adapted for building and improvements, and then might succeed a tract of 40 or 50 miles affording no inducements whatever to that object. It appears to us, therefore, that much the best Plan is to fix the maximum quantity of Land which the Company may receive for these purposes, in proportion to the whole length of its Line, and to leave all the rest to be settled by considerations of Local convenience.

We think that 50 acres to each mile (which would amount to 1,000 acres for every 20 miles) might well be allowed to be conceded, as an encouragement to improvements by the Company.

If the foregoing views be approved, the Governor could be empowered to sell to every duly constituted Railway Company, at a
fixed price of £1 per acre, or as much more as he may think fit in each case, any quantity of land not exceeding 50 acres to each mile of the Line, for the purpose of constructing the Road and ordinary Stations; and further to sell at a fixed price of £1 per acre any additional quantity of Land that he may deem proper, adjacent to or in the neighbourhood of the Railway, not exceeding the rate of 50 acres to each mile of the Line, to become the Property of the Company for general purposes.

In conclusion, we have merely to recommend that for his guidance in any other practical questions which may arise, the Governor be referred to Mr. Secretary Gladstone's Circular Despatch of the 13th of January, 1846, which contains a valuable series of suggestions founded on the experience of England on this subject.

We have, &c,

T. FREDK. ELLIOT.
FREDK. ROGERS.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 99, per ship Beulah.)

Sir,
Downing Street, 27th February, 1847.

I transmit to you, herewith, for your information and guidance copies of a Correspondence which has taken place between this Department and the Society for the Propagation of the Gospel, in consequence of an application on their part for additional Clergymen of the Church of England to the Ecclesiastical Establishment of New South Wales.

Having thought it right to consult Sir G. Gipps as to the propriety of complying with that request, I likewise enclose copies of the communications, which have passed with him on the subject; the result of which is that Mr. F. C. Russell, the Gentleman recommended by the Society, will proceed to New South Wales, on the understanding that he is not appointed by Her Majesty's Government to a Chaplaincy or any other Benefice in the Colony, but that he is simply sent out to be disposed of by The Bishop of Australia under the Colonial Church Act.

The usual allowance for Passage and Outfit, amounting to £150, will be paid to Mr. Russell on this occasion, and this will be charged upon the Fund provided for Public Worship by Schedule C of the 5th and 6th Vict., Cap. 76, on which Fund I observe there was in March last an unexpended Balance of £6,369. In deference, however, to Sir Geo. Gipps' further suggestion in the matter, and for the reasons assigned by him in his Letter of the 19th Instant, I have required that, if Mr. Russell be not ordained before he leaves this Country, he shall give a promissory Note for the repayment of the money, in the event of his failing to be ordained within a reasonable time after his arrival in the Colony.

I have, &c,

GREY.
1847.

27 Feb.

Request for allowance for passage and outfit of F. C. Russell.

Letter acknowledged.

Statement requested re vacant chaplaincies.

Statements by bishop of Australia re necessity for additional clergy.

[Enclosure No. 1.]

REVD. G. H. FAGAN TO UNDER SECRETARY HAWES.

Sir,

79 Pall Mall, 30th Octr., 1846.

I am desired by the Society for the Propagation of the Gospel to request you to inform Earl Grey that the Society has had the most satisfactory grounds for determining to recommend Mr. Francis T. Cusack Russell, B.A., of Trinity College, Dublin, as a Candidate for Ordination by The Lord Bishop of Australia.

As Mr. Russell will be nominated by The Bishop of Australia on his Ordination to one out of several Colonial Chaplaincies in New South Wales, which are now vacant, the Society trusts that Earl Grey will permit Mr. Russell to draw the usual allowance of £150 granted to those who leave this Country to occupy Colonial Chaplaincies in Australia.

I have, &c.

G. H. FAGAN.

[Enclosure No. 2.]

UNDER SECRETARY HAWES TO REVD. G. H. FAGAN.

Sir,

Downing Street, 9th November, 1846.

I am directed by Earl Grey to acknowledge the receipt of Your Letter of the 30th Ultimo, in which you request that the usual Passage Allowance of £150 may be issued to Mr. Francis Russell, who is recommended by the Society for the Propagation of the Gospel as a Candidate for Ordination by The Bishop of Australia, and for an appointment to one out of several Colonial Chaplaincies in New South Wales, which you state to be now vacant.

In reply, I am directed by Lord Grey to inform you that he has not been made aware of any vacancy amongst the Colonial Chaplains in New South Wales, and I am to request that you would have the goodness to explain the grounds on which you state there are several Chaplaincies in that Colony to be filled up.

I am, &c,

BENJ. HAWES.

[Enclosure No. 3.]

REVD. G. H. FAGAN TO UNDER SECRETARY HAWES.

Sir,


In reply to Your Letter of the 9th Instant, I am desired to request that you will inform Earl Grey that the Society has been frequently solicited by The Bishop of Australia to procure the services of additional Clergymen for his Diocese. As from want of Clergymen, he was unable to open Chaplaincies in places where the means would have been readily supplied by the Members of the Church, according to the terms of the Colonial Act.

In a letter dated Febry. 3d. 1846, his Lordship further states, “at this time, there are certainly two if not three cases, where the stipend has been assigned, but I cannot make any appointment in consequence of there not being Clergymen here on whom I can confer them.”

It was under these circumstances that I was desired to request that the usual Passage Money of £150 might be granted to Mr. F. T. Russell, who has been distinctly informed that the Society can give him no further guarantee that he will be appointed to a
Chaplaincy than that which is founded on The Bishop of Australia's Statements; and on which, from its knowledge of the deficiency of suitable Candidates for Ordination in the Colony, the Society is persuaded Mr. Russell may depend.

I have the honor to enclose an extract from a recent communication of The Bishop of Australia, which refers to the urgent need which exists for additional Clergy in that Diocese.

I have, &c,
G. H. Fagan.

[Enclosure No. 4.]

Extract from a Report of a visitation Tour by the Bishop of Australia in 1845.

"The Church of St. Thomas, on the North Shore of Port Jackson, remains unconsecrated for a different reason; that is, my inability to provide a Clergyman to discharge its Ministry. The mention of this fact leads me to beg the Society's consideration of the destitute condition to which I am reduced by the want of additional Clergymen, and the deplorable consequences which must arise unless that want can be by some means speedily removed.

"In December, 1844, I admitted to Deacon's Orders Mr. Thomas Horton and Mr. F. C. Adams, but since that time no suitable Candidates for admission have been presented. During the same interval, the Diocese has lost the services of several; others are at this time completely or partially disabled by sickness; and, in the event of any other casualties diminishing our remaining numbers, it would not be in my power to provide for the Ecclesiastical Services of the Diocese, or to keep open the several Churches, much less to occupy the additional ones, of the actual erection of some of which and of the still further proposed augmentation of their numbers, I have now transmitted a statement."

[Enclosure No. 5.]

Under Secretary Hawes to Revd. G. H. Fagan.

Sir,
Downing Street, 30th November, 1846.

I have laid before Earl Grey your Letter of the 17th Instant with its enclosure from The Bishop of Australia, relative to the appointment of additional Clergymen of the Church of England to the Ecclesiastical Establishment of New South Wales.

I am directed to request that you will acquaint the Society for the Propagation of the Gospel that his Lordship has received no communication on the subject from The Governor of New South Wales, and that, on the arrival in this Country of Sir George Gipps, which is looked for in the course of the ensuing Month, Lord Grey will take an early opportunity of communicating with him on the subject.

I am, &c,
Benj. Hawes.

[Enclosure No. 6.]

Sir George Gipps to Under Secretary Hawes.

Sir,
White Friars, Canterbury, 31st Jan'y., 1847.

I have had the honor to receive Your Letter of the 28th Inst., Letter enclosing copies of a Correspondence with the Secretary to the Society for the propagation of the Gospel relative to the appointment of some additional Clergymen of the Church of England to the
1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.

1847.
27 Feb.

Conditional approval by Sir G. Gipps of application re F. C. Russell.
Schedule C of the 5th and 6th Vict., Ch. 76, on which Fund there appeared to be in March last an unexpended Balance of £6,369. In answer to the reference thus made to me, I think it right to observe that the sum mentioned was the whole unexpended Balance on Schedule C, and that of it a portion only belonged to the Church of England; but that nevertheless, considering the care with which the expenditure of the Fund called Schedule C is ever watched in the Colony, I feel fully satisfied that the portion of the surplus appertaining of right to the Church of England must be amply sufficient to bear the proposed charge; and, in respect to the propriety or expediency of making the proposed outfit or passage money a charge on Schedule C, instead of one on Emigration, I beg to report that my only doubt of its being both expedient and proper arises out of the circumstance that Mr. Russell is not actually a Clergyman, but only a Candidate for Orders; though very improbable, it is still possible that he may on his arrival in New South Wales decline ordination, and it is also possible that after examination the Bishop may decline to ordain him; for these considerations, and for more abundant caution, I think it right to suggest that Mr. Russell should be ordained before he leaves England, though at the same time I cannot in any way doubt the power of the Secretary of State legally to order the payment of outfit and passage money to be made to him, whilst only a Candidate for Orders.

As bearing on this subject, I beg leave to refer to my Despatch No. 153 of the 15th September, 1845, wherein I recommended that outfit and passage money should be paid to Six Roman Catholic Clergymen out of Schedule C; and I further think it right to remark that two Roman Catholic Gentlemen, who were Candidates for Orders only (Mr. Gould and Mr. Farrelly), were Passengers with myself in the Ship “Upton Castle,” which sailed from Plymouth for Sydney, on the 16th October, 1837; and that both these Gentlemen received an allowance for outfit and passage money, though not (as far as I recollect) the full sum of £150 each. In the same Ship was a third Roman Catholic Gentleman; but he was a Clergyman in full orders, The Rev. Mr. Brady.

I have, &c.,
Geo. Gipps.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 101, per ship Beulah.)

Sir,
Downing Street, 27th February, 1847.

I transmit to you herewith a Copy of a Correspondence, which has been recently laid before Parliament on the subject of Convict Discipline and Transportation; from which you will perceive that it is the intention of Her Majesty’s Government forthwith to break up the Convict Establishment at Norfolk Island. I think it of importance to call your attention to the fact, in order that you may be aware that Norfolk Island will be no longer available for the reception of Convicts from New South Wales.

I need hardly observe that Convicts from New South Wales cannot be sent for punishment to Van Diemen’s Land; it will,
therefore be necessary that effective means should be adopted for the punishment, within the Colony, of the Criminals who, according to the practice which has hitherto prevailed in New South Wales, would have been sentenced to Transportation. You will take the earliest opportunity of calling the attention of the Legislative Council to this important subject, and in doing so you will recommend to their notice the views with respect to the punishment of Criminals, which have been adopted by Her Majesty’s Government, and which you will find fully explained in my Instructions to Sir W. Denison on his assumption to the Government of Van Diemen’s Land; and in a letter addressed to me by The Secretary of State for The Home Department, both of which are included in the correspondence now transmitted to you.

I have, ěc.,

GREY.

[Enclosure.]

[This was the folio volume of two hundred pages, entitled "Correspondence on the subject of Convict Discipline and Transportation," which was presented to the British parliament on the 16th of February, 1847.]

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 50, per ship Sir George Seymour; acknowledged by earl Grey, 10th July, 1847.)

My Lord,

Government House, 27th February, 1847.

With reference to Mr. Secretary Gladstone’s Despatch, No. 43 of the 16th of June last, in reply to my Predecessor’s Despatch, No. 15 of the 20th of January previous, reporting on the state of the Botanical Gardens in Sydney, I have now the honor to inform Your Lordship that, having in compliance with Mr. Gladstone’s instructions brought the subject before my Executive Council with the view of obtaining their opinion as to how far it might be practicable to restore the scientific character of this Establishment without a sacrifice of the purposes of recreation to which it is at present appropriated, a Minute was adopted, of which I annex a Copy, from which your Lordship will perceive that the Salary of Two hundred pounds per annum for a superintendent was voted by the Legislative Council, in expectation that a scientific person would be sent from England to fill the situation. At the same time, I beg to state that, should your Lordship not have any particular person in view whom you may desire to appoint to it, I believe a competent person may be found in this Colony.

I have, ěc.,

CHS. A. FITZ ROY.
FITZ ROY TO GREY. 377

[Enclosure.]

PROCEEDINGS of the Executive Council on the 2nd January, 1847, relative to a Despatch from the Right Honorable the Secretary of State, respecting the restoration of its scientific character to the Botanical Garden at Sydney.

EXTRACT from Minute No. 47/1, dated 2nd January, 1847, and confirmed by the Council on the 28th January, 1847.

His Excellency the Governor having laid before the Council Mr. Secretary Gladstone's Despatch of the 16th June, 1846, respecting the Botanical Garden at Sydney, the Council begged to submit the following Report:—

The Council have had under their consideration the Despatch of the 16th June, 1846, No. 43, in which the Right Honorable the Secretary of State expresses regret at having learned from a Report of Sir George Gipps that the Botanical Garden at Sydney had lost the scientific character, which it originally had; and requests His Excellency the Governor to bring the subject before the Executive Council, and to obtain from them a Report how far in their opinion it might be practicable to restore that character to the institution without a sacrifice of the purposes of recreation, to which it appears to have been of late wholly devoted.

Having directed their attention to the matters thus brought before them, the Council have to report that they see no reason to think that the use of the Botanical Garden as a place of recreation would be in any degree interfered with by the restoration of its Scientific character, Nor do they perceive that anything more is wanting to effect this desirable object than the appointment of a Scientific person to the charge of the institution.

The Council feel themselves justified in assuring the Right Honorable the Secretary of State that he has rightly understood the intention with which the Salary of the Superintendent of the Garden was raised by the Legislative Council in 1845 to its former amount of £200 per annum. This increase was certainly voted in the expectation of a Scientific person being sent from England to fill the situation. The Council, therefore, beg to express their hope that, on the receipt of this Report, the Secretary of State will appoint to the office a person possessed of the desired qualifications.

FRANCIS L. S. MEREWETHER, Clerk of the Council.

Executive Council Office, 2nd January, 1847, No. 47/1.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 51, per ship Sir George Seymour; acknowledged by earl Grey, 8th October, 1847.)

My Lord, Government House, 27th February, 1847.

I have the honor to enclose herewith a Memorial, addressed to your Lordship by certain Ministers and other Members of the Wesleyan Church in this Colony, praying, for the reasons therein set forth, that Your Lordship will instruct the Governor of New South Wales to revise the Colonial Ecclesiastical arrangements and to adopt as the basis of financial distribution among the
several religious communions in the Colony, from time to time, the Returns of the Census last taken.

I also have the honor to enclose a copy of the letter from the Reverend William B. Boyce, Chairman of the Wesleyan Church in these Colonies, forwarding the Memorial for transmission to your Lordship.

In order that your Lordship may be made aware of the circumstances out of which this Memorial has arisen, I further enclose a Copy of a letter addressed to the Colonial Secretary of this Government by the Revd. Mr. Boyce, in reply to the communication made to him of Her Majesty's Instructions respecting the distribution of the £30,000 reserved to Her Majesty by Schedule C of the Act 5th and 6th Victoria, Cap. 76, for the purposes of public Worship, together with a Copy of the Answer, which, with the advice of my Executive Council, I caused to be returned to Mr. Boyce.

It is scarcely necessary that I should point out to Your Lordship that, even if it had been considered expedient to have acceded to the principle contended for by Mr. Boyce, it was not of course competent to the local Government, as he assumes to be the case, to set aside Her Majesty's Instructions, which adopt, for the present at least as the basis of financial distribution amongst the various denominations, the proportions shewn by the Census Tables of 1841.

In the Memorial now forwarded to Your Lordship, it is assumed, apparently because it suits the arguments of the Memorialists, that the Census Tables of 1841 are very incorrect, but that those of 1846 are perfectly accurate. The incorrectness of the former Tables is attempted to be accounted for by the allegation that, having been the first census in which the different Protestant denominations were distinguished from each other, a large number returned themselves simply as Protestants, and thus served to swell the number of the Church of England. So far as I can learn, there is not the slightest ground for supposing that the Census of 1841 was in any way less correct than that of 1846. Its general correctness received a remarkable corroboration from the fact that the general total of the number of the Population shown by it, corresponded within one per cent. with that deduced from the annual compilations made in the Colonial Secretary's Office from the Census of 1836, and the Returns of births, arrivals, deaths and departures from the Colony in the intervening period. If, therefore, the Census of 1841 was thus satisfactorily proved to be correct in its general results, there can be no reasonable ground for assuming that it was incorrect in its details.
It is fully admitted that the proportion of the Wesleyan Denomination has greatly changed in the period between the Census of 1841 and that of 1846; but this may be accounted for upon totally different grounds from those assumed by the Memorialists, who seem to have forgotten that, in a new Country to which Emigrants are brought, and occasionally in very large numbers, the excess in the arrival of persons belonging to any one denomination will of course disturb the proportion it previously bore to the others; and this is certainly an argument in favor of the pecuniary distribution among the different denominations being subject to vary according to the proportion shown by the Tables of the last Census taken. When the sum to be distributed, however, is a fixed one, there can be no doubt that much inconvenience would arise from the frequent changes which would then become necessary in the extent of the Establishment to be maintained by each denomination. It would, of course, be impossible to guarantee to Clergymen the receipt of their Stipends beyond the period intervening between each Census. Congregations would thus be liable to be deprived of the services of a Clergyman at the end of every five years. There is also this great objection to a mutable scale of distribution, namely, that it would hold out great temptation to the several denominations to endeavour to swell the Lists of their adherents, in order to obtain for them the largest possible contribution. This is, in fact, asserted to have taken place during the recent Census, but not on such authority as would enable me to rely implicitly on the truth of the statement.

Having thus pointed out to Your Lordship the inconvenience which would probably arise from adopting the rule of distribution contended for by the Wesleyans, I must nevertheless freely admit that, upon general principles, I am favorable in a community, composed as this is of many denominations, of whom no one possesses any very large excess above the others, to an equable appropriation amongst them of the pecuniary assistance afforded by the Government for the purposes of public Worship. This is a principle to which great importance is attached by the Colonists generally; and it is obvious that it cannot be completely carried out, unless the amount of contribution be liable to vary from time to time with the varying proportions of the different denominations. But, as already explained, there are very serious objections to changes in scale of distribution for public worship. Necessity for equitable distribution of appropriation for public worship.
Proposition for supplementary vote by legislative council for public worship.

General approval of system of distribution.

Memorial from Wesleyan Methodists re distribution of appropriation for public worship.

1847.
27 Feb.

Proposal for supplementary vote by legislative council for public worship.

HISTORICAL RECORDS OF AUSTRALIA.

Memorial from Wesleyan Methodists re distribution of appropriation for public worship.

Denomination required an increased provision for spiritual care and assistance. It would be called upon to surrender a portion of that which was already too slender for the purpose required. I confess that, after much consideration, I see no effectual means of meeting all the difficulties of the case, unless the Legislature will consent, from time to time, to vote, by way of supplement to Schedule C, any addition necessary to cover the excess on applications made to the Local Government for pecuniary aid by the different denominations, in conformity with the provisions of the Local Church Act, 7 William IV, No. 3, beyond the sums appropriated to each under the Royal Instructions.

I have much satisfaction in being able to add that, so far as has come under my observation, the announcement of the distribution sanctioned by the Royal Instructions has met with the general concurrence and approval of all the denominations with the exception of the Wesleyans, whose remonstrance I now forward to Your Lordship.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure No. 1.]

The Memorial of the undersigned Ministers and others connected with the Wesleyan Methodist Church in New South Wales

To the Right Honorable Earl Grey, Her Majesty's Principal Secretary of State for the Colonies.

Respectfully Sheweth,

1. That, by an Act of the Governor and Council of New South Wales, 7 William IV, No. 3, 29th July, 1836, entitled "An Act to promote the Building of Churches and Chapels, etc.," it was provided that certain Annual Allowances, varying in proportion on the number of Signatures presented in favor of such party, should be paid by the Colonial Treasury to Ministers of Religion, irrespective of any reference to peculiarities of Creed or Religious Denominations.

2. That, in accordance with the provisions of this Act, the Wesleyan Methodist Church in New South Wales has, for some years, enjoyed Stipends paid to various Ministers, amounting to £1,150 annually. In all cases, the requisite number of Signatures has been obtained, and satisfactory proof afforded, from Year to Year to the Colonial Government, that the duties obligatory upon the receipt of the said Stipends had been faithfully discharged.

3. That, by an Act of the Imperial Parliament, 5 and 6 Victoria, Cap. 76, 30th July, 1842, entitled "An Act for the Government of New South Wales and Van Diemen's Land," the Sum of £30,000 was appropriated, to be paid annually out of the Revenue of New South Wales to Her Majesty for the purposes of Public Worship (Schedule C), under the provisions of which Act, the Wesleyan Methodist Church continued to receive the Stipends heretofore allowed by the previous Act 7 William IV.

4. That, in consequence of the recommendation of the Governor and Executive Council of New South Wales, 9th June, 1843, Her Majesty the Queen in Council (in the instructions given to His...