2. A Return of the Annual receipts and application of all monies received as Tolls for Light Houses in the Colony of New South Wales, up to the 31st of December, 1846, so far as can be ascertained.

In transmitting these Returns to Your Lordship, it may be proper to mention that, funds having been provided for the purpose by the Legislative Council, the erection of two additional Light Houses has been commenced on the Coast of this Colony between Port Jackson and the entrance of Bass' Straits from the Westward, the one being on Cape Otway, and the other on Gabo Island near Cape Howe, and that both are to be first class Lights.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure No. 1.]

A Return of all Light Houses in the Colony of New South Wales, showing the Date at which each Light House was erected; the original cost of Erection, and from what Fund defrayed; and the annual Expense since its first Erection; and from what Fund defrayed, so far as can be ascertained from the Records in this Office.

<table>
<thead>
<tr>
<th>Description of Light and where situated.</th>
<th>Date and Cost of Erection and Annual Expense of Maintenance.</th>
<th>Remarks.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Light House on the South Head of Port Jackson</td>
<td>Year</td>
<td>Cost of Erection.</td>
</tr>
<tr>
<td>1819</td>
<td>£ s. d.</td>
<td>£ s. d.</td>
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<td>1820</td>
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</tbody>
</table>

The original cost of the Erection, in 1819, and the annual expense to the 31st Decem. 1827, of the Light House, South Head, cannot be ascertained from the records in this office.
### Return of cost, etc., of lighthouses.

**Description of Light, and where situated.**

<table>
<thead>
<tr>
<th>Year</th>
<th>Cost of Erection</th>
<th>Annual Expense</th>
</tr>
</thead>
<tbody>
<tr>
<td>1836</td>
<td>£752 4 2</td>
<td>£177 1 11[2]</td>
</tr>
<tr>
<td>1837</td>
<td>£417 7 3[2]</td>
<td></td>
</tr>
<tr>
<td>1838</td>
<td>£574 12 10[3]</td>
<td></td>
</tr>
<tr>
<td>1839</td>
<td>£421 14 5[2]</td>
<td></td>
</tr>
<tr>
<td>1840</td>
<td>£455 13 3[2]</td>
<td></td>
</tr>
<tr>
<td>1841</td>
<td>£606 5 4[2]</td>
<td></td>
</tr>
<tr>
<td>1842</td>
<td>£601 11 6</td>
<td></td>
</tr>
<tr>
<td>1843</td>
<td>£556 0 8[2]</td>
<td></td>
</tr>
<tr>
<td>1844</td>
<td>£441 7 8</td>
<td></td>
</tr>
<tr>
<td>1845</td>
<td>£439 10 11</td>
<td></td>
</tr>
<tr>
<td>1846</td>
<td>£680 12 3</td>
<td></td>
</tr>
<tr>
<td>1840</td>
<td>£762 4 2</td>
<td>£5,375 7 4[2]</td>
</tr>
<tr>
<td>1841</td>
<td>£194 10 5</td>
<td></td>
</tr>
<tr>
<td>1842</td>
<td>£212 17 0</td>
<td></td>
</tr>
<tr>
<td>1843</td>
<td>£247 16 0</td>
<td></td>
</tr>
<tr>
<td>1844</td>
<td>£239 6 0</td>
<td></td>
</tr>
<tr>
<td>1845</td>
<td>£146 0 0</td>
<td></td>
</tr>
<tr>
<td>1846</td>
<td>£118 6 4</td>
<td></td>
</tr>
<tr>
<td>1842</td>
<td>£165 12 2</td>
<td></td>
</tr>
<tr>
<td>1843</td>
<td>£59 11 0</td>
<td>£1,232 8 5</td>
</tr>
<tr>
<td>1844</td>
<td>£266 15 2</td>
<td></td>
</tr>
<tr>
<td>1845</td>
<td>£248 13 10</td>
<td></td>
</tr>
<tr>
<td>1846</td>
<td>£196 1 3</td>
<td></td>
</tr>
<tr>
<td>1842</td>
<td>£249 8 1</td>
<td></td>
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<tr>
<td>1843</td>
<td>£954 18 4</td>
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<tr>
<td>1844</td>
<td>£954 18 4</td>
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<tr>
<td>1845</td>
<td>£954 18 4</td>
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<tr>
<td>1846</td>
<td>£954 18 4</td>
<td></td>
</tr>
<tr>
<td>Totals</td>
<td>£2,983 15 8</td>
<td>£16,570 3 11[2]</td>
</tr>
</tbody>
</table>

**Remarks.**

- The sum of £59 11\[2\] 6\[d\] was for Lamps, Glass, Timber and Ironmongery. All the other Expenses of the Erection, being blended with those for the General Service of the Department of Public Works, cannot readily be ascertained.

- The Expense of the Maintenance of this Light prior to 1st January, 1828, cannot be ascertained from the Records in this office.

- The Government Revenue of the Colony.

**Light Vessel at the Entrance of Port Jackson.**

- The Government Revenue of the Colony.

- The Expense of the Maintenance of this Light prior to 1st January, 1828, cannot be ascertained from the Records in this office.

**Light House, Gillbrand’s Point, Port Phillip.**

- In the absence of the Auditor General.

Audit Office, Sydney, New South Wales, 22d February, 1847.  **Stephen Cole.**
RETURN of the Annual Receipts and Application of all Monies received as Tolls for Light Houses in the Colony of New South Wales, up to 31st December, 1846, as far as can be ascertained from the Records in this Office.

<table>
<thead>
<tr>
<th>Year</th>
<th>Portland Bay</th>
<th>Melbourne</th>
<th>Sydney</th>
<th>Total</th>
<th>Application of all Monies received as Tolls for such Light Houses</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£ s. d.</td>
<td>£ s. d.</td>
<td>£ s. d.</td>
<td>£ s. d.</td>
<td></td>
</tr>
<tr>
<td>1822</td>
<td>0 2 6</td>
<td>176 0 11</td>
<td>176 0 11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1823</td>
<td>173 10 8</td>
<td>165 12 0½</td>
<td>165 12 0½</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1824</td>
<td>178 5 4</td>
<td>178 5 4</td>
<td>178 5 4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1825</td>
<td>182 16 10</td>
<td>199 3 4</td>
<td>199 3 4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1826</td>
<td>244 2 2</td>
<td>244 2 2</td>
<td>244 2 2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1827</td>
<td>269 6 8</td>
<td>269 6 8</td>
<td>269 6 8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1828</td>
<td>220 8 4</td>
<td>220 8 4</td>
<td>220 8 4</td>
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<tr>
<td>1829</td>
<td>321 11 0</td>
<td>321 11 0</td>
<td>321 11 0</td>
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<tr>
<td>1830</td>
<td>443 16 11</td>
<td>443 16 11</td>
<td>443 16 11</td>
<td></td>
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<tr>
<td>1831</td>
<td>403 12 3</td>
<td>403 12 3</td>
<td>403 12 3</td>
<td></td>
<td></td>
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<tr>
<td>1832</td>
<td>471 1 6</td>
<td>471 1 6</td>
<td>471 1 6</td>
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<tr>
<td>1833</td>
<td>477 13 0</td>
<td>477 13 0</td>
<td>477 13 0</td>
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<tr>
<td>1834</td>
<td>630 17 9</td>
<td>630 17 9</td>
<td>630 17 9</td>
<td></td>
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<tr>
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<td>684 9 8</td>
<td>684 9 8</td>
<td>684 9 8</td>
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<tr>
<td>1836</td>
<td>947 16 6</td>
<td>947 16 6</td>
<td>947 16 6</td>
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<tr>
<td>1837</td>
<td>1,572 17 6</td>
<td>1,572 17 6</td>
<td>1,572 17 6</td>
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</tr>
<tr>
<td>1838</td>
<td>1,572 17 6</td>
<td>1,572 17 6</td>
<td>1,572 17 6</td>
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<tr>
<td>1839</td>
<td>1,572 17 6</td>
<td>1,572 17 6</td>
<td>1,572 17 6</td>
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<tr>
<td>1840</td>
<td>2,050 18 7</td>
<td>2,050 18 7</td>
<td>2,050 18 7</td>
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<td>1841</td>
<td>2,050 18 7</td>
<td>2,050 18 7</td>
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<td>1842</td>
<td>2,050 18 7</td>
<td>2,050 18 7</td>
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<td>1843</td>
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<td>2,050 18 7</td>
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<tr>
<td>1844</td>
<td>2,050 18 7</td>
<td>2,050 18 7</td>
<td>2,050 18 7</td>
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<td>1845</td>
<td>2,050 18 7</td>
<td>2,050 18 7</td>
<td>2,050 18 7</td>
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<tr>
<td>1846</td>
<td>2,050 18 7</td>
<td>2,050 18 7</td>
<td>2,050 18 7</td>
<td></td>
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<tr>
<td>Totals</td>
<td>0 2 6</td>
<td>1,800 18 3</td>
<td>12,867 6 11½</td>
<td>14,758 7 8½</td>
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</tbody>
</table>

In the absence of the Auditor General, Audit Office, Sydney, New South Wales, 23rd February, 1847. STEPHEN COLE.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 152, per ship Eleanor Lancaster.)

Sir,

Downing Street, 24 May, 1847.

I transmit to you herewith, with reference to former Correspondence on the same subject, the enclosed copy of a further Communication from Mr. Sievwright, relative to the circumstances of his removal from the Office of Protector of Aborigines at Port Phillip. I also enclose a copy of the answer, which has been returned to that Letter.

Although I am still persuaded of the impossibility of instituting an investigation, with any satisfactory result, into the charges of immorality brought against Mr. Sievwright, I yet think it due to the local Authorities concerned, as well as to himself, to request a report on the allegations contained in his letter of the 8th Instant.

I have, &c.,

GREY.
Letter acknowledged.

Reasons for dismissal of W. Sievwright.

My Lord,

Wandsworth Road, 8th May, 1847.

I have the honor to acknowledge the receipt of a letter addressed to me by the Under Secretary, dated 2nd March, wherein I am referred to an extract from Mr. Secretary Gladstone's letter of 27th March, 1846, in which it is observed that the primary cause of my removal from Office was stated to be "my general unfitness for the performance of its duties."

It is true that, on being allowed access by Mr. Secretary Gladstone to the Despatches of the Governor and other correspondence relating to my removal from office, I learned for the first time, on reading the letter of the Colonial Secretary to Mr. La Trobe, dated 25th February, 1842, "that His Excellency the Governor upon the perusal of a communication from the Chief Protector accompanied by a Report from Mr. Asst. Protector Sievwright from 1st Sept. to 30th November, 1841, had come to the conclusion that Mr. Sievwright's proceedings were extremely injudicious, whilst he at the same time appears to pay no attention to the instructions of his own immediate superior, or of the Government"; and it is added "To bring together large bodies of the natives from distant parts and to issue to them indiscriminately Rations from the Government is quite at variance with the orders under which Mr. Sievwright is acting"; and

"The repeated Reports of Mr. Sievwright's inefficiency made to His Excellency officially added to extremely injurious reports affecting his moral character, which have reached the Governor through channels, which, though not official, are such as to leave little doubt of their correctness, force him to request your Honor to report whether the continuance of Mr. Sievwright in the Public Service can be creditable to Government or calculated to advance the cause for which he was sent to Port Phillip."

In the Extract from Mr. Supt. Latrobe's letter to the Chief Protector, dated 12th August, 1842, which was appended to my letter to Your Lordship of 19th February last, it is shown that the sole charges, upon which I was suspended from my office, were those alluded to in the concluding paragraph of the Colonial Secretary's letter; and consequently I have hitherto confined myself to them independently, as they are charges affecting my moral character, and of such a nature as of necessity to be primarily disposed of before any other subject could be approached.

But it now becomes my duty to examine those subjects, mentioned in the Governor's Despatch to which I am referred, and bring under your Lordship's notice the extraordinary measures which the Colonial Government found it expedient to adopt in order to rid themselves of a Public Servant, who had the misfortune to incur the displeasure of His Honor the Superintendent of Port Phillip, and also to render himself obnoxious to the Squatter from having diligently and fearlessly performed the onerous duties to which he had been called by the Right Honorable The Colonial Secretary of State, Lord Glenelg.

In carrying out the orders, which I had the honor to receive from Lord Glenelg, "to watch over the rights and interests of the Natives, to protect them from any encroachment on their Property, and from acts of cruelty, oppression or injustice, and faithfully
to represent their wants, wishes or grievances to the Government," I unreservedly brought under the notice of the Government the subjects connected with this clause of my general Instructions, and as a magistrate did not hesitate to bring before the proper Tribunals with a strict impartiality those who unfortunately had been brought into collision with the natives, while defending their Property, as also the more aggravated cases of homicide and murder which were perpetrated by the lawless and depraved portion of the White Population.

In fulfilling those duties, I was necessarily exposed on the one hand to the enmity and vituperation of the Squatter and his Agents, whose murderous Acts were then for the first time brought to light, while on the other it appears that I became troublesome to the Government, through the incessant and pressing representations, which I deemed it my duty to make regarding the inert measures taken by the authorities, who, in declining to bring the implicated parties to trial even for their justification, thus naturally excited a feeling of hostility against the Officer, whose duty was primarily to detect and report upon the cases of homicide and murder, that came under his knowledge.

I may instance one case out of many for Your Lordship's information, where, according to the deposition of one of the parties engaged, "between Thirty and Forty men exclusive of women and children were shot dead, only one escaping of the whole Tribe"; and yet no trial or Inquiry of any description upon those outrageous transactions took place, further than the original depositions which I took upon the subject, which upon being forwarded to the Government for Instructions (having ceased to commit upon my own view of the case); and, upon The Crown Prosecutor returning as his decision "that the Blacks appear to have been the aggressors, at all events the conduct of two natives would make the conviction of the parties very uncertain," the case was allowed to stand over and ultimately fell to the ground.

I would here respectfully crave permission to bring under Your Lordship's notice the sensation which was produced in the Colony of New South Wales, and the reception which awaited the arrival in Sydney of the gentlemen who were chosen to fulfill the Duties of Protectors; when it became generally known that such a Department had been instituted.

Its creation was regarded even in the highest quarter as a tacit though unequivocal reproach to Colonial Philanthropy, and as an implied censure upon the vigilence of the Government, While the Squatter, and through him the Press, lost no opportunity of expressing the utmost disapprobation of the measure itself, and of heaping personal abuse upon the men whose qualifications were yet untried, and who henceforth were to protect and improve that race, who had erroneously been described to Lord Stanley "as being incapable of improvement, and whose extermination before the advance of the white Population is a necessity which it is impossible to control"; and to such an extent was the opposition carried that, in the opening speech of the Governor on the first Assembly of the Legislative Council in 1839, it became necessary for His Excellency to declare "that he had learned that it was the intention of the Council to refuse to Vote the Salaries of the Protectors, and, in the event of Members doing so, His Excellency would be obliged to charge the amount to the Land Fund which was at his Excellency's disposal."
I have referred to those facts to enable Your Lordship to judge of the prejudices that were to be overcome and the impediments with which the Department had originally to contend; which disadvantages were materially increased, when Mr. Robinson assumed the duties of Chief Protector in Port Phillip.

It appears that Mr. Robinson had arrived a few years before the period alluded to in Van Diemen's Land as an Emigrant in the humble sphere of a "Bricklayer," and had recommended himself to the Government by facilitating the removal of the few remaining Tribes of Natives from Van Diemen's Land to an adjacent Island, for which Service he was appointed their Superintendent, and, having thence acquired a knowledge of their habits, had been selected by Sir George Arthur as a fit person to instruct gentlemen sent out from England how to acquire the confidence of the Natives; but, as it will be shown in the sequel, neither cooperation nor assistance of any kind, even in the shape of Instructions to his colleagues, were rendered on his part while the periodical transmission of the Letters and Reports to and from the Government, which passed through his hands, were much retarded by Mr. Robinson, who by his Education was not well qualified for the duties that devolved upon him, even as a correspondent.

The hopeless position into which I and my party were thrown by the supineness and negligence of the Chief Protector, who during the first three years of the existence of the Department could not be prevailed upon even to visit my District, will be at once ascertained by a perusal of the Papers, marked Nos. 17 and 18 in the printed Appendix, which accompanied my letter to Mr. Secretary Gladstone, 17th March, 1846, and the serious evils and losses referred to in Nos. 19, 20 and 22 in the same Appendix, which were entirely occasioned by his remissness, while they were represented to the Colonial Government by that officer, and thence to Lord Stanley, as the result of my imprudence and inactivity.

It was at this juncture, when the minds of the Settlers were irritated by the severe losses they had sustained from the depredations of the Natives upon their flocks and herds, and from the deplorable state of inaction of the Authorities, and apparent apathy with which the complaints of the Settlers and my representations were received, that the Chief Protector appears to have successfully secured his own justification by falsely reporting to the Government "that I had brought large bodies of Natives from distant parts and issued to them indiscriminately Rations from the Government, while at the same time I paid no attention to the Instructions of my immediate Superior or of the Government."

It is remarkable that the only Instructions, I ever received from the Chief Protector, and for which I had so long and frequently applied, were precisely those upon which I was then acting, namely, "To endeavor to collect at one Central Station as many of the Natives of my District as could be induced to congregate," notwithstanding I had in toto dissented from the practicability of a project, more wild than the elements it had to contend with; a reference to my letter,* dated 27th September, 1839, will be sufficient to show my opinion of the hopeless experiment of collecting Natives from distant parts, which nevertheless was attempted to be carried out, by the orders of the Chief Protector, in the several Districts under the Assistants; and signally failed in all.

* Marginal note.—Printed App'x, No. 8.
As to the indiscriminate issue* of rations to the Natives at this time at the encampment, a perusal of my Report referred to will show that I had it not in my power, though my earnest entreaties were to be allowed to do so under certain restrictions.

While the other Districts had been for many years gradually approached, and the difference of opinion between the Settler and the Savage on their first introduction to each other, as to right of occupancy, had been long adjusted; the Public Disclosures of the actual state of affairs in my District, which it may be here remarked was the most extensive and was then being occupied for the first time by the Squatter, and the untiring assiduity with which I continued to call upon the Government for a demonstration, that might serve to check the appalling loss of life which had been so repeatedly brought under their notice, together with the remembrance of the unmeasured, but still respectful terms in which, as an old Soldier and a gentleman, I indignantly replied to His Honor the Superintendent, when I awaited upon him to demand an explanation of his discourteous official reception of me, I discovered that he had presumed on the statement of some secret enemy of mine to prejudge and condemn the conduct and character of a Stranger unheard, who was then and is now incapable of countenancing or participating in any behaviour unbecoming a Gentleman and to the fact of having been obliged in the discharge of my duty to call the attention of His Excellency the Governor to most arbitrary and unjust measures of the Superintendent towards the Aborigines.

I have no doubt led to the foundation of the Scheme to remove me from my office.

And how has this been accomplished? This measure could not be accomplished upon any ground connected with my Public Duties, notwithstanding, I was left to carry out my duties in my own way, and "my proceedings not intermeddled with," while my representations and reports were treated with silence and neglect, preparatory to the misrepresentations ascribing to my measures what by my statement to the Superintendent at the time were shown to be the result of the Chief Protector's neglect of duty, a series of the most foul and malignant calumnies were adopted and made use of, as grounds for the dismissal of a Public Servant, who, in obeying the only orders for his guidance, which he ever received (namely those of the Secretary of State already referred to, and which were loudly declared to be incompatible with the interests of the Colony) had in doing so not only incurred the displeasure of the Executive, but had sacrificed, for himself and family, every comfort of civilized life; while, at the same time, education, and frequently the commonest necessities of life, were from his exiled position, in the interior, totally unattainable for his children.

It was not my interest therefore, it could not be my wish at any time to embarrass the Colonial Government, either by the inordinate display of a distempered zeal in the cause of those committed to my charge, or from a desire to become per fas et nefas the puling champion of a barbarous though suffering people; but I had been pledged to lend my energies to the National experiment that was being made for the amelioration and for the protection of the Aborigines, and my mind and capabilities were accordingly given to the task.

* Marginal note.—Printed App'x, Nos. 20 and 22.
I would not now most respectfully beg Your Lordship's attention to the manner in which my removal was accomplished, and to the consequences that have ensued to my family from a treatment which can only be characterized as being in the highest degree arbitrary and unjust in its measures, unconstitutional in its character, and in its effect to myself and family overwhelming and ruinous.

Soon after the assumption of the duties of Superintendent by Mr. La Trobe, at a private interview with that officer at his own residence which I sought for the purpose already stated in my letter of 19th August, 1842 (said to be "my defence"), I learned from his Honor that "Rumors had been busy with my character"; and, although I could neither obtain from his Honor the nature of the rumors he alluded to, nor the names of the parties from whom he had gathered this defamation, I then and there intreated that His Honor would bring the matter to an issue by the strictest investigation on every point, that had been brought under his notice; to which appeal His Honor replied, "That he did not see how he could then interfere with the matter, as it ought to have been the duty of the Chief Protector to have done so at the time the accusations against me were first made."

Your Lordship will undoubtedly be astonished to learn that, nearly three years after this conversation, I received a notification, intimating, "That His Excellency The Governor had been pleased to order me to be suspended from my office, more on account of the charges that have existed, and which still exist with reference to my moral character, than from any want of capacity or perverseness I may have evinced since my connection with the Department."

It would thus distinctly appear that Mr. La Trobe after my interview with His Honor could not have given credit to the reports which, upon his arrival, he vaguely intimated had been attached to my name, and yet when it subsequently became expedient to remove that officer whose sense of duty led him at all risks fearlessly to detect and "perversely" to proclaim the dark deeds, which from their continuance so blotted His Honor's administration, it became necessary to fall back upon and revive those extinct and forgotten calumnies in order to have an apparent legitimate reason for his removal, as also to insure the Services of a more discreet Successor.

In full confidence of the Supreme ascendency of truth, I earnestly and I may say joyously demanded the investigation of the strictest Tribunal in order that I and my family might at once and for ever be delivered from such degrading and truly indecent fabrications: but such were not the views nor the intentions of His Honor the Superintendent, who on finding that by the production of Documents I was prepared to falsify the evidence which had been prematurely remitted to Sydney, as that "in which entire confidence was to be placed, and that consequently there might be some difficulty in determining the precise points to be investigated," or, in other words, that he dare not approach a scrutiny which might terminate in the confusion of my calumniators, it appears that His Honor availed himself of all that sophistry and the most jesuistical application of distorted facts could effect, to give complexion and character to those orbate and anonymous defamations.

As to the repeated Reports made to the Governor officially of my inefficiency, it seems to me surprising that no intimation was at any time given to me even of the slightest disapproval of my
official conduct, nor any act or omissions pointed out in the Governor's dispatches indicating "unfitness"; or in Mr. La Trobe's reply, enclosing that of the Chief Protector, is any specific cause mentioned. Mr. La Trobe states, in his letter of the 7th May to the Colonial Secretary, "That he had referred to The Chief Protector the Colonial Secretary's Letter on the propriety of Mr. Sievwright being continued in the Public Service, and that he had received the following brief reply, that, under all the circumstances and judging from all proceedings, that it would be desirable that the services of Mr. Sievwright should be dispensed with"; here nothing is referred to, nor any charge made; Mr. La Trobe in the same letter also avoids any accusation by stating that the conviction has been impressed upon his mind that Mr. Sievwright's connection with the Department was a most unfortunate one, and the sooner it was dissolved the better, adding, "that it is not to be asserted that any Member of this Department has fully acted up to their duties; but, however failing in this or that particular, each with the exception of Mr. Sievwright has conciliated at least that degree of respect, which will be awarded to a fair moral name, and an evident desire to effect good, however limited the success"; concluding with this general clause, "Mr. Sievwright unfortunately for himself has not been in a position to claim even these advantages, neither can he claim the approbation of the Government, as to the general tenor of his proceedings"; and Mr. La Trobe agrees with the Chief Protector "that his further Services should be dispensed with"; here Mr. La Trobe falls back upon the only reason he ever gave, as far as I know, either to the Governor or myself, namely "the calumnies attached to my character"; even while in search of charges to fill up the catalogue he was preparing against me, no specific act or dereliction of duty could be found upon which he could fix in order to condemn my official conduct to the Governor, although in his anxiety to do so he even appointed a Commission of Inquiry to investigate at a considerable expense to the Government, if the simple Report, which I as a Magistrate had made to the Government of some barbarous murders upon some Aboriginal women, were a correct and unexaggerated statement of the circumstances as they occurred. Nay, in his confidential Report to the Governor, dated 2nd August, 1842, having fixed upon the nature of the charges about to be brought against me, and in his endeavor to give as high a coloring to the subject as it would admit of, the Superintendent inadvertently allows what he before (in his letter above quoted) insinuates did not exist, forgetting that he had not even included me in the faint praise he awarded to my colleagues, when describing "their evident desire to effect good"; he subsequently contradicts himself, when endeavoring to uphold the argument he was then engaged in supporting, while he says, "The existence of these Reports have thrown serious obstacles in Mr. Sievwright's way, their existence having cast an air of ridicule over the personal efforts of Mr. Sievwright in the discharge of his Duty as an Assistant Protector and a Magistrate."

And, with this indirect admission of my personal efforts to discharge my duty, I am in possession of favorable testimonials from the first Colonial Law Officers of The Crown as to my conduct as a Magistrate.

This new, vague untangible charge of "General unfitness" is a term easily applied to any official; and, if held to justify removal,
no person would be safe in office for a day, nor would any one take employment in our Colonies, going out at a large expence and breaking up connexions and establishments in this Country. Sir George Gipps specifies no acts showing "unfitness," and refutation is thus precluded. He was as it now appears very unfit for his Office himself; and his death and that of others imposes great difficulties on me for which in justice allowance should be made.

In order to show that I do not seek to establish my own exoneration from the charges alleged against my official "unfitness" for the performance of the duties assigned to me upon my own solitary representation, I take the liberty to append a Colonial Newspaper, received while writing, by which I am enabled, and I trust without any impropriety at this moment, to place before Your Lordship the opinion entertained by the Public of Port Phillip of my official proceedings and also of the estimation in which the private character I left behind me is held; while my present allegation, affecting the Chief Protector, appears but a faint echo of the general Public outcry as to his inefficiency.

In conclusion, I would respectfully submit to Your Lordship that, having shown that this new and unjust charge of "General unfitness" is contradicted by public opinion, as well as by the fact that not the slightest intimation was ever conveyed to me by the Colonial Government of disapproval and much less of censure of my official proceedings, that its unfair adoption now, when the moral charges are virtually abandoned, places me in a position in which it is absolutely impossible for me now to obtain redress in any way for visible wrong done.

In the first hour of my impeachment, I with scorn repelled those truly Colonial Accusations, and demanded there and then of the Colonial Government "that a Commission of Inquiry should be immediately instituted as the only means by which the truth or falsity of the charge brought against me could be fully and clearly ascertained. I begged for the severest scrutiny into my past and present conduct, my moral and domestic character, and the discharge of my official duties, and stated that every facility would be given by myself and family towards arriving at the truth on these subjects."

Your Lordship is aware how these my reiterated demands were for months evaded, and ultimately refused upon the plea "that my case was then in the hands of the Secretary of State." The time and opportunity for these inquiries being then denied has now passed away. The scrutiny I involved, when my Calumniators and their Agents might have been convened, would now be as useless to me as it would then have been fatal to their views.

They are not only dispersed throughout the two hemispheres; but, by the death of Sir George Gipps, the Revd. Mr. Dredge, and of the Lady who on the Instant became a victim of their machinations, I am deprived of reference and testimony of vital importance to me.

Still I am sustained by the hope that my claim for simple Justice will yet be responded to by Your Lordship, upon that broad principle of Equity, which is at once the shield of the oppressed and the glory or dishonor, by whomsoever it is granted or withheld.

I have. &c.,

W. SIEWRIGHT, last Asst. Protector of Aborigines, New South Wales.
GREY TO FITZ ROY.

[Enclosure No. 2.]

UNDER SECRETARY HAWES TO MR. W. SIEVWRIGHT.

Sir,

Downing Street, 22d May, 1847.

I am directed by Earl Grey to acknowledge the receipt of your Letter of the 8th Instant, on the subject of your removal from the Office of Assistant Protector of Aborigines in New South Wales.

The effect of Your representation Lord Grey understands to be, 1st. That the chief ground of your removal from your Office was that of your alleged immorality, although as you maintain that fact had never been fully investigated; and 2nd. That the charge of incompetency for the duties of your Office was unfounded and had its origin in the vindictive feelings which (as you allege) your too great zeal in the discharge of your Office had excited against you.

It has already been pointed out to you that any further enquiry, which could be instituted into the charges affecting your Private character, must be futile and destitute of any satisfactory result so long as you shall continue to absent yourself from the Colony. Lord Grey will however call for a report from the Local Authorities on the statements which you have now made.

I have, &c.,

B. HAWES.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 153, per ship Eleanor Lancaster; acknowledged by Sir Charles Fitz Roy, 9th October, 1847.)

Sir,

Downing Street, 24 May, 1847.

I have communicated to the Lords Commissioners of the Treasury a Copy of your Despatch, No. 43 of the 28th October last, together with the Address which accompanied it from the Legislative Council of New South Wales, the object of which was to obtain a reversal of the decision of their Lordships, in respect of a deduction which they ordered to be made from the pension granted by the Home Government in 1815 to Mr. A. Macleay, late Speaker of the Council, upon the abolition of the Transport Board in this Country, at which that Gentleman then held the Office of Secretary.

The Answer of the Lords Commissioners is unfavorable to this application, their Lordships having informed me that they see no ground for directing any larger portion of the compensation allowance granted to Mr. Macleay to be paid to him, than that which is authorized by the Act of 3d and 4 Wm. 4, Cap. 24, namely, so much as, together with the Salary of any other Office he may hold, will make his yearly income equal to the salary attached to the office on account of which the compensation was granted.

I have to request that you will apprise the Legislative Council of the contents of this Despatch. I have, &c.,

GREY.
1847.
25 May.

Advance to agent-general for payment for equipment of lighthouses.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 154, per ship Eleanor Lancaster; acknowledged by Sir Charles Fitz Roy, 31st October, 1847.)

Sir,
Downing Street, 25 May, 1847.

With reference to my Despatch of the 10th of July, 1846, No. 2, I have now to inform you that, in compliance with an application which he has addressed to their Lordships for that purpose, the Lords of the Treasury have reported to me that they have given directions for an advance to the Colonial Agent of the sum of £5,500, on account of The Government of New South Wales, to enable him to pay for the Lanterns, Apparatus, Stores, etc., for the Lighthouses proposed to be erected in Bass' Straits, and which have been provided by Mr. Barnard at the cost of £5,537 4s. 8d.

It is stated, in your Predecessor's Despatch of 21st Decr., 1845, No. 194, that a sufficient sum would be reserved by the Local Government, out of the £9,000 appropriated to this service, to cover any advances which might be made to the Agent on that account. You will, therefore, make the necessary arrangements for the repayment of the said £5,500 into the Commissariat Chest of the Colony.

I have, &c.,
GREY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 115, per ship Honduras; acknowledged by Earl Grey, 19th November, 1847.)

My Lord,
Government House, 25th May, 1847.

I have the honor to enclose herewith a copy of the Speech with which, on the 4th instant, I opened the Session of the Legislative Council of this Colony.

I also transmit a copy of the Address presented to me by the Council 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.]

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 155, per ship Eleanor Lancaster; acknowledged by Sir Charles Fitz Roy, 20th November, 1847.)

Sir,
Downing Street, 26 May, 1847.

With reference to my Despatch of the 28th Ultimo, No. 140, I have now to acquaint you that, in answer to a recent application on the subject from Mr. Moger, I have caused that
Gentleman to be informed that the Yearly deduction to be made, for his benefit, from Mr. Slade's salary is to commence from the 28th of last month.

You will, therefore, take the necessary measures for carrying this arrangement into effect.

I have, &c.,

GREY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 116, per ship Honduras; acknowledged by earl Grey, 2nd January, 1848.)

My Lord, Government House, 26th May, 1847.

I have the honor to transmit (with a view to their being Papers submitted for the consideration of the Lords Commissioners of Her Majesty's Treasury) the copy of Minutes of the proceedings of the Executive Council of this Government, relative to the recent suspension of Mr. Peter Stewart, Second Clerk in the Customs Department at Sydney, together with copies of the correspondence and documents referred to therein.

It will be perceived that, upon receiving a Report from the Collector of Mr. Stewart's, on being ordered to undertake certain additional duties (on the 4th Feby. last), absented himself from the Custom House, without leaving his address or accounting in any way for his non-attendance. A similar occurrence having taken place at precisely the same time last year when he was ordered to undertake the same additional duties, I deemed it necessary to bring the case before the Council, who advised that Mr. Stewart should be suspended from Office until he could afford a satisfactory explanation of his conduct.

It will be further perceived that the Council, after having at various meetings fully investigated the charges against Mr. Stewart and also heard what that gentleman had to offer in his defence, advised that his suspension should be no longer continued, but that I should transmit the Papers, which had been laid before them, to Your Lordship with a request that the Lords Commissioners of Her Majesty's Treasury might be moved to approve and confirm Mr. Stewart's suspension and deprivation of Salary for the period he remained suspended from Office, and to consider whether it would not be expedient for the benefit of the public Service that Mr. Stewart should be employed elsewhere than in New South Wales.

I have only to add that, from what came out in evidence before the Council, it will appear that Mr. Stewart, at no time a very efficient Officer, had latterly given himself up to such
dissipated habits as would render his employment anywhere unadvisable; but, as Mr. Stewart has served for many years in the Customs Department, I would venture to suggest that it might be more beneficial to the public service if he were to be permitted to retire from it upon such allowance as he would be entitled to if he had retired under other circumstances.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

[A copy of these minutes will be found in a volume in series II.]
State's Despatch, No. 101 of the 5th May, 1842, I proceed to offer such observations upon the condition of the Colony as may be interesting to Your Lordship.

The total Revenue derived from the duties on Spirits imported as well as made in the Colony was in

<table>
<thead>
<tr>
<th>Year</th>
<th>Revenue (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1845</td>
<td>107,056 17 4</td>
</tr>
<tr>
<td>1846</td>
<td>86,037 9 3</td>
</tr>
</tbody>
</table>

This decrease has arisen from the reduction in the duties on Spirits under the Act, 9 Victoria, No. 20.

The ad valorem duties remain as last reported, but their amount is progressively improving with the recovering prospects of the Colony. They produced in

<table>
<thead>
<tr>
<th>Year</th>
<th>Revenue (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1845</td>
<td>19,471 0 2</td>
</tr>
<tr>
<td>1846</td>
<td>27,779 15 4</td>
</tr>
</tbody>
</table>

The Duties on Tobacco produced in

<table>
<thead>
<tr>
<th>Year</th>
<th>Revenue (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1845</td>
<td>48,990 3 2</td>
</tr>
<tr>
<td>1846</td>
<td>53,400 12 1</td>
</tr>
</tbody>
</table>

The Wharfage and Harbour dues amounted in 1846 to £6,592 7 10 but, by the local Act, 10th Victoria, No. 4, all Wharfage dues payable direct to the Government are abolished from the 1st January, 1847, the Governor being authorised to let by Public Auction the Wharfage and Tonnage rates receivable at the Public Wharves, such rates not to exceed those mentioned in the 8th Victoria, No. 16; and the rates of Wharfage at Private Wharves are not to exceed those charged at Public Wharves.

The Revenue produced by the Post Office, although considerable, has not hitherto added much to the General Revenue of the Colony, owing to the causes specified by my Predecessor in his Report on the Blue Book for 1845, namely, the great extent of the Colony and the dispersed state of the population.

<table>
<thead>
<tr>
<th>Year</th>
<th>Revenue (£)</th>
<th>Expenditure (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1845</td>
<td>18,001 11 6</td>
<td>16,335 13 4</td>
</tr>
<tr>
<td>1846</td>
<td>17,924 13 3</td>
<td>16,165 15 7</td>
</tr>
</tbody>
</table>

The Act of the Imperial Parliament (7 and 8 Victoria, C. 49) placing the Post Office under the direction of the Post Master General in England is not yet in operation.

The Local Act (2d Vic., No. 27), under which the assessment on Stock depastured on Crown Lands was levied, expired on the 30th June, 1846. The amount received for the first six months of that year was £17,918 15s. 7d.; and nothing in the shape of assessment on Stock has since then been received.
The Fees on Licenses to occupy Crown Lands and to Cut Timber, which are part of the Crown Revenue, produced in 1845 2. 31,790 2 6
" 1846 39,724 18 1

Fees of Office, Pages 15 to 41.
The Revenue derived from Fees of Office was in
1845 9,479 11 0
1846 10,931 18 10

The Fees taken in the Insolvent Court and in the Court of Request, which in 1845 and 1846 were applied to defray the expenses of those Courts, will in 1847 be again carried to the General Revenue, the Legislative Council having, in their second Session of 1846, voted (as a Supplement to Schedule A of the Constitutional Act, 5 and 6 Vict., C. 76) the funds necessary for the maintenance of these Courts; These fees amounted in 1844 to

Insolvent Court 2,088 19 0
Courts of Request 4,413 4 10

£6,502 3 10
(see Sir Geo. Gipps’ Despatch of 3d Feb., 1845, No. 26.)

The fees taken in all the Courts of Justice have greatly decreased. In the Supreme Court in Sydney, they were in
1842 14,460 15 7
1845 5,045 9 8
1846 4,530 0 6

Revenue and Expenditure, Pages 41 to 105.
The Accounts of the Colony are made up in accordance with the principles laid down in the Constitutional Act, 5 and 6 Vict., C. 76.
The Ordinary Revenue, that is to say, the Revenue derived from Taxes, Duties, Rates and Imposts, was in
the year 1845 288,945 16 2
" 1846 270,550 9 9
Therefore the Revenue of 1845 exceeded that of 1846 by 13,385 6 5

The Expenditure chargeable on the Ordinary Revenue was in
1845 251,087 10 11
1846 254,177 4 1
Therefore the Expenditure of 1845 was less than that of 1846 by 3,089 13 2
And the Ordinary Revenue of 1846 being... £270,550 9 9
and the Expenditure... 254,177 4 1

The Revenue of 1846 exceeded the Expenditure by... £16,373 5 8

Crown Revenue.
The following is a Statement of the Crown Revenue for 1846:

Territorial—

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Sold</td>
<td>£27,060 15 7</td>
</tr>
<tr>
<td>Quit Rents</td>
<td>£7,296 1 7</td>
</tr>
<tr>
<td>Depasturing Licenses</td>
<td>£38,943 18 1</td>
</tr>
<tr>
<td>Timber</td>
<td>£781 0 0</td>
</tr>
<tr>
<td>Rents, Leases, etc., within the Boundaries</td>
<td>£4,566 4 10</td>
</tr>
</tbody>
</table>

£78,648 0 1

Casual Revenue... 3,060 2 1

£82,708 2 2

The charges on the same Revenue for 1846 were,

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Survey and management</td>
<td>£13,381 1 4</td>
</tr>
<tr>
<td>Aborigines</td>
<td>£2,062 10 11</td>
</tr>
<tr>
<td>Immigration</td>
<td>£1,782 19 8</td>
</tr>
<tr>
<td>Interest on Debentures</td>
<td>£7,383 15 0</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>£1,682 19 11</td>
</tr>
<tr>
<td>Debentures paid off</td>
<td>£9,500 0 0</td>
</tr>
</tbody>
</table>

£35,793 6 10

There is a balance therefore in the Crown Revenue of £46,914 15s. 4d. applicable towards the paying off of the remaining outstanding Debentures.

Convict Expenditure, Pages 105 to 117.
The Expenditure under this head continues to decrease; it was...

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1845</td>
<td>£31,582 10 0</td>
</tr>
<tr>
<td>1846</td>
<td>£27,713 4 9</td>
</tr>
</tbody>
</table>

The number of Convicts in the Colony, according to the Blue Book for 1846, is 11,271; being a decrease on the previous year of 5,572.

Local Revenues, Pages 117 to 125.
The local Revenues of the City of Sydney amounted in 1846 to £9,922 18s. 4d.; those of the Town of Melbourne to £5,140 14s. 11d.
The District Councils are in the same state of abeyance and inaction, and require no report.

Military Expenditure, Pages 125 to —.

No expense has been incurred on account of Military Defences in the Colony; and the only Colonial Military Expenditure is that of the Mounted Police, amounting in 1846 to £5,880 10s. 4d.

The amount paid for gratuities to Officers and Soldiers out of Colonial funds for guarding Convicts employed on Public Works for the Colony was, in 1846, £1,027 6s. 11d.

Legislation, Pages 147 to 157.

The Reports on the Acts passed by the Legislative Council in 1846 are contained in Sir George Gipps' Despatch, No. 130 of the 26 June, 1846, and my own Despatch, No. 10 of the 9th January, 1847.

Councils and Assemblies, Pages 157 to 163.

No observance on this Head seems Necessary.

Civil Establishment, Pages 163 to 359.

This Head appears to require no report.

Security for Discharge of Duties, Pages 359 to 369.

This Head appears to require no report.

Pensions, Pages 369 to 374.

The Pension List shows an increase in 1846.

The Pensions payable in the Colony were

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1845</td>
<td>£619 17 10</td>
</tr>
<tr>
<td>1846</td>
<td>664 2 6</td>
</tr>
</tbody>
</table>

Recapitulation of the Establishment, Pages 374 to 377.

No observation seems necessary.

Foreign Consuls, Pages 377 to 379.

There are only two Consuls in the Colony, French and American.

Population, Pages 379 to 437.

A Census of the Colony was taken on the 2d March, 1846, of which a general summary will be found at page 382. The Population was shown at that date to be 189,609 souls (exclusive of Port Essington), being an increase during the preceding five years of 58,753 souls.
Ecclesiastical Return, Pages 437 to 459.

The number of Clergymen receiving Salaries from the Government in the year 1846 was 141, being an increase of 27 on the previous year.

The amount, secured for Public Worship under Schedule C of the 5th and 6th Vict., C. 76, is distributed under the arrangement sanctioned by the Secretary of State's Despatch, No. 19 of the 17th January, 1846.

Education, Pages 459 to 475.

No alteration has been made in the method of providing for Education in the Colony. The number of Schools is stated, at page 473, to be 394, being 27 more than there were in 1845. The number of Scholars is also increased by 2,517.

Exchanges, Monies, etc., Pages 475 to 495.

The Coin in the Colony was in 1845 £875,166 0 0 and in 1846 £847,316 0 0.

The Paper Money in circulation was in 1845 £196,310 0 0 and in 1846 £210,219 0 0.

Exchange has been for the most part at Par.

Imports and Exports, Pages 495 to 533.

The Imports (Port Phillip included) were

<table>
<thead>
<tr>
<th>Year</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1845</td>
<td>£1,233,854 0 0</td>
</tr>
<tr>
<td>1846</td>
<td>£1,630,522 0 0</td>
</tr>
</tbody>
</table>

The Exports (Port Phillip included) were

<table>
<thead>
<tr>
<th>Year</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1845</td>
<td>£1,555,986 0 0</td>
</tr>
<tr>
<td>1846</td>
<td>£1,487,258 0 0</td>
</tr>
</tbody>
</table>

The Export of Wool from the whole Colony was

<table>
<thead>
<tr>
<th>Year</th>
<th>Quantity</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1845</td>
<td>17,364,734 Lbs.</td>
<td>£1,009,242 0 0</td>
</tr>
<tr>
<td>1846</td>
<td>16,479,520 Lbs.</td>
<td>£1,019,985 0 0</td>
</tr>
</tbody>
</table>

The value of Tallow exported was

<table>
<thead>
<tr>
<th>Year</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1845</td>
<td>£102,746 0 0</td>
</tr>
<tr>
<td>1846</td>
<td>£28,107 0 0</td>
</tr>
</tbody>
</table>

The great decrease in the value of Tallow exported appears to have arisen from the great deficiency of the natural grasses in the greater part of the year 1846, and the consequent impossibility of obtaining fat Stock, which of course is the only Stock fit for boiling down and converting into Tallow.

Agriculture, Pages 533 to 539.

The returns of Produce and Live Stock will be found at page 534; but it is doubtful whether the Agricultural Tables can be depended upon for accuracy.
Manufactures, Mines, and Fisheries, Pages 539 to 545.

The manufacture of Tweed Cloth in the Colony is progressively improving; and the working of a Copper Mine at Molong in the Western District of the Colony has been lately commenced with some prospect of success.

Grants of Land, Pages 545 to 553.

No observation seems necessary in respect to Grants; an improvement is shown in the amount received for the sale of land;

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1845</td>
<td>£18,451</td>
</tr>
<tr>
<td>1846</td>
<td>28,255</td>
</tr>
</tbody>
</table>

Gaols and Prisoners, Pages 553 to 575.

The following Returns of the comparative state of Crime in the Colony will be found interesting:

Convictions in the Supreme Court.

<table>
<thead>
<tr>
<th>Year</th>
<th>Murder</th>
<th>Other Felonies</th>
<th>Misdemeanours</th>
</tr>
</thead>
<tbody>
<tr>
<td>1845</td>
<td>8</td>
<td>190</td>
<td>42</td>
</tr>
<tr>
<td>1846</td>
<td>7</td>
<td>173</td>
<td>44</td>
</tr>
</tbody>
</table>

Convictions in Courts of Quarter Sessions.

<table>
<thead>
<tr>
<th>Year</th>
<th>Felonies</th>
<th>Misdemeanours</th>
<th>Criminals Executed</th>
<th>Civil Cases tried in the Supreme Court</th>
<th>Of which the number of undefended or short cases was</th>
</tr>
</thead>
<tbody>
<tr>
<td>1845</td>
<td>303</td>
<td>51</td>
<td>3</td>
<td>178</td>
<td>26</td>
</tr>
<tr>
<td>1846</td>
<td>350</td>
<td>77</td>
<td>1</td>
<td>197</td>
<td>26</td>
</tr>
</tbody>
</table>

Miscellaneous Returns, Pages 575 to 594.

A variety of Returns is given at the End of the Blue Book, as printed for the Legislative Council of the Colony. A Table of the Contents of them will be found at page 576; and they disclose a great body of useful statistical information.

In conclusion, I have the gratification of feeling justified in stating my belief that the Colony is in a thriving condition; and, provided it is blessed with favorable seasons and the increase of the labouring population which is now so much required, there appears to me to be every reason to hope for the continuance of its prosperity.

I have, &c,

Chs. A. Fitz Roy.
Earl Grey to Sir Charles Fitz Roy.
(Despatch No. 157, per ship Eleanor Lancaster.)

Sir,
Downing Street, 28 May, 1847.

I have received your Despatches, Nos. 3 and 13 of the 3d and 9th of January last, the former reporting the progress of the Expedition under Sir Thomas Mitchell towards Port Essington, the latter reporting the return of that Officer and the result of his Expedition.

I have to express my satisfaction at the success which has so far attended the Expedition in the discovery of a valuable Country, and in opening out so fair a prospect of an overland route to Port Essington.

I have, &c.,

Grey.

Sir Charles Fitz Roy to Earl Grey.
(Despatch No. 118, per ship Honduras; acknowledged by Earl Grey, 16th May, 1848.)

My Lord,
Government House, 28th May, 1847.

I have received a Memorial from Mr. George W. Evans, soliciting that the sum of £336, together with the Costs of certain proceedings instituted against him in the Supreme Court of this Colony at the suit of the Crown, may be returned to him.

It appears that, in the year 1811, Mr. Evans obtained from the Report on Local Government the loan of four Cows and two Oxen of the value of £163, and that he gave a Bond in the penal sum of £336 to repay the amount, or, in lieu thereof, to return to the Government four good Cows and two good sound Oxen within the term of three years.

In September, 1839, the Attorney General, under instructions from the Lords of the Treasury communicated through the Deputy Commissary General, took proceedings against Mr. Evans in the Supreme Court on the Bond alluded to, and obtained a Judgment for the sum of £163, with interest thereon at the rate of 5 per cent. from the 11th June, 1814, but not exceeding the amount of the Penalty.

It is now represented by Mr. Evans in his Memorial, of which I enclose a copy, that certain Documents have since been found to prove that, in the terms of the Bond, the Cattle were duly returned to the Superintendent of Government Stock in satisfaction of his debt to the Government; and he solicits therefore that the whole of the Expenses, which he has been put to in this matter, may be returned to him.

I have considered it proper to call on the Crown Solicitor for Civil Business to furnish a statement of the case, and also to enquire into the facts of it as represented by Mr. Evans; and I
Refund proposed.

1847.
28 May.

Memorial of G. W. Evans requesting refund and payment of costs.

now do myself the honor to transmit, for Your Lordship's information, a copy of the Report which I have received from that Officer, from which it appears that Mr. Evans' statement is substantially correct. I beg, therefore, to recommend, for your Lordship's favorable consideration, that this case should be placed on the same footing as those respecting which, it is stated by the Civil Solicitor, the Lords of the Treasury have directed that the Bonds should not be enforced.

This would of course involve the necessity of refunding to Mr. Evans from the Military Chest the amount of the Decree of the Court, viz., £336, and the Costs which he has incurred, amounting to the further sum of about £400.

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

[Enclosure No. 1.]

THE Memorial of George William Evans,
To His Excellency Sir Charles Augustus Fitz Roy, Knight, Captain General and Governor in Chief of the Territory of New South Wales and its Dependencies, etc., etc., etc.,
Respectfully Sheweth,

That, in the month of February, 1842, a Decree was issued against your Memorialist by the Supreme Court in Sydney, by which your Memorialist was compelled to pay to the Crown the sum of £336 upon an irregular Bond executed by him in 1811, upwards of thirty years before, to return to the Crown Four cows and two oxen, that it was contended had been lent to Memorialist as was then usual.

That, in the argument of the case, no Returns or Vouchers, Books or Accounts of the Superintendent in charge of the Crown Herds were produced to shew that the cattle named in the Bond had ever been issued to Memorialist, or had not been returned; those Books and all the documents connected with the Crown Herds having been supposed to be lost or destroyed, and the Officer in charge long since deceased, which, had the case been between Individual and Individual, would have rendered it, independent of the lapse of years, utterly unsupportable.

That your Memorialist shortly since received intimation from George Cox, Esqr., J.P., of Mulgoa, that he had discovered Books and Returns kept by the late Reverend Roland Hassall, who was the Superintendent of the Government Herds in 1811, and which Books and Returns were in the hands of W. C. Wentworth, Esq., M.C., but are now in the possession of the Crown Solicitor; your Memorialist begs permission to refer Your Excellency to them. Had those Documents been preserved as carefully as were the Bonds, the Action which has helped to the ruin of your Memorialist could not have been brought, because they will prove to Your Excellency that the Four Cows and two oxen for which Memorialist has been compelled to pay Three Hundred and Thirty six pounds, besides an
immense sum in Law charges, including Thirty years' Interest, were duly and actually returned to the Superintendent of the Crown Herds by the person to whom they were issued, William Cox, Esq., in the name of your Memorialist.

That it is well known by the whole Colony that your Memorialist never was a holder of Stock in New South Wales; with this conviction upon your Memorialist's mind, when the legal proceedings of the Crown were commenced against him, he had really forgotten the circumstance of his ever signing a Bond. From the information of George Cox, Esq., it will now be seen, upon reference to the documents in the Crown Solicitor's hands, that the Cattle was issued to and returned by his Father, the late William Cox, Esq., such transfers having been usual and allowed by His Excellency Governor Macquarie, as an indulgence to public officers, who was perfectly aware that your Memorialist at no time cultivated the breeding of Stock, but attended solely to his official duties.

That your Memorialist believes, since the Books and documents of the Reverend Roland Hassall, the late Superintendent of the Crown Herds in 1811, have been discovered, certain claims upon similar Bonds for cattle, in the hands of the Commissariat, have been given up, and the proceedings withdrawn.

That your Memorialist came to New South Wales in the year 1802, and from that period to the year 1825 had been a faithful servant to the Government; that, during the early stages of these Colonies, Memorialist had performed under every privation the most arduous and fatiguing duties in the Survey Department, and discovered that extensive country West of the Blue Mountains, the principal Township therein, named Bathurst, was laid out by your Memorialist; your Memorialist also performed, at intervals, the chief duties of the Survey Department, in Van Diemen's Land, from its first Settlement in 1803, and was, in 1812, appointed by the Right Honble. Lord Bathurst to remain permanent on the Island with the designation of Deputy Surveyor General; and until the year 1821 had not any or the least assistance. That, in November, 1825, your Memorialist being much afflicted with chronic Rheumatism was permitted by the then Right Honorable the Secretary of State for the Colonies to retire on a pension of £200 per annum. That your Memorialist, by the failure of a Bank in London in 1827, lost the whole of his hard earned property, and in the year 1830 was compelled to apply to the Government to receive a commutation in lieu of the pension bestowed upon him. That, in the year 1832, your Memorialist returned from England to Sydney and embarked in Trade, and was for some years fortunate in his undertaking, until a jealousy in the occupation created him secret enemies, that at length, by cruel persecutions, insolvencies, and bad debts, is now at his advanced age with a large family labouring under much pecuniary distress.

Your Memorialist, therefore, most humbly prays that Your Excellency will be graciously pleased to cause the Officer in charge of the Commissariat, from whence the prosecution of Memorialist emanated, or such other officer or person in whom Your Excellency may place confidence, to examine the Books and Returns of the late Roland Hassall, the then Superintendent of the Crown Herds in 1811, now in the hands of the Crown Solicitor; and if from those documents it shall appear that the cattle, which Memorialist has so overwhelmingly paid for, were fairly returned to Government,
1847. 28 May.

that Your Excellency will cause the £336 to be refunded with the same rate of Interest, and the expenses so oppressively wrung from your Memorialist after a period of Thirty years.

And as in duty bound will ever pray, G. W. EVANS.

New Town Bay, near Hobart Town, Van Diemen’s Land, October, 1846.

[Enclosure No. 2.]

REPORT ON CASE OF MR. G. W. EVANS.

The Attorney General v. Evans.

This was an information filed on the nineteenth January, one thousand, eight hundred and thirty nine by the Attorney General on behalf of Her Majesty, on a Bond executed by Defendant in the year 1811 in favor of the Acting Commissary General of the Colony in the penal sum of £336, with a condition that the Bond should become void on payment by the Defendant to the Acting Commissary General or his successors of £168, or in lieu thereof 4 good cows and 2 good sound oxen, not to be under the age of 2 years, nor exceed the age of 3 years, within the term of 3 years from the date of the Bond, the same being in consideration of 4 cows and 2 oxen received by him from the Herds belonging to Government. The information sought an account of the cattle and increase and proceeds and payment of the principal money stipulated to be paid within three years, with Colonial interest, payable at the date of the Bond, to the extent of the penalty.

The defendant in his answer denied the receipt of the Cattle.

The Bond in question remained in the possession of the Commissariat Officers until about 17 years since, when it was sent with a parcel of other similar Bonds by those Officers to England. It came back to the Colony in April, 1836, for the purpose of being put in suit at the instance of the Crown by the direction of the Lords of the Treasury.

In February, 1842, a Decree was made (which was affirmed on appeal) in favor of the Crown, by which it was referred to the Master in Equity to compute the interest on the Bond up to the amount of the penalty, and the Defendant was ordered to pay the principal and interest to that amount. This sum £336 was afterwards paid by the Defendant.

It now appears from documents in the possession of the representatives of the late Mr. Rowland Hassall, who in March, 1814, was appointed by the then Governor of the Colony to be Superintendent of Government Stock in the room of George Thomas Palmer, Esquire, and part of whose duty appears to have been the receipt of Cattle on account of the Government from persons to whom they had been issued, that, on March 4th, 1815, the Defendant George Evans returned to the Government Herds in charge of Mr. Hassall “6 Bulls or Oxen” valued at £168 on account of a Government debt contracted in the time of Commissary Broughton.

The accompanying statement of facts has been handed to the Civil Crown Solicitor by Mr. John Gurner, Solicitor, Sydney, who is in possession of the documents referred to on behalf of the representatives of Mr. Hassall.
The Law expenses incurred by the Lords of the Treasury in this prosecution amount to about £300, and Mr. Evans' costs to about £400.

Mr. Commissary Ramsay has reported to the Civil Crown Solicitor that the Lords of the Treasury have directed that no other similar Bonds should be enforced.

17th May, 1847.

The Attorney General v. Evans.

Statement of facts by Mr. Gurner.

By a Government and General Order dated the 26th March, 1814, His Excellency Governor Macquarie appointed the late Mr. Rowland Hassall to be Superintendent of Government Stock in the room of George Thomas Palmer, Esquire, resigned; Mr. Hassall's appointment taking place from and after the 31st Instant, from which period Mr. Palmer's appointment ceased.

That it appears from a letter addressed to the late Mr. Hassall, now in the possession of his representatives, dated Deputy Commissary General's Office, Sydney, 3rd January, 1815, and signed by W. Broughton, the then Deputy Commissary General at Sydney aforesaid, that the said Mr. Hassall was with such letter furnished with a list of persons indebted to the Crown for Cattle, etc., received from the Public Herds on a limited credit, and which had in most instances long since expired. And that most of the said persons had been apprised that they would be called upon for the payment of their said debts on or before the then 31st Instant; and that, if they failed in payment thereof, prosecutions would be commenced against them at the opening of the Civil Court. That the said Mr. Broughton was commanded by His Excellency the Governor to desire the said Mr. Hassall to call on them and acquaint such, as had paid no part of their debts, they would be allowed to pay them in kind, that is a cow for a cow, a Bullock for a Bullock, and a Sheep for a Sheep. It was thereby observed that in some instances it would be found that several people had paid part of their debts, and that the balance due from them would not amount to the value of a cow, and that in such cases the Governor had no objection to young Stock being taken in proportion to the value of their debts. This letter has the following memorandum at the foot of it in Governor Macquarie's own handwriting:

"Appd. L. Macquarie."

There is also in the possession of the representatives of the said Mr. Hassall a List or document, which is supposed to be the one alluded to in the above letter, which list or document is headed as follows:—" A List of persons indebted to the Crown on account of cattle received from the Public Herds between the 1st April, 1810, and the 25th July, 1813, with amount of payments made, and balance due on their respective amounts." This List is signed "W. Broughton, Deputy C. Genl.," which signature is in the proper handwriting of the said Mr. Broughton. The List consists of Seven columns, the first of which contains the names of the parties; The second the place of their residence; The third the cattle delivered and their description; The fourth the amount; The fifth the amount paid in part; The sixth the balance due to the Crown; The seventh, remarks.

In the first column of this List appears the name "Evans, George." In the third, Cows and Oxen 6. In the fourth, £168. In the fifth, ———. In the Sixth, £168, and the Seventh is blank.
HISTORICAL RECORDS OF AUSTRALIA.

It also appears from another document, which appears to be a Return, made by the persons in charge of the Government Herds to the said Mr. Hassall, of Stock received by Government from several persons on account of their debts, also in the possession of the representatives of the said Mr. Hassall, that the said Mr. Evans returned to Government, 2 oxen and 4 cows, which entry is as follows: “1815, March 3rd, Evans, Mr., Oxen 2, Cows 4, £168.” And in a book, marked on one side of its cover “1814, Cattle issued from the Government Herds,” and on the other side of the said cover “1814, Cattle received into the Government Herd,” also in the possession of the representatives of the said Mr. Hassall, the following entry appears in that side of the said book marked “Cattle received into the Government Herds.” “1815, March 4th, Evans, George, Bulls or Oxen, 6 Government debt in whose time contracted, C. J. Broughton, valued at £168.”

The several documents above mentioned have been laid before George Cooper Turner, Esquire, the Crown Solicitor, and there can be no doubt from the facts appearing therein, that Mr. George Evans in the Month of —, 1813, received from the Government, on a limited credit, six Cows or Oxen, and that they were valued at £168; and that the said George Evans did on the third or fourth day of March, 1815, return to the Government, Six Bulls or Oxen in payment of his said debt, which Bulls or Oxen were also valued at £168.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 158, per ship Eleanor Lancaster.)

Sir, Downing Street, 29 May, 1847.

I have to acknowledge the receipt of Your Despatch and its enclosures of the 1st of February last, No. 29, containing various remarks in respect of my Predecessor’s Circular Instruction of the 15th of June, 1846, relative to the enactment of a law in each of Her Majesty’s Colonies for the arrest and delivery of persons charged with the Commission of Offences in other of the Colonies or in the United Kingdom.

On this subject, it will be sufficient for me to refer you to my Circular Despatch of the 30th of September last.

I have, &c.,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 159, per ship Eleanor Lancaster; acknowledged by Sir Charles Fitz Roy, 28th September, 1847.)

Sir, Downing Street, 29 May, 1847.

I have received your Despatch dated the 9th January, 1847 (No. 11), enclosing the Copy of a printed Bill to declare void so much of all local Ordinances of New South Wales now in existence, as assumes to vest the appropriation of the Ordinary Revenue elsewhere than in the Legislative Council.
In the report of the Attorney and Solicitor General of your Government of the 29th of October, 1846, they express the "strongest doubts of the possession by the local Legislature 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."

After receiving this report, you (as appears from your present Despatch) caused the Colonial Secretary to explain to the Council "that the reasons which had induced you to withhold your assent did not arise from any objection to the principle of the measure"; "but, from having been advised by The Crown Law Officers that there were certain technical points in the Instruction, by which you are guided in assenting to Bills, which preclude you from giving your assent to this Bill."

I am quite unable to reconcile the language of the report of your Legal Advisers with the communication which you caused and estate your Legal Advisers with the communication which you caused to be made to the Legislative Council: your legal advisers, it is true, remarked that The Royal Instructions required that in a repealing Act the Title of every Act to be repealed should be set forth. But their Report referred not to a repealing Act, but to a declaratory Act, and it pointed out an objection to that declaratory Act, not of mere technical detail, but of principle, and of principle of the highest importance. If your Legal Advisers were right, as it seems to me they evidently were, the Bill sent up for your assent was an attempted usurpation of a function belonging exclusively to Parliament, an attempt on the part of the local Legislature to define and determine the limits of the Constitutional Authority with which Parliament has entrusted them, a precedent for diverting from the Legal Tribunals to the Legislative Council the right of interpreting the Act of Parliament. A more serious objection in principle can hardly be supposed; and yet you report yourself to have informed the Legislative Council that you had not been induced to withhold your assent from any objection to the principle of the measure.

Fully and cordially as I adopt the opinion that the Legislature of New South Wales should, in all matters of mere local concern, be entrusted with the free and full exercise of the high franchise they enjoy, I am yet bound to remember and to impress on you the remembrance, that, for the common benefit of all Her Majesty's subjects, it is indispensable that the Constitutional limits of that franchise should be respected and observed. It is doubtless right and wise always to address the Legislative
Council in terms of studied respect and courtesy. But I am convinced you will perceive how serious may be the danger of urging that courtesy to such an extent as to sacrifice to it the powers with which, for the general good, the Sovereign or Parliament or the Judges are invested. If any other attempt should be made to pass a Law declaratory of the true construction of any Act of Parliament, and especially of the Constitutional Act, it will be your duty to refuse your assent, and to ground that refusal on the broad and important principle on which your legal advisers so properly insisted on the present occasion.

I have, &c,

GREY.
Fitz Roy to Grey.

Her Majesty will be prepared to alter so much of the Royal Instructions as imposes any other Oath than these, on being apprized that the Local Legislature have concurred in the propriety of the contemplated change in the Law.

I have, &c.,

Grey.

Sir Charles Fitz Roy to Earl Grey.

(Despatch No. 119, per ship Honduras; acknowledged by Earl Grey, 30th November, 1847.)

My Lord,

Government House, 29th May, 1847.

With reference to Your Lordship's Despatch, No. 46 of the 18th October, 1846, confirming the Judicial arrangements recommended by my Predecessor on the removal of Mr. Justice Willis from Office as one of Her Majesty's Judges in this Colony, I have the honor to transmit the Copy of a letter addressed to me by Mr. Justice Therry, claiming precedence next after Mr. Justice Dickinson and before Mr. Justice a'Beckett.

This position, it would appear, Mr. Justice Therry conceives he has a right to claim on the ground that it was the one which it was contemplated by Sir George Gipps that he should occupy; but he wishes the point to be decided by Your Lordship, in consequence of Mr. Justice A'Beckett's name having been inserted (as Mr. Therry supposes by accident) before his own in the London Gazette, which announced their appointments.

As Mr. Therry's right to the precedence he claims seems to me opinion of borne out by the paragraph quoted by him from Lord Stanley's Despatch of the 30th April, 1845, and as his service under the Government is of much older date than that of Mr. Justice a'Beckett, I can have no hesitation in strongly recommending his request, that the point may be settled according to his desire, to your Lordship's favorable consideration.

I have, &c.,

Chs. A. Fitz Roy.

[Enclosure.]

Mr. Justice Therry to Colonial Secretary Thomson.

Sir,

Supreme Court, Sydney, 22nd May, 1847.

In reference to your letter of the 20th March apprising me that the Queen had been pleased to appoint me to the office of a Puisne Judge of the Supreme Court of New South Wales in pursuance of the advice of the late Governor, I need hardly assure you that I considered this communication as intimating distinctly to me that my appointment by Sir George Gipps was confirmed with "the right of precedence next after Mr. Justice Dickinson," which was expressed in your official letter to me of the 3rd of February, 1846.
1847.
29 May.

Claim by
R. Therry to
precedence
before
W. a'Beckett.

My attention has been recently attracted to this subject by the
mode in which the appointment of Mr. A'Beckett and myself to
seats on the Bench of New South Wales had been announced in the
London Gazette. ’Tho’ I cannot suppose that, by the accidental
position of Mr. A'Beckett’s name before mine in that announce­
ment, it was intended to disturb the arrangement by which my
right of precedence had been previously settled, yet, to prevent any
future misapprehension on the point, I deem it right to refer
briefly to the grounds which I submit show satisfactorily that I
had good reason for supposing that my claim of precedence over
Mr. a'Beckett had been established.

The first and, I own, the strongest ground on which I rest this
claim is contained in the following passage of Lord Stanley's Des­
patch to Sir Geo. Gipps of the 30th of April, 1845, in which His
Lordship is pleased to state:

"I have felt bound to regard the long services of Mr. Therry and
the high testimony borne in his favor on repeated occasions as
giving him a preferable claim to Mr. a'Beckett to advancement in
the judicial Establishment of your Government."

In the same Despatch His Lordship states, “in the event of Mr.
Plunkett declining the appointment of third Puisne Judge, you are
to offer it to Mr. Therry,” and further “in the event of his declin­
ing” (which event has since happened) His Lordship adds “Mr.
a'Beckett will then have the option of succeeding to the permanent
office of the Court of Requests or to the Provisional Judgeship, the
final confirmation of which would of course depend on the issue of
Mr. Willis’ appeal.”

My right to the position of third Puisne Judge being thus deter­
dined by Lord Stanley, an official communication was made to me
by your letter of the 28th of November, 1845. In that letter, in­
forming me of Mr. Plunkett's declining a seat on the Bench, the
position, which it was proposed to me I should occupy on the
Bench, is thus clearly indicated. “Your commission will declare
your Honor to be the second Puisne Judge of the Colony, next to
Mr. Dickinson who is the senior Puisne Judge; or it will declare
that you are to occupy the seat which was vacated by Mr. Stephen
on his advancement to the office of Chief Justice.” The latter
course (which was the more appropriate course) was the one
adopted, as at that time, pending Mr. Willis' appeal, who still was
considered as holding his position on the Bench, it could not be
determined whether the position of Mr. Stephen’s Successor was
that of Second or Third Puisne Judge. Accordingly I received an­
other letter from your office, dated the 3rd of February, 1846, inti­
mating that “His Excellency (Sir George Gipps) yesterday signed
a Commission appointing me one of the Judges of the Supreme
Court of this Colony with rank and precedence as such next after
Mr. Justice Dickinson,” who (Mr. Willis' case being then unde­
decided) was second Puisne Judge, but who, on its being decided unfavor­
ably to Mr. Willis, of course became Senior Puisne Judge.

I pass over the circumstances of Mr. a'Beckett having held the
office of Solicitor General during the period of two years and a
half, that I held the appointment of Attorney General in the
Colony, as that circumstance I apprehend was considered by Lord
Stanley among the grounds on which His Lordship determined
"my preferable claim to Mr. a'Beckett to advancement in the Judi­
cial establishment of this Government."

HISTORICAL RECORDS OF AUSTRALIA.
I have thus, I trust, stated sufficient to show that, unless it were
designed to deprive me (which I cannot for a moment suppose) of
that rank and precedence which Lord Stanley sanctioned in his
despatch of the 30th of April, 1845, and which, pursuant to His
Lordship’s instructions, was assured to me by your letter of the
3rd February, 1846, and the commission therein referred to, I am
the holder in my opinion beyond dispute of the office of Second
Puisne Judge of the Court.

To prevent any doubt however that may hereafter arise or be
suggested in any quarter upon the point, from the mode of an­
nouncement in the London Gazette to which I have adverted, I beg
that His Excellency the Governor will refer this letter for the con­
sideration of the Secretary of State; and I trust I do not make
an unreasonable request in soliciting that His Excellency may
accompany it with expression of an opinion and request on his
part, that the question should be decided in my favor, or rather
that the decision, already pronounced by Lord Stanley and acted
upon by Sir George Gipps in the matter, may not be departed from
or disturbed.

I have, &c.,

R. THERBY.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 161, per ship Eleanor Lancaster; acknowledged by
Sir Charles Fitz Roy, 27th September, 1847.)

Sir, Downing  Street, 31 May, 1847.

I have received your Despatch, No. 5 of the 5th of Janu­
ary last, enclosing a Memorial from Mrs. Percy Simpson, on be­
half of her husband, who was absent from the Colony, renewing
an alleged claim, arising out of the Appointment which he for­
merly held of Commandant at Wellington Valley.

You observe that, as the question has already been decided
against Mr. Simpson by three of my Predecessors, the only prac­
ticable way, which you can point out of setting it finally at
rest, will be to allow Mr. Simpson to bring an Action against
the Government; and that that is the course which you informed
Mr. Simpson you should recommend.

The circumstance, which you yourself have stated, that the case
has already been so repeatedly considered, prevents my entering
again into the merits of it; and I cannot adopt the advice which
you have given. If Mr. Simpson has any effective Legal remedies,
he requires no authority from the Government to enable him to
avail himself of them. If he has no such remedies, he has no
right to expect that the Law should be bent to suit his par­
ticular case.

It is not without surprise that I learn that you have not only
tendered such advice upon such slight grounds; but that you
have communicated your intention of doing so to the Applicant.
Without suggesting the slightest doubt as to the integrity with which the verdict of a Colonial Jury would be returned in any case, I cannot conceal from myself the high probability that any such Jury would be influenced by strong but unconscious prepossessions on the trial of such a question between a Colonist on the one hand, and the Lords Commissioners of the Treasury on the other, I regret that your offer of referring the claim to such a Tribunal should have rendered the duty, which devolves on myself of retracting that offer, both difficult and ungracious. It is however a duty from which I cannot shrink.

I have, &c,
GREY.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 121, per ship Honduras.)
My Lord,
Government House, 31st May, 1847.
I have the honor to acknowledge the receipt, on the 26th instant, of Your Lordship's Despatches numbered as per margin.*
I have, &c,
CHS. A. FITZ ROY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 162, per ship Trafalgar; acknowledged by Sir Charles Fitz Roy. 31st December, 1847.)
Sir,
Downing Street, 3 June, 1847.
I have to acknowledge the receipt of your Predecessor's Dispatch, No. 144 of the 7th of July, 1846, containing the explanation he had been called upon to give in respect of the expense and other circumstances relating to the question of the maintenance of the Offices of Astronomer at Paramatta, and of the Meteorological Recorders at Port Macquarie, Melbourne and South Head.
I have also received your Despatch of the 30th of October last, No. 45, having exclusive reference to the three last mentioned appointments; and especially as regards the sources from which the charge for the Salaries of the Recorders is to be defrayed, when the Convicts, who now perform that duty, shall become free.
I referred Copies of both these Dispatches to the Boards of Treasury and of the Admiralty, and the result of the correspondence, which has since taken place on the subject, has been to show that the advantages in a scientific point of view, arising from the Observatory at Paramatta, are not such as to justify its being continued at the cost of the British Treasury.

* Marginal note.—Nos. 69 to 80, "Military" 4, Circular 7 and 8 Oct., 46.
It will, therefore, be your duty to acquaint Mr. Dunlop that his Services as Superintendent will not be required after the 31st of March, 1848, up to which period only provision will be made for his Salary in the Estimate for expenditure connected with the Convict Establishments in New South Wales.

With respect to the three Offices of Meteorological Recorders already noticed, Her Majesty's Government consent to the present rates of allowance being paid to them, only so long as the parties employed in the Service are Convicts, and who must otherwise be maintained at the expense of the Home Government.

I have, &c.,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY. (Despatch No. 164, per ship Trafalgar; acknowledged by Sir Charles Fitz Roy, 24th December, 1847.)

Sir, Downing Street, 4 June, 1847.

I have received your Despatches, Nos. 14 and 15 of the 9th of January last.

In the former Dispatch, you report that, in consequence of an Address which was voted to you by the Legislative Council, praying that you 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, you had caused an Estimate to be prepared and laid before the Council in conformity to the prayer of that Address. In the latter Despatch, you report the Appointment of Mr. Browne to be Water Police Magistrate for the City and Port of Sydney, and submit further arrangements which you had made in other Departments in consequence of that Appointment.

I see no reason to disapprove of the creation of the Court or of the arrangements which followed that measure; but I must here again refer you to the remarks contained in my Despatch, No. 126 of the 13th of April last, in regard to the mode of dealing with Addresses from the Council, containing applications to you to originate Estimates for particular charges.

I have, &c.,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY. (Despatch No. 165, per ship Trafalgar.)

Sir, Downing Street, 5 June, 1847.

I have received your Despatches, Nos. 9 and 31 of the 9th of January and 1st of February last, enclosing various Petitions against the renewal of transportation to New South Wales.
The Petitions addressed to the Queen from the Inhabitants of Maitland, from the Inhabitants of Paterson, and from the Operatives and other Inhabitants of Sydney, have been laid before The Queen; and you will acquaint the Petitioners that Her Majesty was pleased to receive them very graciously. The petition to the House of Lords from the District of Maitland, I have presented to that House; and that from the same District addressed to the House of Commons, and entrusted to Mr. Ewart, has been forwarded to that Gentleman for presentation.

I have, &c.,

GREY.

9 June.

Despatch acknowledged re steam communication with England.

Route proposed by P. P. King.

Subsidy proposed.

Companies formed to establish steam communication between England and Australia.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 106, per ship Trafalgar.)

Downing Street, 9 June, 1847.

Sir,

I have received your Despatch, No. 47 of the 1st of November last, enclosing a copy of an Address from the Legislative Council of New South Wales with a printed copy of a Report of a Committee of the Council, appointed to consider the best means of establishing Steam Communication between England and Port Jackson.

I perceive that the route, pointed out by Captain King, R.N., to whose opinion great weight appears to be attached by the Council, as the least expensive and the most convenient and advantageous, is that which joins the Indian and China Line, and that the Committee of the Council recommend that the Sum of £500 a Month or £6,000 a year should be contributed from the Funds of the Colony for a period of three years towards the amount beyond the Postage receipts, which would be required for carrying the plan into effect.

My attention had already been drawn by various parties in this Country to the question of establishing Steam communication with Australia.

I enclose copies of a Correspondence shewing the plans of two Chartered Companies which have been formed for that purpose. The one, styled the “India and Australia Royal Mail Steam Packet Company,” contemplates a junction with that Line already established in the East, and to which on the information before them the Council of New South Wales appear to have shewn a preference. The other proposes the establishment of a Line of Steam Packets furnished with the Propelling Screw, to make the voyage direct to Australia, touching at the Cape and with a branch packet to Mauritius. You will perceive that the latter Company propose at once to make arrangements
for despatching an experimental Ship on that enterprize, on the condition of receiving the amount of Postage chargeable on the Letters and Newspapers which she may carry, and of taking Government Emigrants equal to her capacity.

From the enclosed Report from the Board of Admiralty, dated the 6th Ultimo, you will perceive that, although the Lords Commissioners do not consider that the projected Line by the Cape can equal that by Alexandria and Singapore in speed or regularity, yet that it would be so advantageous to National interests as to deserve encouragement from the Government.

Under these circumstances, Her Majesty's Government have been induced to abstain from deciding at present in favor of the plan recommended by the Council.

I should wish you again to bring the subject before that Body, when the issue of this experimental voyage is known, and transmit to me the result of their further deliberations on the subject.

For your assistance in reconsidering this question, I enclose copies of a Letter from the Secretary to the Board of Admiralty and of Reports from the Hydrographer to that Board and the Comptroller of Steam Machinery, pointing out what is conceived to be the most eligible route in connection with the Indian Line, and shewing the estimated expense of carrying into effect such an undertaking. I also enclose a copy of a Letter from the Secretary to the Treasury with a Statement of the Revenue derived from the Postage on Letters and Newspapers conveyed between the United Kingdom and the Australian Colonies for the year ending 5th Oct., 1846.

...
Australia Mail Steam Packet Company," via Egypt and Singapore, for carrying on Steam communication between England, India and Australasia, and the intermediate Ports and their extensions.

Your Majesty's Petitioners therefore humbly beseech your Majesty to grant to your Petitioners, or such other Persons as shall subscribe to or be elected and accepted Proprietors, Your Majesty's Royal Charter of Incorporation for the proposal aforesaid, and that Your Petitioners or such other Persons as aforesaid and their Successors may be henceforth one Body Politic and Corporate by the Name of the India and Australia Mail Steam Packet Co., with such rights, powers, privileges, franchises and immunities as are expressed in the Schedule hereunto annexed.

And your Majesty's Petitioners as in Duty bound shall ever pray.

Signed by—

Sir George Larpent, Bart.
(Firm:—Cockerell and Co.).

HONBLE. Francis Scott, M.P.
(Agent for the Colonies).

James Pattison, M.P., Bank Director.
W. Hutt, M.P.
M. Forster, M.P.
(Firm:—Forster and Smith).
Iraez Currie, M.P.
(Firm:—Currie and Co., Bankers).

Joseph Soames.
D. Mackillop
(Firm:—Palmer, Mackillop and Co.).

Joseph Underwood.
Thomas Waddington, R.N.

Thomas Browne.
J. Ingram Travers
(Firm:—Travers and Sons).

T. S. Rawson
(Firm:—Rawson, Norton and Co.).

D. B. Chapman and Rajeeb.
(Firm:—Overend, Gurney and Co.).

G. S. Walters
(Firm: of A. A. Gower and Co.).

H. J. Euthoven
(Firm:—Euthoven and Co.), Calcutta.

Mark Boyd
(Firm:—M. and E. Boyd), Australasia.

D. C. Aylwin
(Firm:—Aylwin and Co.), India.

Robert Brooks, Australasia.
John Gore and Co., Australasia.
Adam Duff, Oriental Bank.
David Pugh, Madras Merchant.

Thomas Wilson
(Firm:—Barrow, Wilson and Co.).

J. Johnson.
J. W. Cole.
P. Stewart
(Firm:—Smith, Elder and Co.).

T. J. Richards
(Firm:—T. J. Richards and Co.).

Henry H. Willis and Co.
James Hamilton
(Swann, Webb, and Co).

Jacob Montefiore.
Robert Ford.
Phillips and Graves.
P. W. Flower.

Adamson and Co.
Chambers and Limy.

March and Edinburgh.

Henry T. Emsworth.
Samuel Browning, Australasia.

George T. Brain, late Dent and Co.,

China.

David W. Wire.
Joseph Causton.
James Alexander.

Francis Syne.

Henry J. Emsworth.
John Carter.

Charles Mallard.

Julius H. Thompson.
George Thompson.

Henry Prace House.

Edward Colman.

Thomas Francis.
R. S. Mackenzie.

William Beard.
W. R. Gobwin.

Thomass Barke.
Fredk. Collier.

Daniel Mulas and Co.
F. W. Green.

Samuel Rogers.

Henry M. Kemphead.
(Firm:—Grant and Kemphead).

Wilson, Wilson and Co.

Edward Moxhay.
R. Turnburn.

(Firm:—Thurberd, Briggs and Co.).

R. Montgomery Martin.

John Yates.

[Sub-enclosure No. 2.]

CAPTAIN HAMILTON TO INDIA AND AUSTRALIA MAIL STEAM PACKET COMPANY.

Gentlemen,

Having laid before my Lords Commissioners of the Admiralty your Letter of the 13th Instant, relative to effecting Steam Communication between England and Australia, I am commanded by their Lordships to acquaint you that they are of opinion that the route proposed by Ceylon and Singapore through the Malay Archipelago to Port Essington and Sydney is the best line for Steam Communication with Australia.

I am, &c.,

W. A. B. Hamilton.
UNDER SECRETARY HAWES TO MR. R. M. MARTIN.

Sir, Downing Street, 17th March, 1847.

I am directed by Earl Grey to acknowledge the receipt of your letter of the Letter 10th Instant, accompanied by the copy of a Petition to the Queen from various Mer- chants and Bankers in the City of London, praying for Grant of a Charter for the "India and Australia Mail Packet Company," and in behalf of which you solicit his Lordship's approval.

I have, &c.,

B. HAWES.

MR. C. D. HAYS TO UNDER SECRETARY HAWES.

Sir, Meriton's Wharf, Bermondsey, 13 March, 1847.

At a Meeting yesterday of the Gentlemen of London and from Liverpool, the supporters and Advocates of my plan for carrying out the Australian communication via the Cape of Good Hope, etc., I was requested to again address the Right Honorable Earl Grey, Her Majesty's Principal Secretary of State for the Colonies, and solicit the honor of an interview for those Gentle­ men with his Lordship, at any time that may be most convenient after Monday the 22d instant, when they will be prepared to lay before His Lordship the terms on which the Service can be performed. I have the honor to enclose herewith a Letter addressed to his Lordship on that subject.

By advices this Morning from Liverpool, I am informed of the voyage of arrival at "New York" of the Screw Auxiliary Steam Ship "Sarah sands" from Liverpool after a passage of 21 days, and having experienced considerable heavy and contrary weather during the passage.

The distance from Liverpool to New York being in a direct line about 4,000 Nautical Miles gives the performance of this Ship at an average of 190 Miles pr. day or 8 Knots pr. hour, and, as She has strictly an Auxiliary power, the nominal horse power of the Engines being only about as 1 to 8 of the measurement Tonnage, and the Voyage from England to America being considered one of the most difficult and tedious on account of the prevalence of strong Westerly Winds in the Atlantic, the performance of this Ship is another proof of what may be expected from the application of the Screw Propeller to a perfect Sailing Ship, and will still further bear me out in the calculations for speed I have made for the Vessels to Australia, which are estimated for a much larger comparative Steam power and to be built expressly with a view to speed; whereas the "Sarah sands" is constructed also to carry a large Cargo, having left Liverpool with more than 1,000 Tons of Goods and over 50 passengers, besides Machinery and Fuel for the Voyage.

The measurement Tonnage of the Ship is about 1,200 and the nominal Horse power about 150.

I have, &c.,

C. D. HAYS.
Advantages of steam communication with Australia via Cape of Good Hope.

Plan proposed.

Proposed experimental voyage.

Request for shipment of immigrants; and for payment for carriage of mails.

My Lord,

Meriton's Wharf, Bermondsey, 15th April, 1847.

I avail myself of your Lordship's permission to submit, somewhat more in detail than I have hitherto done, the advantages I venture to believe will attach to the plan I have propounded for the establishment of Steam communication with the Australian Colonies via the Cape of Good Hope, with branches to the Mauritius and New Zealand, and which I conceive to be far greater both in a Commercial and political point of view than can possibly attend the extension to New South Wales of the existing Overland route whether from Singapore or any other point.

In this view I am supported, as your Lordship is already aware, by many Gentlemen of experience and influence interested in the Trade with the Colonies referred to, and I cannot but believe that the Colonists themselves will unanimously prefer a plan affording advantages of so much more comprehensive a character, than the mere postal communication with one Colony, to which all other plans that have been hitherto proposed must be practically confined.

The plan, which I have in view in conjunction with the Gentlemen who recently had the honor of an interview with your Lordship on this subject, is the establishment by means of a public Company of a Line of Screw Steam Packets, sufficiently numerous and of adequate power to insure a regular Monthly communication with the Colonies referred to as fully detailed in the Pamphlet which accompanies this Letter, and to which I respectfully take leave to call your Lordship's attention.

Inasmuch however as an undertaking of this magnitude cannot be carried out without that assistance from Her Majesty's Government, which your Lordship does not consider could be at present afforded,

It has occurred to the Gentlemen, who are favorable to and have entire confidence in my plan, with the view of removing the doubts attempted to be instilled into your Lordship's mind as to the practicability of the plan, That it is desirable one such Vessel as is proposed to be employed in the service contemplated should at once be built and equipped, provided Her Majesty's Government are prepared to wait the issue of such experimental Voyage, before entering into arrangements with any other parties for the conveyance of Mails to the same quarter. But, by way of meeting the heavy expences which must necessarily attend this experiment, it is hoped your Lordship will feel justified in so far affording the assistance of Her Majesty's Government as to promise that, in the event of the Vessel's equipment and dispatch during the Autumn of the present Year, a number of Emigrants equal to the Ship's capacity shall be embarked on board her at the average rate of passage money, which may have been paid by the Emigration Commissioners in other Vessels to the Australian Colonies during the preceding Six Months.

In addition to which, it is hoped that the Post Master General will consent either to pay a liberal remuneration for the conveyance of a Mail or to give up altogether the amount of postages upon such Letters as the public might elect to forward by the Vessel in question.
GREY TO FITZ ROY.

I may also add that I am allowed by Captain Ellice, Superintendent of the Steam Department of the Admiralty, to refer your Lordship to him for a professional opinion upon the merits of my plan.

I have, &c.,

C. D. HAYS.

[Sub-enclosure.]

[This was an octavo pamphlet of eight pages, with a map and table of distances between ports, etc., entitled, "Remarks upon the Proposed Establishment of Steam Communication with the Australian Colonies and the British Possessions at the Cape of Good Hope, New Zealand, Mauritius, etc.," by C. D. Hays.]

[Enclosure No. 4.]

UNDER SECRETARY HAWES TO MR. C. D. HAYS.

Sir,

Downing Street, 4th June, 1847.

The necessity for communicating with the Lords Commissioners of the Treasury and the Board of Admiralty on the proposals contained in your letter of the 15th April has prevented Lord Grey from returning an early answer to that letter.

I am now directed to acquaint you that Her Majesty's Government accede to your proposal that, in consideration of the Company whom you represent despatching during the Autumn of the present year one Vessel fitted with the Screw Propeller in order to test the practicability of the project of establishing a line of communication by vessels of that description with Mauritius and Australia, via the Cape, the Government should agree to wait the issue of such experimental voyage before entering into any agreement with other Associations for the conveyance of Mails to the same quarter, and should send by the vessel in question a number of Emigrants equal to her capacity at the average Passage Money, which may have been paid by the Emigration Commissioners for the conveyance of Emigrants in Vessels proceeding to Australia during the preceding six months. The Lords of the Treasury have also stated their readiness to furnish the Post Master General with the requisite authority for the payment in aid of the expenses of the undertaking of the amount received on the Letters and Newspapers, which may be forwarded by the Vessel.

In making this communication to you, Lord Grey desires that it may be clearly understood that, even if the experiment should prove successful, Her Majesty's Government must not be considered as in any degree pledged to give the preference to that route, as it is a material consideration in favor of the other Line proposed that it affords to Australia a good means of communication with India and China, with which Countries the Australian Colonies are likely to have much Commercial Intercourse.

I am, &c.,

B. HAWES.

[Enclosure No. 5.]

MR. J. YATES TO EARL GREY.

India and Australia Royal Mail Steam Packet Company,

My Lord,

34 Cornhill, London, 25th May, 1847.

I am requested to lay before your Lordship for consideration the accompanying prospectus of a Company, for which a "Royal Charter" of Incorporation has been conceded by Her Majesty's Government.
The object is to give to the most distant but vast and increasingly valuable dominions of the Crown in Australia, Van Diemen's Land and New Zealand, the advantages of a regular Steam communication, so as to bring Sydney, the Metropolitan of the whole of the Australian Colonies, within 60 or 64 days distance of London.

The Committee of management impressed with the National and important interests involved in this measure, and being desirous of evincing to the British Colonists in the remotest part of the Empire how deeply all Classes of Her Majesty's Subjects, including those of the highest and most exalted Station, sympathize with them, and desire to strengthen and perpetuate the Bonds of Union with the parent State, are desirous of being honored with the name of Your Lordship as one of the patrons of the undertaking, and in doing so beg to assure your Lordship that, if you should be pleased to accede to their request, no responsibility will be incurred.

I should be happy to wait upon your Lordship to offer any further required information and have the honor to be, My Lord, etc.,

JNO. YATES, Secy.

[Sub-enclosure.]

[This was a printed prospectus of the "India and Australia Royal Mail Steam Packet Company," incorporated by royal charter.]

[Enclosure No. 6.]

UNDER SECRETARY HAWES TO MR. JOHN YATES.

Sir, Downing Street, 4th June, 1847.

Refusal by earl Grey of office of patron.

I am directed by Earl Grey to acknowledge the receipt of your letter of the 25th Ultimo, enclosing for His Lordship's consideration a Prospectus of a Company designated the Indian and Australia Steam Packet Company, to which a charter has recently been granted, and requesting that he will become one of the Patrons of the undertaking; and I am directed to acquaint you that Lord Grey cannot consent to accede to that application, as by so doing His Lordship might be considered to imply a preference of this project to any of the rival Plans for the establishment of Steam Communication to Australia; and Lord Grey conceives it to be necessary that Her Majesty's Government should reserve to themselves a perfectly unfettered discretion to enter into any arrangement hereafter, which they may with more complete information think the best for effecting the important object in view.

Lord Grey further directs me to transmit to you for the information of the Company on whose behalf you write a copy of a letter which has been addressed by His Lordship's direction to the Association interested in the project of Establishing Steam Communication with Australia via the Cape, as His Lordship thinks it right that you should be aware of the terms of that communication.

I have, &c.,

B. HAWES.

[Enclosure No. 7.]

MR. H. G. WARD TO UNDER SECRETARY STEPHEN.

Sir, Admiralty, 6th May, 1847.

Letter transmitted.

With reference to your Letters of the 9th, 14th and 27th Ultimo. on the subject of the establishment of Mail Packet Communication between this Country and the Australian Colonies, I am commanded by the Lords Commissioners of the Admiralty to
request that you will inform Earl Grey that, though my Lords do not consider that Mr. Hays' projected Line to Australia can equal that by Alexandria and Singapore in speed and regularity; yet that it would be so advantageous to the National Interests, as to deserve encouragement and countenance from H.M.'s Government; it will afford the Communication so much wanted with the West Coast of Africa at Ascension, as well as with the Cape of Good Hope and the Mauritius, and it may become of the utmost importance by furnishing a direct Line of Communication between England and the Indian Ocean by Sea, without the necessity of passing through the Territories of any Foreign Nation.

If the Vessels to be employed should be built under the control of this Department, and fitted to carry a proper armament, they might prove an useful addition to the National Forces.

The experience derived from the Packets plying between London and Hamburgh, from the "Sarah Sands" and from certain of H.M.'s Vessels, shews that the proposed Voyage is quite practicable for auxiliary Screw Steam Vessels, and that a considerable portion of it might be ordinarily performed, at a sufficient speed, without the assistance of their Steam Power.

The shortest Sea distance from England to Sydney, touching all the projecting points, and moving in great circles, is measured at 12,630 Geographical miles; and an addition of 600 Miles being made for the necessary deviations of an auxiliary Screw Vessel would give a course of 13,200 Miles, and this distance might probably be traversed in 65 days each way.

Herewith is returned the printed copy of the report from the Select Committee on Steam Communication, which accompanied your letter of the 14th Ultimo. My Lords believe the Report of and re route Captain King and the decision of the Legislative Council of New South Wales to be fully borne out by the facts of the case, and consider the advantages of the route, recommended by Captain King, such as to warrant the expectation that Steam Boats must be employed along it at no distant period; but My Lords are desirous for the reasons before mentioned of seeing some assistance and encouragement given to the project of Mr. Hays.

I have, &c.,
H. G. WARD.

[Enclosure No. 8.]

MR. H. G. WARD TO UNDER SECRETARY HAWES.

Sir,

Admiralty, 20th October, 1846.

Having laid before my Lords Commissioners of the Admiralty your Letter of the 22d August last, conveying the opinion of Earl Grey as to the extreme importance of securing to the Australian Colonies the great advantage of more rapid communication with this Country, and stating that his Lordship proposes to direct the Governors of the various Australian Colonies to ascertain to what extent their respective Legislatures would be able and willing to contribute towards the cost of establishing a line of Steam communication in that part of the World, I am commanded to transmit to you, for the consideration of his Lordship, copies of Reports from the Hydrographer to the Admiralty and from the Comptroller of Steam Machinery on this subject.

I am, &c.,
H. G. WARD.
HISTORICAL RECORDS OF AUSTRALIA.

[Sub-enclosure No. 1.]

REPORT BY CAPTAIN BEAUFORT.

24 September, 1846.

It is now acknowledged by every one that a direct intercourse by Steam between
England and that group of Colonies, of which Sydney is the centre, would in a
short time double her Capital, her Population, and her Produce, and the only ques­
tions are, which will be the best line to carry it, and how can it be most economically
maintained.

Three fourths of the whole distance are already performed by the Hong Kong Mail
to Singapore; and, if the Sydney Mails were to branch off from that Port and take
the Eastern line by Batavia and Torres Straits, they would traverse smooth Water
Seas, where a passage is certain at all Seasons; they would at once supersede the
Steamer, which the Dutch now run from Java to meet our Packets, and they would
likewise produce direct communication between Australia and China, as well as the
three Presidencies of India, which would be as beneficial to all those places as lucrative
to the carriers.

From Sydney, the Mails would be forwarded to the neighbouring Settlements without
delay, as there is a regular overland Post to Melbourne and another from thence
to Adelaide. Steamers now ply regularly between Sydney and Port Phillip and
Launceston, and easy contracts might be made for the furtherance of the Mails to
Swan River and New Zealand.

Whereas, by the scheme proposed in Mr. Sharpe's and other letters, the Steam
Vessels from the day they quitted Point de Galle would avoid all collateral aid in
feeding their line; they would have to run direct for those miserable Coral Reefs,
called the Keelings or Cocos, which can scarcely be said to be inhabited, and which
are so low and small that there would be a constant difficulty in finding them, and
where the continued surf would much impede the business of Coaling. From thence
to Australia, they would cross an open Ocean where the heavy western swell is
notorious and peculiarly unsuited to Steam Navigation and throughout which they
would during the winter season to be sure of tempestuous weather. And finally by
this process, Sydney, the Seat of Government, would be the last place to receive
Her Majesty's Mails.

If therefore Government is inclined to make any sacrifice in favor of those
thriving and important Settlements, by facilitating their rapid communications with
the Mother Country, I would strenuously urge their Lordships to recommend that it
should be effected by a sufficient number of Steam Vessels of competent power, and by
the Singapore and Batavian route.

F. BEAUFORT.

[Sub-enclosure No. 2.]

REPORT. 10th October, 1846.

WITH reference to the Letter from the Colonial Office, 22d August, and Sir Charles
Adams' Minute of the 30th September thereupon.

Assuming the route proposed by Captain Beaufort, namely between Singapore and
Sydney, touching at Batavia and Port Essington, to be the adopted route, the expense
will be as follows—

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total First cost</td>
<td>£50,000</td>
</tr>
<tr>
<td>Annual Expence</td>
<td></td>
</tr>
<tr>
<td>Wear and Tear of Hull and Spars</td>
<td>£4,800</td>
</tr>
<tr>
<td>Machinery</td>
<td>£6,400</td>
</tr>
<tr>
<td>Wages and Victuals</td>
<td>£33,428</td>
</tr>
<tr>
<td>Coals</td>
<td>£13,810</td>
</tr>
<tr>
<td>Total Annual Expence</td>
<td>£46,495</td>
</tr>
</tbody>
</table>

The Average price of £1 5s. per Ton is taken for Coals.

W.E.P.

[Enclosure No. 9.]

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

Sir, Treasury Chambers, 5th January, 1847.

I transmit herewith, by command of the Lords Commissioners of Her Majesty's Treasury, for the information of Earl Grey with reference to Mr. Rogers's letter of 6th November last, a copy of a Report, etc., from the Postmaster General, dated 24th December, 1846, on the subject of Steam communication with the Australian Colonies.

I am, &c.,

C. E. TREVELYAN.
GREY TO FITZ ROY.

[Sub-enclosure No. 1.]

LORD CLANRICARDE TO LORDS COMMISSIONERS OF TREASURY.

My Lords,

In compliance with the request contained in Mr. Parker's Letter of the 19th Ulto., I have the honor to transmit to your Lordships an Estimate, which I have caused to be prepared shewing the Postage Revenue charged upon Letters and Newspapers conveyed between the United Kingdom and the Australian Colonies by the Sydney Packets, and by private Ship during the year ended the 5th October last, and which Estimate furnishes the best information it is in my power to afford with regard to the amount of Revenue to be expected from the establishment of Steam communication with these Colonies.

I have, &c.,

CLANRICARDE.

[Sub-enclosure No. 2.]

ESTIMATED statement of the amount of Postage charged upon Letters and Newspapers conveyed between the United Kingdom and the Australian Colonies by the Sydney Packets and by private Ship during the year ended the 5th October last.

<table>
<thead>
<tr>
<th></th>
<th>Despatched.</th>
<th>Received.</th>
<th>Total.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£ s. d.</td>
<td>£ s. d.</td>
<td>£ s. d.</td>
</tr>
<tr>
<td>By Packet—</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount of Letters for one year calculated on account of letters despatched during the 3 months of September, October and November, 1846</td>
<td>2,883 2 0</td>
<td>2,883 2 0</td>
<td>5,766 4 0</td>
</tr>
<tr>
<td>By Ship—</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actual Amount of Postage on Letters during the year</td>
<td>1,368 2 6</td>
<td>6,516 17 2</td>
<td>9,013 10 4</td>
</tr>
<tr>
<td>Do. Newspapers Do.</td>
<td>213 6 5</td>
<td>974 10 3f</td>
<td></td>
</tr>
<tr>
<td>Total for a year by Packet and by Private Ship</td>
<td></td>
<td></td>
<td>£ 14,799 14 4</td>
</tr>
</tbody>
</table>

G.P.O., December, 1846.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 167, per ship Trafalgar; acknowledged by Sir Charles Fitz Roy, 19th November, 1847.)

Sir,

With reference to my Predecessor's Despatch and its enclosure of the 30th of May, 1846, I now transmit to you the copy Letter transmitted. of a further letter from Mr. John Hughes, renewing his enquiry respecting the fate of his two Sons who emigrated to New South Wales in the Year 1841; and I have to request that I may be furnished with the information asked for by the Applicant with the least possible delay.

I have, &c.,

GREY.

[Enclosure.]

MR. JOHN HUGHES TO SECRETARY OF STATE.

No. 26, late 23 South Earl Street.

Right Honble. Sir,

Dublin, 31st May, 1847.

I humbly and most respectfully beg leave to state that my two Sons, namely Henry and William Hughes, emigrated to New South Wales in 1841, and I humbly observe that your honor has been graciously pleased to state on the 30th May, 1846, that your
1847.  
12 June.  
Request for report re H. and W. Hughes.

honor gave the necessary Instructions to the Government at Sydney to make the necessary inquiry after them in order to ascertain whether they be living or dead, and that your honor would have the goodness and kindness to inform me accordingly. Honored Sir, I have not received as yet any information upon the subject of my enquiry, and therefore I most humbly entreat that your honor may be so kind as to inform me upon the subject of my said enquiry relative to my said sons above mentioned, and for which I will be sincerely thankful, and as in duty bound will ever pray most respectfully submitted.

I have, &c.,

JOHN HUGHES.

Care of Mr. John Walsh, 23 Earl Street South.

EARL GREY TO SIR CHARLES FITZ ROY.  
(Despatch No. 168, per ship Trafalgar.)

Sir, Downing Street, 15 June, 1847.

I transmit to you herewith a Copy of a Letter from the person described in the margin,* containing an application for information relative to Rosana Spence, 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.

MR. T. SPENCE TO SECRETARY OF STATE.

Care of Mr. John Walsh, No. 23 South Earl Street.

Right Honble. Sir, Dublin, 31st May, 1847.

I humbly and most respectfully beg leave to state that my Daughter, Rosana Spence, emigrated to New South Wales from the City of Waterford, Ireland, on the 28th July, 1839, and I humbly observe to your honor that it appears that she arrived safe in Sydney in the ship "China," but I never heard any account of or from her since.

Right Honorable Sir, therefore, I most humbly entreat that Your Honor may have the goodness and kindness to be graciously pleased to direct that an enquiry may be made after her in order to ascertain whether she be living or dead, and please to inform me accordingly; and for which I shall be sincerely thankful, and as in duty bound will ever pray.

I have, &c.,

THOMAS SPENCE.

It appears that my said Daughter, Rosana Spence, resided with a person named Mr. Spratt, Shoe Maker, in the Town of Sydney in the year 1841 or 1842.

SIR CHARLES FITZ ROY TO EARL GREY.  
(Despatch No. 122, per ship Union; acknowledged by earl Grey, 17th January, 1848.)

My Lord, Government House, 16th June, 1847.

I have the honor to transmit a Memorial addressed to Your Lordship by Miss Mary B. Reddall, the daughter of a

* Marginal note.—Thomas Spence. 31 May, '47.
deceased Clergyman of the Church of England who was employed as a Colonial Chaplain under this Government.

The Memorialist prays to be relieved from the Quit Rent on a Grant of Land which she obtained under Regulations established by Sir Ralph Darling in the year 1830, and previously sanctioned by the then Secretary of State for the Colonies (Earl Bathurst) in a Despatch dated the 25th May, 1829, No. 113.

These Regulations were framed with the view of improving the condition of the Chaplains and their families, by giving the various members of them Grants of Land, the proportion allotted to the daughters being 1,280 acres.

I have carefully perused Lord Bathurst's Despatch, and I cannot find that any instructions were given in it whether these Grants were to be liable to or free from Quit Rent; and it would appear that nothing was said on the subject when the Regulations were issued.

Subsequently, however, when the Grants under these Regulations were being made out, Sir Ralph Darling decided that these lands were to be liable to the same charge as ordinary Grants, namely, 2d. per acre per annum after seven years.

Miss Reddall obtained her Grant in the year 1831, chargeable of course with the Quit Rent against which she now appeals to Your Lordship on the ground that the land selected for her was and is of little value, and would sell for little more than the amount of the Quit Rent, so as that, as she alleges, if she does not sell the land immediately to pay off the debt already incurred, or get the Quit Rent remitted, the debt will soon become greater than the worth of the land.

There are other distressing family circumstances detailed by the Memorialist, which render her an object of compassion; and, as I am not aware that a compliance with her request would entail upon the Government other applications of a similar nature, I beg to recommend it to Your Lordship's favorable consideration.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

[A copy of this memorial is not available.]

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 123, per ship Union.)

My Lord, Government House, 17th June, 1847. 17 June.

With reference to Mr. Secretary Gladstone's Despatch, No. 22 of the 29th January, 1846, transmitting to my Predecessor copies of a correspondence which had passed between the
then Under Secretary of the Colonial Department, Lord Lyttelton, and Mr. Joseph Hume, relative to Mr. Hinton's claims on this Colony for Bounties on account of Immigrants landed in it from the "Ward Chapman" in 1841, and to the direction contained therein that the opinion of the Crown Law Officers of this Government should be obtained as to "how far what was received by the local Government on payment of the sum of £2,260 10s. did or did not constitute a legal receipt."

I have now the honor to transmit a copy of the Opinion which has been furnished by the Crown Law Officers, wherefrom it will appear they consider that the Government may and ought to resist the claim of Mr. Hinton, on the ground "that it cannot be responsible to an undisclosed principal for the defaults (if such there were) of an Agent whom that principal had clothed with full ostensible or actual authority to bind him." Mr. Hinton, however, has not as yet given notice of any intention to bring an Action in the Colony for the recovery of this money.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

[SIR CHARLES FITZ ROY TO EARL GREY.]

(Despatch No. 124, per ship Union; acknowledged by Earl Grey, 1st May, 1848.)

My Lord,

Government House, 18th June, 1847.

I have the honor to enclose copies of two Despatches from the Superintendent of Port Phillip, reporting the arrival on the 4th ultimo of the ship "Thomas Arbuthnot," which your Lordship apprised me, in your Despatch, No. 64 of the 25th November last, had been chartered for the conveyance of 290 Exiles.

I also transmit the copy of a further communication from Mr. La Trobe, covering a nominal List of the Exiles who arrived in that Vessel; and giving such information with regard to the manner in which they were disposed of and the engagements they have accepted as he has been able to procure.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosures.]

[Copies of these despatches, dated 6th and 11th May and 5th June, 1847, will be found in a volume in series III.]
FITZ ROY TO GREY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 125, per ship Union; acknowledged by earl Grey, 20th December, 1847.)

My Lord, Government House, 19th June, 1847.

At the request of Mr. Robert Lowe, a Member of the Legislative Council of this Colony, I have the honor to transmit a letter addressed by him to Your Lordship, forwarding a Pamphlet,* which he has recently published, entitled the "Impending Crisis; an Address to the Colonists of New South Wales on the proposed Land Orders."

I have, &c.

CHS. A. FITZ ROY.

[Enclosure.]

MR. R. LOWE TO EARL GREY.

My Lord, Sydney, 11 June, 1847.

I respectfully request your Lordship's perusal of the annexed very short pamphlet.

Except as a well wisher to the Colony, I have no interest whatever in this question. I occupy no country land either within or beyond the boundaries of location. The only property, I possess in the Colony, is a few houses in Sydney and my own residence in its neighbourhood. I have resided in N. S. Wales since 1842, the year in which the minimum price of land was raised to one pound an acre, and had an opportunity of watching the system from its commencement. As a proof of the entire failure of that system in raising a Land Fund, I may be allowed to call your Lordship's attention to the fact that, in the year 1836 when the whole population of the Colony consisted only of 77,066 men, women and children, the amount of the land fund was £126,458, whereas, from the year 1842, when the population was 159,850, to the year 1846, when the population was 181,556, both inclusive, the gross amount of land sales, not for each of these years, but for all of them put together, is not quite £80,000.

I have, &c.,

ROBERT LOWE.

[Sub-enclosure.]

[This was an octavo pamphlet of eight pages, entitled, "The Impending Crisis, An Address to the Colonists of New South Wales on the proposed Land Orders."]

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 126, per ship Union.)

My Lord, Government House, 20th June, 1847.

I have had the honor to receive Your Lordship's Despatch, No. 80 of the 24th December last, transmitting copy of a letter from the Assistant Secretary to the Lords Commissioners of Her Majesty's Treasury, respecting the increased expenditure rendered necessary for the remuneration of persons employed in...

* Note 45.
1847.  
20 June.  

Adjustment re customs officers.

the Customs Department at Van Diemen's Land, in consequence of the Collector and certain other Junior Officers having been ordered on special service to proceed to Sydney.
I have the honor to report that I have given the necessary directions for carrying into effect your Lordship's instructions which were therein conveyed.

I have, &c,

CHS. A. FITZ ROY.

21 June.

Inability to report re D. Lang.

My Lord,

Government House, 21st June, 1847.

I do myself the honor to acknowledge the receipt of Your Lordship's Despatch of the 31st July last, marked “Separate,” requesting information respecting David Lang, stated to have emigrated to this Colony; and in reply I beg to inform your Lordship that I have failed in procuring any information respecting this person.

The Commissioner of Police reports that he has caused every enquiry to be made concerning David Lang without effect; and, under a notice which I caused to be published in the Government Gazette, no information about him has reached me.

Conceiving it possible, as Lang is stated in the enclosure to your Lordship's Despatch to have commuted his Pension in England, that the Deputy Adjt. General might be in possession of some information respecting him, I caused a letter to be addressed to him on the subject; but that Officer states that no person of the name in question appears in the Books either as a commuted or Chelsea Pensioner.

I have, &c,

CHS. A. FITZ ROY.

23 June.

Resignation of J. S. Burke.

Sir,

Downing Street, 23 June, 1847.

I have to inform you that Mr. John S. Burke, Assistant Surveyor of the Colony under your Government, and now in this Country, has recently resigned that appointment. I have accordingly accepted the resignation thus tendered by him.

I have, &c,

GREY.

24 June.

Payment of pension to widow of Sir J. Dowling.

Sir,

Downing Street, 24 June, 1847.

In answer to your Dispatch of the 28th of February last, No. 52, I have to inform you that the necessary Instructions have been given to the Colonial Agent General to pay to Lady
FITZ ROY TO GREY.

Dowling, during her residence in this Country, the Pension which has been granted to her by the Legislative Council of New South Wales, subject to the conditions pointed out by you.

I have, &c.,

GREY.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 130, per ship Union; acknowledged by earl Grey, 9th January, 1848.)

My Lord,

Government House, 24th June, 1847.

I do myself the honor to transmit to Your Lordship a copy of a letter addressed by His Honor Mr. Justice a'Beckett, the Resident Judge at Port Phillip, to the Colonial Secretary of this Government, stating the circumstances under which he considers that he should not be required to repay to the Colonial Treasury a sum of one hundred pounds advanced to him in the year 1846, to defray the expenses of his removal from Sydney to Port Phillip.

It appears that this advance was made to Mr. a'Beckett on the understanding that it should be refunded, if confirmed in the Office of a Judge, in conformity with the principle explained in a Despatch from Sir George Gipps to Lord Stanley of the 14th July, 1842, but with liberty to make any representation he might think proper in order to show that he ought not to be called on to repay this money. He accordingly urges in his present communication that, as he had no choice but to proceed to Port Phillip, he should not now be required to refund the advance made to him; and, as it appears to me that Mr. a'Beckett has shown sufficient reasons why the Government should not press this claim on him, I beg to submit for your Lordship's favorable consideration that he may be relieved from it.

I beg to add that the letter to Lord Stanley of the 27th February, 1846, to which Mr. a'Beckett refers, was forwarded in Sir George Gipps' Despatch, No. 62 of 1846.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

MR. JUSTICE a'BECKETT TO COLONIAL SECRETARY THOMSON.

Sir,

Melbourne, 7th May, 1847.

I beg to acknowledge the receipt of your letter of the 24th Ultimo, referring to yours of the 30th January, 1846, and requesting that I will repay to the Government the sum of £100 advanced to pay my expenses of removal to Port Phillip, in accordance with the terms of upon which you state that advance to have been made; I have now your letter of 30th January, 1846, before me, and also that of 23rd January, 1846, and you will perceive, by a reference to them as well as to mine of the 27th January, 1846, to which the former of yours is an answer, that I accepted the advance in

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question upon the understanding that my doing so was not to preclude me from submitting at any future time that I ought not to be called upon to repay it.

This understanding you acknowledge in your letter of the 30th January, 1846, in the following passage:

"In making this communication to your Honor, I am directed by the Governor to state that you will, of course, be at liberty to make any representation you may think necessary in order to shew to the Secretary of State that you ought not, in the event of your being confirmed in the Office of a Judge in New South Wales, to be called on to refund the amount."

I now beg leave to respectfully submit to His Excellency why I ought not to be called on to repay the sum in question.

In the first place I never have held, and do not now hold, any such appointment *per se* as Resident Judge of Port Phillip. On the 15th July and 21st October, 1844, I was appointed by Sir George Gipps, under respective Commissions of those dates, a Judge of the *Supreme Court of New South Wales* and have been confirmed by Her Majesty in that appointment and no other. It was, in consequence of my holding that appointment, that Sir George Gipps, under the power given him by the 4th Sec. of the 4th Vic., No. 22, directed me to proceed to Port Phillip, and not because any vacancy had occurred there, or because I had applied to go there. I could not have refused had I been confirmed, and I submit, therefore, that my subsequent confirmation as a Judge of the New South Wales Court is no more a reason why I should pay the expenses of my previous removal to Port Phillip, than my confirmation prior to that time would have been a reason for my refusal then to have gone there.

It was not my act or wish; on the contrary. I remonstrated against it, and indeed, could I have foreseen that I should have been sent away from Sydney, nothing would have induced me to accept a seat on the New South Wales Bench. It is impossible, however, that His Excellency can fully understand or appreciate my position in regard to my location here, and the demand now made upon me, without a perusal of my letter to Lord Stanley of the 27th February, 1846, which I beg through you respectfully to request that His Excellency will do me the favor of perusing.

My position on coming here was very different from that of either Mr. Willis, Mr. Jeffcott, or Mr. Therry. I had been on the Bench fifteen months, and it was very clearly pointed out to Sir George Gipps, both by the Chief Justice and myself, that the terms of Lord Stanley's Despatch of the 30th April, 1845, did not at all alter my position as a Judge of the *Supreme Court*, but merely left my final confirmation dependent on the issue of Mr. Justice Willis' appeal. But Mr. Therry, who was then at Port Phillip, wished to go up to Sydney, and Sir George Gipps, acting upon the construction which he put upon Lord Stanley's Despatch, allowed Mr. Therry to do so. I was in short in the position that Mr. Therry would be now, if His Excellency were to accede to a request from me to go up to Sydney, and send Mr. Therry down here: in which case Mr. Therry could surely not be called on to pay his own expenses, whatever under the circumstances might be expected from me. The expenses of Mr. Willis, though amounting to £250, were paid. Mr. Jeffcott's were paid; and so were Mr. Therry's: though like my own conditionally. But Mr. Therry and Mr. Jeffcott took
the office of Resident Judge at once, and subject to the condition then imposed. To have escaped from going to Port Phillip, I must have resigned the situation I then held, and had for fifteen months previously. Mr. Jeffcott and Mr. Therry had nothing to resign, but took the Judgeship with the knowledge that they must go, and for the express purpose of going to Port Phillip. Moreover, I was in fact put indirectly to double the expense actually advanced, although I never asked for more than £100. If I had not sacrificed my furniture by a sale, my actual voyage would have cost £200 instead of £115, as it actually did. But without going into all the details of my pecuniary losses in consequence of my removal to Port Phillip, there were other and more serious inconveniences, not to say sufferings connected with my removal to Port Phillip, which no money could repay. These, however, are so fully set out in my letter to Lord Stanley, that I need not here more particularly allude to them, and I only do so now to point out the very different circumstances, under which I came to this place, from all other Judges.

If I felt my personal honor pledged to the repayment of the sum in question, I should not make a moment's hesitation in the matter; but I trust His Excellency will see my objections in the light in which I have placed them, or, if he should not do so, that he will forward the letter in which they are stated to the Secretary of State, and allow the claim to abide the event of his decision.

I have, &c,

WILLIAM A'BECKETT.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 174, per ship Trafalgar.)

Sir, Downing Street, 25 June, 1847.

I have received your Dispatch of the 6th of November last No. 57, accompanied by a Petition which has been presented to you by Mr. C. McLaughlin, praying that his Pension, as constable in the Irish Constabulary, might in future together with the arrears due to him be paid to him in New South Wales.

I have communicated on this subject with the Board of Treasury and the Home office, and you will perceive from the accompanying copy of a letter from Mr. Trevelyan to this department that Instructions for the regular payment of the Memorialist's pension, as it might become due, had been given by the Lords Commissioners of the Treasury, and acknowledged by the Commissariat Officer in Charge in New South Wales so far back as the 9th of August, 1845, and that their Lordships have now called for the necessary explanation in the matter. I have, &c,

GREEN.

[Enclosure.]

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

Sir, Treasury Chambers, 10th June, 1847.

I am commanded by the Lords Commissioners of Her Majesty's Treasury to acquaint you for Earl Grey's information, in reply to your letter of the 3d Instant, that the Commissariat Officer
in charge in New South Wales acknowledged, on the 9th Augt.,
1845, the receipt of the Instructions to pay to Chas. McLaughlin,
late of the Irish Constabulary, his Pension of £9 4s. per Annum
from time to time as it might fall due, and the arrears thereof from
1st July, 1838, and an explanation has now been called for of the
reason of those Instructions not having been carried into effect.

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

Earl Grey to Sir Charles Fitz Roy.
(Despatch No. 175, per ship Trafalgar.)

Sir, Downing Street, 25 June, 1847.

I have received your Dispatch, No. 47 of the 24th of Febru­
ary last, transmitting three Memorials addressed to The Queen
and the two Houses of Parliament by certain Inhabitants of
Dungog in New South Wales, praying that the transportation
of Criminals to that Colony might not be resumed.

The Memorial addressed to The Queen I have laid before
Her Majesty, who was pleased to receive it very graciously. That
addressed to the House of Lords I shall take an opportunity of
presenting, and that addressed to the House of Commons I have
forwarded with the accompanying letter to Mr. Ewart in accord­
ance with the intention of the Petitioners.

I have, &c.,
Grey.

Earl Grey to Sir Charles Fitz Roy.
(Despatch No. 176, per ship Trafalgar; acknowledged by
Sir Charles Fitz Roy, 12th November, 1849.)

Sir, Downing Street, 25 June, 1847.

I have received your Despatch, No. 40 of the 25th October,
1846, in which you transmit a report from the Superintendent at
Port Phillip, pointing out the defective state of the Law as it
affects the Aborigines of Australia, and the insufficient security
which it affords, both as regards the protection of the Natives
and their punishment for Acts of Aggression committed by them
on the Settlers.

Two Circumstances are chiefly pointed out in this case: 1st.
The inapplicability to the Natives of the Law of evidence, as it
at present stands; and 2nd, The impediment to the administra­
tion of Justice arising from the variety of the forms and tech­
nical rules of procedure under which the Law is administered.
Hence it is represented that murders and other Crimes are in­
flicted with impunity by the Natives not only upon each other
but upon the Settlers.

As you transmit that statement without comment, I am led
to infer that you acquiesce in it. If so, you have probably over­
looked the Act of the Imperial Parliament which was passed in
the 6th Year of Her Majesty's Reign, Cap. 22, and which was framed with a view to remove the evils complained of, in so far as it was within the power of Parliament to provide a remedy. It is intituled, "An Act to authorize the Legislatures of certain of Her Majesty's Colonies to pass Laws for the admission in certain cases of unsworn testimony in Civil and Criminal proceedings." That Act was transmitted to your predecessor with Lord Stanley's Despatch, No. 101 of the 6th July, 1843. Of that Despatch, and of the accompanying Act, I transmit a copy for the purpose of more ready reference. The Statute in question imparts to the local Legislature all requisite powers for removing the difficulties founded on the supposed inadmissibility of the evidence of the Aborigines. But I must acknowledge that it is to the care and vigilance of the Executive Authorities alone, that we can trust for such an application of the Law as may effectually ensure the Administration of justice and the prevention of those crimes of which the Natives are either the perpetrators or the victims. To exempt the administration of the Law from cumbersome formalities and superfluous rules is, as you are well aware, an attempt of almost hopeless difficulty, in whatever Country and in reference to whatever class of Society that attempt may be made.

I have, &c,

[Enclosure.]

[Earl Grey to Sir Charles Fitz Roy.

(Despatch No. 177, per ship Trafalgar; acknowledged by Sir Charles Fitz Roy, 29th March, 1848.)

Sir,

Downing Street, 25 June, 1847.

In answer to your Despatch of the 18th of February last, No. 40, forwarding some new Rules of Court promulgated by the Resident Judge of the District of Port Phillip, I have to inform you that, pending the consideration which you have stated was in the course of being given by a Committee of the Legislative Council on that subject, I shall postpone submitting the said Rules for the confirmation of Her Majesty. I have, &c,

Grey.

[Earl Grey to Sir Charles Fitz Roy.

(Despatch No. 131, per ship Union; acknowledged by Earl Grey, 20th December, 1847.)

My Lord,

Government House, 25th June, 1847.

Mr. Callaghan having published a second supplement to his "Acts and Ordinances of the Governor and Council of New
South Wales, and Acts of Parliament enacted for, and applied to the Colony, with Notes and Index." I do myself the honor to inform Your Lordship that six copies of this Supplement are forwarded by the present Post Office Packet, the "Union," for the use of the Colonial Office in a Box consigned to the Colonial Agent General.

I have, &c.

CHS. A. FITZ ROY.

26 June.

Petition received re mails for Port Phillip.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 178, per ship Trafalgar.)

Sir, Downing Street, 26 June, 1847.

I have received and laid before the Queen the Petition addressed to Her Majesty by certain Merchants and Colonists of the District of Port Phillip (enclosed in your Despatch of the 29th of December last, No. 67), who pray that, in consideration of the delay, inconvenience, and expense, which result to the Inhabitants from the present practice of sending the Mails from the United Kingdom to Port Phillip by the Sydney Sailing Packets, those Mails may in future be forwarded in separate Bags, and sent direct when practicable, and that on other occasions they may be sent by way of Hobart Town.

Her Majesty was pleased to receive this Petition very graciously.

I have further to acquaint you, that I have been in communication on the subject with the Post Master General, who has stated that it was thought advisable to send Letters to Port Phillip by way of Sydney, in consequence of the regular despatch of Packets to the latter Port, and from there being known to exist a post Communication, once a Week, between the two places. His Lordship, however, in deference to the wishes expressed by the Memorialists, will at once give the necessary Instructions to the Officers, belonging to his Department, to forward by private Vessels sailing direct to Port Phillip all Correspondence for that District, unless it be specially directed to be sent by the Sydney Contract Packets.

I have, &c.,

GREY.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 132, per ship Union; acknowledged by earl Grey, 27th December, 1847.)

My Lord, Government House, 26th June, 1847.

It having been brought under my notice that certain Accounts, which had been furnished to the Lieutenant Colonels of the Regiments stationed in this Colony, containing charges for the insertion in the New South Wales Government Gazette
of Reports of Soldiers who had deserted from their Regiments, had not been liquidated, I considered it proper to cause an intimation to be made to the Deputy Commissary General that, such Notices being strictly for Military services, the expense of their publication should be defrayed from the Military Chest.

The Deputy Commissary General has in consequence forwarded to me the copy of a letter from the Assistant Military Secretary, stating that the Lieutenant General Commanding does not feel himself authorised to sanction the claim, until it has been referred for the decision of the Secretary at War; and that, until his decision is received, the insertion of these Notices will be suspended.

I have, however, suggested that it would probably be the better course to continue the insertions on the same terms as heretofore, pending the decision of the Secretary at War, as Deserters may escape from the absence of any public notification of their having deserted; and I beg to explain for your Lordship's information, in the event of any communication being made to you on the subject by the Secretary at War, the circumstances under which the charge for these Notices has been made. The New South Wales Government Gazette is published at the expense of the Colony; and all Notices inserted in it by the Commissariat Department, or matters published not immediately connected with the Departments of the Colonial Government forming a charge on the Colonial Treasury, are paid for either from the Military Chest or by the Departments from which the Notices issue; and no reason appeared, therefore, why the Military advertisements alluded to should be exempted from this rule.

I have, &c,

Chs. A. Fitz Roy.

Sir Charles Fitz Roy to Earl Grey.

(Despatch No. 133, per ship Union; acknowledged by Earl Grey, 1st February, 1848.)

My Lord,

Government House, 27th June, 1847.

The Convict Establishment at Carters' Barracks, the expense of which was defrayed from the Military Chest, having for some time past been broken up, I gave directions for the Treadmill, which had been erected there for the punishment of Convicts, to be removed to the Darlinghurst Gaol, as being no longer required for the Convict Service.

The Commanding Royal Engineer having, however, requested that the Mill might be valued as it stood, and the amount of the valuation paid into the Military Chest from the Colonial Treasury, I caused it to be intimated to him that I saw no objection to

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26 June.
the Mill being valued as proposed; but that the payment should be deferred until a reference had been made to Her Majesty’s Government, as I was informed that it was usual, when the expense of an Establishment originally for Convict purposes has been transferred from the Military Chest to the Colonial Treasury, to hand over the buildings belonging to it to the local Government free of expense, a course which has received the approval of Her Majesty’s Government; and that, as the Establishment for working the Treadmill would in future be borne by the Colony, I thought that by analogy of principle it ought to be handed over to the local Government without any payment.

The Mill and Machinery have, under the orders which I gave, been transferred to the Gaol at Darlinghurst, having been previously valued at the sum of £130 by two Officers, one from the Engineer Department and the other from the Establishment of the Colonial Architect; and I have to request that your Lordship will have the goodness, should the principle which I have adverted to meet with Your Lordship’s concurrence, to direct that no charge be made on the Colonial Government on this account.

I have, &c.,

CHS. A. FITZ ROY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 134, per ship Union; acknowledged by earl Grey, 7th February, 1848.)

My Lord, Government House, 28th June, 1847.

I have the honor to enclose herewith, at the request of the Moderator of the Synod of Australia, a Petition from the Trustees, Elders and Congregation of St. Andrew’s Scots Church, Parramatta, addressed to the Moderator of the General Assembly of the Church of Scotland, praying that a Minister may be selected and ordained for that Church; and to request that Your Lordship will be so good as to cause the same to be forwarded to its destination.

Accompanying this Petition will be found copies of certain correspondence explanatory of the circumstances which have given rise to the application which it contains. In the letter to the Colonial Secretary of this Government from the Moderator of the Synod of Australia, of which I also enclose a Copy, he requests that the Stipend of £150 allowed to the former Incumbent may be assigned to the Minister, who may be nominated by the General Assembly to the Church in question; and that he should also receive the usual allowance for outfit and passage to the Colony.
Fitz Roy to Grey.

In recommending the present application to Your Lordship's favorable consideration, I have the honor to observe that the local Government will be in possession of the necessary funds to meet this expenditure from the sum set apart by the Royal Instructions for the Presbyterian Church in this Colony, should Your Lordship be pleased to sanction the arrangement.

In explanation of the delay that has taken place in transmitting the application in question, I beg to inform your Lordship that, before doing so, it became necessary to ascertain the funds applicable to the purpose, which could only be done by a correspondence with the Moderator of the Synod and a reference to the Executive Council, with the details of which it would be needless to trouble Your Lordship. I have, &c.,

Chs. A. Fitz Roy.

Enclosures.

Copies of these papers are not available.

Earl Grey to Sir Charles Fitz Roy.
(Despatch No. 179, per ship Trafalgar.)

Sir,
Downing Street, 29 June, 1847.

I have received from the Chief Justice of New South Wales a Report of a Judgment delivered by him in the Supreme Court of New South Wales on the 10th of February last, in the case of the Attorney General against Brown for intruding into a Coal Mine; and I have to request that you will convey to the Chief Justice my thanks for that communication.

I have, &c.,
Grey.

Sir Charles Fitz Roy to Earl Grey.
(Despatch No. 135, per ship Union.)

My Lord,
Government House, 29th June, 1847.

In my Despatch of the 22d February last, No. 44, I had the honor to report to Your Lordship that, with the advice of the Executive Council, leave of absence for eighteen months had been granted to Mr. Byron, Coast-waiter in the Department of Customs at Geelong in the District of Port Phillip; and I now beg to state to Your Lordship that, Mr. Byron having reported that he does not desire to avail himself of the Leave of absence granted, I have, with the advice of the Council, authorised his return to his duties.

I have, &c.,
Chs. A. Fitz Roy.
1847.  
30 June.  

Sir, Downing Street, 30th June, 1847.

I have to acknowledge the receipt of your Despatch and its enclosures, No. 55 of the 6th of November last, informing me that the Accounts of the Collector at Sydney, which for some time past had been in course of investigation by Mr. Barnes, the Collector of Customs in Van Diemen's Land, had been surcharged to the amount of £75,269 10s. 4d., but that Mr. Barnes did not appear to consider it necessary that, pending the decision of the Lords Commissioners of the Treasury in the matter, the Collector at Sydney should be relieved from the charge of the Department.

I thought it right to forward a Copy of your Despatch and of the papers which accompanied it for the consideration of their Lordships, and I now transmit for your information and guidance Copies of the Correspondence which has passed on the subject, together with a Report from the Commissioners of Customs relating to the Surcharge above referred to. I have, &c.,

GREY.

[Enclosure No. 1.]

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

Sir, Downing Street, 23rd April, 1847.

By the direction of Earl Grey, I transmit to you the accompanying copy of a Despatch, which his Lordship has received from the Governor of New South Wales, from which it appears that Mr. Barnes, the Collector of Customs in Van Diemen's Land, has investigated the Accounts of the Collector at Sydney and has surcharged that account to the amount of £75,269 10s. 4d., but did not appear to consider it necessary that the Collector at Sydney should be relieved from the charge of the Department pending the decision of the Lords Commissioners of the Treasury. It also appears, from the Despatch and the annexures to it, that Mr. Barnes has made no communication to the local Government from which they or the Legislature of New South Wales could derive any conclusion as to the propriety of these Surcharges being enforced or abandoned.

Considering that the whole of the Revenue, the receipt and collection of which have been thus investigated, is placed by Parliament at the disposal of the Legislative Council of New South Wales, it does not appear to Lord Grey convenient that a question affecting that Revenue to so great an extent should be finally disposed of by any authority in this Country, until that Legislature shall have had an opportunity of informing themselves, and of submitting to the Queen their opinion as to the course which it would be right and judicious to pursue. Lord Grey, therefore, directs me to request that you would move the Lords Commissioners to cause him to be furnished with a copy of the report of Mr. Barnes and with a copy of any Report which the Commissioners of Customs have made, or may hereafter make to the Lords Commissioners on that subject. Lord Grey further directs me to request that you would intimate to the Lords Commissioners his opinion.
that no final decision ought to be taken on the report of Mr. Barnes until it shall have been communicated to the Governor of the Colony and shall by him have been communicated to the Legislative Council, nor until they shall have had sufficient opportunity for making any representations on the subject, which it may appear to them fitting to bring under the notice of Her Majesty's Government.

I have. &c.

JAS. STEPHEN.

[Enclosure No. 2.]

MR. J. PARKER TO UNDER SECRETARY STEPHEN.

Sir,

Treasury Chambers, 12th June, 1847.

I am commanded by the Lords Commissioners of Her Majesty's Treasury to transmit herewith, for the information of Earl Grey, with reference to your letter of the 23d April last, copy of a Report from the Commissioners of Customs dated 18th Ultimo, relative to the Surcharges made in the accounts of the Collector of Customs at Sydney by Mr. Barnes, the Collector of Customs at Van Diemen's Land, and I am to state to you that the Commissioners of Customs have been desired to forward for the approval of this Board such final directions as they (the Commissioners) may conceive to be called for with regard to Mr. Barnes' investigation into the Accounts of the Collector of Customs at Sydney, before they are forwarded to the Colony.

My Lords have further desired the Commissioners of Customs to forward instructions to the Collector at Sydney to furnish to the Governor of New South Wales copies of the queries raised by Mr. Barnes and of the explanations he (the Collector) may see occasion to submit to the Board of Customs. I am, &c.

J. PARKER.

[Sub-enclosure.]

REPORT BY COMMISSIONERS OF CUSTOMS.

May it please Your Lordships.

Your Lordships having referred to Us the annexed Letter from Mr. Stephen, transmitting by desire of Earl Grey a copy of a Despatch which his Lordship had received from the Governor of New South Wales, from which it appears that Mr. Barnes, Collector of Customs at Van Diemen's Land, has investigated the accounts of the Collector at Sydney and has surcharged that Account to the Amount of £75,269 10s. 4d., but that he did not appear to consider it necessary that the Collector at Sydney should be relieved from charge of the Department, pending the decision of Your Lordships, and that it also appeared that Mr. Barnes had made no communication to the Local Govt., from which they or the Legislature of New South Wales could derive any conclusion as to the propriety of these Surcharges being enforced or abandoned, and that a question affecting that Revenue, to so great an extent, should not be finally disposed of by any authority in this Country, until the Legislature of New South Wales should have had an opportunity of informing themselves and of submitting to the Queen their opinion as to the course which it would be right and judicious to pursue, it was Lord Grey's desire to be furnished with a copy of any Report, which we had made or might hereafter make on that subject to Your Lordship, and Mr. Stephen having further signified it to be Lord Grey's opinion that no final decision ought to be taken on the opinion of Mr. Barnes, until it shall have been communicated to the Governor of the Colony, and shall by him have been communicated to the Legislative Council, nor until they shall have had sufficient opportunity for making any representations on the subject which it may appear to them to be fitting to bring under the consideration of Her Majesty's Govt.

We Report,

That, as there would appear to be some misconception as to the precise grounds which led to Mr. Barnes' mission to Sydney, it may be proper in the first place to state that, in the month of April, 1845, Mr. Woodhouse, the late Inspector and Examiner of Plantation Accounts, brought under our notice the very unsatisfactory state of the Accounts which had been rendered to his Office by the Collector at Sydney and expressed his inability, without further scrutiny and more accurate information, of discharging the responsible duty, which devolved upon him of auditing and certifying as to the correctness of that Officer's Accounts, and
640 HISTORICAL RECORDS OF AUSTRALIA.

1847.
30 June.

Report by customs commissioners on accounts of J. G. N. Gibbes.

in Our Report to Your Lordships of the 23d October, 1846, upon certain Papers which Your Lordships had been pleased to refer to Us from the Colonial Office, We stated that, in consequence of the defective state of the Customs Dept. at Sydney, New South Wales, as well as the irregular manner in which the accounts had been rendered by the Principal Officer at Sydney, We had deemed it expedient, in May, 1846, to direct Mr. Barnes, the Collector of this Revenue at Hobart Town, Van Diemen's Land, to proceed to Sydney for the purpose of instituting a minute enquiry into the state of the Customs Department at Sydney, as well as into the character and qualifications of the several Officers employed thereat, and that he had empowered him to select and take with him one or more experienced Officers from the Van Diemen's Land Establishment, in order that he might if necessary avail himself of their Services in conducting the enquiry which we had confided to him.

And, under the authority of this Order, Mr. Barnes accordingly proceeded to Sydney in Nov., 1845; a Copy of our order, dated 2d May, 1845, directing him to proceed to Sydney, and conveying to him the necessary Instructions for his Government, as well as a copy of our communication to the Governor of New South Wales, apprising his Excellency of Mr. Barnes' mission to Sydney, We beg to annex for Your Lordships' Information. It may be proper also to observe that, in a previous report to Your Lordships, dated 11 July, 1845, We adverted to the unsatisfactory manner in which the business of the Customs Department at Sydney had been conducted, and recommended that the office of Comptroller should be revived and an intelligent Officer selected to fill that situation; but upon which recommendation it does not appear that any final decision has been come to by Your Lordships.

That, upon the 7th May, 1847, seven days subsequent to the date of Your Lordships' annexed order of reference, We received a very voluminous Report from Mr. Barnes, dated the 29th Octr., 1846, detailing the result of his investigation of the Accounts of the Department as well as the general state of the Indoor and Waterside Department at Sydney, and which We regret to observe indicated anything but a state of correctness and efficiency. It is true that he has raised, upon the Collector's Accounts for further consideration, numerous queries, which taken separately and in detail involve but small sums, but amount in the aggregate to the sum of £75,269; but we beg distinctly to state that no surcharges have as yet been struck against the Collector, and that the queries, which have been raised by Mr. Barnes upon the occasion, have been raised for our consideration, and to enable our Inspector and Examiner of Plantation Accounts, with the assistance of such detailed information as those queries contain, to complete the audit and examination of the Collector's Accounts and thereby discharge the very responsible duty, which devolves upon him of ascertaining how far the Collector has rendered a correct and faithful account of the large amount of Revenue, which had been confided for its due collection to the Collector by Your Lordships.

We beg further to state that it would appear from Mr. Barnes' Report, as well as from a representation which We have received from Mr. Gibbs, Collector at Sydney, that he has been furnished by Mr. Barnes with copies of the charges, which had been raised against him by Mr. Barnes to enable him to offer such explanation as he may deem proper for our consideration; and it is our intention upon the receipt of those explanations to cause the necessary steps to be taken for the adjustment of his accounts.

Should it however be Your Lordships' desire, with reference to the opinion expressed by Earl Grey that a decision should not be taken on Mr. Barnes' report, until it shall have been communicated to the Governor of the Colony, We will take care that no final Instructions shall be transmitted to New South Wales, without the approval of Your Lordships; and in order, as far as possible to avoid any unnecessary delay, we would, upon being favored with Your Lordships' directions, instruct the Collector at Sydney to furnish at once to the Governor of New South Wales with copies of the explanations, which the Collector may deem proper to transmit to Us in reply to the queries of Mr. Barnes.

THOS. F. FREEMANTLE
EDWD. SATTR. R. DAWSON,
DECLING C. SMITH.

Customs House, 18th May, 1847.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 181. per ship Trafalgar; acknowledged by Sir Charles Fitz Roy, 4th January, 1848.)

Sir, Downing Street, 30 June, 1847.

I have received and have laid before The Queen Your Despatch, No. 1 of the 1st of January last, in which you report the measures which you had adopted, with reference to the Instructions addressed to you by Mr. Secretary Gladstone of the
7th March, 1846, on the question of the Settlement of the Quit Rents due to the Crown on Lands granted under the former regulations of Government in New South Wales, and transmitting the Regulations which with the advice of Your Executive Council you had framed and promulgated for that purpose.

At the period when the question was brought under the consideration of Her Majesty's Government by Your Predecessor, the whole amount of those Rents appears to have been from £10,000 to £12,000, and Sir George Gipps stated that they were not collected, or only partially collected until the year 1840, leaving a large amount of Arrears, which in some cases was estimated to have accumulated for 25 Years. In other cases, the Arrears were said to have amounted to more than the value of the Lands. In the year 1840, Sir George Gipps proceeded with energy and with some success to the collection of that Revenue, and for some years succeeded in collecting on an average about £10,000 a year on account of the Current Revenue and Arrears together.

A steady increase, however, took place in the amount of the Arrears, and at the period of the latest Returns it is stated at nearly £75,000.

When the difficulties of the case were brought fully under the consideration of Mr. Secretary Gladstone, he judged it necessary to make some concession on the part of the Crown, and you were accordingly authorized to remit a portion of the arrears, but in special cases:

1st. Those, wherein the claim for payment had been practically suspended for so long a time as to lead to a reasonable belief that the Government did not intend it should be enforced; and
2nd. Those cases in which the sum due amounted almost to the value of the Land itself. To these cases alone was the remission to be extended.

Mr. Gladstone further declared himself prepared to assent on behalf of the Crown to a commutation of Quit Rents at Ten Years' purchase, at the same time expressly directing that no persons should be admitted to the benefit of such commutation unless they had paid up their required proportion of arrears.

The Regulations, which you promulgated on the 9th Octr., and now transmit, are to the following effect:

1. That all persons having paid 20 years' Quit Rents shall be discharged from all further payment, and those who have paid more than 20 years' Quit Rent shall have the excess refunded to them.
2. That those, who have not yet paid 20 years' Quit Rent, shall be free from further charge when they shall have done so.
3. That this Rent may be redeemed at any time within twelve months from the date of the Government notice at a rate varying according to the number of Quarterly payments still due from the Land Owner, and never exceed nine years and nine months' purchase.

I exceedingly regret to perceive that the concessions, which you have made go so far beyond those sanctioned by my Predecessor on behalf of The Crown.

Mr. Gladstone directed that persons, who had paid up their arrears, and those only, should be admitted to commute their Quit Rents at 10 years' purchase, and not less. You have offered the same terms to persons who have never paid a single year's Rent to The Crown, and from whom by reference to date at least 10, and in some cases 25 years' Rent must be due. To those who have paid their Rents regularly for 20 years or more, you have offered not a commutation but a free remission of all Rent for the future, and in some cases even an actual repayment of money.

The grounds, on which these offers are justified by you, appear to be that the "laches of Government" in many cases has "practically operated as an injustice to the present Possessors of the Land," and "that no less favorable terms would have been considered equitable by the Public or would have tended to allay the discontent generally felt in respect of these claims." Admitting that the laches of Government were such as in many cases to justify a considerable remission of arrears, and for such cases Mr. Gladstone had already provided, it could not possibly apply to the cases in which the Quit Rent had been regularly paid, and in which the future Quit Rents are accordingly remitted. The prevalent discontent was known to Her Majesty's Government and fully considered by Mr. Gladstone when he wrote the Instructions under which you have acted; and you have stated no grounds for supposing that the discontent had shewn any new character. On the other hand, you have not adverted to the fact that the discontent which may be felt by those who even if they had fully paid the Quit Rents, to which they were liable, would still have obtained their Land on far easier terms than subsequent settlers, who under the existing regulations have been compelled to pay for it not less than £1 an acre, affords no just reason for relieving these persons from an obligation they have deliberately and voluntarily incurred to the detriment of the rest of the community and more especially of the subsequent purchasers of Land. The remission of what is due by the Grantees of Land subject to Quit Rent is obviously a benefit conferred upon these Individuals at the Public Expence by allowing them.
to retain money, which, if paid as it ought to have been, might have been applied to various objects of Public utility and particularly to the promotion of Immigration in which the whole body of Land Owners is so deeply interested. I regret, therefore, that I can find no circumstance to justify so total a disregard of your Instructions.

With regard to the future, I am still unable to perceive that, in thus reducing the claims of the Crown, any security has been taken for their more easy or certain recovery in their reduced shape. The Government notice had been published for nearly three months at the date of Your Despatch, and I am not informed that you had devised any means for enforcing the payment of the Rents in future or that the Colonists were generally availing themselves of the offered terms of commutation. In the absence of any positive information to that effect, I cannot but apprehend that those persons, who have hitherto resisted the payment of the Quit Rent, will be encouraged by success to raise the same vexatious opposition with increased hopes of attaining their end, and after a gratuitous surrender of the just rights of The Crown as Trustee for the Public.

Under these circumstances, however painful the task, it becomes my duty to express to you Her Majesty's displeasure at the unauthorized measure which you have thus adopted, and to intimate that the repetition of a similar disobedience of express instructions will render it necessary for me to advise Her Majesty immediately to recall you from Your Government.

I should have considered it imperative upon me to cancel the Regulations, which you promulgated, had I not been restrained from so doing by an apprehension of the confusion and embarrassment, which would inevitably have resulted from a reversal after so long a period of this act of your Government; a difficulty which was further encreased by the delay which you suffered to elapse in reporting the measure.

Sir Charles Fitz Roy to Earl Grey

(Despatch No. 136, per ship Union.)

My Lord,

Government House, 30th June, 1847.

I have the honor to acknowledge the receipt, on the 18th instant, of Your Lordship's Despatches numbered as per margin.* I have, &c.,

Chs. A. Fitz Roy.

* Marginal note.—Nos. 81 to 92; Cirr., 11 January; Separate, 2d February.
1847.

1st July.

Earl Grey to Sir Charles Fitz Roy.

(Despatch No. 182, per ship Louisa.)

Sir,

Downing Street, 1st July, 1847.

With reference to your Despatch, No. 2 of the 7th of November, 1846, and to your further Despatch of the 1st of February last, as well as to mine of the 27th ultimo, on the subject of the measures you had adopted, and the consequent expense incurred, in the establishment of the Settlement of North Australia, I have now to inform you that Her Majesty's Government have decided that the Expenditure, which may attend the proceedings connected with that Settlement, must be defrayed from the Parliamentary Grants for the Convict Establishments and charges in New South Wales and Van Diemen's Land.

I have, &c.,

Grey.

Earl Grey to Sir Charles Fitz Roy.

(Despatch No. 183, per ship Louisa.)

Sir,

Downing Street, 2d July, 1847.

At the instance of the Secretary of State for the Home Department, I have to request you would ascertain and report to me, for his information, the particulars of the character, conduct, and condition of Daniel Wright, now residing at Melbourne, in the District of Port Phillip, whither he was sent as an Exile in the Ship "Maitland."

I have, &c.,

Grey.

Sir Charles Fitz Roy to Earl Grey.

(Despatch No. 137, per ship Centaur; acknowledged by earl Grey, 27th February, 1848.)

My Lord,

Government House, 5th July, 1847.

I have the honor to acknowledge the receipt of Your Lordship's Despatch, No. 68 of the 29th November last, expressive of the general views of Her Majesty's Government in regard to the administration of the waste Lands of the Crown in this Colony, and enclosing a Copy of the proposed Rules to be established by Her Majesty in Council for the occupation of the same in pursuance of the Act of Parliament, 9 and 10 Victoria, Cap. 104.

I took an early opportunity of laying the Despatch and its enclosures before my Executive Council, with a view to obtain their advice as to the measures which it might be desirable to adopt, in order to bring the Regulations into operation with as little delay as possible after it shall be notified to this Government that they have received Her Majesty's final sanction. I
have the honor to enclose, for your Lordship's information, a Copy of the proceedings of the Executive Council which have accordingly taken place on the subject.

In the course of those proceedings, a doubt was suggested whether Her Majesty in Council could, consistently with the 10th Section of the Act of Parliament, 9 and 10 Victoria, Cap. 104, delegate to the Governor the powers contemplated by the first chapter of the proposed Rules, and the opinion of the Law Officers of my Government was taken on the subject. From that opinion, of which a copy is appended to the Proceedings of the Council, your Lordship will perceive that, although the Law Officers do not themselves entertain the doubt which has been raised, yet, considering the importance of the question to the Titles of those who may acquire Leases under the expected Order in Council, they recommend that the subject should be brought under your Lordship's consideration, in order that measures may be taken for remedying the defect in the Act of Parliament and the Rules, should any such appear to your Lordship to exist.

Acting under the Law Officers' opinion that it will be my duty to carry into effect the provisions of the Rule in question, should it become part of the contemplated Order in Council, and thus acquire the "force and effect of Law in the Colony," I shall proceed unhesitatingly to discharge the functions imposed upon me by it; but I think it advisable without delay to direct your Lordship's attention to the doubt which has been raised, in order that, if it be not groundlessly entertained, the remedies suggested by the Law Officers may be at once applied.

I have, &c.,

Chs. A. Fitz Roy.

[Enclosure.]

PROCEEDINGS of the Executive Council on the 8th and 15th June, 1847, relative to the Proposed Rules on the occupation of Crown Lands transmitted with Earl Grey's Despatch of the 29th November, 1846, No. 68.

EXTRACT from Minute No. 47/10, dated 8th June, 1847.

Members present:—His Excellency the Governor; His Excellency the Commander of the Forces; The Honorable the Colonial Secretary; The Honorable the Attorney General; The Honorable the Colonial Treasurer.

His Excellency the Governor laid before the Council a Despatch* from the Secretary of State, transmitting a Draft of the Regulations proposed to be established by order of the Queen in Council under the provisions of the Statute, 9 and 10 Vict., cap. 104.

* Marginal note.—29 November, 1846, No. 68.
These documents having been circulated amongst the members, they were aware that the proposed Regulations had not been finally determined upon, but that they had been forwarded for the purpose of enabling His Excellency, as stated in the concluding paragraph of Lord Grey's Despatch, "to consider at once in what manner it would be best to proceed in performing the duty, which it was in contemplation to impose upon him, of classifying the lands of the Colony, and defining the Boundaries of the different Districts which will require to be determined," and thus "to obviate all unnecessary delay in bringing the Regulations into operation in case they should be sanctioned by Her Majesty." In order to obtain the advice of the Council on the matters thus submitted to his consideration, His Excellency laid the Papers before them.

The Council accordingly proceeded to deliberate on the preliminary measures, which it would be advisable for the Government to take.

A doubt having been suggested whether Her Majesty in Council could legally delegate to the Governor the power of dividing the Colony into Districts as proposed in the First Chapter of the contemplated Rules, the Council advised that the following case should be submitted to the Crown Law Officers for their opinion:

The Sixth Section of the Statute, 9 and 10 Vict., cap. 104, empowers Her Majesty by order in Council to make Rules and Regulations respecting, amongst other matters, "The division of the Colony into Districts within which alone any Demises or Leases," granted under the said Statute, "may be made to take effect." By the Tenth Section of the same Statute, it is enacted, "That it shall and may be lawful for Her Majesty by any such order in Council as aforesaid to delegate to the Governor (on such conditions as Her Majesty shall see fit to impose) all or any of the powers hereby vested in Her Majesty, save only as far as respects the powers so to be exercised by Her Majesty as aforesaid by and with the advice of Her Privy Council."

A copy of the Draft of the Regulations, which it is proposed to establish by order in Council under the provisions of the above mentioned Statute, has been forwarded by the Secretary of State to the Governor. Of these proposed Regulations the following is the first Clause:—

"The lands in the Colony of New South Wales shall, for the purposes of the present order, be dealt with in three classes accordingly as they may be situated in districts to be denominated respectively as the unsettled, intermediate and settled Districts, and the Governor is hereby authorized and required to establish in the Colony, or in the different parts of the Colony, so many districts of each kind as he may judge necessary for the purpose of duly distinguishing Lands, which ought to come respectively under one or other of the classes aforesaid; and he is further authorized and required to determine, according to the best of his judgment, and to declare by Proclamation the boundaries of such districts, designating them respectively as being, for the purposes of the present order, unsettled, intermediate or settled districts as the case may be."

The opinion of the Attorney and Solicitor General is desired on the following questions:—

1. "The division of the Colony into Districts" being expressly mentioned in the Act, 9 and 10 Vict., No. 104, S. 6, as one of the
matters respecting which Her Majesty is empowered to make rules and regulations by orders in Council, can Her Majesty in Council, consistently with the reservation made in the 10th Section of the same Act, delegate to the Governor the powers proposed in the section of the Draft Regulations above recited.

2. Assuming that the division of the Colony into Districts, for the purposes mentioned in the Act, 9 and 10 Vict., No. 104, cannot be legally effected otherwise than by order of the Queen in Council, could it be maintained that, in directing generally that the Lands of the Colony should be divided into three classes, Her Majesty in Council had done enough to satisfy the requirements of the said Act, and that the power to determine what portions of land should be comprised within those three classes respectively could be delegated to the Governor.

The Council then advised that the evidence of the Deputy Surveyor General should be taken by them respecting the extent of information possessed by his department relative to the lands beyond the Boundaries, and on other matters connected with the division and survey of the Lands for the purposes of the Regulations about to be established. His Excellency, therefore, directed the Clerk to request the attendance of the Deputy Surveyor General on Tuesday, the 15th June Instant, at Twelve o'clock.

The Council further advised that, so soon as they should be in possession of the Law officers' opinion and of the information which the evidence of the Deputy Surveyor General would afford, a letter should be addressed to the superintendent of Port Phillip requesting his opinion as to the arrangements which would be most desirable in respect to the lands of that District; and that a circular should be sent to the several Commissioners of Crown Lands beyond the Boundaries, directing their attention to the provisions of the proposed Rules, and desiring them to collect such information and to take such preliminary steps as may tend to expedite the general classification of the lands and the determination of the boundaries of individual runs with a view to the issue of leases.

EXTRACT from Minute No. 47/11, dated 15th June, 1847.

Members present as above.

His Excellency the Governor laid before the Council the opinion of the Attorney and Solicitor General on the case proposed at their Meeting on the 8th June Instant.

The Attorney and Solicitor General advised that the question, which had been referred to them, should be brought under the notice of the Secretary of State with a view to the removal of all doubt on a matter so materially concerning the Titles of Leaseholders under the system about to be adopted. Their own opinion, however, was that the Queen in Council, having passed Rules and Regulations respecting the division of the Colony into Districts, could impose upon the Governor the duty of classifying the lands in the manner proposed by the first clause of the Draft Rules; and they distinctly stated that, in the event of that clause becoming part of the contemplated order, and thus obtaining "The force and effect of law in the Colony," the Governor would have no alternative but to discharge the functions imposed upon him by it.
The Deputy Surveyor General, being in attendance pursuant to the summons issued under the order given by the Governor and Council on the 8th Instant, was then called in and examined.

FRANCIS L. S. MEREWETHER, Clerk of the Council.

PROCEEDINGS on the 8th and 15th June, 1847, relative to the proposed Rules on the occupation of Crown Lands.

Appendix No. 1.

Opinion of the Attorney and Solicitor General on the case stated in the Minute of 8th June.

1. We are of opinion that Her Majesty in Council can, consistently with the reservation made in the 10th Section of the Act of Parliament, delegate to the Governor the power proposed in the first Section of the draft regulations of the Privy Council. The only part of the sixth section, which it is necessary to consider with reference to this point, is that which provides that Her Majesty in Council shall make "rules and regulations for the division of the Colony into districts," and the question is whether in the draft regulations it is proposed to delegate to the Governor the power to make such "rules and regulations."

We think that the sixth clause is not to be read as if it had been required that the Queen in Council should herself make the division of the Colony into Districts; and that the first clause of the draft referred to does in fact make and establish a rule and regulation respecting the division of the Colony into districts, and must be taken rather as imposing upon the Governor the duty of making an actual division in obedience to it, than as a delegation of a power vested only in Her Majesty in Council.

2. We cannot see that it belongs to the Governor of the Colony to enquire whether, by directing the division of the lands of the Colony into three classes, enough has been done by Her Majesty in Council to satisfy the requirements of the Act. It is presumable that the framers of the Act, namely, Her Majesty's Ministers, who also prepared the draft regulations, did not intend that more should be done in the Privy Council; but possibly the Legislature may be taken, from the language used, to have contemplated something more.

This question, however, we think it unnecessary to discuss, because it is clear to us that the first clause in the draft does amount to a proposed "rule and regulation respecting the division of the Colony into districts," which if passed will have "the force and effect of law in the Colony," and that the Governor will have no alternative but to discharge the functions imposed upon him by it, but will be bound by it to precisely the same extent as if the Act of Parliament itself had contained an Enactment in the same words.

As, however, it may be considered that the Imperial Legislature intended that Her Majesty in Council should, in the rules and regulations respecting the division of the waste lands of the Colony, at least establish some principle for the guidance of the Governor, which should be more definitely laid down than is done by the mere use of the names of "settled," "intermediate" and "unsettled" districts, and not leave the creation of districts to the undirected discretion of the Governor, or to the Instructions of Her Majesty's Ministers; and as the questions which have arisen may hereafter prove of great importance to the titles of the intended Lease holders, We beg leave to recommend that the subject be brought
under the notice of The Secretary of State for the Colonies, by whom measures may be taken for remedying the defect in the Act of Parliament and Rules and Regulations, if any such should appear to His Lordship to exist.

We anticipate that so much time will be occupied in the requisite Surveys and other preliminary matters before the establishment of Districts, as to make it far from improbable that a reference of the questions to the Home Government, as we suggest, will occasion no delay in bringing the expected system of Leases and Licenses into operation.  

JOHN H. PLUNKETT, Attorney General.

15 June, 1847.  

W. M. MANNING, Sol. Genl.

PROCEEDINGS of the Executive Council on the 8th and 15th June, 1847, relative to the proposed Rules on the occupation of Crown Lands.

Appendix No. 2.

Evidence of the Deputy Surveyor General with Explanatory notes added by him.

Samuel Augustus Perry, Esq., Deputy Surveyor General, called Evidence in and examined.

1. You hold the office of Deputy Surveyor General in this Colony?—I do.

2. You have now the charge of the Department in the absence of the Surveyor General?—I have.

3. A copy of Earl Grey's Despatch of the 29th November, 1846, with the Draft, therein enclosed, of the Proposed Rules on the occupation of Crown Lands in New South Wales has been furnished to you?—Yes.

4. Do you consider that the information contained in the records of your office is sufficient to enable the Government to carry out those proposed rules?—It is sufficient, I think, for the general purposes of the Rules, but not to enable the Government to define the Boundaries of Runs.

5. You think that it is sufficient to enable the Government to classify the lands in the manner contemplated by the proposed Rules?—Yes.

6. And to define the boundaries of the several classes with accuracy?—Not with accuracy, because the lands are not all surveyed. Certain points have been taken throughout the Country, and have been arranged with a view to the definition of boundaries, but there has not been a complete survey.

7. Of what portion of the Colony do you possess an accurate survey?—Of the whole of the Twenty Counties proclaimed previously to the year 1839, and of five new Counties, viz., Stanley and Auckland in the Sydney District, and Bourke, Grant and Normanby, in the Port Phillip District, which have been surveyed with sufficient precision to enable them to be proclaimed.

8. Have these Counties been considered within the Boundaries?—The whole of them.

9. Then they would naturally come within the class of settled lands?—Yes, the whole of the twenty five counties would.

10. Are there any portions of the Country taken up by Squatters of which you possess a survey?—Yes, we have a complete survey of nearly the whole of the Country about the Clarence River, that is, the Country between the Macquarie and Moreton Bay.
Evidence of S. A. Perry re division and classification of lands into districts.

11. To what distance from the Coast does the survey extend?—Not less at any point than about 40 miles in a straight line.

12. Are there any other portions of the Colony which have been accurately surveyed?—A great deal of the Country which is occupied by Squatting Stations is under survey. The intermediate Country between the Clarence River and Moreton Bay, and between the Clarence River and Port Macquarie, that is the whole line of sea coast, with the exception of the County of Stanley, is beyond the Boundaries of location.

13. Is the Survey sufficiently in detail to enable you to lay down the principal lines of thoroughfare and sites of towns?—Yes, and to proclaim the Counties provisionally, but the Boundaries are not surveyed in detail.

14. Have you any survey of the country lying to the Westward of the 20 Counties in the Middle District?—We have sketches made by Commissioners and Amateurs, but no survey by the Officers of the Department.

15. Have points been laid down trigonometrically?—Sufficient points to enable the whole of the Regulations to be carried out with the exception of unsettled lands in which only a few great lines have been traced by Exploring Expeditions, such as the course of the Darling, the Murray and some other principal features.

16. Have you any survey of the lands to the southward of the Twenty Counties?—We have a Survey in progress which is being carried on by a very able Officer, Mr. Townshend, but it is not yet complete. Mr. Townshend is now upon the Snowy Mountains.

17. How far does that survey extend from the coast?—About 120 Miles.

18. Is that country also occupied by Squatters?—Yes, the whole of it.

19. And has been for some years?—Yes, I believe so.

20. Proceeding further to the Southward, what Survey do you possess of the Country to the South of Auckland?—We have points fixed all the way from thence to the Meridian of 141° of East Longitude, and three Counties, which are now practically occupied by Squatters, viz., Grant, Bourke and Normanby, are ready for Proclamation.

21. And of Gipps Land, what Survey have you?—Gipps Land is partially surveyed, and it is all occupied.

22. Is there not an accurate survey of Gipps Land by Mr. Tyers, who is a very competent surveyor?—The Survey is only a partial one. It is not complete.

23. Does it contain the leading features?—It contains one or two rivers and a range and a few other points fixed trigonometrically.

24. Is that survey connected with the general trigonometrical survey of the Colony?—Yes, it is connected with the Port Phillip Survey.

25. There is a large portion of the Country now occupied by Squatters of which you know nothing?—We possess information which is called a survey, but we have no accurate survey. We have rough sketches by Commissioners and amateurs, which although containing much very useful information cannot be relied on as accurate surveys.
26. They would be found defective in the marking of the Boundaries?—Yes. They can only be taken as guides in respect to the general features; so far they have been compared with our Surveys for the purposes of general information.

27. Do you consider that it will be impossible to classify the lands without an accurate survey?—I think it very possible to classify them by previously proclaiming Counties along the Coast, for which we have sufficient information.

28. To what extent do you possess that information?—Have you any regular survey?—The survey as I said before is but partial, but I believe that a general description of each County with a view to provisional proclamation was furnished to the Government by Sir Thos. Mitchell prior to his proceeding on his last expedition, and that of some descriptions there are copies in the office.

29. These Counties would only embrace about a fourth part of the country occupied by Squatters?—Thereabouts.

30. Of three-fourths of the whole of the Country at present occupied by Licensed Squatters you possess no survey, with the exception of such parts as have been casually laid down in the course of exploring Expeditions?—No other.

31. Have the Commissioners and amateurs to whom you have alluded sufficient knowledge to be trusted?—Some of them have.

32. Are they Surveyors by profession?—Mr. Tyers is a Surveyor and so is Mr. Wright and Mr. Commissioner Mitchell.

33. If it were proposed that the Boundaries of intermediate Districts should be fixed at any given distance from Counties or reputed Counties, is there any possibility of fixing those boundaries without an actual survey of them on the spot?—Certainly not.

34. What time and what force would be required for such a survey?—If the whole of the present strength of the Department were employed upon it, it would take at least Twelve months. I am speaking with reference merely to the fixing on a line as a boundary for an intermediate district at a given distance from what are now called the settled district.

35. No portion of the establishment could then be left to mark the Boundaries of Runs?—To do that would require a Department of five times the strength.

36. Within what period could the present runs be surveyed in such a way as to admit of a technical description of their boundaries being given in the leases?—I do not think that with any strength they could be so surveyed in a less time than three years.

37. Do you consider that there are sufficient number of qualified Surveyors in the Colony to admit of the strength of your Department being increased five fold?—Yes I do, but I doubt whether a sufficiency of labourers could be obtained. Very strong parties would be required. In giving this reply, I am by no means diverging from the question because it is absolutely necessary that each Surveyor should have a party sufficient to clear away obstructions to his vision of distant objects.

38. What is the present expense of your Department?—It is within £12,000 per annum.

39. What would be the additional expense if the Department were increased to the extent which you have just mentioned?—The
expense would not be less than three times its present amount if
the Department were to be increased for the purpose of defining
the boundaries of individual runs.

40. Would the survey requisite for the marking of the boundaries
of individual runs be in addition to the general trigonometrical
survey?—No, the two must go on simultaneously.

41. You were understood to say that you were sufficiently in­
formed to lay down general lines of thoroughfare and sites of
Towns in all the Country at present occupied by licensed Squatters?
—Yes, I am sufficiently informed so to do.

42. Have you the maps which were some time since transmitted
to the Government by the Surveyor General, with a proposal that
a considerable portion of the lands now occupied by Squatters
should be divided into and proclaimed as Counties as therein
shewn?—Yes, I have them here (Witness produced the Maps to the
Council and also a rough sketch shewing the proposed new counties
on a smaller scale).

42. Supposing that the proposed Counties shewn in these Maps
were made intermediate lands under the Regulations, do you con­
sider that there would be any difficulty in proclaiming the boun­
daries of them?—There would be no difficulty in proclaiming them
as Counties provisionally.

43. What is the number of these proposed new Counties?—I think
there are Fifty shewn on the Plan.

44. What is the average area of these proposed Counties?—About
40 miles square.

45. In stating the number of counties to be 50, you mean that
there are 50 in addition to the 25 already proclaimed?—Yes.

46. On a rough estimate, what number of acres do you think
would be included in those 50 Counties?—About Forty five Millions
of Acres in round numbers.

47. Do you consider that this quantity of land would be sufficient
to satisfy the demands for purchase during the next fourteen
years?—That will depend much on the amount of Immigration,
but I consider that it would be much more than sufficient.

48. Do you consider that the lands which are situated more
inland than these Counties would be likely to be required for pur­
chase within the next fourteen years?—No, I do not.

49. But if the Country which formed the Colony of North Aus­
tralia were reunited to this portion of New South Wales, there
would be lands there likely to be required for purchase?—No
doubt of it. A great quantity of land could be sold there. I have
reason to believe that a seaport would be opened immediately.

50. There are lands there in that portion of the Country which
should be included among the settled Districts in the event of
their reannexation to this Territory?—Yes, such arrangement would
be desirable.

51. Are you prepared to recommend any particular system of
surveying the runs with a view to expedition?—The object can
only be effected by a regular trigonometrical and chain Survey. I
know of no shorter Method.

52. Is there any work which could at once be undertaken which
would facilitate the early survey of the land?—I know no other
mode than that of tracing the general features.
53. A preliminary survey would be necessary to ascertain the general features?—Yes, but it might be carried on simultaneously with the detailed survey. Points must first be fixed and by some of those points boundaries of runs as well as of Districts would be defined.

54. Do you not consider that the survey of runs would be hastened by taking the feature Surveys first?—I do not think so, because the survey of runs would fall into that of the features.

55. Would it be necessary to fix points trigonometrically in addition to those which you now have?—It would be necessary to fix points trigonometrically and to trace rivers and ranges, because the survey is incomplete.

56. Would it not be a saving of time to do this at once?—You would still have to go over the survey of the runs. I do not think that any time would be saved, although such a course might be otherwise convenient.

57. Would it be attended with increased expense?—No.

58. Were private parties to employ private Surveyors to define the boundaries of their runs, would the business be expedited?—Unquestionably. In such case our Department would furnish the private Surveyors with principal points and they would supply the details. They must, however, be under the supervision of the Government Department.

59. Would the Government Department be able to exercise sufficient supervision?—Yes, sufficient to ensure reasonable accuracy.

Francis L. S. Merewether, Clerk of the Council.

Explanatory notes appended to my evidence of 15th June, 1847, before the Executive Council respecting the Proposed Rules on the occupation of Crown Lands in New South Wales, which were enclosed in the Secretary of State's Despatch of the 29th November, 1846, No. 68.

17. My answer to question No. 17 is that the Survey of the lands to the Southward of the Twenty Proclaimed Counties extends 120 miles from the Coast. In saying this, I did not mean that there was a continuous and connected survey from the Coast 120 miles inland at the point referred to, but that the field of Mr. Townsend's operations was that distance, some portions of the intervening features having also been surveyed. The same remark may apply to all except the proclaimed Counties.

32. My reply to question No. 32 is that there is not any possibility of fixing the boundaries of intermediate Districts at any given distance from Counties or reputed Counties without an actual survey of them on the spot. The surprise that my reply appeared to excite in the Council induces me to offer an explanation. The boundaries of Counties or reputed Counties are not meridians nor parallels of Latitude; but they are irregular lines either along the crests of mountain ranges, or are determined by the courses of rivers, in both cases extremely tortuous, and therefore neither latitudinal differences nor distances from the meridian would settle the point. In such case the required distances must be determined by actual geodesical operations, whether conducted by the aid of a common chain, by triangulation or by whatever process. As to any imaginary short cut by celestial observations, I am supported by the best authorities in denying its efficacy.
On a proposé diverses méthodes pour tracer le parallèle de Paris, en choisissant des points, qui auraient la même latitude, et mesurant la distance de ces points, on de ces lignes, que l'on pourrait regarder comme les côtes infiniment petits de la courbe, qui forme la projection du parallèle: telle etoit l'idée de la méthode proposée par M. Godin, dont l'exécution étoit presque impossible et sujette aux plus grandes erreurs. En effet, on ne pouvoit s'assurer que deux lieux étoient situés sur la même latitude, que par les observations astronomiques, qui supposent de grands instruments l'ors qu'il s'agit d'une précision de quelques secondes; ce ne pouvoit être qu'en tatonnant et multipliant les observations que l'on parviendroit au point cherché, on s'exposant à une erreur de 15° dans le ciel, qui repondent à plus de deux cent toises sur la terre; la détermination d'un seul point aurait été l'ouvrage d'un mois, temps nécessaire pour multiplier les observations, pour la construction des observatoires, pour loger l'Observateur obligé de passer des mits pour attendre le moment des observations."

Another author says (a century subsequently to the above):

"Les erreurs du calcul étoient pour l'ordinaire fort inferieures à celle de l'observation, et l'on a en raison de ne pas affecter une exactitude qui n'eût été qu'illusoire."

Even Mr. Tyers, whose name is mentioned in the course of the examination, refers to the chain survey of Mr. Townsend in determining an approximate meridian, see his pamphlet; but it is unnecessary to multiply authorities upon this point, seeing that there is but one route to follow.

My answers to questions from 33 to 36 all refer to the time and the means requisite to complete a survey sufficiently detailed to mark the Boundaries of runs. and, as I felt some doubt whether I was justified in appearing to the Council to oppose an obstacle in the way of carrying into effect a most important measure of Government, I consulted my authorities even on this point. The result may almost be comprised in the words of an address to Louis XV upon a similar subject:

"Stre.

"L'ouvrage, que j'ai l'honneur de presenter a Votre Majesté, est d'autant plus digne de paroitre sans ser auspices, qu'il est le fruit de votre protection et de celle de vos Ancetres.

"Je ne devois pas esperer de voir la fin d'une entreprise dont l'exécution devoir durer un demi-siecle," etc.; again

"La plus loingue vie d'un Calculateur exerce ne suffiroit pas pour calculer plus de quarante mille triangles, sans y comprendre tous les objets designés sur les Cartes, je parle seulement de Parvisses." etc.

As the Council seemed to be startled at my reply to question 38 as to the expense that would be incurred in the surveys required, I must beg leave to trouble them with one more extract on this point.

"Elle (La Majesté) m'ordonna d'en former le projet de le presenter à M. de Machault, et me chargea de l'exécuter.

"Je trouvai dans ce Ministre les dispositions les plus favorables: mon projet etoit le meme que celui dont j'ai deja parlé. M. de Machault bien loin d'etre effrayé de la depense annuelle de quarante mille livres, me proposa de l'augmenter, pour abreger le temps de l'exécution qu'il prevoyoit trop long dans la place qu'il occu­poit"; and I may here mention that Lt. Mitchell, now Sir Thos.
Mitchell, one of the most rapid and persevering military surveyors of the British Army, was occupied, I think, six years in making surveys of Massena's retreat and of the lines of Torres Vedras.

I stated in reply to questions 51 and 52 that I knew of no other method of surveying the runs with a view to expedition than that of regular Trigonometrical and chain survey; but the system I would beg leave to recommend to effect this object is to allot to each of the experienced field Surveyors of this Department, say of not less than ten years' service, a District and attach to each a certain number of Assistants and aspirants, and which would have the effect of keeping the expense within reasonable bounds. Each Head of a District should be a full Surveyor with one Assistant, to be selected as far as possible from the junior members of the Department, and three aspirants or Cadets, youths of good abilities and docility of disposition, who should receive little more than nominal pay until they were sufficiently qualified to act independently of instruction. I shall have the honor to submit the proposal in detail; but I may merely observe that by such an arrangement the expenses, even including a slight augmentation at Head Quarters, will be within three times the amount of the present expenditure of this Department.

18th June, 1847. S. A. Perry, Dy. S. Gt.
EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch per ship Louisa.)
Sir, Downing Street, 8th July, 1847.

With reference to Lord John Russell's despatch of the 4th Sept., 1840, and to Lord Stanley's despatches of the 12th June, 1843, and 28th November, 1844, I transmit to you herewith five Copies of the 4th Volume of the published Reports of the Cases heard before the Judicial Committee of the Privy Council, in continuation of the series of Reports which accompanied the despatches above mentioned.

I have to desire that you will deliver this Volume to the same Officers in the Colony under your government as received the previous Volumes, and that you will obtain from the Colonial Revenue, and remit to P. Smith, Esq., the Chief Clerk of this Office, the Sum of £7 17s. 6d., being the price of this Work.

I have, &c.,

GREY.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 138, per ship Lima.)
My Lord, Government House, 8th July, 1847.

With reference to my Despatch, No. 107 of the 17th May last, transmitting the Annual Reports of the Officers employed under this Government in the protection of the Aborigines, I am induced to transmit herewith the Report of Assistant Protector Thomas for the period commencing on the 1st March and terminating on the 31st May last, as I conceive that this document may be more than usually interesting to Your Lordship from its containing a relation of Mr. Thomas' attendance upon two Aborigines, who were recently executed for the murder of a Settler in the District of Port Phillip.

I may add that it was deemed advisable to let the sentence of the law be carried into effect in the case of these two unfortunate people from the fact that the murder was of an atrocious character, and unprompted by any act of aggression on the part of the sufferer; and also from the conviction that, had not this example been made, the Settlers in remote places would be led to seek revenge by reprisals upon the Aborigines under the impression that the laws for their protection were not duly enforced.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

[A copy of this report will be found in a volume in series III.]
FITZ ROY TO GREY.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 188, per ship Louisa.)

Sir,

Downing Street, 10th July, 1847.

With reference to your Despatch, No. 50 of the 27th of February last, I have now to inform you that I have appointed Mr. Charles Moore to be Superintendent of the Botanic Garden at Sydney, on the Salary which you inform me was voted for that purpose by the Legislative Council, namely, £200 a Year.

Mr. Moore has been recommended to me in the strongest manner by Dr. Lindley, and I annex a Copy of the Testimonials he has received from various Quarters, as a proof of his qualifications for the Office for which I have selected him.

Mr. Moore may be expected to depart for his destination within two Months from the present time.

I am, &c.,

GREY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 141, per ship Lima; acknowledged by earl Grey, 14th April, 1848.)

My Lord,

Government House, 11th July, 1847.

With reference to Your Lordship's Despatch, No. 38 of the 3d October last, on the subject of the Observatory at Parramatta, and to the Instructions therein contained, I have now the honor to inform your Lordship that I lost no time in calling upon Mr. Dunlop, the Superintendent of the Establishment, to furnish me as soon as possible with the report required by Your Lordship for the current year. This Report has not yet been forwarded to me, but it shall be transmitted to Your Lordship by the earliest opportunity after I receive it.

In further obedience to Your Lordship's instructions, I appointed a Commission consisting of Captain King, R.N., Lieut. Colonel Gordon, Commanding Engineer, and the Ordnance Store-keeper; and I have now the honor to forward the Inventory made under their inspection of the Instruments and Books belonging to the Observatory.

Your Lordship will perceive that the Commission report that the Instruments and Books generally are in good condition, but that the Buildings, from want of timely repairs, are in a very dilapidated state; and on this point (as the Observatory is within one hundred yards of the Government House at Parramatta and immediately under my own eye), I can state that I am clearly...
of opinion that no repairs, which could now be executed, short of entirely rebuilding the premises, would put them in a habitable or efficient state.

Your Lordship will further observe that Mr. Dunlop is anxious to resign his Appointment on account of the state of his health, which renders him incapable of attending to his duties. And as, since receiving the Report of the Commission, I have been informed by Lieut. Colonel Gordon that the Building cannot be even temporarily repaired without considerable expense, I have, in order to preserve the Instruments, etc., from further injury, directed that they should be packed up in Boxes and placed in charge of the Ordnance Storekeeper until Your Lordship's further wishes are made known to me.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure No. 1.]

BOARD reporting on state of Observatory Establishment at Parramatta.

Sir, • Sydney, 26th June, 1847.

Referring to your letter of the 14th April, the receipt of which we have the honour to acknowledge, appointing us Members of a Commission for the purpose of examining the Inventory of all the Instruments, Books, etc., belonging to the Observatory in this Colony.

2. We have the honour to report to you for the information of His Excellency the Governor that, on the 21st of the month, we repaired to the Observatory, Parramatta, and there examined the Instruments and Books in the charge of Mr. James Dunlop, the Astronomer; a report of which we have the honour to enclose.

3. We regret to state that the building is in a very dilapidated state of repair, and the Instruments are likely, unless they are immediately protected from the weather, to be very much injured.

4. The floor and partitions of the building seem to be entirely destroyed by the white ant, and the building itself is so dilapidated as to require to be rebuilt.

5. Under these circumstances, we would beg to recommend that the building be covered in such a way as may be considered best to secure the Instruments from further injury, where they may remain until another Observatory be built, the site of which should, we respectfully suggest, be better left for selection by the Astronomer who may be appointed to succeed Mr. Dunlop, who is desirous of being relieved, inasmuch as his health entirely incapacitates him from the fatigue of observing.

The clock and smaller instruments might for greater security be packed up and enclosed in cases, but the Instruments which are fixed had better be secured in their present positions, whereby there would be less risk of their receiving injury.

We have, &c.,

PHILLIP P. KING, Captain, R.N.
J. A. GORDON.
RICH. ROGERS, Ordnance Storekeeper.

The Hon. the Colonial Secretary.
REPORT of a Commission appointed by the order of His Excellency the Governor, dated 14th April, 1847, for the purpose of examining the Inventory of Instruments and Books, etc., belonging to the Observatory at Parramatta.

**Instruments.**

An Astronomical Clock, by Brequet, with two square pendulums: reported to be in good order but not kept going.

An Astronomical Clock, by Hardy, in good order, going at Sidereal Time.

An Astronomical Clock, by Barraud, in good order, but not going.

An Astronomical Clock, by Gremalde, recently cleaned and in good order, stated by Mr. Dunlop to be in the Hall of Government House, where it has been seen by Captain King.

A Mural Circle, by Troughton, with four eye pieces. The Instrument is stated to be in good order but requires cleaning. The pillar to which it is fixed has given way.

A five and a half feet Transit, by Troughton, complete with Ys and hanging level. This Instrument was taken from its place to make room for the Meridian Circle; it is in good order and ready for use.

A sixteen inch Repeating Circle, by Reichenbach; the Verniers have been removed from the Instrument, but are ready to be fitted. The pillar has given way.

An Equatorial Stand, and forty-six inch Achromatic Telescope, by Banks. Both require cleaning but otherwise are ready for use. There is also a Micrometer Eye-piece in a separate case.

A Parallactic Instrument, by Cambrier and Le Noir. Much damaged and unfit for use.

A Magnetic Transit, by Dolland, apparently fit for use.

A Dipping Needle, by Gambey, apparently fit for use.

Borda's Apparatus for measuring the length of a Pendulum—damaged.

A Platina Sphere, with knife-edges.

A Diurnal Variation Instrument.

A Mountain Barometer, by Troughton, in good order.

A Mountain Barometer, now at the South Head of Port Jackson.

A Barometer, by Banks, in order, but not in use.

A Kater's Azimuth Compass, in good order.

A pair of eighteen inch Globes, dated 1791, much injured.

An Elrometer, by Jones, in order.

An Hygrometer, by Saussiere, damaged.

A Zenith Sector, in two cases, apparently having never been used, and considered to be in good order.

A Night Glass—useless.

Several Thermometers, broken and useless.

A Telescope, by Berge, one of the glasses in the Eye-piece broken.

A Sextant, by Jones, in order.

An Artificial Horizon, by Jones.

A Microscope, by Banks.

A Meridian Circle, forty-two inches diameter, by Jones, the Telescope having an aperture of three and three-quarter inches. This Instrument is set up where the five and a half feet Transit was fixed. The level is broken, and the Index Circle very badly damaged.
Report on instruments and books at the observatory.

Mr. Dunlop complains generally of the instrument, as being so very unsatisfactory in its fittings and the graduation of the Circle itself as to lie quite useless.

Connected with the Meridian Circle is a thirty inch Transit, the Is being fixed on stone pillars to serve as a Collimator.

A Pocket Chronometer, by Dallas, requiring slight repairs.

A Box Chronometer, by Dent, No. 220, in good order.

A Levelling Telescope, Rod and Chain, Staves, etc., complete, in good order and ready for use.

The Instruments above enumerated have been individually seen by us; but the Mural Circle and the Sidereal Clock only are in use. Generally the Instruments require to be cleaned, and the stone pillars which have been erected on a bad foundation have sunk so much as to be out of the perpendicular.

The Building is in a very dilapidated state, the partition walls having settled; the floor and partitions perfectly rotten from the effect of the white ant; and the roof admitting rain in most parts; the canvas coverings of the domes are quite rotten and torn, and affords no protection to the Instruments: in fact, they are all but entirely exposed to the weather, and will soon be destroyed unless steps are taken to protect them, until another building be erected.

Books.

Works received recently by Mr. Dunlop.


PHILLIP P. KING, Captain, R.N.
J. A. GORDON.
RICH. ROGERS, Ordnance Storekeeper.

Parramatta, 21st June, 1847.
1847.
11 July.
Recommendation in favour of storing of instruments.

[Enclosure No. 3.]

13th August, 1847.

Since the Report of the Board was sent in, I have seen Colonel Gordon, who said that Captain King concurred with him in thinking that, instead of incurring the expense of covering in any portion of the Observatory for the preservation of the Instruments, it would be better to have them put up in boxes and placed in Ordnance Stores.

A.J.F.

4th August.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 190, per ship Louisa.)

Sir, Downing Street, 12th July, 1847.

I transmit to you herewith a Copy of a Letter from the person described in the margin,* containing an application for information relative to Patrick Martin 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.,

EARL GREY.

[Enclosure.]

MRS. MARTIN TO SECRETARY OF STATE.

Honble. Sir,

Pardon the Liberty I take in sending this. I had a Son of the name of Pat. Martin, who went as an Emigrant to Australia in the year 1842, of the free Emigration Class. I have not heard from him since he went. Hoping, Sir, that you will be so kind as to let me know whether he be living or dead, or in what part of the Country he resides at present.

I am, &c.,

MARGARET MARTIN (Widow).

Please to direct to care of Revd. Michael Tobin, P.P., Cahir, Co. Tipperary.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 143, per ship Lima; acknowledged by earl Grey, 20th January, 1848.)

My Lord, Government House, 13th July, 1847.

I do myself the honor of forwarding, for the consideration of your Lordship, the accompanying Memorial from Mr. David Maziere, who arrived as a Settler in this Colony in the year 1822, praying compensation for the loss of certain land under the following circumstances.

In the year 1824, one Michael O'Brien obtained from Sir Thomas Brisbane, then Governor of this Colony, a promise of a Grant of 500 acres of land at a place situated about fifteen miles from Sydney.

* Marginal note.—Margt. Martin (no date).
In the year 1831, the Government, being about to issue a Deed for this land in favor of O'Brien, duly notified in the Official Newspaper of the time, according to the usual practice, its intention of doing so, provided no counter claim was made within one month from the date of the advertisement, which was the 14th September, 1831, although not published until the 17th of the same month. No such claim being received at the Office of the Colonial Secretary, the Deed was accordingly prepared and executed in favor of O'Brien, of date 19th October, 1831.

It subsequently appears that, previously to the execution of the Deed, the land in question had been advertised for sale by the sheriff, and that all the "right, title and interest" therein of O'Brien was accordingly so put up on the 13th October, 1831, and sold to Mr. Maziere, which circumstance, however, was unknown to the Government until communicated on the 26th October following by Mr. Maziere, whose conveyance of the land from the sheriff is dated 29th October, 1831, in pursuance of which he was placed in possession on the 31st of the same month, and in the year 1835 the Deed of Grant in the name of O'Brien was delivered to him by the Colonial Treasurer.

There were several dealings with the property by Mr. Maziere by Mortgage and otherwise, which it does not seem necessary to enter into; and he continued in the actual possession thereof, making very considerable improvements in Buildings, Vineyard, Garden, etc., until the year 1843, when O'Brien by action of Ejectment ousted Mr. Maziere from the land which has since passed into other hands for valuable consideration.

On behalf of Mr. Maziere, the matter was brought forward in the Supreme Court, when the former judgment as to the action of ejectment was upheld by the Judges, who considered that, when Maziere purchased the land from the Sheriff on the 13th October, 1831, the legal estate was in O'Brien, the sheriff only selling the "right, title and interest" of that individual, who did not possess the legal interest until the execution of the Deed of Grant in his favor on 19th October, 1831, although the sheriff's conveyance to Maziere bears an after date.

The case, upon being represented to the Government, appeared to be such a peculiar one that the opinion of the Law Officers of the Crown was taken, with a view of seeing if any legal assistance could be afforded to Mr. Maziere; but by the opinion of these Officers, of which I do myself the honor of enclosing a copy, it was not thought proper for the Government to take any measures in the matter.
The case was subsequently brought under the notice of the Legislative Council upon the motion of Mr. Wentworth, when a copy of the opinion above referred to was laid before it, but nothing further was done or proposed.

Another circumstance was afterwards brought forward by Mr. Maziere, which was the fact of O’Brien being a Convict attaint and actually undergoing sentence at Norfolk Island at the time the Deed of Grant was executed in his favor on the 19th October, 1831; and, as this was thought to affect the case favorably towards Maziere, the opinion of the Law Officers was taken on that point, of which a copy is herewith transmitted, and from which Your Lordship will observe that the circumstance in question was not considered in Law to benefit Mr. Maziere; and it may, perhaps, be unnecessary for me to remark to Your Lordship, that it was entirely unknown to the authorities that O’Brien was a Convict under sentence when the Deed to him was executed.

Finding that he had no legal or equitable remedy, Mr. Maziere applied to the Executive Council for compensation for having been deprived of the land in consequence, as he alleged, of the act of the Government in issuing a Deed of Grant to a Convict under Sentence; but, as I did not consider that the circumstance alluded to was the cause of Mr. Maziere’s loss of the property, and consequently that it was not a case wherein he had a right to demand compensation from the Government, I caused him to be so informed, although I admitted it to be one of considerable hardship.

Mr. Maziere, in his present Memorial to your Lordship, solicits that you will authorise the Governor of the Colony to award him such compensation as, upon due enquiry, may be found reasonable and just; and perhaps under the peculiarity of the case your Lordship will give me permission to do so with the advice of my Executive Council.

At the request of Mr. Maziere, who is a very poor man, I venture to enclose with this Despatch two sealed letters which bear upon his case, and which he has addressed to Lieut. General Sir Ralph Darling and Sir William Vernon, Baronet.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure No. 1.]

The humble Memorial of David Maziere, of Parramatta, in the Colony of New South Wales, an Immigrant Settler.

To Her Majesty’s Principal Secretary of State for the Colonial Department,

Sheweth,

That, on the 13th October, 1831, under a writ of Execution from the Honorable the Supreme Court of said Colony, the Sheriff
sold to your Memorialist, by public Auction, all the right, title, and interest of one Michael O'Brien in and to five hundred Acres of Land situate in the neighbourhood of Parramatta aforesaid.

That your Memorialist at once entered into possession of the said land, and proceeded to invest large sums of money in buildings, and other permanent improvements thereon, eventually expending not less than Fifteen hundred Pounds Sterling.

That, on the 19th October, 1831, by an inadvertency of Office, a Deed of Grant of the same land was sealed and delivered by Governor Sir Ralph Darling, in the name of the said Michael O'Brien; but, upon your Memorialist's satisfying the proper Department (that of Internal Revenue) that the land had become his property in due course of law, the said Deed was issued to him.

That the said land was conveyed to your Memorialist by the usual instrument in writing, dated the 29th of October, 1831, under the hand and official Seal of the Sheriff.

That your Memorialist remained in peaceable and undisturbed possession of the said land until the middle of the year 1843, when an Action of ejectment was commenced against him in the Supreme Court by the said O'Brien, and, in the month of April, 1845, judgment was delivered in the Plaintiff's favor, the Court holding that the Sheriff's Sale, as aforesaid, to your Memorialist was null and void, the legal estate having vested in O'Brien by Governor Darling's Deed of Grant aforesaid.

That your Memorialist, with his wife and children, was consequently turned out of his house and land vi et armes, and reduced to beggary and want.

That, on the 17th June, 1831 (four months before the date of the said Deed of Grant), the said O'Brien was convicted of felony, and sentenced by the Supreme Court to fourteen years' transportation to Norfolk Island.

That, by a Government Notice, dated 27th May, 1831, it was declared that no Deed of Grant should be issued to a prisoner of the Crown or Convict attaint.

That your Memorialist will not presume to offer an opinion whether or not the fact of the Grantee's being a Convict attaint actually under sentence of transportation at the date of the Grant had the effect of rendering the instrument void in law; but he would most respectfully draw your Lordship's attention to the purport of the above mentioned Government Notice, as affording special proof that the execution of the Deed in O'Brien's favor was purely an act of inadvertency on the part of Government.

That your Memorialist would further implore your Lordship's consideration of the fact, that the calamity thus brought upon himself and his family can in no degree be attributed to misconduct or error on his own part, the land having been honestly bought and paid for, and even the full amount of Quit Rent accruing thereon to the Crown having been paid by him up to the year 1843.

That your Memorialist humbly trusts that it will thus be manifest to your Lordship that this disastrous issue (to the fortunes of Memorialist and family absolutely ruinous) is attributable entirely to an error on the part of the local Government.

That your Memorialist humbly trusts, further, that your Lordship will not hesitate to admit that the honor and dignity of the Crown require that such errors should be atoned for by adequate reparation.
MEMORIAL OF D. MAZIERE
Soliciting Compensation for Loss of Land.

Wherefore your Memorialist humbly prays that your Lordship will be pleased to take the premises into your most favorable consideration, and instruct His Excellency the Governor of New South Wales to make to your Memorialist such compensation as upon due enquiry shall be found to be reasonable and just.

And your Memorialist will ever pray, etc., etc., etc.

Parramatta, 8th June, 1847.

DAVID MAZIERE.

MEMO, BY CHIEF JUSTICE.

I am well acquainted with the particulars of this case, the circumstances having been fully before me on the occasion of the trial and the arguments which ensued on the motion for a New Trial; and I am clearly of opinion that the Petitioner's case is one of extreme hardship, and well deserving the favorable consideration of Her Majesty's Government.

Sydney, 14th July, 1847.

ALFRED STEPHEN, Chf. Justice.

[Enclosure No. 2.]

[These were legal opinions on the "Sheriff's Titles to Landed Property," printed by order, dated 11th November, 1845, in the "Votes and Proceedings" of the legislative council.]

[Enclosure No. 3.]

MESSRS. PLUNKETT AND MANNING TO COLONIAL SECRETARY THOMSON.

Sir,

We have the honor to acknowledge the receipt of your letter of the 4th instant in reply to one from the Attorney General of the 2nd Ultimo, referring to a further communication from Mr. Maziere on the subject of 500 Acres of Land at Dural, of which he has been recently deprived under process of law by one Michael O'Brien the original promisee, whereas he brings forward a new feature in the case, namely, that O'Brien was actually undergoing his sentence of Transportation for felony on the date of the Deed of Grant executed in his favor by Sir Ralph Darling, and stating that His Excellency the Governor has directed you to request our opinion as to how the case is affected by this circumstance, and adding the following remarks for our consideration.

That there is no doubt but that the Deed of Grant to O'Brien was executed without the Governor being aware of that Individual's condition, for that, by a public Notice, dated only the 27th May previously, the Governor intimated that no deed of Grant would be prepared in favor of any prisoner of the Crown whatsoever, not even to persons holding Conditional Pardons or Tickets of Leave.

That O'Brien's conviction of felony took place on the 17th June, 1831, and he was sentenced to fourteen years' transportation on the 28th; but his land seems to have been subject to pecuniary claims previously contracted, and in consequence one Taylor obtained a Judgment in the Supreme Court against O'Brien, whereby the Sheriff, on the 13th October, 1831, sold all that Individual's right, title, interest and Estate in and to the property in question to Maziere, but the conveyance by the Sheriff to Maziere
does not appear to have been executed until the 29th of the same month, the Deed of Grant having been immediately executed on the 19th October, 1831, to O'Brien, although not recorded by the Colonial Secretary until the 31st of December of that year.

That, if Maziere had intimated to the Government his purchase of the Land previously to the execution of the Grant to O'Brien, it would certainly not have been signed; but, according to the practice at the time, the intended preparation of the Deed in favor of Maziere would have been announced for one Month, and, in default of any opposition, issued in his name at the end of that period.

In reply, we have the honor to report that in our opinion the case of Mr. Maziere is in no way, that can be in law beneficial to him, affected by the circumstance that O'Brien was actually undergoing his sentence of Transportation for felony on the date of the Deed of Grant, and, in support of this view, we beg leave to refer to the annexed Extracts from our Report* of the October last, from which it will appear so plainly as to require no comment from us, that, however unjust the claim of O'Brien may have been (according to the statement of the Petitioner and to the facts as far as they are known to us), Mr. Maziere has no title, legal or equitable, to the property in question; that the only persons who could have raised any claim before the 9th June last were Mrs. Walker and Mr. R. Hunt, whose interest has since been defeated by the Conveyance from Mr. Kay (irrespective even of Mrs. Walker's execution of it and of Mr. Hunt's alleged agreement) to O'Brien and the delivery to him of all the title deeds and papers, and that O'Brien has conveyed the property, to which his legal title has been established, to other parties for valuable consideration.

We have, &c.,
J. H. PLUNKETT, Attorney General.
W. M. MANNING, Sol. Genl.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 145, per ship Lima.)

My Lord,
Government House, 15th July, 1847.

I do myself the honor to inform you that I have given directions for the respective sums of £1,841 4s. from the General Revenue, and £656 10s. 7d. from the Crown Revenue of the Colony, to be issued to the Deputy Commissary General; and I have to request that Your Lordship will have the goodness to cause the necessary order to be given for an equal sum to be issued to the Colonial Agent General from Her Majesty's Treasury to enable him to make payments for Services on account of New South Wales, as shown in the accompanying Statement.

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

* Marginal note.—Embodied in the printed Copy, laid before the Legislative Council, on motion of Mr. Wentworth.
1847.
15 July.

Payments for remittance to agent-general for special services.

STATEMENT of the Amount to be remitted from the Colonial Treasury of New South Wales to the Colonial Agent General in England to enable him to make Payments for the undermentioned Services on Account of the Colony to the 31st December, 1847.

From the General Revenue.

<table>
<thead>
<tr>
<th>For what Service</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>To Pay the Salary of the Colonial Agent General, chargeable on the General Revenue, for the period from 1st January to 31st December, 1847</td>
<td>£150 0 0</td>
</tr>
<tr>
<td>To Pay Pensions, for the same period, Lady Dowling's included</td>
<td>450 0 0</td>
</tr>
<tr>
<td>To Pay the Half Salary (£200 per ann.) of Wm. H. Kerr, Esq., Chief Commissioner of Insolvent Estates, while on Leave of Absence, from 1st January to 31 December, 1847</td>
<td>200 0 0</td>
</tr>
<tr>
<td>To meet the Extra Cost of Lamps and Machinery for Light Houses in Bass' Straits, in addition to the sum of £4,000 remitted on 3rd February, 1846</td>
<td>150 0 0</td>
</tr>
<tr>
<td>To meet the Expense of the Outfit and Passage of the Revd. Wm. McGinty and of the Revd. Michl. Corish, Roman Catholic Clergymen, at £150 each</td>
<td>300 0 0</td>
</tr>
<tr>
<td>To meet the charges for Parliamentary and other Public Documents, and Incidental Expenses from 1st January to 31st December, 1847</td>
<td>100 0 0</td>
</tr>
</tbody>
</table>

From the Crown Revenue.

<table>
<thead>
<tr>
<th>For what Service</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Salary and Allowances of the Colonial Agent General for the period from 1st January to 31st December, 1847</td>
<td>£112 10 0</td>
</tr>
<tr>
<td>The Half Salary of Sir Thos. L. Mitchell, Surveyor General, while on Leave of Absence, from 29th March to 31st December, 1847</td>
<td>379 0 7</td>
</tr>
<tr>
<td>The Half Salary of Asst. Surveyor John Burke, while on Leave of Absence from 1st December, 1845, to 31st May, 1847</td>
<td>165 0 0</td>
</tr>
</tbody>
</table>

£2,497 14 7
SIR CHARLES FITZ ROY TO EARL GREY.

(My Lord, Government House, 16th July, 1847.)

I have the honor to acknowledge the receipt of your Lordship's Despatch, No. 69 of the 4th December last, transmitting copies of a correspondence with the Most Rev. Dr. Polding, relative to an application which he had made to Your Lordship 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.

In compliance with Your Lordship's instructions, I lost no time in placing these communications before my Executive Council; and I have now the honor to enclose a copy of the Minute of their proceedings on this subject, wherefrom your Lordship will perceive that the Board of Council and myself fully concur in the views expressed in Mr. Under Secretary Hawes' reply to Dr. Polding; and that, for other reasons which are stated in the Minute, they do not consider that it would be either lawful or expedient to grant to the Roman Catholic Church more land than may be required for a site for the buildings of the proposed Institution.

I have, &c,

CHS. A. FITZ ROY.

[Enclosure.]

PROCEEDINGS of the Executive Council relative to Dr. Polding's application for a grant of land as an endowment for a college.

EXTRACT from Minute No. 47/12, dated 28th June, 1847, and confirmed by the Council on the 8th July, 1847.

Members present:—His Excellency the Governor; His Excellency the Commander of the Forces; The Honorable the Colonial Secretary; The Honorable the Attorney General; The Honorable the Colonial Treasurer.

His Excellency the Governor, laid before the Council a Despatch* from the Right Honorable the Secretary of State, transmitting copies of a correspondence with the Most Reverend Dr. Polding relative to an application from him for a grant of land, and requesting a Report on the subject from the Governor and Executive Council.

The Council after mature consideration of the matter thus referred to them concurred in the adoption of the following Report:—

In order to provide within the Colony a supply of duly qualified clergymen, Dr. Polding proposes to establish a College for ecclesiastical students. Considering that without assistance from the Governor this undertaking could not be accomplished, he asks for a grant of land, from the sale or other beneficial use of which (as the Council understand) he may obtain indirectly that pecuniary aid, which in the present circumstances of the Colony he could not expect to receive directly. In support of this application, he

* Marginal note.—4 December, 1846, No. 69.
cites as precedents the grant of land worth several thousands of pounds to the Australian Library, the grants of Parsonages and Glebes made to the Church of England previously to the passing of the Colonial Act, 7 Will. 4, No. 3, the grant of land for the Church of England Missionary Establishment at Wellington, the building at the Public expense of the King's school at Parramatta, and the loan of £3,000, which from its never having been repaid may be more properly termed a grant, towards the erection of the Australian College for the education of members of the Church of Scotland. Referring to these cases, Dr. Polding further argues, in support of a compliance with his request, that the grant asked for by him could not be construed into a precedent for further grants of a like nature to other denominations, as the concession in this instance would only be deemed an act by which those in favor of whom it was made were at length placed on a level with their fellow-Colonists, who at a former period received similar or greater advantages.

The obstacles in the way of a compliance with this request, and the inapplicability under present circumstances of the precedents cited in favour of it, are so fully explained in Mr. Hawes' reply to Dr. Polding that the Council might sufficiently discharge the duty imposed upon them by simply reporting their entire concurrence in the views expressed in that reply. As, however, Lord Grey specially desires to receive from the Governor and Council an estimate of the demands from other Christian Societies, which would be likely to result from a concession in this case, the Council think it right to declare their conviction that such concession would not be viewed by other denominations, as supposed by Dr. Polding, as one due to the Roman Catholic Body, in order to place them on a level with others who had received such grants before; but that it would be regarded as a new precedent, and claims would be advanced under it to an extent which it is impossible to foresee.

The Council moreover apprehended that such a grant, as is sought by Dr. Polding, could not be made consistently with existing law. The Act of Parliament, 5 and 6 Vict., cap. 36, makes it unlawful for Her Majesty or any person acting under Her Majesty's authority to convey or alienate the waste lands of the Crown in this Colony by any other way than that of sale, with the exception of lands required for certain public purposes specified or described in the Third Clause; and it does not appear to the Council that the purpose, for which Dr. Polding wants the land asked by him, can be considered as one of those which the clause in question contemplates. Did he merely desire a site for the buildings of the proposed Institution, his request would be legally admissible and would meet with the ready support of the Council, more especially as they understand that a grant of land as a site for a college for Members of the Church of England has been recently promised to the Lord Bishop of Australia.

FRANCIS L. S. MEREWETHER, Clerk of the Council.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 191, per ship Louisa.)

Sir,

Downing Street, 21st July, 1847.

I herewith transmit, for your information and guidance, the copy of a letter from the Board of Treasury, together with
the copy of a Report addressed to the Lords Commissioners of that Board by the Commissioners of Customs, from which it appears that, in contravention of his late Majesty's Order in Council, dated 28th April, 1828, the Collector of Customs at Melbourne had objected to admit to Entry the Cargo of the Spanish Vessel "Preciosa," recently arrived there from Manila, but that, with your sanction, he had subsequently allowed the Cargo to be landed upon the parties entering into Bond in the sum of £500 to abide the decision of Her Majesty's Government.

You will see that, on the grounds stated in the accompanying enclosures, instructions are about to be given by the Lords of the Treasury for the cancelment of that Bond; and I would especially direct your attention to the remarks which the Commissioners of Customs have offered on the subject, with a view to proper care being taken to guard against any future interruption of the trade legally permitted to Spanish Vessels with Her Majesty's Colonial Possessions.

I have, &c.,

[Enclosure.]

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

Sir,

Treasury Chambers, 12 July, 1847.

I have it in command from the Lords Commissioners of Her Majesty's Treasury to transmit to you a copy of a Report of the Commissioners of Customs upon the subject of the admission to duty at Melbourne, New South Wales, of the cargo of Spanish Vessel "Preciosa," and I am to request that, in submitting the same to Earl Grey, you will state to his Lordship that, My Lords having communicated with the Lords of the Committee of Privy Council for Trade on the subject referred to, it has appeared to this Board and to the Lords of the Committee that it will be proper that the communication suggested by the Commissioners of Customs should be made to the Governor of New South Wales.

I am further to request you will move Lord Grey to cause the requisite steps to be taken in this respect; and at the same time apprise his Lordship that My Lords will direct the Commissioners of Customs to convey corresponding instructions to their Officers in the Colony and to cause the Bond taken in respect of the Cargo of the "Preciosa" to be cancelled.

I am, &c.,

C. E. TREVELYAN.

[Sub-enclosure.]

REPORT by Commissioners of Customs To the Lords Commissioners of Her Majesty's Treasury.

We beg to represent to Your Lordships that, under his late Majesty's Order in Council, dated 28th April, 1828, it is declared to be lawful for Spanish Ships to authorising import into any of the British Possessions abroad, from the Colonies and Possessions of His Most Catholic Majesty, Goods the produce of those Colonies and possessions Spanish vessels, and to export Goods from such British Possessions to be carried to any Foreign Country whatever, and by the 3rd Section of the Act of 8 and 9 Vict., Cap. 84, this Order in Council as well as various other orders have been continued in force.

That We have recently received a communication from the Collector of this Refusal to Revenue at Melbourne, N. S. Wales, stating that, the Spanish Vessel Preciosa having admit cargo of recently arrived at Melbourne from the Spanish Colony of Manila with a Cargo of Spanish vessel Sugar, he had objected to admit the Cargo to entry upon the ground that he had at Melbourne, been unable to discover any Order in Council permitting Spanish Ships to trade with
the British Possessions abroad, but that, with the sanction of the Governor, he had allowed the Cargo to be landed upon the Parties entering into Bond in the sum of £500 to abide the decision of H.M.’s Government.

We beg leave also to transmit a copy of a Representation, which we have received from the Collector at Sydney, together with copies of the correspondence which had taken place between himself and the Colonial Government upon the same subject; and, as it would appear therefrom that not only our Officers in New South Wales but the Colonial Law Authorities are entirely ignorant of the existence of the Order in Council of 28th April, 1828, and as serious inconvenience may arise in the event of the Trade, which Spanish Vessels are by Law permitted to carry on between the Colonies of Spain and the British Possessions abroad, being interrupted from a want of a proper understanding of the Law, We would submit how far Your Lordships may not deem it expedient to bring the circumstances under the consideration of H.M. Principal Secretary of State for the Colonies with a view to the Governor of New South Wales being apprized of the state of the Law as applicable to the subject; and we would, upon being favored with your Lordships’ directions, issue instructions to Our Collectors at Sydney and Melbourne with directions to the Latter Officer to cancel the Bond, which had been entered into for the Cargo of Sugar brought by the "Preciosa" from Manilla to Melbourne.

With respect to the Order in Council of the 8th August, 1841, referred to in the accompanying papers, copy of which is annexed, We beg to state that we are advised that it does not in any manner interfere with the privilege granted to Spanish Ships under the Order in Council of the 28th April, 1828, hereinbefore referred to.

Custom House, 29th May, 1847.

Geo. R. Dawson.
W. Richmond.
J. P. Dickenson.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 151, per ship Lima.)

My Lord,

Government House, 21st July, 1847.

I have had the honor to receive your Lordship’s Despatch, No. 88 of the 22d January last, forwarding, at the request of Sir W. M. Somerville, the Member for Drogheda, a Paper which had been sent to him by Mr. C. Magrane, complaining of the conduct of the Police Magistrate of Dungog, which led to the relinquishment by his relative Mr. Phillip H. Magrane of the appointments of Clerk of Petty Sessions and Post Master of that District; and, in compliance with Your Lordship’s directions, I have now the honor to report the circumstances connected with Mr. P. H. Magrane’s case, which I have ascertained on reference to the records in the Office of the Colonial Secretary of this Government.

It appears that Mr. Magrane was appointed Clerk of Petty Sessions and Deputy Post Master at Dungog on the 15th February, 1839, and that he continued to hold the former appointment until he was dismissed from it on the 6th August, 1840.

On the 27th March, 1840, it was communicated to the late Governor Sir George Gipps by Mr. J. Hook that a Notice had been published by Mr. Cook, the Police Magistrate at Dungog, in which it was announced that none but Protestants need apply for vacant situations in the Constabulary of that District. Mr. Cook was, in consequence, called upon for an explanation, and at the same time informed that the Governor could not approve of the introduction of any religious test whatever as a qualification for Office in this Colony. The Very Reverend Dr. Polding also brought the matter under notice.
The Police Magistrate stated in reply that he had directed the publication of the Notice in question, in consequence of the unwarrantable interference of the Roman Catholic Clergyman with the Constabulary of his own persuasion having rendered the adoption of such a measure absolutely necessary to enable him to maintain a proper command over that Force; and also that the Constables, who had been suspended for refusing, under the influence of the Clergyman referred to, to attend muster and prayer meeting on Sunday mornings according to custom, were reinstated upon their expressing contrition for their conduct. Mr. Cook further stated that Mr. Magrane was mixed up in these matters, and requested therefore, as he could not continue to place confidence in him as Clerk of the Bench, that he might be removed.

In June, 1840, it was represented to the Post Master General by Mr. Cook that several complaints had been made against Mr. Magrane as Deputy Post Master; and amongst them that of his having absented himself without leave, and of the Mail Bags being opened and the letters distributed during his absence by a man of indifferent character. Other similar cases were stated to have occurred; and the Governor in consequence directed the Police Magistrate to animadvert severely on the conduct of Mr. Magrane and to reprimand him in his Excellency's name, and also, in conjunction with the Post Master General, to appoint some other person to perform the duty of Deputy Post Master, which was accordingly done.

On the 20th June, the Police Magistrate brought under notice a letter, which had been published in the "Sydney Morning Herald" bearing Magrane's signature, giving an unqualified contradiction to an assertion alleged to have been made in a former publication by the Police Magistrate that Magrane had tampered with the Constables or encouraged them to a dereliction of duty; and with reference to which Mr. Cook at the same time submitted depositions from the Chief and another Constable of the District, in the first of which it was stated that, before Mr. Magrane arrived in the District, the Constables attended the Sunday Muster cheerfully and everything went on peaceably; but that Magrane was accustomed to speak of the Police Magistrate in disrespectful terms, and had abused one of the Constables who had been reinstated for returning to his duty, and that he was also in the habit of getting drunk. The other Constable stated himself to be a Roman Catholic, and that he attended the Sunday Muster but not by compulsion; that the Roman Catholic Clergyman, when he attended the District, expressed his wish that he would leave the Police, and that Magrane also urged him to do so; that on another occasion Magrane had promised to get
him a situation in Sydney, if he would leave the Police; and that, except once, he had never seen Magrane drunk.

On the 6th July, the Governor directed it to be communicated to Mr. Cook that, having read the documents alluded to, and also bearing in mind the misconduct of Mr. Magrane in the capacity of Post Master, he could not think it would be for the advantage of the public service that he should any longer hold the situation of Clerk of the Bench at Dungog, and authorised his discharge at the expiration of one month.

On the 15th July, a letter was received from Mr. Magrane conveying the resignation of his situation, when he was referred to the communication which before that time would have been made to him by the Police Magistrate. The letter authorising his discharge, however, never reached the Police Magistrate; and it was presumed that it had been withheld from him by the Clerk of the Bench; but, a duplicate of it having been forwarded, Mr. Magrane was removed on the 6th August following.

Mr. Cook was not dismissed from his appointment, but was discontinued in common with the Police Magistrates of other Districts on the 31st December, 1842, under the necessity which then existed for reducing the Expenses of the Police.

I have, &c,

CHS. A. FITZ ROY.

22 July.

Despatch acknowledged re land grant to trustees of P. and A. Dwyer.

My Lord,

Government House, 22d July, 1847.

I have the honor to acknowledge the receipt of your Lordship's Despatch No. 90 of the 28th January last, enquiring what has been done under the arrangement reported in Sir Geo. Gipps' Despatch, No. 218 of the 30th Decr., 1845, under which a Deed of Grant from the Crown was issued in favor of Mr. W. M. Manning, the Solicitor General of this Colony, 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.

Having referred to Mr. Manning on the subject, I now transmit for your Lordship's information a copy of a letter from that Officer dated the 2d instant, stating that nothing has yet been realized by the sale of the land granted to him in trust for the Dwyers, but that he has some expectation, altho' difficulties to the completion of the purchase have been interposed by the purchaser, of being able to make a remittance shortly.

I have, &c,

CHS. A. FITZ ROY.
GREY TO FITZ ROY.

MR. W. M. MANNING TO COLONIAL SECRETARY THOMSON.

Sir,

Sydney, 2nd July, 1847.

In reply to your letter of the 30th Ultimo, transmitting to me a Copy of a Despatch received from the Secretary of State respecting the sixty (60) Acres of land, granted to me as Trustee for Patrick and Anthony Dwyer, and requesting that I would state what has been done in this matter; I have the honor to inform you that the land was contracted to be sold for £150 to a Dr. Colman, who, after paying £27 to release the original deeds from the lien of Mr. Pilcher (a solicitor), resorted to a variety of vexatious objections to the title, and ultimately threw up the purchase and demanded the £27 (which I refused), when on the point of leaving the Colony suddenly for England.

A Sale has since been made to a Mr. Arnold at £120 through Mr. Chambers, the Clerk of the Peace at Maitland, but again great delays are interposed by the Purchaser or his Solicitor; and, although I have repeatedly pressed by letter (twice within the last month) for a completion of the Contract, the business yet remains unsettled.

Hitherto I have not received as much as the fees which were paid by me on the issue of the Grant, and I have disbursed not only those fees (£2 2s.) but also £30, paid on 20th June, 1846, in satisfaction of a debt of £33, and interest for five years, due to the Insolvent Estate of the late Registrar, for over payments by him as Collector and Manager of the Intestate Estate of the deceased, A. Dwyer.

I regret very greatly that nothing should have been yet realized; but, as a Gratuitous Agent for irresponsible Principals, I cannot undertake to involve myself in legal proceedings for the enforcement of any Contract of Sale, and therefore am much in the power of any Purchaser. I am therefore unable to promise an early remittance, but, from Mr. Chambers' reply to my last letter, I have some expectation of being able to remit before long.

I have, &c,

W. M. MANNING.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 193, per ship Louisa; acknowledged by Sir Charles Fitz Roy, 23rd December, 1847.)

Sir,

Downing Street, 23d July, 1847.

I have to call your attention to the Instruction, which my Predecessor addressed to you on the 28th of March, 1846, directing you to remit to Mr. Smith, the Chief Clerk of this Office, the sum of £43 12s. 2\ 4th\ , being the proportion of charges payable on your Commission as Governor of New South Wales, which it was not in the power of the Government to remit.

Although it does not appear that the receipt of that Instruction has been acknowledged by you, I observe that despatches from me dated in September last have reached your hands; and I cannot therefore avoid desiring that the sum in question be remitted by you as soon as may be practicable. I have, &c,

GREY.
1847.
23 July.

Papers transmitted re trial of F. Morley.

Opinion requested by Sir A. Stephen.

Request for legal opinion by judges.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 153, per ship Lima; acknowledged by earl Grey, 1st January, 1848.)

My Lord, Government House, 23d July, 1847.

At the instance of the Chief Justice of this Colony, I have the honor to bring under your Lordship's notice the case of the man, named in the margin,* who was convicted of Murder at the late Criminal Session of the Supreme Court at Sydney, and upon whom sentence of death was accordingly passed, but which has been commuted to transportation for Life in consequence of a technical objection raised in his behalf.

Sir Alfred Stephen, on the part of himself and his brother Judges, is anxious to obtain the opinion of the Judges in England on the point of Law arising out of this case, the nature of which is fully explained in the printed report of the Trial and Copies of the letters from the Chief Justice herewith enclosed.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure No. 1.]

[This was a printed report of the trial, the Queen v. Francis Morley.]

[Enclosure No. 2.]

SIR ALFRED STEPHEN TO COLONIAL SECRETARY THOMSON.

Sir, Supreme Court. 14th July, 1847.

The Government has already been apprised that the Prisoner Francis Morley, convicted of murder at the late Criminal Session, has been recommended for a pardon on condition of Transportation for Life, in consequence of doubts entertained on the Bench respecting the propriety of Mr. Justice Therry's charge in that case to the Jury. I have now the honor to submit to the Governor through you the request of myself and Brother Judges that His Excellency will be pleased to forward the enclosed report of the case, and our opinion thereon, to the Right Honorable the Secretary of State. We conceive that the question involved in this case, and on which a difference of opinion exists between the majority of the Court and one of its Members, is of by far too much importance (independently of that which belongs to the question in respect of the particular fate of the present Convict), to be allowed to remain in any degree of doubt, if the removal of that doubt can be effected by a reference to higher authority in England. And it occurred to us that, considering the circumstances, and especially the ground on which Mr. Justice Dickinson's difficulty in the case rests, that reference might not inappropriately be (if His Lordship saw no objection) to the Judges, the question being apparently one, on which those very learned persons, according to the Authorities mentioned in Our Judgment, are themselves divided in opinion. But should the Secretary of State determine that such a reference is impracticable or inexpedient, then we respectfully beg the favor of His Lordship's obtaining for our guidance the opinions of Her Majesty's Attorney and Solicitor General.

* Marginal note.—Francis Morley.
We need scarcely observe to His Excellency the Governor that, however important the question raised may be in England, it is much more so in this Colony, where, in cases of murder (especially those committed in secret in the Wilds of the Interior), it is frequently impossible to assign the Death specifically to one cause alone, or with certainty to two combined causes, altho' it generally is possible to shew that it was the result either of both or one of the causes assigned in some Count of the Indictment. Cases occur in which it is impossible to say by which of two causes the death was produced, even where they are most dissimilar in character; or to say whether the death was not occasioned by their conjoint operation. But if the distinct conclusion must be drawn, in cases like that of Morley where the same injury and appearances might have been produced by both or either of the means alleged, the ends of Justice will, I am certain, be frequently defeated, free scope will be afforded to brutality and revenge, and murderers will find escape easy.

I have, &c.,

ALFRED STEPHEN, C.J.

I send 4 printed copies of the Judgment for transmission to England and one for reference, should it be required.

[Enclosure No. 3.]

SIR ALFRED STEPHEN TO COLONIAL SECRETARY THOMSON.

Sir, Supreme Court, 14th July, 1847.

In reply to your inquiry by letter of 9th Instant, as to the disposition of the Convict, Francis Morley, I have the honor to inform you that, as a Majority of the Judges have decided that the point taken in the Man's favor was untenable, and the Commutation was only advised because of the doubts entertained in a similar case in England, we are all of opinion that that commutation should be carried into effect in the Ordinary manner. The Murder was a very atrocious one, committed under circumstances of great barbarity. If the conviction, nevertheless, be not legal, Morley should be pardoned; but, until it be decided (if it ever shall be so decided) that such conviction is illegal, the punishment should, we apprehend, take effect by virtue of the Judgement already given.

I am, &c.,

ALFRED STEPHEN.

P.S.—I would suggest whether it might not be expedient to forward a Copy of that letter to the Comptroller General of Convicts (or other proper officer of the Government) at V. D. Land.

A.S.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 194, per ship Louisa.)

Sir,

Downing Street, 24th July, 1847.

I have received your Dispatch, No. 46 of the 31st of October last, on the question of adopting some mode of investing with safety and with sufficient profit the Funds placed in the Savings Bank at Sydney.
This question had been brought under consideration from the circumstance of the accumulations in the hands of the Trustees of the Bank, in consequence of there being no legal mode of investing these Funds with interest.

In your Dispatch, two projects are referred to, the one for investing the Funds of the Bank in Loans to corporate Bodies raised for the purpose of carrying on Public Works; the other for investing those Funds in Government securities appropriating the amount to the construction of Public Works.

I have attentively considered this question, and I have obtained the opinion on the subject of Mr. Tidd Pratt, the Barrister appointed to certify the Rules of Savings Banks in this Country.

It appears to me that, in order to invest with safety and adequate profit the Funds in question, it will be advisable to adopt the plan suggested by the Trustees, and recommended by you, viz., that they should from time to time be advanced to the Government at a fixed rate of interest, with a view to their being applied to permanent works of general utility. I concur with you in thinking that the Application of any part of these Funds by way of Loan to Corporate Bodies would be highly objectionable.

It also appears to me to be desirable to propose to the Legislative Council to amend the present Law of the Colony relating to Savings Banks, 9 Vic., No. 25, by repealing those parts of it which authorize the deposit of the Estates of Intestates, and of Monies paid by order of the Judges, and by introducing some provision, in order to prevent any pressure on the Government for Money, with regard to the length of notice, which the Depositors as well as the Trustees should give before the Money is withdrawn either from the Bank or the Government.

I have, &c.,
Grey.

Earl Grey to Sir Charles Fitz Roy.
(A circular despatch, per ship Louisa.)

Sir,
Downing Street, 24th July, 1847.

I transmit, for your information and guidance, Copy of a Treaty of Commerce and Navigation between Her Majesty and the Grand Duke of Tuscany, the ratifications of which were exchanged at Florence on the 12th ulto.

I have, &c.,
Grey.

[Enclosure.]

[A copy of this treaty was published in the issue of the “Government Gazette,” dated 31st December, 1847.]
SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 154, per ship Lima; acknowledged by Earl Grey, 15th January, 1848.)

My Lord,

Government House, 24th July, 1847.

In referring your Lordship to a Despatch, addressed by Lord Stanley to my predecessor in the Government of this Colony, No. 78 of 17th May, 1844, upon the subject of Mr. Robert Crawford's claim to a Grant of Six thousand acres of land, alleged to have been promised to him by Sir Thomas Brisbane, I beg to inform your Lordship that peculiar circumstances, namely the sequestration of Mr. Crawford's Estate and the delay in getting it ultimately released, have prevented the claim in question being disposed of conformably with that Despatch; and further that, at the pressing request of Mr. Crawford, I have considered it my duty to forward the accompanying appeal of that gentleman addressed to your Lordship in support of his original claim to a grant of land, although I do not perceive any fresh reasons added for altering the decision already given upon it by Your Lordship's predecessor.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

MR. R. CRAWFORD TO EARL GREY.

My Lord,

New South Wales, Hillend, 25th June, 1847.

I beg leave most respectfully to state that I have been resident in this Colony, as an Emigrant Settler, for the long period of twenty Six Years.

A question having been raised, under the late Government of Sir George Gipps, as to my title to a Deed of Grant without purchase of an Estate of Six thousand Acres of Land at "Elalang," in the County of Northumberland, of which I have now held peaceable possession upwards of twentyone years, my claim was eventually submitted to one of your Lordship's Predecessors, Lord Stanley, by a Memorial from myself dated 15 September, 1843, forwarded by Sir George Gipps along with his Report on the case. Lord Stanley's decision, communicated to the late Governor by a Despatch bearing date 17 May, 1844, No. 78, was unfavorable to my claim to a Grant without purchase, but authorised a completion of my title upon my paying the original minimum price of five Shillings an acre, with a reasonable indulgence as to time.

The ground of His Lordship's decision would appear to be comprised in the following paragraph of his Despatch:—

"I cannot recognise Mr. Crawford's claim to the confirmation of the Grant: and whatever error may have been committed on the part of the Surveyor General, I consider the internal evidence conclusive of the fact that Sir Thomas Brisbane had not the intention, as he certainly had not the power, than do more than grant to Mr. Crawford and his Brother permission to purchase the land in question."
My Lord, I feel so strongly dissatisfied with Lord Stanley's decision, firmly believing it to be contrary to the Evidence adduced in my Memorial, that under any circumstances I should have sought the indulgence of being permitted to lay my case before his successor in the Colonial Department; but a new fact having come to my knowledge, since that Memorial was sent home, I have a twofold reason for asking that indulgence. Having accordingly obtained the requisite permission from His Excellency Sir Charles A. Fitz Roy, I have earnestly to entreat that your Lordship will do me the favor to peruse the aforesaid Memorial, and to give a candid consideration to its several averments and proofs.

The new fact to which I have just adverted is this:

In paragraph 13, Sections 1 and 2 of my Memorial to Lord Stanley, I appeal, in support of my claim, to the distinctive terms of the Certificate of possession which I had received from the Surveyor General, and which differed in the essential particulars, therein pointed out, from the terms of Certificates issued to purchasers of Crown Lands; and, in a letter to the Honorable the Colonial Secretary, dated 29 May, 1843, I called the attention of Sir George Gipps to the usage with regard to such Certificate in the following passage:

"The printed Certificates to Grantees without purchase were usually surrendered at the Colonial Secretary's Office, upon the holders receiving an order for Six Months' Rations from the Commissariat Store; whereupon they entered into a Bond, which compelled them to take an Assigned Convict Servant, and at the same time entitled them to receive a Cow from the Government Herds for every 100 acres granted. These certificates and Bonds are still in existence, and are to be found in the Record Room in your Office."

I have recently ascertained, My Lord, that the important documents above appealed to, upon being called for by Sir George Gipps prior to his reporting to Lord Stanley, were not to be found; and I naturally infer that this circumstance, being a serious flaw in the proofs of my case, must have operated greatly to my prejudice upon the mind of the late Governor, and upon the Spirit of his report to the Noble and Right Honorable Secretary.

On being made acquainted with this circumstance, Still feeling confident in the accuracy of my representation, I procured leave to assist in a further search amongst the papers in the Colonial Secretary's Office; and the result was completely successful, the missing documents* being then brought to light.

I have therefore humbly to pray that, of this new confirmation of my original Statement, your Lordship will be pleased to give me the full benefit.

Respecting Lord Stanley's remark that Sir Thomas Brisbane had neither the "intention" nor the "power" to grant the land in question without purchase, I would respectfully submit to your Lordship,

First, That Sir Thomas's intention must be gathered from his Acts, as shown in the proofs I have adduced, and has moreover been placed beyond all doubt by his own assurance in a letter to myself.

* Marginal note.—Vide attested Copies hereto Appended.
Secondly. That whatever might be the nature of Sir Thomas's unpublished instructions, of which the Public could of course know nothing, the Colonists were bound to believe that his Official Acts were not performed without due Authority; and I presume that, under the circumstances, the Crown like any other principal was bound in its relation to third parties by the Acts of its Agent.

Committing my case into your Lordship's hands, with a firm reliance that Your Lordship's decision will be such as to Your Lordship shall seem to be required by equity and good conscience,

I have, &c.,

[Sub-enclosure No. 1.] ROB. CRAWFORD.

EXTRACT from Sir Thomas Brisbane's Letter addressed to Mr. Crawford.

"I RECEIVED your first letter the beginning of the month and immediately wrote to Lord Stanley in as strong language as I could use to represent the hardship of your case, and that your Grant given by me should not be disturbed but confirmed; from the want of some registry that had been neglected in consequence of the long illness of Mr. Oxley, That I considered your Grant as good and as valid as any Grant given by me."

[Sub-enclosure No. 2.]

FORM OF CERTIFICATE.

This is to Certify, that in the actual Occupation and Possession of Acres of Land, situated in the District of and County of the same being Located to under Authority of a Warrant from His Excellency, Surveyor General's Office.

I CERTIFY that the above is the form of Certificate given during the Administration of Sir Thomas Brisbane to Grantees of Land without purchase, as appears by the records of this office. E. DEAS THOMSON, Colonial Secretary.

Colonial Secretary's Office, Sydney, 16th April, 1847.

[Sub-enclosure No. 3.]

COLONIAL SECRETARY GOULBURN TO DEP. COMMISSARY-GENL. WEMYSS.

Sir, Colonial Secretary's Office, 182—.

I have the honor to request that Mr. and the Convict Servants named on the Margin may be victualled from His Majesty's store at tualling order for Six months from this date. I have, &c, to grantees.

William Wemyss, Esqr., Deputy Commissary General.

I HEREBY certify that the above is the form of victualling order in favor of Grantees, issued during the administration of Sir Thomas Brisbane, as appears by the records in this office. E. DEAS THOMSON, Colonial Secretary.

Colonial Secretary's Office, Sydney, 16th April, 1847.

[Sub-enclosure No. 4.]

[This was the form of bond entered into by grantees during the administration of Sir Thomas Brisbane.]

[Sub-enclosure No. 5.]

MR. W. CARTER TO COLONIAL SECRETARY THOMSON.

Sir, Registrar General's Office, Sydney, 9th June, 1845.

I had the honor to receive your letter dated 6th inst., requesting that I Search for would cause the necessary search to be made for the purpose of ascertaining the mortgages on names of the Mortgagors of the Land referred to in your letter; and have now the land, honor to state, that I have caused the search to be made, and enclose a list of the several Mortgages affecting the Land in question; at the same time you will allow me to remark that such Searches form no part of the regular business of this office. Such Search should I presume have been made by the Civil Crown Solicitor. I have too few Clerks to perform the regular business of this Office.

I have, &c.,

WILLIAM CARTER, Registrar General.
HISTORICAL RECORDS OF AUSTRALIA.

[Sub-enclosure No. 6.]

Abstract of Search Since 1825 for Incumbrances in the names of Robert and Thomas Crawford on Lands at Ellalong, County of Northumberland.

No. 561, Book D.—Mortgage, dated 28 July, 1831, Robert Crawford to James Brindley Bettington to secure £218 4s. 7d. of all that piece or parcel of Land Contg. 3,000 Acres situate and being in the County of Northumberland bounded on the W. by John Martin's farm of 400 acres, on the E. by vacant Land and Government reserve, and on the S. by Thomas Crawford's farm of 3,000 acres.

No. 713, Book M.—Surrender of Mortg. dated 23 Augt., 1833, James B. Bettington to Robert Crawford (same land as above described) consideration £384 10s. 11d. being surrender of Mortg. from Robert Crawford to James B. Bettington, dated 28th July, 1831, registered No. 561, Book D.

No. 564, Book F.—Mortgage, dated 18th Sept., 1833, Robert Crawford to James Mitchell to secure £200 of same premises as first above described called by the name of Ellalong and granted by the Crown to Robert Crawford.

No. 187, Book H.—Surrender of Mortgage, dated 8 April, 1835, James Mitchell to Robert Crawford, same Land as described in Mortgage to James Mitchell cons'on £201 4s.

No. 309, Book H.—Mortgage, dated 9th April, 1835, Robert Crawford and wife to Robert Campbell, Sen., Robert Campbell, Junr., James Mitchell and William C. Wentworth to secure £1,600 inter alia same land as first above described in mortgage to James Bettington.

No. 809, Book N.—Mortgage, dated 23 October, 1838, Robert Crawford to Robert Scott to secure £700 of the same premises as first above described.

No. 225, Book S.—Conveyance, dated 2nd Novr., 1843, Thomas Crawford to Robert Crawford in consideration of £1,000 of all those 3,000 Acres called Ellalong, situate in the Parish of Ellalong in the District of Wollombi and County of Northumberland, bounded on the E. by Govt. Land, on the W. by Haydon's Grant, on the S. by Thomas Crawford's primary Grant of 2,000 a. called "Brown Muir," and on the N. by the Ellalong Estate.

No. 320, Book 5.—Mortgage, dated 14 Novr., 1843, Robert Crawford to Robert Campbell, Sen., Robert Campbell, Junr., James Mitchell and William C. Wentworth to secure £4,000 inter alia same Land as described in Mortgage to James B. Bettington first before described and same land as described in conveyance from Thomas Crawford to Robert Crawford lastly above described.

[Sub-enclosure No. 7.]

MEMO. J. NORTON TO MR. R. CRAWFORD.

Sir,

For a considerable period after the establishment of the Colony, Grants of land were made to parties on a personal application to the Governor, and were by him notified to the Surveyor General, and no entry of the order was made, except in the Office of the Surveyor General, where the situation and measurement of the land were recorded.

As the Colony increased, an unavoidable delay occurred in the measurement of lands which were selected at a remote distance from the Seat of Government; and, as these lands frequently became the subject of testamentary or other disposition before the actual issue of the deed of Grant, so much inconvenience was felt from this irregular course that it became the practice of the Governor to issue a written order or Warrant for the Grant, which was at once filed or recorded in the Surveyor General's Office, and the intended Grantee, on notifying to the Surveyor General the selection he had made, was allowed to occupy the land and received a certificate in the following form:—

"This is to Certify that acres of land situated in the Parish of County of , the same being located to him under Authority of a warrant from His Excellency Sir Thomas Brisbane, K.C.B., dated ."

"Surveyor General's Office, 18—" "J. OXLEY, Surveyor General."
to be pledged for the issue of a Grant of the fee simple of the land to the party who received the promise and to his heirs and assigns. Mortgages and Sales were universally made of such lands without waiting for the completion of the Grant.

In the course of time, such transfers became so numerous and the Government found so much difficulty in determining the rights of the Claimants, that a Commission, denominated the Land Court, was established to ascertain the real owners of such lands, and to enable the Crown to issue the Grant in the name of the proper party. This Court is still in operation.

During the administration of Sir Thomas Brisbane, it was proposed by the Government, in order to meet the increasing wants of the Graziers, to sell Crown Lands at 5s. an acre, the purchasers of which were to pay £10 per Cent. on the selection of the land and the remainder at certain periods named by the Government. Under the regulations made to carry out this scheme, very extensive purchases were made. The purchasers of these lands, instead of the Certificate above copied, obtained from the Surveyor General a receipt in the following form:

"Received from the sum of £10 per Cent. on & for the purchase of acres of land in the Township of and County of Pursuant to a Warrant from His Excellency the Governor dated. "J. OXLEY, Surveyor General."

I was aware of your purchase under the last mentioned regulations of 6,000 acres of land at a place known by the native name of Elalong, and also that from some cause the Governor was pleased to remit the purchase money and convert the land purchase money into a free Grant, I presumed in consideration of your Services in the Office of the Colonial Secretary.

I believe there are several cases in which such remission was made; one of them came immediately under my notice, it was that of the late Surveyor General, Mr. Oxley, who has purchased 5,000 acres of land and had paid the deposit money of £10 per Cent.; this purchase was by order of the Home Government after the death of Mr. Oxley converted into a free Grant to his widow and family, and the deposit money repaid out of the Colonial Treasury to me as the Executor of his Will.

I am, &c.,

J. NORTON.

[Sub-enclosure No. 8.]

CERTIFICATE BY MR. T. RYAN.

Principal Superintendent of Convicts' Office,

Sydney, 29th March, 1847.

To Certify that, in the Year 1817, I entered the Office of the Colonial Secretary and continued therein until transferred to this Office in the Year 1828. That a considerable portion of my time in the Secretarial department was devoted to the preparation of Deeds of Grant and leases of Town Allotments, and from my long experience I am perfectly conversant with the mode and practice of Alienating Crown lands during the Administration of the various Governors. About the year 1822, when the granting of Lands in large portions became more frequent, a printed form of Certificate was adopted; that form is precisely the same as the one issued to Mr. Crawford. On the production of this Certificate at the Office of the Colonial Secretary, the holder received an Order for Six Months' rations from the Commissariat Store for himself and family and a proportionate number of Convicts according to the extent of his Grant; he also entered into a Bond to take and maintain a Convict Assigned Servant for every One hundred Acres his Grant contained, and received as an indulgence a Cow from the Government Herds for every hundred Acres so granted.

I also certify that Mr. Philip Cavenagh conducted the correspondence of the Surveyor General's Office, and had the general management and control of the Department during the long illness of Mr. Oxley, the Surveyor General. And lastly I certify that the printed Certificate of possession was invariably considered equivalent to a Deed of Grant, as many conveyances and Mortgages were made on the validity of that document.

THOMAS RYAN, Chief Clerk.

[Sub-enclosure No. 9.]

RECEIPT.

Surveyor General's Office, 16 December, 1826.

RECEIVED from James Norton, Esq., the Sum of One hundred pounds Sterling, being Receipt for the Amount of the deposit of £10 per Cent. on £1,000 for the Purchase of Four thousand Acres of Land, in the Township of and County of Pursuant to a Warrant from His Excellency the Governor, Dated 16th May, 1825. "J. OXLEY, Surveyor Genl.

The above written paper contains a true Copy of an original receipt held by me.

J. Norton.
1847.
26 July.

Despatch acknowledged.

Report by crown law officers transmitted.

[SIR CHARLES FITZROY TO EARL GREY.
(Despatch No. 156, per ship Lima.)

My Lord,

Government House, 26th July, 1847.

Referring to Mr. W. E. Gladstone's Despatch, No. 13 of 8th January, 1846, transmitting to my predecessor a paper which he had received from Mr. C. A. Tulk, containing a series of observations by Mr. Gordon as practising Barrister in Sydney, respecting the mode of carrying out in this Colony the provisions of the Act of Parliament (1 Wm. IV, Cap. 22) to enable Courts of Law to order the examination of witnesses.

I have the honor to enclose the Report of the Crown Law Officers of this Government, and the original documents, which were forwarded with Mr. Gladstone's Despatch, to which they have annexed in the form of marginal notes their observations on Mr. Gordon's propositions.

I have, &c.

CHS. A. FITZROY.

[Enclosures.]

[Copies of these papers are not available.]

27 July.

Official answer refused to despatch.

SIR CHARLES FITZROY TO EARL GREY.

(A private despatch, per ship Louisa.)

Sir,

Colonial Office, 27 July, '47.

I think it right to inform you that I shall return no official answer to your despatch, No. 39 of the 17th of February last, not because I disapprove of the course which you took under the circumstances there described, but because I think it would establish an inconvenient precedent, were I officially to recognize the propriety of even a temporary suppression by the Governor of a Colony of an Order made by Her Majesty in Council under any circumstances whatever. It being obvious, however, that a mistake in point of form had been committed in this office, and that, by the measure you adopted, you in reality carried into effect the object of the instructions conveyed to you, which by a more literal obedience to them wd. have been defeated, I have no hesitation in thus privately informing you that you have acted judiciously.

I have, &c.

GREY.

[SIR CHARLES FITZROY TO EARL GREY.
(Despatch No. 157, per ship Lima.)

My Lord,

Government House, 27th July, 1847.

With reference to my Despatch, No. 126 of the 20th ultimo, reporting that I had given the necessary directions for
carrying into effect your Lordship's instructions respecting the payment of the Salaries of Mr. Barnes and the other Offices of Her Majesty's Customs while employed at Sydney on special service, I have the honor to inform your Lordship that I have since received a communication from the Lieutenant Governor of Van Diemen's Land, stating that Mr. Barnes had proceeded to England, and suggesting that the arrangement, under which the payments are to be made under the instructions contained in Your Lordship's Despatch, No. 80 of the 24th December last, will be difficult to be carried out, as the Officers alluded to have received their full Salaries in Van Diemen's Land. I, therefore, do myself the honor to state that, under the proposal of Sir William Denison, I have deemed it my duty to accede to a slight alteration in the mode of payment directed by Your Lordship, by ordering the sum claimed, viz., £525 5s., to be remitted direct to the Government of Van Diemen's Land, instead of paying the amount to Mr. Barnes and the Officers who accompanied him to New South Wales.

I have, &c.,

CHS. A. FITZ ROY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 195, per ship Louisa.)

Sir,

Downing Street, 28th July, 1847.

I have referred to the Secretary of State for the Home Department your Despatch No. 41 of the 19th of February last, with its enclosures, relative to an application which had been addressed to the Principal Superintendent of Convicts by George Jenkins, one of the Pentonville Exiles, who prays that the benefit of the Regulation, recently promulgated in the Colony respecting the extension of the terms of Conditional Pardons then in existence, may be conceded to himself and others similarly situated.

Sir George Grey has now transmitted to me the accompanying Pardon, which Her Majesty has been graciously pleased to extend to the Individuals in question, upon condition of their not returning to the United Kingdom during the residue of their respective terms of Transportation; and I have to desire that you will take the necessary measures for securing to them the benefit thereof.

I have, &c.,

GREY.

[Enclosure.]  
[A copy of this pardon is not available.]
Sir Charles Fitz Roy to Earl Grey.
(Despatch No. 158, per ship Lima.)

My Lord,

Government House, 28th July, 1847.

In compliance with the instructions conveyed in Your Lordship's Circular Despatch of the 24th August, 1846, I do myself the honor to transmit herewith the Return required by an Address of the House of Commons, dated the 12th of the same month, of the receipt and appropriation of Fees in the Public Offices of New South Wales during the years 1844 and 1845.

I have, &c.,

CHS. A. Fitz Roy.

[Enclosure.]

This paper was printed in the papers of the house of commons.

Earl Grey to Sir Charles Fitz Roy.
(Despatch No. 196, per ship Louisa.)

Sir,

Downing Street, 29th July, 1847.

It has been intimated to me by Mrs. Chisholm, of whose benevolent exertions you are no doubt well aware, that there are many of the Settlers in New South Wales, who, having prospered in the Colony, are exceedingly desirous of applying a part of their Savings in assisting their friends and relations, whom they have left in this country, to join them in the Colony, and share in the advantages which they themselves enjoy; but who are prevented from so doing by the difficulty of securing the safe remittance of the necessary Funds, and their application to the intended purpose.

I consider it of the greatest possible importance to adopt means for obviating that difficulty, and for affording the utmost practicable facility to those who, having already emigrated, wish to devote a portion of their earnings to so commendable a purpose. From Emigrants who have gone to the British Colonies in North America and to the United States, remittances are now received to a very large amount for a similar object; and it is supposed that, in the last year, no less a sum than £200,000 has been sent by them to this Country for the purpose of assisting their friends to emigrate. By means of the Canada Company and various banking Establishments, such remittances are made from that Quarter with ease and safety; and, though the practice has only begun within a comparatively short period, it has already become general, and the remittances have reached the very large amount which I have mentioned, the result being to give a most powerful encouragement to an emigration of the most healthy
GREY TO FITZ ROY. 687

description. The hope of saving money for that purpose is found to act as a stimulus to industry and economy on the part of the Emigrants, while the fact that those, whom they have known to have gone from this Country with no property but their labour, are able in a few years to make such remittances to their friends at home, is the most convincing proof to them of the advantages of Emigration, and tends to diffuse a general desire for emigration amongst the most active and enterprising of the labouring classes.

I am anxious that Australia should enjoy the same advantages in this respect as North America; and I have, therefore, to desire that measures may be adopted for enabling all persons in Australia, who may wish to remit money to friends in the United Kingdom for this purpose, to pay to some Officers of the Government, appointed for that object, any sums which they are desirous of so applying, giving at the same time the names and addresses of the persons at home, for whose benefit the money is to be expended. It will be requisite to consider very carefully who are to be the persons appointed to receive money so paid, and under what regulations, remembering that the facility of making payments, by having persons authorized to receive them in the greatest possible number of places, is an important consideration, as well as the establishment of efficient securities against abuse. You will, therefore, consult your Executive Council upon this subject, and report to me the arrangement which you may eventually decide to adopt. The sums of money, received by the persons appointed for that purpose in the different districts of the Colony, will be forwarded by them to Sydney, together with a list of the names and addresses of the parties in the Colony by whom the payments have been made, and of those in this Country for whose benefit the money is to be applied; and you will then direct the whole amount of such receipts to be paid into the Military Chest, and will forward to me Certificates of the payments so made, together with copies of the lists. When these documents shall have been received in this Country, the Lords Commissioners of the Treasury will place to the Credit of the Land and Emigration Commissioners a sum equal to that paid into the Military Chest, and they will be directed to apply that money in providing passages to the Colony for the parties described in the lists. Any balance, which may remain after defraying the cost of the passages, will either be paid to the intended Emigrants, or returned to those who have made the remittances, according to the directions which may be given by the latter; but, in order to prevent this arrangement being used for the purpose of making remittances unconnected with
Emigration, the Commissioners cannot undertake to make payments of money in this Country to any persons but those for whom they may have provided passages to Australia. It is not necessary in making remittances that the amount sent should in all cases be sufficient to pay the whole cost of the passage of parties proposing to emigrate, since they will probably, in many instances, be enabled themselves to raise in this Country from their own resources, or by the assistance of their friends, a portion of the money required. At the same time, it must be distinctly understood that the Land and Emigration Commissioners will only undertake to apply to the best advantage for the benefit of the parties such sums as may be furnished to them, either by remittances or by contributions in this Country, and not to provide passages in cases where the money placed in their hands is insufficient for that purpose. If the state of the funds in the Colony applicable to emigration should be sufficient to admit of public funds.

Proposed subsidy from public funds.

You will from time to time give public notice in the Colony whether any such grants can be made in aid of private contributions for emigration, and, if so, to what extent; and you will then cause the regulated addition to be made, from the public funds applicable to the purpose, to the contributions received, and the joint amount to be paid into the Military Chest, and signified to the Land and Emigration Commissioners, in the manner I have already described. You will, of course, keep a watchful eye upon the progress of the demands made upon the money set apart for this purpose; and, if there should appear the slightest reason to apprehend that these demands are likely to exceed the means of meeting them, you will at once issue a notice of the discontinuance or reduction of the assistance previously granted, as the case may require. You will also take care that both the sums raised by private contributions, and those added
EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 197, per ship Louisa.)

Sir,

Downing Street, 29th July, 1847.

It has been suggested to me that great advantage would probably arise from the adoption in New South Wales of some measure, which would enable the Depositors of money in the Savings Banks in that Colony to apply the amount of such deposits in purchases of Crown Lands. So far as I can judge, the suggestion is well founded, and the scheme exempt from any legal or technical difficulty.

For example it might, I apprehend, be enacted by the Local Legislature that any Depositor in the Savings Banks might, by a declaration to be made by him for the purpose, render his Deposits returnable in the form of Credits to be allowed to him in the future purchase of Crown Lands, and in that form only. Of all deposits made on such terms, accounts might be kept at the Savings Banks as at present. But any money so deposited might immediately be transferred to the Land Fund, and, until the Depositor was able to effect a purchase of the requisite amount, the Land Fund might, by the authority of the Executive Government, be charged with interest on the Sums so transferred to that Fund. To induce Depositors to prefer this mode of investing their Savings to any other, the rate of Interest so to be charged on the Land fund might be higher by perhaps one per Cent. than the rate allowed by Law on other Deposits. Nor would this be an unreasonable or a gratuitous boon. For, as the money would be applicable without delay to the introduction of Immigrants from this Kingdom, the Public at large would derive from the operation an immediate benefit sufficient to compensate for the cost of thus inducing depositors to devote their money to this object.

If any large number of Depositors should adopt such terms, the accumulated fund would probably become ere long very con­siderable. The effect would be both to enable many of the most diligent and thrifty of the inhabitants to become gradually land­holders in their own right, and to make a great and early addition to the number of the competitors for the wages of manual labour.

I have, &c.,

GREY.
To such Depositors might of course be also held out the same inducement to devote their Savings to the purchase of Crown Lands, which is held out to the Capitalists in general, that is the right of nominating (subject to the sanction of the Colonial Land and Emigration Commissioners) the Emigrants, to the expense of whose voyage to the Colony their Savings should be applied. In the exercise of that right, the Depositors would of course in general nominate their own nearest kindred in this Country; a choice on every account desirable, if such kindred should be of the required ages, and possess the requisite qualifications.

In another despatch of this date, I have given you instructions for adopting an arrangement, by which great facilities will be given to Settlers in New South Wales, who may wish to remit money to assist friends left in this Country to emigrate. The operation of the measure, which I have now suggested, will be greatly assisted by that arrangement.

You will consult the Executive Council of New South Wales on this subject, and you will adopt whatever may appear to them and to yourself the most efficient steps for giving practical effect to these suggestions, bearing of course steadily in mind that, subject to the conditions prescribed by the Constitutional Act for the Government of New South Wales, Her Majesty's Government are bound to retain in their own hands those powers of appropriating the proceeds of the Land Revenues, for the due exercise of which Parliament has rendered them responsible.

I have, &c,

GREY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch marked "Separate," per ship Lima; acknowledged by earl Grey, 24th December, 1847.)

My Lord,

Government House, 29th July, 1847.

The accompanying Address of condolence with Lady Gipps on the death of the late Sir George Gipps* from the District Council of Parramatta has been transmitted to me by the Warden of that District, at whose desire I take the liberty of requesting that Your Lordship will cause it to be forwarded to its destination.

I have, &c,

[Enclosure.]

CHS. A. FITZ ROY.

ADDRESS TO LADY GIPPS.

May it please Your Ladyship,

We, the Warden and Members of the District Council of Parramatta, have felt, in common we believe with the whole body of our Constituents, much grief at the melancholy intelligence of the decease of our late excellent Governor, Sir George Gipps.

* Note 40.
We should not presume to intrude upon Your Ladyship's privacy with this expression of our Sympathy upon the mournful occasion, but that we felt ourselves called upon from a grateful sense of his unwearied zeal, while Governor of this Colony, in promoting its interests, not to suffer the opportunity to pass without placing on record some tribute to the memory of such departed worth.

We beg to assure Your Ladyship of our unfeigned sympathy and condolence with you in your present affliction, and hope that, whilst called upon to endure so painful a dispensation of Providence, it may afford you some consolation to know that the rare and excellent qualities of our late lamented Governor, both in public and private life, have left a deep and lasting impression on the minds of the members of this community.

With every sentiment of respect,

We have, &c.

PATRICK HILL, Warden. M. ANDERSON.

GEORGE OAKES. ISAAC SHEPHERD.

NATHANIEL PEYTON. JAMES PYE.

JAMES BYRNES. JAMES HOWISON.

J. EDROP. GEO. R. NICHOLLS.

Councillors. Councillors.

District Council Chambers, Parramatta, 28th July, 1847.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 198, per ship Louisa.)

Sir, Downing Street, 30th July, 1847.

I herewith transmit to you the copy of a Letter, addressed to me by Lady Dowling, the Widow of the late Chief Justice of New South Wales, in which she requests that her Pension may take effect from the date of her Husband's death, instead of from the date at which it was granted to her by the Legislative Council.

I likewise enclose a copy of the answer, which I directed to be returned to that application; and I have to desire that you will lose no time in bringing Lady Dowling's application under the notice of the Council, conveying my recommendation that, under all the circumstances, it may be taken into their favorable consideration.

I have, &c.,

[Enclosure No. 1.]

GREY.

DAME HARRIOTT DOWLING TO EARL GREY.

No. 12, Park village East.

My Lord, Regent's Park, 15 July, 1847.

In requesting Your Lordship's attention to the Appeal which necessity forces me to submit to Your Lordship, as Chief Secretary of the Colonial Department, I am persuaded it will meet with Your Lordship's prompt and kind consideration. Aware of the value of your Lordship's time, I shall be as brief as possible in the detail of facts on which my application is founded.

I am the widow of the late Sir James Dowling, who held the Offices of Second Judge and Chief Justice of New South Wales for a period of 17 years. For the manner in which he discharged the
duties of those Offices, I need only refer to the records of your
Lordship's Department and to the high distinctions which were
conferred upon him by Her Most Gracious Majesty.

Were it necessary, I could add to these the testimony not only of
the Governors under whom Sir James Dowling acted in New South
Wales, of the Legislative Assembly, and of every Official of the
Government, but I might say of every human being of whatever
rank or class with whom, publicly or privately, he came in contact
throughout his long and alas too laborious career.

To recapitulate to you the evidence on which these assertions
are made, however gratifying to my heart, would be to Your Lord­
sip tiresome, and yet they form the justification for humbly
requiring at your hands the Act of justice I now claim.

In the year 1842, after fifteen years of incessant labour, the
health of my unfortunate husband gave way, and, under the best
medical advice, he sought permission of the Governor, Sir George
Gipps, to return to England for a short time to obtain the advan­
tage of his native air. For reasons into which it is not my present
purpose to enquire, this indulgence was refused, although Judge
Buskin, Sir Francis Forbes, and the Attorney General had received
this favor. The exigency of the Public Service required that Sir
James should not desert his Post; and he cheerfully submitted,
contenting himself with an expensive trip to Van Diemen's Land in
the hope of arresting the progress of disease. On his return from
thence, for two years more, with increased duties and responsibili­
ties, he painfully struggled on, till at last, on the 27th June, 1844,
he was carried from the Judicial Bench in a state of bodily exhaus­
tion. His Medical Attendants at once pronounced his return to
duty beyond his physical powers, and prescribed a temporary visit
to Europe as the only chance of saving his valuable life. The joint
certificate of all the faculty of Sydney to this effect at length
obtained for him the desired boon. His passage was taken for
England, his Cabin furnished, and his afflicted family and myself
yet hoped he might be restored to Convalescence. If the sym­
pathies of all classes could have afforded him consolation in his
suffering, they were indeed unlimited; and not the least gratifying
was a resolution adopted by the Legislative Council recommending,
in consideration of his acknowledged merit and overwhelming
labour, that he should have his full salary (£2,000 pr. annum)
during his 2 years' absence, with an advance of £1,000 towards
defraying his expenses to England.

I will not obtrude on Your Lordship details of the numerous
testimonies of kindly feeling which followed. I must hasten to
the fatal blight to the prospective happiness of myself and his
children. On the 27th of September on the very eve of embarka­
tion, my unhappy husband breathed his last, universally admitted
the victim of over-exertion in the conscientious discharge of his
public duties.

I might enlarge on this melancholy topic but all I could say. I
have no doubt will anticipated by Your Lordship. The limited
Salary of my husband, the incessant and promptly met calls on
his benevolence, his large family, the unavoidable expense of edu­
cating his children (one Son in England, since called to the Bar)
is a sufficient reason for his dying in poverty.

In fact his effects were barely sufficient to pay his debts, and
his afflicted widow was left penniless. I sought a pension and
memorialized the Right Honble. Lord Stanley, your Lordship's
predecessor, and was honored with his approval of the justice of my claim. The question was however referred to the Legislative Assembly in New South Wales with his Lordship's sanction; but it was not till 15 months after my bereavement that a grant of £200 a year was made, and then only from the day on which the resolution was adopted. From the hour of my husband's death till that day, a period during which I had to incur debts and obligations for my very existence, my distresses were left unconsidered; and, although £4,000 had been saved to the Colony, as I have already stated (voted by the Legislative Assembly for my husband's use during his two years' leave of absence), this did not plead in my favor, and his salary was calculated and only paid to the hour of his death.

I have already trespassed too long on your Lordship's time; and I now come with confidence to the humble prayer of this letter. which is that your Lordship will be pleased to give directions that I may receive the amount of my pension from the day of my husband's death to that on which it was granted by the Legislative Assembly. The amount is trifling, £250; but to me it is of serious import, reduced as I am in circumstances, and one half at least of my last year's pension having been expended in my passage to this Country, whither I have come in search, among my friends and my husband's relatives, of the only consolation left to the bereaved Widow of a man, whose life I humbly but truthfully repeat has been devoted for a period of seventeen years to, and at last sacrificed in the public Service. I have, &c.

HARRIOTT MARY DOWLING.

[Enclosure No. 2.] UNDER SECRETARY HAWES TO DAME HARRIOTT DOWLING.

Madam,

Downing Street, 30th July, 1847.

I am directed by Earl Grey to acknowledge the receipt of your letter of the 15th Instant, requesting that your pension may be allowed to take effect from the period of your husband's death instead of from the date, at which the Resolution of the Legislative Council of New South Wales granting it to you was adopted.

Lord Grey desires me to acquaint you that it is wholly out of his power to give any directions for the accomplishment of the object you have in view. Lord Grey will be happy, however, to transmit a copy of your present application to the Governor of the Colony with instructions him to bring the subject under the notice of the Council, together with His Lordship's recommendation that it should be favorably considered by that Body.

I am to add the expression of his Lordship's regret that he can render you no further assistance in the matter. I have, &c.,

B. HAWES.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 159, per ship Lima.)

My Lord,

Government House, 30th July, 1847.

In pursuance of the instructions contained in Your Lordship's Despatch of the 30th Novr. last, marked "Separate," I do myself the honor to inform you that I have given directions for
the sum of £45 2s. to be paid to the Deputy Commissary General from the Colonial Treasury, in order that that amount may be paid to Mr. Smith, the Chief Clerk of Your Lordship's Office, being the amount of Fees and Stamp duties on four Warrants under the Royal sign Manual, authorising Letters Patent to be passed under the Public Seal of the Colony, appointing Mr. Roger Therry and Mr. W. a'Beckett 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 Courts of Quarter Sessions. These gentlemen have paid into the Colonial Treasury each the sum of £11 5s. 6d.; and I have to beg of your Lordship to cause the whole sum of £45 2s. to be issued to Mr. Barnard from the British Treasury to enable him to pay the amount to Mr. Smith.

I have, &c.,

CHS. A. FITZ ROY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 200, per ship Louisa; acknowledged by Sir Charles Fitz Roy, 8th January, 1848.)

Sir,
Downing Street, 31st July, 1847.

I have laid before The Queen the Acts passed by the Legislature of New South Wales during the second session of the year 1846, the transcripts of which accompanied Your Despatch to me, No. 10 of the 9th of January last.

I subjoin a Schedule of the Titles, Dates and numbers of those Acts.

The Act No. 2 amends the Act for regulating the Sale and delivery of Coal in Sydney (9 Vic., No. 8) imposing certain penalties to be recovered as provided by that Act. In my Despatch, No. 11 of the 6th of August last, I have objected to the terms of that Act, on the ground that it reserved these penalties to the Colonial Treasury and not to The Queen, and you were directed to suggest to the Legislative Council the propriety of amending it.

Until, therefore, I shall have been apprised of the result of that recommendation, Her Majesty's decision on the Act (No. 2) will be suspended. I would at the same time remind you that, as it will not be in my power to advise Her Majesty to allow the Act (No. 8 of the 9th Victoria) unless it shall be amended, it will be necessary, under the 32nd clause of the Constitutional Act, that an Order in Council should be passed for that purpose before the 7th of May next. It will, therefore, be your duty to report to me, with the least practicable delay, the steps which may have been taken by the Legislature in consequence of my Despatch of the 6th of August.
The Acts, Nos. 4 and 5, which suspend the operation of the Acts incorporating Melbourne and Sydney, so far as they relate to levying Police Rates in those Towns, Her Majesty has been pleased to leave to their operation.

The Act No. 13, which regulates the warehousing and exportation of Spirits free of Duty, together with the private Act for enabling Mr. and Mrs. H. Bobart to lease some Mineral Lands, are still under the consideration of Her Majesty's Government.

The Acts Nos. 15 and 16 will also form the subject of a future communication.

Subject to the exceptions already mentioned, Her Majesty is pleased to confirm and allow all the Acts enumerated in the annexed Schedule No. 2.

I have, &c.,

Grey.

[Enclosure.]

This was a list of the titles of the acts, numbered 1 to 17 in Schedule of acts.

An Act to amend an act to enable "The Commercial Banking Company of Sydney" to sue and be sued in the name of the Managing Director for the time being of the said Company, and for other purposes therein mentioned.

Assented to 30th October, 1846.

An Act to enable the Reverend Henry Hodgkinson Bobart, of Parramatta, in the County of Cumberland, Clerk, and Elizabeth Mary, his Wife (late Elizabeth Mary Marsden, Spinster) and the survivor of them, and their Trustees, to grant Leases of Land situate on the Molong River, in the County of Wellington.

Assented to 30th October, 1846.

Earl Grey to Sir Charles Fitz Roy.

(Despatch No. 201, per ship Louisa.)

Sir,

Downing Street, 31 July, 1847.

In fulfilment of the design intimated to you in my Despatch of this day's date, No. 200, I now proceed to signify to you Her Majesty's Pleasure respecting an Act, and two reserved Bills, of the 2nd Session of the Legislature of New South Wales for the year 1846.

The Act No. 12 of that Session is the annual appropriation Act. In my Despatch of the 30th of April last, No. 145, I intimated to you the probable disallowance of that Act, if it should be found to contain any appropriation by the authority of the Local Legislature of any part of the Civil List Funds. I am happy to find that this is not the case, and that in that respect the Act is unobjectionable.

But I find, among the Grants in this Act, a sum of £1,000 "to cover an allowance to the Honorable Francis Scott at the rate of
£500 per annum for the years 1845 and 1846.” This is a very embarrassing provision. If the Queen should be advised to sanction the Act which contains it, Her Majesty would be unequivocally, though indirectly, concurring in a measure to which, in his Despatch of the 1st September, 1845, Lord Stanley objected, as involving a serious infringement of the constitution of the Colony. If an Act retrospectively authorizing such an encroachment should be confirmed by The Queen, an insuperable obstacle would be raised to any effectual resistance in future to proceedings of the same kind.

The assumed right of the Legislative Council to appoint a Committee, the powers of which would survive a prorogation and even a dissolution, would be distinctly recognized; and no doubt can be entertained that many other such Committees would then be appointed to exercise the same unconstitutional privilege. It is a claim which must be resisted decisively and from the commencement.

As however this part of the Act will be obsolete before the time at which the disallowance of it could reach the Colony, it seems superfluous to adopt that measure; and of course it is a measure to be deprecated and avoided if possible.

The Queen will, therefore, make no order whatever on the subject of this Act. But I have to desire that you abstain in future from applying to the Legislative Council for any vote of money for this or for any other service, or from accepting any such Vote, when the money may be either asked or granted on such terms as to involve an infringement, whether express or implied, of the terms of the Act of Parliament, from which the Authority of that Body is derived.

You judged rightly that you were not at liberty to assent to the Bill No. 15 for the appointment of Mr. Scott as Agent. That Bill contains in the preamble an express reference to the “Committee of Correspondence” as a Body of which the composition and the powers are already ascertained. For the reasons assigned by Lord Stanley, in his Despatch of the 1st September, 1845, and to which I have already referred, The Queen in Council cannot be advised to assent to this reserved Bill. Her Majesty will be ready to give Her assent to any Bill for the appointment of Mr. Scott, or of any other proper person as an Agent, if the Bill shall provide for the introduction into the Committee of correspondence of a reasonable proportion of the non-elected members of the Legislature; and if the powers of that Committee shall be expressly limited to the duration of the Session.

You also judged rightly in reserving for the signification of Her Majesty’s Pleasure the Bill No. 16 to render certain persons
incapable of being elected as Members of the Legislative Council. I think it needless to enquire how far the local Legislature possesses the right to make such a Law; since, even if the right were admitted, I should dissent from the wisdom or propriety of such an exercise of it. The result of the Bill is to render the Colonial Secretary, the Attorney General, the Solicitor General, the Treasurer and the Auditor General ineligible as representatives of the People. It is therefore in direct conflict with the maxim and habit of the British Constitution, which permit the same persons to serve the Crown in the higher Offices of the Executive Government, and to represent the People in the Legislature, and must therefore tend to obstruct the reconcilement and harmony between the Royal and the popular powers, in which the strength and security of both is so deeply involved.

It is indeed maintained in defence of this Enactment that in no other Legislature but that of New South Wales are the nominees of The Crown and the representatives of the people united together as Members of the same House or chamber. The statement is not quite accurate, for Guiana and Newfoundland are examples of such an union. But, waving those precedents, it may be answered that if the elected and the nominated Members constituted different Houses in New South Wales as elsewhere, the right of The Crown to nominate all the Members of one branch of the Legislature, and the eligibility of the Chief Officers of The Crown as Members of the other branch of the Legislature must co-exist. The analogy therefore requires that this power of nomination by The Crown, and this eligibility of the Crown Officers should also be maintained when the two Houses are combined into one. If any constituent Body in New South Wales shall be of opinion that they will be better represented in the Local Legislature by some of the high Officers I have mentioned than by any other candidates, I am aware of no good reason why that freedom of choice should be restrained, or why the elective franchise should be thus narrowed.

For these reasons, Her Majesty in Council will not be advised to consent to this Bill. I have, &c.,

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EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 202, per ship Louisa.)

Sir,

Downing Street, 31 July, 1847.

I transmit to you, herewith, a series of reports relating to the project of constructing a Railway from Halifax to Quebec. At page 59 of the enclosed reports, you will perceive one addressed to The Governor of New Brunswick by Mr. J. Wilkinson, a Member of the Surveyor General's Department in that
Construction of wooden railways.

I wish to call your attention to that Report, and to point out to you the great importance of establishing such means of communication at the earliest possible period within the Colony under your Government.

I have, &c.,
GREY.

[Enclosure.]

[This was an octavo pamphlet of one hundred and twenty-seven pages, entitled, "Reports relating to the Project of Constructing a Railway and a line of Electro-Magnetic Telegraph through the Province of New Brunswick from Halifax to Quebec.”]

Earl Grey to Sir Charles Fitz Roy.
(Despatch No. 203, per ship Louisa.)

Sir, Downing Street, 31st July, 1847.

The long delay which has occurred in communicating to you the decision of Her Majesty's Government on the question of the erection of the Port Phillip District of New South Wales into a separate Colony, under a distinct Government, has been occasioned by the magnitude of the interests at stake, and by the necessity of proceeding with the utmost deliberation in a case in which any material error might involve consequences of such grave inconvenience. An additional motive for delay has arisen from the nature of the business, alike urgent and momentous, which has chiefly occupied the attention of Parliament during their recent Session. Under pressure of such exigencies as the failure of a large part of the usual produce of the soil in the United Kingdom had produced, Her Majesty's Government could scarcely hope that the attention of the Legislature could be devoted to the reconstruction of the political institutions of Australia with the care requisite for the safe accomplishment of such a measure; nor can I altogether regard this as undesirable on other grounds. It has afforded, and will yet afford, to Her Majesty's Government the opportunity and the means of framing the Bill to be submitted to Parliament with more circumspection, and (as I trust) with greater accuracy than might otherwise have been attainable.

In the year 1846, six Despatches were addressed to this Office by Sir George Gipps and by yourself on this subject. They were dated on the 23rd January, the 29th April, the 21st and the 24th of June, and the 29th of September in that year. Of these, the first was marked "confidential," the others were numbered

Delay in decision for erection of separate colony in Port Phillip district.

Despatches on problems re separate colony.
respectively 90, 91, 122, 125, and 23. Of these, however, the Despatch No. 91 relates principally to a question of boundaries; and the Despatch No. 23 has chiefly in view the commercial relations between the Australian Colonies. Each of them, however, has an incidental and an important bearing on the subject of the erection of Port Phillip into a separate Government. It is therefore most convenient that I should acknowledge and answer the whole of the series together.

The Despatch, dated the 29th April, 1846, No. 90, and the voluminous annexures attached to it, may be considered as having exhausted the arguments for and against the separation of the Port Phillip District from the rest of the Colony of New South Wales, so far as those arguments are drawn from facts or consideration of a local nature. It would be vain to expect from any other body of persons, to whom the enquiry could be referred, a review of those arguments, more complete, more dispassionate, or conducted with greater ability than is the discussion comprised in the various minutes of the Executive Council of New South Wales, of the 1st and 23rd April, 1846, and in the appendices subjoined to those minutes. As it would be impossible for me to exhibit a more clear or comprehensive summary of the whole controversy than is to be found in those minutes and appendices, it will be sufficient for me to state that, adopting in general the reasonings of Sir George Gipps, and of the majority of the Executive Council, Her Majesty's Government have submitted to the Queen their opinion, that Parliament should be recommended to impart to Her Majesty the authority necessary for carrying into effect the practical conclusion of that majority.

I am far from being insensible to the weight of the opposing considerations, or of the authority they derive from the suffrages of the Colonial Treasurer and of the Bishop of Australia in their favor. That Right Reverend Prelate has perceived and pointed out the indissoluble connexion between the secular and ecclesiastical bearings of this question, and has justly felt that the duties of his sacred office imposed on him the obligation of considering it in each of those lights. You will convey to him my thanks for the important aid he has rendered on this occasion to Her Majesty's Government—an aid which I do not value the less, because the objections of the Bishop to the contemplated change do not appear to me to countervail the considerations urged in support of it by the majority of his colleagues in the Executive Council.

Without entering at large into the arrangement, I must yet so far vindicate my own conclusion as to remark, that it rests mainly on the great principle of Colonial Government, which all
Necessity for adoption of principle of local self-government.

Failure of provision for erection of municipal corporations.

1847.
31 July.

Necessity for limitation of principle of local self-government; and for central control of non-local interests.

theory and all experience seem to me to concur in establishing. That principle is, that all affairs of merely local concern should be left to the regulation of the local authorities. To that principle I know of no general exceptions, unless in cases where local interests may clash with the interests of the empire at large, or in cases where some one predominant class of a Colonial society might be disposed to exert such powers so as unjustly to depress some feeble and defenceless class. It was on this general principle that the existing constitution of New South Wales was founded. It is on the same general principle that the proposed qualification of it may be most successfully vindicated.

Local self government, if necessary for the good of the whole Colony, is not less necessary for the good of the several Districts for which it is composed. For this reason it was that Parliament provided for the erection throughout New South Wales of Municipal Corporations, which should, in various respects, balance and keep in check the powers of the Legislative Council. By this method it was supposed that the more remote districts would be able to exercise their fair share of power, and to enjoy their proper influence, in the general policy of the whole Province; but the result has disappointed this expectation. The Municipalities have only a nominal existence. The Legislative Council has absorbed all the other powers of the Colonial State. The principle of self government in the Districts the most remote from Sydney is therefore acted upon almost as imperfectly, as if the conduct of local affairs had remained under the same management and institutions as those which the existing system superseded. Members, it is true, are chosen to represent those Districts in the Legislature; but it is shewn that such of the Inhabitants of Port Phillip as are really qualified for this trust, are unable to undertake it at the expense of abandoning their residences and their pursuits in the Southern Division of the Colony. Thus the Port Phillip representation has become an unreal and illusory, not a substantial enjoyment of Representative Government.

The principle of local self government (like every other political principle) must, when reduced to practice, be qualified by many other principles which must operate simultaneously with it. To regulate such affairs with reference to any one isolated rule or maxim would, of course, be an idle and an ineffectual attempt. For example, it is necessary that while providing for the local management of local interests, we should not omit to provide for a central management of all such interests as are not local. Thus questions co-extensive in their bearing with the limits of the Empire at large are the appropriate
province of Parliament. But there are questions which, though local as it respects the British possessions in Australia collectively, are not merely local as it respects any one of those possessions. Considered as members of the same Empire, those Colonies have many common interests, the regulation of which in some uniform manner, and by some single authority, may be essential to the welfare of them all. Yet in many cases such interests may be more promptly, effectually, and satisfactorily decided by some authority within Australia itself, than by the more remote, the less accessible, and, in truth, the less competent authority of Parliament.

Her Majesty's Government therefore hope, in the next Session of Parliament, to introduce a Bill for the division of New South Wales into two Colonies, the Northern of which would retain its present name, while the Southern Colony would, by Her Majesty's gracious permission, receive the name of the Province of Victoria.

The effect of this alteration would be, to render inevitable some changes in the existing constitution of the Northern Government. When detached from the Southern Districts, the existing system would cease, in many respects, to be appropriate and applicable to its new condition; and there appear, also, to be some particulars, in which the practical operation of the present constitution proves that it might, with advantage, be revised.

One of the most material of these contemplated changes is that which involves a return to the old form of Colonial Constitution. You are aware that in the older British Colonies, the Legislature, as in New South Wales, is generally composed partly of nominees of the Crown, and partly of the representatives of the people, but there is this important difference between the two systems: that in the one case the Legislature is divided into two separate Houses or Chambers; in the other, the representatives of the people and the nominees of the Crown form a single body, under the title of the Legislative Council. It does not appear to me that the practical working of this last system would, by any means, justify the conclusion that it is an improvement upon that which it was formerly the practice to adopt; on the contrary, I see many reasons for believing that the more ancient system, by which every new law was submitted to the separate consideration of two distinct Houses, and required their joint consent for its enactment, was the best calculated to ensure judicious and prudent legislation.

Another very important question will arise as to the means which should be taken in order more effectually to provide for the Municipal Government of the various Towns, Counties, or other
1847.
31 July.
Problem of provision for municipal government.

Boundaries to be determined. I have already observed that it was the intention of Parliament, in establishing the existing constitution of New South Wales, to create local authorities of this description, and although that intention has hitherto been defeated, it is not the opinion of Her Majesty's Government that it ought to be abandoned. The experience of our own country, that of the British Provinces in North America, and also that of the former British Colonies which now constitute the great Republic of the United States, may be said to have conclusively established not merely the great advantages of devolving the management of local affairs upon the inhabitants of districts of moderate size, acting by their representatives, but likewise the converse of this, and that evils of a very serious kind result from committing the exclusive management of the affairs, both general and local, of a whole Province to a central Legislature, unaided and unbalanced by any description of local organization. It follows that, in revising the constitution of New South Wales, it will be necessary to consider what changes ought to be made in the existing law for the creation of municipalities in order to secure to those bodies their just weight and consideration, and especially whether, with that view, they may not be made to bear to the House of Assembly the relation of constituents and representatives.

Some method will also be devised for enabling the various Legislatures of the several Australian Colonies to co-operate with each other in the enactment of such laws as may be necessary for regulating the interests common to those possessions collectively—such for example are the imposition of duties of import and export, the conveyance of letters, and the formation of roads, railways, or other internal communications traversing any two or more of such Colonies.

I will not attempt at the present moment to do more than to indicate the general principles on which it is proposed to legislate. The details will be the subject of further and of very attentive consideration.

That part of the plan, which respects the creation of a central authority,* implies the establishment of the system of Representative Legislation throughout the whole of the Australian Colonies, including Van Diemen's Land, and South and Western Australia; though, in the latter, it will probably be thought right to postpone the operation of the change, until the Colonists shall be prepared to defray the expense of their own Civil Government, without the assistance of an annual Parliamentary Grant.

In giving effect to these intentions, it will be my duty to take the necessary means for adjusting the question respecting the

* Note 49.
boundaries of New South Wales, South Australia, and Western Australia, to which Sir George Gipps refers, in his Despatch of the 29th April, 1846, No. 91.

I shall take the same opportunity of proposing to Parliament to adjust the questions of Territorial Revenue between the two Provinces of New South Wales and Victoria, to which Sir George Gipps refers, in his Despatches of the 21st June, 1846, No. 122, and of the 24th June, 1846, No. 125.

The subject of your own Despatch of the 29th December, 1846, viz. the imposition of discriminating duties in any Australian Colony on goods, the growth, produce, or manufacture of any other Australian Colony, will also be adverted to, and provided for in that part of the contemplated Act of Parliament which will relate to the creation of a central Legislative authority for the whole of the Australian Colonies.

With these general remarks I must for the present dismiss a subject, the importance of which would merit, and may hereafter receive a much more copious examination and discussion. What I have written will, however, I trust, be sufficient to relieve the anxiety of the public mind in New South Wales, respecting arrangements pregnant with results so momentous to that part of Her Majesty's Dominions, and therefore so deeply interesting to every other Member of the widely extended Empire over which Her Majesty reigns. It will be no slight relief to the responsibility of proposing such a change to find myself in possession of the most complete local intelligence, and supported by the opinion of the most eminent local authorities. I need scarcely add, that it will be a source of the highest gratification to me if, under the authority of Parliament, the Colonial Government of Australia can be settled on a basis, on which the Colonists may, under the blessing of Divine Providence, themselves erect Institutions worthy of the Empire to which they belong, and of the people from whom they are descended. I have, &c.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 160, per ship Lima.)

My Lord,


I have the honor to acknowledge the receipt, on the 10th and 28th instant, by the ships "Beulah" and "John Fleming" of your Lordship's Despatches, the numbers of which are specified in the margin. I have, &c.

CHS. A. FITZ ROY.

* Marginal note.—By the "Beulah": Nos. 93 to 101; Circular, 8th and 9th Feby. By the "John Fleming": Nos. 102 to 121; Circular, 20th March.
EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 204, per ship Kelso.)

Sir, Downing Street, 2 August, 1847.

With reference to my Despatch, No. 188 of the 10th Ultimo, intimating the appointment of Mr. Moore to the Office of Superintendent of the Botanical Gardens at Sydney, I transmit to you herewith Copies of a Correspondence with Mr. Moore relative to his Appointment.

I have also to acquaint you that, in consideration of the Circumstance that Mr. Moore has resigned an appointment in this Country, and that he will derive no emolument from his new Office until his arrival in the Colony, and, advertent to the moderate rate of his Salary, I have authorized the Colonial Agent to furnish him with a passage to Sydney. You will propose a Vote to the Legislative Council, in order to make good that Charge; but, if you should experience any difficulty in passing that Vote, which, however, I do not anticipate, you will draw the amount from the reserved moiety of the Land Fund.

I have, &c,

[Enclosure No. 1.] GREY.

MR. C. MOORE TO UNDER SECRETARY HAWES.

34 Munster Square.

Sir, Regents Park, 12th July, 1847.

I take the liberty of furnishing you with a List of Queries which it would be very satisfactory for me to have answered, if it be in the power of the Government to do so. I have &c.

CHAS. MOORE.

[Sub-enclosure.]

QUERIES.

1. When does my Salary begin?
2. What amount for Outfit, or Advance of money will be given previous to starting?
3. On What conditions will I be sent out?
4. Shall I have a free furnished, or unfurnished House?
5. Under whose Orders am I to act in arriving at my destination?
6. What length of time will be permitted me to prepare outfit and visit relations, previous to starting?

[Enclosure No. 2.]

UNDER SECRETARY HAWES TO MR. C. MOORE.

Sir, Downing Street, 21st July, 1847.

I have laid before Earl Grey your letter of the 12th Inst., and I am directed to make to you the following communication in reply to the enquiries, which that Letter contains.

1st and 2nd. It is not the practice of this Department to grant outfit, or to allow passages to Colonial Officers, except with very few exceptions; and, in those cases in which an Officer relieves in the Colony, to which he has been appointed, his immediate Predecessor, who draws as in the present case full Salary, there are no means of allowing him any Salary until the period of his entering on his duties.
In the present instance, Lord Grey will communicate with the Lords Commissioners of the Treasury, in order to ascertain whether it may not be practicable to afford you a Passage to Sydney in consideration of the circumstances of the case.

3. Lord Grey does not clearly understand the purport of your third enquiry.

4. Lord Grey has no certain information of the fact whether there is any residence provided for the Superintendent of the Botanic Garden. If there should be, his Lordship will suggest to the Governor that you should be allowed the free use of it; but he cannot pledge himself that that Officer will be able to make that arrangement. The House would under any circumstances not be furnished at the Public expense.

5. You will place yourself under the directions of the Governor on arriving at Sydney; but the practical arrangements connected with the Botanical Garden are under a Committee of Management.

6. It is generally found that a period of six Weeks or two months is necessary in order to enable persons to make their preparations for embarking for Australia.

I have, &c.,

B. HAWES.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 206, per ship Kelso.)

Sir, Downing Street, 14 August, 1847.

I have to request you would inform Mr. A. Flood of New¬castle, New South Wales, that his letter of the 11th of March last, addressed to Mr. Hope, the late Under Secretary of State for the Colonies, has been received; and that you will convey to him the expression of my thanks for the trouble he has taken in forwarding the Box of Geological Specimens which he refers to as having been shipped in the Colony, but which have not yet reached this Department.

I have, &c.,

GREY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 161, per ship Sunflower.)

My Lord, Government House, 15th August, 1847.

I do myself the honor to inform Your Lordship that a Requisition has been forwarded to the Colonial Agent General for six sets of Standard Weights and Measures for the service of this Colony, and that I have given the necessary authority for the estimated expense of the articles, and which has been voted for the purpose by the Legislative Council, to be issued to the Deputy Commissary General from the Colonial Treasury, namely £204. I have, therefore, to beg that your Lordship will have the goodness to cause the necessary order to be given for an equal sum to be issued to Mr. Barnard from Her Majesty's Treasury to enable him to comply with the Requisition.

I have, &c.,

CHS. A. FITZ ROY.
EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 208, per ship Kelso.)

Sir,
Downing Street, 16 August, 1847.

I herewith transmit for your information and guidance the enclosed copy of a letter from the Board of Treasury, having reference to the directions which the Lords Commissioners have considered it requisite to give to the Officer in charge of the Commissariat in New South Wales, in accordance with the arrangements which, in my Despatches of the 29th Ultimo, Nos. 196 and 197, you were instructed to adopt for facilitating the Emigration to New South Wales of the Friends and relatives of Emigrants, who are already settled there, and for enabling the Depositors of money in the Savings Banks in that Colony to apply the amount of such Deposits in the purchase of Crown Lands.

I have, &c,

[Enclosure.

J. GREY.

MR. J. PARKER TO UNDER SECRETARY STEPHEN.

Sir,
Treasury Chambers, 11th August, 1847.

With reference to Mr. Hawes’ Letter of the 28th Ult., I am commanded by the Lords Commissioners of Her Majesty’s Treasury to acquaint you, for the information of Earl Grey, that my Lords have caused a communication to be made to the Officer in charge of the Commissariat in Van Diemen’s Land, New South Wales and South Australia, apprising them respectively that Her Majesty’s Secretary of State, being desirous to make arrangements for facilitating the application in this Country of such sums, as parties in the Colony may wish to contribute for assisting their relatives or friends in emigrating to the Colony, and also for facilitating the early application, in furtherance of the conveyance of Emigrants to the Colony from the United Kingdom, of Sums which may be deposited in the Colonial Savings Banks with a view to future investment in the purchase of Land, My Lords are pleased to authorize them to receive into the several Chests under their charge all such sums as may be tendered by the respective Colonial Governments for either of these objects, and to grant Certificates for the same, in order that the amounts may be placed without delay at the disposal of the Colonial Land and Emigration Commissioners in this Country.

I am, &c,

J. PARKER.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 163, per ship Sunflower.)

My Lord,
Government House, 17th August, 1847.

I do myself the honor to inform Your Lordship that a Requisition has been forwarded to the Colonial Agent General for a New Royal Standard for the use of this Government, and that I have authorised its estimated expense of £50, which has been voted for the purpose by the Legislative Council, to be issued to the Deputy Commissary General from the Colonial
FITZ ROY TO GREY.

Treasury; I have therefore to beg that Your Lordship will have the goodness to cause the necessary order to be given for an equal sum to be issued to Mr. Barnard from Her Majesty's Treasury, to enable him to comply with the Requisition.

I have, &c.,

CHS. A. FITZ ROY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 165, per ship Sunflower; acknowledged by earl Grey, 25th February, 1848.)

My Lord,

Government House, 19th August, 1847.

Referring to my Despatches, No. 76 and " Separate" of the 2d April last, and to that portion of Your Lordship's Despatch of the 28th August, No. 28, which adverts to the relative position which the Bishop of Australia will hold in this Colony after vacating his seat at the Board of Executive Council; I have now the honor to transmit the Copy of a letter addressed by the Chief Justice to the Colonial Secretary, explaining the reasons which induce his Honor to decline to accede to any alteration in the Table of Precedence of the Public Officers of the Colony, which would place him in an inferior position to that which he now occupies.

As Sir Alfred Stephen, in stating his objections, has entered at considerable length into matter extraneous to the question that was referred to him, it is right that I should explain that the Colonial Secretary merely forwarded for his consideration an Extract of so much of Your Lordship's Despatch of the 28th August as relates to the future precedence of the Bishop, with a request that his Honor would favor me with his wishes at his earliest convenience.

The view, which Sir Alfred Stephen has taken of the subject, while it of course prohibits my bringing the matter under the consideration of the Legislative Council, does not appear to require that I should enter into any discussion with him regarding its merits; but Your Lordship must be aware that he is entirely in error in his estimate of the characters and qualifications of the Chief Justices of the North American and (of the principal at least) of the West India Colonies.

With respect to the other Colonies enumerated by Sir Alfred Stephen, wherein the Chief Justices take precedence next the Governors, I may remind Your Lordship that, at the Cape of Good Hope and at the Mauritius, at the time the respective Charters of Justice for those Colonies were framed, the Offices of Governor and Commander of the Troops had been for many years united. There was no Bishop in either of those Colonies;
and this Colony was precisely similarly situated; Ceylon was equally without a resident Bishop; but precedence is given in that Colony to the Commander of the Forces over the Chief Justice.

In conclusion, I would observe that, as I am aware of no circumstance "in the existing state of things in this Colony" to induce me to believe that an alteration in the right of precedence, such as that submitted for the consideration of the Chief Justice, would be in the slightest degree prejudicial, either to the interests of the Colony or of the Church, I would strongly recommend that, whenever a vacancy may occur in the Office of Chief Justice, the opportunity should be taken of placing the person who may succeed to that appointment in the same relative social rank and position, with respect to the other public Officers of the Colony, as are established by the Book of Regulations; and that the Puisne Judges should continue to hold the same rank and precedence as they do at present, being according to that to which they are entitled under those Regulations.

I have, &c,

CHS. A. FITZ ROY.

[Enclosure.]

SIR ALFRED STEPHEN TO COLONIAL SECRETARY THOMSON.

Sir,

Supreme Court, 20th July, 1847.

I have the honor to acknowledge the receipt of your Letter, enclosing Extract of a Despatch from the Right Honorable The Secretary of State on the subject of the precedence of the Right Reverend the Lord Bishop. Lord Grey observes that the Bishop would acquire precedence over the Chief Justice of this Colony, were so much of the Charter of Justice repealed as is opposed to that arrangement, and His Lordship states that he would assent to the enactment of a Local Law for that purpose, should no objection be raised to it by the Chief Justice. His Excellency the Governor is pleased to desire me accordingly to communicate to him my wishes on the suggested measure.

2. It does not appear to me that I can do this, in justice to myself, without entering somewhat fully into the subject. From the first institution of the Supreme Court, the place assigned to the Chief Justice by the Royal Charter has been immediately after His Excellency the Governor. That of the Commander of the Forces and the Lord Bishop respectively have been the next in order; and both those Officers until recently held seats also in the Executive Council, whose members have rank as such next in succession. The late retirement of the Bishop therefore from that Station simply left his precedence where it was. It is proposed, however, that the established order shall now be altered: so that the Bishop shall take precedence of the Chief Justice, whereby he would acquire precedence over the Commander of the Forces also.

3. Those, who know my feelings towards the Venerable Prelate, will readily believe me when I say that, if the question were one between individuals merely, or of which the decision ought to be influenced by personal considerations, I should not hesitate to yield
my own Official precedence to one every way so eminent. Nor, if 1847,
the decision affected myself alone, should I be the less disposed to 19  Aug.
make the concession, could I bring myself to believe that the mea-

sure, considering the existing state of things in this Colony, would  
be beneficial to the Church over which His Lordship presides. It  
appears to me however that this matter is by no means a personal  
or a private one. It involves the interests of my Colleagues, as well  
as my own, and the rights of my Successors. And being strongly  
of opinion that the social rank and position of the Judges in this  
Colony cannot be lowered without injury to the Queen's Service,  
the cause of good government, and therefore the welfare of the  
community, while I am equally satisfied that the degradation of  
that rank now contemplated will be equally opposed to the true in-
terests of the Church in particular, I feel bound to express my  
earnest hope that no such arrangement will be permitted.
4. I would take the liberty of reminding His Excellency that,  
although the precedence assigned to the Chief Justice of New  
South Wales is higher than that established for the West Indian  
some other Colonies, as stated in the Regulations of 1843, yet  
the higher rank is conferred in the East Indies, Newfoundland and  
at the Cape, and in every Colony I believe to the Eastward of the  
Cape. In each of the three Presidencies (by the Royal Warrants  
of 31 May, 1814, and 28th June, 1841) the second rank is assigned  
to the Chief Justice. The Puisne Judges take rank below the  
Bishop and the Members of Council, but before the Commander in  
Chief unless a Member of the Council. In India, however, I need  
hardly observe, the Members of Council form a portion of the  
Government. They are not office bearers; but the various Secre-
taries and other high functionaries are distinctly subordinate to  
them.
5. In Ceylon by the Charter (Clark 548), the Puisne Judges have  
precedence after the Commander in Chief, but before the Members  
of Council. The reason is, I apprehend, because in that Colony the  
Council is composed of Office Holders, whose rank as such is below  
that of the Judges. By the Cape Charter also (Clark 477) and  
that of Newfoundland (Ibid 424), the Puisne Judges take rank  
before both Councils. That is to say in those three Colonies the  
Puisne Judges have precedence next to the Chief Justice, and the  
latter (with one exception where the Commander in Chief has that  
rank) is, as here, next to the Governor. Had the Charter for this  
Colony contemplated the existence of Puisne Judges (who were  
created by Warrant without further provision) they would doubt-
less have been secured a similar precedence.
6. The difference may be accounted for by the fact that, in these  
several instances, the Judges are educated men, barristers, usually  
of considerable experience, many of them of talent and learning,  
the cases and questions discussed in their Courts are frequently  
of great amount and intricacy; and it is felt to be of great import-
ance politically and morally to assign to such men a social standing  
and rank commensurate with the high estimation in which they  
generally are (as all Judges doubtless ought to be) held by the  
public. Nor need I dwell on the advantages obtained by a Govern-
ment wise enough to maintain that system. They are obvious, but  
especially in Colonies such as these.
7. In the West Indies and some of the North American Colonies,  
the relative rank of the Judges is different in exact proportion to  
the difference between the two cases. The Chief Justice is, I do
1847.
19 Aug.

Reasons for claims for puisne judges.

not say without exception, but frequently, incompetent to the Office, generally a half educated Colonial Lawyer with a petty salary that scarcely places him above want. The Puisne Judges are almost without exception private Gentlemen or Merchants. The causes which they decide are not numerous, and they are of the most simple and generally petty character. Cases in Equity are disposed of, or were so until lately, by the Governor, either alone or assisted by the Council. That body, on the other hand, usually consists of men of the oldest families and greatest influence or fortune in the Country. To give such men precedence over the Judges is only in the natural order of things. To do otherwise would be only to render rank contemptible.

8. It is my duty humbly to claim for my Colleagues a place among the elevated Class first described. I boldly assert that there is no Colonial Dependency of the Crown, in which a Bench can be found, by which a larger amount of Judicial duty in every branch of Law is discharged, in which cases of more difficulty and complexity or of greater importance, whether in a pecuniary or more general view, are annually decided, to which more extensive and responsible duties are confided, or by which in the discharge of those duties more laborious research or painstaking exposition of the Law is exhibited.

9. With these claims to consideration, I do most respectfully submit, through His Excellency to Her Majesty's Government, that the Puisne Judges of New South Wales have not at present their proper place assigned to them. To the Commander of the Forces and the Bishop, precedence is usually given before the Puisne Judges. To the precedence, also, of the present Colonial Secretary and Treasurer as Executive Councillors, my Colleagues would scarcely be entitled to object, as they have always enjoyed it. and the Judges took office under the system and rule by which it was conferred. I submit, however, that there is no other reason for continuing that system (forming as it does an exception from the general rule applicable to them) against the Puisne Judges of this Colony. I have shown that Executive Councillors are not usually placed before the Puisne Judges in cases parallel with the present. On behalf therefore of my colleagues and in concert with them, I venture to express the hope that Her Majesty may be advised to give the Puisne Judges precedence in this Colony over all appointees to the Council (the Commander of the Forces excepted) in future.

10. But whether that shall hereafter be the rule of precedence or not, without reference to the particular composition of the Council, we submit with great respect and deference that its present constitution renders some alteration unavoidable. We submit that to give the Attorney General, a Barrister of our own Court, rank and social position above the Puisne Judges is calculated to lower the Judges in public estimation by practically proclaiming, as it seems to do to the Community, the opinion entertained by Her Majesty's Government of the relative importance and value of an Attorney General and a Judge, a comparison when apparently so sanctioned by no means favorable to the Supreme Court of Justice of this Colony, or calculated to uphold and promote its dignity or efficiency.

11. I request that His Excellency will be pleased to cause a Copy of this Letter to be transmitted to the Right Honorable the Secretary of State.

I have, &c.,

ALFRED STEPHEN, C.J.
SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 166, per ship Sunflower.)

My Lord,

Government House, 20th August, 1847.

I have, on several occasions since my arrival in this Colony, been urged by many persons of influence and respectability, and particularly by gentlemen connected with the Commercial interests of Sydney, to bring under your Lordship's notice the defenceless state of the Harbour of Port Jackson, in the hope that Her Majesty's Government might be induced to undertake the expense of erecting such Fortifications as are required for its protection from foreign invasion.

As I was aware, however, from the records of the correspondence that had passed between Sir George Gipps and Your Lordship's Predecessors at the head of the Colonial Department, that Her Majesty's Government were unwilling to incur this expense, I considered that I should be exceeding the limits of my duty if I again brought this question forward; and I should still have refrained from doing so, had not the recent removal of the 58th Regiment to New Zealand given occasion for renewed applications on the ground that Your Lordship in Your Despatch, No. 2 of the 24th November last (directing the increase from hence of the Military Force in New Zealand) intimated that Her Majesty's Government will take care that efficient Naval and Military protection from the attack of any foreign enemy shall be afforded to the Colony.

It has been asserted that Her Majesty's Government have expended, and are now expending, large sums for the erection of Fortifications in the North American and other Colonies, especially for the defence of Quebec and Kingston in Canada, and Halifax in Nova Scotia; and therefore it is argued that the small sum of about £12,000 required for the defence of Port Jackson ought not to be denied.

It has further been argued that, as the Colonies have no voice in the Wars of the Mother Country which are generally injurious to their interests, it is hard that Her Majesty's Government should refuse to bear the expense of such Works as may be necessary to secure the Principal Port and City of this Colony from sudden attack from foreign enemies, to which it is at present so completely exposed that an enemy's Frigate, or even Privateer, would find no difficulty in anchoring off, and laying contributions on the City of Sydney.

I have, of course, refrained from expressing any opinion as to the validity of arguments upon a point which it is not within
my province to decide, or upon the inference that has been drawn from the expressions used in Your Lordship's Despatch; but I feel it my duty to submit them for your Lordship's consideration, and in the meantime, as I am convinced, from the violent discontent which was very loudly expressed by a large majority of the Legislative Council when the determination of Her Majesty's Government to decrease the Military Force in this Colony was announced to them, that any application for a vote of money to defray the expense of the works, which have been proposed for the purpose of protecting the entrance to Port Jackson, would be entirely fruitless, at least during the present Session, and would only add to the general excitement and discontent, I have taken upon myself the responsibility of withholding the notification of the decision of Her Majesty's Government as communicated to me by Your Lordship's Despatches "Military," Nos. 1 and 4 the 6th November and 30th December last, until I am honored with Your Lordship's further commands.

I take the liberty of annexing for Your Lordship's information a copy of a Report addressed by the Commanding Royal Engineer to the Secretary of this Government on the 9th March last on the subject of the Defences of Port Jackson.

I have, &c.,

Chs. A. Fitz Roy.

[Enclosure.]

[A copy of this report is not available.]

Sir Charles Fitz Roy to Earl Grey.

(Despatch No. 169, per ship Sunflower; acknowledged by earl Grey, 12th April, 1848.)

23 Aug. 1847.

My Lord,

Government House, 23d August, 1847.

I have the honor to bring under your Lordship's consideration the copy of a confidential communication which I have received from the Crown Law Officers of this Government, pointing out the evil consequences that might follow any public announcement of the revocation of my Commission as Governor of the late Colony of North Australia, as my Commission as Governor of New South Wales gives me jurisdiction only to the Southward of the 26th parallel of South Latitude.

As it is within my knowledge that numerous parties of unauthorised Squatters have, with their flocks and herds, proceeded far beyond this boundary in search of Stations, and that many others have, without the sanction of Government, already established Stations beyond it, while I am informed that many
persons have left Sydney with the view of establishing themselves at and in the vicinity of Port Curtis, I venture to recommend that immediate steps may be taken for placing my authority on the same footing as that of my Predecessors in this Government, before it was in contemplation to form a Colony to the Northward of the 26th Parallel of South Latitude.

I have, &c.,

Chs. A. Fitz Roy.

Enclosure.

The Colonial Secretary of the 16th instant, No. 47/565, stating that your Excellency having it in contemplation to issue a Proclamation notifying the revocation by Her Majesty of the Charter erecting North Australia into a separate Colony, and also of the Commission appointing your Excellency the first Governor of that Colony, and requesting us to prepare a draft of the proper Instrument for that purpose, to which letter we deem it right to address an answer confidentially to Your Excellency.

We have the honor to report that in our opinion it is not desirable to issue any such Proclamation; but, on the contrary, we beg leave to suggest for your Excellency's consideration whether it be not right, under the circumstances, that the utmost caution should be observed to prevent the issue of such Letters Patent from becoming known to the public, in so far as relates to Your Excellency's Commission as Governor of North Australia.

We regret to perceive that the Commission of the preceding day (20th February, 1846) gives jurisdiction only to the Southward of the 26th degree of South Latitude: and that, consequently, by the revocation of the first mentioned Commission, that part of the Territory which lies to the Northward of that parallel of Latitude is no longer under Your Excellency's control.

We do not suppose that, by withholding the Letters Patent from publication in this Colony, the revocation will be prevented from taking effect; but we may hope that the very great public evils, which might follow from a knowledge on the part of the public that the late Colony of North Australia is without a Governor, may by this means be escaped, until Her Majesty's Ministers shall have procured the issue of a new Commission, and taken the requisite steps to legalize all acts done in the mean time by Your Excellency and all subordinate Officers.

We beg leave also at the same time to bring under Your Excellency's notice the fact that the Letters Patent purport to be an immediate and absolute revocation of the Charter of the late separate Colony as well as of your Excellency's Commission of it; and we take the liberty of remarking that this circumstance might give rise to very serious doubts as to the validity of acts done in execution of the Charter and Commission, whilst the Letters Patent were in course of transmission to this Colony.

We have, &c.,

J. H. PLUNKETT, Attorney General.
W. M. MANNING, Sol. Genl.
1847.
24 Aug.

Inquiry for despatch re appeals to privy council.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 170, per ship Sunflower; acknowledged by earl Grey, 15th February, 1848.)

My Lord,

Government House, 24th August, 1847.

At the request of the Chief Justice of this Colony, I have the honor to enclose the Copy of a letter which he has addressed to the Colonial Secretary, enquiring whether any Despatch has been received on the subject of Appeals from the Supreme Court to Her Majesty in Council.

It appears that two years ago the Chief Justice presented to Lord Stanley a work published by him relating to the Constitution, Rules, and Practice of the Supreme Court; and pointing out measures for facilitating Appeals to the Privy Council from this Colony, which was forwarded in Sir George Gipps' Despatch, No. 155 of the 17th September, 1845, and was referred to in his subsequent Despatch, No. 170 of the 10th Octr. following; and, as no reply has yet been received, I have thought it right to comply with Sir Alfred Stephen's request contained in the last paragraph of the enclosed letter.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

SIR ALFRED STEPHEN TO COLONIAL SECRETARY THOMSON.

Sir,

Supreme Court, 28th July, 1847.

I take the liberty of drawing the attention of the Government to the subject of Appeals from the Supreme Court to Her Majesty in Council, And I shall be obliged if His Excellency the Governor will be pleased to inform me, whether any communication has been received from the Right Honorable the Secretary of State respecting the introduction of some provision for establishing and regulating such Appeals.

I thought it my duty, about two years ago, to bring the subject under the notice of Lord Stanley and of His Excellency Sir George Gipps, by Letters of the 15th September and 31st October, 1845, of which I have now the honor to enclose Copies. Subsequent experience has not affected the impressions, then entertained by me; but I have never heard whether any attention was paid to my communications.

In the course of the last five years, there have been decided in the Supreme Court very many questions of extreme difficulty, as well as of the greatest public importance. Among these there are several, involving sums to the amount of (in the whole) three or four hundred thousand Pounds. In some of the cases, the Judges have differed in opinion; and in four or five appeals have been instituted, at great expense, by Special order; while, in as many more instances I am persuaded, Appeals would have been interposed, had the direct right and power of appealing existed. In every fit and proper case for appeal, I respectfully submit that that power ought to be conferred. I would by no means have it implied, from the expression of this opinion, that I think the
Judgments in the instances alluded to erroneous. But, considering the nature of some of the questions and the pecuniary magnitude of others, it is not for the interest of the public, as I conceive, or the reputation and honor of the Court, that no means should exist on the spot for initiating an Appeal from its decisions.

It is to be observed that, should any Judgment pronounced by us be mistaken, the losing Suiitor has at present no immediate remedy in any case. The preliminary step of a Petition to the Queen, with its expense and grievous delay, is inevitable, and in Cases where money is recovered (there being no security for its return) he is practically denied justice. On the other hand, where the Judges of a Colonial Court are not incompetent but bring to the consideration of cases a reasonable amount of industry and legal knowledge, the existence of an immediate appealing power in the Suiitor is a great advantage to them. The correctness of their opinions, in every really doubtful case, can then be tested, and the value of their labors, even should one of their Judgments be occasionally reversed, will be the better understood and appreciated.

Should nothing have hitherto been hitherto done touching the institution of the Appelate power, I would beg the favor of His Excellency the Governor to cause a Copy of this Letter to be forwarded to the Right Honorable the Earl Grey.

ALFRED STEPHEN, C.J.

[Sub-enclosure No. 1.]

EXTRACT from a Letter to the Right Honorable Lord Stanley, of which a Copy was sent to His Excellency Sir George Gipps, under date, Sydney, 15th September, 1845.

I HOPE to receive Your Lordship's forgiveness for drawing attention to one of the subjects introduced in this Book; that of Appeals from the Court to Her Majesty in Council. Your Lordship will perceive it to be stated, in Pages 25 and 26, and in the Appendix Page 42, that no provision has yet been made in this Colony for such Appeals. This deficiency, which probably has never before been distinctly brought under Your Lordship's notice, I humbly submit should be removed. The extent to which the right of Appeal shall be conceded and the conditions to be imposed on parties appealing will best be determined by Your Lordship. I have, however, it will be perceived, made some observations on these points in one of the Pages referred to.

ALFRED STEPHEN.

[Sub-enclosure No. 2.]

MR. JUSTICE STEPHEN TO COLONIAL SECRETARY THOMSON.

Sir, Supreme Court, 31st October, 1845.

In reference to your Letter of the 11th August last, transmitting Copy of an Order made by the Judicial Committee, I have the honor to solicit His Excellency's attention to the fact that there is no provision by Law for Appeals in this Colony, an omission which I humbly conceive should be supplied.

Having had the honor to transmit to His Excellency a Copy of a work published by me on the Constitution and Rules of the Supreme Court, I hope to be pardoned for begging a perusal of the statement and suggestions in that work on the subject of Appeals to the Privy Council.

I have, &c.,

ALFRED STEPHEN.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 171, per ship Sunflower.)

My Lord, Government House, 25th August, 1847.

I do myself the honor to acknowledge the receipt of Your Lordship's Despatch of 13th November, 1846, No. 57, requesting
information respecting Redmond Sheering, stated to have emigrated to this Colony; and in reply I beg to inform your Lordship that Sheering arrived at Sydney in the "Albatros" in 1841, and engaged from the ship to Mr. Peter Stuckey of Long Acre in the County of Argyle. It appears from Mr. Stuckey's statement that Sheering was subsequently employed at the Murrumbidgee; but I regret to inform Your Lordship that I have failed in obtaining any further information relative to this person, either through the Bench of Magistrates of the District in which he was supposed to be employed, or by a Notice which I caused to be published in the Government Gazette.

The Magistrates are making further enquiry; and, in the event of their procuring any particulars of the individual in question, I shall duly communicate the same to your Lordship.

I have, &c.,

CHS. A. FITZ ROY.

26 Aug.

Inability to report re J. Gaffney.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 172, per ship Sunflower.)

My Lord, Government House, 26th August, 1847.

I do myself the honor to acknowledge the receipt of Your Lordship's Despatch of the 24th November, 1846, marked "Separate," requesting information respecting one Mr. James Gaffney, stated to have emigrated to this Colony; and in reply I beg to inform your Lordship that, altho' every enquiry has been made after this person by the Commissioner of Police, the Emigration Agent, and by a Notice published in the Government Gazette, I have failed in obtaining any information respecting him.

I have, &c.,

CHS. A. FITZ ROY.

27 Aug.

Letter transmitted.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 209, per ship Kelso.)

Sir, Downing Street, 27 August, 1847.

I transmit to you the Copy of a letter, which has been addressed to me by Sarah Ingham, renewing her enquiry respecting some property stated to have been left by her father in New South Wales. The Writer's first application accompanied my Dispatch of the 8th of August, 1846, No. 13, and I have to request that you will lose no time in sending home whatever information you may be able to procure on the subject.

I have, &c.,

Grey.
THE Humble Petition of Sarah Ingham,
To the Right Honorable Earl Grey, Secretary of State for the Colonial Department, etc., etc., etc.,
Sheweth,
That, in a reply from your Office of 8th August last, being an answer to mine of 27th July, Your Lordship has promised to refer to the Acts of the Officers of Government at Parramatta, who took possession of the entire property of the late David Aiken in about 1839, and sold the same Publicly upon the plains of Goulburn about 128 miles from Sydney.
Robert Wainwright assisted to convey the Cattle from Manera to Goulburn Plains and had with me several others, who were hired as I was at 5s. pr. diem.
I knew David Aikin long before his fatal accident of being killed by a fall from his Horse.
I REQUEST that, if your Office has had a reply upon this subject, that the same may be signified to me at your Official Convenience with such other directions as may be in that case necessary. If the authorities in Sydney had communicated with your Department in England in 1840, this act at Sydney would look much more honest, but my trust now is to the never failing integrity of His Lordship at the Head of the Colonial Department.
I request an answer.
I am, &c,

SARAH X INGHAM.

No. 7 Every Street, Great Ancoats, Manchester, 3d May, 1847.
1847.
27 Aug.

[Enclosure No. 1.]

LETTERS PATENT FOR ERECTION OF BISHOPRIC OF SYDNEY.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to all to whom these Presents shall come, Greeting:— Whereas His late Majesty, Our Royal Uncle King William the Fourth, did, by Letters Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing date the 18th day of January, 1836, in the sixth year of His Reign, found, ordain, constitute and erect all the Territories and Islands comprised within or dependent upon Our Colonies of New South Wales, Van Diemen's Land and Western Australia, into a Bishop's See or Diocese, and did declare and ordain that the same should be styled the Bishopric of Australia, and that the first and other Bishops thereof should be subject to the Archbishop of Canterbury, for the time being, as their Metropolitan, and did in and by the said Letters Patent name and appoint William Grant Broughton, Clerk, theretofore Archdeacon of New South Wales, to be Bishop and Ordinary Pastor of the said See of Australia, and the said William Grant Broughton was thereupon ordained and consecrated to be the Bishop and Ordinary Pastor of the said See.

And Whereas, in and by the said Letters Patent, Our said Royal Uncle did declare that, if He, His Heirs or Successors should think fit to recall or revoke the appointment of the said Bishop of Australia or his Successors and should declare such His pleasure by Letters Patent under the Great Seal of Our said United Kingdom, then every such Bishop should from and after the notification thereof in such manner as in the said Letters Patent should be directed to Him to all intents and purposes cease to be Bishop of Australia. And Whereas, by virtue of the powers of revocation mentioned in the said Letters Patent, We did, with the concurrence of the said Bishop of Australia, by Letters Patent, bearing date the 18th day of August in the Year of Our Lord 1842, wholly separate, divide and exempt the City of Hobart Town, and all Our Island of Van Diemen's Land, and all Islands and Territories lying to the Southward of Wilson's Promontory in 39 degrees 12 minutes South Latitude, and to the Northward of the 45th Degree of South Latitude and between the 140th and 150th Degrees of Longitude East from Greenwich, and also Macquaries Island, lying to the South Eastward of the said Island of Van Diemen's Land, and all other the Dependencies of Our said Colony of Van Diemen's Land, and did declare that the said City and Colony should thenceforth be wholly separated and exempted from the Jurisdiction, authority and Diocese of the said Bishop of Australia and his Successors, and did ordain, make, constitute and declare the same to be the Diocese of the Bishop of Tasmania, as by reference to the said Letters Patent will more fully appear. And Whereas it has been represented to Us by the Most Reverend Father in God, William, by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, that, considering the present great extent of the said Diocese of Australia, notwithstanding the severance therefrom of the said Diocese of Tasmania, as hereinbefore mentioned, and also the inconvenience and detriment arising therefrom, as well as to the Bishop of the said See as to the Members of the United Church of England and Ireland resident within the same, He is desirous, with the concurrence of the said Bishop of
Australia, that the extent of the said Diocese should be still further reduced, and that the same should be divided into four several and distinct Dioceses to be styled The Bishoprick of Sydney, The Bishoprick of Newcastle, The Bishoprick of Adelaide, and the Bishoprick of Melbourne; the Bishops of the said several Sees of Newcastle, Adelaide and Melbourne, and their Successors, and also the Bishop of Tasmania and his Successors, and the Bishop of New Zealand and his Successors, to be subject and subordinate to the See of Sydney and to the Bishop thereof, and his Successors, in the same manner as any Bishop of any See within the Province of Canterbury is under the authority of the Archiepiscopal See of that Province and the Archbishop of the same.

And Whereas we, having taken the premises into Our Royal consideration, and, having been certified of the concurrence therein of the said Bishop of Australia, are persuaded that, by complying with such the request of the said Archbishop, we shall under the Blessing of Almighty God greatly advance the well being of the said United Church of England and Ireland within the said Colonies and Settlements, We have resolved to grant the same accordingly.

Now know ye that, in pursuance of such Our Royal Intention, it is Our Will and Pleasure, And We do by these Presents revoke and determine the said Letters Patent, made and passed in the 6th year of the Reign of His said late Majesty King William the Fourth to all intents and purposes, save and except as to all acts, matters or things which may have been done under the authority of the same, which we will and ordain shall be and remain of the same Force and Effect as if the said Letters Patent were not revoked and determined. And we do further by these Presents erect, found, ordain and constitute all those parts or portions of our said Colony, known or called by the name of the Counties of Wellington, Roxburgh, Cook, Cumberland, Camden, Westmoreland, Georgiana, Bathurst, King, Murray, Argyle and Auckland, with the Territory to the West bounded by the Parallel of Latitude 32° 30', And the 141st degree of East Longitude, together with all those parts of the Continent of Australia, not comprized within the limits of any other See or Diocese, to be a Bishop’s See and Diocese, and to be called from henceforth the Bishoprick of Sydney. Saving nevertheless unto Us our Heirs and Successors the powers of altering from time to time, with the consent of the Archbishop of Canterbury, for the time being, if the said See be vacant or otherwise of the said Archbishop, and of the Bishop of the said See for the time being, the limits of the said Diocese or of the Jurisdiction of the Bishops thereof. And to the end that this Our Intention may be carried into due effect, We, having great confidence in the learning, morals, probity and precedence of the said Right Reverend Father in God, William Grant Broughton, heretofore Bishop of Australia, do by these Our Letters Patent name and appoint him to be Bishop of the said See of Sydney. And We do hereby signify to the Most Reverend Father in God, William by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, the erection and constitution of the said See and Diocese, and our nomination and appointment thereto of the said Right Reverend Father in God William Grant Broughton. And We do ordain and declare that the said Right Reverend Father in God William Grant Broughton, so by us nominated and appointed, may enter into and possess the said Bishop’s See as Bishop thereof, without let or
impediment from Us, Our Heirs or Successors, for and during the term of his natural Life, subject nevertheless to the right of Resignation hereinafter more particularly expressed.

And we do further will and ordain that the said Right Reverend Father in God William Grant Broughton, Bishop of the said See of Sydney, and his Successors, Bishops thereof for the time being, shall be and be deemed and taken to be Metropolitan Bishop in Australasia, subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury for the time being, and subordinate to the Archiepiscopatf See of the Province of Canterbury. And we will and ordain that the said Bishops of Newcastle, Adelaide and Melbourne, and also the Bishop of Tasmania respectively, shall be suffragan Bishops to the said Bishop of Sydney and his Successors; and we further will and ordain that the said Bishop of New Zealand and his Successors shall also become Suffragan Bishops to the said Bishop of Sydney and his Successors in such manner and at such time, as We or our Successors shall hereafter, with the consent of the said Bishop of New Zealand or upon a Vacancy of the said See, be pleased, by Letters Patent under the Great Seal of Our said United Kingdom, to order and direct; and we will and grant to the said Bishop of Sydney and his Successors full power and authority, as Metropolitan of Australasia, to perform all functions peculiar and appropriate to the Office of Metropolitan within the limits of the said Sees of Newcastle, Adelaide, Melbourne and Tasmania, and also within the Limits of the said See of New Zealand, Whenever we shall as aforesaid be pleased to order and grant to the said Bishop of Sydney and his Successors full power and authority to visit, once in five years or oftener, if occasion shall require, as well the said several Bishops and their successors, as all Archdeacons and Dignitaries and all other Chaplains, Ministers, Priests, and Deacons in Holy Orders of the United Church of England and Ireland within the limits of the said Dioceses. And we do hereby authorize and empower the said Bishop or Sydney and his Successors to inhibit, during any such visitation of the said diocese, the exercise of all or of such part or parts of the Ordinary jurisdiction of the said Bishops or their Successors as to him the said Bishop of Sydney or his Successors shall seem expedient, and during the time of such visitation to exercise by himself or themselves, or his or their Commissaries, such powers, functions and jurisdictions, in and over the said Dioceses, as the Bishop thereof might have exercised if they had not been inhibited from exercising the same. And we do further ordain and declare that, if any person against whom a Judgment or Decree shall be pronounced by the said Bishops or their Successors, or their Commissary or Commissaries, shall conceive himself to be aggrieved by such Sentence, it shall be lawful for such person to appeal to the said Bishop of Sydney or his Successors, provided such Appeal be entered within fifteen days after such sentence shall have been pronounced. And
we do give and grant to the said Bishop of Sydney and his Successors full power and authority finally to decree and determine the said Appeals. And we do further Will and ordain that, in case any proceedings shall be instituted against any of the said Bishops of Newcastle, Adelaide, Melbourne, Tasmania and New Zealand, when placed under the said Metropolitical See of Sydney, such proceedings shall originate and be carried on before the said Bishop of Sydney, whom we hereby authorize and direct to take cognizance of the same. Moreover, We will and grant by these Presents that the said Bishop of Sydney shall be a Body Corporate, and do ordain, make and constitute him to be a Perpetual Corporation, and to have perpetual succession; and that he and his Successors be for ever hereafter called and known by the name or Title of the Lord Bishop of Sydney; and that he and his Successors, by the name or Title aforesaid, shall be able and capable in the Law and have full power to purchase, have, take, hold or enjoy Manors, Messuages, Lands, Rents, Tenements, Annuities and Hereditaments of what nature or kind soever in Fee or in perpetuity or for a Term of Life or Years; and also all manner of Goods, Chattels and things Personal whatsoever, of what nature or value soever; and that he and his Successors, by and under the said Name or Title, may prosecute claim, plead and be impleded, defend and be defended, answer and be answered in all manner of Courts of Us, Our Heirs and Successors, and elsewhere in and upon all the singular Causes, Actions, Suits, Writs, and Demands, Real and Personal and Mixed, as well spiritual as temporal, and in all other things causes and matters whatsoever. And that the said Bishop of Sydney and his Successors shall and may for ever hereafter have and use a Corporate Seal, and the said Seal from time to time at his and their Will and pleasure break, change, alter and make anew, as he or they shall deem expedient.

And we are moreover pleased to order and direct that the said Bishop of Sydney under that Title may take up, continue and proceed with every Act or engagement, lawfully commenced, done or entered into as Bishop of Australia under the Letters Patent heretofore granted to him as Bishop of the said See of Australia.

And We do hereby further ordain and declare that the Church, called Saint Andrews, in the City of Sydney aforesaid shall henceforth be the Cathedral Church and See of the said Right Reverend Father in God William Grant Broughton and his Successors, Bishops of Sydney.

And We do further by these presents expressly declare that the said Bishop of Sydney and his Successors, having been respectively by Us, our Heirs and Successors, named and appointed and, by the said Archbishop of Canterbury for the time being as Metropolitian of the said See, canonically ordained and consecrated according to the Form and Usage of the United Church of England and Ireland, may perform all the Functions peculiar and appropriate to the Office of Bishop within the said Diocese of Sydney.

And We do by these Presents further declare that the aforesaid Bishop of Sydney and his Successors may exercise and enjoy full power and authority by himself or themselves, or by the Archdeacon or Archdeacons, or the Vicar General, or other Officer or Officers hereinafter mentioned, to give Institution to Benefices, to grant Licenses to Officiate to all Rectors, Curates, Ministers and Chaplains of all the Churches or Chapels or other places within the
said Diocese, wherein Divine Service shall be celebrated according to the Rites and Liturgy of the Church of England, and to visit all Rectors, Curates, Ministers and Chaplains, and all Priests and Deacons in Holy Orders of the United Church of England and Ireland, resident within the said Diocese, and also to call before him or them or before the Archdeacon or Archdeacons, or the Vicar General, or other Officer or Officers hereinafter mentioned, at such competent days, hours and places, when and so often as to him or them shall seem meet and convenient, the aforesaid Rectors, Curates, Ministers, Chaplains, Priests and Deacons, or any of them, and to enquire as well concerning their morals as their behaviour in their said Offices and Stations respectively, subject nevertheless to such rights of reviews and appeal as are hereinafter given and reserved; and, for the better accomplishment of the purposes aforesaid, We do hereby grant and declare that the said Bishop of Sydney and his Successors may found and constitute one or more Dignitaries in his said Cathedral Church, and also one or more Archdeaconries within the said Diocese, and may collate one or more fit and proper persons to be Dignitaries of the said Cathedral Church, and also one or more fit and proper persons to be the Archdeacons of the said Archdeaconries respectively. Provided always that such Dignitaries and Archdeacons shall exercise such jurisdiction only as shall be committed to them by the said Bishop or his Successors; and the said Bishop and his Successors may also from time to time nominate and appoint fit and proper persons to be respectively the Officers hereinafter mentioned, that is to say, to be Vicar General, Official Principal, Chancellor, Rural Deans and Commissaries, either General or Special, and may also appoint one or more fit and proper Persons to be Registrars and Actuaries; Provided always that the Dignitaries and Archdeacons aforesaid shall be subject and subordinate to the said Bishop of Sydney and his Successors, and shall be assisting to him and them in the exercise of his and their Episcopal Jurisdiction and Functions; and We will and declare that, during a vacancy of the said See of Sydney, by the demise of the Bishop thereof or otherwise, the said Dignitaries and Archdeacons, and the said Vicar General, and other Officers respectively appointed as aforesaid, shall continue to exercise, so far as by Law they may or can, the Jurisdiction and Functions delegated to them; and that the said Registrars and Actuaries shall respectively continue to discharge the Duties whereunto they have been appointed, until a new Bishop of the said See of Sydney shall have been nominated and consecrated, and his arrival within the Limits of the said Diocese shall have been notified to the said Parties respectively.

And We further Will and do by these Presents declare and ordain that it shall be lawful for any party, against whom any Judgment, Decree or Sentence shall be pronounced by any of the said Archdeacons, or by the Vicar General, or other Officer or Officers of the said Bishop or his Successors, to demand a re-examination and review of such Judgment, Decree or Sentence before the Bishop or his Successors in person, who, upon such demand made, shall take cognizance thereof, and shall have full power and authority to affirm, reverse, or alter the said Judgment, Sentence or Decree; And, if any Party shall conceive himself aggrieved by any Judgment, Decree or Sentence, pronounced by the
said Bishop of Sydney or his Successors, either in case of such review or in any cause originally instituted before the said Bishop or his Successors, it shall be lawful for the said party to appeal to the said Archbishop of Canterbury or his Successors, who shall finally decide and determine the said appeal; Provided Always that, in any such Case of Appeal or review, notice of the Intention of the Party to make such appeal or Demand such review shall be given to the Bishop or Subordinate Judge, by whom the Sentence appealed from or to be reviewed shall have been pronounced, within Fifteen days from the promulgation thereof. And We do further Will and by these Presents ordain that, in all cases in which an Appeal shall be made or review demanded as aforesaid, a copy of the Judgment or Sentence in such case promulgated or given, setting forth the causes thereof, together with a copy of the Evidence on which the same was founded, shall without delay be certified and transmitted by such subordinate Judge to the said Bishop or his Successor, or by the said Bishop or his successor to the said Archbishop of Canterbury as the case may require. Moreover it is Our Will and pleasure and We do hereby declare and ordain that nothing in these Presents contained shall extend, or be construed to extend, to repeal, vary or alter the provisions of any Charter whereby Ecclesiastical Jurisdiction has been given to any Court of Judicature within the limits of the said Diocese. And, for removing Doubts with respect to the validity of the resignation of the said Office and Dignity of Bishop of Sydney, it is our further will that, if the said Bishop or any of his Successors shall by Instrument under his Hand and Seal, delivered and sent to the Archbishop of Canterbury for the time being, and by him accepted and registered in the Office of Faculties of the said Archbishop, resign the Office and Dignity of Bishop of Sydney, such Bishop shall, from the time of such acceptance and registration, cease to be Bishop of Sydney to all intents and purposes, but without prejudice to any responsibility to which he may be liable in Law or Equity in respect of his conduct in his said Office; and lastly, to the end that all things aforesaid may be finally holden and done, we will and grant to the aforesaid William Grant Broughton that he shall have Our Letters Patent under Our Great Seal of Our said United Kingdom duly made and sealed. In Witness whereof, we have caused these Our Letters to be made Patent. Witness Ourself at Westminster, the 25th day of June in the eleventh year of our Reign.

By Writ of Privy Seal.

[Enclosure No. 2.]

LETTERS PATENT FOR ERECTION OF BISHOPRIC OF NEWCASTLE.

[The first paragraphs were similar to the first three and a half paragraphs of the letters patent in enclosure No. 1.]

And We do further, by these Presents, erect, found, ordain, and constitute all those parts or portions of Our Colony, known or called by the names of the Counties of Northumberland, Hunter, Durham, Brisbane, Phillip, Bligh, Gloucester, Maquarie, Stanley, with the Territory to the North and West bounded by the 21st Parallel of Latitude, and the 141st Degree of East Longitude, to be a Bishop's See and Diocese, and to be called from henceforth the Bishopric
Letters patent for erection of bishopric of Newcastle.

1847.
27 Aug.

of Newcastle. Saving nevertheless unto Us, our Heirs and Successors, the powers of altering from time to time with the consent of the Archbishop of Canterbury for the time being, if the said See be vacant or otherwise of the said Archbishop and of the Bishop of the said See for the time being, the Limits of the said Diocese or of the jurisdiction of the Bishop thereof. And to the End that this our Intention may be carried into due effect, We having great confidence in the Learning, Morals, Probity and Prudence of Our Well Beloved, William Tyrrell, Doctor in Divinity, Do name and appoint him to be ordained and consecrated Bishop of the said See of Newcastle. And We do hereby signify to the Most Reverend Father in God, William, by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, the erection and constitution of the said See and Diocese and our nomination of the said William Tyrrell, requiring and, by the Faith and Love whereby He is bound unto Us, commanding the said Most Reverend Father in God to ordain and Consecrate the said William Tyrrell to be Bishop of the said See and Diocese in manner accustomed, and diligently to do and perform all other Things appertaining to his Office in this Behalf with Effect. And We do Ordain and declare that the said William Tyrrell, so by Us nominated and appointed, after having been ordained and consecrated thereunto as aforesaid, may by virtue of such appointment and consecration enter into and possess the said Bishop's See as Bishop thereof without Let or Impediment from Us. Our Heirs and Successors, for the Term of his Natural Life, subject nevertheless to the right of resignation hereinafter more particularly expressed.

Moreover. We Will and Grant by these Presents that the said Bishop of Newcastle shall be a Body Corporate, and do Ordain, make, and constitute him to be a Perpetual Corporation, and to have Perpetual Succession, and that He and his Successors be forever hereafter called or known by the name or Title of the Lord Bishop of Newcastle. And that He and His Successors by the name or Title aforesaid shall be able and capable in the Law and have full power to purchase, have, take, hold and enjoy Manors, Messuages, Lands, Rents, Tenements, Annuities and Hereditaments of what nature or kind soever in Fee and in Perpetuity, or for a Term of Life or Years, and also all manner of Goods, Chattels and Things Personal whatsoever, of what nature or value soever: And that He and His Successors be and may prosecute, claim, plead and be impleaded, defend and be defended, answer and be answered, in all manner of Courts of Us, our Heirs and Successors, and elsewhere in and upon all and singular Causes, Actions, Suits. Writs and Demands, real and Personal and Mixed, as well Spiritual as Temporal, and in all other Things, Causes and Matters whatsoever. And that the said Bishop of Newcastle and his Successors shall and may for ever hereafter have and use a corporate Seal, and the said Seal from time to time, at his and their Will and pleasure, break, change, alter or make anew as He or They shall deem expedient.

And We do further by these Presents ordain and constitute the Town of Newcastle within the said Colony of Australia to be a Bishop's See, and the Seat of the said Bishop. And We do Ordain that the said Town of Newcastle shall henceforth be a City and be called the City of Newcastle.
And we do hereby further ordain and declare that the Church
called “Christ Church” in the said City of Newcastle shall hence-
forth be the Cathedral Church and See of the said William Tyrrell
and his Successors, Bishops of Newcastle.

And we do further ordain and declare that the said Bishop of
Newcastle and his Successors shall be subject and subordinate to
the Bishop of Sydney as Metropolitan in the same manner as any
Bishop of any See within the Province of Canterbury in our King-
dom of England is under the Metropolitical See of Canterbury and
the Archbishop thereof.

And We do further Will and ordain that every Bishop of New-
castle shall take an Oath of due obedience to the Bishop of Sydney
for the time being as his Metropolitan, which oath shall and may be
ministered by the said Archbishop or by any Person by him duly
appointed or authorized for that purpose.

And We do further by these Presents expressly declare that the
said Bishop of Newcastle and also his Successors, having been re-
spectively by Us, our Heirs and Successors, named and appointed,
and by the said Archbishop of Canterbury canonically ordained
and consecrated according to the Form of the United Church of
England and Ireland, may perform all the Functions peculiar and
appropriate to the Office of Bishop within the said Diocese of New-
castle; and, for a Declaration of the Spiritual causes and matters
in which the aforesaid jurisdiction may be more specially exercised,
We do by these Presents further declare that the aforesaid Bishop
of Newcastle and his Successors may exercise and enjoy full power
and authority by Himself or Themselves, or by the Archdeacon or
Archdeacons or the Vicar General, or other Officer or Officers
hereinafter mentioned, to give Institution to Benefices, to grant
Licenses to officiate to all Rectors, Curates, Ministers and Chap-
lains of all the Churches or Chapels or other places within the said
Diocese, wherein Divine Service shall be celebrated, according to
the Rites and Liturgy of the Church of England, and to visit all
Rectors, Curates, Ministers and Chaplains, and all Priests and
Deacons in Holy Orders of the United Church of England and
Ireland, resident within the said Diocese, as also to call before
Him or Them, or before the Archdeacon or Archdeacons, or the
Vicar General, or other Officer or Officers hereinafter mentioned,
at such competent days, Hours and Places, when and so often as
to him or them shall seem meet and convenient, the aforesaid
Rectors, Curates, Ministers, Chaplains, Priests and Deacons, or any
of them, and to enquire as well concerning their Morals as their
Behaviour in their said Offices and Stations respectively; subject
nevertheless to such rights of review and appeal as are hereinafter
given and reserved; and, for the better accomplishment of the Pur-
poses aforesaid, We do hereby grant and declare that the said Bishop
of Newcastle and his Successors may found and constitute one or
more Dignities in the said Cathedral Church and also one or more
Archdeacons within the said Diocese, and may collate one or
more fit and proper persons to be Dignitaries of the said Cathedral
Church, and one or more fit and proper persons to be Archdeacons
of the said Archdeaconries respectively. Provided always that
such Dignitaries and Archdeacons shall exercise such jurisdiction
only as shall be committed to Them by the said Bishop or his Suc-
cessors, and the said Bishop and his Successors may also from time
Letters patent for erection of bishopric of Newcastle.

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...to time nominate and appoint fit and proper persons to be respectively the Officers hereinafter mentioned, that is to say, to be Vicar General, Official Principal Chancellor, Rural Deans, and Commissaries either General or Special, and may also appoint one or more fit and proper persons to be Registrars and Actuaries. Provided always that the Dignitaries and Archdeacons aforesaid shall be subject and subordinate to the said Bishop of Newcastle and his Successors, and shall be assisting to him and them in the Exercise of his and their Episcopal Jurisdiction and Functions. And We Will and declare that, during a Vacancy of the said See of Newcastle by the demise of the Bishop thereof or otherwise, the said Dignitaries and Archdeacons and the said Vicar General and otherOfficers respectively appointed as aforesaid shall continue to exercise, so far as by Law they may or can, the Jurisdiction and Functions delegated to them; and that the said Registrars and Actuaries shall respectively continue to discharge the Duties whereunto they have been appointed, until a New Bishop of the said See of Newcastle shall have been nominated and consecrated, and his arrival within the limits of the said Diocese shall have been notified to the said Parties respectively.

And We further Will and do by these Presents declare and Ordain, that it shall be lawful for any Party against whom any Judgment, Decree, or Sentence shall be pronounced by any of the said Archdeacons, or by the Vicar General, or other Officer or Officers of the said Bishop, or his Successors to demand a re-examination and review of such Judgment, Decree or Sentence before the Bishop or his Successors in person, who upon such Demand made shall take cognizance thereof and shall have full power and authority to affirm, reverse, or alter the said Judgment, Sentence or Decree; and, if any party shall conceive himself aggrieved by any Judgment, Decree, or Sentence pronounced by the said Bishop of Newcastle or his Successors either in case of such review or in any cause originally instituted before the said Bishop or his Successors, it shall be lawful for the said party to appeal to the said Bishop of Sydney or his Successors, who shall finally decide and determine the said appeal. Provided always that, in any such case of appeal or reviews, notice of the intention of the Party to make such appeal or Demand such review shall be given to the Bishop or subordinate Judge, by whom the Sentence appealed from or to be reviewed shall have been pronounced within Fifteen days from the promulgation thereof. And We do further Will and by these Presents ordain that, in all cases in which an Appeal shall be made or review demanded as aforesaid, a Copy of the Judgment or Sentence, in such case promulgated or given, setting forth the causes thereof, together with a Copy of the Evidence on which the same was founded, shall without delay be certified and transmitted by such subordinate Judge to the said Bishop or his Successor, or by the said Bishop or his Successor to the said Bishop of Sydney as the case may require.

Moreover it is Our Will and Pleasure, and We do hereby declare and ordain that nothing in these presents contained shall extend, or be construed to extend, to repeal, vary or alter the Provisions of any Charter whereby Ecclesiastical Jurisdiction has been given to any Court of Judicature within the Limits of the said Diocese,
and for removing doubts with respect to the validity of the Re- 1847.
signation of the said Office and Dignity of Bishop of Newcastle. 27  Aug.
It is Our further Will that, if the said Bishop or any of his Suc-
cessors shall by Instrument under his Hand and Seal delivered and
sent to the Archbishop of Canterbury for the time being and by
him accepted, and registered in the Office of Faculties of the said
Archbishop, resign the Office and Dignity of Bishop of Newcastle,
such Bishop shall from the time of such acceptance and registra-
tion cease to be Bishop of Newcastle to all intents and purposes,
but without prejudice to any responsibility to which he may be
liable in Law or Equity in respect of his conduct in his said Office.

And lastly, to the End that all things aforesaid may be firmly
holden and done, We Will and grant to the aforesaid William
Tyrrell that He shall have Our Letters Patent under Our Great
Seal of Our said United Kingdom duly made and sealed. In Wit-
ess whereof We have caused these Our Letters to be made Patent.
Witness Ourself at Westminster the 25th day of June in the
Eleventh Year of Our Reign.

By Writ of Privy Seal.

[Enclosure No. 3.]

LETTERS PATENT FOR ERECTION OF BISHOPRIC OF MELBOURNE.

[These letters patent were similar to those contained in enclo-
sure No. 2 with the substitution of Charles Perry for William
Tyrrell, and Melbourne for Newcastle, wherever these names occur,
and of the church, called "St. James the Great," for the church,
called "Christ Church," as the cathedral church; and with the
alteration of the boundaries of the diocese as follows:—]

All those parts or portions of Our said Colony, known or called
by the name of Port Phillip District, the same being bounded by a
Line drawn from Cape Howe to the nearest Source of the River
Murray, and by the course of that River until it reaches the 141st
Parallel of East Longitude, to be a Bishop's See or Diocese, and
to be called henceforth the Bishoprick of Melbourne.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 173, per ship Sunflower; acknowledged by
earl Grey, 21st February, 1848.)

My Lord,

Government House, 27th August, 1847.

Referring to my Predecessor's Despatch of the 17th No-
vember, 1845, No. 190, reporting that, with the advice of the
Executive Council, Leave of Absence for eighteen months with
half Salary had been granted to Mr. Assistant Surveyor Bourke;
I now do myself the honor to state to Your Lordship that the
time for which leave of absence was granted to Mr. Bourke, and
which was confirmed by Mr. Gladstone's Despatch, No. 28 of
28th May, 1846, has expired, but that he has not yet returned to
the Colony.

I have, &c.,

CHS. A. FITZ ROY.
1847.
28 Aug.

Ship chartered for conveyance of "exiles."

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 211, per ship Kelso; acknowledged by
Sir Charles Fitz Roy, 23rd March, 1848.)

Sir, Downing Street, 28 August, 1847.

I have to acquaint you that the ship "Marion" has been
chartered for the conveyance of Three hundred Exiles from Mill-
bank, Pentonville and Parkhurst Prisons to Port Phillip.

I have, &c.,
GREY.

30 Aug.

Despatch acknowledged re redemption of debentures.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 212, per ship Kelso; acknowledged by
Sir Charles Fitz Roy, 8th January, 1848.)

Sir, Downing Street, 30 August, 1847.

I have the honor to acknowledge the receipt of Your Des­
patch, No. 19 of the 30th of January, reporting that the out­
standing Debentures issued on account of former Emigration, to
the amount of £100,000, will be paid off this year, and that the
Crown Revenues will therefore become quite unencumbered; and
recommending a renewal of Emigration to the extent of 5,000
Statute Adults.

I have to state that, on the expediency of renewing Emigration,
I entirely concur in the opinion you express. I am fully alive
to the urgent demand for labor, and it would be a source of deep
regret to Her Majesty's Government if, with a flourishing revenue
and a large trade, the prosperity of the Colony were permanently
endangered for want of hands to develop its resources.

The only difficulty has been to settle the mode in which the
expenditure should be provided for. It was ascertained that to
make a stipulation as you suggest that, in the event of your
failing from any unexpected reason to raise the requisite Funds,
the Ship Owner should accept payment in Debentures, would be
liable to defeat the measure or at any rate to expose the Colony
to the most serious disadvantage in the terms it could obtain. On
the other hand, it might have been in vain, and would possibly
have been attended with difficulties of a legal nature to attempt
this year to raise a Public Loan for the Colony in the London
Money Market. For some time before receiving your Despatch,
I had under my consideration a proposal of an advance by one of
the Banks; but to take a Loan of this kind by private Contract
would have been a questionable measure, and on investigation it
appeared that virtually the offer of the Bank was only tanta­
mount to advancing the money in the Colony, where, from your-
representation in the present Despatch, I trust that it will be in your own power to raise it in a regular way by public Competition.

On the whole, therefore, being anxious to relieve the Colony from that extreme want of labour which at present exists, and relying on the confident expectation you express that Funds can be raised, I have resolved to direct the Emigration Commissioners to take the necessary measures without delay to send out 5,000 Statute Adults to New South Wales.

It remains that I should notice some particulars on the manner in which the Emigration is to be conducted, and on the pecuniary arrangements.

I agree with you that it is important that means should be taken to distribute the Emigrants promptly after arrival. Some deficiency in this respect is said to have been experienced at the time of the last Emigration to New South Wales. So fully do I feel the importance of this object, that I should especially wish you to adopt every advisable means for corresponding with the interior on the demand for Servants, and for employing during the Emigration any additional Agency which may appear calculated more readily to find the people good employment in the Country. But I do not think it would be advisable to insert, as you suggest, a provision in the Charter-parties that Ships may be ordered from Sydney and Port Phillip to Minor Ports. This measure might affect Insurances; it would impair the facilities of Ship Owners for taking Cabin Passengers and Cargo, and, by thus diminishing convenience and economy, would entail the disadvantage on the Colony of enhancing terms on which Contracts could be entered into. Important therefore as I deem the object, it appears to me that it may be more fitly met by making use of the Coasters and Steamers on the spot. And I have not, therefore, caused any change to be made in the Charter Parties.

I may take the present opportunity of informing you that it has been mentioned by Mrs. Chisholm, in some evidence before a Committee of the House of Lords, that there used to be a want of proper accommodation for the reception and protection of young women immediately on their landing from Emigrant Ships. This is a point to which I would request your early attention, and I am sure that I need not impress upon you the importance that single women, who arrive by Emigrant ships, should not be exposed to any hardships or dangers which can possibly be averted by the Government.

I have not caused the Emigration to be resumed on the footing of what is called Bounty. That system, in its original shape, has long since been abandoned. In the modified form in which
it was last used, it was not unsuccessful, because fortunately it fell into the hands of Contractors of great experience and respectability. But there is always the risk that the Contract may be acquired by less deserving or less competent persons. Many Merchants may be excellent Shipowners, without at all understanding the complicated business of selecting and despatching large bodies of Emigrants.

On the whole, there is stated to have grown up a general consent among all parties, that it is better that the Shipowners should attend to their own business of finding Ships, and the Government not abandon its proper functions of selecting Emigrants; and, upon this footing accordingly, I have directed the Emigration Commissioners to proceed in carrying into effect the present measure. No Board of Inquiry is to sit in order to examine in the case of every Emigrant, whether or not he appears a Man on whom it is fit to pay Bounty.

The Commissioners will select the most fitting Candidates they can procure, and the Shipowner will be paid for every passenger whom he conveys.

Turning now to the pecuniary arrangements, I have to inform you that the Commissioners have ascertained that there will be no objection on the part of the Trade to dispense with receiving any portion of the freight at the time of Sailing from this Country; but that, in order to avoid the inconvenience of Agency and remittance, Owners would rather not be paid in the Colony, and would prefer waiting till intelligence reaches England of the safe arrival of the Emigrants.

The Lords of the Treasury have agreed that, in order to promote this arrangement, they will authorise the Chief Officer of the Commissariat to receive any Sums which you may pay into the Military Chest for Emigration purposes, and will direct him to give immediate notice of the same to their Lordships, upon which they will at once issue the same amount to the Emigration Commissioners to be applied to the objects of the present measure.

I have to instruct you therefore as soon as possible to raise and pay to the Commissariat a Sum of £20,000, in order to meet the liabilities of the earlier Ships, and to raise and pay in like manner the remainder of the total amount of £100,000 in Instalments of not less than £10,000 in each succeeding month until the whole be completed. Half this amount of £100,000 is to be raised by the Sale of Debentures secured separately on the Crown Revenues of Sydney, and half by the sale of Debentures secured on the Crown Revenues of Port Phillip. The Emigrants will also be divided equally between those two destinations, so that each will receive the number of Emigrants for which it pays.
In your Despatch, you appear to contemplate the possibility of issuing at par Debentures bearing only 5 Per cent. Interest. But the value of money has since so much risen in almost every part of the world that I apprehend it is very unlikely you would now find such favorable anticipations realized. If such should be the case, it will be of great importance to the permanent advantage of the Colony that you should rather meet this change in the Money Market by raising the rate of interest at which the Debentures are issued, than by consenting to allow a discount on Debentures issued at 5 per cent. By the latter course, the interest, to be paid on the amount of money actually paid by the leaders into the Colonial Treasury, would probably be the same, or nearly the same, as that paid on the money received for Debentures bearing a higher nominal interest; but the Colony would incur a loss in the ultimate repayment of the principal, and also the power of hereafter obtaining a reduction in the rate of interest, if a fall in the market value of money should occur.

With this general remark, I must of course leave it to you to be guided by local circumstances, at the time, in the details of a transaction of this nature.

One observation only I must strongly impress upon you. The present Emigration has been commenced in consequence of your report that the outstanding Debentures will in the course of this year be paid off; extensive liabilities are about to be contracted in the faith that the Colony will supply the means of defraying the charges incurred for an object, justly described as of such vital importance to its interest. I do, therefore, rely upon you to omit no effort to ensure the prompt raising and remittance of the Funds necessary to maintain the Credit of New South Wales, and to justify the Government on future occasions in continuing or renewing similar efforts to supply it with labor. No useless expense, of course, should be incurred in borrowing the money; but, should circumstances be adverse, you will still bear in mind that the first duty is to provide, even at a sacrifice, the means of meeting the engagements now going to be formed, and, that no ordinary difficulties must on any account be considered a reason for failing to satisfy that paramount object. I have, &c.,

GREY.

SIR CHARLES FITZROY TO EARL GREY.

(Despatch No. 176, per ship Sunflower: acknowledged by Earl Grey, 14th April, 1848.)

My Lord, Government House, 30th August, 1847.

With reference to my Despatch, No. 141 of the 11th ultimo, forwarding the proceedings of the Board appointed to
examine into the state of the Books and Instruments in the Observatory at Parramatta, and reporting the steps I had taken to insure their preservation, I have the honor to transmit the copy of a letter from Lieut. Colonel Gordon, Commanding Royal Engineer, and the Ordnance Storekeeper, enclosing a communication from Mr. Dunlop, intimating his wish to resign the appointment of Astronomer in consequence of his continued state of ill health, which incapacitates him from the fatigue of observing; and I have the honor to report that I have accepted his resignation accordingly.

I have also approved the suggestion of the Board that the expense incurred in packing and removing the Instruments from the Observatory to the Ordnance Store in Sydney be charged to the Engineer Estimate for Civil Services.

I have, &c,

CHS. A. FITZ ROY.

[Enclosure No. 1.]

MR. JAMES DUNLOP TO THE BOARD OF VISITORS OF THE PARRAMATTA OBSERVATORY. Observatory, Parramatta, 18th August, 1847.

Gentlemen,

The Observations were commenced by me about the middle of January, 1832, with a five-and-a-half (5½) feet transit and a two (2) feet mural circle by Troughton, and continued until the transit was replaced by Jones' three-and-a-half (3½) feet transit circle in the middle of the year 1835, after which the mural circle was principally used, the circle by Jones being very difficult for one person to work.

The observations consist of right ascensions and polar distances with moon, culminating stars, comets, etc. The reductions of a portion of the observations between 1832 and 1835 have been proceeded with, but, having no assistant or clerk, they have not proceeded so far as I could wish.

The buildings of this Observatory are in a very bad state of repair. The white ant has been most destructive, and, as the surrounding ground is full of them, it would be fruitless to attempt a repair, which could not last above two or three years at most. The building was originally of a very inferior description, being only intended as a private establishment* and not calculated to last beyond a few years. (The building was commenced in December, 1821, and the instruments were fixed and the observations commenced about the 11th of March, 1822).

The subsoil is alumina schistose, into which the stone piers are sunk several feet, and from the access of air and water the alumina is gradually dissolving and the pillars sinking, and some of them unsteady.

The Library is in much the same state as it was when I took charge of it in 1832.

The manuscript observations are contained in five volumes and six or seven smaller volumes.

* Note 50.
The instruments and clocks are in good working order. The spirit level of the transit circle, by Jones, burst by exposure to the sun a few months after it was set up, the tube being filled with sulphuric ether, which boils at a very low temperature, far below the powerful influence of the solar rays.

This circle would have been a more powerful instrument had it read off with four microscopes instead of three. The errors arising from eccentricity (if any) would thereby in a great measure have been neutralized, which cannot be the case with three microscopes. Altogether it is an unhandy instrument.

As the building cannot long protect the instruments in safety, I would recommend their removal to one of Her Majesty's Stores in the Military Barracks.

The site of the present building is what I could not recommend for the erection of a more complete and useful establishment, not only on account of the poisoned state of the ground by the white ant, but its local situation, and also its distance from Sydney, the sea-port.

I think a very desirable and convenient site may be obtained on the high grounds on the North Shore in the vicinity of Sydney, out of the smoke of the city and view of the harbour and shipping, which would give to the masters of vessels the desirable opportunity of obtaining their time, and ascertaining the rate of their chronometers by signal or ball as practised at Greenwich and other places.

For myself, I have now weathered it nearly three-score years, and I find the last quarter of a century spent in this country has considerably blunted my energies of body and mind. With your recommendation to His Excellency the Governor, it is my wish to try a change of scene and occupation with what little health and strength remains, to endeavour to weather it a few years longer.

I have, &c.,

JAMES DUNLOP.

[Enclosure No. 2.]

LIEUT.-COLONEL GORDON AND MR. ROGERS TO COLONIAL SECRETARY THOMSON.

Sir,

Sydney, 23rd August, 1847.

1. In reference to the accompanying letter from Mr. Dunlop, the Astronomer at Parramatta, we beg to request the authority of His Excellency the Governor for the instruments and books belonging to the Parramatta Observatory being packed in cases and deposited in either the Royal Engineer Office or Ordnance Store in Sydney.

2. Captain King, R.N., the senior Commissioner for visiting the Observatory, previously to his leaving Sydney acquiesced in the propriety of this measure as the best that could be adopted for the safety of the instruments and books pending the construction of a new Observatory.

3. It is proposed, subject to the approval of His Excellency, to charge to the Engineer Estimate for Convict Services the expense to be incurred in providing the packing cases and in the removal of the instruments and books.

We have, &c.,


RICH. ROGERS, Ordnance Storekeeper.
EARL GREY TO SIR CHARLES FITZ ROY.

(Circular per ship Kelso.)

LORD GREY presents his compliments to Sir Charles Fitzroy and transmits herewith 2 Copies of Blank Returns of which the Annual Blue Book is composed for the year 1847.

Downing Street, 31st August, 1847.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch marked "Separate," per ship Sunflower; acknowledged by earl Grey, 18th February, 1848.)

Government House, 31st August, 1847.

Referring to my Despatch of the 29th ultimo, I have the honor to enclose the accompanying Address of Condolence with Lady Gipps, on the death of the late Sir George Gipps,* from the Mayor and Aldermen of the City of Sydney, who have requested me to forward it through your Lordship to insure its safe transmission.

I have, &c.

CHS. A. FITZ ROY.

[Enclosure.]

COPY of an Address of Condolence to Lady Gipps on the death of Sir George Gipps, adopted by the City Council on 19th July, 1847.

May it please Your Lordship,

We, the Mayor, Aldermen and Councillors of the City of Sydney in Council assembled, beg leave to offer to your Ladyship our deep Sympathy and condolence on the painful bereavement with which it has pleased God to visit you in the sudden death of your Consort, His Excellency Sir George Gipps, who, for upwards of eight years, and during a period of unparalleled Commercial embarrassment and difficulty, administered the Government of this distant but important portion of Her Majesty's dominions.

It must be gratifying to Your Ladyship to feel that the name of Sir George Gipps is associated with the introduction of Free Institutions into this Colony, and in such proud connection will survive, when the present generation has passed away, and the conflicting interests, which the introduction of liberal measures must always put in motion, are forgotten.

While we maintain a grateful remembrance of the Parent of that Institution which gave us Corporate existence, we have reason, on account of our Constituents, deeply to regret the untimely death of one whose great abilities and powerful influence might still have been exerted in our behalf, and our regret is increased by the conviction that his death was hastened if not occasioned by his anxious and unremitting labours in the service of his Country while Governor of New South Wales.

In conclusion we feel assured that, in the expression of our deep and unfeigned sympathy with your Ladyship on the irreparable loss which you have sustained, we are echoing the sentiments of

* Note 40.
the whole Community, where your virtues will long be remembered: and praying that He, who has laid his afflicting hand on you, may give you strength to endure the blow, and that you may be preserved for many years to watch over the education of your son, and to train him up to tread in the Steps and to emulate the upright and manly example of his illustrious Father.

We have, &c,

JOHN RAE, Town Clerk.

THOS. BROUGHTON, Mayor.

SIR CHARLES FITZ ROY TO EARL GREY.

(My Lord, Government House, 1st September, 1847.

I have the honor to acknowledge the receipt of your Lordship's Despatches numbered in the margin,* which arrived this day by the ship "Sterling." I have, &c,

CHS. A. FITZ ROY.

EARL GREY TO SIR CHARLES FITZ ROY.

(My Lord, Downing Street, 3 September, 1847.

I have to acknowledge the receipt of Your Despatch of the 6th November, 1846, No. 56, transmitting a Memorial from Gentlemen resident in Sydney, together with copies of Petitions presented to the Legislative Council of New South Wales against the revival of Transportation to the Colony, and also the Report of a Committee of the Legislative Council upon the same subject.

I have to inform you that, these documents having received the attentive consideration of Her Majesty's Servants, we have not been able altogether to assent to the views which have been adopted by the Committee of the Legislative Council, or to the greater part of the proposals which are founded upon them; but that the result of their enquiry suggests a course of proceeding which I trust will prove of great benefit both to the Colony and to the Mother Country.

The system of assignment, tho' no doubt of great pecuniary advantage to those of the Settlers in New South Wales and Van Diemen's Land to whom it was the means of affording a supply of gratuitous or, at all events, of very cheap labour, is one which has been condemned on grounds so conclusive that I cannot anticipate the possibility of its ever being resumed. Hence it is unnecessary that I should enter into any examination of the extensive changes, which are proposed on the supposition that it might be so.

* Marginal note.—Nos. 122 to 146 (inclusive). Circular, 8 April, 1847; Circular, 12 April, 1847; Circular, 16 April, 1847; Circular, 19 April, 1847; Circular, 19 April, 1847.
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On the other hand, I concur with the Committee in considering it to be inexpedient that Transportation to New South Wales should be revived with the view to the infliction in that Colony of punishment upon Convicts by placing them in Penal Gangs.

To whatever extent it may be found advisable that Penal labour should be inflicted upon Convicts, the experience of the last few years demonstrates the importance of its being so where its effects can be more closely watched by Her Majesty's Government; and such improvements, as from time to time may be found to be necessary in the system under which it is enforced, more promptly introduced.

I also concur with the Committee in thinking that Convicts, holding Tickets of Leave or Conditional Pardons, may be sent to Australia with great advantage to themselves, the Mother Country and to the Colony. To Convicts themselves, their removal to Australia, after having undergone a reformatory course of punishment at home, would be the best means of affording a prospect of once more becoming honest and useful Members of Society. To the Mother Country, there would be the advantage of being relieved from the presence of a Class of persons, who, if they remain at home, are almost irresistibly forced back by the circumstances in which they are placed, into a life of crime; while, to the Colonies, there would arise the advantage of obtaining without charge a supply of labour which is greatly needed, and this, as I believe, without serious danger (supposing proper precautions to be adopted) of entailing upon the Colonial Society countervailing moral evils.

Of these precautions, the most essential is that Offenders thus sent into exile should have been previously subjected to a reformatory punishment at home. Though exile is no doubt in itself a punishment, and in some cases a severe one, still, as experience proves that many thousands of honest and industrious persons of the labouring class are annually content to submit to the pain of leaving their Native Country for the sake of the higher Wages which they can earn in the Colonies, it is impossible to regard mere removal to the Australian Colonies with Tickets of Leave or Conditional Pardons, as a sufficient punishment for persons who have been guilty of serious offences. Those who have Conditional pardons are, on their arrival in Australia, in precisely the same condition as free Emigrants of the working Class, except in the single particular of not being at liberty to return to their own Country; and the situation of the holders of Tickets of Leave is practically but little different, since, while
they reside in the districts appointed for them and maintain themselves by honest industry, conforming to certain rules by no means of a severe character, they are not interfered with.

Hence, for the ends of Justice, it is absolutely necessary that Offenders should be subjected to some serious punishment at home, before they are thus sent out to the Colonies; and the experience of the last few years justifies the hope that, by adopting an improved system of imprisonment, it may be practicable to render this previous punishment both an object of salutary dread to those disposed to the commission of Crimes, and reformatory as regards Offenders who are subjected to it.

I am happy to find that this conclusion is supported by the Report now before me of the Committee of the Legislative Council of New South Wales, and that, from the evidence they had had of the good conduct of the Exiles sent to Port Phillip, this Committee adopted the opinion that Convicts, who have undergone a reformatory punishment at home, might be received with advantage in the Colony; the reasons, however, which they have pointed out for sending Offenders to Australia after their preliminary punishment at home rather with Tickets of Leave than with Conditional Pardons, seem to be just; and they are also, as I find by a Despatch I have received, supported by the opinion of Mr. La Trobe, the Acting Lieutenant Governor of Van Diemen's Land, and of Dr. Hampton, the Comptroller of the Convict Department in that Colony. Should it appear, therefore, from the proceedings of the Legislative Council on its re-assembling, that that body concurs in the opinion expressed by its Committee on this subject, an arrangement will probably be made, in conformity with the views I have now stated, for sending Convicts, after having undergone some portion of their punishment, to New South Wales as Holders of Tickets of Leave or Conditional pardons in general, for the reasons, I have stated, with the former, but in some cases, in which greater indulgence would seem to be proper, with the latter. Her Majesty's Government would of course reserve to themselves the discretion of deciding in each individual case in which of these conditions Convicts should be sent out.

I have to add that it would be a necessary part of the arrangement that, whenever the conduct of Married Convicts so sent to Australia should be such as to entitle them to the indulgence, Her Majesty's Government would be prepared to afford facilities to their Wives and Families to join them; and that still further to guard against the social evils which have heretofore resulted from the system of transportation, means would also be provided (in accordance with the recommendation of the Committee of the
Legislative Council) for sending to Australia, at the cost of the British Treasury, a number of Free Emigrants equal to that of the Offenders who may go there.

Such are the conclusions, to which Her Majesty's Servants have been led, after very mature consideration of this most important subject, and which I hope will be received as not unsatisfactory by the majority, both of those of the Inhabitants who have petitioned the Council against the renewal of Transportation, and of those who concur in the views of the Committee of that Body by which the subject was investigated. The former will find that there is no intention of resuming Transportation to New South Wales, as it formerly existed, to which they entertain what I regard as such just objections; the latter, that it is contemplated (if the further advices to be expected from the Colony should show the Legislative Council to agree in the views of their Committee) in some degree at least to adopt their suggestions for rendering the system of secondary punishment in this Country subservient to the object of encreasing the supply of labour in the Colony.

I have, &c,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 214, per ship Alert.)

Sir,
Downing Street, 3 September, 1847.

With reference to my Dispatch, No. 200 of the 31st Ultimo, I have now to acquaint you that Her Majesty has been pleased to confirm and allow, the Act (No. 13), passed by the Governor and Legislative Council of New South Wales on the 30th of October, 1846, and entitled "An Act to authorize and regulate for a limited time the Warehousing under Bond and the exportation free of duty of Spirits distilled within the Colony of New South Wales."

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.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 216, per ship Alert.)

Sir,
Downing Street, 4 September, 1847.

I referred a copy of your Dispatch of the 17th of June, 1846, No. 118, to the Lords Commissioners of the Treasury, and I have now to inform you that their Lordships have intimated
to me their approval of your having established a Branch of the Customs Department at the Township of Eden in Twofold Bay, and of the appointment of Mr. Hamon Massie as Sub-Collector and of Mr. Edmund Gibbes as Landing Waiter at that station. The requisite directions have been given by their Lordships for the confirmation of those appointments.

GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(A private despatch, per ship Alert.)

Sir, Downing Street, 7th of September, 1847.

I have to acknowledge the receipt of your letter of the 3rd of April last, marked "Private," in reply to which I have only to express my regret at your having suffered so much from the accident* which you have met with.

I have, &c,

GREY.

MEMO, FROM COLONIAL OFFICE.
(Per ship Alert.)

The accompanying letter has been sent to this office with a request from a person, subscribing himself Michael Carroll, that it may be forwarded through the Governor of New South Wales in order that he Michael Carroll may be protected against some fraud which he seems to apprehend.

Colonial Office, 7th September, 1847.

[Enclosure.]

[A copy of this letter is not available.]

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 217, per ship Alert.)

Sir, Downing Street, 9 September, 1847.

With reference to Lord Stanley's Despatch to Your Predecessor, No. 167 of the 30th of November, 1844, with its Enclosures, relative to the enquiry which had previously taken place into the state of the Customs Department at Port Phillip and to the Surcharges which on that occasion were raised against Mr. Webb, the Sub-Collector at Melbourne, I now transmit, for your information and guidance, the accompanying Extract from a report of the Commissioners of Customs, with copies of a Minute of that Board, and of the Balance Sheet prepared in conformity therewith, together with the Copy of a communication

* Note 42.
which the Lords of the Treasury have directed to be made to the Commissioners, from which you will perceive that their Lordships have decided that, excepting to the extent of Thirty two Pounds, 9s. 7d., Mr. Webb should not be held responsible for the amount of the above mentioned surcharges, and that he is to be reemployed as first Clerk to the Collector at Sydney at a Salary of Three hundred Pounds per annum.

I have, &c.,

GREY.

[Enclosure No. 1.]

REPORT To the Lords Commissioners of Her Majesty's Treasury.

We beg to represent that, in Our Report to Your Lordships, dated 30th October, 1844, No. 1467, upon a letter from Mr. Stephen transmitting, by desire of Lord Stanley, copy of a dispatch from the Governor of New South Wales relative to an enquiry, which had been instituted in pursuance of our directions by Mr. Barnes, the Collector of Customs at Hobart Town, Van Diemen's Land, into the state of the Customs Department at Port Phillip, New South Wales, and which has led to the discovery that Mr. Webb, the Sub-Collector at that place, had failed to account to the Crown for a considerable portion of the Customs revenue of the Colony, which had been confided to his management.

We adverted to the disorganised state, in which the department had been found by Mr. Barnes, as well as to the numerous surcharges which had been raised upon Mr. Webb's Account; and we at the same time stated that under the circumstances we had felt it to be our duty to suspend Mr. Webb and to direct that Mr. Cassell, the Senr. Clerk to the Collector at Hobart Town, Van Diemen's Land, to continue to act as collector, pending Mr. Webb's suspension, and to proceed in the adjustment of his Accounts, for which purpose we had furnished him with detailed instructions for his Government.

That we have recently received the Report of Mr. Cassell, accompanied by Mr. Webb's explanations, that, after a careful examination of these different statements by the Inspector and Examiner of Plantation Accounts, that Officer had laid before us for our consideration and decision a statement shewing under 5 different and distinct heads the balance apparently outstanding against Mr. Webb, amounting to the sum of £3,108 11s. 1d.

We beg to annex a copy of Our Minute, dated 23d of June, 1847, marked B, wherein we have detailed the grounds upon which we consider Mr. Webb ought to be relieved from the greater part of the Surcharges therein referred to.

With respect, however, to the surcharges of £1,778 6s. 11d. on account of Wharfage Entrances and clearances, short charged, We beg to annex Copies of the opinion of the Law Officers of the Colony upon the subject, having to state, as already observed in our minute of the 23d June last upon this item of surcharge, that, as the total amount of the sum short charged for Wharfage is entirely of a local nature and unconnected with the Customs revenue, it will be for the competent Authorities in the Colony to decide how far they may see fit to waive their claim to the whole or to any portion of the surcharge.
We also annex a revised Balance sheet, marked C, which has been prepared in pursuance of the directions contained in our Minute of the 23d June last, from which your Lordships will observe that the actual sums with which Mr. Webb stands in our opinion charged, exclusive of the sum of £1,778 6s. 11d. due on account of Wharfage, is £32 9s. 7d.

With respect to the individual case of Mr. Webb himself, who your Lordships are aware was a Clerk in the Customs Department at Sydney, and had been directed in 1838 to proceed for the purpose of acting temporarily as sub-collector at Port Phillip, We have to state that although there can be no doubt that he failed in carrying out to a successful termination the mission with which he had been entrusted, and that the Department generally was in a very disorganized state at the period of Mr. Barnes' visit in 1844, nevertheless considerable allowances are to be made for the difficult situation in which he was in the first instance placed. Mr. Barnes himself having represented at the opening of the Port, when there was scarcely a Hut on the Settlement, or the assistance of any person to be procured, that Mr. Webb's embarrassment was of no ordinary nature, and that it was beyond all human power to carry into effect or enforce at the time our adherence to those rules and regulations, by which long established Ports are governed; in addition to which duties, it is to be observed that Mr. Webb was at one time required under our order from your Lordships to discharge the duties of Colonial Treasurer, which duties we expressed our apprehension in Our report of the 12th April, 1838, No. 548, might be found incompatible with his duties as an Officer of Customs. Under all the circumstances however of Mr. Webb's case, and although we would by no means feel ourselves justified in recommending that he should be again placed as the principal Superintending Officer of a Port like Melbourne, nevertheless we are disposed to give him an opportunity of redeeming his character, and would submit that, upon his foregoing the Balance of £32 9s. 7d. and undertaking to abide the decision of the Colonial Government in regard to the sum of £1,778 6s. 11d. due on account of wharfage, that he be appointed 1st Clerk to the Collector at Sydney at the established Salary of £300 per annum and which office is at present vacant by the suspension of Mr. Bury.

THOS. FREEMANTLE.  ED. SAURIN.
H. J. DAWSON.  J. GOULBOURNE.

Custom House, 6th August, 1847.

[Sub-enclosure marked B.]

Copy of Board's Minute, dated 23d June, 1847.

The Board have had under consideration the report of the Inspector and Examiner of Plantation Accounts, submitting for their consideration and direction the result of the investigations into the accounts of Mr. Webb, while acting in the capacity of sub-collector at Port Phillip, and from which it would appear that the Balance outstanding against that officer, subject to the revision of the Board, and which may be classed under the following heads, amounts altogether to the sum of £3,108 11s. 1d., viz:

1st. Miscalculations and Miscellaneous sums ................. £111 14 6

The Board are of opinion that Mr. Webb cannot be relieved from the surcharge of £19 16s., being the amount improperly and without due authority advanced to Mr. Le Sceuf, late Acting landing Surveyor, nor from the sum of £12 13s. 6d., being the amount paid in deposit by Mr. Graham for the duties due on Brandy and Whiskey, imported from Leith in 1841, and which clearly have not been paid or accounted for the Colony.
With respect to the remainder of the sums under this head, including the surcharges on the Milk Punch, and which amount altogether to the sum of £79 4s. 11d., the Board are of opinion that Mr. Webb should be relieved, there being no ground whatever to suppose, however irregular he may have conducted the Department, that he was guilty of any misappropriation with respect to them.

2nd. Goods improperly admitted as British. £4,632 3 0

The most material item forming this heavy surcharge, the Board observe is £326 8s., being the difference between the Foreign and Colonial duty charged on a quantity of rum imported from Bristol.

The Board are willing to give Mr. Webb the benefit of the Circumstance that the Cocket that accompanied the Rum from Bristol omitted to certify that the Rum had been mixed with Foreign spirits, and advertising to their decision in the case of Rum imported into Van Diemen's land per the Duillus from Bristol under similar circumstances in 1842, they direct that he be relieved from the same.

With respect to the remainder of the sums amounting to £126 15s., under Head, the Board, advertizing to the imperfect nature of the Documents which accompanied the goods with a view of establishing their origin and character, as well as to the circumstance that the Landing Surveyor, whose duty it was to have ascertained that fact by examination of the goods as well as a comparison of the result with the proper Documents, has been dismissed; and, as there is no ground whatever to suppose that Mr. Webb has not fully accounted to the Colony for all the duties which he received on their account, the Board are of opinion that his account may be relieved from the said sum of £126 15s.

3. Goods Warehoused but not accounted. £689 4 7

With respect to the surcharges arising under these heads, the Board have to observe that, at the period at which many of the transactions which have given rise to these surcharges took place when the Colony was in its infancy, that no proper establishment had been fixed for Melbourne, and that the Individuals, who had been temporarily employed, ought never in consequence of their inefficiency and indifferent character to have been admitted into the Department, that the warehouses were insecure, so much so as to leave no doubt that pillage to a considerable extent must have been carried on; the Board, therefore, although they cannot absolve Mr. Webb from great neglect, are of opinion, that it would be an extreme measure in a case involving so many difficult and doubtful considerations to hold him responsible for circumstances, over which it would have been difficult for him under the peculiar circumstances by which he was surrounded to have exercised strict control; and they therefore consider that his accounts shall be relieved from the surcharge under these heads.

5. Wharfage, Entries and Clearances short. £1,778 6 11

The principal part of the Surcharge under this head would appear to have reference to the account short charged previous to February, 1842 (being the period when the first wharf was erected), and amounts to the sum of £1,278 18s. 10d., inasmuch as it would be an Act of Severity to surcharge him for not having collected Wharfage during the period when no Wharf existed, it appearing that the Queen's Wharf was not constructed until 1842, previous to which period the goods were landed on the River's Bank, which was in a state of nature; and, although the surcharge of £499 8s. 10d. does not altogether stand in a favorable point of view, nevertheless under all the circumstances, and advertising to the view taken of the question by the Law Officers of the Colony, his claim to relief appears to be deserving of consideration, there being no ground whatever to suppose that he received and appropriated to his own use any sum which was strictly due on Account of Wharfage for that period.

As the total Amount however of the sum short charged for Wharfage is entirely of a local nature, and unconnected with the customs revenue, it will be for the Colony to decide how far they may see fit to waive their claim to the whole or any portion of the surcharge.

The Inspector and Examiner will, therefore, proceed in the preparation of a Balance sheet, shewing the sums which Mr. Webb with reference to the opinion herein expressed by the Board stands indebted to the Colony, in order that they may submit his case for the final directions of the Treasury.

[Annexure No. 1.]

Report of Mr. Pemberton, Inspector and Examiner of Plantation Accounts in the foregoing Minute.
BALANCE sheet, shewing the Amount due to the Revenue by Mr. Webb as stated in the revised queries on his accounts, in conformity with the decision of the Board, dated 23d January, 1847.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount of Surcharges</th>
<th>Amount of Do. to be struck off</th>
<th>Amount of Surcharge to Remain</th>
<th>Total Amount against Mr. Webb</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miscalculations and Miscellaneous</td>
<td>£ 111 6 s. d.</td>
<td>£ 79 11 s. d.</td>
<td>£ 32 9 s. d.</td>
<td>£ 32 9 s. d.</td>
</tr>
<tr>
<td>Goods improperly admitted as British</td>
<td>453 0 s. d.</td>
<td>453 0 s. d.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Difference in Warehouse Wasteage</td>
<td>66 2 s. d.</td>
<td>66 2 s. d.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wharfage Entries and clearances short</td>
<td>1,778 6 s. d.</td>
<td>1,778 6 s. d.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goods Warehoused and not accounted for</td>
<td>699 4 s. d.</td>
<td>699 4 s. d.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3,108 11 s. d.</td>
<td>3,076 16 s. d.</td>
<td>32 9 s. d.</td>
<td>32 9 s. d.</td>
</tr>
</tbody>
</table>


Sir, Melbourne. In reply to the case submitted to me by the Crown Solicitor, I do myself the honor to state to you that, in my opinion if the goods in question have been landed on the Queen’s Land, it is quite evident they are liable to what is technically called Wharfage; if not landed, it is equally clear Wharfage is not chargeable. Mr. Webb seems to admit the goods were landed, but that wharfage was not charged, first because there was no Wharf, and 2ndly because there was no charge made in Sydney for Wharfage. It strikes me that the charge for Wharfage is a Common Law right; in fact it is an easement, and on that principle the Crown may charge for the easement. It is not necessary that what is technically called a Wharf should exist to enable the Crown to charge, nor is it necessary that the right to Wharfage be sanctioned by an Act of Council. The right to the charge is a common Law Right.

It is an easement or accommodation, a permission to the Merchant, which he has a right to pay for, should the Crown insist upon the charge; under these circumstances, I consider Mr. Webb liable; but the question is will the Crown charge in a case where there was no regularly constructed Wharf until the year 1842.

Jas. Cassell, Esqe.

[Enclosure No. 2.]

MR. C. E. TREVELYAN TO COMMISSIONERS OF CUSTOMS.

Gentlemen,

Treasury Chambers, 27 August, 1847.

With reference to your report dated 6th instant, No. 1320, I am commanded by the Lords Commissioners of Her Majesty’s Treasury to acquaint you that, on considering the circumstances therein adverted to, my Lords have not seen reasons to dissent from their recommendations; that, excepting to the extent of £32 9s. 7d., Mr. Webb should not be held responsible for the amount of the Surcharges which had arisen on the examination of the Accounts of the Department under his charge at Melbourne, or in regard to the re-employment of Mr. Webb as Clerk to the Collector at Sydney; and that my Lords have accordingly caused Earl Grey to be so apprized in order to any requisite notification on the subject being made to the Governor of New South Wales.

I am also to state that my Lords have at the same time signified to Earl Grey their opinion that, notwithstanding Mr. Webb would
appear to have erroneously omitted to demand Wharfage Dues after a Wharf had been constructed at Melbourne, there is no sufficient ground for making him liable to pecuniary surcharge for the sums that might apparently have been collected, had the demand been made.

I am, &c.,

C. E. TREVELYAN.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 178, per ship Sunflower; acknowledged by earl Grey, 24th February, 1848.)

My Lord,

Government House, 9th September, 1847.

I have the honor to acknowledge the receipt of Your Lordship's Despatch, No. 144 of the 30th April last, in which, I deeply regret to observe, your Lordship adverts in terms of censure to the course I had pursued in recommending (in my Despatch, No. 44 of the 29th October, 1846) to Your Lordship's favorable consideration an Address presented to me by the Legislative Council of this Colony, requesting me to place on the Estimates for the present year certain sums as compensation to the holders of the Offices, which were abolished in the years 1843 and 1844.

In reply, I can only lament that any want of sufficient explanation on my part should have induced Your Lordship so entirely to misconceive my meaning or motives, as to suppose that I had even the remotest intention of imputing error either to Lord Stanley or Sir George Gipps as regards the decision which had been given on this matter on a former occasion.

Your Lordship will perceive, on reference to Lord Stanley's Despatch, No. 177 of the 8th December, 1844, that the only grounds therein stated, on which Her Majesty had been advised to decline to accede to the Address of the Council, were those of economy and the necessity for retrenchment.

Your Lordship will further perceive that, in my reply (a copy of which is annexed) to the Address of the Council to myself, I declined, in consequence of the decision that had already been given, to comply with the wishes of the House. But, as I was aware of the strong desire that prevailed both in the Council and in the Colony generally (a desire having no reference to former political feeling) that some compensation should be awarded to those unfortunate persons whose Offices had been so abruptly abolished, many of them having been thereby reduced to a state of destitution, I certainly did not conceive that, in bringing the question again, under the consideration of Her Majesty's Government at a time when the improved state of the finances of the Colony would warrant the Expenditure, I was making a concession to the Legislative Council that was contrary to the letter or
FITZ ROY TO GREY.

I was acting in accordance with the instructions contained in Lord Goderich's Despatch, No. 27 of the 29th September, 1831, regulating the scale upon which individuals, whose Appointments in the Colony might under any arrangements of expediency be from time to time abolished, were to be compensated for their loss of Office.

I have, &c.,


REPLY BY SIR CHARLES FITZ ROY.

In reply to the Address of the Legislative Council, dated the 29th ultimo, requesting that "a sum may be placed on the Estimates for 1847, not exceeding one year's salary in each case, for the purpose of affording compensation to the Public Officers, holding office under the Colonial Government only, whose Offices were abolished in the years 1842 and 1843," the Governor has to express his regret that the terms of Lord Stanley's Despatch, No. 177 of the 8th December, 1844 (a copy of which was submitted to the Council by Sir George Gipps on the 12th September, 1845), prohibit his compliance with the wishes of the House.

In deference, however, to the opinion expressed by the House, and in consideration of the disappointment experienced by the Public Officers referred to from the abolition of their Offices, the Governor will take an early opportunity of submitting their case to the consideration of Her Majesty.

Government House, Sydney, 8th October, 1846.

(TRUE COPY): G. H. Fitz Roy, Private Secy.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 218, per ship Alert.)

In answer to your Dispatch of the 28th of March last, No. 61, forwarding a new order which had been promulgated by the Resident Judge in the District of Port Phillip, determining the scale of Fees to be taken by the Deputy Sheriff of the District, it will be sufficient for me to refer you to my dispatch, No. 177 of the 25th of June last.

I have, &c.,

GREY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 179, per ship Sunflower; acknowledged by earl Grey, 18th March, 1848.)

My Lord, Government House, 10th September, 1847.

I have the honor to acknowledge the receipt of Your Lordship's Despatch, No. 145 of the 30th April, 1847, in which you Lordship has animadverted in terms of displeasure on the course
1847.
10 Sept.

Surprise at censure for submission to council of estimates for administration of justice.

which I adopted in applying to the Legislative Council for a supplementary Vote in aid of the amount appropriated by Schedule A of the Constitutional Act of this Colony, 5 and 6 Vict., C. 76, for the Miscellaneous expenses of the Administration of Justice.

It is with the most unfeigned regret that I have thus learned that, from the obscurity with which I must have expressed myself in my Despatch to Your Lordship’s predecessor, No. 54 of the 6th November, 1846, I have given rise to the misapprehension of the real facts of the case under which Your Lordship appears to have laboured in making the observations which you have addressed to me on the subject, and which has called forth the severe censure which, I lament to perceive, pervades the whole tenor of Your Lordship’s Despatch. I am indeed at a loss to discover from what part of my Despatch, above referred to, the conclusion could have been drawn that I had “abandoned to the control of the Legislative Council the funds, which Parliament placed at the disposal of the Queen, and under the Audit of the Lords Commissioners of The Treasury”; or that “the Judges’ Salaries were with my consent to be made the subject of an annual grant”; on the contrary, it was only on the assurance that “the Council had no intention of proposing any reduction in the Salaries to which Her Majesty’s Government was pledged,” that I consented to lay before them an Estimate in detail of the whole of the Expenses of the Administration of Justice. The Council has never, I believe, asserted the right to interfere in any manner with the salaries specifically provided for in the Schedule, including, of course, those of the Judges of the Colony. If any such right had been assumed, or if any attempt had been made to alter the other Salaries to which I conceive the faith of Her Majesty’s Government stands pledged, it would have been my undoubted duty to have abstained from accepting any supplement burthened with such a condition; and, whatever might have been the inconvenience consequent on such a course, I would most unhesitatingly have adopted it.

The views which I entertain, and the course which I have adopted, are so perfectly accordant with the opinion on this subject held by my predecessor, as so fully and ably explained in his Despatch to Lord Stanley No. 176 of the 28th October, 1843, that, to avoid unnecessary repetition, I would take leave to refer Your Lordship to that Despatch.

In asking the Council for a supplementary vote for the Miscellaneous expenses of the Administration of Justice, I only acted in strict conformity with the instructions to my predecessor
of the 9th March, 1843. Although I anticipated that the excess of the sum appropriated by Schedule B of the Constitutional Act over the Estimated Expenditure would be sufficient to meet the supplement required on Schedule A, yet I could not rely with perfect certainty on that appropriation, as it was of course liable to be applied under Her Majesty's authority to contingent expenses, the nature and extent of which could not be foreseen, as, for instance, in the case of Mr. Willis, a sum exceeding £8,000 became chargeable on that fund. I felt persuaded also that, if the practice of obtaining a supplement from the Council were once discontinued, it would be extremely difficult, if not impossible, ever after to resort to it.

Having determined for these reasons to ask the Council for a Supplement, I was unable to refuse the application they made to me in their Address of the 7th October, 1846, to lay before them a detailed estimate of the whole of the expenses of the Administration of Justice, more especially under the assurance which I received that no alteration would be proposed in any Salaries to which the faith of Her Majesty's Government was pledged.

My Predecessor, in his Message to the Council of the 19th October, 1843, the general tenor of which appears to have been approved by Lord Stanley in his Despatch, No. 47 of the 29th March, 1844, observes that, considering that it undoubtedly rested with the Council to give or withhold the whole or any portion of the excess, he deemed it proper to lay the entire Estimate for the Administration of Justice before the Council, for it seemed to him impossible to exercise a right discretion in giving or withholding the excess without knowing how it was proposed to expend the sum granted to the Government by Schedule A. Concurring as I do entirely in these views, and conceiving that they were approved by Her Majesty's Government, I did not hesitate to adopt a similar course to that taken by my predecessor.

In the Appropriation Act, 10 Vict., No. 12, which was transmitted in my Despatch, No. 10 of the 9th January, 1847, the right of Her Majesty to the Appropriation, for the purposes now under consideration, of the sums mentioned in Schedule A, has been carefully preserved. By Section 8 of the Act in question, it is enacted that "there shall and may be issued and applied any sum or sums of money not exceeding £4,385 13s. 4d., to defray the Miscellaneous Expenses of the Administration of Justice, in addition to the amount appropriated for the purpose by Schedule A to the Act of Parliament, 5 and 6 Vict., cap. 76, annexed." I trust, therefore, that your Lordship will thus see that there exists no necessity for advising Her Majesty to withhold the
Royal Assent to the Appropriation Act, in consequence of any invasion of the Rights conferred upon Her Majesty by the Constitutional Act of the Colony.

In conclusion, I hope I may be allowed to observe that, having ever since I have had the honor of administering a Colonial Government enjoyed the confidence of Her Majesty's Government, I trusted rather to my obtaining credit for having acted with prudence and judgment in the matter referred to than to any detailed explanation of the facts of the case, or of the motives which influenced me in adopting the measure which I deemed necessary in reference to the case in question; and I trust that, in the explanation which I have now given, your Lordship will clearly perceive that I in no way compromised the Rights of Her Majesty, nor granted any concession to the Legislative Council except what the occasion justified and required, and from which no possible inconvenience could arise as a precedent. The control, which the Council could exercise over the appropriations of the minor or miscellaneous expenses of the Administration of Justice, could in no way embarrass the Government, whilst by their own express declaration they abstained from any interference whatever with the salaries of Officers, which were either specifically provided for in the Schedule, or guaranteed under Her Majesty's authority. Had the Council, even in the minor details of the Schedule, recommended any alterations or reduction which, in my opinion, would have materially impaired the Efficiency of the Courts of Justice, the course was still open to me to refuse any supplement encumbered with such a condition, and to have fallen back upon the amount appropriated by the Schedule itself.

It only remains for me to express the confident hope that the explanation which I have now given will prove satisfactory to Your Lordship, and will relieve me from the severe imputation, for the first time attributed to me, of having failed to guard with due care and proper judgment the important rights which Her Majesty entrusted to my administration.

I have, &c,

CHS. A. FITZ ROY.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 219, per ship Alert.)

Sir,

Downing Street, 14 September, 1847.

In answer to your Dispatch, No. 33 of the 1st of February last, accompanied by the Copy of a Petition, which had been addressed to you by certain Inhabitants of the Town of Portland,
praying that the said Town may be constituted a Free Warehousing Port, I have now to acquaint you that I have been apprized by the Lords Commissioners of the Treasury that they have requested the Lords of Her Majesty's most Honorable Privy Council to cause an order to be submitted for the approval of Her Majesty in Council, whereby the object sought by the Petitioners will be effected.

I have, &c.,
GREY.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch marked "Military, No. 6," per ship Alert; acknowledged by Sir Charles Fitz Roy, 20th March, 1848.)

Sir,
Downing Street, 14th of September, 1847.

I transmit herewith, for your information, copies of a letter and of its enclosures which have been received from the War Office, relating to the employment of Dr. Silver, Colonial Assistant Surgeon at New South Wales, as Medical Officer to a detachment of Troops sent from Sydney to North Australia, together with a copy of the reply which I have directed to be returned to that communication.

I have, &c.,
GREY.

[Enclosure No. 1.]
MR. L. SULLIVAN TO UNDER SECRETARY STEPHEN.

Sir,
War Office, 2 September, 1847.

I am directed to transmit to you the enclosed copies of a letter and its enclosure, transmitted to this Office by the Treasury, regarding the payment of 7s. 6d. a day to Dr. Silver, Colonial Assistant Surgeon, for a period he was employed in Medical charge of a detachment of Troops, sent from Sydney to the New Settlement of North Australia; and to request that you will acquaint me, for the Secretary at War's information, whether Dr. Silver is in receipt of any Salary as Colonial Surgeon, and if so, whether, in the opinion of Earl Grey, payment should also be made by this Department for duties which Dr. Silver may perform to the Military.

I have, &c.,
L. SULLIVAN.

[Sub-enclosure No. 1.]
COMMISSARY-GENERAL RAMSAY TO MR. C. E. TREVELYAN.

Sir,
Commissariat, Sydney, 6th March, 1847.

I have the honor to annex, for the information of the Lords Commissioners of H.M.'s Treasury, a copy of a letter from the Assistant Military Secretary of this date, conveying the Lieutenant General's authority for employing Dr. Silver (Colonial Assistant Surgeon) as Medical Officer in charge of the Detachment proceeding to the New Settlement of North Australia per Ship "Thomas Lowry," with pay at the rate of 7s. 6d. per diem, and passage, with messing, free. His Excellency has also been pleased to approve of the advance of one month's pay being made to this gentleman.

I have, &c.,
WM. RAMSAY, C.G.
Correspondence re employment of J. Silver as assistant surgeon in North Australia.

1847.
14 Sept.

CAPTAIN O'CONNELL TO COMMISSARY-GENERAL RAMSAY.

Sir, Assistant Mil. Secy.'s Office, Sydney, 6th March, 1847.

In the absence of the Deputy Inspector General of Hospitals, I am directed by the Lt. General Commanding to acquaint you that Dr. Silver, a Colonial Assistant Surgeon, has been appointed to take Medical charge of the Detachment now on board the Ship "Thomas Lowry," proceeding to the new Colony in North Australia, he receiving the pay of an Assistant Surgeon at the rate of 7s. 6d. per day, with his passage and expence of living on board free; and His Excellency has been further pleased to approve of an advance of one month's pay being granted to Mr. Silver, previous to embarkation.

I am desired also to request that you will be pleased to make the necessary arrangements for proper accommodation being provided for Dr. Silver on board the Ship "Thomas Lowry."

I have, &c.,

W. B. O'CONNELL, A.M.S.

UNDER SECRETARY STEPHEN TO MR. L. SULLIVAN.

Sir, Downing Street, 14 September, 1847.

Having laid before Earl Grey your letter of the 2nd instant with its enclosure, relating to the payment to Dr. Silver, Colonial Assistant Surgeon at New South Wales of 7s. 6d. a day, during the period of his employment as Medical Officer to a detachment of troops sent from Sydney to North Australia. I am directed to request you will state to the Secretary at War that his Lordship collects, from the correspondence in this Office, that Dr. Silver was in the receipt of Colonial pay at the rate of 7s. 6d. a day as Assistant Surgeon on the Establishment of New South Wales, when he was selected to accompany the troops to North Australia; and that his Lordship sees no reason for objecting to the appointment of Dr. Silver to accompany the troops; but that it must be understood that Dr. Silver's Colonial pay ceased from the date at which he drew pay from the Military Chest, and that his Lordship has instructed the Governor accordingly.

I have, &c.,

JAS. STEPHEN.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 180, per ship Tory.)

My Lord, Government House, 14th September, 1847.

I have the honor to acknowledge the receipt of Your Lordship's Despatch of the 12th of March last, No. 104, enclosing a copy of a representation from the Secretary to the London East India and China Association against the rate of duty charged on Spirits, the produce of the possessions of the East India Company, on importation into New South Wales; and desiring to be informed of the reasons which led to the suspension by the Local Government of the operation of the Order of the Queen in Council of the 8th May, 1841, for the reduction of duties levied in this Colony upon Articles, the produce and manufacture of the British possessions in India, to the same rate as were imposed upon similar Articles, the produce or manufacture of the United Kingdom or other British possessions.

Having referred to the Collector of Customs for an explanation on the subject, I do myself the honor to transmit a Copy of the
Report received from that Officer, by which your Lordship will observe that the meaning of the words "the produce of the United Kingdom or of other British possessions," in the order of the 8th May, 1841, has been held to be that the duty on Spirits, the produce of the British possessions in India, is to be the same as on Spirits the produce of the Mauritius, which is the high or foreign rate of duty.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

MR. J. GIBBES TO COLONIAL SECRETARY THOMSON.

Sir,

Customs, Sydney, 21st August, 1847.

I have the honor to acknowledge the receipt of your letter of the 18th Instant, No. 91, transmitting to me Copy of a Despatch from the Right Honorable the Secretary of State for the Colonies on the subject of the rate of duty charged here on Spirits, the produce of the Possessions of the East India Company, and desiring that I will afford any explanation in my power on that Subject.

In compliance therewith, I beg to state that, in accordance with the provisions of the Act of Parliament, 3rd Geo. 4th, ch. 96, Spirits, not the produce of the British Possessions in the West Indies or in North America, and not coming direct from the United Kingdom, have always been charged with the highest rate of duty on importation into this Colony; and, although there can be no doubt that the intention of the Order of the Queen in Council of the 8th May, 1841, was that Articles, the produce or manufacture of British India, should be admitted here at the same rate of duty as similar articles, the produce or manufacture of the United Kingdom were, still the words which followed, viz., "or of other British Possessions," destroyed that object altogether, because, as no Act of Council ever had been passed here, in contravention of the above mentioned Imperial Act, Rum coming from the Mauritius (even by way of Great Britain) could only be admitted at the high or foreign rate of duty, as would too have been the case with Rum from the West Indies, if brought direct from those Islands.

Thus, as the Produce of those other Colonies would of necessity be charged with the high rate of duty, so would the produce of India.

It is however to be observed that, although no articles Similar to Rum or Arrack are manufactured in the United Kingdom, we have of late given the advantage intended by the order in Council to Spirits from British India, if brought by way of the United Kingdom; and the method of charging duty on other articles from that Country is this:

If they are similar to articles produced in the United Kingdom, as Gunny Bags, which are Sacks, they come free.

If Muscovado Sugar, which is not manufactured in the United Kingdom but is in other British Colonies, the same duty is charged thereon as on the manufacture of those Colonies; and where any article, which is produced both in the United Kingdom and in other British Colonies, is imported, as for instance a Horse, which from Van Diemen's Land pays a duty of Ten per cent. ad valorem, and from England nothing, I give the advantage to the Importer by charging the lower rate of duty, that is admitting it free.

I have, &c.,

J. GIBBES, Collr.
EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 220, per ship Alert.)

Despatch acknowledged.

Sir, Downing Street, 15 September, 1847.

In answer to your Dispatch, No. 72 of the 3d of April last, recommending Mr. Bidwill for the appointment of Colonial Botanist at Sydney, it is sufficient for me to refer you to my Dispatch of the 10th of July, in which you were informed that I had selected Mr. C. Moore to fill that Office. I have, &c.,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 221, per ship Alert; acknowledged by Sir Charles Fitz Roy, 19th March, 1848.)

Sir, Downing Street, 15 September, 1847.

I herewith transmit, for your information and guidance, an Extract from a Report addressed by the Commissioners of Customs to the Lords of the Treasury, relative to the suspension from office of Mr. Cassell, Acting Collector of Customs at Melbourne, together with a Copy of a communication which the Commissioners have also made to the present Acting Collector in that Town; and I have to add that I am informed by the Lords of the Treasury that they are willing to assent to the reinstatement of Mr. Cassell in the office, from which he has been suspended, provided you have no objection to offer to the arrangement.

With reference to the concluding paragraph of your Dispatch, No. 57 of the 26th of March last, I beg to call your attention to that part of the Report of the Commissioners of Customs, in which it is stated that they had called Mr. Cassell’s attention to his instructions and had expressed to him their strong disapprobation at his having failed to pay prompt obedience to your Orders. I have, &c.,

GREY.

[Enclosure.]
having refused to furnish Mr. Webb, now under suspension, but who had been formerly employed as Acting Clerk at Melbourne with copies of certain Documents, which were considered of importance to enable him to reply to the queries, which had been raised on his account by Mr. Barnes, Collector at Van Diemen's Land.

"We beg leave further to state that, upon the receipt of Mr. Hunt's communication, We lost no time in drawing Mr. Cassell's attention to his Instructions, and expressing to him Our strong disapprobation at his having failed to pay prompt obedience to the Orders of His Excellency the Governor of New South Wales, and that under these circumstances he must abide by all the consequences resulting from his suspension. A copy of Our Order to the Collector at Melbourne, dated 22d July last, marked B, We beg leave to annex for your Lordships' information.

"That in bringing these circumstances under the consideration of Your Lordships, We deem it proper to state that Mr. Cassell has been 10 Years in the service; that he is a very capable and efficient Officer; and that, with the exception of the occasion upon which he incurred the displeasure of the Governor of New South Wales, his conduct has been such as to meet our approval; and under these circumstances and as considerable embarrassment is likely to be experienced by the Department being deprived of his Services. We would submit whether the severe admonition, which he has already received from us, as well as the loss of Salary which he must necessarily suffer, while under suspension, may not be deemed a sufficient punishment for his improper conduct on the occasion in question, and that he be restored from suspension and directed to resume the duties of Acting Collector at Melbourne."

[Sub-enclosure B.]

COMMISSIONERS OF CUSTOMS TO ACTING COLLECTOR AT MELBOURNE.


Having had under consideration Your Report, dated 18th February last, Instructions to No. 11, transmitting a letter from Mr. J. Cassell, late Acting Collector at Melbourne, acting collector together with copies of his correspondence with the Acting Superintendent detailing at Melbourne. The circumstances, which have induced His Excellency the Governor of New South Wales to suspend Mr. Cassell from duty for not having furnished Mr. Webb with a copy of his (Mr. Cassell's) report upon the completion of the surcharges upon his accounts, in which report you signify that you fully concur with Mr. Cassell in his proceedings on this occasion,

We direct you to draw Mr. Cassell's attention to Our General Orders of the 8th July, 1814, and 25th Sept., 1835, and express to him our surprize and strong disapprobation that, in violation of the Instructions of Her Majesty's Govt, so distinctly conveyed in Our Orders above referred to, and notwithstanding the warning contained in Our General Order of the 25th Sept., 1835, he should have failed to pay prompt obedience to the first requisition of the Governor and Superintendent, dated 11th January, 1847; and he is to be further apprized that, in having persisted in refusing to obey the Governor's order after his attention had been drawn by His Excellency's desire to the Instructions of Her Majesty's Govt, upon the subject, he has properly incurred the severe displeasure with which he has been visited by His Excellency the Governor of New South Wales, and that, under these circumstances and pending the consideration of his case by H.M Government, Mr. Cassell must abide by all the consequences resulting from his suspension; and We direct you to adopt forthwith prompt measures in order that Mr. Webb may, in accordance with the original directions of the Governor, be furnished with a copy of Mr. Cassell's Report on the adjustment of Mr. Webb's surcharges; but, in the event of his having left the Colony, you will deliver the same to the Superintendent in order that they may be forwarded to the Governor of New South Wales.

And We acquaint you that, as you would appear to have concurred in the very erroneous view which had been taken of the question by Mr. Cassell, we, in drawing your attention to Our Orders upon the subject, have to apprize you that it is your bounden duty to comply with any requisition or Order, you may receive from the
Governor or Officer Administering in the Colony, transmitting however to his Excellency your Protest against such Order, should you deem that step necessary, as directed by our General Order of the 5th July, 1814, but without presuming to question the authority or power of the Executive Govt. to issue such Order or requisition. And We must impress upon you and the several Officers under your superintendence the consequences that must inevitably result (as in the present instance) from Officers deviating from the spirit and tenor of their Instructions by opposing the due execution of Orders, emanating from those to whom the administration and Government of the Colony had been confided by Her Majesty.

F. F. PREV Markup.
F. GOULBURN.

SIR CHARLES FITZROY TO EARL GREY.
(Despatch No. 182, per ship Tory; acknowledged by Earl Grey, 22nd March, 1848.)

My Lord,

Government House, 16th September, 1847.

I have the honor to acknowledge the receipt of your Lordship's Despatch, No. 117 of the 24th March last, desiring me to call upon Mr. W. Cape of O'Connell Street, Sydney, for a Copy of a letter, which he addressed and forwarded direct to Your Lordship on the 24th September, 1846.

In compliance with your Lordship's instructions, I have the honor to enclose a copy of a letter, which I have received from Mr. John Smith, covering the communication in question, the object of which appears to be merely to request that search should be made in the Colonial Office for four letters, which were addressed to Mr. Cape by the late Colonial Secretary of this Government, and which he forwarded to Lord Stanley in 1844, for the purpose of endeavouring to substantiate his claim to an Allotment of Land in Sydney, a promise which he states that he obtained from Sir Thomas Brisbane.

For the last sixteen years, Mr. Cape has been in constant communication with the Home and Local Government respecting some supposed Land grievance; and his case has been fully reported upon by Sir Geo. Gipps in his Despatches, Nos. 139 of 4th September, 1843, and No. 82 of 30th April, 1845.

The original letters from Mr. Macleay, which form the subject of Mr. Cape's present request, were forwarded with his Memorial to Lord Stanley, dated 31st March, 1842, a copy of which was returned to Sir Geo. Gipps with his Lordship's Despatch, No. 5 of 8th January, 1845.

I may add that I have been informed that Mr. Cape is a very old and (to say the least) an eccentric man, which may in some measure account for the style of his correspondence.

I have, &c,

CHS. A. FITZROY.
FITZ ROY TO GREY.

[Enclosure No. 1.]

MR. W. CAPE TO EARL GREY.

O'Connell St., Sydney, N. S. Wales,

Sir,

24th September, 1846.

May I be permitted to introduce myself to you through the Right Honorable the Chancellor of the Exchequer, whose lamented Brother Major Goulburn, for many years held the appointment of Colonial Secretary in this Colony under the administration of Sir Thomas Brisbane as Governor General. At the time referred to, I was head Master of the Sydney Public School, and from holding that appointment was prevented from locating the Lands which had been granted to me, and from obtaining a Town Allotment to which I was entitled, and a remuneration of Cattle, Rations, etc. All these had been promised to me; but on the sudden departure of Sir Thomas Brisbane from this Colony it was discovered by Major Goulburn, who shortly afterwards followed Sir Thomas home, that the Grant of a Town Allotment had been omitted to be made out in my favor. Independent of this omission, no remuneration whatsoever was made to me in Cattle or Rations, as had been the custom. Prior to the departure of Major Goulburn, I waited upon Mr. Alexander McLeay, afterwards Major Goulburn's successor, and urged upon his attention the omission of Sir Thomas; he promised both Major Goulburn and myself that I should at once be put in possession of a Town Allotment and my other rights; upon this assurance, I was for a time satisfied, and relied upon his promises, until I discovered that the very allotment, which had been selected by me and which he had promised should be conveyed to me, had actually been selected and granted to himself. Beside this duplicity on the part of Mr. McLeay, there was still another grievance of which I had to complain. I possessed one thousand acres of valuable Land in Van Diemen's Land, and it had been agreed by the Government that I should be permitted to exchange it for the same quantity in this Country, and that the same should be free of Quit Rent; the result of this was that six hundred and forty Acres only were granted to me in lieu of the One thousand Acres, and that too charged with a heavy Quit Rent; the conduct of Mr. McLeay in this matter was represented to Earl Bathurst by Major Goulburn in 1828, but the matter was permitted to be passed over by that Nobleman without affording me any redress. In 1835 or '36, my friend Sir Thomas Mitchell, Surveyor General of this Colony, having official business in England, and being aware of the justice of my claim, offered and did present my Memorial to Lord Glenelg, with Mr. McLeay's Letters annexed, but at the same time advised me not to be too sanguine, as his Lordship had taken no notice whatever of his own Memorial. Finding that I could obtain no redress at home, I determined still to push my claim upon the Local Government but without effect; and, Mr. Goulburn having been restored to office as Chancellor of the Exchequer, I determined once more to push my claim through him, and with that view forwarded to that Gentlemen in 1842 for presentation a Memorial to Lord Stanley. In the following year 1843, I heard that my Memorial had been presented, and that a Despatch would be at once forwarded to Sir George Gipps authorising an investigation into the merits of my claim. On receipt of this intelligence, I waited repeatedly upon His Excellency Sir George Gipps, who positively denied having received the Despatch until the 19th April, 1844,
1847.
16 Sept.

when he acknowledged its arrival. The investigation having been reported upon by His Excellency without my knowledge, I addressed a letter to the Chancellor of the Exchequer upon the subject and memorialised once more Lord Stanley, and submitted with such Memorial four original Letters from Mr. McLeay, which has been totally disregarded; my immediate object therefore, Sir, in addressing you is to beg that you will have the goodness to cause a search in your office for these Letters, as these productions will be of importance to me in an investigation which His Excellency Sir Charles Fitz Roy has been pleased to intimate he will cause to be made in the matter.

I have, &c.

WM. CAPE.

[Enclosure No. 2.]

MR. J. SMITH TO COLONIAL SECRETARY THOMSON.

Sir, O'Connell Street, Sydney, 26th August, 1847.

Copy of letter transmitted. In compliance with the request of His Excellency the Governor, I beg to enclose the copy of a Letter addressed by Mr. William Cape to the Secretary of State for the Colonies on the 24th September last.

Mr. Cape has placed in my hands all his papers connected with the subject of his letter, and his extreme age and severe indisposition induces me to solicit your early attention to the investigation of his claim.

I have, &c.

JOHN SMITH.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 183, per ship Tory; acknowledged by earl Grey, 18th May, 1848.)

17 Sept.

My Lord, Government House, 17th Sept., 1847.

In reference to my Despatch of the 26th May last No. 116, forwarding to your Lordship a copy of the proceedings of my Executive Council relating to the suspension of Mr. Peter Stewart of the Customs Department, I now do myself the honor to transmit, with a view to their being submitted to the Honble. the Board of Customs. Copies of a letter and its enclosures, which I have received from the Collector at this Port, on the subject of an Order made by the Board for the appointment of Mr. Stewart to the Customs Department at Port Phillip.

By the Board's order of 29th April, 1847, Mr. Stewart has been removed from Sydney to Melbourne, and the Collector here expresses a doubt whether, in deciding in Mr. Stewart's case which appears to have been brought under the Board's notice by Mr. Barnes, the Officer who has been specially employed investigating into the Customs Department at Sydney, the Board had had before them his letter of 14th Octr., 1846, which forms one of the Enclosures now forwarded to Your Lordship.

I have, &c.

[Enclosure.] CHS. A. FITZ ROY.

[A copy of this letter is not available.]
Earl Grey to Sir Charles Fitz Roy.

(Despatch No. 223, per ship Alert.)

Sir,

Downing Street, 18th September, 1847.

I have received your Despatch of the 1st of April last, in which you bring under my consideration the claim of Mr. Latrobe to the receipt of his full Salary as Superintendent of Port Phillip from the date of his giving up the temporary charge of the Government of Van Diemen's Land, on the arrival of Sir William Denison, to the period of his resuming his duties as Superintendent at Melbourne, amounting to £139 7s. 11d. and also the claim of Captain Lonsdale to the receipt of full Salary at the rate of £1,500 pr. annum during the period he acted as Superintendent at Port Phillip during Mr. Latrobe's absence, amounting to £190 5s. 7d.

I have to convey to you the necessary authority for making these payments to Mr. Latrobe and Captain Lonsdale respectively.

I am, &c.,

Grey.

Sir Charles Fitz Roy to Earl Grey.

(Despatch No. 184, per ship Tory.)

My Lord,

Government House, 18th Sept., 1847.

In reference to my Despatch of the 31st March last No. 68, communicating to Your Lordship the information I had obtained relating to William Hughes, respecting whom particulars were required by Your Lordship's Circular Despatch of 30th May, 1846, I now do myself the honor to report that I have received a letter from Mr. Edward B. Hawkins, dated Boyne River, August 21, 1847, in which he states that Henry Hughes, the Brother of the person above named, and who also forms the subject of Your Lordship's Despatch referred to, is at present in his service as a Shepherd, and that during three years he has known him, his conduct has been good.

I have, &c.,

Chs. A. Fitz Roy.

Sir Charles Fitz Roy to Earl Grey.

(Despatch No. 185, per ship Tory.)

My Lord,

Government House, 19th Septr., 1847.

I have had the honor to receive your Lordship's Despatch, marked "Separate," of the 2nd February, 1847, enclosing an application from the individual, named in the margin,* for information respecting Thomas MacGuire and family, who are stated to have emigrated to this Colony.

* Marginal note.—Philip Wholehan.
I now beg to forward to Your Lordship the copy of a communication from the Police Magistrate of Maitland, containing such information as could be obtained of this family.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosure.]

MR. E. D. DAY TO MR. F. L. S. MEREWETHER.

Sir,

In reply to your letter of the 21st July last, I have the honor to state that Thomas McGuire has this day called upon me, and stated that he resides at Old Banks in the Paterson Police District, where he rents and cultivates a small Farm. He has four children in the Colony, two Daughters (one married and one unmarried who resides with him) and two Sons, both married.

McGuire himself came to the Colony as a Convict in the "Prince Regent" about 25 Years since, and his Children came out as Emigrants about seven years since.

I have, &c.,

EDW. D. DAY, Pol. Mag.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 224, per ship Alert.)

Sir,

Downing Street, 20th September, 1847.

In Compliance with the request contained in your Dispatch of the 31st March last, No. 67, I have to Convey to you the necessary authority for the enactment of a local Law for the Naturalization of Samuel Folk, a Native of Prussia, and now residing in New South Wales.

I am, &c.,

GREY.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 225, per ship Alert.)

Sir,

Downing Street, 21st September, 1847.

I have received your Despatch, No. 66 of the 30th March last, transmitting three Memorials addressed to the Queen and the two Houses of Parliament by certain of the Inhabitants of the District of Goulburn, in New South Wales, praying that the Transportation of Criminals to that Colony may not be renewed.

The Memorial addressed to the Queen I have laid before Her Majesty, who was pleased to receive it very graciously. That addressed to the House of Lords, I shall take an opportunity of presenting; and that addressed to the House of Commons, I have forwarded to Mr. Ewart in accordance with the intention of the Petitioners.

I am, &c.,

GREY.
GREY TO FITZ ROY.

SIR CHARLES FITZ ROY TO EARL GREY.
(Despatch No. 187, per ship Tory.)

My Lord,

Government House, 21st Sept., 1847.

I have had the honor to receive Your Lordship's Despatch, No. 133 of the 22d April last, enclosing copy of a letter from the Reverend D. Stoddart, requesting to know the result of the enquiry which, by Mr. Gladstone's Despatch, No. 8 of the 17th March, 1846, Sir George Gipps was directed to make respecting certain property supposed to have been left by Thomas Canny. My Despatch No. 61 of 22d December last, which I conclude had not reached Your Lordship's hands on the 22d April, will have already apprised your Lordship that no trace whatever could be found of the individual above named.

I have, &c,

CHS. A. FITZ ROY.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 226, per ship Alert.)

Sir,

Downing Street, 22d September, 1847.

The question, which you have proposed to me in your Despatch of the 24th of March, 1847 (No. 53), respecting the course to be taken for enlarging the Pardons of Convicts, who, before your receipt of Mr. Gladstone's Dispatch of the 13th of May, 1846, had already received Conditional Pardons, will, I think, be best answered as follows.

I do not think that it is either necessary or desirable that an Act of Parliament should be passed to provide for these cases. The Law Officers of the Crown in New South Wales have advised that course, to obviate a difficulty which they think may "possibly arise in some supposeable cases," as to the efficacy of the endorsements which you have made on the old Pardons. What those supposeable cases are, and what the anticipated difficulty would be, is unexplained, and I cannot supply the omission. But supposing that, in any particular instance, the validity of your endorsement should be brought into question, an entirely new Pardon would be an effectual remedy for the inconvenience. It is an inconvenience, however, which can scarcely be anticipated, for, except in some rare and most improbable contingency in which the Title to real Estate might be brought into Debate, in the person of one of these Convicts, the efficacy of his Pardon could be controverted by no one but an officer of the Crown, and the authority of the Crown would be sufficient to arrest any such controversy.
Sir Charles Fitz Roy to Earl Grey.

(Despatch No. 188, per ship Tory; acknowledged by Earl Grey, 8th March, 1848.)

My Lord,

Government House, 22d Sept., 1847.

I have received a communication from Charles Nicholson, Esq., M.C., as Chairman of a Committee of a Public Meeting held at Sydney for the purpose of raising a sum of money to be presented to Mrs. Chisholm in acknowledgment of the services of that lady in promoting Emigration to this Colony, requesting, in pursuance of a Resolution passed at the Meeting, that I would grant a small sum of money from the Public Funds in aid of the purposes of the general subscription.

I have not, however, taken upon myself the responsibility of granting the request; but I beg to forward to Your Lordship for the consideration of Her Majesty's Government a copy of the application received from Mr. Nicholson.

It is scarcely necessary for me to mention that Mrs. Chisholm's exertions have already been under your Lordship's notice, and that her name appears in Your Lordship's Despatch of 20 March, 1847, addressed to the Lieut. Governor of V. D. Land, relating to the Wives and Families of Convicts sent out in the ship "Asia" to join their relatives in this Colony.

I have, &c.,

[Enclosure.]

Chs. A. Fitz Roy.

Mr. C. Nicholson to Colonial Secretary Thomson.

Sir,

Sydney, 10th September, 1847.

I have the honor to state that a Public Meeting was held in Sydney on the 7th ultimo for the purpose of raising a sum of money to be presented to Mrs. Chisholm in acknowledgment of the distinguished services of that lady in promoting Emigration to this Colony.

At the Meeting above referred to, a resolution was passed directing that application should be made to the Government for the purpose of soliciting the grant of a small sum of money from the Public Funds in aid of the purposes of the general subscription.

By direction of the Committee appointed to collect subscriptions, I have now respectfully to bring under His Excellency's notice the resolution above referred to.
As it is believed that His Excellency the Governor and the Officers of the Executive Government have had opportunities of becoming acquainted with the valuable and disinterested services of Mrs. Chisholm, it is hoped that the present application may receive His Excellency's favorable consideration. I am authorized to state that the Right Honorable the Secretary of State for the Colonies and other members of Her Majesty's Government have been pleased to signify their approval of Mrs. Chisholm's benevolent exertions, and to afford them every encouragement.

Under such circumstances, the Committee venture to express a hope that His Excellency the Governor may be pleased to authorize or recommend such a contribution from the Public Treasury, as he may think fit for the purpose above specified.

I have, &c.,

CHARLES NICHOLSON,
Chairman of Committee.

EARL GREY TO SIR CHARLES FITZ ROY.
(Despatch No. 227, per ship Alert.)

Sir, Downing Street, 23d September, 1847.

I transmit to you herewith the Copy of a Letter from the Secretary to the Lords Commissioners of the Treasury, enclosing the Copy of a Communication from the Board of Customs, with Commissions and Instructions for Mr. H. Massie as Sub-collector, and Mr. E. Gibbes as Searcher, Landing and Coast Waiter at Eden in Twofold Bay, New South Wales; and I have to desire that you will cause the necessary directions to be given for the admission of those parties to the Situations to which they have been appointed by the Board of Treasury.

I have, &c.,

GREY.

[Enclosure.]

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

Sir, Treasury Chambers, 10th September, 1847.

I am commanded by The Lords Commissioners of Her Majesty's Treasury to transmit to you the enclosed copy of a communication from The Board of Customs, dated the 3d instant, with Commissions and Instructions for Mr. H. Massie as Sub-Collector and Mr. E. Gibbes as Searcher, Landing and Coast Waiter at Eden in Twofold Bay, New South Wales; and I am to request that you will submit the same to Earl Grey and move his Lordship to cause the directions suggested by The Commissioners of Customs to be conveyed to The Governor of New South Wales.

I am, &c.,

C. E. TREVELYAN.

[Sub-enclosure.]

MR. W. MACLEOD TO MR. J. PARKER.

Sir, Custom House, 3d Sept., 1847.

The Lords Commissioners of Her Majesty's Treasury having been pleased by Their Warrants, dated 31st Ultimo, to nominate Mr. H. Massie and Mr. E. Gibbes to the Offices of Sub-Collector and Searcher, Landing and Coast Waiter at Eden in Twofold Bay, New South Wales, and, in pursuance of the Instructions contained in your Letter of the 4th August, 1846, "that any information it may appear necessary..."
Transmission of commissions and instructions for customs officers at Twofold bay.

1847.
23 Sept.

to furnish to Governor of Colonies should be transmitted to The Lords of the Trea-
sury," I have it in command to transmit, herewith, Commissions and Instructions
for Messrs. Masse and Gibbes, and at the same time to signify the request of the
Board that their Lordships will be pleased to cause the requisite measures to be
taken for the purpose of having the same forwarded to the Governor of New South
Wales, in order that His Excellency may cause the necessary directions to be given
for the admission of those parties to the situations to which they have been
appointed.

I am, &c.,

W. MACLEOD.

[ Copies of the commissions and instructions are not available. ]

EARL GREY TO SIR CHARLES FITZ ROY.

(A circular despatch, per ship Alert.)

Sir,

Downing Street, 25th September, 1847.

In the last Session of Parliament, an Act was passed "for
the Naturalization of Aliens," 10th and 11th Vict., ch. 83. I
herewith enclose a Copy of it.

The Preamble of that Act explains briefly the circumstances
in which it originated. In almost all of the British Colonies,
Laws had, of late years, been enacted, the object of which was
to impart the privileges of Natural-born British Subjects to
Aliens inhabiting the Colonies in which those Enactments were
made. On referring those Acts to the successive Law Officers of
The Crown, it appeared from their answers to such references to
be a matter of great doubt whether they were valid and effectual
for their purpose, and whether The Queen could properly be
advised to confirm them. The principal ground of this doubt
was the existence in the British Statute Book of various General
Acts respecting the Naturalization of Aliens, some of which
Acts of Parliament, and especially the Statute, 7th and 8th Vict.,
ch. 66, were supposed by Her Majesty's Legal Advisers to extend
to, and to be in force throughout the British Colonies. But the
Colonial Acts in question being found to be in several respects at
variance with, and repugnant to those Acts of Parliament, it
was inferred that such Colonial Enactments were null and void
either in whole or in part.

To obviate a conclusion replete with so much inconvenience,
and recommended by no assignable advantage, Her Majesty's
Government recommended to Parliament in their last Session
the passing of the Act, which I now enclose.

The result of that Act is, First, to give validity to all Colonial
Naturalization Acts formerly passed, and to declare that they
shall be taken to have been valid from the time of their Enact-
ment; Secondly, the Act then proceeds to provide that all
Naturalization Acts, which shall hereafter be passed by any
Colonial Legislature, shall within the limits of the Colony have
the force of Law, any Law or Statute to the contrary notwithstanding. But, Thirdly, both the retrospective and the prospective operation of the 10th and 11th Vict., ch. 83, is confined to Colonial Acts, which authorize the enjoyment of the privileges of Naturalization within the limits of the Colony within which such Act shall have been or shall be made. It also declares, Fourthly, that all such Naturalization Laws shall be subject to the Rules which regulate the Enactment and disallowance of Colonial Laws on any other subject. And, Finally, it declares that the 7th and 8th Vict., ch. 66, does not extend to the British Colonies.

The result of these Enactments will be to remove all doubts which have hitherto prevented the confirmation of various Naturalization Acts of the different British Colonies, and to ascertain the competency of the Colonial Legislatures to confer on Aliens the privileges of Natural-born British subjects, if the exercise of those privileges be limited to the particular Colony in which the Enactment may be made.

It may obviate a possible misconception to add that, inasmuch as that part of the Navigation Act which confines to British Subjects the ownership of British Registered Shipping is not repealed, but continues in full force, the disability of an Alien, naturalized under a Colonial Act, to own such Shipping is not removed by the accompanying Statute, 10th and 11th Vict., ch. 83. It would, indeed, be at variance with the terms of that Act to claim such a privilege in pursuance of it, inasmuch as the privileges, which it authorises the Colonial Legislatures to confer, are expressly restricted to the limits of the Colony within which they may so be conferred.

I propose, in a series of separate Despatches, to advert to and dispose of the particular questions of this kind which have hitherto been pending, those separate Despatches being, of course, addressed to the Governors of those Colonies only in which any such questions have arisen. I have, &c.,

Grey.

[Enclosure.]

This was a copy of the statute, 10 and 11 Vict., c. lxxxi.

Earl Grey to Sir Charles Fitz Roy.

(Despatch No. 228, per ship Alert.)

Sir,

Downing Street, 25 September, 1847.

Referring to my "Circular" Dispatch of this date, on the subject of the naturalization of Aliens, I have to observe that the effect of it will be to enable the Legislature of New South
Wales, if such should be their pleasure, to impart the privileges of Naturalization to be enjoyed within the limits of that Colony to the persons recommended for that purpose in Sir George Gipps's Despatches dated the 4th of June, 1846, No. 110, the 18th of the same month, No. 119, the 19th of the same month, No. 120, and in your own Despatch dated the 24th of September, 1846, No. 18. You will therefore instruct the Petitioners to address themselves to the Legislative Council on the subject.

I have, &c.,

GREY.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 191, per ship Tory; acknowledged by earl Grey, 7th March, 1848.)

My Lord,

Government House, 25th Sepr., 1847.

At the request of the Legislative Council of this Colony and with reference to Mr. Secretary Gladstone's Despatch "Confidential" of the 30th April, 1846, I have the honor to transmit, for your Lordship's information, the copy of an Address recording the opinion of the Council "that a return to the system of Transportation and Assignment would be opposed to the wishes of this Community, and would also be most injurious to the moral, social, and political advancement of the Colony."

I have, &c.,

CHS A FITZ ROY.

[Enclosure.]

ADDRESS 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.

May it Please Your Excellency,

We Her Majesty's most dutiful and loyal subjects, the Members of the Legislative Council of New South Wales, in Council assembled, beg respectfully to transmit to Your Excellency the following Resolutions adopted by the Council this day:—

(1) That this Council disapproves of the principles avowed and recommendations contained in the Report of the Select Committee, appointed on the 13th October, 1846, to enquire into and report upon the Despatch of the Right Honorable the Secretary of State for the Colonies to Governor Sir Charles Fitz Roy, dated 30th April, 1846, respecting the renewal of Transportation to this Colony; and desires to record the expression of its opinion that a return to the system of Transportation and assignment would be opposed to the wishes of this Community, and would also be most injurious to the moral, social and political advancement of the Colony.
(2) That an address be presented to His Excellency the Governor, transmitting a Copy of the above Resolution, and respectfully requesting that His Excellency will be pleased to forward the same to the Right Honorable the Secretary of State for the Colonies for the information of Her Majesty's Government.

And respectfully to request that Your Excellency will be pleased to forward the same to the Right Honorable the Secretary of State for the Colonies, for the information of Her Majesty's Government.

CHARLES NICHOLSON, Speaker.

Legislative Council Chambers, Sydney, 14th September, 1847.

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch No. 230, per ship Alert.)

Sir, Downing Street, 26 September, 1847.

I have received your Dispatch, No. 56 of the 25th of March last, enclosing an Extract from the proceedings of the Executive Council of New South Wales on the subject of an application made to you by the Warden of the District Council of Sydney for the sum of £1,000, in order to effect the liquidation of a debt which had been incurred on the responsibility of himself and two other Members of the District Council, and which that Body were unable to defray from the want of legal powers to levy a rate for that purpose, in the manner prescribed by the Constitutional Act.

Under the circumstances detailed in your Dispatch, and acting on the advice of the Executive Council, you request authority to relieve the Warden and his Co-sureties from their liability by payment of the amount out of the Casual Revenues of the Crown, or out of the unexpended balance of the Sums reserved in Schedule B of the Constitutional Act.

I regret that I am unable to subscribe to the reasonableness of this proposal.

The Gentlemen, who have incurred the liability in question, have unfortunately acted without adopting the precaution of previously ascertaining the state of the Law and the facts on which the Law depended; and it appears to me that their proper remedy now is to apply to the Legislature for powers to raise the Rate or for Funds to relieve themselves from their liability. On general considerations it is not only inexpedient but dangerous to admit the liability of the Executive Government in cases of this nature. If any one such precedent were admitted, many other applications of the same kind would be promptly made. Neither does it appear to me that either of the funds which you have pointed out could be properly resorted to in the case, even if the general expediency of the Executive Government rendering such assistance were admitted.
The Funds, which can be saved from the Crown Revenue, are much required for other purposes and especially for Immigration and the Fund arising from Schedule B of the Constitutional Act will, I apprehend, be exhausted by the appropriations to be made from it in order to defray the cost of Mr. Willis's litigation.

The legal difficulties, under which the applicants in this case labour, are stated by the Law Officers of your Government so briefly and indeed so obscurely that I am unable to suggest with confidence any mode of overcoming them. But, so far as I can collect the real state of the facts, the most obvious method would appear to be either that of issuing a new Charter correcting the error existing in the Charter originally granted to the District Council, or that of passing an Act of the Legislative Council conferring on the Corporation all such further powers as may be required to enable them to levy this rate. I have, &c.,

Grey.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 192, per ship Tory; acknowledged by earl Grey, 12th March, 1848.)

My Lord, Government House, 26th Sept., 1847.

With reference to that part of my Despatch "North Australia" No. 1 of the 1st February last, wherein I reported the return of the Deputy Surveyor General, Captain Perry, from an unsuccessful attempt to reach the mouth of the River Boyne, so called by the Moreton Bay settlers under the supposition that it was the same River as that to which the same name had been given by Surveyor General Oxley, and which flows into Port Curtis, I have now the honor to submit copies of two Reports from Mr. Surveyor Burnett, who accompanied Capt. Perry on his Expedition, and who, as soon as the dry weather set in, returned to and continued the Expedition from the spot whence Capt. Perry was compelled to turn back.

Your Lordship will perceive that Mr. Burnett succeeded in tracing this River as far as the confluence of fresh and tide water, whence, from the nature of the Country on its banks, he considered it advisable to return to Moreton Bay. He then proceeded from Moreton Bay in an open Whale Boat, succeeded in entering the mouth of the River, and traced it to the point which he had reached on his land expedition.

Mr. Burnett also reports having entered and proceeded about forty miles up another River, recently known as the Wide Bay River, which had not until then been explored.
The result of Mr. Burnett's expeditions has proved that the former of these Rivers is not identical with that to which the name of the Boyne was given by Surveyor General Oxley, the latter or the Wide Bay River, according to Mr. Burnett's report, would appear to be a discovery of some importance.

In conclusion, I trust Your Lordship will approve of my having marked my sense of the perseverance and enterprise evinced by Mr. Burnett in the performance of his public duty, which on the second occasion was attended by considerable personal danger, by directing that the first River explored should henceforth be designated as the River Burnett.

I have, &c.,

CHS. A. FITZ ROY.

[Enclosures.]

[These reports were contained in the issues of the "Government Gazette," dated 7th and 8th September, 1847.]

EARL GREY TO SIR CHARLES FITZ ROY.

(Despatch per ship Chaseley.)

Sir, Downing Street, 27th September, 1847.

In pursuance of the recommendation of the Select Committee of the House of Commons, which was appointed in 1845, to examine into the accounts of Colonial Receipt and Expenditure, and to report as to the mode in which it would be desirable to frame the future accounts, in order to introduce uniformity, regularity, correctness, and completeness, I have the honor to transmit to you the accompanying copies of the Resolutions to which that Committee agreed, and to direct you to take an early opportunity of submitting the same to the Legislature of the Colony under your Government, as containing the suggestions of the Select Committee for the general improvement of Colonial accounts.

I have, &c.,

CHES. A. FITZ ROY.

[Enclosure.]

REPORT and Resolutions of the Select Committee of the House of Commons appointed to examine into the Accounts of Colonial Receipt and Expenditure.

The Select Committee, appointed to examine into the Accounts of Colonial Receipt and Expenditure laid on the Table of this House, and to Report their opinion as to the mode in which it may be desirable to frame the same for the future, in order to introduce uniformity, regularity, correctness, and completeness, and who were empowered to Report the Minutes of Evidence, have considered the matters referred to them, and have agreed to the following Resolutions, which they recommend should be conveyed to the Crown Colonies, for prompt adoption, in all cases in which they
1847.
27 Sept.
Report and resolutions of select committee of House of Commons re colonial accounts.

may not have been already adopted and complied with under the instructions that have been issued for the guidance of Colonial Accountants, and to the Colonies having Representative Assemblies, as suggestions for the general improvement of the Colonial Accounts, and for carrying out the objects recommended to the attention of your Select Committee.

Resolutions.*

1. That in the opinion of this Committee, it is desirable that a uniform plan of Colonial Estimates be adopted.

2. That it is the opinion of this Committee, that such Estimates be prepared (wherever it is possible) in time to receive the sanction of the State Treasury Board and Secretary of State, before the commencement of the service to which the Estimates apply.

3. That it is the opinion of this Committee, that such Estimates be accompanied by a comparative statement of the Receipts and Expenditure, made up to the close of the year previous to that in which the Estimates are prepared.

4. That it is the opinion of this Committee, that such Estimates, as regards the Colonial Receipts, shall represent the gross Revenues under their several and distinct heads.

5. That it is the opinion of this Committee that, as regards the Colonial Expenditure, the different charges, including the charges of collecting the Revenue, be classed separately, under their different heads, and that the same order of arrangement be universally adopted.

6. That it is the opinion of this Committee that the fixed charges for salaries and other personal services be kept distinct from all other charges.

7. That it is the opinion of this Committee, that in case of extraordinary or unanticipated expenditure, a Supplementary Estimate, in the same form as the Yearly Estimate, be prepared in the Colony, and forwarded, without delay, to the Colonial Office.

8. That it is the opinion of this Committee, that immediately after the local examination in each Colony of the annual account has been completed, a comparative statement of the estimated and actual Receipts and Disbursements of the year should be prepared by the Auditors, or other officers by whom the accounts are examined, shewing, under each head of Revenue and Expenditure, any difference that may have occurred between the estimated and actual Receipts and Disbursements of the year, and explaining the cause of any such differences.

9. That it is the opinion of this Committee, that as all the evidence taken before the Committee proves the superiority of the double entry system of book-keeping, its success wherever introduced into the Public Departments, and its general adaptation to Public Service, it is expedient that the said system be adopted for keeping the Accounts of Colonial Revenue and Expenditure.

10. That it is the opinion of this Committee, that a cash book, journal, and ledger be kept in all the Colonies, and that the ledger distinctly represent the various heads of Receipt and Expenditure as exhibited in the Estimates.

11. That it is the opinion of this Committee, that with a view to the prompt examination of the Colonial Accounts, in all cases where a local Auditor has not been appointed, provision should be made for a speedy and efficient local examination of the accounts;

* Note 51.
GREY TO FITZ ROY.

and the Auditor or other officer to whom such local examination is entrusted, should be empowered, at any and all reasonable times, to compare the cash or other balances of the Treasurer or any other officer entrusted with public money, with the balances represented in the cash accounts of their respective departments; but such inspection and comparison are not to supersede the periodical verification of public balances by Committees or otherwise, which the Governors of Colonies have heretofore been instructed to institute.

12. That it is the opinion of this Committee, that the accounts of Receipt and Expenditure, when sent to the Audit Board in London, be accompanied by the Estimates for the year to which the accounts belong.

13. That it is the opinion of this Committee, that the Colonial Accountants be required to make up and forward their accounts to the Audit Board in London within three months after the close of the financial year to which the accounts refer, or specially to report the causes of any greater delay.

14. That it is the opinion of this Committee, that in addition to the accounts sent home after Audit in the Colonies, copies of the Colonial cash book and journals be forwarded to the Audit Board.

15. That it is the opinion of this Committee, that where any enquiries or questions necessary for the elucidation and prompt Audit of the Colonial Accounts, are suggested by the Board of Audit, the Colonial Accountant be required to reply to the same within one month after their receipt, or to send a special report as to the causes of delay, stating the period at which the explanations may be expected.

16. That it is the opinion of this Committee, that in case such replies or explanations shall not be received by the Audit Board within a reasonable time (to be estimated according to the distance of the Colonies and the facilities of communication with the same), the Audit Board shall call the attention of the Lords of the Treasury to the neglect of the Colonial Accountant.

17. That it is the opinion of this Committee, that a quarterly Report be made by the Audit Board to the Lords of the Treasury on the state of the Colonial Accounts, shewing the arrears and the causes of the arrears, and calling the attention of the Treasury Board to every case of irregularity and delay.

18. That it is the opinion of this Committee, that Abstracts of the Accounts of the various Colonies, after being examined by the Audit Board, be annually presented to Parliament, and that they be accompanied with copies of the Estimates for the years to which they refer.

19. That it is the opinion of this Committee, that it is desirable that steps should be taken for ensuring the more punctual transmission of the periodical returns of Revenue and Expenditure, provided for in the 7th chapter of the "Rules and Regulations for the Colonial Service"; and that it is also desirable that a systematic record should be kept at the Audit Office, in a complete and concentrated shape, of the results of all the Colonial Accounts rendered to and examined in that department, in such manner as, at all times, would afford the means, so far as regards the Crown Colonies, of giving to Government and Parliament specific information on all points relating to the Colonial Receipt and Expenditure; and likewise that the Board of Audit should, from time to time, suggest the introduction of such improvements in the existing...
modes of keeping or rendering the Colonial Accounts, as would remove the present anomalies, and secure a uniform, regular, and correct system of Colonial Book-keeping; and should also suggest the needful instructions to the Colonial Officers for that purpose, and prepare such forms and models as may be useful to give effect to these instructions.

Despatch acknowledged re proposal for settlement of claims of R. Simpson.

Precedents for allowing claimants against government to take action at law.

SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 193, per ship Tory; acknowledged by earl Grey, 19th March, 1848.)

My Lord,

Government House, 27th Septr., 1847.

Your Lordship's despatch, No. 161 of the 31st May, conveying to me in terms of censure Your Lordship's disapproval of the mode suggested by me in my Despatch of the 5th January (No. 5) as the only practicable one I could propose for the final settlement of the repeatedly urged claim of Mr. Percy Simpson against the Government of this Colony, has caused me deep pain and regret.

I now beg leave most respectfully to represent that the advice I tendered was not offered upon slight grounds or without due consideration.

The practice of allowing claimants, who may be dissatisfied with the decisions of the Home or Local Authorities, to bring actions against the Government with a view to the final adjustment of their claims, has on more than one occasion been already acted upon in this Colony under the sanction of Her Majesty's Government; in proof of which I take leave to refer Your Lordship to a Despatch from Lord Goderich to General Darling, dated the 19th June, 1831 (No. 41), on the subject of a claim preferred by a Mr. Harris "complaining of a breach of faith on the part of the Government of this Colony during the Administration of Sir Thomas Brisbane, in respect to an agreement which was entered into with him for superintending the construction of certain Works which were then in progress in the Colony." This case was of a nearly similar character to that of Mr. Percy Simpson; and Mr. Harris was permitted to bring an action against the Government under the opinion of the Crown Law Officers of the Colony (the present Attorney General being then Solicitor General), and in accordance with the instructions of Lord Goderich conveyed to General Darling in the Despatch to which I have referred.

I would further beg to state that in the case of Mr. Wilson, who preferred a claim against the Government for remuneration for the Survey of certain lands on the Clarence River in the year 1839, to which the Government did not conceive he was entitled, my Predecessor upon his own authority directed the Colonial
Treasurer to appear as nominal defendant to any Action which Mr. Wilson might think fit to bring against the Government. An Action was accordingly commenced by Mr. Wilson; but, under the advice of the Crown Law Officers, who were of opinion that the Government had not good ground of defence, it was not brought to the issue of a trial, but was compromised for the sum of £372 5s. 6d., with the addition of £20 Costs, amounting in full to £392 5s. 6d.

With respect to Mr. Percy Simpson's claim, I feel bound in justice to myself to state that, in proposing that he should be allowed to bring an Action against the Government, I only acted in strict accordance with the views of Sir George Gipps, who, I am enabled to state on the authority of his Private Secretary, Mr. Parker, had on a previous occasion informed Mrs. Percy Simpson that this appeared to him the only mode by which her husband's claim could be set at rest.

While I trust that the explanation I have now offered will be satisfactory to Your Lordship, I cannot but regret that an unfavorable impression of my proceedings in this matter should have been caused by my not having entered in my former Despatch into the details of the precedents to which I have now referred. I can only state in excuse for this neglect that, as I considered they must be well known in Your Lordship's Office, it did not appear to me desirable that I should trespass on Your Lordship's time with a recapitulation of them.

I have, &c,

[Enclosure.]

MR. G. C. TURNER TO COLONIAL SECRETARY THOMSON.

Civil Crown Solicitor's Office, N. S. Wales,

Sir,

3rd December, 1845.

With reference to yours of 25th instant, returning the papers on the subject of the claim of Mr. C. B. Wilson upon the Government for the survey of land, and further stating that His Excellency the Governor will sanction the payment of Mr. Wilson's claim for work done, provided the Law Officers of the Crown advise that the Government have not a good ground of defence against the Action to which the Colonial Treasurer has been made nominal defendant; I have the honor to state, for the information of His Excellency the Governor, that the Solicitor General thinks it advisable that the Government should submit to Mr. Wilson's claim to the extent of the contract price for work actually performed, which Captain Perry has certified to be £372 5s. 6d., with Mr. Want's costs of £20, amounting in full to £392 5s. 6d.

I have also the honor herewith to transmit a copy of the Solicitor's General opinion thereon for the perusal of His Excellency the Governor.

I have, &c,

G. COOPER TURNER.
I have perused the accompanying case and the entire correspondence upon the subject, and think it advisable that the Government should submit to the Plaintiff’s claim to the extent of the contract price for work actually performed; I do not feel by any means confident that the construction put by the Officers of the survey department could be sustained in the absence of proof that Mr. Wilson’s services were engaged in accordance with the terms of His Excellency’s Minute of 31st October, 1839, and of Mr. Harrington’s letter of the 1st November in the same year; but the consideration, which most strongly influences my opinion as to the propriety of yielding to Mr. Wilson’s claim to the extent proposed, is this, that the sympathies of the Jury would certainly be enlisted in favor of the Plaintiff, and that the issue of a trial would from that cause probably be that he would succeed, and the Government be exposed to an unfavorable opinion; although it can scarcely be doubted by one who should peruse the whole correspondence that Mr. Wilson must have intended to contract under the notice of 21st November, 1838, and that he has been liberally treated by the Government, I fear that it would be almost impossible to overcome the notion of right to payment founded upon the undeniable fact of the work having been done and its results placed at the disposal of the public, especially as the Crown could not put in evidence such parts of the correspondence, etc., as are not proved to have been communicated to and acted upon by Mr. Wilson.

WM. M. MASSING.

28 Sept.

Despatch acknowledged.

Regret at censure.

Reasons for bill re appropriation of ordinary revenue.

SIR CHARLES FITZROY TO EARL GREY.

(Despatch No. 194, per ship Tory: acknowledged by earl Grey, 19th March, 1848.)

My Lord,

Government House, 28th Sept., 1847.

I have the honor to acknowledge the receipt of Your Lordship’s Despatch, No. 159 of 29th May, 1847; and I deem it my duty to lose no time in endeavouring to explain to your Lordship the grounds and motives of my proceedings in the matter to which that Despatch refers.

I must first express my great regret that the want of a full and clear explanation of all the circumstances of the case in my Despatch of the 9th January, 1847, has given rise to this renewed expression of Your Lordship’s displeasure. Had I done so, I feel persuaded that Your Lordship would have seen that I have in no way exposed myself to the severe remarks which I grieve to perceive are contained in Your Lordship’s Despatch.

In order to understand the whole bearing of this subject, it is necessary that I should advert to the circumstances which led to the introduction into the Legislative Council of the Bill to declare void so much of all Local Ordinances as assumes to vest the appropriation of the Ordinary Revenue elsewhere than in the Legislative Council.

When the Legislative Council refused, on the application of my Predecessor, to vote a Supplement to Schedule A of the Constitutional Act for the Expenses of the Administration of Justice, it became necessary, in order to prevent the public inconvenience which would have arisen from the undue curtailment of this branch of the Public service, to have recourse to some of the permanent appropriations made by the late, as well as the present
Legislative Council; and the expense of the Courts of Request were accordingly, under the advice of the Law Officers of the Crown, charged upon fees arising under the provisions of the Act of Council, 2 Wm. IV, No. 12. The expenses of the Insolvent Court were also charged upon the fees received under the Act of Council, 7 Victoria, No. 19.

In like manner, the expenses of the repairs of Roads and Bridges were charged on the receipts from Tolls under the provisions of the Act of Council, 2 Victoria, No. 15, the Legislative Council having refused to vote any sum, as had been usual, for the Department of the Civil Engineer, who was entrusted with this branch of the public service.

To these Appropriations, the Legislative Council had frequently and strongly objected as interfering with the Legitimate powers conferred upon them by the 34th Section of the Constitutional Act, 5 and 6 Victoria, Cap. 76. In the Session of 1845, the subject was referred to a Select Committee, which reported in favor of the introduction of a Bill of the nature of that now in question. A Bill was accordingly brought in towards the close of the Session of that year, but lapsed in consequence of the House being counted out. Having been again introduced in the Session of 1846, the measure was passed by the Council; but it became my duty to withhold from it the Royal assent, as already reported to Your Lordship.

Having at the commencement of my Administration of this Government, in accordance with the Instruction which I received from your Lordship's Predecessor, endeavoured to establish a good understanding with the Legislative Council, and finding that these permanent appropriations by the late Legislative Council formed one of the most fruitful sources of collision which had previously taken place; I saw no objection or inconvenience that could arise from the passing of a measure which, if properly framed, would have the effect of restoring to the Legislative Council the right of appropriation to the full extent intended by the Constitutional Act. It was under these circumstances that I authorised the communication to be made to the Council that the reasons, which had induced me to withhold my assent to the Bill, did not arise from any objection to the principle of the measure, that principle not being as your Lordship has apparently supposed “an attempted usurpation of a function belonging exclusively to Parliament, an attempt on the part of the Local Legislature to define and determine the limits of the Constitutional authority with which Parliament had entrusted them,” but the exercise of a power expressly vested in them by the 53d Section.
of the Constitutional Act, namely, the power to repeal, vary, or alter any law or ordinance passed by the late Legislative Council.

In this view of the case, I am borne out by the opinion of the Attorney and Solicitor General, a copy of which accompanied my Despatch of the 9th January last, No. 11. In that opinion, they distinctly state 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 could give his assent to it.”

I conceived, therefore, under this opinion, that I was justified in considering that the objection to the measure was a merely technical one as to the mode in which the object was attempted to be carried out, and not to the object itself, to which upon general grounds of policy there was no real objection. I considered that, in withholding the Royal Assent to this Bill, I sufficiently vindicated the principle that the powers of the Legislative Council should be strictly confined to an exercise of them subject to the limitations of the Constitutional Act, and of Her Majesty’s Instructions under which I am permitted to give the Royal Assent to Bills. Had the measure been framed in accordance with those Instructions, I am not aware, nor have the Law Officers suggested, that I would have been precluded, if satisfied of its policy, from assenting to it.

It may not be irrelevant here to inform Your Lordship of the course which I have adopted in reference to all Bills submitted for the Royal Assent, a course which I trust your Lordship will perceive has been dictated by motives of the greatest prudence and circumspection, and which is well calculated to prevent my falling into the error which, I trust I have shown, has been imputed to me under an erroneous impression of the circumstances of the case, arising, I regret to say, from my having omitted properly to explain them.

Every Bill submitted for the Royal Assent is previously sent to the Crown Law Officers, with a request that they will carefully peruse it with a view to ascertain 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. They are also requested to state whether in their opinion there is any objection to the Governor giving his assent to the Bill, or whether he is required under the provisions
of the above mentioned Act or the Royal Instructions to withhold
his assent from it, or to reserve it for the signification of Her
Majesty's pleasure. They are further requested to point out any
amendments which they may deem necessary to give legal effect
to the intentions of the Legislative Council, and to render the
Bill in other respects unobjectionable. This has been the in-
variable course adopted ever since my assumption of this Govern-
ment; and it was in pursuance of this practice that I obtained
the opinion of the Crown Law Officers on the Bill which forms
the subject of this communication.

In conclusion, I trust that Your Lordship will permit me to
observe that, although I am fully alive to the advantage of main-
taining a good understanding with the Legislative Council, I am
nevertheless equally impressed with the necessity of maintaining
inviolate the rights of Her Majesty, and a strict observance of the
law. Should the necessity ever arise for an assertion of that
principle, I could have no difficulty whatever in adopting the
course which in the plain line of my duty I ought to pursue,
whatever might be the consequences in a popular point of view,
either as regards the Colonial Legislature or the Colonial Public.
Your Lordship may rest assured that I am altogether incap-
able of making any concession opposed to those rights and prin-
ciples, which it is my first duty to guard and maintain; and I
trust that, with the explanation now given, Your Lordship will
be satisfied that in the particular case referred to, I made no sur-
render which the circumstances did not justify.

I have, &c,

CHS. A. FITZ ROY.

EARL GREY TO SIR CHARLES FITZ ROY.

(S despatch No. 231, per ship Alert.)

Sir,

Downing Street, 29th September, 1847.

I have received from Lieut. A. Martin, R.N., of Camper-
down, Camden, New South Wales, a letter dated the 31st of
October, 1846, bringing under my consideration his claim to an
additional Grant of Six hundred and Forty Acres of Land.

This Communication having been sent to me from the Colony
by the Writer, and not having been transmitted through you, I
have to desire that you would apply to the Writer for a Copy of
it, and that you would forward that Copy to me, accompanied by
such a Report as the case may appear to you to require.

I have, &c,

CHS. A. FITZ ROY.

GREY TO FITZ ROY.

1847,

25 Sept.

Policy of

Sir C. Fitz Roy

re bills

submitted for

royal assent.

Determina-

Sir C. Fitz Roy

tion of to maintain constitutional rights.

Earl Grey to Sir Charles Fitz Roy.

(Despatch No. 231, per ship Alert.)

Sir,

Downing Street, 29th September, 1847.

Letter received

from A. Martin.

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down, Camden, New South Wales, a letter dated the 31st of
October, 1846, bringing under my consideration his claim to an
additional Grant of Six hundred and Forty Acres of Land.

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by the Writer, and not having been transmitted through you, I
have to desire that you would apply to the Writer for a Copy of
it, and that you would forward that Copy to me, accompanied by
such a Report as the case may appear to you to require.

I have, &c,

Grey.
SIR CHARLES FITZ ROY TO EARL GREY.

(Despatch No. 195, per ship Tory; acknowledged by earl Grey, 7th July, 1848.)

My Lord,

Government House, 29th Sept., 1847.

I have the honor to forward to Your Lordship the copy of an Address, which has been presented to me by the Legislative Council, enclosing a copy of the Report of a Select Committee appointed to consider and report upon the present demand for labour in the Colony, and the best means of obtaining a supply of the same, together with certain Resolutions requesting me to urge upon Her Majesty's Government the renewal of Immigration from the Mother Country.

Having, in my Despatch, No. 19 of the 30th January last, brought this subject fully before your Lordship, I can only now add that the experience, which I have since gained in this Colony, has convinced me that a supply of labour is indispensably necessary for its prosperity; and I beg, therefore, to urge most strongly upon Her Majesty's Government a renewal of Immigration to the extent recommended in my Despatch above quoted.

I have, &c,

CHS. A. FITZ ROY.

[Enclosures.]

[Copies of these papers will be found in the "Votes and Proceedings" of the legislative council.]
COMMENTARY.
COMMENTARY
ON
DESPATCHES
APRIL, 1846—SEPTEMBER, 1847.

Note 1, page 19.
That passed.
This order-in-council formed the appendix to chapter four, on page 25, in the first edition of the "Book of Rules and Regulations" for the colonial service.

Note 2, page 27.
An intention.
The formation of a separate colony at Port Phillip was brought under the consideration of the secretary of state in March, 1836, by G. Mercer as representative of the Port Phillip association; and the under secretary, Sir George Grey, in reply, stated that the question was one "of great importance and difficulty" (see pages 383 and 390, volume XVIII). A petition for separation from residents in the district of Port Phillip was presented to H.M. Queen Victoria in the year 1841 (see page 528, volume XXI).

Note 3, page 31.
The Boundary.
By the second section of the statute, 5 and 6 Vict., c. lxxvi, it was provided "that, for the Purposes of this Act, the Boundary of the District of Port Phillip on the North and North-east shall be a straight Line drawn from Cape How to the nearest Source of the River Murray, and thence the Course of that River to the Eastern Boundary of the Province of South Australia."

Note 4, page 31.
A Despatch.
A copy of this despatch will be found on page 354, volume XXIV.

Note 5, page 33.
The proviso.
The proviso was as follows:—"Provided always that no Part of the Territories lying Southward of the Twenty-sixth Degree of South Latitude in the said Colony of New South Wales shall by any such Letters Patent as afore-said be detached from the said Colony."

Note 6, page 41.
Also page 229.
Circumstances.
Sir Eardley Wilmot was suddenly recalled from the government of Tasmania. In a private letter which accompanied the official despatch of recall, the right hon. W. E. Gladstone stated that he was not recalled for any
errors in his official character, but because rumours had reached the colonial office reflecting on his moral character which precluded him from further employment. There was probably no greater act of injustice committed by the right hon. W. E. Gladstone. Sir Eardley Wilmot asked for the names of his accusers, and the substance of the charges. He was refused the names, and was informed that the charges were subjects of common notoriety. He was thus condemned on rumour and denied the opportunity of defence. In his recall, he received the almost unanimous sympathy of all classes of the community in the colony.

Note 7, page 59.

Gentlemen.

These gentlemen were a deputation from the provisional board of directors of the Great Southern and Western railway company, and consisted of the chairman, Charles Nicholson, the mayor, M. B. O'Connell, William Walker and H. G. Smith. The company proposed to construct railways to Goulburn in the south and Windsor in the west.

Note 8, page 67.

The 23d clause.

This clause was as follows:—

"And be it enacted That the said Legislative Council shall, at its First Meeting and before proceeding to the Despatch of any other Business, elect some one Member of such Council to be the Speaker thereof; and, as often as the Place of the said Speaker shall become vacant by the Death, Resignation or Removal by a Vote of the said Council, shall again elect some other Member to be Speaker thereof; and the Speaker so elected shall preside at all Meetings of the said Council; Provided nevertheless that it shall be lawful for the Governor for the Time being of the said Colony to disallow the Choice of any such Speaker; and, upon such Disallowance being signified by the said Governor to the Legislative Council, such Appointment shall become and be absolutely null and void; and the said Legislative Council shall forthwith proceed to the Choice of some other Member of the same to be Speaker thereof, and so from Time to Time until the Choice of a Speaker who shall be allowed by the Governor for the time being."

Note 9, page 68.

A new Settlement.

This "new settlement" was the creation of a new colony in the northern portion of the modern state of Queensland. It was proposed to settle this area with "exiles," who were convicts who had undergone a probationary period of punishment prior to transportation. The papers relating to this "settlement" will be found in a volume in series III.

Note 10, page 74.

A Periodical.

This was a quarto magazine or newspaper, entitled, The Weekly Register of Politics, Facts and General Literature. It was edited, printed and published by William Alexander Duncan. The first number was dated 29th July, 1843, and the last, 27th December, 1845. The paper was well conducted, and many leading colonists were contributors.