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HISTORICAL RECORDS

OF

AUSTRALIA.

SERIES I.

DESPATCHES
TO AND FROM SIR THOMAS BRISBANE.

VOLUME XI.
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EDITORIAL NOTE.

A slight departure from previous practice has been made in the arrangement of the despatches in this volume. The despatches addressed to Governor Darling bearing dates prior to the 21st of November, 1825, have been omitted, and will be found in volume XII. This has been done in order to prevent the volume becoming too bulky, and to complete the publication of the despatches to and from Sir Thomas Brisbane in this volume.

F.W.
INTRODUCTION.

SIR THOMAS BRISBANE.

The period of the administration of Sir Thomas Brisbane is probably one of the most momentous epochs in the history of the Australian colonies. During the four years of his government, the foundations of the modern fabric of civil life were laid and many important principles received consideration. The separation of Tasmania as an independent colony was partially accomplished; a council was formed, partly as an advisory body to the governor, partly to relieve him of the responsibility of enacting laws and ordinances for the good government of the colony; trial by jury was introduced in the law courts; the censorship of the press was removed; immigration of free settlers was encouraged; the sale of crown lands was commenced, and the pernicious system introduced of utilising the moneys derived from such sales for general revenue purposes; and a monopoly was first officially countenanced in the formation of the Australian agricultural company. Besides the consummation of these important changes, many large economic policies were under trial or consideration, such as the legitimate spheres for government as distinguished from individual enterprise; taxation by representation; the separation of the two branches of the legal profession; the reduction of licensed houses; the prohibition settlements at Newcastle and Port Macquarie; the abolition of the government monopoly in coal-mining; the cessation of transportation of convicts to the colonies; the open-air treatment of prisoners; wages for prisoners; the principles of task or piece work; commission to government superintendents on work performed; and the establishment of agricultural training colleges.

The material development of the colony continued. Knowledge of the country was gained by official and private exploring parties. A settlement was formed in the Wellington valley west of the town of Bathurst, and the colonization of the modern state of Queensland was commenced by the formation of a penal settlement at Moreton bay.
Many of these changes were due largely to the reports* made by John Thomas Bigge on the state of the colony under the government of Lachlan Macquarie. England at this time was recovering from the effects of the protracted Napoleonic wars. Attention was being devoted to the problems of empire and the development of trade, and these three reports attracted public opinion, both in and out of parliament, to the development of the Australian colonies. The principal result was the passing of the statute 4 Geo. IV, cap. xcvi, whereby the elements of the modern machinery of government were first enunciated. Sir Thomas Brisbane was entrusted with their initiation. The evidence of subsequent history indicates that they were well and truly established, but the personal influence of Brisbane was somewhat marred by the actions of his subordinates in the government, and by his delegation of many of his minor powers to these officers.

It is a remarkable fact that, although this period was one of the most important in the history of the colonies, the four years of his government appear as only an incident in the active life of Sir Thomas Brisbane; whereas their administrations of the colony were the most important events in the lives of his predecessors.

Sir Thomas Brisbane was born at Brisbane House, Largs, in Ayrshire, on the 23rd of July, 1773. His father was of ancient Scottish lineage. His mother, Eleanora, was a daughter of Sir W. Bruce, of Stenhouse, a direct descendant of Robert the Bruce, and whose pedigree included members of the royal families of England, France, Scotland, and Castile. Brisbane was educated at the university of Edinburgh, and subsequently at an English academy at Kensington, where his taste for mathematics and astronomy was first developed. In the year 1789 he was gazetted an ensign in the 38th regiment, and in the following year he joined this regiment, under major Trench, in Ireland. During his service there, he commenced his life-long friendship with the duke of Wellington, who at that time was lieutenant Wellesley, serving in a regiment of cavalry. Brisbane was promoted to the rank of lieutenant in 1792. When war broke out in the following year, he raised a company and joined the 53rd regiment with the rank of captain. This regiment was attached to the army of the Duke of York in Flanders. During the years 1793–5 Brisbane was wounded in the attack on the camp of Famars on the 18th of May, 1793, and

* See note 160, volume X, and note 29.
INTRODUCTION.

subsequently was present at the capture of Valenciennes, at the battles before Dunkirk, at Nieuport and Nim.CGuen, and in the winter retreat to Bremen. He returned to England in the year 1795, and was promoted major in the 53rd on the 5th of August. In October of the same year, he sailed with his regiment in the expedition under Sir Ralph Abercromby to the West Indies, and was present at the capture of Morne Chalot and the Morne Fortunée in St. Lucia, and saw service at St. Vincent, Trinidad, Porto Rico, and San Domingo. The climate of the West Indies affected his health, and, in consequence, he was compelled to return to England in the year 1799. During his absence his friends had purchased for him the commission of lieutenant-colonel in the 69th regiment, which had sailed for Jamaica before his return. After recuperating in England, he sailed for that island and took command of the regiment in the year 1800. The 69th regiment was recalled to England in 1802, and in 1804 was ordered to India. On account of his health, Brisbane was compelled to relinquish his command to avoid the service in India, and was placed on the half-pay list.

During this interval in his military service, Brisbane devoted himself to the study of astronomy, and in the year 1808 erected an observatory near Brisbane house, in Ayrshire. His natural love for the science had been stimulated by the fact that, owing to a mistake in longitude, he had narrowly escaped from shipwreck on his voyage to the West Indies in the year 1795. From that year he had devoted himself to a special study of astronomy and navigation, which became a ruling passion in a long life, and which gained him a large scientific reputation. His hobby was of practical value on his military campaigns, and, in the words of the duke of Wellington, Brisbane “kept the time of the army” during the Peninsular wars.

In the year 1810 Brisbane returned to military duties, and was appointed colonel and assistant adjutant-general on the staff at Canterbury, England. In the year 1812, at the request of the duke (then marquis) of Wellington, he was made a brigadier-general, and ordered to the Peninsula. On joining the army, he was given the command of the first brigade in the third division under general Sir T. Picton. He was present at the battle of Vittoria, where his brigade lost ninety officers and eighteen hundred men, and captured sufficient booty to enable Brisbane to give each of
his men five dollars. He commanded his brigade at the battles of
the Pyrenees, Nivelle, Nive, and Orthes, and for his services in
the last action he received the thanks of parliament on the 27th of
February, 1814. He was present also at the battle of Toulouse,
when he was wounded by a musket ball in the arm; for his services
on this occasion he was mentioned in despatches.

In the year 1813 he was promoted to the rank of major-general;
and in the following year, when the order of the Bath was ex­tended, he was created a K.C.B. in common with other Peninsular
generals.

In the year 1814 the duke of Wellington recommended him for
a command in America, and Brisbane sailed for Canada with his
Peninsular veterans, and commanded them at the battle of Platts­burg. Owing to his absence on this service, Brisbane was not
present at the battle of Waterloo; but on his return to England, he
was appointed to the command of a brigade, and for some time to
the command of the second division in the army of occupation in
France.

On the withdrawal of the army from France, Brisbane returned
to England. This terminated his active military service, during
which he had been present at fourteen battles, twenty-two minor
actions, and six sieges. In the year 1817, he had received at the
hands of the duke of Wellington the honorary title of knight of
the cross of Hanover. In the meantime, he had found time to
continue his scientific studies, and had been elected a member of
the royal society, London, in 1810; of the royal society, Edinburgh,
in 1811; and a corresponding member of the Paris institute in 1816.

In the month of November, 1819, Brisbane married Anna Maria,
daughter and heiress of Sir Henry Hay Makdougall, of Makers­
toun, Scotland, and in consequence of this alliance he assumed the
additional name of Makdougall by letters patent, dated 14th
August, 1826. He had two sons and two daughters, who pre­
deceased him. The second daughter was born in the colony on the
7th of April, 1823, and was named Eleanor Australia Makdougall
Brisbane; the elder son was also born in the colony, on the 24th of
August, 1824, and was named Thomas Australius Makdougall.
The younger son was born on the voyage from New South Wales
to England.
After the conclusion of the European wars, many of the commanding officers were deprived of congenial employment. In July, 1820, Governor Macquarie’s resignation was accepted by Earl Bathurst, and he was recalled from the government of New South Wales.* Bathurst thereupon wrote to the duke of Wellington asking him to nominate a successor, and, after consulting him, Wellington nominated Brisbane. Brisbane’s scientific reputation was then well known, and it is said that Bathurst replied to Wellington that he “wanted a man to govern, not the heavens, but the earth.” On the 5th of October, 1820, Brisbane wrote to Earl Bathurst from Cork, applying for the appointment, and stated, “I believe my wishes have been communicated to Your Lordship by His Grace the Duke of Wellington and by the late Sir Joseph Banks.” On the 3rd of November following, Bathurst notified Brisbane that he had been appointed to the government. Brisbane himself attributed his appointment to the influence of the duke of Wellington. His commission† as governor was dated the 3rd of February, 1821.

It is not improbable that Brisbane’s passion for astronomy induced him to become an applicant for the government of New South Wales. No observations of stars had been made in the southern hemisphere since the work of Lacaille at the Cape of Good Hope in the years 1751–2, and it was considered that two observatories were needed to undertake the work. When the government declined assistance, Brisbane purchased the necessary instruments for an observatory, and took two assistants, C. S. Rumker and J. Dunlop, with him to the colony at his own expense.

Brisbane arrived in Port Jackson on the ship Royal George on the 7th of November, 1821, but he did not assume the administration until the 1st of December following. A few days after his arrival, his instruments were unpacked and used to observe the solstice in December before there was an observatory to cover them. During the early part of his administration, and until his official duties absorbed his attention, Brisbane was one of the most active of the three workers in the observatory‡ established near the

* See page 314, volume X.
† See page 589, volume X.  ‡ See note 137.
government house at Parramatta. Much good work was carried on there, which received world-wide recognition. In the year 1824 an honorary degree was conferred on Brisbane by Edinburgh university, and subsequently he received the degree of D.C.L. from both Oxford and Cambridge universities. On the 8th of February, 1828, the royal astronomical society awarded him its gold medal for the Parramatta catalogue of stars and general observations, and for his munificence in establishing and maintaining the observatory.

Brisbane was recalled by Earl Bathurst from the government of the colony in a despatch* dated 28th December, 1824, under circumstances which are discussed later, and he relinquished the administration on the 1st of December, 1825.

After his return to Scotland, he devoted most of his attention to science. In the year 1826 he erected a third astronomical observatory at Makerstoun, in Scotland. In the following year he was elected vice-president of the astronomical society. In 1832 he succeeded Sir Walter Scott as president of the royal society at Edinburgh, a position he held until his death. In 1834 he was president of the British association at its meeting in Edinburgh. In the year 1841 he established a magnetic observatory at Makerstoun, which was the first of its kind in Scotland; and on the 6th of March, 1848, he received the Keith medal of the royal society of Edinburgh for his magnetic observations. Besides articles in scientific publications, Brisbane contributed six papers to the royal society of London and five to the royal astronomical society.

After his return from the colony, Brisbane was promoted to the rank of lieutenant-general in 1829. In 1836 he was created a baronet, and in the following year he received the distinction of G.C.B. In 1836 he was offered, but refused, the command of the troops in Canada, Nova Scotia, and New Brunswick. In 1841 he was promoted to the rank of general, and some years later his appointment as field-marshall was under consideration.

Apart from his scientific pursuits, Brisbane devoted the closing years of a long life to the occupations of a country gentleman in addition to holding the appointment for some years of honorary colonel to the 34th regiment.

* See page 429.
Brisbane died on the 27th of January, 1860, in the same room in which he had been born eighty-seven years before. All his family had predeceased him, Lady Brisbane having died on the 26th of February, 1849.

Sir Thomas Brisbane was a man of many parts, and would have made an ideal constitutional governor. Prior to his arrival in the colony, he had won rank and fame on the field of battle, and had gained considerable scientific recognition for his labours in the field of astronomy. He belonged to a family of high standing in Scotland, and was possessed of sufficient private means to place him above the temptations to obtain personal pecuniary advantages from his government, temptations which had exposed some of his predecessors to grave criticism. He was highly intellectual, and fully realised the problems of his government. He was kind-hearted, honourable, and gentle, and ever ready to assist and advance the persons he had to govern, when such assistance was deserved. But his administration of a crown colony was marred by a curious anomaly of character. In his military career he had proved that he was undoubtedly a man of action and dauntless, even to heroism, on the field of battle. In his civil career he was somewhat a man of inaction, and, when thwarted, he was averse to maintaining his own authority. He gave evidence of a constitutional disinclination for the details of business and for the minor matters of administration. His ideas for the advancement of the colony and the colonists were rational and far-sighted. He gave orders which would have materially assisted the progress of the colony; but when these orders were thwarted, opposed, or ignored by the officials of his government, he neglected to enforce compliance. He was averse also to solving the problems caused by the opposition of contending factions in the colony. As the result, Brisbane left the general administration more and more in the hands of his officials, and exercised only a general direction of affairs.

In an academic sense, Brisbane was the best governor who had been sent to administer the colony; but undoubtedly he was more suited for the administration of a self-governing colony than that of a crown colony. In practical politics, his influence is not pronounced, as many of his good intentions were defeated by his officials. If he had been so fortunate as to possess the able and loyal support of his administrative officers, the striking reforms which
were commenced by his orders or under his directions, and which characterise his administration, would have stamped the four years of his government as some of the most successful in the history of the colony.

At the time of Brisbane's arrival, the inhabitants of the colony were still divided into two classes, the exclusives, and the emancipists with whom, by a community of interests, were associated the poorer free settlers. All the exertions of Governor Macquarie to break down the barriers between these two classes had failed. Macquarie had not only failed, but had increased the antagonism, and, in the opinion* of J. T. Bigge, had left his successor "the hopeless task" of reconciling the conflicting interests of the two classes. Prior to Macquarie's administration, the exclusives had been the dominant party. Macquarie had restricted their influence, and had encouraged the wishes and desires of the emancipists and their friends. In January, 1821, Frederick Goulburn had commenced his duties as colonial secretary. All Goulburn's opinions and desires were in favour of the exclusive party. When Brisbane became averse to interference in the minor details of administration, Goulburn, as the principal executive officer, acquired more and more power in the functions of the government. As the result, his natural inclinations, associated with similar feelings on the part of John Oxley, the surveyor-general, tended to restore the exclusive party to their former power and influence. This party was opposed to reform and to the increase or extension of the civil rights of the community at large; and to its opposition may be traced the partial failure of the various reforms introduced during Brisbane's administration, and even the actual recall of Brisbane.

In considering this period, the changes introduced fall into three main classes—firstly, those due more or less to Brisbane's initiative; secondly, those due to the reports of Mr. Commissioner J. T. Bigge; and thirdly, those due to the passing of the statute 4 Geo. IV, cap. xcvi.

One of the earliest changes introduced by Brisbane was in the reorganisation of the system of land grants. The power to make land grants was one of the chief sources of influence and of the popularity or unpopularity of his predecessors. It had been found

* See first report of J. T. Bigge, page 154.
that, when an applicant obtained the land he desired, he sup­
ported the governor; but when disappointed in his application, he
was dissatisfied and discontented with the administration, and
became "the implacable enemy" of the governor. The acquisition
of a land grant was a sure stepping-stone to some wealth, for the
government gave the land, supplied the labour for its cultivation by
the assignment of convicts, and for many years purchased the pro­
duce at a fixed price. If the grantee was negligent and did not
make the most use of his land, he was sure of obtaining an
enhanced value by the progress of settlement in the surrounding
district.

Brisbane was entirely dispassionate in his administration, and
desired to show favour to no class of colonists. Unlike his pre­
decessors, Macquarie and King, he made no attempt to court popu­
ularity by the lavish distribution of indulgences, especially, as they
did, during the last few months of their government. Within five
months of the commencement of his administration, he had intro­
duced a new system,* whereby each grantee was compelled to
relieve the government of the cost of maintenance of one convict
for each one hundred acres granted. This change was a distinct
advance in the political economy of the country. Apart from the
direct saving to government caused by the relief from the main­
tenance of a certain number of convicts, it had a deterrent effect on
mere speculators in land; it prevented the acquisition of land by
settlers with fictitious capitals; and it promoted the settlement of
the colony by settlers who were really desirous of improving the
land. The change provoked considerable opposition; but, never­
theless, within two years one hundred and seven grantees had
accepted land with all the obligations, whilst three hundred and
five bonds had been executed for the maintenance of convicts as
soon as the deeds could be delivered to the grantee. In a despatch†
dated 24th July, 1824, Brisbane pointed out that, whilst all other
articles were burdened to a certain extent for revenue purposes,
land had been almost exempt. By imposing the condition of main­
taining one convict (at a cost of probably £16 per annum) for
every one hundred acres, that land was subjected indirectly to a
tax of that annual value, less the value to the settler of the labour
performed by the convict.

* See page 631, volume X. † See page 331.
Acting under the suggestion* of J. T. Bigge, in the year 1824 Brisbane commenced the practice of the sale of crown lands.† At the same time, Brisbane himself regarded it as "one of the most legitimate sources of Revenue for this Colony." In this he was undoubtedly wrong, so long as such revenue was not used for productive works or works of permanent value to the general improvement of the colony. For, as the crown lands were gradually alienated, the colony was confronted with a diminishing revenue without a corresponding compensation to the public generally, apart from the individual holders of land.

In the convict system Brisbane introduced many reforms, some of which were first suggested by J. T. Bigge. Probably one of the earliest and most important was the organisation of gangs of convicts‡ for the purpose of clearing lands for settlers. These gangs, under a government overseer, were employed at the request of the settler, who lodged in the commissariat six bushels of wheat (valued at 8s. 6d. per bushel) for each acre cleared. By this system the country was developed, the government gained some return from the labour of the convicts employed, and the convicts were trained to a labour which would be of use to them after the expiration of their sentences. Each gang consisted of an overseer and twenty-two men, and the overseer was paid 3s. 6d., and the gang were allowed certain quantities of tea, sugar, and tobacco for each acre cleared. As the result of this system, 11,503 acres were cleared in two years, which was nearly one-fifth of the total area cleared in the colony since its foundation to that date, and the government was saved the cost of maintaining eleven hundred and fifty convicts.

Brisbane reintroduced order amongst the convicts by the impartiality with which he granted indulgences. He systematised the practice of granting tickets of leave, remissions of sentences and pardons, and it was soon realised that such indulgences could only be obtained as the reward of real merit and good conduct.

He abolished the system§ of assigning mechanics to magistrates and government officials, and adopted the practice of hiring them

* See note 28.
† See page 330 et seq.
‡ See page 323 et seq.
§ See page 471 et seq.
to settlers at 3s. 6d. per week and the cost of maintenance. By this means a revenue of £3,712 16s. was obtained in one year, apart from the saving in the maintenance of four hundred and eight convicts, which, at £16 per annum each, amounted to £6,528.

He developed the practice of agriculture on government account, which had been discouraged by Macquarie. The principal station for this purpose was at Emu plains. Here the convicts were trained to useful pursuits for their after life. The superintendents were granted a tithe on all crops and ten per cent. on the net profits. As a result, the convicts employed paid for their maintenance, and the establishment became a remunerative government enterprise.

As the result of reforms in the convict administration, there was a general improvement in the moral character of the convicts. Notwithstanding the great influx of convicts transported to the colony, the number of convictions recorded by the criminal court showed a marked and progressive diminution,* as follows:—in 1822, 208; in 1823, 175; and in 1824, 100.

In the commissariat department Brisbane introduced some striking reforms. In the year 1824 he appointed two boards of inquiry† to consider the question of the issue of rations. These boards recommended a complete change of system, which was adopted by Brisbane.

In the year 1822 Brisbane altered the system of payments made by the commissariat. In future, he directed‡ that these should be made in dollars at a fixed value of five shillings, which was about 16s. per cent. above their intrinsic value. The value of the dollar in circulation in the colony had been five shillings; but owing to large importations, the currency about that time became overloaded, and the value of the dollar to the merchant fell to its exportable value, viz., 4s. 2d. sterling. The change made by Brisbane caused much stir in the colony, but was approved by Earl Bathurst in a despatch§ dated 31st March, 1823. Bathurst, at the same time, recommended that all commissariat supplies should be obtained by tender.

* See page 478. † See page 498 et seq. and page 661 et seq. ‡ See page 729 et seq., volume X. § See page 73.
INTRODUCTION.

In the year 1823 Brisbane introduced the practice of calling for supplies by tender. Shortly after the harvest he called for tenders for the supply of grain for the ensuing quarter, instead of filling the stores with a year's supply at a fixed price, as had been the previous custom. This sudden change caused consternation amongst the colonists. The long-established practice amongst storekeepers and dealers had been to receive from their customers grain at a slightly lower value than the price fixed by government, and then to lodge it in the public stores. The purchase by the government of three months' supply left a large amount of grain in the hands of dealers and settlers, which appeared to be unrealisable, and many anticipated ruin, as they thought there was a superabundance of grain in the colony. In consequence, grain was neglected or used to feed live stock. When the season advanced, however, it was found that there was an actual scarcity of grain, and the price increased to fifty shillings a bushel. Brisbane thereupon chartered the ship *Almorah* to proceed to Batavia and secure a cargo of grain. On the return of this ship to Port Jackson, the opponents of Brisbane's policy induced Charles Mitchell, commander of H.M.S. *Slaney*, to seize the vessel and cargo for alleged infraction of the charter of the East India company by the importation of some tea, sugar, and dollars, which had been done without Brisbane's knowledge.*

Brisbane at the same time was effecting many economies† in the commissariat, which decreased the amount of public money in circulation, and the opponents of his policy anticipated general bankruptcy. The reforms, however, were excellent, and the evil effects anticipated were adjusted by the more than equal expenditure of money which was the result of capital introduced by the great influx of free immigrants.

Brisbane granted the colonists a great boon in the liberation of the press from censorship on the 15th of October, 1824. This change was reported in a despatch‡ to Earl Bathurst, dated 12th January, 1825.

The progress of trade and commerce under Brisbane was extraordinary. This is indicated by the revenue collected, which was largely derived from customs duties. In the year 1821 it was

* See page 529 et seq.
† See page 622 et seq.
‡ See page 470 and note 112.
INTRODUCTION.

The export of wool, which was becoming the principal industry in New South Wales and Tasmania, apart from the whale and seal fishery, likewise increased; in 1822 it amounted to 138,498 lbs.; in 1823, 477,261 lbs.; in 1824, 382,907 lbs.; and in 1825, 323,995 lbs.

The reforms introduced in consequence of the reports of Mr. Commissioner J. T. Bigge were fully detailed by Brisbane in two despatches,* dated 28th April, 1823, and 14th May, 1825.

The control in church matters was removed from the governor’s jurisdiction during Brisbane’s administration. This change was made principally at the suggestion of J. T. Bigge, and was communicated by Earl Bathurst in a despatch† dated 21st December, 1824.

The changes introduced by the passing of the statute 4 Geo. IV, cap. xcvi, were the most important in the subsequent history of the colony. This statute provided for the appointment of a nominee council, whose constitution was in general conformity with that granted to Canada under the provisions of the Quebec act of 1774. The first council consisted of five members, viz., the lieutenant-governor, the chief justice, the colonial secretary, the principal surgeon, and the surveyor-general, who were appointed by warrant,‡ dated 1st December, 1823. By a second warrant,§ dated 16th November, 1824, the archdeacon of the colony was nominated in the place of the surveyor-general. The holders of these various offices at that time were nominated by name in the warrants; but, in the event of their death, the successor in office succeeded ipso facto to the vacancy in the council, except in the case of the archdeacon, who was to be succeeded by the surveyor-general. The council was appointed to act as an advisory body to the governor, and to relieve him of some of the responsibility of enacting laws and ordinances for the peace and good government of the colony. Prior to the appointment of the council, the governor of the colony had exercised sole control in enacting laws for local purposes under the system of general orders and proclamations. By the appointment of the council, the powers of the governor, however, were little restricted if he so desired. The council had no power

* See page 74 et seq. and page 572 et seq.
† See page 419 et seq. ‡ See page 195. § See page 424.
to initiate legislation. All proposed laws were submitted for consideration by the governor, who presided, and who had previously submitted them to the chief justice and had obtained his opinion that they were consistent with the laws of England. The governor's power was further maintained by his right to establish any law, if he obtained the support of one member of the council, notwithstanding the fact that the majority were against its enactment. At a time of rebellion or apprehended rebellion, the governor was granted the additional power to legislate against the will of the entire council. Further, all acts and ordinances were subject to the confirmation, revision, or veto of the British parliament.

It is clear that, in granting a council to the colony, consisting of nominee civil officers, the English government recognised that the time had arrived for a change from the former military administration to a civilian form of government. The council had no power of initiative, but had full freedom of criticism of proposed laws and taxes. The criticism, however, was secret; the members were bound by an oath never to divulge the proceedings, and this prevented any reference to them even in official correspondence with members of the English government.

The maintenance of the governor's authority and the limitations on the freedom of action of the members indicate that parliament was not prepared to make a revolutionary change in granting even a modified form of self-government, but merely to pave the way for such a change by a process of evolution.

The first meeting* of the council was held on the 25th of August, 1824, and the first act† was passed on the 28th of September following. During Brisbane's administration, twenty-three acts were passed. These provided for the regulation of the liquor traffic, of licensed houses, of shipping, of duties, tolls, and taxes, of the post office, and of the hulk in Sydney harbour; for the registration of deeds and conveyances, and of births, deaths, and marriages; for the relief of persons imprisoned for debt; for the appointment of an additional judge of the supreme court; for the prevention of malicious prosecutions; and for the naturalisation of certain persons.

* See page 407 and note 95. † See page 408.
The foundation of the council under Sir Thomas Brisbane was fortunate. Brisbane had no desire for autocratic powers, and he encouraged the development of the idea of civil responsibility by referring all possible subjects to the council for consideration and advice. The deliberations of the council under his fostering care were ideal in character; they were calm and thorough, and during his government the council was the one institution free from faction and party disputes. Its legislation in one instance, namely, the prevention of malicious prosecutions of magistrates,* was primarily for the purpose of avoiding all chance of such disputes. When an endeavour was made by the attorney-general, Saxe Bannister, to prevent the passing of the act of indemnity, Sir Thomas Brisbane quietly but firmly maintained the authority and independence of the council.† Brisbane, as has already been stated, was an ideal constitutional governor; and it is probable that with more opportunity he would have established the council as a body equal in weight and influence, if not actually in power, with the governor himself.

The statute, 4 Geo. IV, cap. xcvi, provided also for the reform of the administration of justice. It provided for the abolition of the judge-advocate's court, with its military constitution, and substituted in its place a criminal jurisdiction for the supreme court. The draft of the bill was prepared by Francis Forbes, who was appointed chief justice. He made full provision for trial by jury in all cases, as in England; but the bill, as passed, provided for a jury of seven commissioned officers of His Majesty's forces in criminal cases, and in civil suits for a civil jury only when both parties to the action agreed to submit the cause to trial by jury. The qualification for a juror was the possession of fifty acres of landed property or of a dwelling worth £300. The provision for trial by jury in the supreme court was, however, seldom exercised, as in practice it was found that, if one party desired a jury, the other party opposed it.

It is probable that the English parliament, in providing for trial by jury by mutual consent, was not prepared to make a drastic change, but desired, as in the constitution of the council, to again pave the way by process of evolution.

*See note 208. †See page 881 et seq.
INTRODUCTION.

In the reconstitution of the courts the last semblance of military rule disappeared, as the judges were civilian in rank. The great advance in the achievement of civil rights by the colonists was the granting of the right of challenge, as in criminal causes the commissioned officers and in civil causes the magistrates were subject to challenge. At the same time, the control which the governor had exercised through his power of summoning the courts and nominating some of its members was eliminated.

Under the same statute, courts of general and quarter sessions were established, which took the place of the governor’s court. These were constituted by the magistrates and a jury. Their establishment provoked considerable opposition, especially amongst the exclusive party, who felt that their influence would be much reduced by the development of civil rights. An impression gained currency that some of the magistrates intended to hold sessions without a jury. Brisbane, however, ignored the opposition, and issued a proclamation summoning the courts to be held in similar manner to those held in England; in this action he was subsequently supported by a decision of the chief justice. The general opinion of the magistrates was in favour of the innovation, and it was welcomed by the colonists in general.

Had the jury system as first established by Brisbane’s proclamation been maintained and extended, it would probably have prevented the party feeling which reasserted itself in the colony a few years later.

Unfortunately, the privilege was grossly misused for private and improper purposes at an early date. This misuse was made at the instigation of members of the exclusive party. In the presentment of the grand jury at Parramatta in the year 1825, opportunity was taken to impeach H. G. Douglass for improper conduct as a magistrate. This was clearly a perversion of the privilege, as the conduct alleged to be improper was of a character for which the foreman of the jury, H. H. Macarthur, himself had set many precedents. The proceedings of this jury were aptly criticised by Brisbane in his despatch dated 25th October, 1825, and by chief justice Forbes in a letter dated 30th October, 1825.

* See page 803.  † See note 237.  ‡ See page 894 et seq.
§ See page 859 et seq.  || See page 894.  ¶ See note 208.
INTRODUCTION.

By the 44th clause* of the statute, 4 Geo. IV, cap. xcvi, power was given to His Majesty in Council to establish a separate government for Tasmania. In 1823 it was not considered advisable to make the separation of the colony from New South Wales complete; but in a despatch† dated 28th August, 1823, Earl Bathurst gave orders to Sir Thomas Brisbane, which were tantamount to a partial separation of the colony. By these instructions the responsible executive powers and the control of the finances were vested entirely in the lieutenant-governor of Tasmania. He also could grant pardons and reprieves, remit sentences, appoint officers, and make land grants; but these were subject to the formal approval of the governor of New South Wales. It was also provided that laws relating to or affecting Tasmania were to be approved by the lieutenant-governor before submission to council, except in cases of emergency.

During Brisbane's administration, one important exploring expedition‡ was undertaken officially by John Oxley, the surveyor-general, in the year 1823. Port Curtis and Moreton bay were thoroughly examined, and the Brisbane river was discovered. The result of this discovery was the establishment of a penal settlement at Moreton bay, and thereby the colonisation of the great modern state of Queensland was commenced. A private expedition.§ organised by Hamilton Hume and W. H. Hovell, was also successful in making far-reaching discoveries towards the end of the year 1824. These two leaders discovered the overland route from Lake George to Port Phillip, and paved the way for the colonisation of the state of Victoria.

In addition to forming the settlement at Moreton bay, Brisbane established a government station in the Wellington valley, to the west of the town of Bathurst. In the year 1824 the English government despatched the expedition|| to form a settlement on Melville island, under captain Bremer; this was the first attempt made to colonise the northern territory of the commonwealth of Australia.

During his government, Brisbane gave every encouragement to the cause of science. Apart from the observatory which was conducted at his own expense at Parramatta, he had thermometers

* See note 33. † See page 109 et seq.
‡ See page 215 et seq. § See note 151. || See page 227.
INTRODUCTION.

and barometers placed at Sydney, Bathurst, and Newcastle, and gave orders for a systematic record of the readings. He encouraged the meetings of a scientific society, which had been formed under the name of the philosophical society of Australia. He promoted the experimental cultivation of various plants and seeds at Emu plains, Port Macquarie, and elsewhere.

In this period, free immigration, which had been discouraged by Governor Macquarie, commenced, and received the full approval of Sir Thomas Brisbane. The English government also approved the formation of the Australian agricultural company,* which subsequently obtained a monopoly of coal-mining.

Throughout his administration Brisbane was constantly thwarted by the actions of opposing parties in the colony. The bitterness which was engendered in these fights is well exemplified by the disputes which centred around the person of Henry Grattan Douglass. These commenced in the allegations made by James Hall of immorality on the part of Douglass with his assigned servant.† A few months after Douglass was exonerated from these charges on inquiry, the Revd. Samuel Marsden was convicted by Douglass for allowing his assigned servant to labour for his own benefit.‡ Marsden preferred charges against Douglass on this account to Earl Bathurst.§ An inquiry was ordered, and Douglass again exonerated. Douglass was further charged with drunkenness and flogging convicts to extort confessions; these charges were followed by a similar result as formerly.|| All these charges were trumped up for mere party purposes, and chief justice Forbes, in referring to the "Douglass cause," stated it was "the cause and not the Douglass, which has made so much noise and excited such a powerful interest in this Colony." The attack on Douglass was actually an attack on every public servant in the colony by a party who felt that their power was being reduced by the introduction of reforms.

When the fight became so bitter, it was unlikely that the governor himself would escape. Private letters were sent to England making the most vile charges against Brisbane. An open letter was published in the Morning Chronicle newspaper in London.¶

* See page 563 et seq. † See page 750 et seq., volume X.
‡ See page 717 et seq.
§ See page 307 et seq. || See page 783 et seq. ¶ See page 606 et seq.
alleging various acts of maladministration. But probably the most contemptible charge was that he had connived at the sending of female convicts to the government establishment at Emu plains for the purposes of prostitution.*

The disputes between parties penetrated into every sphere of life, probably with the single exception of the deliberations of the council. As has been noted already, it was evident in the report of the grand jury at Parramatta in August, 1825, and in the seizure of the ship *Almorah*. The departure of judge Field was made the opportunity for an attack on Brisbane at a meeting of the agricultural society. The discoveries of Hume and Hovell did not receive due recognition for fear of detracting from the merits of the discoveries of John Oxley, who was a member of the exclusive party. These are only a few of many examples which might be quoted.

Brisbane's greatest difficulties, however, were caused by lack of loyalty and support from his principal executive officer, Frederick Goulburn, the colonial secretary. Goulburn thought himself justified in withholding correspondence from the governor, in modifying instructions received from the governor, and in issuing orders on his own responsibility. Goulburn was actually the cause of the dispute between Brisbane and John Macarthur relating to his land grants. Owing to Goulburn's actions, it became recognised in the colony that, unless he approved, it was useless for anyone to seek a favour from the governor. Brisbane was aware of all this, and made a report on Goulburn's misconduct in a despatch to Earl Bathurst† dated 1st May, 1824. But Brisbane made no strong effort to counteract Goulburn's influence, and in that he marred his administration, which would otherwise have been the most successful in the colony. Principally in consequence of the disputes between the governor and the colonial secretary, Earl Bathurst, in December, 1824, wrote despatches‡ recalling them both from the colony.

In May, 1825, Brisbane acknowledged with satisfaction and relief the orders for his recall.§ and only continued to administer

* See page 814 et seq. † See page 253 et seq. ‡ See page 429. § See page 606.
the colony until the end of the month of November, because he considered that Colonel Stewart was incompetent to govern,* and Governor Darling's arrival was not expected until December.

Sir Thomas Brisbane's administration just missed being ideal from his failure to enforce the loyalty and obedience of his principal executive officers. A paragraph from an ex parte statement in a farewell address to the governor aptly summarised the main points in his favour.

"Your Excellency's Government, for mildness, has not been equalled since the foundation of the Colony. For impartiality, it has been pre-eminently distinguished. Its firmness has been exemplified by Your Excellency having never, in the distribution of the patronage of the Crown or in framing New Laws or Ordinances, allowed yourself to know the high from the low, the Emigrant from the Emancipist; all orders of the people have been equally protected and equally recognised by you; and no temptation has ever caused Your Excellency to swerve from the straight path of simple rectitude, or to give one class of His Majesty's free Subjects an undue preference above another."

_FREDK. WATSON._

_August, 1917._

*See page 589.*
DESPATCHES.
RECOMMENDATIONS OF SETTLERS.*

During the year 1823, letters of recommendation from the under secretary were forwarded to Sir Thomas Brisbane on behalf of the following settlers:

<table>
<thead>
<tr>
<th>Date of Letter</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>1823. 22 February</td>
<td>Mr. Henry Jellicoe and Mr. Thomas Curry</td>
</tr>
<tr>
<td>11 March</td>
<td>Mr. John Sturgeon</td>
</tr>
<tr>
<td>20 March</td>
<td>Mr. John Sharland</td>
</tr>
<tr>
<td>30 August</td>
<td>Mr. Robt. Waddell</td>
</tr>
<tr>
<td>19 November</td>
<td>Mr. T. H. James</td>
</tr>
</tbody>
</table>

ASSIGNMENTS OF CONVICTS.*

During the year 1823, letters, which enclosed the assignments of convicts (not available) per the ships named, were sent to Sir Thomas Brisbane bearing dates as under:

<table>
<thead>
<tr>
<th>Date of Letter</th>
<th>Ship</th>
<th>Number of Convicts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1823. 22 April</td>
<td>Ocean</td>
<td>171 Male</td>
</tr>
<tr>
<td>25 April</td>
<td>Henry</td>
<td>160 Male</td>
</tr>
<tr>
<td>5 June</td>
<td>Mary</td>
<td>126 Female</td>
</tr>
<tr>
<td>30 July</td>
<td>Asia</td>
<td>150 Male</td>
</tr>
<tr>
<td>23 August</td>
<td>Guildford</td>
<td>160 Male</td>
</tr>
<tr>
<td>21 November</td>
<td>Brothers</td>
<td>89 Female</td>
</tr>
</tbody>
</table>

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch per ship Competitor.)

Sir,

Downing Street, 1st January, 1823.

I have the Honor to acquaint you that I have appointed Mr. Frederick Augustus Hely to be Superintendent of Convicts in New South Wales at a Salary of £200 per Annum.

I have, &c.,

BATHURST.
1823.
27 Jan.

Trials of
Davidson, W.,
and Rotton, W.

Enclosure No. 1.

HISTORICAL RECORDS OF AUSTRALIA.

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked “No. 1 of 1823,” duplicate per ship Surrey.)

Government House, Sydney, New South Wales,

My Lord,

I have the Honour to enclose from the Judge Advocate of New South Wales two reports of the proceedings on the Trials of John Davidson and Walter Rotton. The Court having in each case determined that the same should be transmitted through Your Lordship for the gracious signification thereupon of His Majesty’s pleasure.

I have, &c.,

THOS. BRISBANE.

[Enclosure No. 1.]

THE INDICTMENT OF WILLIAM DAVIDSON.

Be it remembered that John Wylde, Esquire, the Judge Advocate of Our Sovereign Lord the King for the Territory of New South Wales and its Dependencies, who for our said Lord the King exhibits the Charge in this behalf comes into the Court of Criminal Jurisdiction, convened at Sydney in the said Territory by Precept under the Hand and Seal of His Excellency Sir Thomas Brisbane, K.C.B., dated the thirteenth day of September in the Year of our Lord One thousand eight hundred and Twenty two, And having power to enquire of, and to hear and determine and punish All Treason, Murders, Felonies, Trespasses, and other Crimes whatsoever, committed within the said Territory or its Dependencies. And for our said Lord the King charges and gives the said Court to be informed that William Davison, otherwise John Davison, on the fifteenth day of June in the Year of Our Lord One thousand eight hundred and twenty two, with Force and Arms at Sydney aforesaid, in the Territory aforesaid, in and upon one Robert Howe, in the peace of God and our said Lord the King, then and there being feloniously, wilfully, maliciously and unlawfully did make an assault, and with a certain sharp Instrument called a Bayonet then and there feloniously, wilfully, maliciously and unlawfully did strike and cut the said Robert Howe in and upon the left breast of him, the said Robert Howe, with intent, in so doing, wilfully and of his malice aforethought to kill and murder him, the said Robert Howe, to the great damage of the said Robert Howe against the form of the Statute in that case made and provided and against the Peace of Our Lord the King, his Crown and dignity.

Other Counts charging the assault with different Intents under the Statute.
BRISBANE TO BATHURST.

[Enclosure No. 2.]

Report by Judge-Advocate on the Trial of William Davidson.

The Report of the Judge Advocate of New South Wales as to the Trial of William alias John Davidson upon a charge reduced into writing and exhibited to the Court of Criminal Jurisdiction on Monday, 30 September, 1822, against the Prisoner for maliciously assaulting and Stabbing with a bayonet Robert Howe at Sydney on 6 June, 1822, with intent to murder or to maim, disfigure or disable the said Robert Howe against the form of the Statute, &c. (43 Geo. 3, ch. 58, S. 1.)

(See Copy Information exhibited against the Prisoner.)

The Prisoner Pleased
Not Guilty.

Norton, Solicitor for the Prosecution, stated to the Court the facts of the Case when the following Witnesses were called and examined:

ROBERT HOWE.—I recollect the evening of 15 June last. I had been in the Chapel, Princes Street, Sydney. I had left the Chapel about 4 past 9 o’Clock, was proceeding home from the Mission House. I was crossing the Street about 5 or 6 yards from Mr. Scott’s House at the opposite side; it was very dark but I could perceive the figure of a Man before me; he was walking before me 8 or 10 Yards; there was a curve on the pathway; seeing some one before me I prepared my Stick and in approaching I saw the Man returning again towards me; I immediately made way for him and something crossed my mind at the moment; I went towards the Road in order that he might pass between me and the paling. I rattled my Stick, and before I could lift my Stick from the Ground he made a run at me and I felt something like a blow of an open hand very violently. He said something at the same time, but I did not distinguish what; Something like “There”; he was about four yards from me. I immediately found I was wounded; whether the Man drew the Instrument from me or I myself, I do not know, but when it was so I found the blood rushing out. I made an alarm of Murder and run back to Mr. Scott’s; the person disappeared immediately I received the Wound; I went to Mr. Scott. I was confined a fortnight; it was not considered that I should live the whole night.

It was two inches from my left breast, parallel towards the shoulder. I knew the weapon was in the Street, and I told Mr. Scott so. I saw this Weapon on the Monday following (bayonet on a Stick produced).
Cross examined by Mr. Rowe, Solicitor for Prisoner.—Dr. Bland attended me. I remained at the Mission house about an hour or an hour and a half; the Chapel ends at 8; it was 9 past 9 when I left the Mission House, and two minutes after I received the blow.

I have thought it was Bullivant. I made sure of it at the moment. I never imagined the Prisoner at the Bar; it never entered my mind to put an end to all questions of that kind, not at the time nor till several days afterwards. I did charge Bullivant; but they brought another man Johnson to me the same night, but they were so much alike that I could not charge either of them. I conjectured it was one of them at that time. No serious differences have ever arisen between Mr. Bullivant and I. I had innocently injured Mr. B., and I did not know but he might have resorted to that mode of Revenge. Johnson had done everything against me, but to take my life, and acted so that I could not but think with the Common opinion that he was Guilty.

Scott is the third House in Princes Street. I only know from Report that Prisoner lodges with MeKinley. I only know he lives at Cockle Bay; it would take 10 minutes to run from the Market Wharf from the place where I was stabbed.

I had not spoken to the Prisoner above three times in my life, and never perhaps three words at a time. I recollect three or four weeks before seeing a Man on the outside of the Macquarie Street Chapel. I was going towards the Chapel on a Wednesday night; a Man with a Stick was looking in at a Window. I walked round to see who it was; I found it was the Prisoner. I knew him perfectly well; he saw me. I saw him get down; he walked out from the Yard. I took no notice of it at the time.

I had been out in the Town, Morning, noon and night since that time. I can mention no other Circumstance connected with this assault. I have no doubt that I had been at Princes Street Chapel in the Interval of time on the two nights that it assembles.

Francis Ewin Forbes.—I lived in Princes Street, Sydney. I recollect the evening Mr. Howe was wounded. I was at Mr. Mansfield's House. I parted with Mr. Howe at Mr. Mansfield's Gate. I had not got many steps when I returned to Mr. Mansfield's, and hardly got into his Study when I heard the cry of "Murder." I had hardly got to Mr. Scott's door again, when I saw Mr. Howe returning to Mr. Scott, who I believe met him as he went towards him. I assisted Mr. Scott to take Mr. Howe into the House. After the wound was dressed by Dr. Stevenson, accompanied by Mr. Mansfield and Mr. Scott I went to look for the Instrument that might have been used, and after looking about the Road I found Mr. Howe's hat with paper in it; a

* Note 2.
Servant of Mr. Scott saw the bayonet lying in the middle of the Road. To the best of my belief this (produced) is it; it was fixed in this way; it was covered with blood. I suppose an inch and ½ towards the point, It was quite wet. We took it into Mr. Scott's House. I did not perceive any blood where it was found. I did not examine particularly. Mr. Howe was bleeding profusely and I thought the wound was fatal.

Cross-Examined.—It could not be many minutes after he left the Mission House that I heard the cry of Murder; it might be 5 minutes or less. I know Johnson. I was not present when he was examined before the Magistrates. At the time the Wound was given, when Mr. Howe was a little recovered, he said he could not suspect any body but Bullivant and Johnson for he had never injured anyone; it was a Starlight night, not a very dark night.

I can't be positive as to the time Mr. Howe left the Mission House. I do not know whether the Drum had beat or not. When I pulled out my Watch, thinking the man who went for the Doctor a long while, I looked at my Watch and it wanted then 20 minutes to 10 o'clock.

It is 15 Yards from Mr. Mansfield's door to where the Bayonet was found. Mr. Howe's hat was further still; the hat was lying at the edge of the Foot path. I think it would take a Man of an hour, unless he was a good runner, to run from Prince's Street to Mr. McKinley's.

JAMES BOWMAN.—I am Principal Surgeon of the Colonial Establishment; the Prosecutor was dressed before I came; I did think at first there might be some danger from the wound.

JAMES MITCHELL.*—I am Surgeon of the 48th Regt. I examined the wound inflicted on the Prosecutor; it was before 10 o'clock. I thought it was a ragged Instrument, a three cornered Instrument. I saw this Instrument at the time, and I considered it as an Instrument with which such a Wound might have been given; it was wet, it was so probably about an inch. I apprehended danger; there was a great difficulty of breathing. The cellular membranes were filled with air all round the wound. I don't think it could be a cutting Instrument.

JOSEPH McKinley.—I live by the Market Wharf of Sydney; I remember the occasion of Howe's being wounded; the Prisoner lodged with me. I don't know whether he was at home or not. I had not been at home that evening. I returned soon after nine o'clock, it might be a ¼ of an hour of the outside. I heard the Drums beat as I was at Bacon's Salt pan; it would take me more than five minutes to get home; shortly after I came in, the Prisoner came forward in his Shirt and asked me after my purchase that I had been out about, out of his room, he rapped at

* Note 3.
the door, there was a door between his room and mine; he did not seem in a state of agitation, not in the smallest that I could perceive; he has often come to me and asked for a light when he said he could not sleep; it has happened ten times as near as I can tell; he has lodged 6 or 7 Years with me; I have not had bayonets in my House, but there has been one; it has been there longer than I can account for; it might have been 5 or 6 Years. I have not got that Bayonet in my possession now. I don't know what has become of it now; I could not say that this is it; it is like it; that had a point that was in my place. I could not justly say it is like it; I made no use of it; it lay among some Lumber. I don't recollect. I may not have seen it these 8 or 9 Months; it lay in the stable and I have seen on the Yard as I went through. I have looked for the Bayonet since. I have not found it. I am not very sure whether it is there or not; it might be there, but I looked for it; there was one or two Waddies in the House; the Prisoner made a practice to carry one of the waddies out with him sometimes. I never see this Stick in my house in my life fixed to a Bayonet; this (another produced) is like one that I had lost; it is broken. I did not take notice of the bayonet being notched; it was rusty. I can't think it is or not the same bayonet. I should not like to swear it is or is not. I could not say how often I had seen this bayonet; I have handled the bayonet in removing the old Iron lumber. I never considered it of any use; the best of my Knowledge it had a point.

I never saw this bayonet in the Prisoner's Hand. I never heard of his handling it till this happened. I never heard anything at all about it. I could not say he ever saw it; it was not concealed from any one in or about the House. I could not say that he must have seen it; he was not in the habit of going to such places to look over Lumber of that kind.

Cross Examined.—The best behaved Man he has been in the Country. I have never known so quiet a Man in the Colony. Many other men have been in the Habit of lodging with me, and often while the Prisoner has been with me; the bayonet may not have been in my possession these last Nine Months for what I know; there were three Men in the boat that night. My own Man (Thomas Lloyd) went with me; he saw the Prisoner as well as me; I can't say who lit the lamp. He lighted himself to the best of my belief. I could not say to that he was not agitated or embarrassed that I could speak to, more than usual. He was undressed and he came from his bedroom. I am confident he did not exceed 9 o'clock.

It was not very dark; it was Starlight; it was on a Saturday I know by making the appointment to buy the Cows of McDonnell. I think it was in June. I did not hear as to Mr. Howe's
BRISBANE TO BATHURST.

assault till next day; to the best of my Knowledge it was the next day. I could not know whether the Prisoner was out or not. I was before the Police. I am not sure whether it was 3 weeks after. I don't know the day of the Month. I can't say it was the day of the accident to Mr. Howe. I can't recollect going before the Magistrate the 3d day afterwards. I think had been at Hawkesbury before I came there.

By the Court.—I am sure I heard, the next day after I had been with McDonnell, of Mr. Howe being stabbed. I left my House on the Saturday about 1 or 2 o'clock at Noon; the Prisoner was not then at home; he has but one Room. There was a waddy missing, Prisoner generally kept one in his room. I looked for it when I looked for the bayonet. I can't tell who took it away. I never heard him speak of Mr. Howe. To the best of my memory he never mentioned his name in respect or disrespect. I don't remember his saying any thing about Mr. Howe being stabbed. I don't recollect any conversation. I have not the smallest knowledge of this bayonet, but as one is like another.

HENRY DURBAN.—I am slightly acquainted with the Prisoner. I am acquainted with Mr. Bullivant. I have met the Prisoner at his lodgings. I never met the Prisoner but once there. I could not say whether it was the day before or a Week or after the assault on Mr. Howe; it was in the early part of June. Mr. Howe's name was mentioned in conversation between Bullivant and Prisoner; he examined no bayonets then; he saw no bayonet there. I listened not to the conversation I told to Mrs. Ikin of what had passed then. Bullivant mentioned to me the conversation that had passed after the Prisoner was gone; there was a Dagger or Dirk in Bullivant's room; it was there when the Prisoner was there. The Prisoner said in the course of conversation, to the best of my knowledge, "This would be of Service to Mr. Howe"; it was produced and exhibited by Mr. Bullivant as an Article of Curiosity; he said "have you seen this," pulling it out of a drawer and shewing it to him. I was reading the Gentleman's Magazine. I was not struck with the observation. In the Course of 4 days, I mentioned it to Mrs. Ikin. I cannot swear that the Prisoner said 3 inches of this, but the words I heard were to the best of my recollection this would be of Service to Mr. Howe; 3 inches were mentioned to me by Mr. Bullivant afterwards; to the best of my recollection it was before the assault.

Cross Examined.—I could not take upon myself to say that I heard the whole of the conversation between the Prisoner and Mr. Bullivant on the subject of Mr. Howe. I don't recollect there was any one else present. I was perfectly sober as I am now. I did not attend to the whole of the conversation, and that
is the reason that I cannot repeat it. It might have been after
the assault, but to the best of my Recollection it was before. I
never saw bayonets in different houses. I never saw any left by
the 46th Regt.

I went to Mr. Wentworth's, and he asked me if I knew any
thing about the assault. I had mentioned it to Mrs. Ikin after­
wards. I might have mentioned it before. I don’t know what
Howe the Prisoner meant; there was no observation that led me
to know it was Howe the Printer. I have never seen the Prisoner
since; he was never suspected till now.

Charles James Bullivant.—I live in an old House, and he
took it (the Dagger or Dirk) from between the Joists and the
Ceiling; it was a dirk. I remember the time perfectly but not
the date; it was before Mr. Howe was assaulted. I suppose a
fortnight; he took it down and examined it; there was nothing
particular in it; he made a remark; he laughing said “That
Howe had injured me; had charged me with a pilfering concern
of robbing him of a book”; and said he deserved some of it, or
words to that kind. I wish to impress upon the Court he said it
laughingly. I made no reply that I recollect. I might do so. I
considered it a Joke at the time; it ended by his leaving me
shortly afterwards. I saw him after his first hearing before the
Magistrate. I don’t recollect seeing him in the interval. Durban
was very much intoxicated when the Prisoner made that obser­
vation; he had drank five glasses that morning.

Cross Examined.—It is frequent in the Town and Country to
see Bayonets.

By the Court.—I am quite sure it was not the same Week that
the assault was committed on Mr. Howe. I do think it was a
full fortnight; the Matter between Mr. Howe and me had hap­
pened a fortnight; it had been mentioned frequently by Prisoner
as a very offensive Matter to me. The Prisoner never had sug­
gested any Matter of Offence on his own part. I felt very much
grieved and spoke to the Prisoner.

I recollect the Prisoner asking me how I got the dirk. There
was an Anchor on it; the Prisoner had been in the Service. I
informed him of the particulars. I never heard any cause or sug­
gestion of Offence to the Prisoner from Mr. Howe or from himself.

Charles Gray.—I know the Prisoner; on the Friday evening,
previous to the assault, I had a conversation with him at my own
Gate, York Street, Sydney; he came up and said that he con­
ceived that Mr. Howe had materially injured him by advertizing
that he was going away in the Medway, which he conceived was
to ridicule him as being a Prisoner. I dissuaded him from the
Idea; that it was Mr. Davison the Supercargo of the Medway and
that he could not allude to him at all; he then said that he con-
sidered himself very much injured by Mr. Howe and that he
would be revenged on him; he shewed me a waddy and asked me
if I thought it would knock a man down. I took it in my Hand,
but it was at such a time that I could not say this (produced) is
it; but it is like it. I attempted to dissuade him from the
impression; he never said but once that he would be revenged on
him; he did not repeat it after I had talked to him; when he
talked of the waddy it was before my explanation.

I saw him on Sunday morning. I met him in York Street. I
had heard of Mr. Howe's Assault. I was going to his Lodgings.
I said I hope you are not concerned in this last night's business
of assassination; there did not seem any agitation in the Man;
he said "no, Mr. Gray, I am not concerned in it; even if I had,
he deserves it at my Hand."

Cross Examined.—I think he went away fully persuaded that
Mr. Howe had done him an injury.

I never heard the Prisoner make any other expression of ill
nature against Mr. Howe. I was going between 6 and 7 o'Clock
in the morning to his House; he had no stick then. I can't tell
that the advertizement had appeared only on that day; it might
have been the week before, not above a Week; it was the first
meeting after the Advertizement appeared.

JOHN FOSTER.—I am a Constable. I know the Prisoner and
have for two Years. On the 13 June, between the hours of Six
and Seven in George Street in the Evening, rather above the
new Police Office, 2 Constables were with me. I met the Prisoner.
I turned round upon him and he then had a Waddy and a
bayonet turned down thus (as shewn) in his hand; I knew him.
I asked him what he was carrying that for, he said it was for
Dogs, that he had been bitten very often before; he mentioned
Smithers dogs in particular. I told him I had a great mind to
take it from him; he begged I would not as it was a great pro-
btection from the Dogs to him; he told me he was going to
Church; it was on Thursday, the 13 June; I told him he had
better not carry such a weapon at night as he might be taken up;
he made no answer, and knowing the Man I let him go. I drew
the Stick and Bayonet through my Hand. I cannot say this is
the bayonet, but the one I drew through my Hands was rusty
and ragged. I can't say as to the point. I should think it very
like but I could not say it was the same bayonet; I could not.

On Friday morning, the next day, the Prisoner was met by
me and Matthews and asked me if I had seen his bayonet, as he
had hid it in a heap of Stones near the New Police Office; we
said not; Matthews was present.
I went to the Prisoner on Monday or Tuesday after the assault on Mr. Howe; he brought this 2d Waddy out and said that is the Waddy I had on the Thursday night; but this is not the same; this is not like it; it was not broken; if even it had been broken in the mean time it is not so thick as the one I drew through my Hand on the Thursday night. Matthews and the other Constable did not examine the Waddy or bayonet.

Cross Examined.—It was a Star-light night; we said the next day we had not got the bayonet; we were going after another business; I cannot swear to any positiveness as to this being the same the Prisoner had; he knew we were coming for him; he asked me if we were coming for him about Mr. Howe. Smithers' is about 100 Yards from the site of the New Police Office.

John Matthews.—I am a Constable. I remember the assault on Mr. Howe. I was with Foster the Thursday night before; I did not observe what the Prisoner had in his hand before Foster took it out of it; it was a bayonet on a Stick; to swear what it was I cannot; it was dark looking rusty bayonet; he said he carried it for protection against the Dogs; he had been bitten some nights before; Foster said he had a great mind to take it from him; the Prisoner said he hoped not, it would be a protection to him; on the next morning he inquired if we had not got his bayonet; we said not; he said not; he said he thought we might as he had planted it under some Stones by the new Police Office.

He came to me on the Monday Morning at the Police Office, and he asked me if I had not got the bayonet; I said I had not, and had told him so before. The Prisoner was about opposite McArthur's Cottage, when we stopped him with the bayonet.

Thomas William Parr.—I live in George Street, Sydney. I heard of the assault on Mr. Howe. I saw the Prisoner Davidson afterwards; he was then in a room behind the Police Office; he asked me if I were inclined to serve him, as I had formerly promised to do; he had been before Mr. Wentworth several times under examination. I was not communicated with till that day. I said I were, as long as I considered him innocent; he then asked me as the bayonet could not be found (I would explain that as he had told me about the bayonet being hid by the New Court House, I had said that I would advise him to advertise it; if he had not the Money for it, that I would give it him); he said then that it could not be found there he supposed, and if I would produce another Bayonet, I can't remember the exact word, and put it in the place, it would do away with the business. I said no; I shook my Head and said No, I could not do it; he did not mention the place.
Cross Examined.—He had told me before that he had hid the bayonet on the Monday or Tuesday after the Assault; he talked about the assault and stated that he had not done it; he seemed to shudder with horror at being charged with it at all times. I did not think him at the time Guilty or I would not have assisted him.

I have known the Prisoner 9 Years; we boarded and lodged then in the same House.

I always considered his Character as diametrically opposite to that of an Assassin. I took him to be a brave Man.

I had frequent conversations with him after his being charged.

By the Court.—I made my deposition four or five days afterwards; he said at the same time Mr. Bullivant would do it if he could do it, or words to that effect; the Prisoner has been before Mr. Wentworth on suspicion and afterwards discharged; after he was discharged, he mentioned about hiding the bayonet under the Stones; he told us it was on account of the Dogs that he carried for defence against.

The Prisoner never expressed any feelings of ill will to me against Mr. Howe.

Sydney Gazettes produced 7 and 14 June as to Mr. John Davidson leaving the Colony by the Medway, &c. No.

Sydney Gazette produced 14 June it was advertised as “Mr. John Davidson, Supercargo of the Ship Medway &c.”

Howe recalled.—The Sydney Gazette gets into Circulation before or about 2 o'clock on the Friday. I altered the advertisement at the suggestion of Mr. Davidson himself.

I am prevented from attending the Church on a Thursday evening on account of the publication of the Gazette. I have never attended since the Paper has been published on a Friday. I am out almost every night and have been so since I saw the Prisoner at Macquarie Street Chapel, very frequently after dark.

No other Witness being called in support of the Information,

Rowe, Solicitor, for the prisoner objected “that the Prisoner was intitled to his acquittal upon the three first counts in the Information, as founded upon the Statute of 43 G. 3, ch. 58, S. 1, making the Offence in question a capital Felony, when committed ‘against any of His Majesty’s subjects in England or Ireland’; that such an Offence committed in the Territory of New South Wales could not therefore be considered as a Capital Offence under that Statute, which does not extend even to Scotland, as was determined indeed upon the point taken in a case there; that the legislative provisions in question are confined wholly in operation to England and Ireland, and could not be extended to the West India or these or any of the British Colonies.”
1823. Norton, Solicitor, on answer suggested, "that the Statute in question might have held as not in operation in Scotland and yet to be in force here; that the Statute of the 27 G. 3, ch. 2, under which the Criminal Jurisdiction was introduced and exercised in the Colony, had at once and effectually put into operation and full force here all the Laws and Statutes of the realm, and given to the Court, erected by it, full authority and power to try and punish all Offenders against the Laws of the Realm according to the Form and provisions of the several enactments of the Particular Statute, on which the Charge against them was exhibited to the Court."

The Judge Advocate having advised, the Court directed the Prisoner to proceed with his defence, reserving so serious a point of Jurisdiction as to the functions of the Court, as well as to the Interests of the Territory, for more solemn argument and consideration.

On the part of the Prisoner was then called,

Richard Wade.—I am Sexton at St. Philip's Church. I heard of the attack on Mr. Howe. I had seen the Prisoner on the Thursday before at the Evening Service. I spoke to him and he to me. I don't recollect he had anything in his hand. I don't remember seeing anything in it; if he had a stick, it must have been a small one. I don't recollect whether he had one at all. I must have seen such as this or that (Bayonet or Waddy) in his hand.

Cross Examined.—I did not observe him after he left the Church; the Service is over some time at 8 or 9; it begins at 7. I had seen him several times before very regular there.

Thomas Lloyd.—I live at McKinley's. I went with McKinley on a Saturday to McDonald's for some Bullocks; the attack on Mr. Howe was that day. I left the House between 1 and 2 o'clock; as we came past Mr. Bacon's Salt pans on our return they were beating; we were about 1/2 of an hour to the best of my knowledge after hearing the Drums to when we got home. I went in with McKinley. I saw nobody, but heard somebody knocking at the Door, and then the Prisoner asking for a light in his Shirt; it was the back door. I gave him a light. The Prisoner said nothing to the best of my knowledge; it was not 1/2 of an hour of the outside.

Cross Examined.—McDonnel's is in the Field of Mars. I did not hear the Drums strike up; we had the tide with us and we pulled well; they were beating at Goat Island. I don't think we were 20 Minutes from Goat Island.

I am not positive whether it was a warning Drum or the Troops beating.
THOMAS CATHRALL.—I went with McKinley on a Saturday about the middle of the Month of June. I heard on the next day of the assault on Mr. Howe. The Drums began to beat as we were between Bacon's Salt pans and the Military Barracks. I merely went up the hill with him; he (McKinley) went into his own house; we could not be more than 15 or 20 Minutes at the utmost before we got home after hearing the Drums; we were very anxious to get home.

Cross Examined.—It was the middle way between the pans and the Barracks; nothing was said about Goat Island when the Drums struck off. I think less than 25 minutes would include the whole interval of McKinley getting home and the Drums beating off.

I meant the Military Hospital not the Barracks.

For Character.

JOHN THOMAS CAMPBELL, Esqr., Provost Marshal of the Territory.—I have had an opportunity of observing his (Prisoner's) general demeanor since he came to the Country, perhaps 9 or 10 Years; during that time I always considered him a quiet inoffensive and well conducted Man. I have always looked upon him as quite the reverse of a malicious habit of mind; I never heard his Character called in question.

Judgment:—William, alias John, Davidson,—Guilty.
And the Prisoner was remanded on the judgment of the Court.

Monday, 21st October, 1822.

The King (v.) Mr. Rowe, Solicitor in arrest of Judgment. 43 G. 3, ch. 58 not applicable to the Territory; not being specifically named in the Statute which passed subsequently to 27 G. 3, ch. 2, erecting the Court of Criminal Jurisdiction here to try Offenders in these Colonies according to the Laws of England.

43 G. 3, ch. 58 strictly confined in operation locally to England and Ireland and extends only to Portland, Isle of Wight, &c. as being included in certain neighbouring English Counties.

Stat. 27 G., ch. 2 empowers the Court to try and punish, as a Court of Judicature "for the trial and punishment of all such outrages and Misbehaviours, as if committed within the realm of England would be deemed and taken, according to the Laws of the realm, to be Felony or Misdemeanor."

No Statute since passed can be intended to include these Colonies, unless specifically named in them and thus rendered
HISTORICAL RECORDS OF AUSTRALIA.

only subject to their operation, because the 27 G. 3, ch. 2 applies at this time only as at the original enactment, never having been repealed or amended by any subsequent Statute.*

So if the Statute 4 G. 1, ch. 11, Sec. 19 had not directed all Piracies, felonies &c. on the High Seas by 11 and 12 W. 3, ch. 7 to be tried according to 28 H. 8, ch. 15,† and by 9 Sect. that it should extend to America, the British American Colonies could have proceeded only according to the Civil Law under 11 and 12 Wm. 3, ch. 7, and not in the manner directed by 4 G. 1, ch. 11 according to the Common Law as directed by 28 Hy. 8, ch. 15.

But 28 H. 8 was not extended to the British Colonies in Asia and Africa, and therefore no more in force here than 43 G. 3, ch. 58, because the Territory is not particularized in that act.

If 43 G. 3, ch. 58 had extended the Offence out of the Realm even, it would have been doubtful whether it could be construed to apply to the Colonies, for Chitty on Criminal Law 647 says *it seems to be considered* that acts specially passed for the trial of certain Offences committed out of the Realm on the High Seas *May* extend to the Colonies; although they were established before the act was passed.

If doubtful therefore as to the Application of an act specially providing for Offences committed out of the Realm, how much more so as to that of a Stat. referring only in operation to Offences within the Realm, this Territory not being within the Realm. By 20 G. 2, ch. 42, Berwick upon Tweed *declared* to be part of the Realm, but the Isle of Man is a distinct Territory and acts of Parliament do not extend to it, unless it be particularly named: so also Jersey, Sark, Guernsey, Alderney and their Appendages.

1 Bl. 99-55, 6 &c.

The Colony of New South Wales cannot be included under the Denomination of H.M. Dominions, unless so particularized in any Act of Parliament subsequently to the first period of Colonization.‡

Sentence.—After Argument, the Court determined that the case as to the point in question should be referred home to His Majesty in Council, but that the Capital Sentence should in the mean time be pronounced upon the Prisoner.

When the Court instanter proceeded to pass accordingly on the Prisoner

Sentence of Death.

A correct report:—JNO. WYLDE, Judge-Adv., N.S.W.

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* Marginal note.—1 Bl. Com. 108; 2 P. Wms. 75; Stokes, 12; Chitty Com. Law 643, 7.
† Marginal Note.—Stokes, 232-3.
‡ Marginal note.—Stokes 11 and 12.
BRISBANE TO BATHURST.

[Enclosure No. 3.]

REPORT BY JUDGE-ADVOCATE ON THE TRIAL OF WALTER ROTTON.

The Report of the Judge Advocate of New South Wales as to the trial of Walter Rotton upon charges, reduced into writing and exhibited under the Stat. of 39 G. 3, ch. 85 to the Court of Criminal Jurisdiction on 17 day of October, 1822, against the Prisoner for fraudulently embezling and making away with certain Monies and Goods of the value of £32, had in the Prisoner's possession on account of his Master, Vickers Jacobs, Merchant of Sydney, contrary to the form of the Statute, &c.

The Prisoner pleaded not Guilty, but upon very clear and satisfactory proof of the specific Acts of embezzlement set forth in the Information, and which it seems therefore unnecessary to detail at length, the Court pronounced Judgment of Guilty. When Rowe, Solicitor for the Prisoner, objected, in arrest of Judgment, that the Statute, under which the Prisoner was charged, and convicted could not be taken cognizance of by the Court, which as to such Offenders had no Jurisdiction so as to warrant a Judgment and the execution of a Sentence under that statute in respect of it.

That the Stat. 27 G. 3, ch. 2 erects the Jurisdiction of the Court in the Territory; and the Court, when convened by Governor from time to time, as occasion may require, is a Court of Judicature for the trial and punishment of all such Outrages and Misbehaviours as, if committed within the realm, would be deemed and taken according to the laws of the Realm to be Felony, Misdeemeanor, &c.

By force of this Statute, the Court can proceed to try and punish all Offenders against and according to the laws of the Realm as then, that is at the date of the Act in the Year 1787, in force there; but no Jurisdiction is given as to Statutes, subsequently and afterwards becoming the laws of the Realm, and accordingly no conviction upon the Stat. of the 39 Geo. 3, ch. 85, passed 12 Years after the 27 G. 3 can take place before the Court as upon the Commission of an outrage and misbehaviour according to the laws of the Realm in 1787, in respect of which alone it seems clear that the Court has Authority to proceed "in a more summary way than is used within the realm according to the known and established laws thereof."

But again that the Stat. in question of the 39 of His late Majesty was intended to apply only and be in force throughout the united Kingdom, it being deemed expedient that the Offences in contemplation should be punished in the same manner "in
both parts of the united Kingdom"; that the Statute in question or any other Statute of like limitation therefore could not be intended to extend in operation to this Colony as not particularly mentioned, while it is certain the Islands of Gurnsey, Jersey, &c. would not be considered as included in the operation of Statutes applicable to and in force only within the united Kingdom.

The Solicitor referred in support of his Argument to Stokes on the Colonies p. 12, 2 Peere Wms 75, 1 Bl. Com. 108, Chitty's Crim. law 638.

Mr. Garling for the prosecution, in answer to the objection, insisted that by force and virtue of the 27 G. 3, ch. 2 the whole body of British Statutes were at least so far in force throughout the Territory as for the Court, upon charges under any of them duly exhibited to the Court against any Offender, to proceed to try and pronounce such Judgment as the Court shall seem meet; while the provisions of the particular Statute in question were essentially necessary for the due protection of His Majesty's Subjects in the Colony and continually had been acted upon by the Court heretofore without Scruple or Objection.

Sentence.—The Court determined that the case as to the point of Jurisdiction should be referred home for due consideration, but that the Sentence should in the mean time be pronounced upon the Prisoner.

When the Court adjudged that the Prisoner on the Conviction recorded should be transported to such place, &c. for seven Years.

A Correct report:—JNO. WYLDE, Judge-Adv., N.S.W.

SIR THOMAS BRISBANE TO UNDER SECRETARY WILMOT.

(Despatch per ship Surrey.)


Having submitted to Mr. John Wylde, in conformity with the tenor of Your instructions conveyed in a communication of the 5th of last July, the necessity of his replying without delay to the letters received by his late Father from Mr. Hibbert, a Merchant in the City, relative to the payment of some Money, which Mr. Brooks of Sydney was indebted to him, and which is stated to have been paid by Mr. Brooks to Mr. Thomas Wylde in consequence of his having received a Power of Attorney for that purpose:—I have now the Honor to enclose, in reply to this allegation, a counterstatement from the Executor of the late Thomas Wylde.

I have, &c.,

THOS. BRISBANE.
By the private Ship David Shaw, arriving in Sydney Cove, New South Wales, on 5th November, 1819, was received and delivered to Myself a Packet addressed to “Mr. John Wylde, Solicitor at Sydney,” covering a Power of Attorney and a Letter of Instructions as to recovering a Debt Stated to be due to Mr. Joseph Hibbert Junr. of London from Mr. Richard Brooks of this place.

On perusing the Power of Attorney itself, as also a Letter inclosed addressed by Mr. Hibbert to Mr. Brooks on the Subject, the said John Wylde was described “as a Solicitor”; and certainly considering therefore that a Mistake merely had arisen as to the Christian Name of the then Solicitor for the Crown in the Territory, the late Mr. Thomas Wylde, and especially as no Consideration, from regard to my public offices here, could have induced me to act under Mr. Hibbert's, or any such Appointment, I, on the very day of the Ship's Arrival and delivery of Mr. Hibbert's Papers to me, handed over the same, exactly as received, to Mr. Wylde, as will appear by the original receipt inclosed, taken of him at the time:—and in a short time afterwards, at his suggestion, as a Matter of form for mere literal correctness almost as to the Proceedings, that seemed then as necessary to be adopted, under the power of attorney and under its Provision for that Purpose, I subscribed Mr. Wylde's Substitution as the Agent of Mr. Hibbert in the Business.

From that Day, until sometime after the Decease of the late Mr. Wylde in December, 1821, I had not the least knowledge, directly or indirectly, of what proceedings or arrangements had in any way obtained in the Matter. No Communication of any kind or in any way reached Me; and whether it may possibly sound strange perhaps or not, from the time of my arrival in the Colony, until that of my father's Death, there existed a perfect Understanding between us from due regard, in my apprehension, to my judicial Functions in the Colony, and almost religiously kept between us, that no Communication whatever should ever take place between us upon professional Concerns in his hands, as a Solicitor of the Supreme Court.

The very first Intimation, in Truth, I had as to the state of the affair between Mr. Hibbert and Mr. Brooks was just before the payment by the latter, in January, 1822, after my father's Decease, to pay me, as the sole Executor under his Will, the Balance he stated to remain due upon the Warrant of Attorney, given upon the Action commenced against him for the recovery of Mr. Hibbert's Demand; and accordingly, in my Character as Executor, and desirous of preventing, as far as in my power, any
1823.
27 Jan.

Statement by
J. Wylde of
T. Wylde's
agency for
J. Hibbert.

Injury to Mr. Hibbert's Interests, as my father's Client, by my father's Decease, I received in Jany., 1822, the Sum of £660 10s. 6d.

Under the above Circumstances, it will appear that I could have had no reasonable cause for personally addressing any Communication from Myself to Mr. Hibbert on the Subject, with the Impression too I could not but entertain of there never having been any Intention on his part to address me personally on the occasion, while also I could not believe but that Mr. Bernard in the Colonial Office, referred to by Mr. Hibbert, would well know that a Barrister only would have had the Appointment in the Colony I was then holding, the party intended to act under Mr. Hibbert's Power of Attorney being designated and described as a Solicitor throughout the Letters and papers.

On the other hand, Mr. Hibbert acknowledges that he never afterwards addressed any one but Mr. Thomas Wylde, Solicitor, on the Business.

With regard to any Letters forwarded by the late Mr. Wylde upon the Business immediately to Mr. Hibbert in the Interval of time he speaks of, I have not any the least Knowledge: but amongst Mr. Wylde's papers I found, after his Decease, an original Letter, dated 21 March, 1821, signed by certain persons subscribing themselves Campbell Deacon and Hurry, Assignees &c. and addressed to Mr. Wylde (a Duplicate of which had been transmitted, I afterwards learned to Mr. Brooks here) giving Notice that, by an Instrument in writing, dated 28 Septr., 1820, made between the said Mr. Hibbert and themselves "That henceforth the said Debt and the said Bill of Exchange for the same and Warrant of Attorney for entering up Judgment thereon and the Money due, and what should become due from Mr. Brooks to Mr. Hibbert, upon the Warrant of attorney in question, should become and be and were declared thereby the property of the said Campbell and others, at Law and in Equity, in satisfaction of a certain Debt due to them from the said Joseph Hibbert &c. &c."

Of or as to this Instrument of Assignment, no mention or allusion whatever even has been made, it will be perceived, by Mr. Hibbert in the Statement laid by him before Lord Bathurst as transmitted from the Colonial Office, nor indeed, in point of fact in any Letter whatever, I am satisfied, addressed by Mr. Hibbert to the late Mr. Wylde.

I have no certain knowledge of the fact; but it is at least very possible certainly that the late Mr. Wylde, on the receipt of this Notice, upon his return from Van Diemen's Land, may have addressed himself, or made remittances even on Mr. Hibbert's
behalf to those Assignees, or to some other person as his own particular Agent in England, duly instructed by him on the Occasion.

No communication of any kind upon the affair to my personal Address has as yet reached me, since Mr. Wylde's decease; but upon the best Information I could in any way obtain from the resources then only open to me, I took upon Myself, as Executor under the will, to transmit by the first Ship from this port to England after my Testator's decease (the Ship Surry, in Feb., 1822) Treasury Bills to the amount of £1,122 19s. 9d., specially indorsed to the order of Mr. Hibbert, but under cover to my brother, Mr. Thomas Wilde,* Barrister at Law, with the original Letter of Notice, already referred to, as to the assignment by Mr. Hibbert of Mr. Brooks' Debt to Messrs. Campbell and others.

By the same Ship, I forwarded a Letter to Mr. Hibbert, dated 24 Jany., 1822, a copy of which is inclosed; and in which it was explained to Mr. Hibbert, that whatever Mr. Brooks might, or not, have written to his Agents in London, as to having paid the whole Sum of £2,200, that the same had not then in fact been paid; that on the contrary a Sum of £600 in part payment had been paid over to myself only since Mr. Wylde's decease; and that during his life-time the quarterly Bills taken upon the Adjustment of the Account under the Warrant of Attorney had not been duly and regularly honoured; For, in truth, in some of the Bills, when due, portions of the amount had been only paid, and from time to time other Bills, for Mr. Brooks' convenience, of different and less amounts and at protracted Periods, had been substituted for the original quarterly Bills:--as for instance:

19 Augt. 1820 for the Sum of £100
" " " " £150
27 Sept. " " " £165
" " " " £165
26 Decr. " " " £163 10s. 6d. &c.

Hence it plainly appears that "delay and Interruption had taken place in the payments by Mr. Brooks" to the late Mr. Wylde, although I know not, whether Mr. Hibbert was, or if not, upon what Motives possibly of Consideration or Delicacy towards Mr. Brooks, or how otherwise, he was not duly informed of these Circumstances.

The cause of the late Mr. Wylde's unexpected Decease, for he was a Man of particularly hale and strong natural Constitution, arose not at all from the Infirmitities of Age, which as yet seemed far from Approach even, but from the effect of a malady, which

* Note 4.
during his passage on official Duty in 1821 from this place to Van Diemen's Land and particularly, reduced him to a state, which terminated at length in premature Death: while the apprehension of Mr. Hibbert as to the Inefficacy of any Steps against him, merely from his holding his official Appointment in the Colony, if he had indeed any Cause of Action or complaint against him, as a Solicitor of the Supreme Court, where the proceedings against Mr. Brooks had been taken, is not immediately to be understood, or at least reasonably accounted for.

At any rate "the assistance of His Majesty's Colonial Department," if indeed, as Mr. Hibbert expresses himself "nothing was left but to solicit its Interference" on his part, will, I trust, appear not at all to have been required for enforcing upon the late Mr. Wylde's executor the performance of any and every Obligation, that may justly devolve upon his Appointment under the Testator's Will.

JNO. WYLDE,
Executor under the Will of the late Thomas Wylde, deceased.

Sydney, New South Wales, 30 Decr., 1822.

[Enclosure No. 2.]
PAPERS handed over to Mr. Wylde, this 15 Novr., 1819, as rec'd p'r Ship David Shaw.

Bill of Exch'ge for £1,608, dated 26 July, 1813, do. by Josh. Hibbert, Junr. & Cy. upon and acc'd by Richard Brooks, Esqr. and Protest.

Letters of Atty. under City Seal Affh. of Debt, &c.


to John Wylde, same Date.

to Richd. Brooks 10 Feby. 1817, and Answer thereto Decr. 12, 1817.

15th Novr., 1819:—Received these Papers:—THOS. WYLDE.
Also Bill of Charges by Notaries.

[Enclosure No. 3.]
JUDGE-ADVOCATE WYLDE TO MR. JOSEPH HIBBERT.

Sir,

Sydney, New South Wales, 24 Jan'y., 1822.

The unexpected and lamented Decease of my father, the late Thomas Wylde, in December last has placed in my hands your Letter of the 24th August last to his address, and calls upon me, as the sole Executor appointed under his Will, to make reply to your Enquiries as to the State of the arrangement made by him in respect of your Demand upon Mr. Brooks of this place.

As to the reports suggested to have been frequently made by Mr. Brooks to his Agents in England of having long since paid
your Acceptance the subject Matter of the Arrangement, I would
only inform you that since my father's Decease only, he has at
my Instance made a payment, as the last certainly due on that
Account, of the sum of £660 10s. 6d., while from the Enquiry I
have been able already to make, it appears that Mr. Brooks was
unable from time to time to honour the quarterly Bills of £500
each, and that other Bills at prolonged Dates and Accommo-
dation have been substituted and resorted to on those occasions
to meet the Convenience of Mr. Brooks. Indeed I have reason
to know that only one of the £500 Bills given was punctually
and regularly paid when due.

The silence on the part of the late Mr. Wylde will be accounted
for in some Degree, when you are apprised that he was under the
Necessity, as Clerk of the Peace, of attending the Court of
criminal Jurisdiction on its Circuit last Year in Van Diemen's
Land, for which place I left in January last, whence I was able
to make return only in the July following, though he returned
some time before me. From that time to his Death, he proved
very far from well; and in this respect I should think your
Enquiries at the Colonial office were misunderstood, as I rather
believe him to be totally unknown there. But at the same time
I have reason to be impressed that the Expectation, you express
yourself in your last, of indulging as to soon hearing from him
has been realized, covering a remittance of the Sum then actually
obtained from Mr. Brooks. At present my public Duties have so
wholly engrossed my Time since his decease, as to have rendered
it impossible to look into his Affairs, or fully to inform Myself
of your or any business indeed, in which he was involved. I
hold however, upon the best Information I can at present
obtain as to your Concern, to transmit inclosed the three first of
three several Sets of Bills, more particularly described below,
making together in Amount the Sum of £1,122 19s. 9d. which
Sum I trust, with his former remittances, I have reason to pre-
sume upon having been made on your Account by my father,
and having since August last come into your hands, wholly or at
least very nearly satisfy the Claim on my father, as your Agent
in this affair. In any Case you may rest assured, Sir, that
although I was perfectly ignorant of the procedure in the Busi-
ness under my father's Agency till since his Death, (for no Com-
munication ever took place between us on such Subjects) it will
be my Care that your and all other Interests committed to him
shall not suffer in any way, as far as my personal Attention can
satisfy any and all proper Demands upon the Estate.

I am, Sir, &c,

JNO. WYLDE.
HISTORICAL RECORDS OF AUSTRALIA.

1823.
18 Feb.

SIR THOMAS BRISBANE TO EARL BATHURST.
(Despatch marked “No. 2 of 1823,” duplicate per ship Surrey; acknowledged by Earl Bathurst, 13th March, 1824.)

Government House, Sydney, New South Wales,
My Lord,
18th February, 1823.

I have the Honor to transmit from the Principal Surgeon of the Territory to Your Lordship, a Requisition for Medicines to be supplied to the Hospitals in New South Wales.

I have, &c.,
THOS. BRISBANE.

[Enclosure.]

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

SIR THOMAS BRISBANE TO EARL BATHURST.
(Despatch marked “No. 3 of 1823,” duplicate per ship Surrey.)

Government House, Sydney, New South Wales,
My Lord,
18th February, 1823.

The Mermaid, a Colonial Cutter, sailed for the Sandwich Islands on the 16th of October, 1821, for the purpose of delivering into the possession of the King of Owhyhee a Schooner* that accompanied her, called the Prince Regent, and built in this Harbour by the express instructions of Your Lordship, bearing date the 27th of July, 1815. I have now the Honor to acquaint you that having fulfilled this duty, she re-entered the Heads of Port Jackson, bearing in return, the enclosed Letter of thanks from the Chief, and thus concluded on the 24th Ultimo her long Navigation.

I have, &c.,
THOS. BRISBANE.

[Enclosure.]

THE KING OF THE SANDWICH ISLANDS TO H.M. THE KING.

Oaku, Sandwich Islands, 21 August, 1822.

May it please Your Majesty,

In answer to Your Majesty’s letter from Governor Macquarie, I beg leave to return Your Majesty my most grateful thanks for your very handsome present of the Schooner Prince Regent, which I have received at the hand of Mr. J. R. Kent.

I avail myself of this opportunity of acquainting Your Majesty of the death of my late father Tamehameha, who departed this life the 8th day of May, 1819, much lamented by his subjects; and having appointed me his successor, I have enjoyed a happy reign since that period, and assure Your Majesty it is my sincere wish to be thought as worthy your attention as my father had the

* Note 6.
happiness to be during the visit of Capt. Vancouver; the whole of these Islands having been conquered by my father, I have succeeded into the Government of them, and beg leave to place them all under the protection of Your most Excellent Majesty, wishing to observe peace with all Nations, and be thought worthy the confidence I place in Your Majesty's wisdom and Judgment.

The former idolatrous system has been abolished in these islands, as we wish the protestant religion of your Majesty's dominions to be practiced here. I hope Your Majesty may deem fit to answer this as soon as convenient, as Your Majesty's good council and advice will be most thankfully received by Your Majesty's Most devoted and obedient Servant,

TAMEHAMEHA, 2D,
King of the Sandwich Islands.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 1, per ship Commodore Hayes; acknowledged by Sir Thomas Brisbane, 10th November, 1823.)

Sir,
Downing Street, 20th Feby., 1823.

I have the honor to transmit to you herewith the Copy of a letter from Mr. Hobhouse to Mr. Wilmot stating some favorable circumstances in the case of James Reilly, a Convict who was transported to New South Wales on board the Countess Harcourt Convict Ship; and I am to desire that Your Excellency will comply with the instructions contained in that Letter.

I am, &c.,
BATHURST.

[Enclosure.]

UNDER SECRETARY HOBHOUSE TO UNDER SECRETARY WILMOT.

Sir,
Whitehall, 12th Decr., 1822.

The Lord Lieutenant of Ireland having communicated to Mr. Secretary Peel that some favorable circumstances have been represented to the Irish Government in the case of James Reilly, a Convict* who was transported to New South Wales on board the Countess Harcourt, Convict Ship, and that the Judge, before whom he was tried, has reported that it may be expedient to grant him His Majesty's Pardon, I am to desire that you will move The Earl Bathurst to instruct the Governor of New South Wales to permit the said James Reilly to return to Ireland by the first opportunity.

I have, &c.,
H. HOBHOUSE.

* Numbered 13 in the Warrant sent to the Governor.
HISTORICAL RECORDS OF AUSTRALIA.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 2, per ship Commodore Hayes; acknowledged by Sir Thomas Brisbane, 10th November, 1823.)

Sir Downing Street, 21st Feb., 1823.

I have the honor to transmit to you the Copy of a letter from Mr. Hobhouse to Mr. Wilmot stating some favorable circumstances in the case of William Sidney Smith, who was transported for life in the ship Hindostan, which sailed for New South Wales in July, 1821, and I am to desire that your Excellency will comply with the instructions contained in the Letter referred to.

I am, &c.,
BATHURST.

[Enclosure.]

UNDER SECRETARY HOBHOUSE TO UNDER SECRETARY WILMOT.

Sir, Whitehall, 17th Decr., 1822.

Free pardon to Mr. Secretary Peel has had under his reconsideration the case of Wm. Sidney Smith, who was transported for Life in the Ship Hindostan, which sailed for New South Wales in July, 1821; and Mr. Peel, finding that the conviction of Smith proceeded in part upon the Evidence of a Man, who has subsequently been disgraced and discredited in a Prosecution of a similar kind, which, if it had occurred before Smith's Trial, might possibly have led to a different verdict in his case, deems it right that Smith should have the benefit of this possibility, and therefore desires that you will move Lord Bathurst to direct the Governor of New South Wales to Grant to William Sidney Smith a Free Pardon and to permit him, if he is so disposed, to return to this Country.

I am, &c.,
H. HOBHOUSE.

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked "No. 4 of 1823," duplicate per ship Surrey.)

Government House, Sydney, New South Wales,
21st February, 1823.

In pursuance of the directions conveyed to me in your Letters of the 31st of December, 1821, and the 8th of last February, I have the Honor to acquaint you that Free Pardons have been granted to Thomas Brabazon and Frances Levens.

Edward Gibson, another Convict recommended for indulgence in your Letter of the 2nd of last April, is at present a resident in Van Diemen's Land, and has been long in the enjoyment of a Ticket of Leave.

I have, &c.,
THOS. BRISBANE.
SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked "No. 5 of 1823," duplicate per ship Surrey.)

Government House, Sydney, New South Wales, 21st February, 1823.

My Lord,

Herewith I have the Honor to transmit to you a return of Convicts, who have petitioned that their Wives or Families might be sent to them at the Expense of the Crown; and these several applications I beg leave to recommend to your Lordship's favour.

I have, &c.,

THOS. BRISBANE.

[Enclosure.]

[This return contained the names of forty-five applicants.]

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked "No. 6 of 1823," duplicate per ship Surrey; acknowledged by Earl Bathurst, 22nd November, 1823.)

Government House, Sydney, New South Wales, 21st February, 1823.

My Lord,

I have the Honor to transmit to You the proceedings that have lately taken place before a Bench of Magistrates with respect to the Ben Johnson, a Vessel from the Isle of France that arrived in this Harbour under the charge of a Mate and one of the Passengers, her Master having been forcibly deprived of his proper Command.

The imputed Offence having been perpetrated on the High Seas, the alleged Offenders have been required to enter into suitable securities answerable for their personal appearance when summoned:—for the known incompetency of all the Courts in this Colony to bring it under their Judicial Cognizance obliges me to defer the whole for Your Lordship's decision.

I have, &c.,

THOS. BRISBANE.

[Enclosure.]

INQUIRY BY BENCH OF MAGISTRATES re CAPTAIN OF BRIG BEN JOHNSON.

Police Office, 6th December, 1822.

Before a Special Bench of Magistrates Convened by order of His Excellency the Governor in a Communication from the Colonial Secretary.

Present:—D. Wentworth, Esq., Supt. of Police; John Thomas Campbell; Alexr. Berry; Thos. MacVitie; Wm. Wemyss; John Oxley; Jas. Bowman; Edwd. Wollstonecraft, Esquires, Magistrates at Sydney.

MR. WILLIAM LINGARD, Chief Officer of the Brig Cumberland "Ben Johnson" now in this Port, being Sworn, to wit, deposeth that on the Passage of the said Brig from the Isle of France to Sydney Cove, to wit, on the 20th of October last, the Master of the said Brig, Mr. Peter Camphor, was very
1823.
21 Feb.

Magisterial
inquiry re
proceedings
during voyage
of brig Ben
Johnson from
Mauritius.

Saith that Mr. Camphor the Master Came on deck on the 23d of October two or three times, and about 7 o'Clock in the Evening of that day was intoxicated and went to bed; that, on the 24th, he was again on deck and took an Observation, and in the Evening of that day was also intoxicated, and about 9 in the Evening Came on Deck again and insisted on Deponent's Making Sail by Setting the fore-top Mast Studding Sail; that the Sail was accordingly Set and was immediately Split; that Mr. Camphor also made Deponent Set the Boom Main Sail; that the Carpenter, who was at the Helm, said he Could not Steer the Ship her Course with the last mentioned Sail Set, When the Master replied "damn the Course. don't Jibe the Sail"; that Deponent, who was on deck then, went aft and looked at the Compass, and found the Vessel was ranging very much to the Windward of her Course, and Deponent remonstrated with the Captain thereupon, who made no other Reply than to direct Deponent to get up another Stud-Sail; that there was None on deck fit to Set, and the Master still persevered in ordering Deponent to Set the sailing. Saith that the Master then went below, and the Helm was then relieved, and the fresh man had scarcely taken the Helm before the Sail Jibed; that Deponent then took in the Sail, secured the Boom, and rigged in the fore top Mast Studding Sail; that Mr. Camphor then Came up and made Deponent Set the Boom Main Sail, which had just been taken in, and rig out the Boom; that Deponent Observed to him that the Studding Sail was not fit to Set, and Mr. Camphor then said "Never Mind". Mr. Camphor then came aft and remarked that, if Sail was Carried to that Excess, the Ship would go to pieces; that at about 12 at Night the Master went below, When Deponent immediately Shortened Sail. and called Mr. Young, the 2d Officer, to Whom, after the Sails had been Shortened, he gave Charge, when the Ship Went at the rate of 8 Knots per hour, which is as much as she ever made; that at 7 A.M. the weather was more moderate and Deponent had better Come up; that Deponent then went below, and was Called again at 4 o'Clock; that at 7 A.M. the weather was more moderate and Deponent made Sail accordingly; that the Master Came up about 9 when Deponent reported the bad weather they had had; that the Master took no Notice, but after Deponent was gone below, he ordered the Top gallant Yards to be sent down; that before the Main top Gallant Yard was sent up, Deponent remonstrated with him on the State the Ship was in from the Press of Sail; that Deponent went below, and the Yard was Sent up by the Master's Orders.

Saith that, at dinner on the 25th of October, Mr. Young was going on deck, and Mr. Lloyd, who was a passenger in the Ship, requested Mr. Young to remain below whilst Mr. Lloyd put a few much intoxicated with Spirits and Continued in that State from day to day until the 26th of the Same Month, during which period his Conduct was extremely extravagant, wild, inconsistent, and shewed evident Symptoms of being out of his Judgment in regard to the Navigation of the Vessel, and in every respect Incapable of doing his Duty as the Master thereof. Saith that, on the 21st and 22d of October, the Master remained in his bed, which Deponent understood to have been the Consequence, Not only of Intoxication but of his having fallen out of his Cot on the Morning of the 21st of October. Saith that Mr. Camphor the Master Came on deck on the 23d of October two or three times, and about 7 o'Clock in the Evening of that day was intoxicated and went to bed; that, on the 24th, he was again on deck and took an Observation, and in the Evening of that day was also intoxicated, and about 9 in the Evening Came on Deck again and insisted on Deponent's Making Sail by Setting the fore-top Mast Studding Sail; that the Sail was accordingly Set and was immediately Split; that Mr. Camphor also made Deponent Set the Boom Main Sail; that the Carpenter, who was at the Helm, said he Could not Steer the Ship her Course with the last mentioned Sail Set, When the Master replied "damn the Course. don't Jibe the Sail"; that Deponent, who was on deck then, went aft and looked at the Compass, and found the Vessel was ranging very much to the Windward of her Course, and Deponent remonstrated with the Captain thereupon, who made no other Reply than to direct Deponent to get up another Stud-Sail; that there was None on deck fit to Set, and the Master still persevered in ordering Deponent to Set the sailing. Saith that the Master then went below, and the Helm was then relieved, and the fresh man had scarcely taken the Helm before the Sail Jibed; that Deponent then took in the Sail, secured the Boom, and rigged in the fore top Mast Studding Sail; that Mr. Camphor then Came up and made Deponent Set the Boom Main Sail, which had just been taken in, and rig out the Boom; that Deponent Observed to him that the Studding Sail was not fit to Set, and Mr. Camphor then said "Never Mind". Mr. Camphor then came aft and remarked that, if Sail was Carried to that Excess, the Ship would go to pieces; that at about 12 at Night the Master went below, When Deponent immediately Shortened Sail. and called Mr. Young, the 2d Officer, to Whom, after the Sails had been Shortened, he gave Charge, when the Ship Went at the rate of 8 Knots per hour, which is as much as she ever made; that at 7 A.M. the weather was more moderate and Deponent had better Come up; that he did so and found the Weather blowing; that he went below to Call the Captain, but did not succeed in getting him up; Came on deck and Close reefed the top Sails, and furled the fore top Sail; that Deponent then went below, and was Called again at 4 o'Clock; that at 7 A.M. the weather was more moderate and Deponent made Sail accordingly; that the Master Came up about 9 when Deponent reported the bad weather they had had; that the Master took no Notice, but after Deponent was gone below, he ordered the Top gallant Yards to be sent down; that before the Main top Gallant Yard was sent up, Deponent remonstrated with him on the State the Ship was in from the Press of Sail; that Deponent went below, and the Yard was Sent up by the Master's Orders.

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Saith that, at dinner on the 25th of October, Mr. Young was going on deck, and Mr. Lloyd, who was a passenger in the Ship, requested Mr. Young to remain below whilst Mr. Lloyd put a few
Questions to the Captain; that Mr. Lloyd then asked the Captain, why he had treated him with so much Contempt for the last few days, having told the Steward to tell Mr. Lloyd that he was "a Magisterial Tale bearer" and Disturber, as he had Never Spoken to the people in the Manner he was accused with, excepting to the Man that was Struck at the Wheel on the Night of the 20th, which was done with a good Intention to make up Matters; that Mr. Camphor then said he did not thank him for that; that Words then took place between Mr. Lloyd and the Master, and Mr. Lloyd was hauled out of the Cabin by a Rope held by 5 or 6 of the Lascars on board; that this Evening the Master was again intoxicated, and was also intoxicated the next Morning by Eleven A.M.

Saith that, on the 26th (Saturday) after dinner was over, the Master insisted on Depoent and Mr. Young remaining below to drink some wine with him; that they Continued below, but Deponent did not drink any Wine; that the Master, who was then intoxicated, spoke about a paper that had been written the day before Concerning the Master and Mr. Lloyd, which Mr. Camphor said was Not Correct; that Deponent said it was Correct, to the best of his Memory, but if anything was omitted, that Mr. Camphor recollected, to Mention it, and if it was recollected that it would be inserted; that Mr. Camphor then said "Never Mind, three days will Settle All"; "that if all was not right in that time he would let them see what should be done as he would be desperate"; that they asked him in what way; that Mr. Camphor still repeated that 3 days would Settle All, for he would be desperate, for that he could but be Shot or hanged once; that he feared "neither Devil or God"; that Deponent at length got upon deck when the Master followed, and Called to Depoent to know if he had written the Ship's Log; that the Log for the day was written but what was to be written Concerning him and Mr. Lloyd was not entered; that the Master said Deponent had better go and do it; that Deponent went below to write it and his own Journal; that Mr. Young then Came below and told Depoent that the Captain had sent him to Insert Something in the Log Book; that Deponent said the Log book was in his possession and he would receive Directions for Inserting any thing further from the Captain; that Mr. Young went upon the deck and in a few Minutes returned; that Deponent asked what was the matter, and Mr. Young said that the Captain, he thought, was going out of his Judgment; that Mr. Young then returned to the Deck; that Deponent then heard the Captain quarrelling with a Man named James Greaves, a Seaman; that he heard the said Greaves endeavour to remonstrate with the Captain, but he said "Not a word, Sir, I'll seize you and give you 39 Lashes"; that Deponent then heard the Master Call to the Steward to bring him a Pistol; that the Steward asked him where the Pistol was; that Deponent replied "Certainly, if the Captain wanted his Pistol, he Could not prevent him from having it"; that Deponent asked the Steward if the Pistol was Charged, and he said it was; that the Steward took the Pistol, and as he supposed delivered it to the Captain; that the Steward Shortly returned, and told this Deponent he had better go on deck as he was afraid the Captain would do some Mischief; that Deponent declined going; that in a Short time he heard Mr. Lloyd's Voice and went upon deck; that he found Mr. Lloyd walking the weather main Deck, the master Sitting
28 HISTORICAL RECORDS OF AUSTRALIA.

on a Hen Coop on the Lee Side of the Quarter Deck, with the Pistol under his left arm which he held in his right hand; that the Captain told Deponent that Mr. Lloyd was not to come further aft than the After Hatch; that Mr. Lloyd went below, and as he was descending the Captain remarked "that Man is bad; I was going to have been desperate"; that the Master smiled and shewed Deponent the Pistol, and shortly after observed that perhaps it was as well as it was; that Deponent then advised the Master to go below; that Deponent, from the Master's looks and from his muttering of strange words, thought it best to get out of his way, and went below; that he had not been below many minutes before he heard the report of a Pistol and a man cry out "Oh"; that he ran upon Deck, and at that time saw John Thomas, who was at the Lee-Wheel, with his arm hanging down and bleeding; that the Master was in the same place where he had left him; that he asked him "what have you done, Sir?" that he said "nothing"; that Deponent then said he had shot a man; that the Master said "no, he had only touched his jacket"; that Deponent took hold of Thomas (John) and pulled off his coat, and saw his arm and the shirt all covered with blood; that the Captain desired Deponent to take him below; that he did so, and on examining his arm, found that the ball had entered his left arm and had lodged under his left shoulder blade; that the Captain then went into his cabin and brought from thence two bleeding lancets in order to extract the ball; that Deponent said it was better not to use them, and the man would not consent to the operation; that Deponent then bound up the wound, and the man retired to his hammock; believes that the wounding of the man was entirely accidental.

Saith that he was then called for on deck by the crew; that he went, when all hands asked him what he was going to do; that Deponent said he was at a loss to know; that the crew said "something must be done"; that Deponent left them and went below; that the crew had previously expressed a desire that the arms in the captain's cabin should be taken away, and they were taken away; that the captain asked for his arms and Deponent told him they were in his possession by request of the hands; that the captain then made use of several threats to Deponent and called him "a robber"; that Deponent then tried to reason with the captain, and a number of the white people on board came below; that a man named Burnett began to speak to the captain of the safety of the ship or of their lives under his command. Whereupon the captain took hold of Burnett and had him on deck, saying he would flog him with 39 lashes, but he did not do so; that he called for Deponent, who met him as he was coming below; that the people had hold of the master; that Mr. Lloyd, who was behind, put his hand upon the master and said he arrested him in the King's name as a murderer; that Deponent desired the people to let go the master; that they said they would not until the arms were secured; and on Deponent saying they were secured they let him go, and he came down into the cabin; that the people then called to this Deponent to take charge of the vessel; that Deponent at first declined, but they all persevered and said it was necessary for the safety of their lives; that Deponent then consulted with Mr. Young, the 2d officer, who advised Deponent to take charge under those circumstances; that Deponent then addressed the people on board and said he would take charge of and do his best to convey the vessel safe to her destined port; that Deponent reported what
BRISBANE TO BATHURST.

had passed to the Captain, who said he had not many days to live and gave up the Chronometer and told him to take Charge of the Vessel, and Deponent took the Chronometer and asked the Captain for the Charts; that he gave him a general Chart; that Deponent asked for others, which the Master refused, alleging they were his own property, but at length he gave over the Charts.

Saith that from this time Deponent took charge of the Ship, and on examining the Charts found that they were 45 Miles distant from the Island of Amsterdam and was therefore under the Necessity of Altering their Course; that the Captain still continued in the same State of intoxication, and occasionally insisted on having the Carving Knife and Fork, and threatened the Carpenter and Others to take their Lives, and said that Deponent should be glad to Call him up when amongst the Rocks; that he went to bed about one o'Clock and the next Morning Continued to drink Brandy and water until the Steward said he was afraid he would drink himself to death. Whereupon Deponent interfered and prevented his having Spirits to such Excess; that the Master was for several days afterwards Confined to his Bed and frequently spoke as if he thought his end was approaching; that Deponent put a Sentry over the Master, who at his Request repeatedly walked the Deck, attended by the Sentry, and in that State the Ship Arrived at Port Jackson, where Deponent reported the Circumstances, first to the Naval Officer, and then to the Captain of the Brig Satellite.

W. LINGABD.

Sworn the 6th December, 1822, Before Us

D. WENTWORTH, Supt. of Police. ALEXR. BERRY, J.P.

J. T. CAMPBELL, J.P. EDWD. WOLLSTONECRAFT, J.P.

THOS. MACVITIE, J.P. J. OXLEY, J.P.

Questions By the Bench to Mr. Lingard.

1st. Whether previous to the 20th of October last the Master had Navigated the Vessel in a proper Manner. 

Answr. Yes, and the Course he was Steering was proper.

2d. Whether previous to that Period (the 20th of October) he had had any Conversation with Mr. Lloyd the passenger on board, respecting the Conduct of the Captain or of taking Charge of the Vessel. 

Answr. No, that the Master and Mr. Lloyd had been always on the most friendly terms.

3rd. When the Captain was informed that you had taken Charge of the Vessel, did he express any Surprise or disappointment or what did he say on that occasion? 

Answr. No, but gave up the Chronometer and desired me to take Charge of the Vessel; at this time the Capt'n, was in a State of Intoxication and observed that he had not many days to live.

Q. 4th. What Voyages, if any, have you made with Captain Camphor before you sailed under him last from the Isle of France, and had you ever any reason to suppose the Captain was in an insane State or incapable of Navigating his Vessel? 

Answr. Once before from the Isle of France to Bombay and back to the Isle of France; and always Considered him in a perfectly Sane State except when he was in a State of Intoxication.

5. On those occasions when you had sailed with him before, did Capt. Camphor shew any of those Appearances of Insanity at the times he was intoxicated which he exhibited on the last voyage? 

Answr. No, he never shewed any Violence to any person, or took up arms before.
1823.  
21 Feb.  
Magisterial inquiry re proceedings during voyage of brig Ben Johnson from Mauritius.

HISTORICAL RECORDS OF AUSTRALIA.

6. Was Mr. Lloyd, the passenger, after he had been turned out of the Cabin by the Captain into the aft deck, admitted after you had taken Charge of the Vessel to the Cabin Table. **Answr. He was not.**

**WM. LINGARD.**

JOHN THOMAS, an African Negro and Seaman on Board the Brig Ben Johnson, saith that, on the Passage of the said Brig from the Isle of France to this Port, one Evening as he was at the wheel and the Captain of the Brig was sitting on a Hen Coop on the Deck, he heard the report of a Pistol and instantly afterwards he felt himself wounded on the Shoulder; that he thereupon left the wheel, when the Captain ordered him to resume the wheel saying he was only frighten'd not shot; saith that nothing had previously passed between the Captain and himself; that he thinks the Captain was sober and heard him say as he went down below that he had shot a man, and if the man died he should be hanged; Saith that the Captain had never spoken to him in any angry way since he left the Isle of France, and saith the wounding of this Declarant was in his mind entirely accidental.

**Taken before us, the 6th of December, 1822.**

D. WENTWORTH, Supt. of Police.  
EDWD. WOLLSTONECRAFT, J.P.  
J. T. CAMPBELL, J.P.  
ALEXR. BERRY, J.P.  
THOS. MACVITIE, J.P.  
J. OXLEY, J.P.

THOMAS YOUNG, Second officer of the Brig Ben Cumberland, being sworn, deposeth that the Brig sailed from the Isle of France on the 4th of October last under the Command of Captain Camphor, and that nothing particular occurred on Board until the 20th of the month, from which day until the 26th, Deponent saith he cannot say he ever saw the Captain of the said Brig sober; that on the 21st he saw the Captain in the Cabin and spoke to him there; that Deponent understood the Captain had fallen from his Cot early that morning; that his nose was Cut and he appeared to be stupid from the effects of Liquor; saith that on the 24th he saw the Captain take an Observation on Deck; saith that he did not then appear sober; saith that about 12 at night Deponent came on Deck, when the Chief officer informed him that there had been too much Sail carried by the Captain, insomuch as to endanger the Ship, and when Deponent came on Deck the Chief Officer was taking in Sail; that the Captain was then below. Saith that during his Watch it came on to blow hard, and Deponent went down to the Chief officer, and said in his opinion it would be necessary to take in more Sail; that when the Chief officer came on Deck and desired All hands to be called, when more Sail was taken in; that nothing particular occurred during the remainder of the Deponent’s Watch; saith that, when he went down to speak to the Chief officer respecting the taking in Sail, he informed this Deponent that he had endeavour’d to speak to the Captain, but that he could make nothing of him as he was drunk; saith that, when he took his Watch at the hour of 8 in the morning which continued until 12, he doth not recollect whether the Captain was on deck during that time or not.

Saith that after Dinner on the 25th Deponent was about to retire from the Cabin and to go on Deck, when Mr. Lloyd, a Passenger, called this Deponent back as he had something to Communicate to the Captain, and to put some questions to him; that then Mr. Lloyd
asked the Captain what was his reason for treating him with so much contempt for the last few days, or words to that effect; doth not recollect that the Captain made any reply; saith that he had not observed that the Captain had treated Mr. Lloyd with any Contempt; saith that Mr. Lloyd mentioned his having received some message from the Captain by the Steward, but Deponent doth not recollect what that Message was; recollects that the Captain remarked to Mr. Lloyd that he had been a Tale Bearer, and had been talking to the men, and that the Captain said he had told the Steward to tell him so; saith at this time Mr. Lloyd made use of threatening movements and attitudes towards the Captain, nor did he conduct himself on this occasion with the respect due to the Captain, and saith that, if he, this Deponent, had been the Captain, he would not have suffered Mr. Lloyd to remain in the Cabin after such Conduct; saith that the Captain ordered Mr. Lloyd to go on Deck, but Mr. Lloyd refused to go; that Deponent then went upon Deck; that the Captain soon after came on Deck and desired him. as soon as the Carpenter and Gunner had got their Dinner, to bring them down to him in the Cabin; that he did so; that at this time Mr. Lloyd was on Deck, but soon afterwards came down into the Cabin and took the key of his Cabin Door out of his Pocket; that he opened the Door of the Cabin and went in; that the Captain repeatedly desired Mr. Lloyd to go upon Deck; that Mr. Lloyd refused so to do, saying he had paid for his Passage in the Cabin and would remain there; that the Captain frequently desired the Carpenter (James Watson) and the Gunner (Robert Hughes) to put Mr. Lloyd on the Deck, but they both refused to obey the Captain's orders in this respect, Hughes the Gunner saying he was as much bound to obey the orders of Mr. Lloyd as of the Captain, and saith that the Captain then told the Carpenter that, if he would not obey his orders to go upon Deck; that an altercation took place between the Captain and Mr. Lloyd, in the Course of which Mr. Lloyd said that he would neither go upon Deck nor would he be confined to his Cabin; that the Captain then said Mr. Lloyd should either be a Prisoner or go to the Steerage; that Mr. Lloyd said he had paid for his Cabin, and would do neither; that at this time Mr. Lloyd was in his own Bed Cabin, and insisted not only to remain there, but to have access to the Main Cabin, as it was a Mess Room for the Officers and Passengers; that the Captain then directed Deponent to put Mr. Lloyd on Deck, when Deponent asked if it was to be done by force; that the Captain replied "Yes"; that Deponent then went into Mr. Lloyd's Cabin and took hold of him by the Arm; that Mr. Lloyd resisted, when the Captain ordered the Gunner to assist this Deponent; that the Gunner went towards Mr. Lloyd and put his hand on him, but afterwards took it away and refused to give any further assistance; that the Captain then said he would Confine Mr. Lloyd in his Cabin, on which Mr. Lloyd forcibly opened the Door and came out into the Great Cabin; that the Captain resisted Mr. Lloyd, and Endeavoured to prevent him, in the Course of which a Struggle took place between them; that the Captain still persevered in ordering this Deponent to put Mr. Lloyd on Deck and, if force was necessary, to use it; that Deponent then went on Deck and called All Hands aft; that thereupon the Crew, White people and Lascars came aft, and Deponent went down below and Called for a Rope, which was handed down to him; that he made a Bowling Knot in the Rope, told the Captain it was ready, and the Captain desired him to use it; that after some resistance and the Rope had
1823.  
21 Feb.  
Magisterial inquiry re proceedings during voyage of brig Ben Johnson from Mauritius.

been thrown round Mr. Lloyd he was hauled upon Deck; that Deponent had given orders to the men on Deck to haul away, but to bear off in order to prevent Mr. Lloyd from being hurt or injured by the Stancheons; that Deponent then went on Deck, and the Captain came up, when the Captain said Mr. Lloyd should be confined to the half Deck and only allowed to come upon Deck for an hour in the day for the sake of his health; that Mr. Lloyd this time remarked that there was not a man in the Ship that would speak well of the Captain; that Mr. Lloyd then asked the Captain, if he would allow him his necessaries on Board the Ship, with which the Captain Complied and gave directions to the Steward accordingly; that the same night the Captain asked the Steward for the Key of Mr. Lloyd's Cabin, which was given to the Captain, who threw it overboard; that the Captain then gave orders to the Steward to remove everything belonging to Mr. Lloyd that he wanted from the Cabin, which was done, and afterwards to nail up the Cabin, which was done accordingly; that, during the whole of this Transaction, the Captain was in Liquor; saith that nothing further occurred during the remainder of this Night; saith that, on the 26th of October about 5 A.M., Deponent was on watch, and Captain Camphor looked up on Deck and asked Deponent, if there had been any Shift of wind; that Deponent replied there had; when the Captain said, if the wind got freer, to keep a Point away as he intended to go to the Northward of St. Paul's; that Deport, then asked the Captain, if he intended to go between the Islands, and he said he meant to go to the Northward of them both; that the Capt. then retired, and Deponent kept his Watch until 8 o'clock whilst Deponent was taking an Observation, he thinks the Captain came on Deck, and asked Deponent what he had got on his Quadrant; saith that at two o'clock they went to Dinner, where the Captain and Mr. Lingard with this Dept. dined; that after Dinner Deponent was about to retire, when the Captain desired him to remain and take more wine; that Dept. remained and took his share of the wine; Mr. Lingard remained also but drank very little; it might be about twenty minutes that Deponent remained drinking wine below, and saith that the whole of the wine drank was two Bottles of Claret and one Bottle of Beer; saith that during this time the Captain expressed himself as desperate, said that he did not fear God or Devil, that he could only be hung or shot once and that in two or three days he would let them see what could be done; that about 3 o'clock Deponent went on Deck and then gave orders to the Captain to go below and notice in the Log Book what had taken place between Mr. Lloyd and the Captain; that he did so, and Mr. Lingard who was below said the Log Book was in his possession, and if the Captain wished to have anything inserted therein, that he would take his Directions from the Captain and would do it; that he reported this to the Captain, who was on Deck, who said "Never mind", that Dept. then went forward on his duty; that the Captain soon afterwards called again to Dept., and pointing towards the Horizon and made use of the word "Phenomenon" several times, and asked if it was level; that he then pointed to a spare Tiller on Deck and asked him to look at that, and also pointed to a Callipers, and, from that and other questions he put to Deponent, he thought the Captain was in an Extraordinary state of mind; that the Captain told him again to
BRISBANE TO BATHURST.

1823.
21 Feb.

Magisterial inquiry re proceedings during voyage of brig Ben Johnson from Mauritius.

go below and write, and this Deponent thought it was something about Lloyd's Business; that he went down below and saw Mr. Lingard, who said that everything was entered, and, on Mr. Lingard's asking how things went on Deck, this Deponent said he thought the Captain was going out of his Judgment; that he remained below about ten minutes, and then returned to the Deck, and soon afterwards ordered the People to Knock off and to put the Sail away, and this was about 5 or 6 o'Clock P.M.; that he heard the Captain speak to Greaves, a white Seaman, respecting some Insolent language he had made use of; that Greaves said, if he would allow him, he would tell him what he had said; upon which he heard the Captain tell Greaves that he would tie him up and give him 30 Lashes, and directed Greaves to stop; and the Captain then Called to the Steward to bring him up his Pistol; that the Steward accordingly brought it and delivered it to the Captain, who put it under his Jacket holding the Pistol in his right hand; that the Captain then desired Deponent to tell that man not to come aft, and Deponent supposing that he meant Greaves (who by this time had gone below) Deponent went down to Greaves and told him not to come aft; that seeing Mr. Lloyd on Deck he thought he had made a mistake in respect to Greaves, and went to the Captain to ask him, if it was not Lloyd that he meant, when the Captain said "Yes"; that he then went to Lloyd and told him not to come so far aft; that Mr. Lloyd expressed a wish to know how far he was to come, and Deponent went to the Captain and asked him, and the Captain told him, and he mentioned it to Lloyd accordingly.

Said that, in about a quarter of an hour afterwards whilst Dept. was on Deck, he heard the Captain say something about Lloyd which Deponent did not understand; heard the Captain express the words bad man, and then drew nearer the Captain in order the better to understand him, when the Captain drew the Pistol from his Jacket and place it on his Thigh; that it was Cocked, and the Captain elevated and fired it off, and said "off she goes"; that the man at the wheel (John Thomas) immediately cried out "oh"; that Mr. Lingard immediately came on Deck together with all hands; that Mr. Lingard said to the Captain what have you done, you have shot a man; that the Captain replied "No," that the man was not hurt, and desired him to take the Wheel again; that at this time Deponent observed some Blood drop from the man's Arm; that the man was taken below by Mr. Lingard and some of the People, as Deponent thinks by the Captain's orders; that Deponent went below and saw the man, who was then stript, and the people below were arguing whether the Ball should be extracted or not; at length it was determined not to extract the Ball, and the man was drest and removed forwards; believes that the Wounding of the man was entirely accidental; that soon after Deponent saw the Captain come on Deck, followed by a number of white People, and the Captain was threatening to flog a man and was calling to the Serang to flog him; that the Serang did not come, and on the Captain attempting to go below he was seized by several of the white people, and saw Mr. Lloyd put his hand across the Companion on the Captain's shoulder, and heard Mr. Lloyd say to the Captain that he made a Prisoner of him in the King's name, as a Murderer; that at this moment Mr. Lingard was below and came immediately on Deck when the Captain addressing himself to his Officers called out "do you see this"; that Deponent and Mr. Lingard then both observed that they were unable to support him.
any longer, as the Ship was in such a state; that they desired the People to let go the Captain and that he should not be ill-used; that Deponent took hold of Greaves, who held the Captain, and desired him to let go; that Enquiry was then generally made amongst the People as to what had become of the arms, and whether they were out of the Captain's way, when Mr. Lingard replied the arms were secured and out of the Captain's way; that the Captain then went below, and that to the best of his recollection he saw Mr. Lloyd hand up the Arms thro' the sky Light to the Deck, which arms were afterwards taken to the half-Deck below, where some other arms were in charge of the Gunner; saith that it was generally agreed amongst all the white men on Board with the exceptions hereafter mentioned that for the safety of the Ship and for the Preservation of All their Lives that Mr. Lingard should take Charge of the Ship and Convey her to her destined Port, in which this Deponent Concurr'd as a matter of necessity; saith that Stone, the Steward who was below with the Captain, and Hughes, who was at the Wheel, did not take any Active Part on this occasion. But that the names of those who did seize the Captain and took an active part in this Business and express'd a Determination not to serve under him are as follows: (viz.)

Mr. Lloyd, the Passenger;
James Watson, the Carpenter;
James Greaves, Sea Cunnie, and
J. Burnett, Do.

Saith that Richard Roe consented to the measure, but was not so active as the last.

Saith that Mr. Lingard, the Chief Officer, then took Command of the Ship and the Captain was Confined to his Cabin below, with a Sentry placed over him; but was allowed occasionally to come upon Deck attended by the Guard, and was allowed every Comfort and Accommodation that he had before had with the Exception of Spirits, which were kept from him; and that the Captain experienced the same Treatment until the Brig arrived in this Port.

Saith that his motive, for agreeing in the Command of the vessel being given to Mr. Lingard, was in Consequence of the Captain having been so many days in a state of intoxication, from his general wild and extraordinary conduct, and with a view to the Preservation of the Ship and the lives of the Crew.

THOS. YOUNG.
Sworn the 7th Decr., 1822, Before D. WENTWORTH, Supt. of Police. J. OXLEY, J.P.
J. T. CAMPBELL, J.P. ALEXR. BERRY, J.P.
THOS. MACVITIE, J.P. EDWD. WOLLSTONECRAFT, J.P.

Cumberland
To Wit

JAMES STONE, Steward of the Brig “Ben Johnson,” being sworn, deposeth, that on the 25th of October he was present and heard the Captain in the Cabin give directions to Mr. Young, Second Officer, Watson, the Carpenter, and Hughes, the Gunner, to remove Mr. Lloyd, in Consequence of an Altercation which had taken place between the Captn. and Mr. Lloyd, from the Cabin he occupied below as a Passenger to the Deck; that the Carpenter and Gunner refused to remove him, saying that they did not think they had anything to do between the Captain and the Passengers, but that, if there was any Mutiny or Riot on Board, that they would obey his orders; that the Captain gave directions to the same Effect to Mr. Young, the 2nd Officer, and a
Rope was fasten'd round Mr. Lloyd, and he was hauled upon Deck, and when there he was ordered to the half Deck; saith that the Captain directed this Deponent to furnish Mr. Lloyd with what necessaries he might require, which he said he might have then but not afterwards; saith that a List was furnished by Mr. Lloyd, and the articles it contained were delivered to Mr. Lloyd and his Cabin nailed up; Saith that at this time the Captain was sober; saith that, on the 26th, the Captain and his officers dined together; that they drank two Bottles of Claret and One Bottle of Porter; that the Officers left the Cabin and soon after the Captain went on Deck, and, as he was ascending the Ladder, directed Deponent to make him some Coffee, which he did, and brought it to the Captain on Deck; that Dept. then went below and soon afterwards heard the Captain abuse some person (Burnett) on Deck; that at this time the Captain appeared to Deponent to be very Drunk; that, in about ten Minutes after the Captain had been abusing Burnett, he called to Dept. and Directed Deponent to bring Burnett a Glass of Grog, which he did and went below; that in about ten Minutes afterwards he heard the Captain and Greaves aft, and heard some words pass between them; that the Captain said "I am the Captain of the Ben Johnson, strike me"; that he then saw Greaves go forward and the Captain called to Greaves to stop; that the Captain then called to Dept. to bring him a Pistol, which Deponent mentioned to the Chief Officer who was below and asked him if Deponent was, from the state the Captain was in, to give him the Pistol or not; that Mr. Lingard said Yes; that he did not think any body would offend or interrupt the Captain; that he brought up the Pistol and delivered it to the Captain enclosed in a piece of white Cloth; that the Captain took off the wrapper and put the Pistol into his breast, and then, sitting down on the Hen Coop, said "I take all these things very deliberately"; that Deponent went below and told the Chief Officer he had better go up, as he was afraid the Captain would do no harm, but soon afterwards went on Deck, and came down again; that in about ten minutes after Deponent heard the Pistol go off, when Mr. Lingard, followed by Deponent, went upon Deck and Mr. Lingard asked the Captain what he had done; that he had shot a man; that the Captain said no, he had not; that he damn'd the man and order'd him to go forward and take the wheel again; that at this time he observed the man's arm hanging down and bleeding; that Mr. Lingard persisted in saying the Capt. had shot him; that the man was taken below, examined and drest, and put to bed, when the Captain directed every Care should be taken of the man and expressed his sorrow for what had taken place; that the Captain repeatedly asked the wounded man if he thought he had shot him accidentally or intentionally but the man was in too faint a state to make any answer, at least he did not hear any; that the Captain advised with the mates as to extracting the Ball, but it was not extracted, and the man was unwilling it should be so; that after the man was put to bed the Captain went into his own Cabin, and all the Crew including Mr. Lingard and Mr. Young (with the exception of Mr. Lloyd) came into the Cabin and told him that from the manner he had behaved himself of late that he was not fit to Command the Ship, and that Mr. Lingard should take Charge of her and bring her to Port Jackson; that after this the Captain rose from the Locker and told Burnett that just for this he would give him 39 Lashes in the main Rigging; that the Captain then went on
Deck and called out to the Serang; that the Captain was followed by
the People on Deck; that soon after he heard a Scuffle on Deck, but,
before this whilst the wounded man was in the Cabin, Mr. Lingard
had directed this Deponent to remove the Arms from the Captain's
Cabin to his own, which he had done whilst the Captain was
present; that Deponent, previous to the Scuffle, had heard the
Captain say he would be damn'd if he would not do it, yet that
Deponent looked up and saw several white people had Hold of the
Captain by the Collar, amongst whom were Greaves and Burnett,
and heard the Captain repeatedly Cry out "What have I done, what
have I done"; that by this time Mr. Lingard was on deck, and the
Captain had called out to him; doth not know what the Captain
said to Mr. Lingard, but he heard Mr. Lingard, who at this time
appeared much agitated and had tears in his Eyes, say “Captain Camphor I have supported you as long as I am able; now I know
not what to do."

Saith that he doth not know who removed the arms from Mr.
Lingard's Cabin, although he was in the Cabin the whole of the
time; nor did he see any person Come down the sky light or jump
on the Table, nor did he see any Person enter the Chief mate's
Cabin at this time; saith that the People above refused to let the
Captain come below until the arms were secured; but, on Mr. Lin­
gard's saying the arms had been secured, they let him go by Mr.
Lingard's Desire, and he came down into his own Cabin, and Mr.
Lingard remained on Deck and the Flap of the Companion was put
down and the Sky light Closed, and deponent was directed to remain
below; that soon after Mr. Lingard came below and told the Captain
that the people had Compelled him to take the Command of the
Ship; that they would do no more Duty under him and if the
Captain came upon Deck no one would go to the wheel; that the
Captain then laughed and addressed himself to Mr. Lingard, and
"now I suppose I must call you Captain Lingard"; that Mr. Lin­
gard replied, “No, he was no captain; he had taken the Command
by force and for the preservation of the Ship and Cargo”; that a
Sentry was placed over the Captain and continued until the Brig
arrived in this Port.

Saith that the next morning Mr. Lingard assembled the people on
the Quarter Deck, and there inform'd them that the Captain had
desired him to inquire of the People whether the Command should
be given back again to the Captain, or whether he Mr. Lingard
should keep the Command; when the People all said that they would
do no more duty under the Captain, but that Mr. Lingard should
keep the Command until the vessel reached her place of
Destination.

Saith that he was once a Partner with Mr. Lloyd in a Hotel in
the Isle of France, but hath no Connexion with him at present, nor
was he ever a general Partner with Mr. Lloyd only in one concern.

J. B. STONE.

Sworn the 9th day of December, 1822, Before:—

D. WENTWORTH, Supt. of Police. ALEXB. BERRY, J.P.
J. T. CAMPBELL, J.P. EDWD. WOLSTONECRAFT, J.P.
THOS. MACVITIE, J.P. J. OXLEY, J.P.

Questions by Mr. Rowe to Mr. John Stone, Steward.

Q. What was the reason for the Mate giving directions for re­
moving the arms from the Captain's Cabin to his own Cabin? A.
Doth not know.
Q. Was the Captain in the habit of drinking to Excess before he was put under Arrest?  
A. Yes frequently, but I cannot mention the particular days or Dates; when in that state he frequently carried a Press of Sail which injured the Ship; never knew of any Remonstrance being made by the 1st or 2nd Mate of such Conduct or on such occasions; believes that a quarrel took place between Mr. Lloyd and the Captain in Consequence of Mr. Lloyd having remonstrated in a friendly way with him for having struck a man at the wheel; was standing with his back towards the sky light below looking up, when the Captain was arrested on Deck, and a person might have come down the sky light without his observing it; had been with the Captm. Twenty two days before he was put under arrest, and had once played at Drafts with Mr. Lloyd in the Cabin.

JOHN B. STONE.

ROBERT HUGHES, Seaman and Gunner on board the Cumberland, being Sworn deposeth that, on the 25th of October last, he was Called down into the Cabin by Captm. Camphor to Assist in putting Mr. Lloyd on Deck, which he at first declined to do, supposing he had Nothing to do with the passengers, but being afterwards Called on again he did Assist in hawling Mr. Lloyd on deck by means of a Rope; that Mr. Lloyd, after getting on deck, was ordered by the Captain to the half Deck and there to remain, and not to return to the Cabin, but to be upon Deck occasionally.

That, on the 26th between the hours of One and two, he was on the Main Top and was Called down by the Captain, who asked him if he would obey his orders, and Deponent replied "Yes, as soon as any Man he had ever Served under"; that the Captain then directed him to go below and Clean the Small Arms, which he did; that he remained below until 6 o’Clock P.M. when he was Called to relieve the Helm; that he remained at the Helm two hours; that all Hands were upon Deck, black and white Men, and amongst the rest, Mr. Lloyd, who in his hearing Said that the Captain must be made a Prisoner of in His Majesty’s Name; at which time the Arms were lying on the Deck, but Saith he doth not know by Whom they were handed up; that by the Consent of All persons then present the Captain was Ordered in to his own Cabin and a Sentry was placed over him; Saith that his Consent was never asked as to this Measure; doth not recollect when he saw the Captain again after this took place, but knows he was not released until the Vessel arrived in this Port.

Saith that Neither on the next day or at any other time was he asked for his Consent; but the next Morning After this transaction took place, Mr. Lingard Called all Hands on deck, and asked them if they were All willing to do their Duty (as heretofore under the Captain’s Command) under Mr. Lingard, or he would not take the Command; that they all said they were willing, and Saith that they all had asked him to take the Command for the Safety of the Ship and the Preservation of the Lives of the people on board.

Saith that on the 26th after 2 o’clock, when he was sent down to Clean the Arms, up to the time when the Captain was deprived of his Command, he does not know of any Circumstances which Could induce the Crew to put him under Arrest except the Circumstance of his having Shot the Man at the Wheel, if he had done so; and Saith that he would as soon Sail with Captain Camphor again as with any Captain he had ever Sailed with; and saith that
HISTORICAL RECORDS OF AUSTRALIA.

neither on the 20th, the 21st, the 22d, the 23d, the 24th, the 25th, or the 26th of October, or at any time did he ever see an Act Committed by Captain Camphor that had the least Appearance of his being Mad; and during Eleven Months that he has Sailed with Capt. Camphor he has always found him a kind and good man.

Saith that from the time the Captain was put under Arrest a Sentry was always over him; but he requested he might not be put to stand Sentry over him, and he was not; he took Care of that.

(In Answer to a Question put to Deponent whether Mr. Lloyd was kept under Restraint as well as the Captain, Deponent Saith he was prevented from Coming into the Cabin, but was permitted to Come on deck when he liked, and in every other respect was at liberty and allowed to walk the Quarter Deck; that Mr. Lloyd slept in a Hammock in the half Deck over the Water Casks from the 25th of October until the 27th of November, When the Brig Arrived in this Port; during which time Mr. Lloyd’s Health was very indifferent and his Health was not good when he first Came on board in the Isle of France.)

Saith that, when Watson the Carpenter was Called on to assist to Secure Mr. Lloyd, that Watson said he did not like to interfere between the Captain and a Passenger, but that if any other Men on board made any Riot that he Watson would Stick to the Captain to the last Drop of his Blood.

Saith that the arms in the after deck had been partly Cleaned about a fortnight before the 26th of October, and that on that day the Captain directed this Deponent, as the Armourer, to finish Cleaning the arms.

Saith that he never saw Mr. Lloyd in the Steerage or in the fore Castle amongst the men playing at Back Gammon or Single Stick, or in any other way before the 25th of October, When Mr. Lloyd was removed from the Cabin into the after Deck; Nor at any time afterwards did he do so.

Saith that on the 26th, when the Captain Called this Deponent down from the Main Top between one and 2, the Captain appeared in a Collected and right State, and gave his orders to this Depont in a regular and Connected Manner as usual.

Deponent Saith that, on the morning of the 27th of October, Mr. Lingard Called all Hands on the Quarter Deck and then asked them whether, as the Captain was then Sober, they wished him, Mr. Lingard, to give up the Command to the Captain and Saith that they all declared that Mr. Lingard should retain and Continue in the Command.

Sworn the 9th day of Decr., 1822, Before:—

D. WENTWORTH, Supt. of Police. ALEXR. BERRY, J.P.
J. T. CAMPBELL, J.P. EDWD. WOLLSTONECRAFT, J.P.
THOS. MAVITIE, J.P. J. OXLEY, J.P.

Before the Bench of Magistrates at the Police Office, assembled 9th Decr., 1822.

Questions to Captain Camphor on his Cross Examination by Mr. Rowe, Solicitor on behalf of Mr. Lloyd, after his Statement had been had in Captain Camphor’s Hand Writing and Subscribed by him.

Q. 1st. When was this Statement of yours written? Ausr. Occasionally, as Circumstances Occurred.
BRISBANE TO BATHURST.

2nd. To whom was the Brig Ben Johnson Consigned? Answ. To Messrs. McQueen & Co., New S. Wales.
3d. Was not the man going a right Course when You altered it? Answ. He was not.
4th. On what terms were you with Mr. Lloyd up to the 21st of October? Answ. Very fair Terms.
5th. Did Mr. Lloyd never remonstrate with you in a friendly way? Answ. Never.

(a Paper produced)
Q. 6. Is that Writing on the back in the hand Writing of the Owner? Answ. I believe it to be so.
Q. 7. How much did Mr. Lloyd pay for his passage? Answ. £25, and he was to find his own Provisions.
Q. 8. Do you know that Mr. Lloyd has the power to Load the Brig in this Port, if he Chooses? Answ. I do not.
Q. 9th. How was the Pistol brought up? Answ. By the Steward openly, but under a Piece of White Cloth.
10. Was it purposely to Shoot the Bird that hovered over the Deck? Answ. Yes, I have sworn so, and still say the Same.
11. Did Mr. Lloyd put his hand on you, or only touch you on the Shoulder? Answ. He took hold of me by the Collar of my Jacket, and Called me a Villainous Murderer.
12. Did not Mr. Lingard, the 1st Officer, say that there was no Mutiny or any thing like it on board; but the Circumstances made it Necessary for him to take the Command? Answ. No, he did not say so.
13. Were you not in a Continual State of Drunkenness at this time? Answ. That I deny positively, for I worked the Chronometer daily myself, &c. &c.

Q. 14. You have stated that the mate said "I have secured every thing." What did this mean? Answ. Certainly that he had Secured All my Arms, and to prevent me from defending myself. The Man at the Wheel, who was Shot, stood at about 3 Yards distance from me; I think from having afterwards Seen the Ball that it had Struck before it had wounded the man and hit him on recoiling.

Saith that the only Objection, made by the Man for not Obeying his Orders in respect to securing Mr. Lloyd, was, because he said Mr. Lloyd was a Passenger; that he declared he was ready in every other way to Obey his Orders.

P. CAMPHOR.
21 Feb.

Magisterial inquiry re proceedings during voyage of brig Ben Johnson from Mauritius.

1823.

HISTORICAL RECORDS OF AUSTRALIA.

1823. 21 Feb.

that Deponent desired him not to tell him any Falsehoods in future; that Shortly after Burnett had the Ship up to S.S. West, and All in the Wind; that Deponent then said “Hard up,” and Burnett repeated that he was due Course; that Deponent again said “hard up”; that Burnett then began to move the Helm, and Deponent gave him a Slap on the Cheek and Said “tell me no more Lies in future”; Saith that Nothing further Occurred, and Deponent went below at 12 o’Clock and went into his Cot, and, when asleep about 2 o’Clock, the Ship rolling very much, he fell out of his Cot and hurt his face severely; that the next Morning about 11 o’Clock, John Lloyd, a passenger on board. Who, Deponent was told had been forward amongst the Men, and Whom he had seen frequently before amongst the Men, Came to Deponent in the great Cabin and Said You have Struck James Burnett last Night at the Helm; it was well that it was not James Greaves, for he would have knocked you down, for it is not the first time he has done so”; that Deponent made No Reply; that Mr. Lloyd then talked of Ship’s Affairs generally, and said they should be short of Provisions and Necessaries; that Deponent replied he would look out for that himself; that Deponent felt much hurt at Mr. Lloyd’s Conduct, as he had laid in his own provisions and not as a Gentleman who had taken his passage in the Cabin; that from this time Deponent thought it necessary, from being displeased at his Conduct, to be reserved towards Mr. Lloyd.

Saith that, on Thursday Morning the 24th of October, on Coming on deck Deponent saw Mr. Lloyd forward amongst the Seamen, and, as he had not spoken to him for some days before, he directed the Steward to tell Mr. Lloyd not to go forward any more amongst the Men as Deponent did not wish to hear any more Tales; that Nothing particular occurred until the following day (the 25th) at dinner. When the Second Mate, Thomas Young, was going on deck, Mr. Lloyd desired him to stop as he said he had Something to say to Deponent, which he wanted the 2d mate to be present at; that Mr. Lloyd then addressing himself to Mr. Lingard, the 1st Officer, and Mr. Young, the 2d Mate, said that Captain Camphor had sent him. Mr. Lloyd, a Message by the Steward to tell him that he was a Tale bearer, and asked them if he, Lloyd, had ever told them any tales; to which they replied “No”; that Mr. Lloyd then said to this Deponent, “Now, Sir, what have you to say for yourself”; to which Deponent replied to Mr. Lloyd, that he had brought him Tales of a most unpleasant Nature, which he did not wish to hear again, and Mr. Lloyd’s interfering in Ship’s affairs was very unbecoming of a Gentleman; that Mr. Lloyd replied he had conducted himself more like a Gentleman than Deponent had; that Deponent asked in What manner, When Mr. Lloyd said that Deponent had placed the back of his Chair close to his Mr. Lloyd’s face, and, if he had been on Terra firma, he would have wrung the Deponent’s Nose; to which Deponent replied if he had held any other Situation than Commander of the Ben Johnson he would instantly wring Mr. Lloyd’s Nose and Strike it hard, and added that if Mr. Lloyd ever in future made Use of such Language that Deponent would Confine him to his Cabin; that Mr. Lloyd then said in a threatening Manner to Deponent, “You Confine me to my Cabin, I defy you”; that Deponent then addressed the Mates and Asked them if they heard Mr. Lloyd’s Language towards him, that Mr. Lingard turned his head round and said “I hear all”; that the 2d Mate made no Reply, and Deponent, thinking that his mates were greater friends
BRISBANE TO BATHURST. 41

to Mr. Lloyd than to him, said "All I have to say to you Mr. Lloyd, is that you shall not sit in future at my Table." When Mr. Lloyd, with a loud Laugh, said "Shall I not, but I will in Spite of you, and how Can you help Yourself?" Deponent then said, "Since you bid me Defiance to all I say to You, I will now take means to Confine you to Your Cabin"; that Mr. Lloyd then said he would not be Confined to his Cabin for Deponent, or for any Man in Existence, to injure his Health; that Deponent said he did not wish to Injure his Health, but that he should have an hour on deck in the afternoon, and come on deck as Nature might require; that Deponent then requested him to go to his Cabin, when Mr. Lloyd again refused, and Deponent said he might have his Choice to go into the half Deck. When he would be at liberty, or to remain in his Cabin Confined; that Mr. Lloyd replied he would not go into his Cabin, and into the half Deck; Deponent must take him by force; that Deponent said he should then be obliged to use force, as he wanted peace and Quiet in his Cabin; that this Deponent then desired the 2d Mate to bring down the Carpenter and Gunner to take Mr. Lloyd away; that the 2d Mate observed that the Carpenter and Gunner were at dinner, when Deponent desired that they might finish their dinner and then come down; that shortly afterwards the 2d Mate, with the Carpenter and Gunner came below, when Deponent told the Carpenter to lay hold of Mr. Lloyd, who before any thing was done rushed into his Cabin and said "take Me out of this if you dare"; that deponent then Shut the Cabin Door and said to Mr. Lloyd "you are very well where you are now"; that Deponent was in the Act of locking the Door when Mr. Lloyd burst it open and said "My God, you shall not Confine me to my Cabin"; that deponent then insisted on the Carpenter laying hold of Mr. Lloyd, who refused saying it was not Ship's Duty; that Deponent then ordered the Gunner to take hold of Mr. Lloyd; that the Gunner also refused, and said he would as soon obey Mr. Lloyd as he would this Deponent; that Deponent then said it was their Duty, and directed them to get Mr. Lloyd on deck in order to preserve Peace; that the Carpenter then said he would obey Deponent in every other respect but that he would have Nothing to do with the Passengers; that Deponent then directed the Carpenter to go on deck; that he did so; that Deponent then asked the 2d Mate if there were no Men on board that would obey his orders; that the 2d Mate then said "Is he to go by force," to Which Deponent said "Yes, as fair Means will not do"; that the 2d Mate then went on deck and Called All Hands, and a Rope was handed down, in which the 2d Mate made a bowling Knot and the Rope was thrown over Mr. Lloyd under his arms, which he extricated himself from and then said to deponent "I now see your Villainous Determination"; that Deponent then ordered the Rope to be thrown over Mr. Lloyd again, which was done; assisted by this Deponent and the 2d Mate and with the Aid of the Lascars on deck, Mr. Lloyd was hauled up by the Rope; that when Mr. Lloyd was on deck, he addressed himself to Deponent and said "You, Camphor, shall pay for this sooner than You expect. for there is not a Man on board but would speak against you if he dared"; that whilst Mr. Lloyd made use of this Expression, Deponent was below, not having followed him on deck; that Deponent then directed the Steward to let Mr. Lloyd have Whatever he wanted; that the Steward soon told Deponent that Mr. Lloyd wanted all his things, and deponent said that he might have them; but on a further Message from Mr. Lloyd that he did not want all his
1823.
21 Feb.

Magisterial inquiry re proceedings during voyage of brig Ben Johnson from Mauritius.

things, this deponent said that he might have them as he wanted them, and the Gunner and Greaves were sent down to hand such things as he wanted from the Store Room which was under Deponent's Cabin. Saith that James Greaves said it was a d—d shame to lay hands on a Man, for, had it been him, Deponent should have paid for it immed'ly; that during the Whole of this Conversation the Chief officer, Mr. Lingard, was on deck; that Deponent then asked the Gunner, What fault he had to find with him; that the Gunner, who had sailed with Deponent for ten Months, said "None"; that Deponent was as good a Commander as he had ever sailed with; that deponent then said to Greaves "Do you hear this; You are a bad Man; you once sent me a Message to frighten me and now you Come yourself to do so, go on deck, and don't let me see You on the Quarter Deck. All I shall do to you is to stop your Grog"; that some time after on the Same day deponent went on deck and saw Greaves and Lloyd in deep Conversation on the Quarter Deck; that deponent ordered Greaves forward and he obeyed; that the threatening Language Mr. Lloyd had made Use of induced deponent to load a Pistol, knowing Mr. Lloyd was possessed of fire arms, and Nothing further occurred that day.

That on the 26th Deponent found himself unwell and desired the Chief Officer to take a good Observation, and that the 2d Mate Should also take one; that, in about 20 Minutes after, the Chief Officer Came down and Deponent asked him what his Latitude was; that he said he had not worked it; that he then asked him what he had on his Sextant, and he told him, and Deponent worked it and made the Latitude; that nothing further occurred until after dinner, when on deponent's going on deck he saw Mr. Lloyd and Greaves again talking together; that Deponent ordered Greaves forward, and he obeyed; and, being some time after on the Starboard Side opposite the Companion, Mr. Lloyd Came aft and walked up against Deponent's arm; that Deponent did not notice this, but desired the 2d Mate to tell Mr. Lloyd not to Come aft the Capstan, as Deponent plainly saw he wanted to Quarrel; that, deponent having been on deck some time and all Quiet, a large Bird Came hovering over his Head on the larboard Quarter and, recollecting that he had a loaded Pistol below, he directed the Steward to hand it up to him; that the Steward did so, and the Bird then kept at a distance and deponent then said to the 2d mate being near him "that fellow (meaning the Bird) has smelled the powder, let him go"; that Deponent then Cocked the Pistol intending to fire it off over the Quarter, when the Pistol went off before Deponent Could raise his hand and unfortunately wounded a Man on the larboard Side of the Wheel; that the Chief Officer Called out to Deponent that he had Shot a Man, to which Deponent said "Certainly not"; Deponent thought the Man had been frightened at the report of the Pistol, and desired the Man to take the Helm again; that Deponent saw him bleeding and gave directions for him to be taken below; that, on Examining the man, he found the Shot had lodged in the Flesh at the back of his left Shoulder; that, previous to the man's going below, Deponent had Called all Hands aft and in their presence asked the wounded man if he thought the Deponent had Shot him intentionally; that the man said "No, Sir, not by any means"; that this deponent, when the man was taken below, wished to extract the Ball; that the Man objected and it was at length determined amongst the Officers and others present that the Ball should not be extracted; that Deponent then told the man he was glad to hear that he did not think
he had Shot him intentionally, and the Man still answered “No, Sir, I am sure you did not”; that Deponent then directed the Man to be taken to his Hammock and to have more Blankets to keep him warm, and Deponent Saith he felt great Grief on the occasion more than he Can express; that, after sitting some little time in his Cabin, Deponent felt much oppressed at what had happened and went on deck, When James Greaves, Who was on the Starboard Side of the Quarter deck, with Mr. Lloyd at his left Hand and James Burnett on the left Side of Mr. Lloyd, that Greaves said “here he comes as sulky as ——” Deponent did not hear the last word; that Deponent took no Notice but walked the Deck and, at length having heard them talking aloud, he ordered Greaves to go forward; that Greaves replied to Deponent that he had better go aft; that Deponent then said to Greaves that he must be a great Villain for what he had done before and now proved himself; that Greaves said he was not so great a Villain as Deponent; that Deponent then observed it was impossible to stand this Language any longer, it was enough to make a Man desperate; that Deponent then wanted to go below to Consult with the Chief Officer about punishing Greaves, but in Attempting to go down into the Cabin, whilst Deponent’s Head was level with the upper part of the Door, John Lloyd rushed upon Deponent, laid hold of the Collar of his Jacket, saying “Seize him, Seize that Villainous Murderer”; that Greaves and Burnett, who were close to Lloyd, immediately laid hold of Deponent’s Collar and his waistcoat and Shirt, which they tore, and endeavoured to force him upon deck, Lloyd saying to Deponent “Come up you —— Come up, Sir, You are my Prisoner”; that at this time Mr. Lingard was in the Cabin, and Mr. Young was on duty on deck; that then Mr. Lingard Came forward, and said “Let him go I have secured everything”; that they then let Deponent go and he went into his Cabin; that he Called Mr. Lingard to speak to him, but he went on deck, and in about a Quarter of an hour Came down below and said that the Ship’s Company wo’d No longer obey this Deponent’s Commands or orders; and had requested him, Mr. Lingard, to take Charge of the Vessel, which he had done; that Mr. Lingard demanded the Chronometer, and Deponent said, as they had taken the Ship from him by force and the Chronometer belonged to the Vessel, they might have it; that he immediately after this demanded Deponent’s Book of Directions and of Charts, which Deponent refused to let him have as they were private Property; When he insisted on having them, and Deponent was Obliged to Comply, having remarked that, as they had taken the Ship from him by force, they might take the Charts in the same way, and they did so; and having found a particular Chart of St. Pauls and Amsterdam, Mr. Lingard said to Deponent, in the presence of all who were below, “See here, we are Close to Amsterdam and are running right on for it”; that Deponent then remarked to Mr. Lingard, “Young Man, this is the first time I see your Malicious Villainous Disposition towards me. I have shaped a Course and given it, which is E.S.E half East, and if the Weather is Clear You will see both Islands to-morrow Morning”; that then Deponent retired to his Cabin and found he had been robbed of his Sword, Pistols, a Dressing Case, Scissors, Lancets, and Several other Articles; that Deponent asked Mr. Lingard by What Authority he had taken away those things, and Mr. Lingard said it was for this Deponent’s Safety; that Deponent said there was no Necessity for that, as he was not tired of his Life as he had a Wife and family,
Magisterial inquiry re proceedings during voyage of brig Ben Johnson from Mauritius.

that he was anxious to see once more; and Mr. Lingard had Still left Several Articles in his possession, which he had pointed out to him saying that they would have been sufficient for his purpose, if he had been tired of his Life; and Saith that Mr. Lingard then Ordered those Articles to be taken away, together with a Razor, which had been overlooked and was taken away the Second day after Deponent was placed under Arrest; Saith that he was five days without being Shaved, when the Serang was sent down to Shave him which he did.

Saith that, by Mr. Lingard's orders, a Sentry was placed over Deponent after his Arrest had taken place, and Continued until the Vessel arrived in this Port.

Saith that the 2d Mate, Mr. Young did not take an Active part in the Transactions against Deponent, nor did he behave in any Manner disrespectful towards him, nor did Hughes take any Active part against him nor did he ever stand Sentry over him; but the rest of the White Men on board did Alternately stand Sentry over him till the Brig arrived at this Port.

Saith that on the 24th of November having an Opportunity of speaking to Mr. Young, the 2d Mate, Deponent asked him if he had also refused to Obey his Commands, to which he replied, "I cannot answer You that Question now, Sir, as it is an Agreement between All Hands" and Saith that Young's Manner to him was very respectful.

Saith that after his Arrest he was never allowed to go into the great Cabin, but his Meals were furnished to him in his own Cabin, and for the first five or Ten days he was deprived the Use of knives and Forks, but was Afterwards Allowed them. Saith that the general Conduct of All the Officers and Crew on board was Very respectful and proper from the time the Vessel left the Isle of France, until the Period when Mr. Lloyd was arrested.

P. CAMPHOR.

Sworn the 10th day of December, 1822, Before

D. WENTWORTH, Supt. of Police. ALEXR. BERRY, J.P.
J. T. CAMPBELL, J.P. EDWD. WOLLSTONECRAFT, J.P.
THOS. MACVITIE, J.P. J. OXLEY, J.P.

Questions by Mr. Solicitor Garling for Mr. Lingard

To Captain Camphor.

Qn. 1st. Were you not allowed to take Lunar Observations after your Arrest at your own request on board? Answer. Yes, I was allowed to take Observations and to examine the Charts in Bass's Straits. I have no doubt but the Ship's Course, as pursued by Mr. Lingard, was solely for the purpose of bringing the Vessel to her destined Port, and the Statement made by Stone, the Steward yesterday, respecting the Closing of the Companion and Sky light at the time of my Arrest is entirely false.

Questions by Mr. Solicitor Rowe for Mr. Lloyd.

Q. On what Terms were you and Mr. Lloyd up to the 21st of October? Answer. On fair Terms, but not particularly friendly; I played a few nights with him at Back gammon, but Afterwards, from Mr. Lloyd's making use of Language during the Play that was not agreeable to me, I declined it. On the Night of the 20th of October, I did not send for Mr. Lloyd from his Cabin to Come and drink Grog with me on deck. When I retired to rest at half past 12, I was not in a State of Intoxication. I never drank any Brandy of
BRISBANE TO BATHURST.

Mr. Lloyd’s. What I drank I paid for. I did not Consider Mr. Lloyd a Cabin Passenger; he had laid in his own Provisions and had paid £25 for his Passage.

P. CAMPHOR.

Statement of Mr. R. C. Pritchett, given in and deposed to on the 10th December, 1822.

On Wednesday, the 27th November, I went on Board the Brig Ben Johnson with Mr. Atkinson having learned that the Vessell was Consigned to us; she had just anchored. On the Quarter Deck we were received by Mr. Lloyd, who in reply to our questions informed us that the Captain was deranged; that he was in durance, having shot a man; I expressed a wish to see him, and received the Letters of Instruction from Mr. Sampson. Mr. Lloyd said that the Chief Officer had gone on Board the Satellite to report Circumstances, and that till his return nobody could have access to the Captain; in about an hour more Mr. Lingard Came on Board and accompanied us below, when I recognised in Captain Camphor an old acquaintance in India; after hearing his Account, I was clearly of opinion that his arrest was illegal and proposed his going on shore to swear to the manifest. The Captain called for a mah to lash up one of his trunks, when the Chief mate immediately went on Board the man of war, and upon going upon Deck Mr. Lloyd informed me that the Captain of a Man of war was coming on Board and that in the interim the Captain Could not leave the Ship. I waited a little, and in about ten minutes four Marines from the Satellite came on Board, and immediately loading with Ball cartridge took their Stations, one keeping Sentry over the Commander. I spoke to Mr. Lingard, and told him that we ought to have been applied to in the first instance, and then the Civil power would have taken notice of the Case; he paid hardly any attention to what I said and observed that it did not belong to the Civil power being a Crime committed on the High Seas and Cognizable only by an Admiralty Court; I requested to see the man, who was wounded; he Came upon Deck and appeared nearly well; I questioned him as to his opinion of the affair; he said it was an accident. I began Conversing with the Serang, when James Greaves said “I know bloody well who the Captain meant to shoot, it was not this Man it was me, but I will do him if the wounded Man does not, or at any rate there are plenty on board who can do him; we will do him between us.” I made a Remark that his Language was very improper. When he said “I suppose you are some bloody Convicted Lawyer Come from the Shore to Cross Question us; but never Mind, we will do him.”

In a day or two after, I Conversed with Mr. Lingard, who Still professed to Consider himself as not amenable to Capt. Camphor, as he had been put in Charge by the Captain of the Satellite. I expressed my Hope that Matters might be adjusted; that they all might return together to the Owner and there adjust their Differences, but to this he replied that he would not remain in the Ship, if Captain Camphor retained Command, and that he should take All the Ship’s Company with him, and that All the Crew, Native and Europeans, were of his mind.

9th Decr., 1822.

R. C. PRITCHETT.

Sworn the 10th day of December, 1822, Before:—

D. WENTWORTH, Supt. of Police. J. OXLEY, J.P.
J. T. CAMPBELL, J.P. ALEXR. BERRY, J.P.
THOS. MACVITIE, J.P. EDWD. WOLLSTONECRAFT, J.P.

1823.
21 Feb.

Magisterial inquiry re proceedings during voyage of brig Ben Johnson from Mauritius.
IN the Hour of trying Solicitude, a Stranger to your Worships and to the Territory (except by a Letter of High recommendation to His Excellency Sir Thomas Brisbane from the Governor of the Mauritius, which I beg to hand in) I appear before you, with a Conscious Integrity of having acted Solely with a view to render Substantial Justice, in the matter which now occupies the attention of the Bench, To the owners, To the Captain, to the Ship and to those in the Ship. The Commander and myself were on such friendly terms at the Commencement of the Voyage that I, as a friend, imagined I could speak freely to him; I did so; I remonstrated with him in Amity on the 21st of October for having struck the man at the wheel; for having beat the Lascars, &c.; for having behaved in the manner he did on the night before; for being liable to Censure and approbrium from the Owners and Ship's Company from his Constant Inebriety, and while in such Inebriety Conducting himself in a manner totally unbecoming the responsible situation he held as Commander of the "Ben Johnson"; he liked not my advice, but actually (although a Cabin Passenger) forced me on with the men for a Month; altho' in a very precarious state of health, I was obliged to lodge over the Water Casks; the Mates know it; they know that I gave not the Captain Cause for such Malicious Mal-treatment; they know that if I uttered an Exclamation against the Captain on the unfortunate Occurrence of the 26th October, that I did so under the firm Conviction at the time that the man had been Shot at the wheel, if it should now appear, not from intention forsooth but at least thro' Carelessness or rather temporary madness arising from excessive drunkenness; I repel the insinuation nor is there the least shadow of Evidence that I instigated the Crew to Mutiny or Piracy in any way; did I ever follow the Commander to or was I seen in his Cabin before or after the first Mate had actually taken the Command? did I not remain a passive Prisoner as the Captain had forced me to be until I could appeal to the proper Authorities for redress of Injuries; did I ever behave otherwise to him than as a Passenger and as I was authorised under the existing Circumstances. I did say "You are arrested Captain Camphor in His Majesty's name," because I conceived a Felony had been Committed, and it is the duty of every man to stop the Course of a Felon; indeed in this Instance, had the Pistol been pointed maliciously (being loaded) and had I prevented the Arrest of the Commander, I should have been liable to be tried under the 43rd G. 3, C. 58, as a Counsellor and abettor of the Act of shooting the man at the wheel. I uttered the Exclamation moreover because I was fearful in his state that he would proceed below and procure the other Small arms in his Cabin, and use them violently and maliciously towards myself and the other Persons on Board, thereby subjecting himself to a Capital Felony endangering his own life, the lives of the Crew, the Safety of the Vessel, the property of the owners; and is it not clear what the general opinion of all on board was; why were the Scissors removed from his reach? Can it be pretended that a pair of Scissors could by possibility be sufficiently formidable in Piracy or Mutiny; but a man may take his own life away with a much less Instrument of terror, "with a mere bodkin." But in Law Drunkenness is no excuse for a Felon, nor is Insanity, unless there be a total Insanity; will the Mate (the temporary Commander) for a moment lead the Bench to suppose that I ever
was impress'd with a Mutinous or Piratical Idea either by Word, Sign or Acting? on the Contrary, will he state that I was actuated from any other motive but a desire to prevent further Felony and breach of the peace, which it is the bounden duty of every Man in any Capacity of Life to put a stop to; 'tis the duty of a child or Servant, if the Father or Master commit Felony, to secure the Felon and hand him over to the Law; 'tis their duty also to prevent the intention, if they have good grounds for supposing such Felony is about to be Committed; the Commander of a Merchant Vessell has no more power or authority over Officers or Crew than a Father or Master over a Child or Servant; what Command then had he over me, not bound by agreement to serve under him in any way; and would not I be therefore particularly Considered to have Acted derogatory to my Situation, had I good grounds for supposing the Felony as in this Case for the time, and not have endeavoured as a good and loyal Subject to prevent further illegal Acts by assuming a right at the moment, and informing the Commander that he was to be arrested in his Majesty's Name, but not as would out of doors be insinuated that I arrested him in My name of Pirate and Mutineer. If I have erred, I have erred from the best of motives and I close my appeal, a Stranger relying upon each of the Magistrates for protection, impartiality and Justice.

LLOYD.

The Bench of Magistrates, in pursuance of being Specially Convened by the Order of His Excellency the Governor, transmitted to the Principal Superintendent of Police in a Communication from the Colonial Secretary under date the 3rd instant for the purpose of Investigating the turbulent Proceedings reported to have taken place on board the Brig Ben Johnson on her Passage hither from the Isle of France, and to Commit for Trial if the Case should so require. and to do such other Acts as were within its Power in order to the rendering Justice to All Parties Concerned, Has now to Report that it Commenced its Examinations on the 6th instant and has Continued them daily without Intermission Until the present time whereby it is now Enabled to Report:

First. That it has Examined the various Allegations in the order in which they have been Enumerated in the Communication from the Colonial Secretary, and has found on the Evidence of Various Persons that the Wounding of a Seaman, John Thomas, by a Ball from a Pistol, fired by Captain Camphor, was altogether accidental and unintentional, and that it has been freely admitted by the wounded Man himself to have been unintentional; the Bench therefore Sees no Ground for any Proceedings being instituted thereon, Captn. Camphor standing thus freely and evidently acquitted of any Criminal purpose therein by the Acknowledgment of the Man himself, by the first and Second Officers, and others of the Crew.

Second. It has not found that Captain Camphor labored under any Mental Derangement or Incapacity whatever, Altho' it may be Inferred from the general Complexion of the Testimony that he did occasionally drink freely. Yet it also appears Still more Clearly that he was attentive to and Correct in the Management of the Vessel under his Command.

Third. The Bench, having heard and Examined various persons touching the Charge of Piracy, does not find that Such Charge Can be at all established, the Vessel having been directly Conducted to her destined Port by the persons placed in Charge by those who had Usurped the Authority on board.
1823.
21 Feb.

Magisterial
inquiry re
proceedings
during voyage
of brig Ben
Johnson from
Mauritius.

Fourth. The Bench has however had most Clearly in proof that a
dangerous Combination or Conspiracy, attended by a Mutinous
Revolt, did take place on board, and that John Lloyd the Pas-
senger, aided and Assisted by James Greaves and James Burnett,
Sailors, did Violently and Unwarrantably, on the 26th of October
last, Arrest and Confine the Person and Supercede the Authority of
the Commander, and did Continue to keep him in Arrest and Con-
finement, under Strict Guard, until her Arrival in Sydney Cove on
the 27th Ulto.

Fifth. That William Lingard, first Mate, and Thomas Young,
Second Mate, do not appear to have fomented, or in the first
instance partaken in the Mutinous Spirit of the Passenger, Lloyd,
and the two Sailors, his Associates, before named; and that it does
not appear that Lingard and Young, the Mates at the time the
Arrest took place, had it in their power to prevent that Act or to
reinstate the Commander. Whilst on the other hand it is in
Evidence that Young Obeyed his Commander's Orders in every
thing down to the Period at Which he was Arrested, and that Lin-
gard had, on the day following the Arrest, desired Leave of the
Ship's Company to restore the Commander, but was forbidden to do
so; the Bench, duly weighing these Considerations, does not find
Sufficient Ground for Committing those Officers for Trial, Whilst it
Cannot but regret that they did not make more Strenuous Efforts to
support the due authority of their Command'g Officer, which Dere-
liction of Duty may perhaps be Assigned to the Youth and Inex-
perience of those Officers; the Bench feels it incumbent, in Con-
cluding these Observations, to express the most decided Reprobation
of Mr. Lingard's Conduct, his Indifference to, and Apathy in the
gross Mutiny and highly disrespectful Conduct Shewn towards
Captain Camphor.

Sixth. The Bench, having found that the Passenger John Lloyd,
and the two Seamen, James Greaves and James Burnett, have been
Guilty of flagrant Mutiny in Arresting their Commander and de-
priving him of his Command, and by frequent disobedience of
Orders previous to the Arrest, and gross Disrespect for the Author-
ity of Captain Camphor on Several Occasions, Has determined that
those three Persons shall be Committed to His Majesty's Goal in
Sydney there to remain until discharged by due Course of Law.

The Bench Orders that all those Examinations, which were taken
in the early Stage of these Proceedings, and which Might have a
tendency to Criminate the Persons themselves who gave them, be
forthwith destroyed, and they are Accordingly destroyed.

Given under our Hands at the Police Office, Sydney, this 12th
day of December, in the Year of our Lord One thousand
Eight Hundred and Twenty Two.

D. WENTWORTH, Supt. of Police.

J. T. CAMPBELL, J.P.
THOS. MACVITIE, J.P.

J. OXLEY, J.P.

True Copy of the Original Depositions and Papers.
Police Office, Sydney, 24th February, 1823.

D. WENTWORTH, Supt. of Police.

24th Decr., 1822, Mr. John Lloyd admitted to Bail, himself in
£500 and two Sureties in £250 each, Conditional to appear Whenever
and Wherever Called on to answer &c. and not to depart from the
Territory without the Permission of His Excellency the Governor.
29th Jany., 1823, Mr. John Lloyd entered into Recognizance himself in £500 and two Sureties in £250 each conditioned to appear within two Years Wherever Called on to answer &c. and in the Mean time at liberty to depart the Colony.

D. WENTWORTH, Supt. of Police.

UNDER SECRETARY WILMOT TO SIR THOMAS BRISBANE.

(Spash per ship Commodore Hayes.)

Sir,

Downing Street, 1st March, 1823.

I transmit to you herewith by the direction of Lord Bathurst an account, which has been forwarded to His Lordship by the Commissioners of Victualling, of Medical Comforts which have been supplied to the Hospitals at New South Wales and Van Diemen's Land from the different Convict Ships, after they have discharged their Convicts at Port Jackson and the Derwent, and I am to request that you will give such directions to the Principal Surgeon as may be deemed proper for causing such Medical Comforts to be duly accounted for.

I am, &c.,

R. WILMOT.

[Enclosure.]
[A copy of this account is not available.]

UNDER SECRETARY WILMOT TO SIR THOMAS BRISBANE.

(Spash per ship Commodore Hayes; acknowledged by Sir Thomas Brisbane, 2nd October, 1823.)

Sir,

Downing Street, 2d March, 1823.

With reference to Mr. Goulburn's letter to Gen'l Macquarie of the 1st March, 1820, I am directed by Lord Bathurst to request that you ascertain whether Mr. Mell, formerly Paymaster of the 102 Regt., is in New South Wales, and under what circumstances, and acquaint me for Lord Bathurst's Information with as little delay as possible.

I am, &c.,

R. WILMOT.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Spash No. 3, per ship Commodore Hayes; acknowledged by Sir Thomas Brisbane, 3rd September, 1823.)

Sir,

Downing Street, 3d March, 1823.

I herewith transmit to you the Copy of a letter from Mr. Jacob, complaining of being unable to obtain a Grant of Land in New South Wales and of the inattention with which his applications have been received. Mr. Jacob represents himself to be
1823.
3 March.

Complaint of V. Jacob re refusal of land grant.

possessed of upwards of £10,000, and as it appears to me to be of the first importance to afford every countenance and support to settlers of Capital and respectability, I am at a loss to account for the want of encouragement on your part, which forms the subject of his representation. On a perusal of the correspondence transmitted by him, it appears that his first application remained altogether unanswered, and that a Month elapsed before any reply was returned to his letter of the 31st July. To settlers with limited means, delay in obtaining their Grants of Land must be attended with the worst effects, and to individuals to whom the expence of being detained in Sydney is not so great an object, it forms a subject of complaint and dissatisfaction, and ultimately entails considerable trouble on the local Government and embarrassment to this Department.

It is only necessary for me to add that, unless there are strong grounds for refusing Mr. Jacob's application, I am of opinion that his request should be viewed with indulgence and that he should receive that encouragement, which it has been the object of Government to extend to Settlers of his Class.

I have, &c.,
BATHURST.

[Enclosure.]

MR. V. JACOB TO EARL BATHURST.

My Lord,
Sydney, New South Wales, 7 Sept., 1822.

Ere I intrude upon your Lordship's notice the accompanying letters addressed by me to the local Government of New South Wales, allow me to bring under your Lordship's consideration the views with which I entered this Colony, and to relate the steps which I have been permitted to take towards their attainment.

A Military Service of more than ten years in India having undermined my health, I sought in New South Wales its confirmed re-establishment. An attentive observation of the advantages, which this Colony promised, and the invitation held out in the instructions furnished by H.M. Ministers to His Excellency Governor Macquarie to afford encouragement to all persons now resident or coming from Great Britain or other parts of the King's dominions and desirous of becoming settlers, impressed me with a wish to fix in it my permanent residence. Revisiting India therefore, I procured a Furlough of three years, and returned hither with a capital of a Lac of Rupees or Twelve thousand Pounds, vested in property, and full assurances from some of the most powerful Establishments in Bengal that any prospect of success in my proposed undertaking should ensure their assistance and support to any requisite extent. I assuredly
calculated that, in an infant Colony like this, the command of means so great would of itself deserve the countenance of a liberal government, and, in a community of Exiles where unblemished reputation and purity of private life had been hitherto little known in any class of Society, I confidently anticipated that the addition of an irreproachable Character would command the warmest encouragement. It was my intention therefore to tender my resignation to the Honorable Company, and employ the funds thus placed at my disposal in the pursuits of commerce and Agriculture, which are here generally and successfully united.

Under these impressions, I waited on His Excellency Sir Thomas Brisbane, and on the Colonial Secretary Major Goulburn, and fully unfolded to each individually the plans which I have thus ventured to submit to your Lordship. Sir Thomas Brisbane was pleased to express himself inclined to promote their Success, but recommended my writing a letter on the subject. In obedience to this Command, I addressed his Excellency personally, requesting a Grant of Land for Agricultural purposes, and pledging myself on the moment of possession to commence its improvement and import the most esteemed breeds of cattle from England and India. From the latter Country, permit me to add, I had already brought a Stallion pronounced by many to be the finest yet introduced into the Colony and had ordered others. I also applied to Major Goulburn for the grant of a town allotment in Sydney by a letter, the copy of which I have the honor to annex.

After an interval of above a month, during which these applications received not the slightest notice, and concluding that some obstacle had arisen to the concession of my first request, I again addressed Major Goulburn on the 31st July, and asked permission to erect a warehouse and dwelling in the Township of Liverpool. This is a small Township, distant from Sydney twenty Miles, situated on the banks of a river Navigable for Small Craft of 20 Tons entering the Sea at Botany Bay, and on the main road leading to the principal grazing districts of Minto, Camden, Argyle, The Five Islands and the whole country in the vicinity of Bathurst* and Lakes George; but such is the present stagnation even in this central and commanding Spot that there was very lately, and I believe still is, scarcely one house of which the inmates are not fed by Government. Of the allotments, several bear the name (without a vestige of building or improvement) of Public Officers, The Surveyor General, Judge, Naval Officer, etc., etc., and no fewer than twenty one in the hands of one publican, obtained chiefly by the barter of Spirits. Receiving no answer during the lapse of three weeks, I at length pursued the only

* Note 7.
course left open to carry into effect my design of establishing myself in this Country, and on the 23rd Augt. invited by public advertisement the transfer of a building allotment in any of the principal Stations; and the many have been offered, not one could shew any right or title to sell further than being in possession. At length on the 3rd Sept., I was Honor'd by a reply to my last letter (reply dated 31 Aug.), whereby your Lordship will perceive by the enclosed Copy all hope was extinguished of receiving any encouragement from the Local Governm't, and I was compelled thus personally to obtrude myself upon your Lordship's notice. Still however after a lapse of ten weeks, my first and most important communications remain unanswered, apparently deemed unworthy of aught but silent neglect.

It were needless to remind any, but particularly your Lordship, of the marked breach in this instance of the established maxim, which ensures attention to every letter addressed to a public Officer, tho' of a tenor far less weighty than my representation to Major Goulburn. Not more necessary is it to expatiate upon the expense, in which I have been involved, and the mental harrassment, to which my family has been subjected by this protracted state of uncertainty. But I shall be pardoned by the indulgence of the Head of the Colonial Department if, in addressing your Lordship, I dwell a little longer on the unnecessary evils which beset every new comer to this remote but highly important Colony.

Alleged official neglect in replying to letters.

Not least among the difficulties are the official impediments, which lie in the way of persons resorting hither, whether under your Lordship's protection or otherwise, by the impossibility which is experienced of obtaining at the Surveyor General's Office that correct information, without which no deliberate Choice can be made, and by the delay which occurs in communicating the intentions of Government (of which I have thus ventured to Submit to your Lordship one strong instance); persons, coming hither with the intention of settling, are detained for a length of time in these alembicks of iniquity, Sydney and Hobart Town. The Consequence is that the property, they bring with them, is dissipated, themselves are immersed in debt, the lands promised by the Crown are mortgaged for present subsistence, and the property itself eventually falls into the hands of the unprincipled Creditor. Thus Felons, Convicted and transported, reconvicted and retransported, Men who have received at the Triangles the due reward of their reiterated Crimes, have become the chief proprietors of the Soil, while their victims sink into infamy and obscurity and too often learn to copy the acts of those who have ruined them.
As internally connected with this Subject and materially affecting the interests of every individual throughout this territory, permit me further to solicit your Lordship's serious attention to the regulations* lately enacted here. By these, every person now receiving grants of Land is compelled to enter into penal Bonds for the maintenance during ten years of a Convict Servant for every 100 Acres which may be allotted him. The deleterious effect of such a measure will at one glance be manifest to a certain degree, but, to disclose them in their ultimate consequences, it will be necessary to enter into a more particular detail.

Your Lordship is doubtless aware that, almost the whole of the land within 50 Miles of the Capital is already located, and, as I have before stated, the chief portions in the hands of the most unprincipled part of the Community. The above mentioned Tax burthens not these lands, on the contrary acts as a bounty on the property of those, who have already attain'd (by whatever means) an overweening and dangerous degree of wealth and influence. Again Your Lordship needs not be informed that nature has peculiarly fitted this Colony for the production of an article, which is essentially necessary to the Staple Manufactures of the Mother Country, but for which she is at present nearly dependent on Foreign Nations, the finest Wool. Yet the tendency of the late regulations is to clog with unnecessary and superfluous expense those lands best suited to this purpose, and to leave free and unencumbered every part which can with the Smallest hope of profit be applied to the raising of grain or other vegetable products, thus diverting to the preparation of these articles, with which our markets are already occasionally glutted, those funds which would be otherwise appropriated to the increase of this Staple export, or the production of animal food, the price of which has been raised, by the premature slaughter of young cattle in Van Diemen's land, from 5d. to 9d. pr. lb., and in New South Wales we import for Government use alone above a million lbs. annually. It is barely necessary to touch upon the dreadful effects to be anticipated from the dispersion throughout the interior, and far removed from all discipline and legal authority (for proprietors will not reside at such a distance from the Capital), so many unreformed Criminals; and before this comes under your Lordship's review, your humanity will have shuddered at the numerous instances of most atrocious murder, which within the last few months have multiplied and alarmed a community, though otherwise most depraved, hitherto remarkably free from the perpetration of this most horrid Crime. The whole Subject may indeed be aptly illustrated by a short sketch of its bearings on my own case. If your Lordship shall see in the exertions,
which I have already made, and the pledges, I have thus given, sufficient cause to extend to me the indulgence heretofore granted to others in somewhat similar Situations of 100 Acres for every £100 of Capital that they could substantiate, I might without exageration expect 12,000 Acres. To maintain a servant for every 100 Acres would at £30 p. Ann. each be in the first year a sinking of nearly one third of my Capital on them alone, in addition to the expences of buildings, fences, clearing or any other improvement. To add any thing to this simple statement would be to tax your Lordship's penetration, and I shall merely observe that the alarm with which these conditions have been viewed by the Colonists themselves cannot be mistaken. One person, and one only out of many, has been found to undertake the Completion or to accept the deeds accompanied by the bond; in the mean time such lands as had been promised and occupied (some five years ago) are held by the Surveyor General's "Ticket of occupation," a mode of tenure undefined and unknown in Law, which is elusive of the regulations, unprofitable to the Crown (for on the strength of it not even quit rents are demanded), and certainly insecure and unsatisfactory to the Subject. Under such circumstances, to expect that honest men, intending to fulfil whatever engagements they undertake, will risk their property or even fix their residence in this Colony is scarcely reasonable. What may be the result of the spirit of alienation from the Government hence engendered, I dare not contemplate. At one view, your Lordship's discrimination will enable you to perceive that though my representations have apparently originated in private motives, yet the considerations they involve are altogether of a public and most important nature. Reverting from the above general speculations to my own more immediate concerns, I may be permitted to observe that the acceptance of my request to be allowed to settle in Liverpool would have been attended with benefits not unworthy the consideration of a liberal and paternal Government. At present, the Settlers of that neighbourhood are compelled to carry the principal part of their produce to Sydney, where too many fall a prey to the temptations of contagious example of their own inflamed appetites, absenting themselves from their families for many days together, and consuming in drunkenness and every species of debauchery that pittance which must be replaced by many days starvation or the mortgaging their land. For a confirmation of my opinion that my projected establishment would materially have diminished these evils and contributed to the moralization of the country by enabling the settlers to exchange their produce for Merchandize so much nearer home, as indeed for an adequate idea of the importance of Liverpool itself, I am proud in being able to refer
your Lordship to Mr. Bigge, H.M. late Commissioner to these Colonies. But beyond this, I may be permitted to state that I am the second yet arrived of a class of individuals not altogether I trust unworthy of encouragement, attracted by the climate most superior but not dissimilar to the one they quit, many of the Servants of the Honorable East India Company, to whom I allude, will retire hither like myself for their health. If the facilities afforded to their predecessors have been such as meet their expectations, not a few will be inclined to become Settlers; and it may fairly be presumed that persons, so coming and retiring from such a service, will prove better Colonists than Convicted or Unconvicted Rogues, fugitives from the law or their Creditors, such as are too many already here.

In conclusion, permit me to express a hope that your Lordship will appreciate the purity of the motive, which has induced me thus personally to approach your Lordship with this respectful application, rejecting every suggestion, which many would have been too ready to adopt, of having recourse to anonymous upbraidings of the local government in opposition prints; and allow me, My Lord, once more to condense into one view the qualifications which I trust entitle me to your Lordship's favorable consideration. They are briefly these. I have command of a capital, about £10,000, with assurances of unbounded pecuniary support in the prospect of there being application for it; and I have been invited by a Merchant of Calcutta to join him in the increase of fine wool in the following terms:—"To enable us to get out from home or from Spain fine Merino Sheep, I shall immediately send £1,000 and such letters to my relations as I think will best secure success to our views; and it is my intention to devote a Similar annual Sum to be sent to you at Sydney in such way as you may point out, there to be invested in purchasing ordinary wooled Sheep, which I hope by that time will be met by some of our fine Merino importations from Europe, and if success attend us we can go on as largely as may be deemed right and proper. The whole to be on joint account, you to advance what you can in addition to my money; if you cannot make it convenient to advance any thing at present, you shall still have a half share in the experiment and pay me a fair rate of Interest for your share of the money I advance." I proved my resolution of attempting at improvement by introducing a valuable Stallion, but was compelled to part with him for want of means of accommodation; and notwithstanding the discouragement I have experienced, I have written for improved breeds of Horses, Cattle and Sheep, but fear their speedy arrival will cause me, from the same inconvenience, to lose much of the anticipated benefit.
1823.
3 March.

Request for land grants and assigned servants.

References for character.

Application for warehouse site at Sydney.

HISTORICAL RECORDS OF AUSTRALIA.

Tutoring that this simple statement will be deemed sufficient recommendation to your Lordship's Cordial patronage, I venture to solicit that, agreeably to the course hitherto pursued towards individuals possessed of Capital, I may be permitted to receive, 1st, The Grant of a building allotment in Some eligible situation in Sydney; 2nd, A Grant in the interior of land proportionate to my means, unencumbered with all regulations save the Customary Quit Rents and Stipulations, respecting alienation within five Years, and the Cultivation of a certain proportion; 3rd, The assignment of such labourers and Mechanics off the Stores as may be required for the erection of the necessary buildings and completion of my intended improvements.

In full assurance that these requests will meet your Lordship's full and indulgent attention, I have, &c.,

V. JACOB.

P.S.—Conscious integrity has caused me to overlook that part of the official notification which requires testimonials of Character. If your Lordship still deems them necessary, I beg to refer you to Sir Ed. Colebrook, Bart. of the H.C. Civil Service, and to Messrs. Wilton and Edmonstone of the Same; Also to Generals Sir Rob. Blair, Charles Stewart and Dick, and to Colonels Nuthall, Morris, Littlejohn, Cumberlege and Hopper, all now in England.

[Sub-enclosure No. 1.]

MR. V. JACOB TO SECRETARY GOULBURN.

Sir,
2 George Street, Sydney, 27 June, 1822.

Being Anxious to become a denizen of the Colony under the fostering auspices of His Excellency Governor Sir Thomas Brisbane, K.C.B., I have to beg you will submit my desire to his Excellency.

My views are directed towards Commerce, combined with farming eventually; and, for the Convenient transacting of business, I propose with his Excellency's Sanction to erect in Sydney a dwelling and commodious warehouses, but cannot find a suitable Central Situation, the tenants of which can identify a clear alienable title. I have therefore to solicit your kindness in bringing my wishes under his Excellency's review with a respectful request, which I prefer with diffidence, that he will be pleased to take my interest into consideration and extend his protection in granting me an allotment of ground whenever his wise arrangements for ascertaining the extent of Government patronage may be mature.

Should his Excellency intend to appropriate any situations occupied by temporary or other public buildings to the use of individuals, I shall be ready to meet his commands in requiting
the public for them; this you will perceive refers to rumours of the removal of various public institutions arising out of the rapid increase of population.

I trust I shall not become liable to the imputation of impor-
tunity in troubling you with a letter, after having had the honor
of an interview on the subject, when I explain my intent to be
that of securing such advantage in the result, as His Excellency
may deem proper to attach to priority of application.

I have, &c.,

V. JACOB, Lieut., 3rd Bengal Nat. Inf'try.

[Sub-enclosure No. 2.]

Mr. V. JACOB TO SECRETARY GOULBURN.

Sir, [31st July, 1822.]

I have to beg that you will do me the honor to submit to
His Excellency the Governor of the Territory my request for a
Grant of Land in the Township of Liverpool, with permission to
build a store and dwelling house thereon.

It is my intention to ply a barge or barges on Georges River,
and to receive Colonial produce at Liverpool and intermediate
Stations in Exchange for my importations, a project which, if
practicable, will obviate the necessity of the farmer coming to
Sydney, at present so indispensable and pregnant with evil.

I have further to beg that you will favor me with His Excel­
lency's decision, as soon as possible, as the early execution of my
plan is highly important to me, and I must purchase, in the
event of his Excellency's seeing any objection to the indulgence
solicited; in which case it will be necessary for me to explain my
views to His Majesty's Government at home, which I propose to
do by the Shipley, memorializing for those indulgences (an allot­
ment for building in Sydney and Land for the purposes of agri­
culture) already I trust before His Excellency, should any objec­
tion appear necessary on the part of H.M. Colonial Govt.; a
transcript of which I am desirous of forwarding with the copies
of my letters to His Excellency's personal address, and to him
thru' you, if you will do me the favor to convey his Excellency's
Commands on the subject of my applications.

There is a good situation unoccupied, opposite the jail and
adjoining the Court House in Liverpool, bounded by the enclosure
of the latter, Bigge Street, Moore Street, George Street, and a
private tenement, for a grant, of which I should hold myself
bound in gratitude to his Excellency; otherwise a Site on the
river adjoining H.M. Store whereon to construct a private wharf,
Store, etc.

I have, &c.,

V. JACOB, Commercial Agent.
1823.
3 March.

Refusal of application for allotment at Liverpool.

20 March.

Despatch acknowledged.

Brisbane's desire to be relieved from financial responsibility.

HISTORICAL RECORDS OF AUSTRALIA.

[Sub-enclosure No. 3.]

SECRETARY GOULBURN TO MR. V. JACOB.

Sir,

Colonial Secretary's Office, 31 Aug., 1822.

The particular Allotment, for which you apply in the Town of Liverpool, being required for the Convenience of the Court House, I am directed by the Governor to acquaint you that it will be out of his power to accede to the request contained in your letter of 31st Ulto. I have, &c.,

F. GOULBURN, Col'l Secret'y.

True Copies:—V. JACOB.

SIR THOMAS BRISBANE TO SECRETARY LUSHINGTON.

(Despatch per ship Surrey; acknowledged by secretary Harrison, 13th December, 1823.)

Government House, Parramatta, New South Wales,

Sir, 20 March, 1823.

I was honored with your original and duplicate Letters, under date 5th August, 1822, the former received by the Lord Sidmouth, which arrived 27 February and the latter by the Surry, which came the 6th March, transmitting the Treasury Circular, No. 46, by order of the Lords Commissioners of the Treasury, directing me to countersign all Bills drawn by the Commissariat; from the importance their Lordships attached to it, I beg leave to acquaint you with the grounds, for their information, upon which I had declined it, As forming no part of my instructions from His Majesty, Being unwilling to involve myself personally in the public expenditure of the Colony, and more particularly from the conviction arising out of the case of Mr. Commissary Drennan, whom I sent home on arrival as an extensive public Defaulter, that it only envolved personal responsibility without protecting the public Interests; I trust I shall have evinced the most implicit obedience to their Lordships' most minute commands, and I hope I may be permitted to call their notice to the decreased expenditure of the Colony during the present quarter of the year, compared with former ones, to impress their Lordships how zealously I have felt disposed to co-operate in their wish of reducing the expences here. I therefore venture to hope from this consideration their Lordships will allow me to urge relief from the only part of my Government, that I feel irksome, namely that of being identified with the public money transactions, which may involve myself and family in ruin, altho' actuated by the purest intentions, and that they may be graciously pleased to send out a Public Accountant.

I trust ever to be able, through the admirable arrangements, the laboring pains, and the indefatigable exertions of the Colonial
BATHURST TO BRISBANE.

Secretary, to bring the public accounts into that train of arrangement that it will be easy to check the expenditure; but I beg leave to say from their confused state hitherto, it has been quite impossible to ascertain whether the amount of bills presented for my signature was faithfully that required for the public service or not. I beg you will assure their Lordships that I can have no hesitation in countersigning the bills presented by Mr. Wemyss, who I consider a most honorable man; still I venture to entertain the hope that their Lordships in their wisdom may relieve me of the unpleasant responsibility, as well as the protracted suspense attendant on this measure, which the Public Accountant would at once remove.

I have, &c.,

THOS. BRISBANE.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 4, per ship Ocean.)

Sir, Downing Street, 21st March, 1823.

Having received the Memorial of Lieutenant Lawson for increase of Pay as Commandant at Bathurst, I cannot help remarking that his Military Duties at that place require but a very small portion of his time; and although I am willing to do justice to his merit in having checked a bad system of employing the Convicts at that place, yet I can only sanction your giving to him the increase of pay which he solicits, by putting him on the same Scale as Commandants at other places, on the condition of his continued residence there.

I have, &c.,

BATHURST.

[Enclosure.]

[A copy of the memorial, which will be found on page 712 in volume X, was forwarded with this despatch.]

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 5, per ship Ocean.)

Sir, Downing Street, 22d March, 1823.

Governor Macquarie has transmitted to me the Memorial of Mr. Hutchinson, the Principal Superintendent of Convicts at Sydney, soliciting that his Appointment as Wharfinger at Sydney should be confirmed; I must, however, hesitate to signify my assent to the confirmation of Mr. Hutchinson in this Appointment, until accounts are received from the Colony that he does not appear to be implicated in any of those abuses, the detection of which has taken place since the departure of Governor Macquarie.

I have, &c.,

BATHURST.
EARL BATHURST TO SIR THOMAS BRISBANE.
(Despach No. 6, per ship Ocean.)

Sir, Downing Street, 23d March, 1823.

The Memorial of Mr. James Meehan, soliciting a Pension for his Services as Deputy Surveyor of Land and Collector of Quit Rents, having been forwarded to me by Governor Macquarie, I have to desire that you will inform Mr. Meehan that he must furnish you, in the first place, with an account of all Quit Rents that are due, as well as a clear Statement of all purchases and exchanges of Land that have been made for and on behalf of the Crown, either for widening and improving the Streets or for any other purpose; and I am to acquaint you, that in the event of his compliance with these demands, you may consider yourself authorized to grant him a Pension not exceeding One hundred pounds per Annum; but I am to desire that no payment be made to him until he shall have rendered the accounts in question.

I have, &c.,

BATHURST.

EARL BATHURST TO SIR THOMAS BRISBANE.
(Despach No. 7, per ship Ocean.)

Sir, Downing Street, 24 March, 1823.

I have the honor to acknowledge the receipt of your Despach No. 21 of the 7th Septr. last, transmitting a Memorial from the Landholders and Proprietors of Live Stock, Members of the Agricultural Society of New South Wales, soliciting a Remission of the duty which was to have been levied from the commencement of the present year on Wool imported into this Country from the Colony, and I have great satisfaction in acquainting you in reply that the wishes of the Memorialists have been anticipated by an Act* of the last Session of Parliament, already transmitted to you, by which the duty, which would otherwise have attached to the Wool imported into this Country from New South Wales, has been remitted for the period of ten years.

I have, &c.,

BATHURST.

UNDER SECRETARY WILMOT TO SIR THOMAS BRISBANE.†
(Downing Street, 24th March, 1823.

This letter will be delivered to you by Mr. John Hall, who is proceeding to New South Wales to practice as a Surgeon, and as he has been strongly recommended to Lord Bathurst I am directed by his Lordship to introduce him to your protection and good offices.

I have, &c.,

R. WILMOT.

* Note 9. † Note 10.
EARL BATHURST TO SIR THOMAS BRISBANE.
(Despatch No. 8, per ship Ocean.)

Sir,

Downing Street, 25th March, 1823.

I have the honor to acknowledge the receipt of your despatch No. 10 of the 5 April, 1822, recommending that a married Clergyman should be appointed to superintend the Orphan Schools. Although at some future period it may be desirable to place these Establishments on a more extended scale so as to render the services of a Clergyman necessary, yet I am not prepared, at present, to recommend such an appointment to His Majesty. As I understand, from Mr. Bigge, that Mrs. Ward has been for some time desirous of giving up the Superintendence of the Female Orphan School at Parramatta, I have to acquaint you, that Mr. Edward Sweetman, and his wife, will proceed in one of the first Convict Ships sailing from this Country; and I am to desire that, upon their arrival in New South Wales, Mrs. Sweetman may be appointed to the situation of Matron of the Female Orphan School, with the Salary of £100 per Annum, as voted in the Estimate for the present year. As Mr. Sweetman will find constant employment in the management of the Household, Farm, and Garden, I am also to desire that you will issue to him a single ration from the date of his entering upon the duties of his situation, with a Salary of £50 per annum from the Police fund.

I am, &c.,

BATHURST.

EARL BATHURST TO SIR THOMAS BRISBANE.
(Despatch No. 9, per ship Ocean.)

Sir,

Downing Street, 26th March, 1823.

I have the honor to acknowledge the receipt of your despatch of the 27th Febry., 1822, on the subject of the representation made to you by the Judges respecting the Appointment of Mr. McArthur to the Magistracy in New South Wales. I cannot but regret that anything should have arisen to disturb that good understanding, which it is desirable to cultivate among all those who are calculated by their Character and respectability to fill the important situations of Magistrates in the Colony, and that the Judges should have felt themselves called upon to represent, in such strong terms, their objection to the Appointment in question; at the same time I must acquaint you, that, considering the decided opinion pronounced by His Majesty's Government on the Transactions which led to the Arrest of Governor Bligh, and the length of time that has since elapsed, I am desirous to discontinue the revival of any discussion upon that subject; and as the conduct of Mr. McArthur, since his return to the Colony, has been...
uniformly correct, and the pursuits in which he and his family are engaged have been of great advantage to the Colony, I should not have been disposed to object to his appointment to the Magistracy. I am, however, relieved from the necessity of deciding this question, as I have been given to understand that Mr. McArthur is not anxious to undertake the duties of the Office. Under these circumstances, I am to desire that you will offer the Appointment to one of his sons now resident in the Colony.*

I have, &c.,

BATHURST.

EARL BATHURST to SIR THOMAS BRISBANE.

(Despatch No. 10, per ship Ocean.)

27 March. Sir,

Downing Street, 27 March, 1823.

As the number of Private Vessels trading from this Country to New South Wales will secure the inhabitants from the danger, to which they have hitherto been exposed, of a monopoly of the Trade on the part of the Merchants in the Colony, I cannot but consider that the proper period is arrived for enforcing the order conveyed in my despatch to Govr. Macquarie of the 12 Decr., 1817, against all the Captains of Convict Ships, who may be found to have on board their Vessels any Goods or Merchandize for the purpose of private Trade; and I am therefore to desire that, upon the receipt of the despatch, you will take measures for levying the penalty inserted in the Charter party of each Vessel, in the event of any Captain having Goods or Spirits which shall not be regularly entered in the lists transmitted from the Commissioners of the Navy, Notice having been already sent to the Navy Board, that such penalties will be exacted upon any infringement of the order in question.

I have, &c.,

BATHURST.

EARL BATHURST to SIR THOMAS BRISBANE.

(Despatch No. 11 or 12.†)

28 March. Sir,

Downing Street, 28 March, 1823.

I transmit to you the Copy of a letter from Mr. Hobhouse respecting the Trials of Sentences of James Dunleary and George Fendrick Jackson.

In Dunleary's Case, his Offence appears only to have amounted to Manslaughter, and His Majesty therefore has been graciously pleased to extend His Royal Mercy to the Convict, and the Warrant is herewith enclosed.

* Note 11. † Note 12.
In Jackson's Case, there is no ground to doubt the fact of the prisoner's guilt or the heinous Character of his Crime, and His Majesty has therefore approved of the Sentence; but, considering the delay which has taken place in the transmission of the proceedings (the Trial having taken place in 1819), His Majesty has been graciously pleased to extend his Royal Mercy to the Prisoner, on condition of his being kept to hard Labour and Imprisonment during the term of his natural life. Two Warrants are enclosed, one for approving the sentence and the other conveying the Royal Mercy.

I have, &c.,

BATHURST.

[Enclosure.]

UNDER SECRETARY HOBHOUSE TO UNDER SECRETARY WILMOT.

Sir, Whitehall, 10th March, 1823.

I laid before Mr. Secretary Peel your letter of the 20th August last, inclosing the Reports of two Trials before The Criminal Court in New South Wales of Geo. Frederick Jackson and James Dunleary for Murder, in both which cases the Sentence of the Law could not be executed according to the Charter of Justice for the Colony, because four Members of the Court did not concur.

On both Cases Mr. Peel has advised with the Attorney and Solicitor General before taking His Majesty's Commands thereon.

In Dunleary's case, the Offence appears only to have amounted to Manslaughter, and His Majesty has therefore been graciously pleased to Extend His Royal Mercy to the Convict.

In the Report of Jackson's case, neither Mr. Peel nor the Law Officers have been able to discover any ground, on which to doubt the fact of the Prisoner's Guilt or the Heinous Character of his Crime. Mr. Peel has therefore felt himself bound to advise His Majesty to approve of the Sentence and to order it to be carried into execution. But considering the delay which has occurred in the Transmission of these Proceedings (the Trial appearing to have taken place in the Year 1819), for which delay Mr. Peel considers the late Governor of the Colony deeply responsible, His Majesty has been graciously pleased to extend His Royal Mercy to the Prisoner on Condition of his being Imprisoned and kept to hard Labour during the Term of his Natural Life. To prevent all doubt of the Propriety of the Verdict, it has been deemed right that it should be confirmed by a separate Warrant from that by which Mercy is extended.

The Three Warrants are inclosed. I am, &c.,

H. HOBHOUSE.

[Sub-enclosures.]

[Copies of these three warrants are not available.]
1823.
29 March.

Civil estimates for year 1823.

Increase of salary for governor.

Salary of lieut.-governor.

Appointment and salary of judge.

Abolition of offices of judge-advocate and judge of supreme court.

Salary of colonial secretary to be paid from police fund.

Salary of surveyor-general.

Superintendents and overseers of convicts.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 13, per ship Ocean.)

Sir,

Downing Street, 29 March, 1823.

I have the honor to transmit to you a Copy of the Estimate for defraying the Civil Estab't of New South Wales, which it is intended to submit for the approbation of Parliament for the present year. I feel it necessary to call your attention to the following alterations, which have been made in it.

Your own Salary has been increased £500 per Annum, in lieu of Meat from the Government Herds and other Colonial Allowances to you as Civil Governor, which are of course to be discontinued.

The Salary of the Lieut. Governor has been increased £150 Per Annum, in lieu of a similar sum formerly paid from the police Fund, and which will cease from the commencement of the present year.

A Judge has been appointed at a Salary of £2,000 per Annum, and the Fees formerly received by the Judge Advocate and Judge of the Supreme Court are to be paid to the Police fund. You will, however consider yourself authorized to reduce or modify them in such a manner as you may deem calculated to benefit the public Service.

The Offices of Judge Advocate and Judge of the Supreme Court have been abolished.*

An Attorney General has been appointed at a Salary of £600 per Annum.

The Salary of the Colonial Secretary has been withdrawn from the Estimate. You will consider yourself authorized to pay him from the Police fund at the rate of £1,200 per Annum. The Fees received by him on mustering Convicts, which are considered to be objectionable, are to be altogether abolished and those received in his Office are to be carried to the Police Fund.

An Addition of £91 5s. Od. has been made to the Salary of the Surveyor General, in consideration of the increased duties he is called upon to perform.

A Superintendent of Convicts has been appointed at £200 per An. Three Overseers at £60 per Annum, and 12 at £30 per Annum. They are also to be provided with a House, one ration, and Coals.

The former is an Officer on half pay, and the Overseers are Pensioners from the Royal Engineers and Artillery, who have been strongly recommended to me by the Board of Ordnance. The Salaries, hitherto borne on the Estimate for the pay of Superintendents of Convicts, are of course to be discontinued.

* Note 13.
The Salary of the Lieut. Governor of Van Diemen's Land has been increased £700 per Annum in lieu of Rations and other allowances valued at that sum.

A Judge has been appointed at a Salary of £1,200 per Annum and an Attorney General at £300 a year, and the Office of Judge Advocate has been abolished.* The Fees received by him are in future to be paid to the Colonial Fund.

An Increase of £158 15s. has been made to the Salary of the Deputy Surveyor of Lands and an addition of £108 15s. to the Assistant Surveyor.

The whole of the Surgeons, both at New South Wales and Van Diemen's Land, have been transferred to the Police fund, and you will consider yourself authorized to pay them at the same rate, which they would have received if Bills for their respective Salaries had been drawn on the Agent.

There are also some other minor alterations which you will not fail to observe, and I do not, therefore, deem it necessary to particularize them. In the event of your having drawn for the Salaries, which will become due on the 30 June, previous to the receipt of this despatch, the new establishment must commence in the succeeding half year. In that case the Salaries will of course be paid on the old scale, and the deficiency, which will arise by the payment of the Chief Justice and other newly appointed Officers, must be remitted by you to the Agent from the Police fund.

I have, &c.,

BATHURST.

[Enclosure.]

[Note 13.]

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 14, per ship Ocean.)

Sir,

Downing Street, 30th March, 1823.

I have the honor to acknowledge the receipt of your Despatch of the 2nd of May last, transmitting various documents on the subject of an action brought against Wm. Howe Esqre., one of the Magistrates of the Territory, for issuing, and against the Constable for executing, a Warrant of distress to enforce the payment of £3 16s. being a Balance due to the Plaintiff from one Thos. Dowse for labor, together with Costs; and £1 15s. for 7 days loss of time, suffered by Dowse in attending the Court to recover his Demand, which payments were awarded by Mr. Howe, conformably with the authority with which he considered himself invested, either under the Act of the 20 Geo. 2 Cap. 19, or the Government Proclamation of the 21 Novr., 1818; and the Questions, which the Court considered to be involved in the case, were
1823.
30 March.
Legal points in dispute.

Statute 20 Geo. II invalid in N.S.W.

Decision of W. Howe untenable.

Approval of indemnification of Howe and Fletcher.

Question of validity of proclamations by governor.

Objections to appointment of officials as members of governor's court.

1st, Whether the Act of Parliament, which empowered a Magistrate in England to decide a similar dispute between Master and Servant, applied to New South Wales; 2d, Whether the Governor could legally issue the Proclamation referred to; and 3d, Whether the nature of the labor performed by Dowse came at any rate within the meaning of the Act of Parliament. With reference to these points, which I have considered with every attention, I am of opinion that the Statute of the 20 Geo. 2 is not in force in the Colony of New South Wales:—That Act did not propose to make the Justices of the Peace in this Country the final Judges of the Questions, which it brought within their Jurisdiction. It gave to either party a right of appeal to the Quarter Sessions. In New South Wales, no Quarter Sessions are held; and, therefore, if the Act were considered to be in force there, it would arm the Magistrates with the power of deciding without Appeal, a power which the Legislature did not deem it expedient to confer in this Country.

It appears, however, that Mr. Howe awarded the party complaining a compensation for his loss of time, which neither the Proclamation, nor the Act of Parliament, authorizes the Justices to allow; and, therefore, on this ground only, without reference to the other points involved in the question, Mr. Howe's decision could not be maintained. I, however, entirely approve, under the particular circumstances of the case, of your having indemnified Mr. Howe, and the Constable, for the expenses of their Trial and the Damages awarded against them.

The question regarding the validity of the Governor's Proclamation is still more important in proportion as the consequences involved in it will be more extensive; but as this part of the subject is I trust effectually provided for in the Bill,* which His Majesty's Government have determined to submit to Parliament during the present Session, it is only necessary for me to remark that the Ordinances and Proclamations, which have been issued by the Governors of New South Wales, must, in the intermediate time, remain on their present footing. I feel perfectly confident that the two Gentlemen,† appointed by you as Members of the Governor's Court, were well qualified to execute the duties required of them, and that they merited, from the respectability of their characters, that mark of your confidence. I am however bound to acknowledge, with reference to general principles, that there appears to me conclusive objections to appointing Gentlemen, however unexceptional in other respects, who may hold temporary Appointments in the Offices of the Secretary or Dy. Commissary General.

I have, &c.,

Bathurst.

* Note 14. † Note 15.
BATHURST TO BRISBANE.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 15, per ship Ocean.)

Sir,

Downing Street, 31st March, 1823.

I have to acknowledge your despatch of the 2d of May, 1822, complaining of misconduct on the part of the Judge Advocate, and expressing your conviction of the necessity there exists for the removal of that Officer from his situation under the Crown; and, in answer thereto I have to inform you that I have taken the same, together with certain explanations of the Judge Advocate in reference thereto, into mature consideration. It appears that the primary cause of complaint arose from a decision of the Judge Advocate in the Govr.’s Court, in which he is stated to have held that the Statute 20th Geo. 2 Cap. 19 was not applicable to New South Wales, and the Governor’s proclamation declaring it to be in force was null and void. Without entering into the question of law, whether the statute alluded to is applicable or not, I certainly think that, if the Judge Advocate was conscientiously and decidedly of opinion that it was not applicable, he was bound to govern his judgment according to his impression of the law, as no act of the Govr.’s could extend, or abridge, the operation of an Act of Parliament; and if the case had rested here, I should not have considered the judgment of the Judge Advocate, however in my opinion erroneous, sufficient in itself to found a complaint against his conduct. I agree, however, with you in thinking that the occasion of expressing this opinion on the part of the Judge Advocate was ill chosen, and the manner highly objectionable. Under the circumstances of the case, it would have been more correct in the Judge Advocate to have suspended his opinion upon a very important point of the Govr.’s authority, which, supposing it to be unfounded in strict principles of law, had grown out of the exigencies of a remote and infant Colony, and appears to have been closely interwoven with some of the essential interests; and this course of proceeding there was the greater reason to expect, as the Judge Advocate is reported by the Commissioner Mr. Bigge to have held, upon a former occasion,* that the proclamations of the Governor were of the same authority in New South Wales as Acts of Parliament, and he had therefore necessarily contributed to the diffusion of the principle which he afterwards attempted to overturn. The Judge Advocate states, in explanation, that he did not decide the case of Howe, upon the principle of the Govr.’s Proclamation being null and void, but because he considered it was not within the Jurisdiction of the Magistrates, either by the Act of Parliament or the Proclamation; and he further states that the communications, which he made to the Magistrates, were confidential.

* Note 16.
1823.
31 March.

Criticism of judge-advocate's decision and conduct.

Contemplated appointment of new legal officers.

Practice to be adopted by governor in framing new ordinances.

Former ordinances to be considered by chief justice.

and have been greatly misstated by them. Assuming his explanation to be correct, I am still of opinion that the proper course would have been for the Judge Advocate to have carefully avoided any intimation of his opinion under any circumstances, until the point could be referred to His Majesty's Law Officers; because it was one in which he was delicately situated, not only in reference to his former opinion, but as Judge of the Govr.'s Court, receiving fees for all business therein, and consequently interested, to a certain extent, in abridging the Jurisdiction of another and, as it would seem, a less expensive Court.

As it is in the contemplation of His Majesty's Government to change the Constitution* of the Criminal and Civil Courts in New South Wales, and to appoint new Officers, it will not be necessary for me to recommend the removal of the Judge Advocate. With the view however to prevent the recurrence of any future causes of difference between the Governor and the Judicial Authorities of the Colony upon a point of great importance, I beg to inform you that it has been deemed expedient to frame the following institution, which it is hoped will answer the end proposed of establishing entire union between the executive and Judicial departments of the Govern't.

It is intended to confer upon the Governor of New South Wales, by express sanction of Parliament, an authority to make local ordinances in certain cases which shall not be repugnant to the laws of England; and as the Courts, which will have to enforce such ordinances, must determine their validity, in reference to the laws, you will be required before you promulgate any Ordinance to call upon the Chief Justice (of the New Court) for his opinion in writing, whether such ordinance is or is not repugnant to the laws of England; or in other words whether he should feel it to be consistent with his duty to maintain and enforce such ordinance, if its validity should be called in question in the Supreme Court. And if the Chief Justice shall be of opinion that it is repugnant to law, its operation shall be suspended, until the ordinance, together with the opinion thereupon, shall be transmitted under the hands of the Governor and the Judge for the decision of His Majesty, except under such extraordinary unforeseen and special circumstances as would justify the Governor, on his own responsibility, for disobeying this instruction.

As respects the Ordinances now in operation, the Governor will be required, in like manner, to call upon the Chief Justice for his opinions in writing, and separately, upon their validity with reference to the Laws of England, as before explained. If the Chief Justice should thereupon find any such Ordinances

* Note 13.
repugnant to law, and the Governor should be unwilling to accede to the annulment or alteration of such Ordinances, the Govr. will in such case transmit the same, together with the several opinions of himself and the Chief Justice thereupon, to the Secretary of State for the Colonies; and, in the mean time, it is thought that the Judge will not be considered to deny right or Justice to any man, if he shall suspend his opinion upon any case involving the validity of such Ordinance, until the question of their lawfulness or unlawfulness shall be determined by His Majesty.

It is confidently hoped that this measure will prevent any collision of opinion between the Governor and the Chief Justice, and tend to establish a general harmony upon all points connected with the Administration of the different departments of the Colony.

I have, &c.,
BATHURST.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 16, per ship Ocean.)

Sir, Downing Street, 31st March, 1823.

I have the honor to acknowledge the receipt of your despatch No. 17 of the 15th July, 1822, relative to a difference between the Judge Advocate and Major Goulburn, as to the construction of his Commission as Secretary and Registrar of New South Wales, by which it appears that he claims the custody of the Records of the criminal Court.

This claim is resisted by the Judge Advocate, who asserts that the Court is entitled to the Custody of its own records.

To solve the question thus agitated between these two public Officers, it appears to me sufficient to refer to the language of the Royal Commission* of the 2nd April, 1787, under which the Criminal Court was constituted and, under the authority of which, its Jurisdiction is at present exercised. The language of that Commission is as follows, "We do hereby create, direct and constitute the said Court of Criminal Jurisdiction to be a Court of Record, and that our said Court of Criminal Jurisdiction shall have all such Powers as are incident to a Court of Record, by the laws of that part of Our Kingdom of Great Britain, called England"; Now among the powers incident to a Court of Record, the custody of its own Records is one of the most indisputable and essential. For this reason alone, I should consider the claim advanced by the Colonial Secretary as unfounded; but in support of the same conclusion, I have further to remark that the Colonial Secretary is not, so far as I am aware, the keeper of the Records of the Courts of Criminal Justice in any one of His

* Note 17.
HISTORICAL RECORDS OF AUSTRALIA.

1823.
31 March.

Majesty's Colonies where the law of England is in force; and that great inconvenience would arise, if the Records were in any other Custody than that of the Courts where they originate.

I have, &c.,

BATHURST.

EARL BATHURST TO SIR THOMAS BRISBANE.
(Despatch No. 17, per ship Ocean.)

Sir,

Downing Street, 31st March, 1823.

I have the honor to acknowledge the receipt of your letter of the 31st Aug. last relative to an Appeal from the decision of the Supreme Court in a case in which Mr. Edward Eagar was appellant and Mr. Henry respondent. In consequence of an application on behalf of Mr. Eagar, requesting the examination upon interrogatory of certain new evidence stated to be important to the favorable issue of his cause, and which from absence or other impediments, at the Trial in the Supreme Court, could not be produced, it appears that, with the concurrence of the Judge Advocate, you granted an order for the examination of the Witnesses, with which the Judge of the Supreme Court was dissatisfied, and officially requested to be furnished with a Copy of the Order which had been pronounced by the Court of Appeal respecting the examination of Witnesses. The Registrar accordingly, by your direction, transmitted to the Judge of the Supreme Court a Copy of the Order, which related exclusively to Eagar's case, and was not a general rule of Court. The Registrar also requested the Judge Advocate to furnish you with a written statement of the Arguments upon which his opinion, respecting the propriety of examining Witnesses in the Court of Appeals, had been founded. The Judge Advocate replied to this application by a letter, in which he expresses extreme dissatisfaction at being required to communicate to any person the grounds of his judicial opinions, and positively declines to make any such communication.

Such being the facts of the case, I have to observe, first, that it does not appear to me possible to express a definite opinion as to the course which ought to have been adopted by you on this occasion. Not only the Courts of Appeals, but the Supreme Court itself, derive their authority and constitution exclusively from the letters Patent of 1814. These Courts are not formed on the model of any Courts of Justice known to the law of England, therefore where (as in this particular case) the letters Patent are silent, the rules and practice of the Courts at Westminster Hall supply at best a loose and very imperfect analogy for the guidance of the Colonial Tribunals. This analogy, however, is the only guide to which it is possible to refer.
Subject to the preceding remark, my opinion is that you were ill advised in taking notice of the application made to you by the Judge of the Supreme Court. The Judge of the inferior Tribunal has no such concern, personal or official, in the course adopted by the Appellant Jurisdiction, as entitles him to call upon it for any explanation of its proceedings. It is therefore to be regretted that the present controversy was not extinguished, in its commencement, by a refusal on your part to enter into the official explanations which the Judge of the Supreme Court required. It further appears to me, that you were perfectly right in referring to the Judge Advocate for advice as to the course to be taken respecting the examination of Eagar's Witnesses, and in acting upon that advice when obtained. It is obviously the duty of the Judge Advocate, as Assessor of the Court of Appeals, to guide its decisions upon all questions of Law.

I also apprehend that you were entitled to call upon the Judge Advocate for a written explanation of the reasons of this advice, and that the Judge Advocate was ill advised in refusing to give such an explanation. The Judge Advocate grounds his refusal on the circumstance of his being "a constituent member" of the Court. In this I conceive he is mistaken. The letters Patent direct the appeal to be made to the Governor alone. The Judge Advocate is to "assist him," that is to act as his Assessor and Official legal adviser. I further incline to think that the Judge Advocate was in error in advising you to admit new evidence upon the Appeal. The proper function of a Court of Appeal is to review the decisions of the inferior Court, that is to say, to decide whether, the judgment of that Court was right or wrong upon the facts in evidence before it. To admit new Evidence is to institute a new Trial, not to review a Trial already concluded.

The omission of evidence is generally to be imputed to the wilful negligence, erroneous judgment, or deliberate purpose of the party complaining of it. In many instances it would be a most unfair advantage to permit a party to introduce new Witnesses, after he had heard the whole of his opponent's case, and had learnt precisely to what point his new evidence could be most advantageously directed. There would be also, in such a practice, a great temptation to perjury. Moreover, the letters Patent, which give to the Supreme Court power to administer Oaths to Witnesses, give no such power to a Court of Appeal. Hence it may be inferred that it was not meant to entrust the Court of Appeal with any such power. In addition to these general reasons, the practice of all Courts of Appeal of Law or Equity, whether in England or in the Colonies, is opposed to the opinion of the Judge Advocate.

I have, &c.,

BATHURST.
Earl Bathurst to Sir Thomas Brisbane.
(Despatch No. 18, per ship Ocean.)

Sir,

Downing Street, 31 March, 1823.

I have to acknowledge the receipt of your despatch of the 25th Aug. last, No. 18, enclosing a correspondence between yourself and the Deputy Judge Advocate as to the Course, which ought to be pursued with respect to Offenders capitally convicted before the Court of Criminal Jurisdiction. I feel some doubt whether I distinctly understand what is the precise point in dispute between you. It appears to me however that you consider that the Judge Advocate is bound to draw up, and transmit to you, a written report of the proceedings in all cases of Capital conviction, in order that you may form your own decision as to the propriety of issuing a Warrant of execution. The Judge Advocate, on the contrary, contends that he is not bound to prepare any written report of the proceedings of his Court. He concedes, however, as I understand him, that it is his duty to wait upon you in person and to make an oral communication to you as to the proceedings which may have taken place on each Trial.

By the commission* for establishing Courts of Judicature in New South Wales, dated the 2d April, 1787, it is required that the Governor shall grant his Warrant for the execution of every sentence of death pronounced by the Court, and that execution shall not be done in any Capital case without his consent. The Governor, therefore, has to sustain the whole responsibility of carrying into execution, or of suspending, every sentence of Death. In order to discharge this duty, it is essential that he should have the most exact information of every circumstance which occurred at the Trial. Such information can be given with precision in no other mode but that of a written report. The course, which is pursued in cases of Capital Convictions at the old Bailey, is perfectly analogous to this; the Recorder of London makes to His Majesty a written Report; and the Royal Warrant of Execution is never signed until this document has been carefully considered by the Official Advisers of the Crown.

Under these circumstances, I have to express my decided disapproval of the conduct of the Judge Advocate in refusing to furnish you with a written report of the proceedings of his Court in all cases of Capital conviction; and I cannot avoid remarking the indifference shewn by him on the unfortunate situation of the Prisoners on whose cases you were desirous of receiving information.

I have to desire that you will immediately require from the Judge Advocate, a full report of the trial of Carroll, Redding,
and Rogers, and transmit the same to me, in order that I may convey to you His Majesty's Pleasure with regard to the final disposal of these unfortunate individuals.

I have, &c.,

BATHURST.

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EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 19, per ship Ocean.)

Sir,

Downing Street, 31st March, 1823.

I have to acknowledge the receipt of your despatch No. 20 of the 2d Septr. last, reporting the change which you had deemed necessary to introduce in the payments made by the Commissariat for supplies furnished to Government.

It appears that Dollars have for many years past been current in New South Wales at the nominal value of 5s. and that, from the variation of the price of the dollar in Europe, it has lately proved a good remittance to New South Wales.

It has heretofore been the practice for Governt. to fix the Maximum Price at which they would take Agricultural Produce from the Farmer, and they have hitherto paid for this produce in Store Receipts exchangeable for Bills upon the Lords Commissioners of the Treasury at Par. I am therefore of opinion that, on notifying to the Public that Supplies would in future be paid for in Dollars at 5s. each, the Commissary General ought to have been instructed to advertise for his supplies of all descriptions and to have accepted of the lowest offer; and with this modification, I do not think that any of the inhabitants of the Colony could have had reasonable ground of complaint, if the new system of paying in Dollars had been adopted upon notice and simultaneously with a system of procuring supplies by competition. Under all the circumstances of the case, I have recommended the Lords Commissioners of the Treasury to sanction the measure adopted by you, accompanied by instructions to the Commissary General in conformity with the suggestions before mentioned.

I have, &c.,

BATHURST.

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EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 20, per ship Ocean.)

Sir,

Downing Street, 1st April, 1823.

I have the honor to acknowledge the receipt of your despatch No. 22 of the 6th Septr. last, and as an action* has been commenced against Dr. Hall for bringing charges against Dr. Douglass, reflecting on his conduct to Ann Rumsby, I shall not

* Note 19.
feel it necessary to make any observations upon the details of the case; at the same time it is impossible not to be struck with the extreme discrepancy of the evidence, for in a memorandum* drawn up by Dr. Hall, and sworn to before the Judge Advocate, he states “At noon, July 31st, I accidentally called, in company with Sir J. Jamison, at the house of Dr. Douglass; he was not at home, we proceeded along the Road and accidentally looking behind us, we saw a young woman running from Dr. Douglass’s house towards us. I recognised her to be Ann Rumsby.” On the contrary, Ann Rumsby states,* on being asked when and where she communicated with Dr. Hall, “it was the same day down on the Sydney Road when he sent for me” and again, Dr. Hall told me the second time he had sent for me, because he thought I had something laying on my mind. This evidence is corroborated by four other Witnesses and is important, because it is left to be inferred, from Dr. Hall’s statement, that the complaint of Ann Rumsby entirely originated from herself, and that the interview was unsolicited by him. I enclose you a report which I have received from the Gaoler of Norwich, relative to Ann Rumsby, and which is the only information I have been able to obtain respecting her.

The conduct of the Magistrates appears to me to have been most injudicious as well as illegal. They possessed no power to declare Ann Rumsby guilty of perjury, nor is there any sort of proof in the proceedings that it was committed. I have therefore to approve of your dismissal of these gentlemen, as their conduct appears to have placed it out of your power to have continued them in Office, with advantage to the interests of the Colony, as involved in the due exercise of their judicial duties, uninfluenced by private resentment or party feeling.

I have, &c,

BATHURST.

[Enclosure.]

[A copy of this report is not available.]

SIR THOMAS BRISBANE TO EARL BATHURST.

Government House, Sydney, New South Wales,

My Lord,

28th April, 1823.

I have had the Honor of receiving your communication of the ninth of last September accompanied by the first part of the Report† of the Commissioner of Enquiry into the state of New South Wales, and calling my attention to the various points in the different subjects contained in it capable of immediate alteration.

* Note 20. † Note 21.
In obedience to the first recommendation every means shall be used, Your Lordship may rely, to prevent the inhabitants of the town communicating with the convicts newly arrived before their disembarkation. With this view I have already issued an order that the mooring chains, sunk at the early establishment of the colony in the very centre of the cove and long left there neglected, should be newly laid down for the express use of these late arrivals in clear view of both batteries and at a distance from the intercourse of the harbour.

The muster of the Convicts, taken in the time of Mr. Campbell on the quarter deck of the vessel in the presence of the Surgeon Superintendent, the Captain and the Ship's Company, is stated in the Report to have been very detailed. It is only necessary therefore to assure Your Lordship, to obtain upon this point your fullest approbation, that the same muster continues to be taken as accurately as heretofore.

The Surgeons Superintendent to obtain their gratuities are obliged to produce the certificates that are given under my signature at the Navy board. These shall be scrupulously withheld whenever the case may require it; and on the accidental occurrence of any unpleasant event, a special report, as in the instance of Mr. Queade,* shall be always transmitted to Your Lordship.

In the suspicion I have ever entertained that an assurance, held out to the Convicts on their landing that no reference would be made to the past, might have the effect of putting all crimes on an equality, I have had the good fortune to anticipate Your Lordship's Apprehension. And while the minute enquiries, whether they have any complaints and the hope ever sincerely expressed that their new situation may lead to new behaviour, originating with the humane feelings of the late Governor, have been implicitly adopted: the latter part of His address, which crept in unawares among better topics, has been as studiously avoided.

The opportunity presented by the Savings Custody bank, founded by Mr. Field under the patronage of Governor Macquarie for the safe deposit of the property of Convicts, too liable otherwise to become an object of early plunder, has not been neglected; and two instances have lately occurred of individuals entrusting to this institution no less than fifty one pounds.

That the behaviour of the Convicts at Church would be more orderly than usual during my presence cannot be doubted. It is therefore only from report [36, 13] that I have been obliged to lament that the duties of the preacher have been sometimes interrupted for the purpose of checking irregularities in the

* Note 22.
conduct of the convict during divine service. But, by placing in the new church* the seat of the principal Superintendent in the gallery, this evil will be remedied.

[15, 36, 167, 20] The female convicts, without being permitted to disembark in Sydney, have been hitherto sent by water to Parramatta under charge of the Surgeon Superintendent: which trust, by Your Lordship's command, will repose for the future with the Superintendent of the Factory. [167, 23] On the day of debarkation, they have always been dressed in their Navy board clothing: the petticoats of which are so short, however, as to oblige them for decency to wear their own clothes underneath. Their assignment into service is entirely entrusted to the magistrate resident at Parramatta: and the settler, who obtains a female Convict, is obliged in the first place to execute a bond, of which I enclose you a Copy. To this asylum, some women are sent for Colonial crime: and I propose to lodge these in a secluded apartment, and employ them on a tread-wheel.

The enquiries, which used to be instituted in the gaol-yard with the sole view of ascertaining the competence of the newly arrived convicts for employment in the works of government, ceased on my landing [17, 30, 19, 3]: and three weeks after my installation a general order was published throwing open the indulgence of mechanics off the store to all. By the spring which it already has given to buildings in both town and country, this measure is amply justified. The order, that accorded this boon, at the same time obliged the settler to pay for its enjoyment: [15, 37, 59, 11, 170, 31] and the weekly sum of three shillings and sixpence, thus obtained for every mechanic assigned into private service, has enabled me to establish a fund, from which the Convict Clerks and Overseers are remunerated without the appropriation to them of working convicts.

[18, 39, 137, 26] The list of applicants for Convicts is kept in the Secretary's Office: and in their allotment into private families, he always bears reference to the degrees of their crimes. [17, 35, 156, 48] The surgeons of the ships are however allowed the highest latitude in their recommendations into the service of settlers: and the perfect freedom, with which these pick from the government gangs, ensures the alienation, that is desirable from private employ, of the worst men. [163, 24] Keeping this principle continually in view, that these persons are and ought to be the only characters in the employ of Government, and that their two great inducements for lingering here were the little work that was obtained from them and the great ration that they received, [65, 23] I considered it my duty, in obedience to Your Lordship's command, which I brought to the Colony in a dispatch bearing

* Note 23.
date the 8th of May, 1821, to issue, as soon as precedence would allow, an order, at the commencement of the maize sowing season, for a material alteration and reduction in the future ration of the Convicts. The consequence of its promulgation at that time has been an immense production of this valuable grain, which we are now in the act of gathering.

[87, 3] But the subsistence of the Convicts, the principal item in the lavish expenditure of this settlement, will require to be checked by more registers than can at present be immediately arranged, before the extravagance of the Colony can be permanently destroyed. Time flies swiftly when engaged in so laborious a task: but the desire to effectuate it at a future day, which is all that I can now boast, will I hope plead some excuse for my delay in the transmission to Your Lordship of last year's muster books. When however they do arrive, You will find them, I believe, more complete than heretofore and affording perhaps an easy alphabetical reference. An exact transcript has now been finished of the Deeds roll for all the Convicts. The originals and their copies are kept in buildings not contiguous. At present, therefore, the insecurity of these Records is a matter of but little importance. [121, 59] Other documents also are in progress, by which I hope ultimately to be able to decide as to the effect on the conduct of convicts, arising from different terms of transportation. [48, 41, 98, 24, 48] Irregularities have ceased in the police records: and alphabetical references are compiling from the quarterly returns of fines and punishments, transmitted to the Secretary's Office, [122, 48] which, when accomplished, will be an index to the moral history of the Colony. Thus the defects, which are named by Your Lordship as hitherto existing in the registration of the Convicts, are in the course of remedy; and the system will speedily be complete, by which, means will be afforded of pursuing the history, conduct and condition of a convict in his various situations in the colony from his arrival to his emancipation or death. [53, 44] For all these purposes, as well as in order to maintain an effectual correspondence with the Magistrates in the interior, hitherto, as the Commissioner has justly observed, inefficiently performed by Mr. Hutchinson, I have found it already necessary to enlarge considerably the duties of the Colonial Secretary, and his Office also will require augmentation: for I propose to concentrate in Him, not only the primary distribution of all the Convicts, [166, 16] but the auxiliary part also, which regards the changes that take place in their assignments into private employ or returns to the labour of Government. [120, 41] The appropriation of one day in the year to the reception of applications for indulgences has been actually abolished. Although I feel anxious, in other respects, to adhere
rigidly to the order* of the late Governor regarding Absolute and Conditional pardons, [119, 30, 122, 17] I have still thought it expedient, with reference to Tickets of Leave, to issue a new regulation, which I hope will receive Your Lordship's sanction. These indulgences when granted are now notified weekly in the gazette, with the names of the districts in which their holders are about to reside.

[85, 12] The supply of publick medicine to persons, who can afford to pay for it, was first allowed as a privilege to the Officers of the Medical department on their charging themselves fifty per cent. above the invoice price at the recommendation of the Commissioner. And the practice still continues.

[61, 10, 60, 58] The spare clothes of the Convicts on their landing are not taken from them: and the room allotted for their deposit shall be arranged with as much regularity as its smallness will admit. [36, 21] Every means will be used to keep them well clad by establishing such a system as must ensure the detection and certain punishment of every sale of dress. [35, 42] On all practicable occasions, however, corporal punishment shall be avoided. In the discipline of the Convicts, [34, 60] I have never as yet considered myself called upon to interfere with the ordinary operation of the law. Their classing, feeding and lodging in the twelve rooms of Hyde park barrack, according to the criminality of their offences in England, has been partially attempted with the Store Gang, [33, 22] and shall be forthwith carried into more entire effect. [19, 33] Those, who are transported for a second or a third time, are uniformly detained in Gaol until an opportunity offers for forwarding them to a penal settlement, and it shall be my study to prevent the mistake, which has occurred upon Hunter's River, being repeated on the Hastings. [117, 44] No convict settler shall there be allowed to hold out his produce as a temptation to plunder, or as the means of procuring those gratifications which ought to be denied in a place of correction: and while spirituous liquors shall be excluded from Port Macquarie as vigilantly as even from Newcastle, no attempt shall be permitted to mingle the undeserved enjoyments of property with the bitterness of just punishment.

So far as my power extends, I will endeavour to adopt the Commissioner's recommendation that Sydney should contain four hundred convicts only. [163, 35, 50, 23] It was with the view of discontinuing every ornamental work, and distributing the mechanics among the settlers as much as possible, that the progress of Bennelong's battery was discontinued immediately after my landing: and, to prevent the commencement of any new undertaking, I have now given orders for the occupation, by the sick of the Buffs, of the spare wing in the General Hospital. [30, 55, * Note 24.
67, 45] So fully aware have I always been of the necessity of concentrating the working parties, when they are composed of Convicts, that the road gangs are abolished almost entirely, and the stations at Parramatta, Windsor and Liverpool reduced next to nothing. [29, 60, 31, 57, 39, 48, 11] I am perfectly convinced of the difficulty of task work and its danger, unless under the strictest superintendence. To ensure which my constant endeavours shall be strained to substract from the persons employed about buildings, and direct them to agricultural operations. [58, 22, 32, 46, 166, 33] The badness of the present overseers, and the impossibility of engaging others, is another great inducement for diminishing the Government works. Into a proper compass should these ever be reduced; the Colonial Architect will then be enabled to measure all the tasks that are performed; [31, 15] then will the Overseers be obliged to render without excuse an accurate account of the expenditure of stores to the Storekeeper, while the ledger, which he keeps for the entry of all the materials appropriated to each building, will not then be in arrear.

[36, 58, 158, 54] So happily did I anticipate the view of the Commissioner that it would be conferring a lasting benefit on the Colony, if parties of Convicts were allowed to be employed in the first operation of cutting down trees and clearing the land of their roots, that, by the annexed orders and under the accompanying regulations, I have established falling gangs all over the Country. The number of men so engaged amount already to Seven hundred. [38, 30] Much less prejudicial to good order than the old road parties, do I find their behaviour. [32, 35] To retain in the service of Government those convicts only whose character is the worst, and to employ them on a species of labour more irksome and more fatiguing than the labour of convicts in the service of settlers, is my sole desire: and it has been gratified not a little by the establishment of these gangs.

[27, 41] It is with an entire conviction of the importance of Agricultural establishments in preference to the location of the better sort of Convicts in towns, until a more enlarged system of employment can be brought into operation, that I have given every possible growth to the station at Emu plains, have nourished Bathurst, and founded a new settlement on a small scale at Wellington Valley [39, 49]. To effectuate these intentions it became necessary to anticipate on the 11th of last April Your Lordship's instructions, [41, 12] by removing Mr. Fitzgerald from a situation the due performance of the duties of which was rendered incompatible with his services at Windsor. The veteran detachment at Emu plains I also relieved by an efficient guard of
the 48th Regt.; [40, 25] and the misfortune therefore, which once befell Springwood, is not likely to recur here. Bathurst I have hitherto made a depot for well educated convicts. [41, 59, 104, 3] Their habits of early life incapacitates them from living in the bush: and this seclusion from the intercourse of a stirring town is a grateful protection for all those, who retain any feelings of shame, and a well merited punishment on such as are wholly degraded. While the new settlement at Wellington Valley will afford future means for extending, along the banks of a navigable river far removed from the undue interference of settlers and all the comforts of civilized existence, penal establishments throughout an immense space for the moral reformation of those who are too ungovernable to be restrained by the mild laws of their home.

I have, &c.,

THOS. BRISBANE.

[Enclosure No. 1.]

BOND FOR SETTLERS ON ASSIGNMENT OF FEMALE CONVICTS.

New South Wales.

Know all Men by these Presents that I .................. am held and firmly bound to Frederick Goulburn, Esqre., Secretary to the Colony of New South Wales, his Executors and Administrators, in the Sum of Thirty Pounds of lawful Sterling Money for the due payment of which I bind my Executors firmly by these Presents. In Witness whereof I have hereunto set my Hand and Seal this day of ............. in the year of our Lord, One thousand, Eight hundred and twenty.

The Condition of the above Obligation is such that, Whereas His Majesty's Government of New South Wales have permitted the above bounden .................. to employ for h. ........ own use and benefit .................. Female Convict per Ship .................., if the above bounden .................. shall obey all the Regulations of His Majesty's Government of New South Wales, which now are or hereafter shall be in force touching the relation of Master and Mistress (as the case may be) and Female Convict Servant assigned by the Crown in this Colony:—and also if the said .................. shall obey all the regulations of His Majesty's said Government, which now are or hereafter shall be in force touching the behaviour of Female Convicts transported to this Colony, and pay all pecuniary and other Fines, which she shall incur by reason of the breach of any of the said Regulations, Then this Obligation to be void and of none Effect, otherwise to be and remain in full force and virtue.

Signed, Sealed }
and Delivered }
in presence of }
BRISBANE TO BATHURST.

[Enclosure No. 2.]

GOVERNMENT AND GENERAL ORDERS.

Colonial Secretary's Office, 22nd December, 1821.

Civil Department.

The Government Men hitherto assigned to Overseers are to be immediately recalled to Government Labour, and instead of this Perquisite, those Overseers will be allowed, from the 24th Inst., an annual Salary of Twenty five Pounds payable Quarterly from the Police Fund: to indemnify which Fund a charge of Three shillings and six pence per week will be made against every Person allowed the Indulgence of a Mechanic off the Stores: which Indulgence, under this Condition, being now thrown open to every respectable Settler, Individuals, intending to avail themselves thereof, are desired to send in Applications to the Colonial Secretary's Office, specifying at the same time the Names of the Convicts they at present employ and the Ships that they came by.

By Command of His Excellency The Governor,

F. GOULBURN, Colonial Secretary.

[Enclosure No. 3.]

GOVERNMENT AND GENERAL ORDERS.

Civil Department.

Colonial Secretary's Office, 12th December, 1822.

Commencing with the New Year, the Weekly Rations for each Convict in Government employ in the County of Cumberland will be—

7 lbs. of Beef or Mutton, or 4 lbs. of Pork
5 lbs. of Wheaten flour and } or { Its produce when Manufactured into Bread.
2 lbs. Maize Flour
3 lbs. Maize Flour
¼ lb. Sugar

By Command of His Excellency,

F. GOULBURN, Colonial Secretary.

[Enclosure No. 4.]

GOVERNMENT AND GENERAL ORDERS.

Civil Department.

Colonial Secretary's Office, 7th November, 1822.

The Government Order of the 9th January, 1813, except so far as it rescinded all former Orders and Public Notices on the

Applications for indulgences from convicts.
subject of Applications, "for Free Pardons, Emancipations, Conditional Pardons, and Tickets of Leave, and also for the obtaining of Lands and Cattle" is itself repealed.

To Convicts under Sentence of the Law,

For {Seven Years} who have {One} Masts
{Fourteen "} during {Eight} served {Two} {Three} faithfully,

Tickets of Leave will be issued every Friday, on producing at this Office a Certificate to the following effect:—

"We hereby Certify that A.B., who came by the ship C, which arrived in the year D, has not been Convicted of any Crime or Misdemeanor in this Colony, but is to our own certain belief an honest, sober, and industrious character, having served faithfully E.F., residing in the district of G, from \ldots\ldots\ldots to \ldots\ldots\ldots, H.I. in the District of K, from \ldots\ldots\ldots to \ldots\ldots\ldots, and L.M. in the District of N. from \ldots\ldots\ldots to \ldots\ldots\ldots."

O.P., Resident Magistrate. H.I., Second Master.
E.F., First Master.

By Command of His Excellency,
F. Goulburn, Colonial Secretary.

[Enclosure No. 5.]

GOVERNMENT PUBLIC NOTICE.

Colonial Secretary's Office, 21st March, 1822.

The following Applications will be received at this Office: viz:

For totally clearing Brush Land, at Seven Bushels the Acre.
" Stumping Forest Land at Three, ditto, and
" Burning off ditto.

F. Goulburn, Colonial Secretary.

[Enclosure No. 6.]

EXTRACT FROM THE REGULATIONS TRANSMITTED WITH EACH CLEARING GANG.

Until this Party of Twenty-two Convicts shall have completely huttled themselves on some central spot of the Estate (which His Excellency is of opinion cannot take longer than a Week) they are to draw their usual Rations, but from that date a System of New Regulations is to be adopted.

Continuing then to draw their 10½ lbs. Flour, and 4 lbs. Salt Pork, or 7 lbs. Fresh Meat, with a proportionate quantity of Salt, as usual, the luxuries they are to receive in addition are to depend entirely on themselves. At the end of every Week, before they send for their Rations, their Overseer is to receive from the Proprietor of the Estate a Certificate of the number of Acres.
that have been properly cleared in the Course of that Week, and, on presenting such Certificate to the nearest Storekeeper, he will find directions ready given for issuing for every Acre so certified to have been cleared, three shillings and six pence in money as a reward to himself, and as Remuneration to be divided equally amongst himself and his Party 6 lbs. Sugar, $\frac{1}{2}$ lb. Tea, $\frac{3}{4}$ lbs. Soap and Two Thirds of a pound of Tobacco.

**Under Secretary Horton* to Sir Thomas Brisbane.**

(Despatch per ship Mary; acknowledged by Sir Thomas Brisbane, 28th January, 1824.)

Sir, Downing Street, 19th May, 1823.

You will perceive by the accompanying letter from Lord Bathurst that the enclosed form of return was generally transmitted to the Colonies last year, with a view to receive the information required by the opening of the Present Session of Parliament; I was however sorry to find that it was omitted in the instance of New South Wales, and I was thereby deprived of the assistance I expected to derive from the receipt of it; this mistake was the more unfortunate in consequence of the usual accounts of the Police Fund &c. not having been received from you: I have now however to request that you will lose no time in filling up the different heads of expenditure, &c., and return it with the least possible delay, in order that it may be received before the opening of the next Session of Parliament, and thereby enable me to give such information as will in all probability be required of me.

I am, &c.,

R. Wilmot Horton.

[Enclosures.]

[Copies of these papers are not available.]

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**Major-General Sir Herbert Taylor to Sir Thomas Brisbane.**

22nd May, 1823.

[A copy of this despatch, which was acknowledged by Sir Thomas Brisbane on the 29th of December, 1823, is not available.]

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**Earl Bathurst to Sir Thomas Brisbane.**

(Despatch No. 21, per ship Mary; acknowledged by Sir Thomas Brisbane, 20th November, 1823.)

Sir, Downing Street, 30th May, 1823.

With reference to the promise of Grants made by M. General Macquarie, upon which Subject I have addressed to you a separate despatch this day, you state that, from the nature of

* Note 25.
these Grants, their number, and the informality of the documents
under which they were claimed, you have felt it to be your duty
to restrict the confirmation of these grants to those applicants
only who would undertake to maintain, free of expense to the
Crown, one Convict labourer for every hundred acres so to be
granted. You have also enclosed the form of a grant of land,* but
it does not appear clearly whether that form is only applicable
to the grants of 340,000 acres, made by General Macquarie, or
whether you propose it as the general form of Grants to be
adopted by you in all future Cases. If it is intended to have the
more general operation, the objections, which attach to its more
limited operation, will still more strongly apply to it, as a
measure of universal adoption. Unquestionably if the Grantees
were willing to take the land upon these terms, the result would
be highly beneficial to the interests of His Majesty's Govern­
ment in an economical point of view; for, taking the expense of
maintaining and clothing a Convict at £20 per annum, which is
at the rate of twenty per Cent. under the Estimate made by the
Commissioner of Enquiry, the saving of expense, under the sup­
position of the whole of the land being taken, would amount to
£68,000 per annum, from which it would only be necessary to
deduct the value of the Work, which the Convicts would have
executed had they remained in the Service of Government; and
the acceptance of Grants upon these terms would unquestionably
demonstrate the general prosperity of the Colony; but I am not
sanguine enough to anticipate that many Grants will be accepted
upon the terms proposed, for, considering it in the light of a tax,
its operation must be most unequal, as the quality of the land
will necessarily vary both as to its fertility and convenience of
situation, and consequently the invariableness of the condition
imposed must in many instances prevent its fulfilment. The
system, recommended by the Commissioner in P. 161 of the
Printed Report, proceeds altogether upon a principle of encour­
gement, and upon the belief, which appears to me a reasonable
one, that in proportion as the means of a Proprietor are encreased,
his employment of Convicts will encrease also. But if cultiva­
tion be made, as it must be, an invariable condition in every
Grant, and provisions enacted for the resumption of Grants by
the most summary process, if at the expiration of five years the
degree of cultivation imposed by the Grant be not fulfilled, you
will at once perceive that the inevitable result of the occupation
of such Grants will be the employment of Convicts, as free labor
does not exist within the Colony so as to supercede the necessity
of an application for Convict labor.
I do not consider therefore that there can be any necessity
for coupling with the Grant a direct stipulation that a Convict

* Note 26.
must be employed by every Grantee holding a certain defined number of Acres; but that it would be much more desirable to regulate the conditions of Grants upon a different principle, to impose in the first instance in each grant a quit rent, proportioned to the quality and circumstances of the location, at the rate of one and a half per cent. upon the present estimated value, which quit rent should not begin to be payable until the commencement of the sixth year; this quit rent to be perpetual, but to be redeemed at the option of the Grantee at twenty years purchase: thus for example, if a Grantee, at the commencement of 1824, receives a Grant of 200 Acres, estimated in present value at ten shillings per acre and consequently worth £100, for which in the year 1829 he is to begin to pay £1 10s. per annum quit rent, being at the rate of thirty shillings per cent. on the estimated value, it will be in his power at any time to redeem that quit rent by the payment of £30. Care must be taken that, when the annual quit rents become due, they are levied by summary process. In any special case, when remission may be deemed advisable, application is to be made through the Governor to the Secretary of State for his decision. This present scale of granting lands should only continue in operation for five years, after which time it should be distinctly understood in the Colony that the terms of the grants and the rate of the quit rent should be altered with respect to future grants, if deemed necessary.

You will have understood from my despatch of * that His Majesty's Government will never lose sight of the important distinction between the punishment of the Convict for the offence which he has committed, and the employment of the labor of the Convict for the benefit of the Colonists. As the first is the primary object, the utmost care must be exerted that the situation of the Convict, when taken off the Store by the Colonists, must be one of laborious employment, tempered at the same time with every consideration of proper humanity, and with every corrective principle of reformation; and I need scarcely observe that this reformation is likely to be accomplished, in proportion to the distance which the Convict is removed from the Towns, where no precautionary measures can prevent the contagion arising from evil association and connections. The same principle must be applied to convicts of a higher Class, who are not calculated for agricultural labor, but whose services may be required for other duties within their competency, and which may be exercised with advantage to the Colony.

You have been already informed that the worst Class of Convicts are to be sent to the New Settlements (where the legitimate terrors, which originally attached to a state of Transportation,

* Note 27.
1823.
30 May.

TREATMENT OF WORST CLASS OF CONVICTS.

Report to be made re demand for labour.

Promises of land grants made by Macquarie to be confirmed, except in special cases.

1823.
30 May.

Treatment of worst class of convicts.

Report to be made re demand for labour.

Promises of land grants made by Macquarie to be confirmed, except in special cases.

HISTORICAL RECORDS OF AUSTRALIA.

cannot fail to revive and to resume their power of checking the inroads of Crime by the certainty of effectual punishment) as soon as they shall be in a condition to receive them; others again may probably be selected for hard labor in other Colonies belonging to His Majesty, where there may be a demand for such employment. These circumstances will infallibly diminish the annual proportion of convicts as compared with the average of preceding years, though it is impossible to anticipate the rate of that diminution. It will therefore be your particular duty to ascertain whether the Proprietors and Settlers, whose numbers have been so increased, are likely to be inconveniently by a want of labor, and in such case to apprise His Majesty's Government of the precise nature of the demand for labor, as well of Mechanics as of Agriculturists, so that His Majesty's Government may encourage an Emigration of free labor proportioned to the precise necessity of the case, should such a supply be called for; but under such circumstances I must expect that all Convicts, retained in the present inhabited districts of New South Wales, will have been previously taken off the Store as Convict labourers, except those whom you may retain for the absolute necessities of your Government.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 22, per ship Mary; acknowledged by Sir Thomas Brisbane, 29th November, 1823.)

Sir, Downing Street, 30th May, 1823.

You have informed me in your despatch of the 10th April, 1822, that Major General Macquarie to whom I have applied for information upon the subject, but whose answer I have not as yet received, had made promises of Grants of 340,000 acres previous to his leaving the Colony, and I have to desire that you will not hesitate to confirm any of these, provided the Grantees do not come under any exceptions mentioned in my despatch of the 9th of Sept., 1822, referring to the 1st printed Report, page 173, and that the terms which are directed to be enforced, in my dispatch of this date, shall be strictly and implicitly adhered to in every instance. In all those cases, where you will feel it to be your duty to withhold the confirmation of the grants upon the principles which I have laid down, or in special cases where objections may in your opinion exist, you will not fail to report to me the number and situation in life of the Grantees, the extent of the Grants, and the nature of your objection to their confirmation. I was anxious to have received an explanation from M. General Macquarie, who is now abroad, previous to my having given you
these directions, and to this cause you will attribute the delay
that has occurred in transmitting them, but as I do not deem it
expedient to postpone such directions any longer, I have to re­
quest your particular and prompt attention in carrying them into
effect.

I am, &c.,

BATHURST.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 23, per ship Mary; acknowledged by Sir Thomas
Brisbane, 29th November, 1823.)

Sir, Downing Street, 31st May, 1823.

With reference to my despatch of the 30th Inst., I have
to direct that wherever ingenious Mechanics or skilful Agricul­
turalists, being Convicts, are allotted to any individuals, it may
be arranged that Convicts of inferior value, with reference to
their capacity in labour, should be allotted with them as a means
of equalizing that disproportion which must otherwise belong to
those allotments.

You will also understand that any Settler, who is enabled by
the liberal and judicious employment of his capital to take a
greater number of Convicts off the Store than the generality of
other Settlers, thereby becomes entitled to the favorable con­
sideration of Government; but at the same time efficient pre­
cautions must be taken to prevent any Settler from letting out
for hire the Mechanic or laborer, who is specially allotted to him.

With respect to the principle of estimating the value of land
for the purpose of imposing quit rents according to the directions
conveyed in my despatch, it may be more convenient to establish
three Classes of land, good, moderate, and inferior, rather than
to have a separate valuation for each individual grant. Mr.
Bigge estimates the value of the best land at 10s. per acre; it will
be for you to decide whether that is a fair maximum, combining
the just interests of Government with a liberal attention to those
of the Settler; if you should deem it to be such, the moderate land
would probably be estimated at 7s. 6d., and the inferior at 5s.,
but this assessment must be left to your discretion subject to the
application of the general principles laid down. In the event of
resident Settlers making application for new grants, you are
authorized to refuse them altogether, if they have neglected to
bring the Grants already in their occupation into a due state of
cultivation, or in other Words, if it appears evident that their
present grants require the application of fresh capital, in which
case they can have no Claim for increasing the area of their
property; but in cases where their present grants have been fully
cultivated or occupied according to the nature of the land,
Conditions imposed on resident settlers applying for new grants.

Returns of assigned convicts to be made.

Whether in tillage or in pasture, you will not hesitate to make new grants to them precisely upon the same terms as to the new Settlers, with this single difference that they shall be called upon to pay a quit rent immediately instead of the commencement of the sixth year. With respect to the precise conditions of cultivation, a compliance with which is necessary to secure to the Grantee his complete title, it is impossible for me to do more than to lay down a principle; such conditions of cultivation ought to be imposed as will shew a real intention on the part of the occupier to effect a progressive improvement on his land without exhausting it, and, in the case where he has employed a certain number of Convicts free of expense to the Government, that test should be considered as complete with reference to any other.

It will be necessary that you should transmit annually an account of the number of Convicts employed by Settlers, together with the returns of the Population, distinguishing the numbers supported by each individual free of expense, and divided into the following Classes:

- Good Mechanics;
- Good Laborers;
- Common Mechanics;
- Common Laborers.

I am, &c,

BATHURST.

Sir, Downing Street, 2d June, 1823.

I have the honor to transmit to you the enclosed Pardon, which His Majesty has been graciously pleased to extend to Mary Ann Lyons, who was tried and convicted of Murder at New South Wales on the 18th day of March, 1822, and I am to desire that His Majesty's gracious intentions respecting this Individual may be carried into effect.

I have, &c.,

BATHURST.

[Enclosure.]
Ship Asia for the Term of Five Years, in pursuance of the Sentence passed upon him, and I am to desire that the Prisoner may be allowed to return to this Country if he shall think fit.

I have, &c.,

BATHURST.

[Enclosure.]
[A copy of this pardon is not available.]

EARL BATHURST TO SIR THOMAS BRISBANE.
(Despatch per ship Mary.)

Sir, Downing Street, 4th June, 1823.

I have the honor herewith to transmit to you the Copy of a letter from Mr. E. Barnard relative to an application which has been made to him to remit the Sum of £100 to Mr. Thos. Carne, of Belle Vue, Bringelly Road, New South Wales, and I am to request that you will direct £100 to be paid to Mr. Carne and deduct the same from any Salary which may be due to Mr. Barnard.

I am, &c.,

BATHURST.

[Enclosure.]

MR. EDWARD BARNARD TO UNDER SECRETARY WILMOT.
(Despatch per ship Mary.)

Sir, Downing Street, 28th April, 1823.

An Application having been made to me, as Colonial Agent for New South Wales, by Messrs. Curtis Roberts and Co. of Lombard to remit the Sum of £100 to Mr. Thomas Carne, Belle Vue, Bringelly Road in that Colony, I request to be informed whether, on the Money in question being paid to me, Lord Bathurst will approve of my drawing a Bill on Sir Thomas Brisbane in favor of Mr. Thomas Carne to that amount, which can be deducted from any Salary, which may be due to me as Agent from the Police Fund.

I am, &c.,

EDWARD BARNARD.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.
(Despatch per ship Mary.)

Sir, Downing Street, 5th June, 1823.

I am directed by Lord Bathurst to transmit to you herewith the Copy of a letter from Sir H. Taylor, stating that the 40th Regt. is about to proceed to New South Wales to relieve the 48th Regt., which is to proceed to Madras as soon as 4 Companies of the 40th Regt. shall have arrived at New South Wales; and I am to desire that you will make the necessary arrangements for carrying the Instructions contained in that letter into effect.

I have, &c.,

R. WILMOT HORTON.
MAJOR-GENERAL SIR HERBERT TAYLOR TO UNDER SECRETARY WILMOT.

Sir, Horse Guards, 24th April, 1823.

The 40th Regiment having been selected for the purpose of relieving the 48th Regiment in New South Wales, I am directed by the Commander in Chief to request You will inform Earl Bathurst that it will proceed by Detachments with Convicts, as the Buffs did during the preceding year; and His Royal Highness requests that His Lordship will sanction the necessary arrangements to be made for forwarding to Madras the 48 Regiment, so soon as 4 Companies of the 40th shall have arrived in New South Wales, the 48 Regiment being destined to relieve the 69 Regiment on the Madras Establishment.

The probable numbers of these Two Regiments may be as follows:–

<table>
<thead>
<tr>
<th></th>
<th>40th</th>
<th>48th</th>
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<tbody>
<tr>
<td>Officers</td>
<td>33</td>
<td>30</td>
</tr>
<tr>
<td>Non Com’d Officers and Drs.</td>
<td>41</td>
<td>56</td>
</tr>
<tr>
<td>Rank and File</td>
<td>576</td>
<td>922</td>
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</tbody>
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I have, &c.,

H. TAYLOR.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch per ship Asia.)

Sir, Downing Street, 31st June, 1823.

I have the honor to transmit to you herewith by Lord Bathurst's direction the Copy of a letter from Mr. Hobhouse stating one Edward Lambert, who was transported for life, had received a free pardon and was expected to return to this Country, and I am to express Lord Bathurst's desire that the convict in question may not be allowed to return to this Country if he has not already embarked for that purpose.

I am, &c.,

R. WILMOT HORTON.

UNDER SECRETARY HOBHOUSE TO UNDER SECRETARY HORTON.

Sir, Whitehall, 13 June, 1823.

Mr. Secretary Peel having received a Letter from one of the Magistrates of the County of Hereford stating that accounts have reached his neighbourhood from New South Wales that one Edward Lambert (a man of notorious bad Character), who was Transported for Life in the Ship Hadlow, has tho' the interest of an Officer now in that Colony obtained his Liberty, and that
he intends soon to return Home, I am directed by Mr. Peel to desire that You will move Lord Bathurst to caution the Governor of New South Wales against being Imposed upon by any representation, which may be made to Him in favor of the Culprit in question, if He has not already granted Him a Free Pardon, which Mr. Peel does not think at all probable after the Injunction, which Lord Bathurst has laid upon the Governor of New South Wales with respect to the granting of Free Pardons.

I am, &c.,

H. HOBHOUSE.

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EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 26, per ship Asia.)

Sir,

Downing Street, 29th July, 1823.

In addition to the various subjects to which I have lately had occasion to call your attention, I must advert to the very delicate point of the manner and degree in which those persons who have been in the situation of Convicts should be received into Society, and called upon to exercise the various functions which attach to the possession of property; I allude to the Magistracy, and such other duties as they may be entitled to discharge by law, but which they can only be called upon to perform by the appointment of the Executive Government. Unquestionably the principle is a just and proper one, that men, who, either by satisfaction of the period of their transportation, or by the operation of a pardon, are restored to a state of freedom, should be encouraged to an amendment of their lives and a reformation of their principles, by finding that they could resume that situation from which their criminal conduct had dispossessed them; while the natural effect of their finding themselves rejected and proscribed must make them indifferent in their efforts to regain a character and estimation, from the advantages of which they were to be perpetually debarred. On the other hand, if no distinction be made by those who are in authority and who can consequently influence public opinion between free Convicts and others, who have in no degree forfeited their character and to whom no imputation of guilt has ever attached, the danger may be incurred of disgusting the better part of the community, by shewing them that persons just removed from a state of punishment can at once be placed upon a complete par with themselves. Such being the relative position of the two parties, and there being no legal disqualification within the Colony for those free Convicts exercising any civil functions or duties, it becomes necessary to apply the greatest discretion in the regulation of the principle that I have laid down, so as not to violate the
92

HISTORICAL RECORDS OF AUSTRALIA.

1823.
29 July.

Instructions re the treatment of emancipists.

...feelings of either party; and there can be no doubt, that if a due selection be made on fit occasions and at proper intervals from the Class of free convicts to fill civil situations, the two parties may ultimately be blended together; but that if the prejudices of the free class are awakened by a precipitate or frequent exercise of such discretion, the collision, which must necessarily exist between parties so circumstanced, will probably be kept alive to an indefinite period. The only positive direction, that I feel disposed to give, would be that, in order to uphold the magistracy of the settlement, you will not appoint any person, who has been a Convict to that important situation, until he shall have acquired weight and consideration by the meritorious discharge of other civil employments. In making your selection of persons duly qualified to discharge the duties of civil stations generally, you will be governed, not only by the sense you might entertain of the abilities of the individual, but also by the consideration of the private character which he had obtained since his return to Society, and which naturally requires some interval of time to elapse before any fair estimate could be formed of it.

I have, &c,

BATHURST.

31 July.

Negotiations with John Macarthur re additional land grants.

EARL BATHURST TO SIR THOMAS BRISBANE.
(Despatch No. 27, per ship Asia; acknowledged by Sir Thomas Brisbane, 4th August, 1825.)

Sir,
Downing Street, 31st July, 1823.

I have been informed by Mr. McArthur, Jr., now resident in London, that no Grant of Land had been made to his father in the month of February last, in consequence of the letter which I addressed to you on the 10th July, 1822, and which I understood was received in the Colony on the 22d of Novr.; but Mr. McArthur has shewn me the Copy of a letter from Major Goulburn, addressed to his Father of the date of 11th February ultimo, offering to make him immediately a Grant of 5,000 acres of Land to the Westward of a Grant, originally made to his two Sons by Governor Macquarie; and he has also shewn me a Copy of an answer addressed by Mr. McArthur, Senr., to Major Goulburn stating that as the whole of the Land, which His Excellency the Governor proposed to grant, is without water, exceedingly mountainous and dangerously precipitous, not of good quality, but a great portion of it rocky and barren to such a degree as to be of little use to him, and still less to any other person, he begs leave respectfully to decline it; and expresses a disinclination to trouble the Governor with any fresh application until a further reference should have been made to me. If this Grant be of the nature described, it is perfectly evident that it does not fulfil
the purport of my letter of the 10th July, 1822, which was to give an advantageous addition of property to Mr. McArthur, adjoining to his original Grant, not with any personal reference to that gentleman, but as to a Settler who had satisfactorily fulfilled all the duties that had been imposed on him, and whose improvement of the breed of Sheep in the Colony had been attended with considerable benefit to the Colony itself and had entitled him to the favorable consideration of Government.

It was with that view that I directed such a Grant of Land to be made to him, as might be suited to preserve from loss, or risk of mixture with other flocks of Sheep, that breed of Sheep which he has, after so much trouble and expence, succeeded in bringing to its present state of purity and perfection.

I herewith enclose a Copy of a letter which was lately addressed by Mr. McArthur Junior to my Under Secretary, together with a map which accompanied it, and I have directed that the proposal made by Mr. McArthur Junior be complied with either by actual purchase, on the terms* stated by the Commissioner, Page 48, Third part of the Report, or by the payment of a proportionate redeemable quit rent, according to the terms suggested in my late despatches.

The effect of this arrangement will be to give immediately to Mr. McArthur Senior the Grant of 5,000 Acres to which he is entitled, not only on account of the promise made to him by Lord Camden, but on account of that benefit which his judicious employment of capital has produced to the Colony, and to secure to him the possession of an additional contiguous district, amounting to 5,700 Acres, for which he will have to pay a suitable consideration in the manner that I have already directed, and therefore the public interest will not be affected by the transaction.

You will observe that as the Grants, that are colored brown in the enclosed map, have been already made to Individuals, notwithstanding the promise made to Mr. McArthur that they should be reserved, no alternative remains, but the arrangement which I have directed to be immediately carried into effect in this letter.

I have, &c.,

BATHURST.

[Enclosure.]

JOHN MACARTHUR, JR., TO UNDER SECRETARY HORTON.

Sir, Inner Temple, 21st July, 1823.

I take the liberty of requesting you will be pleased to submit to Lord Bathurst, that having learned from the Reports of the Commissioner of Inquiry, and particularly from the Third on the “State of Agriculture and Trade in New South Wales”

* Note 28.
that the sale of lands, contiguous to grants made upon real
capital was recommended as a measure likely to prove "very
beneficial to settlers, and also to be productive of Revenue to the
Crown" (3 Rep. p. 48), I was induced to lay a proposal before
his Lordship, on behalf of my father, for the purchase of such
Crown lands, adjoining his property in the County of Camden,
as might remain ungranted, after the location to him of the five
thousand acres directed to be given in a despatch transmitted
to the Colony in July 1822.

The principal reasons, on which I solicited for him this indul­
gence, were the great facilities that would arise from the pos­
session of an extensive and connected Tract of country for the
further improvement and encrease of Merino Sheep, the estab­
ishment of vineyards and olive-grounds, and the introduction of
various agricultural products, in which he was prepared to employ
a large capital in a manner alike beneficial to his family and the
public. But having since ascertained that unexpected obstacles
have been raised in the Colony, and that Earl Bathurst's order
has not been complied with, the particulars of which I have
already submitted for your consideration, I am compelled to
intrude again upon his Lordship's and your attention, by entreat­ing
that his Lordship will be pleased to direct that my Father
may receive a Grant of five thousand acres, adjoining his present
estate, and out of the District coloured Green on the accompany­ing
map, and which may extend from the allotment called Bris­
bane to the river Nepean (see Map, marked A), or that his Lord­
ship will permit him to take the whole of that District, consisting
of 10,700 acres, bounded on the north by the river Nepean, on
the west by Mount Hunter Creek, on the South by Brisbane, and
on the east by West Camden, on his either agreeing to pay for
the surplus of five thousand seven hundred acres, at the highest
price named by the Commissioner, or to yield in return any
annual quit rent Earl Bathurst may think it just to impose.
Either of these plans will be acceptable to my father, since he
will be thus relieved from the painful necessity of renewing
discussions in the Colony with the local Government, and will
be placed in early possession of a property which he has been
anxiously expecting for many years, both as the reward of his
past exertions and as the means of completing more extensive
and important improvements. I must further remark that all
the other good lands in the Cow Pastures were granted subse­
quently to my first application to Earl Bathurst, and after I
was assured by Mr. Goulburn, in 1819, that the Governor would
not be authorized to dispose of them until my father's claim
was settled.
BATHURST TO BRISBANE.

There appears, therefore, to be no other mode left of fulfilling the promises, and giving effect to the intentions of Government, than what I have here suggested, and respecting which, from its great importance to my family, and the unforeseen delays already experienced in the Colony, I hope you will excuse the anxiety I feel.

I have, &c.,

JOHN MACARTHUR, JR.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 28, per ship Asia.)

Sir,

Downing Street, 31st July, 1823.

With reference to my despatch of the 9th of Sept., last, transmitting the first part of the Report of Mr. Commissioner Bigge on New South Wales, I have now the honor to enclose the second, in which the Judicial Establishments and the Police are brought under consideration, together with the Third and concluding part of it, on the Agriculture and Trade of the Colony.

In directing your attention to the statements and recommendations made in the two parts now forwarded, I have for the sake of convenience and perspicuity adopted a similar reference to the Pages, to that made in my despatch above alluded to; and I have to desire that a corresponding reference may be followed in your reply to each subject.

You will understand that the recommendations, to which I shall refer in the Commissioner's Report, have received my approbation and sanction; and that I draw your attention to them for the purpose of their being carried into effect. At the same time, if upon any point you feel a strong doubt as to the propriety of completing the alteration, I am disposed to entrust to you, on this as on a former occasion, a discretion of postponing that particular measure until you have heard again from me on the subject.

You will observe, therefore, that in the second report it is recommended, that the Schedule of Fees of the Provost Marshal should be referred to the Judge for revisal, for proportionate augmentation in certain cases there stated. Also that the Schedule of the fees, by which the Charges of the Solicitors are now regulated, should be reduced, as well as those now payable to the Registrar, which should be paid and accounted for upon oath to the Treasurer of the Police fund, from whence a competent and fixed annual Salary should be assigned to the Registrar not exceeding £400. That the Registrar of the Returns of Ecclesiastical Courts should be required to transmit to the Agent for the Colony, a List of all persons dying intestate in the two

1823.
31 July.

* Note 29.
Coloniess, together with an Inventory of their effects, and that to him shall be addressed all enquiries of relations concerning the same.

It is here recommended [61-62] that the Remuneration of the district and petty Constables in New S. Wales and Vandemiens's Land should be reduced to a single ration of 7 lbs. of meat and 7 lbs. of flour weekly; and that no Ration should be issued to their families; that an annual allowance of £20, paid quarterly, should be made to the district constables; and £10 and certain clothing to the petty constables; that no other allowances should be continued; and that this expense at Vandemiens's Land should be borne by the Colonial funds there.

The Commissioner here notices [63] the regulations respecting the removal of Convicts from the service of one master to another, or from one district to another, and suggests that they should be more exactly and carefully enforced; he also notices the superior practice in Vandemiens's Land.

I would particularly call your attention to the observations [65 to 71] here made on the system of granting licences to Publicans, and the necessity of every restraint on the immoderate use of Spirits, that can be effected either by means of positive regulation or exemplary punishment.

It is here suggested [71] that the names of the owner of Carts and Boats should be exhibited upon them, and the numbers of each house in the Towns; also that regulations should be enforced for the due observance of the Sabbath.

The practice [74] of allowing parties under prosecution to obtain Copies of the Informations, taken by the magistrates, from the offices of their Clerk is pointed out as improper, and that it should be altogether discontinued.

The muster of a Ship's Crew is in future recommended [79] to be taken by the Colonial Secretary on board the Vessel, as near as may be convenient before the period of its actual departure, and that the passengers should repair to his Office to have their names inserted in the Clearance before the vessel weighs anchor.

The advertisements in the Gazette [Vide 3d Report Page 55] and Certificates of no detainers to be dispensed with as to Captains, Mates, and Sailors of the Colonial Vessels.

The necessity of encreasing the number of Magistrates is here stated [82], and it is recommended [83] that the Evidence upon which sentences are founded should be entered in the Record Book; With a return made quarterly of all punishments inflicted, Fines, and Penalties levied by order of one or more Magistrates in the form here prescribed [83].
The Commissioner suggests [83] that the Office of Assistant Superintendent of Police in Sydney might be discontinued; and states [84] the number of Clerks required in the Offices of the Superintendent of Police; he comments also upon the duty of the Police Clerks, and of the Clerks of the Magistrates, and on their remuneration both as to Salary and Fees; he points out the impropriety of allowing the Clerks to give any copies of informations, or proceedings without the order of the Magistrates; he recommends [84] that the Magistrates should be allowed to apply the funds arising from fines and penalties in the reward of Constables for activity in the pursuit and apprehension of Offenders; and that Copies of their Accounts should be annually laid before the Chief Justice, and then transmitted to the Governor; also that the allowances to all functionaries should be equalized with a view to the simplification of the Commissariat Accounts, and the transference of a portion of the Charges of the Police from the Treasury at home to the Colonial funds. The importance of great attention [85] in selecting Chief Constables is here adverted to as well as the necessity [14] of allowing a horse for each of these Officers at Parramatta [85] and at Windsor. The establishment of Patroles [Vide also 1st Report Page 107] on the Roads from Parramatta to Sydney, to Windsor, and from thence to Liverpool, is recommended, and I take this opportunity of enclosing to you a plan of an establishment of Horse Patrol in the Colony for your consideration and adoption, if you should think it likely to be productive of beneficial effects.

The duties of the Chief Constables are here specified [85], and the necessity of printed forms for the returns of the musters of convicts &c.

The commissioner here recommends [87-88] that New Gaols should be erected at Sydney and Parramatta; that the regulations [89] of the Gaol at Hobart Town should be introduced into the Gaols in New S. Wales; that the Magistrates should be enjoined to visit them in rotation, and to make a Report once in every month to the Chief Justice; that they should enter also in a Book, to be kept in the Gaols, Minutes of their observations.

The last point in the second part of the Report, to which I feel the necessity of directing your attention, is the recommendation [90 also P. 3] that the vigilance of the Police Officers, in the suppression and punishment of Drunkenness and in the control of Public-houses, should be stimulated by high rewards; that the number of licensed Houses should be gradually reduced to that granted in 1820; that good securities be taken for proper behaviour, and that no Magistrate, having an interest in the Sale of Spirits or who is the owner of any house, shall be continued in the Commission of the Peace.

1823.
31 July.
Administration of police Department.

Fines to be used for reward of constables.

Simplification of accounts.

Selection of chief constables.

Establishment of patrols on main roads.

Regulations re public houses.

Management of gaols.

SER. I. VOL. XI—G
In the Third Part of the Report the Commissioner suggests [17] the necessity of improvement in the communication between Bathurst and the Sea Coast, and other districts by Roads, and by the establishment of a Stock Yard, and a Military Station at the foot of Mount York. He also recommends [18] the examination of certain parts of the Coasts with the view of discovering the existence of Harbors and Rivers, and the nature of their communication with the interior; also a Land Survey in certain directions to ascertain the character of the Country and its capacity for colonization; and in Vandiemen's Land [31] the improvement of a communication between the Coast and the plains of York, and Westmoreland.

The regulations [32] by which the Contracts for the supply of Government may be kept free from Monopoly, or the influence of one, or more individuals, both in New S. Wales and Vandiemen's Land, are here recommended [33] as well as the necessity of building additional Granaries at Windsor, Paramatta, Liverpool, Hobart Town and Port Dalrymple.

I am induced to hope that the alteration in the Department of the Surveyor General, both at New South Wales and Vandiemen's Land here recommended [36] will prevent in future the arrear of business which has occurred in this Department. I have already communicated to you the plan that is to be permanently adopted with respect to Grants and Quit-Rents. You will at the same time take into consideration the observations [37] made by the Commissioner on the condition of cultivation, and on the danger of a literal or even sometimes partial enforcement of such conditions as have hitherto been prescribed, as well as the necessity of more positive proof of the amount of capital possessed by Emigrants.

He suggests [38] the expediency of withdrawing for the future, and also retrospectively, the reservation of timber fit for Govern't purposes, and recommends [39] that new Grants of Richmond and Nelson Commons should be made out with a reservation of Glebe for the Clergymen of Windsor and Richmond. He states [40] also the regulations to be adopted for the direction and formation of Public Roads and the plan [41] for keeping them in repair. Notices the necessity of paying attention [44] to the direction of Streets and the position of the houses; recommends that any equitable interest which Mr. Lord may have in a piece of Ground at Hobart Town fronting the harbor should be purchased for the improvement, or defence of the Town at the expiration of his lease [45]; and expresses an opinion [46] that the Settlement at Launceston should be continued there and not removed to George Town; mentions the expediency [47] of the
entire separation of the Offices of Surveyor General in New S.
Wales and Vandiemen's Land, and of the abolition of the Office
of Surveyor of Roads and Bridges, and Collector of Quit rents,
the latter to become part of the duty of the Colonial Treasurer.
He also recommends that an allowance should be made to two
Assistant Surveyors at £25 per annum each for a horse.

You will pay particular attention [48] to the Reservation of
Lands for the Clergy and Schoolmasters in the several districts
and take care that the same shall be cleared and fenced.

It is strongly recommended [49] that a Survey Division and
Subdivision of each County should be made with a view to facili-
tate the location of land to Settlers, and that access should be
given to the Settlers to inspect the Chart of such Survey. Also
that a Registry should be kept of all transfers of Land held of the
Crown, and that no conveyance of any such land should be legal
unless so registered.

It is here remarked [50] that it is no longer necessary to issue
Cattle to Settlers from the Government herds, nor that the Con-
victs allotted them as Laborers should be subsisted by the Crown,
both which I have therefore to desire may be discontinued except
under the circumstances of Loans of Cattle to the Sons of
persons who have been Convicts, and are alive and settled in the
Colony.

With regard to the account of quit rents [50] to be furnished
by Mr. Meehan, and as already required by my despatch of the
23d March last, I have to desire that you will not fail, in your
requisition of this account, to observe the course here pointed
out by Mr. Bigge.

In treating [50] of the Trade of the Settlements of New South
Wales and Vandiemen's Land, the Commissioner recommends
that a Licence for Tanning should be required, and notices the
measures necessary [51] for the protection of the Hides from
Injury. He also states [52] that it does not appear expedient
to continue the Convicts at the Pottery, except in the coarser
branches of the Trade; he appears to speak [53] however very
satisfactorily of the experiments that have been made of the
New Zealand flax, and I have therefore to approve of your em-
ployment of some of the Convicts in planting the Phormium
Tenax, wherever you may consider that the Soil is best qualified
for its successful cultivation.

With respect to the Colonial duties here mentioned [60], you
will be aware that I have already signified my approval [87] of
the allowance of Drawback on the Reshipment of Articles from
the South Seas by my letter to Governor Macquarie of the 4th
August, 1819, and I have now to authorize you to repeal the Colonial duties alluded to on Sandal Wood, Seal Skins, Beche de mer, Pearl Shells, Olive Wood and Coals.

The state of the water Tanks is here noticed [61], and the charge [102] to vessels alluded to is not justifiable. I hope however that the arrangement with Mr. Busby, and of which you will be informed will enable you to adopt measures for securing a better supply of water for the Town of Sydney.

It is also stated [61] that the fee for permission to Trade should be abolished, and that the Wharf at Sydney should either be enlarged or the Tax repealed. Also that attention should be paid to the state of Sydney Cove, and that an alteration [62] should take place in the mode of levying Wharfage fees.

My despatch of the 27th March last will have already instructed [63] you as to the Goods being landed from Convict Ships not specified in the Lists transmitted by the Commissioners of the Navy.

You will perceive [67] that it does not appear expedient to grant a Charter of Incorporation to the Sydney Bank in the year 1824, when their present Charter expires, but that the establishment should proceed subject to the ordinary risk of Commercial partnership.

It is stated [69] that a place of worship and interment is wanted in the district of Pitt water in Van Diemen's Land, and also another Chaplain. An additional Clergyman has been placed on the Parliamentary Estimate for the present year, and I will take care that no time is lost in supplying the vacancy.

In his remarks [74] on the state of the education in the Colony, Mr. Bigge remarks that the system in the Districts and Towns should be extended and that it would be desirable [75] that a Farm for instruction [76] in Agriculture should be established at Paramatta, also that two more schools [78] should be formed in Van Diemen's Land.

Much alteration is proposed [79] in the manner of taking the musters, and it is expedient that returns [80] of them should be made on regular printed forms, according to the suggestions of the Commissioner.

Among the subjects treated [88] under the head of Revenue, a reduction on the licences to brew from £25 to £5 is proposed. You will also perceive an alteration suggested in the mode of levying the duty on tea and sugar, viz., that, whenever the alterations recommended at the wharf shall have taken place, the duty shall be levied according to the weight, and not according to the sworn value as at present.

It does not appear [88] advisable that any augmentation should take place on the tolls at the different Turnpikes.
It is recommended [89] that the collection of the internal Revenue, whether for duties on Spirits, Tolls, Licences, or otherwise, should be entrusted to an Officer to be named the Colonial Treasurer, to whom also the postmaster shall be accountable for the receipts of his Office after deducting £100 for his annual Salary; also that a Post on horseback should be established from Sydney to Paramatta, and from thence to Windsor.

It appears desirable that leases of the Coal Mines for a term of years should be granted, reserving an annual rent and a portion of the Coal raised; unless subsequent enquiry should induce you to consider that they could be more advantageously worked by the Government. Also that attention should be paid to the botanic Garden.

The arrangement for the augmentation [94] of the Salary of the Colonial Secretary has been already communicated to you in my Despatch of the 29th March last.

I fully approve of the recommendation [95] that young persons, who are natives of the Colony, should for the future be employed as Clerks, instead of those, who have been convicted. As well as of the suggestion [96] that all rations to that Class of functionaries at Sydney, denominated Superintendents, Pilots, Gaolers, Schoolmasters, &c. should be done away with, and that a proportionate money payment should be made to them out of the Police fund; and I have to desire that you will without delay take the necessary measures for making this alteration with respect to the rations specified.

You will also attend to the reduction [97] of the Public Herds at the Cow Pastures, altho' the Herds at Rooty Hill and Bathurst may for the present be continued until the recommendation mentioned in the former report for the removal of these rations can be effected. It will be necessary also to resort to the practice of purchasing horses, instead of the exchange of them for Cattle, and of receiving Grain from the settlers into the Store by weight and not by measure.

After a detail [104] of the establishment of the different hospitals in the Colony, and the regulations by which they are conducted Mr. Bigge recommends [110] that a Store Keeper of Medicines, &c. and an apothecary should be provided; for both of which Situations I shall forward by the earliest opportunity Officers properly qualified for the discharge of these duties. You will observe also the regulations here stated as necessary to be followed respecting the patients at the hospitals, and the supply of Medicines to all the Officers of Government, with the exception of the Clergymen and their families.

In closing [111] this branch of the Enquiry, which is the conclusion of the Third and last Report, Mr. Bigge recommends
that allowances of Horses should be made to the principal Surgeon and his Assistants at Paramatta, Liverpool, Windsor, Hobart Town and Launceston, and that the pay of the Assistant Surgeons should be 7s. per diem, with the allowance of rations &c. The number of Assistants, that I have considered necessary for the Medical Establishment, will have been already notified to you in my letter, which forwards the Parliamentary Estimate for the present year.

In the Medical and domestic arrangements of the Colonial hospitals, you will of course require the opinion of Mr. Bowman the principal Surgeon [111] to whose zealous exertions in the discharge of duty I have had much satisfaction in receiving the testimony of the Commissioner as here recorded [111].

I have, &c.,

BATHURST.

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked “No. 8 of 1823,” per ship Surrey.)

Government House, Sydney, New South Wales,

My Lord, 1st Aug., 1823.

By the present conveyance I have the Honor of transmitting a separate dispatch box addressed to Your Lordship, containing an Alphabetical List of the Names of all the Convicts, who have been transported to New South Wales and were alive in the Territory during the annual Muster for last year.

I have, &c.,

THOS. BRISBANE.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 29, per ship Guildford; acknowledged by Sir Thomas Brisbane, 21st February, 1824.)

Sir, Downing Street, 4th August, 1823.

Herewith I have the honor to enclose an Act* passed in the last Session of Parliament for instituting a Supreme Court of Judicature in New South Wales, and to acquaint you that Francis Forbes,† Esqre., has been appointed to the Office of Chief Justice in the new Court, and will immediately proceed to Sydney to enter upon the duties of his Office.

Mr. Judge Advocate Wylde and Mr. Justice Field have been informed to the above effect, and I have to direct that you will provide a passage for themselves and families to England, in case they should be desirous of returning.

I have, &c.,

BATHURST.

[Enclosure.]

[This act was the statute 4 Geo. IV, cap. xcvi.]

* Note 13. † Note 30.
BRISBANE TO WILMOT.

SIR THOMAS BRISBANE TO EARL BATHURST.
(Despatch per ship Surrey.)

Government House, Sydney, New South Wales,

My Lord,

I have the honor to forward for the information of Your Lordship, the General Monthly Returns of the Troops serving in this Territory from 25th of May to 24th of July, 1823, inclusive.

I have, &c.,

THOS. BRISBANE.

[Enclosures.]
[Copies of these returns are not available.]

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.
(Despatch per ship Guildford.)

Sir,
Downing Street, 5th August, 1823.

I am directed by Lord Bathurst to transmit to you the copy of a letter from Mr. Hobhouse, enclosing a warrant for the discharge of John Holden, who was transported to New South Wales in April last in the Ship "Commodore Hayes," and to desire that the instructions contained in that letter may be carried into effect without delay. I am, &c.,

R. WILMOT HORTON.

[Enclosure.]

UNDER SECRETARY HOBHOUSE TO UNDER SECRETARY HORTON.

Sir,
Whitehall, 19th July, 1823.

I am directed by Mr. Secretary Peel to transmit to you the accompanying Warrant for the discharge of John Holden, who was transported to New South Wales in April last in the ship Commodore Hayes; and I am to desire that you will lay the said Warrant before Lord Bathurst, and move his Lordship to be pleased to forward the same to the Governor of New South Wales in order that the Prisoner may receive the benefit thereof.

I am, &c.,

H. HOBHOUSE.

[Sub-enclosure.]
[The usual warrant signed by R. Peel was inclosed.]

SIR THOMAS BRISBANE TO UNDER SECRETARY WILMOT.
(Despatch per ship Surrey.)

Government Ho., Sydney, New South Wales,

Sir,

With reference to the Letter I had the Honor of addressing to you on the 27th of last January, I feel now great pleasure in complying with the wish of Mr. John Wylde by transmitting
for your information a written communication from Mr. Hibbert, acknowledging the receipt of no less a remittance than Eleven hundred and twenty two pounds nineteen shillings and ninepence three farthings.

I have, &c.,

THOS. BRISBANE.

[Enclosure.]

MR. JOSEPH HIBBERT TO JUDGE-ADVOCATE WYLDE.

Hylords Court, Crutched Friars, London,
3 Septr., 1822.

Sir,

I have been favored by your Brother, Mr. E. A. Wylde, with a remittance in Bills amg. to £1,122 19s. 9|d. on account of Monies paid your late respected Father, Mr. Thomas Wylde, by Richard Brooks of your Colony on my account, having previously revoked the notice of Messrs. Campbell and Cy.; and your brother informs me that the Letter, covering the said Bills, mentions that the balance received from Mr. Brooks should be remitted so as to reach London this Month or last. I was in hopes the Grace's Letter bag would have brought me a Letter, but trust that the next arrival will, and have to acknowledge my Obligations to you for your kind and prompt Attention after my long Disappointment, and also to your Brother Mr. E. A. Wylde for his politeness on the occasion.

I remain, &c.,

JOSEPH HIBBERT.

Recd. at Hobart Town, 4 March, 1823, per Cockburn.

A true Copy:—JNO. WYLDE.

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked "No. 9 of 1823," per ship Surrey; acknowledged by Earl Bathurst, 28th February, 1824.)

Government Ho., Sydney, New South Wales,
9 Augst., 1823.

My Lord,

Herewith I have the Honor to transmit for Your Lordship's indulgent consideration a Memorial from Mr. William Evans, lately an Assistant Surgeon on the Establishment of New South Wales, soliciting the half-pay or pension usually allowed to the same class of Officers in His Majesty's Sea and Land Forces.

Your Lordship will perceive from Mr. Evans' Statement that he has served in the Colony more than Seven years, has been wounded in his left hand by the explosion of a fowling piece, and from two successive attacks of palsy has suffered so much in his health as to be unable to execute the duty of his appointment in a manner satisfactory to his own feelings.
To accept his resignation when proffered, I therefore considered to be incumbent upon me; but I beg most respectfully to recommend to Your Lordship the long and tried Services of Mr. William Evans.

I have, &c.,

THOS. BRISBANE.

[Enclosure.]

THE MEMORIAL OF WM. EVANS, LATE ASSISTANT SURGEON, ON THE MEDICAL ESTABLISHMENT OF NEW SOUTH WALES.

To the Right Honourable Earl Bathurst, His Majesty's principal Secretary of State for the Colonies, &c., &c.

Sheweth,

That memorialist was appointed to his late situation by a General Order of L. Macquarie, Esqr. (the then Governor of the Colony), dated March 16th, 1811, and ordered to take charge of the Medical duties at Newcastle, Hunter's River, where he continued until August 1822.

That Memorialist was wounded in the left hand, by the accidental explosion of a Fowling Piece, on the 3rd of March, 1817, the contents of which passing through the limb deprived Memorialist of the use of that limb.

That on the 16th of October, 1820, Memorialist had a slight attack of Paralysis, and a very severe one on the 20th of the same month, which confined Memorialist to his house for nearly three months, but from which Memorialist recovered by the friendly attentions of Mr. Fenton (Assistant Surgeon of H.M. 48th Regiment) then on duty at Newcastle, with a detachment of the Regiment.

That Memorialist, finding his health continued so precarious, that he could not carry on his duty in a manner satisfactory to his own feelings, addressed, on the 18th of June, 1822, to His Excellency Major General Sir Thos. Brisbane, Governor of the Colony, a memorial, stating his inability to perform his duty, and praying His Excellency's permission to retire, which His Excellency was pleased to allow, and, on the 24th of the ensuing August, Memorialist gave up the charge of his station to Mr. Assistant Surgeon Brooks.

That, in addition to the Medical duties of his station, Memorialist, until the period of losing his Hand, had also to act as Chaplain to the Settlement so far as Reading Divine Service on Sundays, and such Holy days as are observed here; Baptizing Infants and Burying the Dead, which duty again devolved on Memorialist, on the removal of Lieut. Kenworthy of H.M. 48th Regt., and which Memorialist continued to perform until the arrival of the Revd. G. A. Middleton.
That, on the removal of Mr. Assistant Surgeon Fenton of the Military service, the duties of Military Assistant Surgeon devolved upon Memorialist, which he continued to perform until the period he retired from the service.

That for the above extra duties Memorialist never received any kind of emolument.

That from the precarious state of Memorialist's health, and the loss of his Hand, Memorialist is unable to follow his profession, and has a Wife, and two Children, entirely dependent on him for support.

Memorialist, having served His Majesty faithfully during a period of nearly Eleven years and half, prays your Lordship will take his case into consideration, and allow him the same half pay and pension usually allowed to the same class of Officers in His Majesty's Sea and land Forces, under similar circumstances.

And Memorialist, &c., &c.,

W. EVANS.

Patterson's Plains, Hunter River, New South Wales,
27th June, 1823.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch per ship Guildford.)

Dear Sir,

Downing Street, 13th August, 1823.

I herewith transmit to you the copy of a letter addressed to me by Mr. Holme Sumner in favor of a Convict named Charles Nye, and I should be much obliged to you for any indulgence which you can extend to him, in case he shall by his good conduct merit your favorable consideration.

I have, &c.,

R. WILMOT HORTON.

[Enclosure.]

MR. G. HOLME SUMNER TO UNDER SECRETARY HORTON.

Dear Sir,

Hatchlands, 24th July, 1823.

The enclosed is from Mr. Goulburn to his Brother at New South Wales; it is written in favor of a Convict of the Name of Chas. Nye, the son of the Person who suckled my eldest Son and Nursed all the others. I requested it in Consequence of the good Report made by a Surgeon, who went out in the Ship in which he was transported, and who in a subsequent visit to the Settlement had occasion to see a good deal of him, and volunteered as a matter of Justice and Truth to see me and make this Report. He was to have gone out again immediately and had undertaken to deliver Mr. Goulburn's letter. I understand his destination is alter'd, and I trouble you with a Request that you will have the
goodness to forward the Letter to Mr. Goulburn by the earliest Conveyance, and if the Report in your Office corresponds with the private one I have received of this Young man's Conduct, and shall appear to you to justify such an Interference, I shall consider myself obliged by your accompanying it with such a recommendation as may be productive of an amelioration of his Condition during the unexpired term of his Sentence.

I am, &c,

G. HOLME SUMNER.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch per ship Guildford.)

Sir,

Downing Street, 19th Aug., 1823.

I am directed by Lord Bathurst to direct to you herewith the copy of a letter which I have addressed to Mr. John Busby, who has received His Lordship's permission at the recommendation of Mr. Bigge, to proceed to New South Wales, as Mineral Surveyor and Civil Engineer, and who it is conceived may be most advantageously employed in the management of the Coal Mines, in supplying the Town of Sydney with water, and in other objects of a similar nature. You will perceive, by the terms offered in the enclosed letter to which Mr. Busby has acceded, that the period, for which his services have been engaged, is for three years from the date of his first employment in the Colony; that for 200 days given up to the Service of Government in each year he shall receive two hundred pounds per annum from the Police fund, and in the event of his having a house provided for him, that his whole time shall be devoted to the Public. Lord Bathurst therefore directs me to desire that you will comply with the above terms, and to acquaint you that, if you shall consider it expedient, at the expiration of three years you will be at liberty to continue his Services for two years longer, as well as to make him a Grant of land as a remuneration provided the terms of his agreement shall have been satisfactorily complied with.

I am, &c,

R. WILMOT HORTON.

[Enclosure.]

UNDER SECRETARY WILMOT TO MR. JOHN BUSBY.

Sir,

Downing Street, 29 March, 1823.

I am directed by Lord Bathurst to acquaint you, in reply to your application to proceed to New South Wales as Mineral Surveyor and Civil Engineer, that his Lordship feels disposed to authorize the Governor of that Colony to issue to you the sum of £200 p. Ann'm, on the condition of your giving the Govt. the

* Note 31.
benefit of your Services for 200 days in each year, such Salary to
be continued to you for three years from the date of your em­
ployment in the service of Govt, after your arrival in New South
Wales; at the end of which period the Governor will be instructed
to allot to you a Grant of Land as a Remuneration for your
Services, in case he shall feel satisfied with your Conduct during
your residence in the Colony. I am moreover to point out to you
that no house will be provided for you, unless your whole time
throughout the year is devoted to the Public Service, and that you
must not under any circumstances expect to receive rations for
yourself and family. In the event of your acceding to these
terms, a passage will be forthwith ordered for yourself and your
family on board some Vessel sailing from the River for Port
Jackson.

I am also instructed to acquaint you that, if any of your sons,
who may proceed with you, take with them Capital to the amount
of £500, they will be considered as Settlers and have Grants of
Land with the Usual Indulgence of Convict Labour.

I am, &c.
R. WILMOT.

EARL BATHURST TO SIR THOMAS BRISBANE.
(Despatch No. 30, per ship Guildford.)
21 Aug. Sir, Downing Street, 21st August, 1823.

Letter of Mr. Forbes, who has been appointed Chief Justice of New
South Wales, will have the honor of delivering this letter to you,
and altho' he cannot commence his Official Duties until the
arrival of the Charter of Justice, yet it is conceived that he may
be usefully employed in making the necessary arrangements pre­
paratory to the opening of the Supreme Court.

You will therefore consider yourself authorized to confer con­
fidentially with Mr. Forbes on any points, which you may be
desirous of submitting to his consideration, and I beg leave to
recommend him to your notice and attention.

I have, &c.,
BATHURST.

EARL BATHURST TO SIR THOMAS BRISBANE.
(Despatch No. 31, per ship Hibernia; acknowledged by Sir Thomas
Brisbane, 31st January, 1825.)
26 Aug. Sir, Downing Street, 26th August, 1823.

Complaints I have received several representations from Major Druitt,
complaining of the proceedings which have been adopted against
him in New South Wales, and stating his readiness to meet any
impartial investigation into his Conduct.
I have delayed for a considerable time to make any commu­nication to you on the subject, under the expectation of receiving from you the detailed proceedings, which are stated to have taken place. Under all the circumstances stated by Major Druitt, and of the testimony I have received of the respectability of his char­acter from many persons, who have been acquainted with him for a long Series of Years, I conceive that an investigation of the Charges* may be conducted by Mr. Forbes, the Chief Justice of New South Wales, with advantage to the Public service and without being liable to the objections, which have been urged by Mr. Druitt, against the Enquiry by Dy. Commissary Wemyss and Mr. Douglas. I have therefore authorised Mr. Forbes to investi­gate, and report his opinion to me on the Charges which may be brought against Major Druitt, and I am to desire that he may receive every facility from you in conducting the enquiry.

I am, &c,

BATHURST.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 32, per ship Guildford.)

Sir,

Downing Street, 28th Augt., 1823.

I am to inform you that His Majesty has been pleased to appoint Col. Arthur to the situation of Lt. Governor of Van Diemen’s Land, and that Officer will accordingly proceed, in the present month, to take upon himself the duties of his Office.

You will perceive that the clause of the act,† passed in the last Session of Parliament, for the better government of New South Wales, has committed to His Majesty in Council the power of erecting the Island of Van Diemen’s Land into a separate and independent Government. It is not, at present, deemed expedient to effect this seperation, altho' the growing Wealth and Population of the Settlement of Van Diemen’s Land may hereafter induce H.M. to exercise the authority thus vested in him. In the interval, however, it becomes necessary to take measures for obviating those inconveniences, which the union of the two Settlements under one Government has in past times occasioned. I therefore avail myself of the present opportunity to communi­cate to you such Instructions as His Majesty deems it necessary to issue for your guidance in the Government of the Island of Van Diemen’s Land; and to which you, and the heads of the different departments at New South Wales will strictly conform.

The Legislative power, which, under the Act of Parliament, is vested in yourself and your Council, extends to Van Diemen’s

* Note 32.  † Note 33.
Laws to be drafted in Tasmania and passed by N.S.W. council. 

Laws relating to or affecting Tasmania to be approved by lieut.-governor before submission to council.

Responsible executive powers vested in lieut.-governor.

System to be adopted for land grants in Tasmania.

1823. 28 Aug. 

Laws to be drafted in Tasmania and passed by N.S.W. council. 

Laws relating to or affecting Tasmania to be approved by lieut.-governor before submission to council.

Responsible executive powers vested in lieut.-governor.

System to be adopted for land grants in Tasmania.

Land; but as persons resident in N.S.W. will be imperfectly informed of the exigencies of the neighbouring Island, the Lt. Governor has received His Majesty's Instructions to transmit to you the drafts of all such Laws as he may deem it necessary to have passed for the better Government of the settlement under his command. These Drafts will be prepared by the Attorney Gen'l of the Island, and will, in conformity with the Act of Parliament, be laid before the Chief Justice of N. S. Wales for his consideration. If that Officer should report them to be not repugnant to the Law of England, you will take the earliest opportunity of laying them before the Council, and of promoting their enactment. In cases where you may doubt the expediency of such Acts, you will communicate to me the grounds of your doubts, on transmitting them for H.M. confirmation.

You will transmit to the Lt. Governor of V. Diemen's Land, for his consideration, the drafts of all Laws originating with yourself which may specially relate to or affect the Inhabitants of that Island; and you will not lay any such Laws before the Legislative Council if he should report to you that they would, in his opinion, be inexpedient; in cases however of extreme urgency and vital importance, the dissent of the Lt. Governor of V. Diemen's Land is not to induce you to suspend the enactment of the projected Law; but in such cases you will transmit to me, for H.M. consideration, a Copy of the Lt. Governor's report on the subject at the time when the Acts themselves are transmitted for the royal confirmation.

With respect to the executive Government of the Island of V. Diemen's Land, the Lt. Governor alone will be held responsible to H.M. for every measure directly suggested by him, to which, in deference to his recommendation, your official sanction may be given; yet if in any instance his advice shall be plainly and unequivocally repugnant to sound policy, and calculated to endanger the peace or safety of the settlement, you will upon your own responsibility control his opinion.

Among the particular cases to which this general principle will be applied, none is of greater importance than that of Grants of Lands to Settlers. As no valid and perfect title to such Lands can be created, except by instruments to be passed under the Seal of the Colony, the Settlers in V. Diemen's Land must ultimately apply to you for the formal confirmation of the Grants of Lands allotted to them. It will rest, however, exclusively with the Lt. Governor to receive and decide upon the claims of all persons who may propose to settle within the limits of his Government; and he will exercise this power under the same restrictions which have hitherto been imposed upon yourself. He will be
further instructed to deliver to all Settlers written Instruments, authorising them to take possession of the Lands allotted to them, and he will cause a registry to be kept at the Office of the Deputy Surveyor General, in which the names of the intended Grantees and the extent, situation and boundaries of their locations, and the conditions upon which they are to be held, will be carefully entered. An exact transcript of this Registry will be forwarded to you by the earliest opportunities, when it will be your duty, without further Investigation, to direct Grants to be issued in Official Form to the several persons whose names appear in the Returns thus made to you; and you will transmit such grants to V. Diemen's Land, to be there recorded in the Office of the Depy. Surveyor General. The Lt. Governor will be instructed to submit to your decision any questions of novelty or peculiar importance which may arise upon this subject. If in any case you should be of opinion, that he has made an improvident or unreasonable concession of the Waste Lands of the Crown, you will not fail to report fully to me upon the subject, and you will in such cases suspend the issuing any Grant until you shall receive His Majesty's commands. In order to give effect to these arrangements, it is to be understood that the Office of Deputy Surveyor General of V. Diemen's Land is to be entirely distinct from and independent of the Surveyor General of N. S. Wales, nor is the last mentioned Officer to exercise any control or to possess any authority in respect to the Crown Lands in Van Diemen's Land.

The rules, which are thus laid down for your guidance respecting the Grants of unoccupied Lands, are to be understood as applying to the case of Lands and Property of every other description, which H.M. may acquire in V. Diemen's Land by Escheat.

In the receipt and administration of the Revenues of the Crown in the Island of V. Diemen's Land, the Lt. Governor will be instructed to act upon his own discretion, and he therefore will alone be deemed responsible to H.M. He will be directed to apply the local Revenue towards the exigencies of the Public Service without waiting for your express authority for each particular payment, it may become his duty to make. To give effect to this regulation, it will be necessary that whatever duties may be imposed by Ordinances of the Governor and Council for the local purposes of V. Diemen's Land, be in such Ordinances expressly made payable to the person executing the duties of Public Treasurer of that Island; and that the Warrants of the Lt. Governor should in such ordinances be declared to be the only instruments, under the authority of which the produce of such duties can be issued for the public Expenditure of the Island.
The Lt. Governor will be instructed to transmit to you periodical Accounts of his Receipts, and application of these Revenues. He will also be required to lay before you for your decision any financial questions of a new or important nature which may arise within His Government.

The Lt. Governor of V. Diemen's Land will further receive H.M. commands to recommend to you such persons as he may deem best qualified to act as Magistrate, or to fill the public Offices, in the various departments of that Island. It will be your duty to attend to these recommendations and to issue the necessary Instruments for confirming those Individuals in their Official Situations whom he may thus nominate; and in the event of any improper appointment of Public Officers in V. Diemen's Land, H.M. will not hold you responsible. In the removal of Officers already appointed, you will however act upon your own discretion and responsibility; and if you should see cause to disapprove of any recommendation of the Lt. Governor, as to the suspension or removal of any Public Officer, you will transmit to me, for H.M.'s information, a full statement of the grounds of such difference of opinion.

In the exercise of the Royal Prerogative of reprieve or pardoning Persons convicted of Crimes in the Supreme Court of V. Diemen's Land, or of commuting their sentences, you will be guided by the suggestions you may receive on each particular case from the Lt. Governor, to whom the Chief Justice of Van Diemen's Land will make his official report. You will not therefore be called upon to perform the arduous duty of investigating the case of each particular Offender, but you will give your formal and official authority for carrying into effect the decisions which the Lt. Governor will form after communication with the Chief Justice of Van Diemen's Land, and for the propriety of which the Lt. Governor alone will be required to answer.

The power of shortening or remitting the term of Service, for which Convicts may have been transported to Van Diemen's Land, being vested by the Acts of Parliament exclusively in the Governor in Chief of the Colony, you must of course in obedience to those Statutes execute this duty according to your own judgment and discretion. Yet, in the exercise of that judgment, you will avail yourself of the advice and assistance of the Lt. Governor, and will give effect to his recommendations on this subject, whenever they may appear to you consistent with the intention and spirit of the Acts of Parliament.

The Lt. Governor of Van Diemen's Land will receive instructions to correspond directly with this department upon all public questions which may arise within his Government. He will,
however be required to transmit to you, for your information, copies of all the Official communications he may address to H.M.'s Government, or receive from them.

In addition to these more general instructions, there are some topics of a comparatively partial and temporary nature to which it is necessary to advert; among these I have to notice a practise which, from Mr. Commissioner Bigge's report, would appear to prevail at Sydney of collecting and appropriating to the Police Fund at that place the duties on Goods imported or intended for importation into Van Diemen's Land. It is His Majesty's pleasure that this practise should be discontinued, and that the duties on all such Goods should be received at the Port in V. Diemen's Land at which they may be landed; and that they should be exclusively appropriated and applied towards the Public Expediture of that Island.

The various Public Works and Buildings at V. Diemen's Land, which are now in progress, or which have been recommended by Mr. Commissioner Bigge, or which may hereafter be expressly authorised by H.M. Government, will be carried on under the direction and superintendance of the Lt. Governor alone; and you will understand that it will not be within the sphere of your duty to issue orders respecting any Works or Buildings in the Island. The Surveyor General will also regard this subject as not falling within the duties of his department. If however the Lt. Governor should project any new undertakings of this nature, which Mr. Commr. Bigge has not specified as necessary, and which may not have been expressly sanctioned by H.M. Government, he will be instructed to lay before you an account of such intended Works, explaining the object and supposed necessity of them, with the Plans and estimates of the probable expense from the Office of the Depy. Surveyor General of V. Diemen's Land; and he will be directed to suspend such New public undertakings until he shall obtain your sanction and consent.

It is not improbable that, in your conducting the Government of Van Diemen's Land upon the principles thus explained, difficulties may arise which cannot clearly be anticipated, and against which therefore no specific provision can be made. Your Zeal for His Majesty's Service will however suggest to you the importance of preventing such difficulties by a cordial co-operation with the Lt. Governor in acting upon the spirit of the preceding instructions; and that Officer will on his part be instructed to take every opportunity of shewing respect and deference to your Supreme authority.

I have, &c.,

BATHURST.

1823.
28 Aug.

BATHURST TO BRISBANE.
HISTORICAL RECORDS OF AUSTRALIA.

EARL BATHURST TO SIR THOMAS BRISBANE.*
(Despatch No. 33, per ship Guildford.)

Sir, Downing Street, 30th August, 1823.

I transmit to you enclosed a communication with its enclosures which have been addressed to my Under Secretary of State by Mrs. Fry† stating her views with respect to the treatment of Female Convicts; and as these Papers appear to me to contain many valuable Suggestions, I cannot but recommend them to your attentive consideration with the view of carrying them into practical operation, as occasion may require.

I have, &c,  
BATHURST.

[Enclosure.]

MRS. ELIZABETH FRY TO UNDER SECRETARY HORTON.

Respected Friend,  
Plasket House, 8th month, '23.

In compliance with thy obliging proposal, I take the liberty to state in writing our views relative to the Female Convicts in Van Diemen's Land, in order that they may be submitted to the consideration of Lord Bathurst, as we cannot but feel anxious that the care we extend to this degraded class of the Community, not only in the different Prisons but also on the Voyage, should be rendered permanently beneficial through the co-operation of Government in the Colonies. In the first place, we deem it expedient that a Building be erected at Hobart Town for the reception of Female Convicts. That a respectable and judicious matron be there stationed, to superintend the whole Establishment under the direction of the Governor or some magistrate appointed by him for that service. That part of the building be appropriated to the use of an adult and girls' school, and that School Mistresses be selected by the Matron from among the reformed Prisoners, provided they be sufficiently qualified for the office.

That immediately on the arrival of a ship, after it has been visited either by the Governor or by some person appointed by him for the purpose of inspecting into its general condition, the convicts shall be quietly (and as privately as possible) conducted from the ship to the said building, where the deportment of every prisoner shall be scrutinized with exactness; that those, who merit a favourable report, be selected and allowed to be taken into service by the respectable inhabitants under such restraints and regulations as may be considered needful. The others to remain confined, receiving at the same time suitable instruction and employment until they evince sufficient amendment in habits.

* A duplicate of the above letter was also addressed to Colonel Arthur, Despatch No. 2.
† Note 34.
and disposition to warrant the grant of similar indulgence; and we conceive that much benefit might result, if some of the regulations mentioned in the new act of Parliament relative to prisons were enforced in this Colony and in New South Wales. We would also propose that a sufficient supply of strong and decent clothing (not parti-coloured) be provided for them during the Voyage, to be put on when they enter the ship in exchange for their own, of which an Inventory shall be immediately taken by a female officer and given with the clothes to the Surgeon (in the presence of their respective owners), who shall carefully keep them in reserve and deliver them to the Matron of the prison, to which they are destined, who shall receive the same in presence of the prisoners, and shall at the same time see if they tally correctly with the inventories; and upon their discharge from prison but not before, she shall restore them to their proper owners; and we consider that it would be a great advantage, on the voyage and more especially whilst lying in the river, that the women should wear a simple uniform dress; and we think it indispensable for establishing of order and for enforcing the needful regulations on board the ship that a Matron be stationed constantly therein, while they remain in the river, to attend to their clothing and to search their female visitors, in order that no spirituous liquors or anything else that is improper be introduced; and, could a person in that capacity accompany them during the voyage, it would no doubt be highly useful.

We are pleased to understand that the Factory in Parramatta has more than cleared its expences during the last year, as the interest we feel in the welfare of the colonies induces us not only to desire the religious and moral improvement of the population at large, but in all our plans we wish to keep in view such a system as shall eventually prove the most economical to Government as well as the most beneficial to the Colonial States.

In consequence of thy friendly encouragement, I have ventured thus freely to offer with submission our sentiments; we are fully aware that much has been accomplished, that many of our requests have been granted with obliging readiness; and we shall feel our sense of gratitude much increased, if Lord Bathurst will condescend to peruse these remarks and to act in compliance as far as his judgment can approve and his authority enforce.

Believe me to remain with respect and regard,
thy obliged friend,
ELIZ’TH FRY.

\[1^\text{See Plan, which Building, if raised by the Male convicts and composed of such materials as the country affords, would it is supposed be completed greatly within the present estimate.}\]
If the Secretary of State for the home department were to direct that the Surgeon Superintendent should be furnished by the Magistrates with a written account of the general conduct and character of every individual, even previously to their commitment, together with the nature and extent of their offence, we think it would greatly aid the Governor in his decision with regard to the proper disposal of the prisoners.

[Sub-enclosures.]

[Copies of the plan of the prison for female convicts and a description of it will be found in the volume of charts and plans.]

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch per ship Guildford; acknowledged by Sir Thomas Brisbane, 9th February, 1825.)

Sir, Downing Street, 30th August, 1823.

I am directed by Lord Bathurst to transmit to you the Copy of a letter from Mr. Boddy, relative to some property left by his son in the hands of Mr. John Macqueen, a Merchant of Sydney; and I am to desire that you will call upon Mr. Macqueen for an explanation of the circumstances, which have prevented him from remitting the account to Mr. Boddy.

I have, &c.,

R. WILMOT HORTON.

[Enclosure.]

MR. G. BODDY TO UNDER SECRETARY WILMOT.

Sir, His Majesty's Yard, Woolwich, 3d April, 1823.

Having applied at your Department on the subject of the following case, I was advised by the gentleman, to whom I was referred, to bring it in this way before you; in consequence of which I have the honor to submit it as follows:—

My son Joseph Yatman Boddy, lately a Mate of the Magnet, an East India Country ship, died early in the year 1820 at the house of Mr. Andrew Barclay at Port Dalrymple. Mr. John McQueen of Sydney took possession of his Effects at that place amounting to £140, and when what was at Port Dalrymple could be collected, would make the whole about £200, as appears from enclosure No. 1, being a letter from Mr. McQueen, dated "Sydney, 1st March, 1820," in which he requests that the property may be applied for in a legal way. I accordingly took out Letters of Adm'n, and, on the 12th March, 1821, sent out an "Act of Court" empowering Mr. McQueen to pay the same over to me. This will appear from the enclosure No. 2 the receipt of which Mr. McQueen acknowledged by l'er of 11 Decemr., 1821, dated
HORTON TO BRISBANE.

from Launceston (No. 3) stating that the amount to be remitted would be as near as he could then see £175, and that he would remit it about the 1 July following (1822) with Interest, it not being convenient to do so before by reason of his having met with severe disappointments.

Not having received the promised remittance, nor any further advice from Mr. McQueen, and it being more than 3 years that the property has been in his possession, I am under some apprehension as to its security; and accordingly take the liberty of submitting the case to you in the hope that through your powerful interference I may be enabled to succeed in this long protracted affair.

I have, &c,

GEORGE BODDY.

[Sub-enclosure No. 1.]

MR. J. MCQUEEN TO MR. G. BODDY.

Sir,

Sydney, 1st March, 1820.

It is with extreme sorrow I have to announce to you the death of your son Joseph, with whom I had the pleasure of being particularly friendly.

Mr. Boddy arrived here in 1818, and sailed for China in the Magnet, Capt. G. Vine; his health was then very indifferent, and on his return it was so as to be advisable for his abandoning the sea till he could recover; he did so and remained with me for a short time, and as the Southern settlement of Port Dalrymple is reckoned far more healthy than here, and inhabited by a Friendly Kind of People, I advised him to go down there to a friend of mine, Capt. Andw. Barclay at Port Dalrymple, where he could have not only good company but have every inducement to health at no expence; at the house of Mr. Barclay, he Expired fairly worn out with the disease which was somehow in his Lungs. Mr. Barclay, in his letter which bro’t the fatal news, says our friend Boddy departed this life without any notice; he went to bed after saying he thought he was getting better, and in the morning, his not coming to breakfast at the usual time, he was looked for and found cold.

I have enclosed two letters which he left when he was going down; I would have sent them before, was it not that the greatest part of the letters get lost going round to Calcutta.

I have also to inform you that I have funds in my hands, the effects of Mr. Boddy, which is at present £140; but when I am able to collect for what is at Port Dalrymple may make the Sum of £200 or thereabouts.

Not knowing who is entitled to it, I beg that it may be applied for in a legal way, and it shall be ready for such application.
HISTORICAL RECORDS OF AUSTRALIA.

The Vessel being under weigh, which conveys this to you, I am unable to say more at present, but to regret with you the death of a young Man who I much esteem.

I remain, &c,

JOHN McQUEEN.

[Sub-enclosure No. 2.]

MR. G. BODDY TO MR. J. McQUEEN.

Dear Sir,  H.M. Yard, Woolwich, 12th March, 1821.

I duly received in June last your letter, dated 1st March, 1820, communicating the melancholy information of the death of my dear Son Joseph Yatman Boddy at Port Dalrymple at the house of Mr. Barclay. Not long before the receipt of this, I had had similar melancholy intelligence of my youngest son Evan Nepean Boddy, who had gone to Calcutta, and not finding encouragement to remain there, had embarked on his return to England and died on his passage about a week after leaving Calcutta; the loss of two such promising sons has been an unspeakable grief and sorrow to my self, Mrs. Boddy, and all my family. I have now to express our great obligations to the kindness and humanity of yourself and Mr. Barclay for the friendly care and attention shewn to my lamented son Joseph, and shall esteem it a great favour conferred upon me, if I can render you or your friends any assistance or good office in England.

Having regularly taken out Letters of Administration of my son's effects, I beg to enclose you an "Act of Court," which I presume will be sufficient to satisfy you that you are fully authorized to deliver over to me the property you have been so good to collect. If however you have any doubt or difficulty, and will have the goodness to transmit the property to your own Agent in England, I will then produce the letters of Administration to such Agent, and give him discharge in any form that may be required. If there should be any article belonging to my son worth sending home I should be obliged by your putting it on board some ship belonging to London.

I am unwilling to obtrude any request that would occasion trouble, yet I should deem it a great additional kindness, if Mr. Barclay would give me any particulars, he may be so good to recollect, of my son's last illness and conversation. I trust he was conscious of the nearness of his end and was prepared to meet the stroke. Also to give me the exact day of his death, which is not mentioned in your letter. Trusting this further trouble will be obligingly excused, I beg to remain with a deep impression of yours and Mr. Barclay's disinterested kindness, Dear Sir,

Your very obedient Humble Servant,

GEORGE BODDY.
BRISBANE TO BATHURST.

[Sub-enclosure No. 3.]

MR. J. MCQUEEN TO MR. G. BODDY.

Launceston, 11th Decr., 1821.

Dear Sir,

I beg to acknowledge the receipt of yours of the 12th March, and shall reply thereto as fully as I shall be able by the next Conveyance.

I have come down here to obtain settlements of People of this place, and shall at the same time make the enquiries you desire from Captn. Barclay.

The amount I will have to remit you will be as near as I can see £175, which will be remitted about the first of July next w'th int. I am sorry that it is not convenient to do it now, I have met with very severe disappointments from this place. I beg you will excuse this short letter for I have not time to say more as the Messenger for Hobart Town is just departing; however in my next I hope to give you a fuller account, with my best wishes,

I remain, &c.,

JN. MCQUEEN.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch per ship Castle Forbes.)

Sir, Downing Street, 30th August, 1823.

This letter will be presented to you by Mr. Anderson, who proceeds to New South Wales in Medical Charge of the Castle Anderson Convict Ship, and I beg to acquaint you that, in consequence of the favorable recommendations which Earl Bathurst has received of that Gentleman’s Character and qualifications, he has given him permission to remain in that Colony with the hope that you would appoint him to some Medical Appointment.

I have, &c.,

R. WILMOT HORTON.

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked “No. 10 of 1823,” per ship John Bull.)

Government House, Sydney, New South Wales,

My Lord,

3rd September, 1823.

I have the Honor to acknowledge the receipt of your dispatch No. 3, dated the third of March, 1823, and enclosing a complaint from Mr. Jacob “of being unable to obtain a grant of land, and of the inattention with which his applications have been received.”

In this complaint he informs Your Lordship that “in a community of exiles, where unblemished reputation and purity of private life had been hitherto little known in any class of society,
1823.
3 Sept.

Statements by V. Jacob.

Inconsistency of statements.

Arrival of V. Jacob in Sydney.

Adverse criticism of his commercial enterprises.

Consideration of V. Jacob's petition postponed.

he confidently anticipated that the addition of his irreproachable character would command the warmest encouragement.” After which he adds that he had already imported into New South Wales “a stallion pronounced by many to be the finest yet introduced into the Colony; and had ordered others.” And he continues “if Your Lordship shall see, in the exertions which he has already made, and the pledge he has thus given, sufficient cause to extend to him the indulgence heretofore granted to others—he might without exaggeration expect twelve thousand acres.” He then proceeds to take for granted his command of great capital; and concludes by transcribing an invitation from an unnamed merchant of Calcutta to join him in the encrease of fine wool; but who seems so unapprised of this lac of Rupees, which Mr. Jacob states to have imported into the Colony, as to offer to devote to him annually £1,000; and, if he cannot advance any thing himself, to allow him nevertheless a half share in the experiment on his paying a fair rate of interest for half the money so advanced.

Lieutenant Jacob, an officer of the East India Company, certainly did arrive in Sydney under the pretext of ill health, but in reality with a mercantile speculation. His brother officers, of whom there were many at the time convalescent in Sydney, shunned him and publicly upbraided his unnatural alliance of the soldier and the shopkeeper. The Head of his service disowned him, and caused letters to be written, the duplicates of which I forward herewith, requiring a particular report on his behaviour at Sydney. It had not been the practice of the late Governor to bestow indulgence on characters like his: and I did not think that the British Government would wish favours to be lavished on the East India Company’s army, which, in a despatch of the 24th July, 1818, Your Lordship had pointedly refused to the service of His Majesty. In consequence of this belief, the necessity was imposed on me of postponing the consideration of Mr. Jacob’s petition until he had quitted the army. When he waited on the Colonial Secretary, the opportunity was accordingly embraced of giving a refusal to his request with as much attention to his feelings as the most sensible delicacy could desire. He was advised to prefer his application immediately, which would ensure to it the benefit of priority; but he was acquainted that so much land in the country had been promised already, and the allotments in the towns were in so great confusion, that I was unwilling for the present to accede to his application until the towns had been reduced into order and former promises of grants fulfilled. Your Lordship will perceive Mr. Jacob’s first letter to have been written under the impression made by this
communication. He there solicits that the Governor will "extend his protection in granting him an allotment of ground whenever his wise arrangements for ascertaining the extent of government patronage may be mature." And he concludes by avowing the single intention of his whole letter to be "the securing such advantage in the result as His Excellency may deem proper to attach to priority of application." Mr. Jacob's second letter was considered to have been written with the same view; and the mistake was not discovered until he had transmitted a third requiring an immediate answer; when the Secretary's reply was returned forthwith.

Soon after I had reached the Colony, I perceived that the lands in the towns were held almost wholly by permissive occupants. Scarcely a crown grant or a crown lease in being; every tenanted allotment almost having been purchased from some obscure individual, who had exercised the right to sell, under an old verbal permission to occupy, given him by a magistrate or the surveyor. I did not then know, nor have I since been able to discover, any means of reducing this confusion into order, except by directing the Surveying department to draw a plan of each town with the divisions of prescriptive property actually subsisting; then, to frame a lease establishing a quit rent of such an amount that no more applications for allotments would be made than there were allotments to be let; and afterwards, to notify to these permissive occupants that they must take leases of the new form, or relinquish their claims. It was not until this had been all completed, which required a long time, that I could properly ascertain what allotments were disposable. This nevertheless has been accomplished for Parramatta and Newcastle; and I will venture to assert that applications for leases in these towns are answered now with every readiness. But neither Liverpool nor Sydney have been reduced into order as yet, which cannot be deemed surprising, if we couple the extreme irregularity of the boundaries of all their allotments with the various other duties of the Surveying department.

Mr. Jacob, in the middle of his letter, proceeds to acquaint Your Lordship with "the impossibility which is experienced of obtaining at the Surveyor General's Office that correct information without which no deliberate choice can be made." If by "obtaining information," I am to understand Mr. Jacob to mean that the Surveyor ought to advise every emigrant settler officially as to the spot upon which he should settle, and save him thereby the trouble and expense of seeing the Colony with his own eyes, and selecting a spot for himself, I feel convinced that such a mode of proceeding would be productive of every inconvenience. Not
a settler would be thus fixed, but he would proclaim that the Surveyor had designedly recommended him to a bad situation; and memorial upon memorial would pour into the Secretary's Office demanding compensation in land for ruin alleged to be at hand in consequence of the imputed error or interestedness of Mr. Oxley. On obtaining the promise of a grant, the settler formerly went and located himself. Many, who had thus established themselves in the year 1811, have not to this hour had their boundaries so marked as to be able to fence; while some, bringing to the colony the commodity too often imported of a litigious disposition, have under this system purposely seated themselves on the same acre of ground; next quarrelled about boundaries, and then one of them has proposed to Government to forego his claim on receiving the compensation perhaps of two thousand acres in addition. Bathurst and Newcastle are the outlets for emigration at present. At both these places immense tracts have now been surveyed into square miles, which have been numbered. An individual, proposing to settle, proceeds accordingly under this system to one of these spots; rides over the country; reads marked on the trees the number of each square; returns to head quarters, and gets located immediately on the square which he has chosen.

Mr. Jacob then solicits "Your Lordship's serious attention to the regulations lately enacted, by which every person receiving a grant is compelled to enter into penal bonds for the maintenance during ten years of a convict servant for every hundred acres which may be allotted him." It will be unnecessary for me to dwell at present on the political effects of this arrangement, as I propose to render them the subject of a separate dispatch; but I cannot forbear forwarding herewith a list of Convictions for Murder from the year 1810 down to the present date; by which Your Lordship will be able to appreciate the accuracy of Mr. Jacob's statement "of the dreadful effects to be anticipated from the dispersion throughout the interior, and far removed from all discipline and legal authority (for proprietors will not reside at such a distance from the Capital) so many unreformed criminals; and (although 'the alarm,' as Mr. Jacob states in another part of his letter, 'with which these conditions have been viewed by the Colonists themselves cannot be mistaken, for one person and one person only has been found to undertake the completion, or to accept the deeds accompanied by the bond,' yet) before this comes under Your Lordship's review your humanity will have shuddered at the numerous instances of most atrocious murder, which within the last few months have multiplied and alarmed a community, though otherwise most depraved, hitherto remarkably free from the perpetration of this most horrid crime."
Mr. Jacob concludes by dwelling with apparent satisfaction on the purity of his own motives; and lauds his rejection "of every suggestion, which many would have been too ready to adopt, of having recourse to anonymous upbraiding of the local Government in the opposition prints." And it had been well if these motives, asserted to be too pure to yield to such suggestions, had proved themselves able also to withstand the feeble temptation of resorting to a convict in gaol for the purpose of executing low caricatures of the public officers of the Colony and myself.

In conclusion I have the Honor to acquaint Your Lordship that Mr. Jacob has been allowed to make choice of an allotment in the town of Newcastle; and he has been given the temporary occupation of two thousand acres of land. I did not see how I could do less after Your Lordship's letter of the third of last March; and, after the correspondence which had passed between this and the Indian Government, I did not know that I could do more. Should that correspondence terminate favorably, which I feel every inclination to hope, it will then give me additional pleasure to carry the wish of Your Lordship into entire effect, by converting Mr. Jacob's present license of occupation into a Grant, provided he remains in the Colony. But, having arrived as the Supercargo of an investment which he has almost sold, I am certain he will again quit New South Wales before the lapse of many weeks.

I have, &c.,

THOS. BRISBANE.

[Enclosure No. 1.]

LIEUT.-COLONEL CASEMENT TO THE SECRETARY TO HIS MAJESTY'S GOVERNMENT, SYDNEY, NEW SOUTH WALES.

Sir, Fort William, 18th October, 1822.

I am Commanded by the Most Noble the Governor General in Council to transmit to you, under a flying Seal, a Packet Addressed to Lieutenant Vickers Jacob, of the 3d Regiment Native Infantry on this Establishment, now on furlo' in New South Wales, with a request that you will Submit it to the Notice of His Excellency the Governor, and then, under His Excellency's Authority, cause it to be delivered to Lieutenant Jacob.

1. As my Letter written by order of the Supreme Government to Messrs. Macintosh and Co., which is Annexed to that Addressed to Lieutenant Jacob himself, together fully explain the nature of the Confidential Reports received here of that Officer's occupations in New South Wales, it is not necessary to say more on that Subject. But, as the Most Noble the Governor General in Council understands that Lieutenant Jacob's trading pursuits
HISTORICAL RECORDS OF AUSTRALIA.

1823.

3 Sept.

Report requested on V. Jacob's conduct in the colony.

Reports re V. Jacob's mercantile transactions.

V. Jacob called on for an explanation.

can be no Secret at Sydney, having publicly engaged in business as a Shop Keeper or Slop Seller and Announced the same by a Circular notice in the Colony, His Lordship in Council requests you will, with His Excellency Sir Charles Brisbane's sanction, obtain and forward to me such Evidence or Authentic declaration of the fact, as it really Stands, respecting Lieutenant Jacob, as may enable the Most Noble the Governor General in Council to determine whether or not that Officer, in Justice to himself and others, Should be Struck off the Strength of his Regiment and the Bengal Army List.

3. I have further to request, by Command of His Lordship in Council, that you will have the goodness, with His Excellency the Governor's permission, to Call upon Lieutenant Jacob for his Official reply to my Letter within the time Specified therein; and finally to transmit the same to this Office, with the results of your Official Enquiries, by the earliest opportunity.

I am, &c.,

WM. CASEMENT, Lt.-Col., Secy. to Govt. Mily. Dept.

[Sub-enclosure No. 1.]

LIEUT.-COLONEL CASEMENT TO LIEUTENANT VICKERS JACOB, 3D REGIMENT BENGAL NATIVE INFANTRY, ON FURLough, NEW SOUTH WALES.

Sir,

Fort William, 18th October, 1822.

The Most Noble the Governor General in Council having received private information that the furlough, specially granted You to New South Wales on your earnest representation of the ill health of a part of Your Family and Your inability to meet the Expenses of a Furlough to Europe, had been taken Advantage of merely to Cover and enable you to Commence Certain Mercantile Speculations into which you are reported to have publicly entered at Sydney, His Lordship in Council directed me to address your Agents in Calcutta on the Subject: Copies of my Letter with their reply are Annexed for your information.

2. The Most Noble the Governor General in Council Can not refrain from observing that the reply of Your Agents tends greatly to Confirm the prevailing Rumour of your Mercantile Engagements in New South Wales; and as such pursuits form a departure from the duties of your profession, not less Subversive of Military feeling and Character, than they are in Opposition to the Authorized practice of the Service to which you belong, His Lordship in Council has Commanded me to Acquaint you, that he Considers it due to your Corps and the Service at large that you should furnish the Most Satisfactory Evidence in reasonable time, that you have not engaged in any Species of Trade, or at Once Admit the fact.
3. As the Most Noble the Governor General in Council has taken other Measures to Ascertaining the precise nature of your Connexions and Pursuits at New South Wales, I am instructed to Observe, without Contemplating it as possible, that any Concealment on your part would be useless; and His Lordship in Council therefore directs that Your Answer to this Communication be furnished, within 5 Days after its receipt, to the Secretary of His Majesty's Government at New South Wales, under a flying Seal, for the information of His Excellency the Governor of that Colony and for eventual transmission to this Office; and finally that unless You Can offer full Proof of your not having entered into trading Concerns, You do Consider Your furlough cancelled by Government from the receipt hereof, return to your duty forthwith, or tender your resignation of the Service; in failure of which the Supreme Government will direct You to be Struck off the List of the Bengal Army from the date of Your furlough, and the necessary promotion made in your room.

I am, Sir, &c.,

WM. CASEMENT, Lt.-Col., Secy, to Govt. Mily. Dept.

[Sub-enclosure No. 2.]

LIEUT.-COLONEL CASEMENT TO MESSRS. MACINTOSH AND CO.

Gentlemen, Council Chambers, 4th October, 1822.

I am directed by the most Noble the Governor General in Council to Acquaint you that it has Come to the knowledge of Government through private Communication, that Lieutenant Jacob of the 3d Regiment Native Infantry on the Bengal Establishment has Commenced Mercantile or rather Shopkeeping Speculations at Sydney, New South Wales, although that Officer procured leave of Absence, on Furlough, to proceed to that Colony in Consequence of his having represented the bad state of health of some part of his family, and his want of Ability to meet the Expences which a Furlough to Europe would entail on them with a Wife and Child.

2. Under the Circumstance Stated by Lieutenant Jacob when he Solicited Furlough, the Governor General in Council was pleased to make a Special Case in his favor, and represented the Matter to the favorable Consideration of the Honble. the Court of Directors, not having the least idea that he intended to embark in pursuits which are forbidden by the Regulations of the Service, as well as by the Nature and Character of the Military Profession.

3. The Governor General in Council is unwilling to adopt any immediate Steps with regard to the Lieutenant, although, if what has come to the knowledge of Government be Correct, such would
1823.
3 Sept.
Inquiry made from V. Jacob's agents in India.

Refusal of V. Jacob's agents to make any statement.

be perfectly justifiable, Considering that Lieutenant Jacob in that Event has Actually availed himself of a pretence to procure a Furlough to New South Wales, vizt. the recovery of his Family's health, and his own inability to take the regular Furlough to Europe on account of the Expense.

Understanding that Lieutenant Jacob has some Connexion with your House, His Lordship in Council is desirous of being informed whether there is any thing of a Mercantile Nature in it; and if so, that you will be so good as to State it explicitly for the information of Government, in Order that the Situation, in which that Officer has placed himself, may be fully and Clearly understood.

I am, &c.,
WM. CASEMENT, Lt.-Colonel, Secy. to Governm't Mily. Departmt.

[Messrs. Macintosh and Co. to Lieut.-Colonel Caseメント.]

Sir,
Calcutta, 7th October, 1822.

We have the honor to acknowledge your Letter dated the 4th Instant to our Address, intimating to us, by Command of the Governor General in Council, His Lordship's desire to be informed whether there is anything of a Mercantile nature in our Connection with Lieutenant Jacob lately permitted to proceed on Furlough to New South Wales.

Our inclination would prompt us to meet every wish of His Lordship with which it was in our power to Comply; and in no Case should we have more pleasure in testifying our zeal for the Public Service, than in One like the present, where our Compliance might tend to remove an impression on His Lordship's Mind, injurious to the Character of an Officer of the Army under this Government. His Lordship in Council will, however, we are persuaded, perceive the impossibility of reconciling the practice of making public the private Concerns of our Constituents, however Advantageous it might be for an individual to Make an exception in his Case, with the general rule to which we are bound, by every tie of honor and good faith to abide, of Considering our Connection with those who make use of our professional Services as perfectly private and Confidential.

Were this principle departed from in any One instance, it Could not be Adhered to in another without giving just rise to a Suspicion, that there were Other Motives for our Withholding information, than Such as are now Avowed, and thus we might feel ourselves Compelled in some instances to disclose family and Other private Concerns of our Constituents, from the Exposure of which, however innocent in themselves, the Most Serious
embarrassment or distress might Arise to those individuals. We therefore feel ourselves forced, however reluctantly, to abstain from Anticipating what, we have no doubt, Lieutenant Jacob himself will, when Called upon, freely State, as to his Connection with us as Agents.

As private Acquaintances, it is within the personal knowledge of some of the Members of our Firm that it was not in Lieutenant Jacob's power to proceed with his Family to England, and that it was the intimate Conviction of his mind, when he applied for Furlough, that it would be at the imminent peril of the life of an Only Surviving Child, if he did not remove it from this Climate to One more favorable to its Constitution, as experience had proved New South Wales to be.

We have, &c.,
MACINTOSH AND CO.

True Copies:—WM. CASEMENT, Lt.-Col., Secy. to Govt. Mly. Dept.

[Enclosure No. 2.]
SECRETARY GOULBURN TO LIEUTENANT-COLONEL CASEMENT.
Colonial Secretary's Office, Sydney, 23rd May, 1823.

In consequence of your Letter No. 302 of the 18th of last October, received only the beginning of the present Month, I transmitted its Enclosure under flying Seal to Lieut. Jacob, and have now the honor of returning, in compliance with your request, the Official reply of this Officer. I have, &c.,

F. GOULBURN.

[Sub-enclosure.]
MR. V. JACOB TO SECRETARY GOULBURN.

Sir, Sydney, 9th May, 1823.

In reply to your Letter of yesterday covering a Packet from the Secretary to the Indian Government in their Military Department to the address of "Lieutenant Jacob," I beg to state that, Colonel Casement having subsequently to the transmission thereof been the channel through which my resignation of that most honorable title was tendered to that venerated Government, and their acceptance of it published for the information of the Bengal Army, I am apprehensive that my now addressing him, with whom I have not the very distinguished honor of the slightest connexion, must appear superfluous and intrusive. I shall not therefore trouble the India Secretary with an explanation thus become unnecessary.

For the Consideration of this Government, under which it has lately been my object to become liege, I beg permission to submit
that no predilection for pursuits different from those of my former profession prompted my retirement to this Colony, but Sir the most trying reiterated strokes of Affliction, which impressed on my mind a deep conviction that the climate of India would have bereft me of my only surviving child and of my Wife, the critical sufferings of the former in this genial Cline and the anguish of her mentally bereaved parents are known to Doctors Allan, Bowman and Bland and to the Revd. Mr. Cowper, who endeavoured to administer Spiritual Consolation. Our griefs did not fail to excite the generous sympathy of His Excellency's amiable Consort, who commiserated them and showed a feeling disposition towards Consolation by the most humane attention. My precautions were happily crowned with success, and the Climate restored to us the object of our almost extinguished hope, who in India must have sunk into the same Grave with her Brother and Sister.

Your humanity, Sir, will pardon me the trespass of here transcribing a private Letter from a Brother Officer and Friend of date 3d July, 1819.

"It would, my dear Vickers, be unbecoming in me, who have never known the happiness of being a parent, and who consequently cannot adequately feel the misery of losing that endearing Appellation, to attempt to offer you Consolation. In soothing a Grief to which even Religion itself cannot bring an immediate balm, how doubtful must be the efficacy of the Consolations of human Friendship. Had your sorrow been the Consequence of some common Calamity, had it arisen from a circumstance, the occurrence of which you had expected, and for which you would have prepared yourself, had Heaven taken from you one Lamb among a number still left to you, it might not perhaps have been useless to have called your mind to reflection, and to have bid you exercise the fortitude of your Sex, but the sorrow of a Father, who has lost his first fond hope, is to me too sacred even for Consolation. Much as I admire nay reverence that Philosophy which enables us to bear like Men the afflictions to which the flesh is Heir, yet I cannot but smile when I see the Philosophic Cicero, boasting of his having found Consolation for the death of his daughter Tullia, in a survey of the ruins of Cities and of Empires. What is it to you or to me that Troy was, and that Palmyra is no more; the Common sympathy of our nature indeed teaches to feel a regret that the race of Priam should have fallen victims to Treachery, and that the Queen of the Desert should have been cruelly destroyed; but our regret is that of a moment, it passes away with that which gave birth to it, it is of too general a nature to make a particular impression on us, it comes not
home to our bosoms. But there is a little World, which we all
form to ourselves, over the ruins of which we cannot weep, for
even the Mantle of Hope cannot hide from us the desolation.”

Further I have to crave your indulgence in quoting a Letter
from a Friend, received on my return from this Country to India,  
20th September, 1821: “It falls to my lot to communicate to you
the heart rending intelligence that your little Girl is now no more.
She passed from this World after a most painful struggle caused
by teething; neither care or experience were spared by Brice or
his Wife, whose attention was every thing that kind hearts and
Affection Could give. I never witnessed a more tender care
than they evinced for the child from the moment you left her to
the time of her death; it must be some consolation to you and
her poor Mother to know this. McWerter and Browne were both
in attendance, but no human skill could avail; a finer or sweeter
babe I never saw a few weeks before she took ill. This is a sad
greeting to you, but it is impossible to help such causes of sorrow,
and equally so to offer Consolation on such a subject.”

If His Excellency have had patience to peruse such testimony
of the cause of my sorrow, he will I trust have been persuaded
that Colonel Casement has written his vehement strictures and
imputations of “pretence” prematurely; they are I think char­
acterized by excessive precipitation, well described in the allegory
of two Knights, who arriving different ways at a statue holding a
shield faced with Gold and lined with Silver, each determined
that the Target must be wholly Composed of the Metal which
his local circumstances placed in view, fought until being un­
horsed in the encounter they mutually had opportunities of see­
ing both sides of the Question.

The insinuation of an intention of Concealment you, Sir, can
decidedly rebut, as I pointedly put the Military Gentlemen of
the place in possession of my views, dictated by that aversion
from evasion, pretence and Concealment, which in truth will not
more quietly enter any bosom, than molten lead into Water Con­
tained in an Iron Vessel. I had another object to secure in
directly announcing to Military men, His Excellency, yourself,
Col. Erskine, Major Ovens, and Mr. Terence Murray, my inten­
tion, which was this, vizt. in the event of any of those Gentlemen,
feeling disposed to honor me with his acquaintance and perhaps
eventual Friendship, he might not be led to such a Condescension
under the supposition of my being an Officer in the Army, when
in fact I was in progress of regeneration and almost divested of
my former Character as to professional pursuits, which the
acceptance by the Bengal Government of my resignation should
put the flat upon. Previously to my arriving at Van Diemen’s
Land and Commencement of Mercantile transactions (for which however through the agency of my Friend Mr. Drummond I was prepared) I formally announced to my fellow Servants of The Honorable Company (my fellow Passengers) my intention to embark into a different line of Life. Mr. Hyde a senior Merchant in the service replied, 8th April, 1822:

"My dear Jacobs, I have received yours mentioning the determination to which you have come of quitting the Army and becoming a Merchant on your arrival at Sydney, at the same time offering me your best services. I need hardly assure you that my best wishes attend your entire success, and that I trust your most sanguine hopes will be realized to their fullest extent, in the new sphere of life in which you are about to embark. If I can be of any service in promoting your views believe me it will afford me much pleasure &c. &c. &c. and remain, my dear Jacobs, Yours &c. C. C. Hyde."

Major Rodber, on that occasion, wrote:—

"My dear Jacob, I wish to be believed when I say, I do in perfect sincerity wish you may realize all you hope in this new situation you have chosen &c. &c. I beg your assurance of my most hearty wishes to do all, that my humble state will admit of, for the furtherance of your views. Yours faithfully, J. Rodber."

My communication to Captain Campbell was Oral, and he fully sympathized in the teeming necessity of my purpose, applauded and unequivocally promised to cherish it. Simultaneous with the printing of my Circular Letter, I wrote a tender of my resignation, both which I sent by the first ship which sailed from the Colony entrusted to Mr. Drummond, who did not arrive in India until the 20th of October, whereas the Chief Secretary was evidently in possession of "private information" on the 4th of that Month, on which he so precipitously acted, without giving time for the development of facts which would have rendered his injunctions superogatory.

I must trouble you with a few words on the subject of the Chief Secretary's irascible bathos for "Shopkeeping," and explain, for the indulgent Consideration of His Excellency the Governor of this Territory, that the necessity of disposing of a quantity of Merchandize on which there was an outlay exceeding Ten Thousand pounds otherwise than by wholesale was a most harrowing humiliation to me; that necessity rested on the following Grounds—first, a raging epidemic of hostility which I found existing against an interloper so magnificently supported, and who it was not likely should join in Combinations which are locally characteristic. My Invoices were displayed in vain, but fortunately my knowledge of localities enabled me to apply an
antidote against the atmospheric venom, which I resolved to put immediately to the test, and announced my intention of accommodating families &c. with such supplies as they might require at wholesale prices; and, as these were from fifty to several hundreds per Cent. under the common rate of the place, the hasty purchase of my heaviest invoices in self-defence was the immediate consequence, and I made Sales in Hobart Town exceeding Seven thousand pounds Sterling when, had I been more Supine or irresolute, I should not have realized £70.

At Sydney I found Colonial Opulence (dependant on British exuberance) on the ebb and considerably undermined by an Exchange of the Sterling Money, which otherwise would have been in Circulation for a Twenty five per Cent. depreciated Currency, skilfully (for their individual Interest) introduced by Invalids from India, Settlers from England and Scotland, Speculators from England, India and China. The Mercantile body, as far as I had an opportunity of judging, was in the utmost Consternation, aptly illustrated by His Excellency, by an allusion to an Earthquake at Lima. I thought I perceived here too a jealousy against my entering the lists of Competition, and there being only one Commission Establishment conducted with any System, which, as Contemporary with having the interests of Constituents in competition with its own similar speculations, could not be trusted with a delegation, which if duly acted upon must injure the sale of their own Stock, I could not employ. I thus situated was Compelled to employ my Clerk to sell in such manner as circumstances confined me to, and this "private information," if I am not greatly mistaken, was immediately transmitted hence by a notorious felon who I may say descended from the Gibbet at Calcutta to thrive here in mercantile pursuits and Jesuitical hypocrisy.

Since then many strangers have been obliged to act similarly and to my certain knowledge Messrs. Aspinall, Brown and Co. broke their Invoices and apportioned them in quantities suited to the wants of their Customers; and their dignity and respectability cannot be questioned, while Mr. Brown appears publicly honored by the Condescending intimacy of the Colonial Secretary, who by walking Arm in Arm with him necessarily imparts a lustre emanating from the familiarity of high professional and Official Rank.

As to the Circumstance of my inability to proceed to England, while able to repair hither with every advantage, I beg leave only to assure His Excellency that, though it may be irreconcilable, it is an incontestible fact, with an explanation of which I shall not trouble His Excellency.
On His Excellency's time and Indulgence I have made a most unwarrantable trespass, to which I shall not presume to add more than an assurance of my Conviction that I shall experience as much kindness in his consideration of it as my case is entitled to.

I have, &c.,

V. JACOB.

P.S.—Malevolence may enquire "why did he not resign instead of proceeding on Furloogh"; to which I straightly answer that, desiring of forming connexions and securing Confidence in Quarters where I am unknown, and well aware that the most insuperable prejudices have been created in all parts of the World against this Community, the Individuals of which are generally believed to be void of integrity, I Considered the fact of my arriving here bona fide a Lieutenant in the service of the Honorable Company could not fail to guard my announcement of my Intention to accept Agency against the anathema, which every Idea connected with New South Wales would otherwise call forth; for in my Mind no collateral inference whatsoever in life could secure so much Confidence and prejudged title to it as the united fact of a Man having resided long in the East Indies, and particularly of a Servant of that Most Honorable Company whose authority is there recognized paramount.

V. JACOB.

[Enclosure No. 3.]

LIEUT.-COLONEL CASEMENT TO THE SECRETARY TO HIS MAJESTY'S GOVERNMENT AT NEW SOUTH WALES.

Sir,

Fort William, 14th Novr., 1822.

1. Since the dispatch of my Letter No. 302 of the 18th of October last to your address respecting Lieutenant Jacob of this Establishment, a Communication has been received from that Officer, Containing his request to be permitted to resign the Honble. Company's Service, which has been complied with.

2. In continuation however to that Letter, I am directed by the Most Noble the Governor General in Council to request that His Excellency Sir Thomas Brisbane, K.C.B., will have the goodness to bring to the notice of the Supreme Government of India the Name of any Officer of the Indian Army who may at any time be engaged in Commercial, Agricultural or other Speculations at the Colony of New South Wales or its Dependencies, such Speculations being contrary to the existing Regulations of this Service and not considered compatible with Military Rank or usage.

I am, Sir, &c.,

WM. CASEMENT, Lt.-Col., Secy. to Govt. Mily. Dept.
[Enclosure No. 4.]

SECRETARY GOULBURN TO LIEUTENANT-COLONEL CASEMENT.

Colonial Secretary's Office, Sydney,
New South Wales, 26th May, 1823.

Sir,

In acknowledgment of the receipt of your Letter No. 545 Despatch acknowledged. of the 14th of last November, I am directed to have the Honor to acquaint you that His Excellency the Governor will not fail to bring to the notice of the Supreme Government of India the Name of any Officer of the Indian Army, who may at any time be engaged in Commercial, Agricultural, or other Speculations at the Colony of New South Wales or its Dependencies.

Sir Thomas Brisbane feeling so fully convinced that such Speculations are contrary to the existing Rules of the Indian Service, that He has expressly refused a Grant of Land to Mr. Jacob until his reply to the Dispatch conveyed to me in your Communication of the 18th of last October shall have been deemed satisfactory by the Indian Government.

I have, &c.,
F. GOULBURN.

[Enclosure No. 5.]

A List of Criminals Convicted of Murder in the Territory of New South Wales between the first day of January, 1810, and the present time.

1810 and 1811.

Terence Flynn John Shea
Martin Eagan John Dunn
Thomas Clough John Gould

1812 and 1813.

Thomas Mahony John Kearns, Senr.
Pierce Condin John Kearns, Junr.
Matthew Kearns

1814 and 1815.

Michael Hallighan John White
Alexander Sutter John Shepherd
Thomas Turner Patrick Collins
Dennis Donovan

1816.

Philip Magee Colin Hunter
Henry Laycock Thomas Dooley
Patrick Dawson Michael Ryan

1817.

John Walker Richard Collin
Ralph Pearson

1818.

George Gray Hugh Duffy
1823.
3 Sept.

Return of criminals convicted of murder.

[Enclosure No. 5]—continued.

A List of Criminals Convicted of Murder in the Territory of New South Wales, &c.—continued.

1819.
Timothy Buckley
Timothy Ford
David Brown
John Morris

1820.
John Kirby

1821.
James Robinson

1822.
Mary Ann Lyons

Recapitulation.

In 1810 and 1811 6 No.
1812 " 1813 5
1814 " 1815 7
1816 6
1817 3
1818 2
1819 8
1820 2
1821 2
1822 2

43 No.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 34, per ship Hibernia.)

Sir,

I beg to acquaint you that I have received a memorial from A. Villemont, a convict Felon, who was sentenced to transportation for the crime of Slave Dealing; and altho' I deem it objectionable in principle to encourage Persons of this Description to address memorials to His Majesty's Government otherwise than with your direct Sanction, yet, in consideration of the Memorialist's good conduct, which has been attested by four Magistrates, I have to desire that you will acquaint him that, due attention having been given to his case, it has not been deemed possible to comply with his prayer, and that the Allegation upon which that prayer is founded is not correct, his Accomplice Alexander Carrol not having received His Majesty's Pardon.

I have, &c.,

BATHURST.
EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 35, per ship Hibernia.)

Sir,
Downing Street, 5 Sept., 1823.

I have recently had some communication with the Lords Commissioners of H.M. Treasury, respecting the principle which should be observed in fixing the Rations to be granted to Convicts in New South Wales; and I now transmit to you enclosed, for your information and guidance, Copies of the letters which have passed between my Under Secretary of State, and the Secretary to the Treasury upon that Question.

I have, &c.,
Bathurst.

[Enclosure No. 1.]

UNDER SECRETARY HORTON TO SECRETARY HARRISON.

Sir,

Downing Street, 13th June, 1823.

In reply to your letter of the 22d of May requesting me to ascertain Earl Bathurst's opinion upon the propriety of reducing the quantity of salt-meat issued to the Convicts in New South Wales, and upon the other Subjects adverted to in Deputy Commissary General Wemyss's letter of the 2d Sept., 1822, I have to acquaint you that his Lordship is of opinion that the rations should be fixed upon an average, and that, although hard working men cannot be supported unless they receive 7 lbs. of meat, &c. per week, there seems no reason for establishing that maximum in all cases. The Convicts may be divided into 3 Classes.

1st. Hard working men in the Service of Govt.
2d. Men who from age or infirmity are incapable of work.
3d. And men who have been returned on the hands of Govt. by the Settlers, because they would not work.

It becomes therefore a question whether it may not be convenient to establish three distinct rates of Rations. By this arrangement, a selection will be practicable and an incitement to good conduct established, as there will no longer be any temptation to quit the service of Individuals for the chance of remaining idle with the full Govt. allowance; but, if this plan be not adopted, it will be advisable to strike an average and to give an extra allowance to hard working men.

The Observation of Mr. Wemyss is perfectly correct that the substitution of Corn, whether of Indian Maize, which appears peculiarly adapted to the Climate of New S. Wales and to be of an excellent quality, or of wheat which is better suited to the Climate of Van Diemen's land, would inevitably give a stimulus to the cultivation of Land, and create a greater demand for the labor of Convicts, and on these grounds the recommended substitution appears highly desirable, altho' it may be expedient.
1823.  
5 Sept.  
Convicts to be graded into three classes and to be rationed accordingly.

HISTORICAL RECORDS OF AUSTRALIA.

136

to introduce the Change in a gradual manner. Mr. Commissioner Bigge, after commenting upon former and on the present rations allowed to Convicts, at pages 63, 64, 66 and 67 of his first Report, recommends expressly the introduction of Maize flour into rations allowed by Govt., stating that it is generally used by Settlers and found very nutritious, and he then adds:—"until the introduction of the flour of this grain for the breakfast of the Convicts can be generally adopted, the present ration is not larger than the labor of a Convict requires." I am also desired by Lord Bathurst to suggest that Tea and Sugar be forthwith discontinued as a regular part of the Government allowance, altho' it may still be afforded in sickness or as an indulgence and reward to individuals, who conduct themselves with particular propriety.

I am, &c.,
R. WILMOT HORTON.

[Enclosure No. 2.]

SECRETARY HARRISON TO UNDER SECRETARY HORTON.

Sir,
Treasury Chambers, 2nd Sept., 1823.

The Lords Commissioners of His Majesty's Treasury having had under their consideration your letter of the 13th June last, respecting Rations issued to the Convicts at New South Wales, I have it in Command to acquaint you for the information of Earl Bathurst that my Lords entirely concur with his Lordship that it will be a proper and expedient measure to divide the convicts receiving Rations from the Public in New South Wales into three Classes.

1st. Hard Working Men in the Service of Government. That this Class should receive the full Ration at present established but without tea or Sugar, which articles do not appear to their Lordships to form a Species of Provisions to which Persons of this class should be entitled, neither does it appear that Articles of this Sort are necessary for their proper Subsistence.

2nd. Men who from Age or Infirmitry are incapable of work. That the Governor of the Colony should be directed to communicate with the principal Medical Officers upon the spot and assign to this Class such a Ration as may be necessary for their Support, but that a much less allowance of Animal food than is allowed to the Hard working Men would be Sufficient for the Men of this Class.

3d. Men who misconduct themselves, or who have been returned on the hands of Government by the Settlers because they would not work. That the Governor should also be directed to communicate with the Medical Officers upon the Spot with a view of fixing the Ration to be assigned to these Men, and that Such
Ration should be limited both in quantity and quality to the smallest ration that can be allowed consistently with the support of the individuals. In fixing the ration, it will be exceedingly important that it operates as a punishment to the men without permanently endangering their health. And my lords will give directions to the governor of New South Wales accordingly.

I am, &c.,
GEO. HARRISON.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.*
(Despatch per ship Hibernia.)

Sir,
Downing Street, 11th Septr., 1823.

I am directed by the Earl Bathurst to transmit to you a copy of the rules and regulations of the General Penitentiary for convicts at Milbank, in order that you may be in possession of materials which may possibly enable you to improve the system of managing the convicts under your government.

I have, &c.,
R. WILMOT HORTON.

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

EARL BATHURST TO SIR THOMAS BRISBANE.
(A circular despatch per ship Hibernia.)

Sir,
Downing Street, 18th Sept., 1823.

I have authorised the secretary of the society for the encouragement of arts, manufactures and commerce, to transmit to you in future, through this office, a copy of the premiums offered annually by that body, amongst which are many that have been expressly proposed for the benefit of British settlements abroad; and I have to desire that you will cause those which refer to New South Wales to be published in the gazette of the colony, with a view of exciting the attention of the inhabitants to the advantage that may accrue to them from the production of various articles of export, apparently adapted to their climate and soil, and for a supply of which this kingdom is now chiefly, if not altogether, dependent upon foreign states. It is also my wish that every reasonable facility should be afforded for the transmission to England of communications and specimens of the colonial productions.

I have, &c.,
BATHURST.

* A duplicate of the above letter was also addressed to lieutenant-governor Arthur.
1823. 30 Sept.

EARL BATHURST TO SIR THOMAS BRISBANE.

Appointment of J. B. Richards as assistant surveyor.

1 Oct.

Under Secretary Horton to Sir Thomas Brisbane.

[30th September, 1823.]

[Copies of these two despatches, which were acknowledged by Sir Thomas Brisbane on the 30th of July, 1824, are not available.]

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 36, per ship Hibernia.)

1 Oct. Downing Street, 1st October, 1823.

Sir,

As I deem it expedient that the establishment of Colonial Surveyors of Land should be maintained in a state of complete efficiency, I have to instruct you to appoint Mr. James Byrn Richards to be Fourth Assistant Surveyor of Lands with an annual Salary of £100 to be provided for out of the Revenues of the Colony.

I have, &c.,

BATHURST.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 37, per ship Hibernia; acknowledged by Sir Thomas Brisbane, 8th June, 1824.)

2 Oct. Downing Street, 2nd October, 1823.

Sir,

I have to acquaint you that, in pursuance of the arrangements which have been for some time under consideration for the purpose of establishing your Government upon a system of more immediate efficiency, I have appointed Mr. W. Balcombe* to proceed to New S. Wales as Colonial Treasurer.

Salary to be fixed by Brisbane.

I have thought it preferable however not to assign any particular Salary to Mr. Balcombe, but to leave it to you to submit a proposition to me, upon the subject, founded upon the view of the duties which the Colonial Treasurer will have to perform, and the degree of pecuniary responsibility which will necessarily be imposed upon him; and you will in the mean time consider yourself authorised to issue such a moderate Salary as under all the circumstances you may consider it reasonable that he should receive.

Bonds to be given by W. Balcombe.

I have further to desire that you will favor me with your opinion as to the amount of the sum for which Mr. Balcombe and his Securities should give Bonds for the due execution of his Office, and for duly accounting for all monies which may come into his hands. His personal bond may be taken in the Colony, and that of his Securities will be entered into hereafter with the Board of Treasury.

I am, &c.,

BATHURST.

* Note 36.
BATHURST TO BRISBANE.

Sir Thomas Brisbane to Under Secretary Wilmot. 1823.

(S despatch per ship John Bull.)

Government House, Sydney, New South Wales, Sir, 2nd October, 1823.

Having made every Enquiry, in consequence of your letter of the 2nd of last March, respecting Mr. Mell formerly Paymaster of the 102 Regiment, I am induced to believe that this Gentleman is in America. I have, &c.,

THOS. BRISBANE.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 38, per ship Hibernia.)

Sir, Downing Street, 3d October, 1823. 3 Oct.

Having, in my despatches of the 30th and 31st of May, explained to you the principle on which Quit Rents should be established with respect to every future Grant of Land, subject to a facility of Redemption at the option of the Grantee, I am now anxious to point out to you the necessity of making sufficient Reserves in every district, which may in future be granted out for the maintenance of both a Clerical and a School Establishment. The land so reserved should be let in the same manner as other lands; but as there can be no power of redemption of the Rents imposed on them as it is intended to preserve them for specific uses, a certain deduction must be made from the amount of that Rent, so that Parties may have a beneficial interest in taking a lease of them, altho' their ultimate conversion into fee Simple property may not be possible. I should feel considerable difficulty in directing the minute details which must regulate the proposed reservation; but having correctly pointed out to you the principle which it is desirable to execute, I must request you to report to me forthwith as to the manner in which that principle can be most beneficially enforced. It is perfectly clear that, in the first instance, the proceeds from the rent of these Lands will not be sufficient to remove the expence of Clergymen, or of Schools, from the general Colonial funds; but, in proportion as the Country becomes civilized and populous, these lands will increase in value and ultimately prove adequate, or more than adequate, to the purpose. It must, however, be distinctly understood that the annual rent, which is to be derived from these lands, is not to be exclusively employed of necessity in the maintenance of the Clergy, or indeed of the Scholastic Establishments; but such sums, as may be deemed necessary by the Executive Government for the maintenance of those two establishments, are
1823.
3 Oct.
Instructions re reservations of land for church and school purposes.

Reservation of commons.

1823.
3 Oct.
Instructions re reservations of land for church and school purposes.

Reserves for maintenance of educational establishments.

Salary voted for attorney-general.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 39, per ship Hibernia; acknowledged by Sir Thomas Brisbane, 30th September, 1824.)

Sir,

Downing Street, 20th Octr., 1823.

Mr. Saxe Bannister, who has been appointed Attorney General of New S. Wales, will have the honor of delivering this letter to you, and altho' he cannot commence his Official Duties until the arrival of the Charter of Justice, yet he may possibly be of service in assisting Mr. Forbes in making the necessary arrangements preparatory to the opening of the Supreme Court.

You will perceive by the Estimate that the Sum of £600 has been voted by Parliament as a Salary to the Attorney General;

* Note 37.
HORTON TO BRISBANE.

but as that Sum will not be a sufficient remuneration for the Services of Mr. Bannister, you will direct the Chief Justice to draw out a Docket of Fees payable to the Attorney General, to be calculated at such a rate as to produce on an average £600 a year, making the total of Mr. Bannister's Emoluments from Government amount to £1,200 per annum. If however the Fees should exceed that sum, Mr. Bannister will be required to pay the Surplus into the Police Fund; and in the event of their not amounting to £600 per annum you will cause the deficiency to be made good to the Attorney General from the Colonial Revenue.

With respect to the Private Practice, which Mr. Bannister will be allowed to perform, I think it necessary to inform you that I have no objection to his acting as Advocate under the same restrictions as are observed in this Country; but I am of opinion that it would be improper to permit him to practice as a Solicitor; you will therefore take care that the instructions contained in this letter are in every respect strictly observed.

I have, &c.,

Bathurst.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch per ship Hibernia.)

Sir, Downing Street, 20th October, 1823.

I have the honor to transmit to you, by Lord Bathurst's direction, the Copy of a letter from Mr. Macqueen requesting an extensive Grant of Land in the Interior of New S. Wales, on which he proposes to employ a number of Convicts, and to fulfil the usual conditions thro' the medium of Resident Agents and Overseers.

You will perceive by my answer to Mr. Macqueen (a copy of which is enclosed) that Lord Bathurst has acceded to his request, and as Captain McArthur,* who will deliver this letter to you is proceeding to the Colony, and is commissioned to appoint resident Overseers, I am to signify to you Lord Bathurst's desire that a Grant of 10,000 Acres may be made to Mr. Macqueen, in such part of the interior of the Colony as may be considered favorable by Captain McArthur with a reservation of 10,000 adjoining Acres, to be granted to Mr. Macqueen, when the original Grant shall be brought into full and successful Cultivation; and I am to request that you will cause every facility to be afforded to Capt'n McArthur in the undertaking which he is about to commence on the part of Mr. Macqueen.

I have, &c.,

R. WILMOT HORTON.

* Note 38.
MR. J. P. MACQUEEN TO UNDER SECRETARY HORTON.

Park Lane, 21st July, 1823.

My dear Sir,

The New South Wales Bill having now received the royal assent, I am desirous to ascertain how far Lord Bathurst may be disposed to favor the Investment of Capital by Persons not actually resident in the Colony.

From the returns recently laid before Parliament, it appears that the Expenses of the Colony for the Year 1822 have exceeded £450,000 Sterling.

It is evident that the only mode of diminishing this enormous burthen is by holding forth encouragement to Settlers, possessing sufficient Capital to employ Convicts on their own account, to Emigrate.

I am inclined to believe that an English Landed Proprietor, purchasing land in the Colony, might readily cause a portion of his dependents, for whom a sufficiency of remunerative labour cannot be provided at home, to emigrate, and an honest and wholesome Population be consequently imported.

Under these Impressions, I take the Liberty of applying to you to ascertain, if a Grant of Land in the Interior of the Country might be allotted to me on the same terms, on my undertaking to send out resident Agents and Overseers, and to invest Capital to any extent that may be required; and further to employ Convicts either with regard to proportional extent, or discharge of Quit Rents, as may be deemed more advantageous.

I beg however to state that, to Carry fairly into effect the experiments I am anxious to undertake, I should wish to treat for the possession of 20,000 acres, Or, should that quantity appear too large in the first Instance, then to obtain 10,000, with an understanding that on the accomplishment of the terms required, the additional allotment of 10,000 adjacent acres be subsequently granted.

I beg leave to observe in conclusion that I conceive the successful result of the Experiment, I propose to establish, must occasion the importation of a large and valuable body of British Subjects now actually in the Situation of Parish Paupers, and who may be placed in a condition where their honest Industry may provide them with every necessary and Comfort, and materially add to the Commerce and Mercantile Interests of the Mother Country.

I have, &c.

J. POTTER MACQUEEN.
HORTON TO BRISBANE.

[Enclosure No. 2.]

UNDER SECRETARY HORTON TO MR. J. P. MACQUEEN.

My dear Sir,

Downing Street, 18th Aug., 1823.

I have in obedience to your request laid before Lord Bathurst your application for a Grant of land in the interior of New South Wales on the usual terms, subject to your sending out at your own expense resident Agents and Overseers, and employing Capital to the extent that may be required by the regulations in force in that Colony, and to your employment of Convicts as proposed; and I have to inform you that Lord Bathurst will consent to your having a grant made to you of 10,000 Acres, which is as large a Grant as his Lordship thinks it proper to make to any individual; but he will take care to direct that 10,000 adjoining Acres may be kept in reserve, with the view of your obtaining that addition, when the first Grant is brought into full and successful cultivation.

I have, &c,

R. WILMOT HORTON.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch per ship Hibernia.)

Sir,

Downing Street, 20th Octr., 1823.

As a Commentary on an official letter addressed to you respecting a Grant of Land to Mr. Macqueen, it is as well to explain that, in this case and probably in others in which similar Grants may be made, the Grantees will send out to the Colony bona fide Representatives, who have the disposal of their employer's Capital, and who therefore are competent to fulfil completely those conditions of cultivation, which, by late regulations sent to you from Lord Bathurst, are to be employed in every future instance.

I have, &c,

R. WILMOT HORTON.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.*

Sir,

Downing Street, 24th Octr., 1823.

This letter will be delivered to you by Mr. James Stirling Harrison, who is proceeding as Tutor to Mr. Balcombe's Family, and as he has been recommended to Lord Bathurst as a Gentleman of great respectability, I am directed by his Lordship to introduce him to your notice and protection.

I have, &c,

R. WILMOT HORTON.

* Note 10.
HISTORICAL RECORDS OF AUSTRALIA.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch per ship Hibernia; acknowledged by Sir Thomas Brisbane, 6th November, 1824.)

Sir,

Downing Street, 24th Octr., 1823.

I have the honor to enclose to you the extract of a letter addressed to me by Viscount Palmerston, respecting the death of a Mr. William Gore, and I request that you will afford me such information on the subject, as you may be enabled to collect.

I have, &c,

R. WILMOT HORTON.

[Enclosure.]

VISCOUNT PALMERSTON TO UNDER SECRETARY WILMOT.

My Dear Wilmot,

Star St., 26 Sepr., 1823.

It would be very agreeable to me if you could with Truth assure me that William Gore, Esqr., Provost Marshal at Sidney in the Colony of New South Wales, has paid the Debt of Nature; But if He is still alive, it would be at least Some Consolation to me to hear that Melancholy Fact from the best authority; and if the Documents in your Office do not happen to enable you to answer my Inquiry, I should really be obliged to you if you would add to your next Letter to Sidney a little Postscript to inquire about my dear Friend Mr. Gore. You may perhaps Suspect that this interesting Individual is a last Life in an old Irish Lease, and hence these Inquiries.

I have had a most amusing Tour through Holland and by the Rhine as far as Baden, with Scarcely a Drop of Rain the—

(signed as) LORD PALMERSTON.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch per ship Hibernia.)

Sir,

Downing Street, 24th Octr., 1823.

Having referred to Mr. Peel the Petition of Patrick Marigan, a Convict at New South Wales, representing some inaccuracy in the term of his Sentence, I am directed by Lord Bathurst to transmit to you herewith the copy of a letter from Mr. Dawson, together with its enclosures, by which you will perceive that Marigan was capitally convicted of Burglary, which Sentence was commuted to Transportation for Life, consequently there can be no ground for the allegation, contained in his Petition, respecting the inaccuracy of the time for which he was transported.

I have, &c,

R. WILMOT HORTON.
MR. GEORGE DAWSON TO UNDER SECRETARY HORTON.


Having referred to the Lord Lieutenant of Ireland the Petition transmitted in your Letter of the Ultimo, which was presented to Mr. Commissioner Bigge when at New South Wales by Patrick Marigan, a Convict there, representing some inaccuracy in the term of his Sentence, I am directed to transmit to you a Copy of the Letter with its Inclosures which has been received from Mr. Goulburn upon the subject, and I am to desire that you will lay these Papers before Lord Bathurst, and move His Lordship to communicate the same to the Governor of New South Wales.

I am, &c,

GEO. R. DAWSON.

SECRETARY GOULBURN TO UNDER SECRETARY HOBHOUSE.

Sir, Dublin Castle, 12th Sept., 1823.

I have to acknowledge the receipt of your Letter of the 21st Ulto. enclosing the Petition of Patrick Marigan, and having caused the necessary enquiries to be made relative to his assertion of the term of his Sentence of Transportation being Seven Years, and not for Life, I enclose for Mr. Secretary Peel's information the certificate of his Conviction, signed by the Clerk of the Crown for the County of Cork, by which Mr. Peel will observe that Marigan was Capitally Convicted of Burglary, and which Sentence, upon reference to the Entry made of the decision upon the Prisoner's case, appears to have been commuted to Transportation for Life, and that therefore there is no ground for the allegation made by Marigan in his Petition which is herewith returned.

I am, &c.,

HENRY GOULBURN.

CERTIFICATE OF SENTENCE ON PATRICK MARIGAN.

I certify that at a General Assizes and General Gaol Delivery, held at the King's Old Castle, Cork, in and for said County on Friday the 7th day of Aug. 1812, Patrick Marigan was at said Assizes Indicted and in due form of Law found Guilty for that he being an evil disposed person, and not regarding the Laws and Statutes of this Realm, or the Pains and Penalties thereof, together with divers other ill disposed persons on the 1st day of June in the 52d Year of the King at Clonnell, after Sun Set of the same day and before the Sun Rise of the next day following, being unlawfully assembled, did feloniously, forcibly and maliciously break
into the Dwelling House of John Gibbons there situate against the King's Peace and against the form of the Statute. Whereupon Judgment was given by the Court that the said Patrick Managan should be hanged by the Neck until he be dead on Saturday the 22d day of Aug., 1812, at Dungorney in the County of Cork aforesaid: All which I certify this 30th day of August, 1823.

JAMES CHATTERTON, Clerk of the Crown.

Under Secretary Horton to Sir Thomas Brisbane.

(Despatch per ship Hibernia.)

Sir, Downing Street, 24th Octr., 1823.

I am directed by Lord Bathurst to transmit to you hereewith an account shewing the quantities of Medical Comforts &c. supplied by the Masters of Transports and Convict Ships to the Military Hospitals at New South Wales and Van D. Land, and to desire that you will cause the same to be duly accounted for.

I have, &c.,

R. W. HORTON.

[Enclosure.]

[A copy of this account is not available.]

Sir Thomas Brisbane to Under Secretary Wilmot.

(Despatch per ship John Bull.)

Government House, Sydney, New South Wales, 4th November, 1823.

I have the honor to acknowledge the receipt of your letter of the 11th June, 1822, brought by the Master of the Urania, and recommending his brig to my attention in the event of a vessel of Her description being wanted for the Service of Government; and in reply I have the honor to acquaint you that, altho' Mr. Oxley is expected to return shortly from the voyage ordered in the dispatch from Lord Bathurst bearing date the ninth of last September, yet considering the improbability of his making at this late day, after the Eastern Coast of New South Wales has been already Surveyed so minutely, a discovery of any harbor fit for the reception of a Vessel of her class, I did not deem it expedient, on the chance of being able to employ her upon the only service in which she could be useful to the Colony, to close with the high terms of the Master of the Urania.

I have, &c.,

THOS. BRISBANE.
EARL BATHURST TO SIR THOMAS BRISBANE.  
(Despatch No. 40, per ship Brothers.)

Sir, Downing Street, 5th Novr., 1823.

I have the honor to transmit to you the Copy of a letter, addressed to my Under Secretary by the Secretary to the Board of Trade, enclosing one from His Majesty's Consul General at Rio Janeiro representing that two British Vessels having arrived there from New South Wales and Van Diemen's Land, with Cargoes of Wheat and Coals, were subjected to the Foreign Duties of 24 per cent., because they were not furnished with Custom House Cockets and Consular Certificates, and I have to desire that you will direct every British Vessel proceeding with a Cargo from New South Wales for the Brazils to be furnished with a Custom House Cocket and Certificate, in order that upon her arrival she may be allowed to enter upon payment of the duties of 15 per cent.

I have, &c.,

BATHURST.

[Enclosure No. 1.]

MR. THOMAS LACK TO UNDER SECRETARY HORTON.

Office of Committee of Privy Council for Trade,

Sir, 23 October, 1823.

The Lords of the Committee of Privy Council for Trade, having had under their consideration the Copy of a Dispatch from His Majesty's Consul at Rio Janeiro, Stating the recent arrival at that Port of two British Vessels from New South Wales and Van Diemen's Land, with Cargoes of Wheat and Coals, which have been subjected to the foreign Duties of 24 per Cent., because they were not furnished with Custom House Cockets and Consular Certificates, I am directed to transmit to you a Copy of the same for Earl Bathurst's Information; and as it is Stated that the Trade in question may, if properly protected, prove to be of considerable advantage to those Settlements, I am further directed to request that you will submit to His Lordship the Expediency of directing the Governors, or other Authorities at New South Wales and Van Diemen's Land, to furnish the necessary Certificates to British Vessels trading from these Settlements to the Brazils.

I am, Sir, &c.,

THOMAS LACK.

[Enclosure No. 2.]

MR. H. CHAMBERLAIN TO LORDS OF COMMITTEE OF PRIVY COUNCIL FOR TRADE.

Sir, Rio de Janeiro, 28th July, 1823.

Two British Vessels have lately arrived from New South Wales and Van Diemen's Land with Cargoes of Wheat and

* A duplicate of this letter was forwarded to lieutenant-governor Arthur.
1823.
3 Nov.

Papers required by ships trading from N.S.W. to Brazil.

Coals, which have been subjected to the Foreign Duties of 24 pr. Cent., because they were not furnished with Custom House Cocketts and Consular Certificates, and the Government in answer to my application for their being allowed Entry upon Payment of Duties of 15 pr. Cent., according to Treaty, have replied that this cannot be complied with because the terms of the Convention of London between the English and Portuguese Commissioners, subsequent to the Treaty, have not been observed, nor the usual legal Certificates produced according to the practice followed by British Vessels from Guernsey, Jersey and the Cape.

Thus in this case, the Convention, as made to supersede the Treaty to which it was merely an auxiliary and explanatory Measure and the non-existence of a Custom House and a Consul in the British Colony, renders null the Stipulation in favor of its Produce when imported into this Country.

However not being aware of the Intentions of His Majesty's Government respecting a Trade between New South Wales and Brazil, I do not feel inclined to press the subject further for the present; and I shall wait until I may be honored with those Instructions to regulate my Conduct in this regard, which I beg leave most respectfully to request may be sent to me.

It is proper to add that the two Cargoes before mentioned, being found of superior qualities to similar Articles from other Countries, have found Prices which will probably encourage more to come this way, and that the Trade may eventually, if fostered, be of considerable advantage to the Colony and to British Shipping, for which latter it will find Employment on the return Voyage towards Great Britain.

I have, &c,

H. CHAMBERLAIN, Consul General.

Appointment of Mr. and Mrs. Fulloon to female factory at Parramatta.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch per ship Brothers.)

Sir,

I am directed by Lord Bathurst to acquaint you that he has appointed Mrs. Fulloon to be Superintendant of the Female Factory at Parramatta with a Salary of £100 per annum, and, as her husband will be required to superintend a different branch of the Factory, he will receive a Salary of £50 per annum both to be paid from the Police Fund; Lord Bathurst is also of opinion that they should occupy Apartments in the Factory, and should receive two single Rations and Coals. If however Mr. and Mrs. Fulloon should conduct themselves perfectly to your satisfaction, his Lordship would be disposed to approve of a further allowance of
two single Rations which must however depend upon your experience of their good behaviour, and you will be at liberty to discontinue that indulgence if you should see any cause for so doing.

I have, &c.,

R. Wilmot Horton.

Sir Thomas Brisbane to Earl Bathurst.

(Despatch marked "No. 11 of 1823," per ship John Bull.)

Government House, Sydney, New South Wales,

My Lord, 6th November, 1823.

On the arrival of the Woodman with female Convicts the Surgeon Superintendent Mr. Fairfowl pressed the necessity of an enquiry into some unpleasant circumstances, which had occurred on board that Vessel during her passage to this port. Accordingly I directed a board to be assembled composed of three Gentlemen who had themselves severally filled the situations of Surgeon Superintendent, Officer of the Guard and Chief Mate of a Convict Vessel. Their proceedings having ended on the first day of their assembly in consequence of the Master of the Woodman quitting the room abruptly, the duties left for me to perform were only two, to refuse to insert into his certificate the clause expressing my approbation of his conduct, and to forward herewith to Your Lordship the only documents relating to this difference which have come into possession.

I have, &c.,

Thos. Brisbane.

[Enclosure No. 1.]

Surgeon Fairfowl to Sir Thomas Brisbane.

Convict Transport the Woodman,

Sir, Sydney, 25th June, 1823.

I have the honor to report the Arrival of the Ship Woodman, 419 tons, with Ninety four female Convicts and thirty eight Women and Children free passengers.

The Woodman received her Convicts and Passengers at Cork on the 22nd day of December last, but did not sail until the 26th of January.

Many of the Convicts were sickly at the time of Embarkation, several came direct from Hospitals, and before they had been a week on board the sick list exceeded thirty, consisting principally of female complaints. A very limited selection only was allowed me there being no Convicts in the jails to replace those whom I might reject; as it was, we sailed three short of our complement which was 100.
1823.
6 Nov.

Anxiety of surgeon re health of convicts.

Refusal of master to comply with surgeon's request.

Health of convicts after leaving Rio.

Complaint against conduct of master.

Evidence tendered by master.

At Sea the Sick list did not for some time decrease in number, and we lost one Woman within the first fortnight by abortion caused by Sea Sickness. As we approached the Equator, the heat of the Prison, which by a register thermometer ranged during the night from 83 to 91½, reduced many to a very dangerous state, and for a long time I was seriously apprehensive of a great mortality, aware also that even the healthy female system could not long with safety be exposed to so high a temperature in a close atmosphere; I became anxious to get through the tropics as quickly as possible, and therefore wrote several pressing letters to the Master of the Ship, stating my reasons in the strongest manner for desiring him to proceed for Water to the Cape of Good Hope, and not to Rio de Janeiro. My representations were treated with contempt and defiance of them, in utter disregard of the health, the comforts, even the lives of the Women under his charge, which I had represented as in danger; he, without condescending to give one efficient reason for so doing, put into the latter port, where we were detained three weeks by the slow mode of watering and by an embargo laid on all shipping, in consequence of Lord Cochrane having taken the Command of a Brazilian Squadron which sailed to attack Bahia de todos as Santor.

We sailed from Rio on the 8th of April, since which we have buried two Women. The sick list decreased after we got to the Southward of the tropic, and we continued healthy until within the last three Weeks when we had some serious cases of Dysentery caused by the cold damp state of the prison from numerous leaks, &c. I have however the pleasure to report that they are all in a fair way of doing well though some are much reduced.

In compliance with my Instructions, I have done every thing in my power to prevent illicit intercourse between the Sailors and the Women. I regret to have to add that I have not met with that support and assistance from the Master, which I had a right to expect, and that he has given me many reasons to be dissatisfied with his conduct.

I have, &c,

GEO. FAIRFOWL, Surgeon and Superintendent.

[Enclosure No. 2.]

MR. HENRY FORD TO SIR THOMAS BRISBANE.

Sir,

The inclosed is from Mr. George Naylor of Rio de Janeiro; the contents I believe are to recommend me to Your Excellency's protection in case Mr. Fairfowl, Surgeon and Superintendent of this Ship, should (as he has threaten'd) take measures to injure me and stop the Ship's Freight.
I beg Your Excellency will be kind enough to suspend your opinion (when Mr. Fairfowl may think proper to bring his charges against me) until Your Excellency has heard both sides of the Question. I have, &c.,

HENRY FORD,
Master of the Female Convict Ship Woodman.

[Enclosure No. 3.]

MR. GEORGE NAYLOR TO SIR THOMAS BRISBANE.

Sir,
Rio de Janeiro, 5th April, 1823.

Having had the honor of some acquaintance with Your Excellency when you touched at this port in 1821, I take the liberty of addressing you on the present occasion.

The Woodman female Convict Ship, Commanded by Mr. Henry Ford, having come in here, and being consigned to the House in which I am associated, the Master informed me that the Surgeon and Superintendent, Mr. George Fairfowl, had threatened to complain of him to the Navy Board for putting into this port instead of into the Cape of Good Hope, and to make other charges against him, partly arising from a private quarrel between them. Mr. Ford wished very much to have their dispute accommodated and I took some pains to effect this, but found Mr. Fairfowl deaf to any arrangement short of a public apology before the Officers and Crew of the Ship and the whole of the free Passengers and Convicts; and feeling persuaded that the circumstances did not warrant such concession, but that, on the contrary, much of Mr. Fairfowl's hostility was without just motives, and that he had been on bad terms with the Masters of other Vessels, in which he had filled the same capacity as he does in the Woodman, I advised Mr. Ford to make application to Mr. Chamberlain, the British Consul General, for an enquiry into his (the Master's) conduct, which was done by Mr. Heatherly, the Vice-Consul, going on board and taking the Depositions of several of the Officers and of the free passengers, all tending to invalidate the charges of Mr. Fairfowl; the Vice-Consul was directed by the Consul General to ask Mr. Fairfowl if he wished any person on board to be examined respecting the Master's conduct, and received for answer that he (Mr. Fairfowl) considered "himself both Judge and Jury," and therefore should not call any one.

I have troubled Your Excellency with this detail, because I have known Mr. Ford for some years, as a good Officer on board different Vessels, and as he has, from his meritorious conduct, just got this Ship, I am anxious that he should have fair play, which I insure to him by placing the real state of the business before Your Excellency, as he informs me that the Surgeons can
refuse to sign the Certificates for the recovery of the Freight, which of course would injure him in the opinion of his owners, and might cause him to lose his Command.

We continue in the same state of Warfare that has existed for the last fourteen Months, and as we have now the assistance of Lord Cochrane, who sailed a few days ago as High Admiral of the Brazilian Navy, to act against the Portuguese Squadron in Bahia in which place some Portuguese Troops still maintain themselves, we expect that Brazil will soon be free from European Soldiers.

I request that Your Excellency will give my respectful compliments to the Ladies, and that you will pardon this intrusion on your time and patience.

I have, &c,

GEORGE NAYLOR.

[Enclosure No. 4.]

BOARD OF INQUIRY TO SECRETARY GOULBURN.

Sir,

Having assembled, in obedience to the orders of His Excellency the Governor dated 8th Instant, for the purpose of inquiring into the circumstances which occurred between Mr. Fairfowl, late Surgeon and Superintendent of the Woodman Convict Ship, and Mr. Ford, Master of the said Ship, on the passage to this Colony,

The Board proceeded to hear Mr. Fairfowl’s statement of the occurrences which took place from Ireland to Rio de Janeiro, when Mr. Ford, from motives which he declined to explain, protested against the proceedings of the Board and abruptly left the room.

Waiting the further instructions of His Excellency,

We have, &c,

J. BOWMAN
JNO. NICHOLSON
WM. WILSON

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked “No. 12 of 1823,” per ship John Bull.)

Government House, Sydney, New South Wales, 10th November, 1823.

In pursuance of the directions conveyed to me in your Letters of the 20th and 21st February, and the 3rd of June, 1823, I have the honor to acquaint you that Free Pardons have been granted to James Reilly, William Sydney Smith and Gilbert McLeod.

I have, &c,

THOS. BRISBANE.
Sir Thomas Brisbane to Secretary Lushington.

(Despatch per ship John Bull.)

Government House, Sydney, New South Wales,
11th Novr., 1823.

Sir, Previously to the arrival of your dispatch of the 31st of last December, I had received from Deputy Commissary General Wemyss an explanation why his accounts of Sums, advanced by him for the ordinary Service of the Army from the 25th November, 1821, to the 24th April, 1822, had not been furnished at an earlier date to the Lords Commissioners of His Majesty's Treasury. I am fully aware that Mr. Wemyss, as he states in the accompanying enclosure, labored under great inconvenience on his succession to Mr. Drennan; but from the improved system in which the duties of his department are now conducted, I am convinced that I can safely promise, with the concluding period of his letter, that “their Lordships may rest assured they shall not have occasion to convey a second censure.”

I have, &c.,

THOS. BRISBANE.

[Enclosure.]

Deputy Commissary-General Wemyss to Sir Thomas Brisbane.

Sir, Commissariat Office, Sydney, 4th July, 1823.

I was yesterday favored with a Communication from the Treasury, of which, for Your Excellency’s information, I take leave to submit a copy.

As will be seen from the Copies of my Letters to the Treasury Board, which I use the freedom also to enclose, all the accounts I could get prepared were sent by the Shipley and Venerable; and I have now to report to Your Excellency that by the first Vessel, which leaves this Port, my Accounts From 25th March To 24th June, From 25th June To 24th Septr., 1822, will be sent, being now in readiness. I need not here repeat, what Your Excellency knows so well, the inconveniences I labored under in consequence of the protracted stay of my Predecessor, by which were entailed on me other than my own proper duties; these however removed and my office better arranged, Their Lordships may rest assured they shall not have occasion to convey a second censure of the kind.

I have, &c.,

W. WEMYSS, D.C.G.
154 HISTORICAL RECORDS OF AUSTRALIA.

Sir Thomas Brisbane to Earl Bathurst.
(Despatch marked "No. 13 of 1823," per ship John Bull; acknowledged by Earl Bathurst, 12th July, 1824.)

Government House, Parramatta, New So. Wales,

My Lord,

15 Novr., 1823.

On my appointment to the Government of this Colony, I felt anxious to promote Science, and particularly that of Astronomy; with which intention I engaged Mr. Rumker, a Prussian by Birth, and who was well known by reputation to the learned from various observations and valuable matter he had set forth to the World, and who came strongly recommended to me, and I was glad to avail myself of his Services; and in order to shew Your Lordship, that I had not been deceived as to his qualifications, the Board of Longitude have lately voted him One hundred pounds for his valuable communications. I was induced on his pressing solicitations to make him a Grant of One thousand Acres of Land, on his assuring me he should continue to devote himself to scientific Pursuits; but the perfect reverse has been the case, for, as soon as he obtained the grant which he pressed for with most anxious solicitude, he withdrew to his Farm, where he has continued for the last five months without complying in the smallest degree with his faithful promises. My object therefore in troubling Your Lordship is to request you to withhold Your sanction to the confirmation of Mr. Rumker's Grant beyond the 2 or 300 Acres he may have occasion for his Stock, as I was only induced to make him a Grant to that extent under the pledge of a faithful promise, which he has completely broken, and has not only deceived me but frustrated the hopes that had been excited amongst men of Science from his labors.

I have, &c.,

Thos. Brisbane.

Sir Thomas Brisbane to Earl Bathurst.
(Despatch marked "No. 14 of 1823," per ship John Bull.)

Government House, Sydney, New South Wales,

My Lord,

17th November, 1823.

The Report, which I have the honor of enclosing, has been received from the Principal Surgeon of the Territory in consequence of the Ship Ocean having arrived in this harbour with her Convicts afflicted so considerably with the Scurvy that Forty were obliged to be disembarked and taken into the Hospital immediately, when I deemed it to be my duty to cause an enquiry to be made, whether Sickness so unusual was attributable to deficiency of attention or professional skill on the part of Doctor McTiernan, her Surgeon Superintendent.

I have, &c.,

Thos. Brisbane.

* Note 39.
PRINCIPAL SURGEON BOWMAN TO SECRETARY GOULBURN.

Sir, General Hospital, Sydney, 29th Sept., 1823.

I have the honor to acknowledge the receipt of your letter of the 18th Inst. communicating the Governor’s instructions to me to undertake a minute examination of the Medical Journal of the Surgeon Superintendent of the Ocean Convict Ship, and report for His Excellency’s information whether sickness so unusual is to be attributed to deficiency of attention or professional skill on the part of Doctor McTiernan.

In reply I have to acquaint you for the information of The Governor, that having perused the Medical Journal of that officer, I do not find any statement of the cause of the disease, which prevailed among the Convicts during their voyage to this Colony, is attributable.

Dr. McTernan has given with considerable care a lengthened detail of the treatment of various patients under his charge, and the daily occurrences which took place, without reference to the manner the diseases originated; he has stated the facts as they came before him and not attempted any theoretical hypothesis. This you will perceive completely prevents me carrying His Excellency’s wishes into effect, as no cause of disease is assigned in the Journal.

Referring to the latter part of your letter respecting the professional skill of Doctor McTernan, I beg to be excused giving any opinion, that gentleman having by a public examination proved himself qualified for the situation he holds in His Majesty’s service; as he is now serving under the immediate control of the Medical Board of the Navy, and is obliged to produce his Journal to that Board on his return to England, he is held responsible by them for the treatment of the sick under his care, consequently any opinion I could offer is rendered unnecessary.

I have, &c.,

J. BOWMAN, Principal Surgeon.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 41, per ship Brothers.)

Sir, Downing Street, 22d Novr., 1823.

I have the Honor to acknowledge the receipt of your Dispatch of the 21st February, 1823, enclosing the proceedings in transactions which have taken place before a Bench of Magistrates in New South Wales, with respect to the “Ben Johnson,” a Vessel from the Isle of France which arrived under charge of the Mate, her
master having been forcibly deprived of his proper Command, and to acquaint you that, having referred the same for the opinion of His Majesty's Advocate General, he reports that the substance on brig of the Affidavits and the Statement made by the Master himself Ben Johnson do not appear to support a charge of mutiny or conspiracy against the parties Loyd, Greaves or Burnet, and is of opinion they ought not to be detained unless the Master or Owners have preferred any charges against them on their own responsibility.

I have, &c.,

BATHURST.

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch per ship John Bull.)

Government House, Sydney, New South Wales,

My Lord, 23d November, 1823.

I do myself the honor to forward, for the information of Your Lordship, the General Monthly Returns of the Troops Serving in this Territory from 25th of July to 24th of October, 1823, inclusive.

I have, &c.,

THOS. BRISBANE, M.-Gen'l.

[Enclosure.]

[Copies of these returns are not available.]

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked “No. 15 of 1823,” per ship John Bull.)

Government House, Sydney, New South Wales,

My Lord, 24th November, 1823.

The enclosed is the report of the Judge Advocate of New South Wales as to the Trial, in the Court of Criminal Jurisdiction on the 10th day of October, 1823, of Edward Gorman, Isaac Ward and William Rowd. These three Convicts, for the sake of obtaining the booty of a few dollars, plotted the robbery of a neighbour’s hut. The death of one of its tenants ensued from the cruelty of the first named prisoner; although his companions, very young men, were constant and earnest in their entreaties to him to use no violence. Edward Gorman has been executed, but the sentences are respite of the other two; I deemed it to be unfit to visit the same punishment on crimes so unequal in their moral guilt; and, both their cases having excited considerable sympathy in the public breast, I held it to be due, to this merciful feeling and to the whole territory’s remarkable tranquility, to exert the authority with which my commission has
invested me of granting a reprieve on the present extraordinary occasion to the two criminals, Ward and Rowd, "until and to the intent the Royal Pleasure of His Majesty may be known therein."

I have, &c.,

THOS. BRISBANE.

[Enclosure No. 1.]

THE REPORT of the Judge Advocate of the Territory of New South Wales as to the Trial, in the Court of Criminal Jurisdiction on the 10th Day of October, 1823, of Edward Gorman, Isaac Ward, William Rowd, and James Norton,

Charged with the wilful Murder of William Wells at Minto in the said Territory on the 18th Day of September last, the said Edward Gorman having with a certain Stick then in his hand given several mortal wounds and bruises, of which the said William Wells, afterwards on the 22d Day of September following, died, and Isaac Ward, William Rowd and James Norton were charged with being present and with aiding and assisting the said Edward Gorman the Said Murder and Felony to do and commit.

In a Second Count, the Prisoner Isaac Ward was charged as striking and giving the mortal wounds, the other Prisoners with being present, aiding and assisting him, Isaac Ward, the said Murder and felony to do and commit. (See Information.)

Isaac Ward, William Rowd and James Norton severally pleaded "Not Guilty"; Edward Gorman on arraignment said "I am Guilty of the Robbery, and I struck the Man; but I am not guilty of the Murder."

PATRICK HILL:—I am a Surgeon in His Majesty's Navy. I am also on the Colonial Establishment. I saw a Man of the name of William Wells now dead. I saw him on Friday morning 19th September last; he was brought to the Hospital; he was in a state of furious Delirium; we were obliged to restrain him; he died on the Monday morning following; the deceased had a number of wounds on the different parts of the head; on each side above the Right ear there were two wounds particularly severe; on Examination I found his Skull fractured; he continued in the State of Delirium till the 22d. I found the brain was in a state of Inflammation; the Scull was extensively fractured on the Right side; there were several contusions on other parts of the body as also other wounds on his head; they must have been made with an obtuse instrument; it might have been a thick stick, the wounds very violent; the Inflammation of the brain was the Cause of Death created by the wounds.

He never gave any account of what had happened.
158 HISTORICAL RECORDS OF AUSTRALIA.

1823.
24 Nov.


REBECCA WELLS:—I live at the Cowpasture, about a ¼ of a Mile from Mannix; my house had been burnt down about a month before. On the 18th September last about 10 o’Clock we heard the Dogs give an alarm; my husband William Wells, James Howard, were with me and my three children; my husband immediately went out. Howard followed immediately; I then heard a violent noise and scuffle; I heard violent blows struck. I shut the Door, when a man came and Rushed the Door, and threw me down behind the Door; he bid me make a light for him; the room was dark; I light some straw; he then asked me for my money; he said he would knock my brains out if I did not give him the Money that minute. I then gave him the Money £6 10s. in Dollars, but they had been burnt in the fire, out of a box in my bed Room; wherever I went he went with me; immediately afterwards he demanded some Tea and Sugar of me, I then gave him the Tea and Sugar; he then immediately asked me for pork; he asked for flour; I gave him two pieces of pork about 3 lb. pieces; he took a bushel of wheat in a two bushel bag; he said that if I spoke that minute he would knock my brains out and held a great stick over my head. I fed the light of straw as it went out; I think he might Remain 15 Minutes; I had the full opportunity of seeing this man, more than once or twice; he had a black face; I could discern features so as to know them again. I have seen him since, it was on a Thursday night. I saw that man again on the Sunday morning at John Hall’s; within three minutes I Recognized him. I knew him by his remarkable tooth his lip being very high, and his voice struck me more than anything; my children were at Hall’s; he was there when I went with Jackson.

I never saw but the glimpses of any other men while he was in the house. I could not speak to the other three; I had the Door on the jar, and looked out and saw 3 of them outside; that was 15 minutes after he had come into the House; I could not go out, he kept holding the Door of me, some one I can’t tell who; I saw three outside, besides the Man in the House.

I heard them say outside “take care of her”; he said with the Stick over me “I’ll take care of her.”

Gorman the Prisoner is the Man that held the Stick over me; his face was very black.

They all four went away together; I had no knowledge, how many were outside, till Gorman opened the Door and I saw the 3 outside; when they went away, I saw them, they left the Door open ajar. I went down on my knees and begged for mercy for myself and my children; he threatened me very violently if I did not hold my tongue. To the best of my belief there were 4 Men; I saw them as they were Running away, only for one moment; I
would not take upon myself to swear that there were more than three. I am impressed that there were 4. I saw the glimpse of 4 Men; they were about the distance of this Court.

I heard hard hitting outside as if they were knocking down a beast; they had done the Deed before Gorman came into the House. I heard no noise but of my husband groaning.

I went to my husband; he was in a deranged state, full of blood and very badly treated; he had no knowledge of me.

I saw Howard 20 Yards from the Door lying on his Belly; Howard knew me, but could not get up.

That instant I went to Campbell about 50 Rods off; he came.

My husband was taken to the Hospital.

The Man in the house had grey Eyes, Gorman is the Man.

I had seen Norton; he belongs to Mr. Oxley's clearing party and he worked for us when the Overseer gave him liberty; when at the fire of the Hut that took place he gave his assistance; the huts that were burnt are about a Mile off; where the other Prisoner lives about 3 miles from these huts.

Norton was there when I took the money out of a cask of Wheat which had been burnt; I saw Norton the night before the Robbery, he came for a peck of wheat; Gorman had a handkerchief Round his head.

I should know the pieces of pork taken that night. I had them from Fletcher. I have seen them since, in the Court Room at Minto. I have seen the bag since; my husband never spoke afterwards.

Howard was perfectly in his Senses; he was not able to get up before I took my Husband to the Hospital.

This is the piece of pork I am sure. I can swear to all the three pieces when it was got, afterwards it had been cut. This is the bag I am perfectly sure; I know this sugar bag. I am sure they are the same, as also Tea bag. I made the bag myself.

I saw his tooth (Gorman's) in the house, a snaggle crooked Tooth, when he opened his mouth.

Cross Examined:—I only go by the form of the lip.

James Howard:—I lived at Wells' before his Death; we heard the Dogs make alarm on Thursday 18th September about 10 o’Clock; there was very little light. Wells and I went out; we made round the Chimney where the Dogs made the alarm and saw these Men at the back of the Chimney; the Moon was then under a cloud; there appeared to be 4 Men. I can’t say positive from being in a fright. I could not say there were 3, I could say there were two; there appeared to be 4 by the glimpse we only got, for they knocked us both down with big sticks; this stick was found alongside the House. I had a sight of the Man who
knocked me down; not a word was said. I saw his face, it was
blacked the whole of it. I know the Man again by his features
and by his Speech; he has double teeth in front. I saw them
when he came up to strike me down, the same Man knocked me
and poor Wells down. I scrambled up to the side of the Chimney;
when I got hold of one of the other Men's sticks, of Isaac Ward.
I would not let it go. Isaac Ward said "loose my Stick, I won't
hurt you." Gorman was beating poor Wells all the time; he came
up and said to Ward "What humbugging are you about, why
don't you knock him down?" As soon as he said so, he knocked
me down; he beat me, while I was down. Ward kept me down
and Gorman rushed into the house. I saw Ward while I had hold
of his stick; he had a handkerchief over the face as high as his
nose; nothing else was over his face. I am sure I should know
him again. I never saw him before; he had hold of the stick 5
minutes, and I was taking notice of his face. I can only swear to
two certainly not 4, nor even 3; the Moon was under a cloud.
I lost my Recollection while the Men were there. I heard
Gorman ask for the Money, or that he would knock her brains
out. Ward who was over me made answer not to ill use the
woman. I had no blow but what I got from Gorman.
Ward is the Man, the Prisoner before the Court. I swear he
is the Man.
Norton was at Wells's the night before the Robbery for a
peck of wheat.
I know this bag with Sugar, I am sure it belonged to Wells.
I know this Cloth, containing the Tea, to be Mrs. Wells's. I
saw it the same Day. I will swear to Ward being the Man.
Cross Examined by Ward.
I swear to Ward by his sandy hair and his being pock-marked;
the Moon gave a little light. I saw his sandy hair under his
straw hat. I mean the Prisoner's hair, which I call sandy. I
was not a yard off, quite close to him. I can swear to the Prisoner
by his Speech, he spoke through his handkerchief, it seems like
to day.
Gorman's voice is like the Man who knocked me down.
Thomas Campbell:—I lived near Wells 60 Rods off; I went up
on that night about 10 or 11 o'clock. Wells was senseless, his
head and face were covered with blood.
I saw Howard on his face alongside of him; he could answer
me slightly. I asked him where the Men were gone, he said "he
could not tell me"; he got up with Difficulty.
William Mannix:—I live at Upper Minto. I know the Pris-
oners; 3 of them are my Men; I don't know Norton. I heard of
the Robbery on the very night. Gorman, Rowd and Ward live in
the same hut; there is a fourth Government man living with them who drives my bullocks; the hut of Wells is about 100 Rod from where I heard the cry of Murder.

On the Sunday following, I heard Gorman had been accused. I heard of his being taken and took my Horse to go to the Upper Farm 3 Miles and a half; the Prisoners lived at this place. I searched the hut, where the 4 Men kept.

In a quantity of felled Timber in a hollow Tree I found 3 pieces of pork about 20 Rod from the hut; these are the pieces now produced.

We found a bag also containing half a bushel of wheat, 10 Rod off in a hollow tree. I saw Ward and Rowd. I found nothing else.

Peter Stuckey:—I live with Mr. Mannix. I was with him when he found the 3 pieces of Pork in a hollow Tree about 10 Rods from the hut. I found also a bag with some Wheat.

The next morning I found Tea and Sugar about 100 Rod from the hut; these Articles now produced are the same. I live at the same farm with the prisoners. Jackson had been gone two hours, when he was called up. I know that Swift went down; it was about 9 o'clock when he did so. I am sure that was the Thursday night when the Robbery took place. Gorman told me of the Robbery himself in the Morning. I am sure it was Thursday.

Joseph Jackson:—I am Government Servant of Mannix. I was in the same hut with Gorman, Rowd and Ward. I Remember the night of Wells’ Robbery. I had been that Day at the River farm. I had been in the hut only a fortnight. I got home about 7 or a little after. I went down to the hut in half an hour afterwards.

I went down to the Hut and found the 3 Prisoners there, they were sitting by the fire. I cooked my supper and went to my bed. I was very fatigued. I left them all in the hut sitting down. I was in ¾ of an hour and then I left them all up. I slept by myself. I was called up some time afterwards; Swift called me to tell my Bullocks were left in the Yard; the 3 Prisoners messed together. I messed alone.

None of the Prisoners were then in the Hut; nobody else slept there then; they could not have been there without my seeing them. I went to the fire to put it together. I saw the bed places; I am a Middlesex man; the Prisoners are Irishmen. Swift did not come to the Hut. I was not absent two minutes, and then went to sleep again.

After I went to sleep Isaac Ward came in and woke me. He asked me to give him a piece of Tobacco; he went and sat on a Stool. I kept awake; in about 20 minutes or ¼ of an hour Gorman and Rowd came home and sat down in the Hut; the whole 3 went
1823.  
24 Nov.  

out of the hut; they seemed to be very silent. I had no Discourse with Ward; they were out only 2 or 3 Minutes and then they went to bed.

I heard of Wells' Robbery next Morning; these Prisoners came back in the middle of the night.

Edward Fletcher:—I am Chief Constable at Minto. I produce 18 Dollars, 9 I got from Edward Gorman the Prisoner when I had him up on the 22d September; he said that if a Constable were to go with him he would give up 7 Dollars, his part that were by a Tree at the Spring-hill farm of Mannix's. I was sent with him; he had them planted in a log in a little hole under a Tree, about 20 or 30 Yards off the Hut. I took him to Liverpool and searching him I found 2 more Dollars; he had told us that 7 Dollars were his share.

I apprehended Rowd and Ward; Gorman and Jackson were at my house and I asked them to take the Sydney Gazette to Mannix. I took them up at 10 o'clock the Sunday night.

On the 24th I went to Springhill farm and found Wm. Rowd's name upon a Tree and 6 yards from it found 8 Dollars under a bunch of grass by the side of a like tree; that was in consequence of Information I got from Tristram the Gaoler.

I apprehended Norton from Information that Howard told me.

Cross Examined.

I did not keep the Dollars apart, which were by the Tree, upon Tristram's Information.

Prisoner Rowd asked: "Did he keep my Dollars by themselves?" Answer. "No, not afterwards."

William Tristram:—I am Gaoler at Liverpool. Gorman, Rowd and Ward came to the Gaol on 22d September last.

I have seen a man of the name of Matthews; he came to the Gaol; he saw Rowd; he (Rowd) was not with the other Prisoners; they were kept separate. I heard privately what passed between Rowd and Matthews, who (the latter) knew that I did so.

Matthews told Rowd that he had been, where he told him the Dollars were; that he could not find them; says he that he had not told him the Right place. Rowd then began to describe the place, where the Dollars were; did he know a creek going to Mr. Mannix's ground, where some Rails were across, one standing up, that he was then to go on, till he found a stump with his Rowd's name on it; a few yards from that he would see a Tree, about the size of his body, where he would find some dried dead grass at the foot of this Tree; under that dried Grass he would find the Dollars; that Conversation closed. I informed Mr. Fletcher.

I swear that every word took place. Rowd the Prisoner is the Man I allude to.
On the following Day, I and Mr. Ikin went to Ward's Cell. Gorman made a voluntary Confession to me, Mr. Throsby and Dr. Hill, but that was after the examination by Mr. Howe.

William Howe, Esqr.:—I am Justice of the Peace of the Territory. I committed the Prisoners, after he Gorman had been identified by Mrs. Wells and Howard as one of those who had done the Robbery. I said to Gorman, thinking the Case so clear against him, "The only extenuation he could make was to give such Information as would lead to a discovery of the others concerned; whatever passed was after this observation." He made the confession now produced.

Without the least inducement from me, Ward and Rowd came into Court and said they had been at the Robbery, but used no violence, and Ward in particular called to Gorman and said "did I not call out to you to do no harm to the Woman."

Rowd said to the best of my Recollection "I was there but used no violence."

This was the first time they were brought up. Gorman had been under examination.

Rowd and Ward were both anxious to confess more than I wished to hear.

Norton, after Wells had been carried to the Hospital, came to me and said he wanted to go and take care of the poor children and to look after some Money bills that he knew of in a Tin box.

The Tin-box was brought back with the two bills; they are for 270 Dollars, a Promissory Note, so was the other, payable on demand.

Frederick Meredith:—I am a Constable. I had in charge Ward, Rowd and Norton; I was taking them from Liverpool to Sydney.

Ward was complaining of his wrists being swelled, and he made answer that he did not care about his wrists being swelled if they did not swell his neck; I said perhaps there is no fear of that. Norton then said the man that had sworn to him the Day before had sworn to him falsely; he was innocent of the charge. Rowd and Ward both then answered yes he was; that Gorman had never seen the Prisoner he was hand-cuffed to him; they then began to Relate that Gorman had drawn them into it. Ward did tell me that he had been a fortnight at them to bring them into it; when they Consented on the Road, they begged Gorman to use no violence.

That when they got to the House, two men came out of the Door; as soon as Gorman saw him, he rushed and knocked Wells
down. Ward went after the Man that ran away and gave him the end of the Stick to hold; that Gorman hit the Man he was guarding and struck him several times; that Gorman rushed into the House; that the woman light some straw and when they had got what they wanted they parted and went away.

McNamara was the other Constable with me and heard it. Murphy was the 4th prisoner in charge.

The Prisoners on being called for their Defence said:—

Gorman: "I own that I am guilty of the Robbery, and that enticed Rowd and Ward to join me. I had struck some blows on both Men; I saw none other struck but by me. Ward is innocent of the Murder. Norton is innocent, he knows neither act nor had part nor deed in it.

"Ward did call out to use no violence."

The Court adjudged

| James Norton | Not Guilty |
| Edward Gorman | Guilty |
| William Rowd | Guilty |
| Isaac Ward |

Sentence:—DEATH

and the bodies afterwards to be dissected and anatomized.

The Prisoners generally, after Sentence pronounced, made confession of their Guilt, but prayed for a longer Interval, previous to the Execution of their Sentences.

On the Day following the Trial and conviction of the Prisoners, I attended upon the Governor at Parramatta with the report, when the Case was fully gone into and considered, the material Evidence taken on the Trial being read to the Governor from my notes. The only point of particular Consideration with the Governor seemed to be whether any Distinction could be drawn between the Cases of Gorman and of the other two Prisoners, Ward and Rowd, who had not used actual Violence in any such Degree as Gorman. I suggested that this circumstance had been particularly in Observation with the Court on the Trial, when, in summing up the Case, I had to lay down the legal Principle that all, who have been present, aiding and abetting when a felony shall have been Committed, are equally Principals in legal Guilt; and that the mortal Stroke or Wound given by any one of such offenders is constructively given by all, who consent and are present at its Infliction, with a felonious Intention, in common, to commit the felony in Question:—But again that the Members of the Court, not only perforce of the legal Principle, but upon the proof adduced of general Co-operation by Ward and Rowd in the perpetration of the Murder and robbery, had
unanimously concurred in the Conviction of and capital Sentence denounced upon them, as well as Gorman having on my own part also previously communicated to the Members of the Court my Opinion, that the Governor I conceived would have no power under his Commission to grant any reprieve in the Case, as on an extraordinary Occasion. In my conference with the Governor, I particularly made mention of the latter Circumstance, as of my still remaining confidently under the same Impression. I had no occasion however, at the time, to urge this point on the Governor, as he declared his Mind to be made up, as to carrying into Effect the Sentence of the Court upon all the three prisoners, and that the Warrants would be signed, as soon as received from the Colonial Secretary (whom I had advised of the Sentence the evening before) observing that the prisoners Rowd and Ward deserved to suffer their Sentences for the robbery of the House, without at all taking into Consideration the Murder done, as against them.

Warrants for the execution of the three Prisoners on the Monday following (13 Instant) were accordingly delivered to the Provost Marshal:—and on that Day, about 10.30 o'Clock before Noon, I found that, a little before or about that time, the prisoners Rowd and Ward, when their fetters were just about to be knocked off, had been respited upon a Letter to the Provost Marshal by the Colonial Secretary, and in the Manner, which the Correspondence hereto annexed will perhaps most satisfactorily develop as well as the general Circumstances and Communications, that subsequently took place on the Occasion between myself and the colonial Government, in respect of the respite and commutation of Sentence upon the prisoners, Rowd and Ward, to Transportation for Life.

The sittings of the Criminal Court were continued on the Monday, and I certainly found that the Issue of the Case, as to the prisoners Rowd and Ward, had immediately made a very strong Impression upon the Members, and, that Influence appearing to remain with them, I felt it due to my judicial Office as to the Court to explain that there was no Disposition, on my part, to render abortive, in any degree, the Jurisdiction of the Court:—an effect, which not only the present but antecedent Courts had in strong Apprehension, as likely to arise from the Capital Sentences of the Court being so very rarely carried into execution:—While the just remark did not escape, that under the peculiar and extraordinary Powers of the Court, not necessarily and without any Discretion, as in the English Courts, to pronounce capital Sentences upon capital Convictions legally, Sentence of Death was only passed, in truth, upon those capital Convicts before the
Court, whose Cases were considered of such public Atrocity as to require, upon consideration of the public Ends of all legal Punishment, the Infliction of the utmost rigour of the Law.

JNO. WYLDE, Judge-Adv., N.S.W.

Sydney, New South Wales, 21 Novr., 1823.

Rex v. Gorman and ors.—Information.

New South Wales  
To Wit  

Be it Remembered that John Wylde, Esquire, the Judge Advocate of our Sovereign Lord the King for the Territory of New South Wales and its Dependencies, who for our said Lord the King exhibits the charge in this behalf, comes into the Court of Criminal Jurisdiction convened at Sydney in the said Territory by Precept under the Hand and Seal of His Excellency Sir Thomas Brisbane K.C.B., dated the nineteenth day of September One thousand eight hundred and twenty three, and having power to enquire of and to hear and determine and punish all Treasons, Murders, Felonies, Trespasses and other crimes, whatsoever committed within the said Territory or its dependencies, and for our said Lord the King charges and gives the said Court to be informed, That Edward Gorman, late of Minto in the Territory of New South Wales Laborer, Isaac Ward, late of the same place Laborer, William Rowd, late of the same place Laborer, and James Norton, late of the same place Laborer, not having the fear of God before their Eyes but being moved and seduced by the instigation of the devil, On the eighteenth day of September in the Year of our Lord One thousand eight hundred and twenty three, with force and arms, at Minto aforesaid, in the Territory aforesaid, in and upon one William Wells, in the peace of God and our said Lord the King, then and there being, feloniously, wilfully and of their malice aforethought did make an assault, and that the said Edward Gorman with a certain Stick in his right hand then and there had and held in and upon the head of him the said William Wells a little above the right ear, then and there feloniously, wilfully and of his malice aforethought did hit and strike, and that the said Edward Gorman did then and there give unto him the said William Wells by such striking of him with the Stick aforesaid several mortal wounds and bruises in and upon the head of him the said William Wells, of which said several mortal wounds and bruises he the said William Wells, from the eighteenth day of September aforesaid until the twenty second Day of the same month of September, at Minto aforesaid did languish and languishing did live; on which said twenty second day of September the said William Wells, at Minto aforesaid in the Territory aforesaid, of the several mortal wounds and bruises died; and that the said Isaac Ward, William
Rowd and James Norton, at the time of the committing the Felony and Murder aforesaid by the said Edward Gorman in manner and form aforesaid, were present, aiding, helping, abetting, assisting, comforting and maintaining the said Edward Gorman the felony and Murder aforesaid in manner and form aforesaid to do, commit and perpetrate. And so the said Judge Advocate gives the said Court to be informed that the said Edward Gorman, Isaac Ward, William Rowd and James Norton him, the said William Wells, then and there in manner and form aforesaid, feloniously, wilfully and of their malice aforethought, did kill and murder against the peace of our Lord the King, his Crown and Dignity. And the said Judge Advocate further gives the said Court to be informed that the said Isaac Ward, Edward Gorman, William Rowd and James Norton, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil on the said eighteenth day of September in the Year aforesaid, with force and arms at Minto aforesaid in the Territory aforesaid, in and upon the said William Wells in the peace of God and our said Lord the King, then and there being feloniously, wilfully and of their malice aforethought, did make an assault, and that the said Isaac Ward with a certain Stick, which he, the said Isaac Ward in his right hand then and there had and held in and upon the Head of him, the said William Wells, a little above the Right ear then and there, feloniously, wilfully and of their malice aforethought, did hit and strike, and that the said Isaac Ward did then and there give unto him, the said William Wells, by such striking of him with the Stick aforesaid several mortal wounds and bruises in and upon the Head of him the said William Wells, of which said several mortal wounds and bruises he, the said William Wells, from the said eighteenth day of September until the twenty second day of the same month of September, did languish and languishing did live; on which said twenty second day of September the said William Wells of the said several mortal wounds and bruises died; And that the said Edward Gorman, William Rowd and James Norton at the time of the committing the said Felony and Murder by the said Isaac Ward, in manner and form aforesaid, were present, aiding, helping, abetting, assisting and maintaining the said Isaac Ward the Felony and Murder aforesaid in manner and form aforesaid to do, commit and perpetrate. And so the said Judge Advocate further gives the said Court to be informed that the said Isaac Ward, George Gorman, William Rowd and James Norton him, the said William Wells, then and there in manner and form aforesaid, feloniously, wilfully and of their malice aforethought, did kill and murder against the Peace of our Lord the King, his Crown and Dignity.
Rex v. Gorman and ors.—Correspondence.

[1] Judge-Advocate Wylde to Secretary Goulburn.
Judge-Advocate's Office, 13th October, 1824,
12 o'Clock at noon.

Sir,

The Police Constables having at the moment reported to me that the body of the Prisoner named in the Margin,* who this morning suffered the utmost Rigor of the law for the wilful Murder of the late William Wells, and whose body was afterwards to be dissected and anatomized, has been refused to be Received into the General Hospital for that purpose by orders, as suggested, of the Principal Surgeon, I deem it my Duty to submit the Matter to your attention, as well as that of the Provost Marshal, in order that Directions may be given, with as little delay as possible, to have the body Removed from the public Street where it at present Remains, I am informed, opposite the Hospital Gates.

I beg further to suggest that in England, upon such Occasions, the body generally lies exposed, for some time at any convenient place, to the public view.

Having made my Report personally on Saturday last to His Excellency The Governor upon this Case, in which the two other prisoners, also named in the Margin,† were capitally convicted of the same Murder and having left His Excellency, upon consideration of the same, fully impressed that there seemed to arise (as in general Tenor The Governor expressed himself) no such extraordinary Occasion upon this part of the Sentence of the Court as would warrant a Reprieve of these Offenders, I beg leave further to enquire whether His Excellency issued Warrant carrying the Sentence of the Court into Execution only as against the Prisoner also named in the Margin.*

I have, &c.,

JN. WYLDE, J.-A.

[2] Secretary Goulburn to Judge-Advocate Wylde.

Sir,
Colonial Secretary's Office, 13 October, 1823.

I beg leave to return you my thanks for the information with which you have been so kind as to favor me on the subject of the course that would be followed in England, in the case of the body of Edward Gorman.

At the moment of Receiving your letter, I was in the act of writing to acquaint you, by command of Sir Thomas Brisbane, that, since His interview with your honor on the subject of the

three Malefactors convicted of Murder, His Excellency had deemed it advisable to Respite Rowd and Ward until he had communicated more fully with yourself on the construction of His Commission* as Governor. I have, &c.,

F. GOULBURN.


Sir,


I beg leave to acknowledge the Receipt of your letter, dated the 13th Instant, with respect to the Reprieve of the Prisoners named in the Margin,† from the Tenor of which I was impressed that, as the Governor was in Town all day yesterday, I might possibly receive a Summons to attend his Excellency, in order thus more satisfactorily to communicate with his Excellency (as you suggested he had deemed advisable) on the Construction of His Excellency’s Commission as Governor, with relation to the exercise of the Power in Question.

But as the Governor has left, I find, for Parramatta, I delay not thus to communicate for the information of His Excellency that it appears clearly competent to the Governor, in the Terms of his Commission, to Reprieve in Cases of Murder upon extraordinary Occasions, until and to the intent His Majesty’s Royal pleasure be known therein.

That on the Sentence, however, of the Court of Criminal Jurisdiction upon the above Prisoners, I cannot but adhere to the opinion of his Excellency, on which, at the time of my personal report upon the case, he felt himself * upon the merits (of which he fully informed himself) without any doubt whatever as to the Justice and painful necessity of, as even if otherwise, without the power but of issuing warrants, for carrying the same into execution:—

And that the respite in question therefore would seem to me, no new circumstances of any kind having intervened, to have taken place wholly without any extraordinary Occasion authorizing or even involving the Exercise of the Power, thus given to the Governor in such Cases under the Commission of His Excellency’s appointment.

The Provost Marshal having forborne to execute the Death Warrants, upon a Communication from yourself conveying the Governor’s command that the execution of the same, as to the above prisoners, should be Respited until &c., I beg to suggest that Reprieves correctly should be signified by Warrants under the hand and seal of the Governor, and that the Provost Marshal, in strictness perhaps, would thus only be justifiable in carrying them into effect.

I have, &c.,

JNO. WYLDE, J.-A.

* Note 40. † William Rowd, Isaac Ward for Murder.
1823.
24 Nov.
Correspondence re execution of sentence on Gorman, and respite of Rowd and Ward.


Sir,


With respect to the Conviction and Capital Sentence instantaneous passed on Friday last in the Court of Criminal Jurisdiction upon the three Prisoners, named in the Margin,* for the wilful Murder of the late William Wells, I beg leave to enquire whether Warrants as to one or more of those Prisoners have been since delivered to you for due Execution of the fatal Sentence, as further also, whether any particular circumstances have subsequently occurred with regard to your Duty under such Warrant or Warrants of His Excellency The Governor.

I have, &c.,

JNO. WYLDE, Judge-Adv., N.S.W.


Sir,


I have been honored by your two letters of the present date, One of which was handed to me at the Police Office on my way to attend on the Criminal Court and the other reached me at that Court.

In answer to the Queries contained in the former, I beg leave to state that I received Warrants yesterday Morning for the execution on this day of the three Criminals, Edward Gorman, Isaac Ward and William Rowd, on whom your Honor had pronounced Sentence of Death on Friday last.

This Morning, at about ½ past 8 o'Clock, I was honored with a written communication from the Colonial Secretary conveying to me “The Governor's commands that the execution of the Sentence of Death ordered to be made and done upon Isaac Ward and William Rowd now in the Gaol of Sydney on Monday the thirteenth Inst.” (letter of Coll'l Secy., dated 13th Octr., 1823) “be Respited until further Signification of His Excellency's pleasure.”

At 10 this morning I proceeded to the Gaol, and at 24 minutes afterwards I caused the Sentence of Death to be carried into effect on Edward Gorman, and subsequently instructed the Gaoler to have the body after One hour's suspension conveyed to the General Hospital as usual on such occasions “and delivered to the Surgeons to be dissected and anatomized.”

I have only to add further on this painful subject that the body was so Removed, and I have learned that admission has been refused for it at the General Hospital; conceiving my duty to be at an end by the Removal to the Hospital, I have not felt it necessary to take any ulterior proceeding. This last passage will I trust answer the second of your Honor's communications of this date.

I have, &c.,

J. T. CAMPBELL, Prov.-Mar.

* Gorman, Rowd, Ward.

Sir,  

In acknowledging your letter of yesterday's Date with Respect to the execution of the capital Sentence denounced by the Criminal Court on Edward Gorman for the Murder of the late Wm. Wells, I feel myself called on to suggest to you, that it would seem to me, that unless the Warrant from the Governor expressly directed that after Death the Body should be delivered to the General Hospital for Dissection, it would Remain in strictness with you under the Charter to see the Sentence of the Court otherwise carried into full Effect; although I am perfectly aware that the practice has hitherto obtained of the Provost Marshal being Relieved, on such occasions, from all further Duty by the Reception of the body for Dissection at the General Hospital.

I take the opportunity also of observing that in England the Body in such Cases generally lies exposed in a partial state of Dissection at any convenient place for some time to the view of the public. Any expence hence arising would of course be chargeable to the Police.

Adverting to the letter stated to have been addressed to you yesterday Morning by the Colonial Secretary, that execution of the Warrants against Isaac Ward and William Rowd should be Respited until &c., I beg to advise you that in this Respect a Warrant under the Hand and Seal of the Governor should have been transmitted in order strictly to justify you in delaying to carry the original Warrants of the Governor into Effect.

Having Received a communication this Morning from the Chief Constable as to the Circumstances that took place with regard to the body of Edward Gorman, in which he states that certain Depositions have been taken on the subject, I have to Request the favor that you will allow me to see, or have copies of the same, in order thus to put me in full possession of those particular Circumstances.

I have, &c.,  
Jno. Wylde, J.-A.


Sir,  
Provost-Marshals Office, 14 Oct., 1823, 2 P.M.

I have the honor to acknowledge the Receipt of your letter of this date, which has now reached me; and I beg to make the acknowledgment of my best thanks for the information you have been pleased to give me, in Regard to the legal Discharge of my Duty as Prov. Mar. under Circumstances similar to those of the Culprits Gorman, Ward and Rowd.

Sir,

In answer to your letter of the 13th instant, I have the Honor to inform you that, after Edward Gorman had been Executed yesterday morning, I ordered James Lane, William Thorne, and other Constables to convey the Body to the General Hospital for dissection pursuant to the Sentence. I was afterwards informed by Thorn that William Mattingly, the Overseer of the General Hospital, had refused to admit the Body, that he had orders to that Effect, having no room for it there. I sent Patrick Field between three and four o'clock in the afternoon to see if the Body was interred; that Field informed me the Body then laid near the General Hospital. I then thought it prudent to communicate the Circumstance to the Provost Marshal, who said, he had concluded his duty when the man had been executed, and
BRISBANE TO BATHURST.

requested me to send the Constables to the Police Office to depose to the Fact of the Body having been refused admittance into the General Hospital. I have also to inform you that I went to the General Hospital this Morning between 5 and 6 o'clock to ask Mr. Mattingly if the dead body had been interred, when he told me it was buried last night; took me into the General Hospital, shewed me the head of the Malefactor Edward Gorman, which had been severed from the Body previous to the Interment.

I have, &c.,

THOMAS DUNN, Chief Constable.


Sir, Judge-Adv. Office, 13 October, 1823, 7 P.M.

On my return from the Criminal Court just now, I found an application from Surgeon Bland* for the Body of the Malefactor named in the Margin,† and the Provost Marshal being unable to inform me how the same has been disposed of since deposited at the Hospital Gates, I beg to enquire where the body may be found, so as thus to carry the Sentence of the Criminal Court into due Effect.

I have, &c.,

JNO. WYLDE, J.-A.

[10] Secretary Goulburn to Judge-Advocate Wylde.

Sir, Colonial Secretary’s Office, 13th October, 1823.

In reply to your letter of this date I have the Honor to acquaint you that, I believe, the Sentence of the Criminal Court upon Edward Gorman has been carried into due effect partly by the Provost Marshal, and the other part in the General Hospital; and that his Remains were afterwards buried in the unconsecrated ground appropriated to Malefactors.

I have, &c.,

F. GOULBURN.


Sir, Colonial Secretary’s Office, 6th November, 1823.

I am directed by the Governor to have the honor to request a Report of the Proceedings of the Court of Criminal Jurisdiction in the case of Isaac Ward and William Rowd, found guilty of murder and sentenced to death, The Governor having deemed it expedient on this extraordinary occasion to grant them a Reprieve, in terms of His Excellency’s Commission “until and to the intent His Majesty’s Royal Pleasure may be known therein.”

I have, &c.,

F. GOULBURN.

* Note 2. † Gorman.
174 HISTORICAL RECORDS OF AUSTRALIA.

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked "No. 16 of 1823," per ship John Bull; acknowledged by Earl Bathurst, 14th March, 1825.)

Government House, Sydney, New South Wales,
My Lord, 27th November, 1823.

John Cahill, sent from Ireland in the Guildford Convict Ship, a transport for Seven Years, and who obtained shortly after his arrival in this country a free pardon ordered in a dispatch from Your Lordship bearing date the 17th December, 1817, having been tried before the Criminal Court convened at Sydney on the 23rd day of September, 1822, charged with assaulting and putting in bodily fear Thomas Colloghan in his dwelling house at Liverpool and Stealing therefrom divers goods, was adjudged guilty, four only of the members of the Court concurring. He received consequently the sentence of Death; but his name was afterwards included along with twenty two other capital Convicts in a general warrant respiting the execution of their respective sentences, on condition that they should be transported to Port Macquarie for the terms of their natural lives, and there kept at hard labour in double irons; but with the stipulation that, if any one of them during the said term be found without lawful cause at large in any other place, then without further delay execution should be done upon him.

To that penal settlement, he was accordingly forwarded, but, having contrived to escape overland, was apprehended in Sydney; and would have been executed, had I, under the Charter, possessed the power. But five members at his trial did not agree in their verdict of his Guilt: I have been obliged therefore to order him to be transmitted to Macquarie Harbour, but have cautioned him nevertheless against attempting to escape from that transportation lest death might be the result. To render this warning valid, I have the honor to enclose the accompanying report of the proceedings of the Criminal Court on the trial of John Cahill, humbly requesting of His Majesty their modified confirmation, so that my original intention of keeping him at a penal settlement with the sentence of death impending on his escape may be effected.

The present is a fit opportunity for soliciting the attention of your Lordship to the commutation I generally extend to prisoners sentenced to death for crimes, in the committal of which violence has not been exerted. In consequence of this system twenty six executions have taken place during the last two years, whilst in an equal period previous to my arrival the number of felons, who had suffered, were sixty eight. If then by this arrangement, while crime so little abounds that the regular quarter Session of
the Criminal Court for last June was dispensed with, in consequence of the few prisoners committed for trial, at the express solicitation of the Judge Advocate, and while the Session just terminated has with the exception of one case of murder exhibited no feature of violence, the lives of twenty one fellow creatures be spared yearly to expiate their crimes by perpetual hard labour, and to serve as living monuments of the inflexible justice of the law, I feel convinced that I shall not be refused (what I solicit earnestly) Your Lordship's approbation of these commutations.

I have, &c.,

THOS. BRISBANE.

[Enclosure.]

16th Octr., 1822.

REPORT of the Judge Advocate of the Territory on the trial of JOHN CHAEL, charged with others with assaulting and putting in bodily fear Thomas Colloghan in the Dwelling House at Liverpool in the said Territory, and Stealing therefrom divers Goods to the value of £80.

In the Court of Criminal Jurisdiction, New South Wales.

PLEA:—Not Guilty.

THOMAS COLLOGHAN:—I live just beyond the Gate on the Liverpool road. My House was entered on a friday morning about 2 o'Clock on 10th or 12th July last. I was in bed at the time. I heard people come in at the Gate I thought they were Settlers. I told the woman to open the Door. They called out "Colloghan, rise and give us a pint of rum." I went to light the lamp at the fire and one of the Men gave me a blow on the head with a pistol; when I looked round, all the men's faces were black; there were five or six; I could not count them, but to the best of my knowledge; they beat me backwards and forwards about the kitchen; the Man that had the pistol kept hold of me. I got hold of the pistol; one of the Men told him to blow my Brains out and not be fighting any more with me; a Man presented a piece at me, and then another of the Men came between me and him, and said there should be no violence used, no murder, and if they did he would have a difference with them. I had no sight of him till he caught me in his arms and put me in the back Room; his face was disguised with dirt; the Rest of the Men went into my Room and Rummaged everything and took away money and property; my loss I calculated at £80. Cullen's man was in the Room before me, beat in, a Man stood over me as far as I am from that person (about 4 Yards) with a pistol; he kept cocking the pistol backwards and forwards; he had his neck and the lower part of his face muffled with a handkerchief; he
had a straw hat on, and a Parramatta frock made at the factory, woollen trowsers of the same kind; he told me to be easy, nothing would hurt me, after I got into the Room. The Man had the gun at the Door. I saw the prisoner at the bar, when he came to Court the other day to swear in Brothers' favor.* I never took notice of him before. I might have seen him. I will swear to the prisoner as the Man who stood near me with the pistol; I really think I should have been killed but for this man; the musket was presented twice and he stood twice between me and the piece; he was 2 of an hour over me, the whole time, there was nothing but the Moon shining in the Room; he told them to use no violence; I always could have sworn to the Man who had the pistol; he fetched a blanket to put over Cullen's Man.

I can swear to the prisoner, but I hope the Court will shew mercy to him as he shewed to my family; he saved me and my family from being ill used, and I hope he will have mercy.

I will swear that he is the man that stood over me.

I could not swear to any one of the Men else, the prisoner is the only one.

On Cross Examination.

I never saw the prisoner before; I have not been acquainted with him three years.

THOMAS DUNN. I am Chief constable, the prisoner was a witness on the trial of Brothers. I pursued the prisoner when he was alone, having left the Court. I took him in custody. I had no communication with him. I apprehended him at the instance of Colloghan.

ANN BOWLER. It was two or three o'clock as near as I can guess; it was Thursday night, I think the 12th. I had no opportunity of seeing the face of any one of the six Men in the house. I have heard Colloghan say of the very night that he could tell the Man who saved his life, if he saw him; he described him as a tall Man with very round shoulders; said he was an Irishman by his voice as the Man who stood over him with a pistol; they were between an hour and ½ of an hour.

JOHN THORNE. I am Chief Constable at Parramatta; the prisoner was never brought before the Bench on the hearing at Parramatta. Colloghan told me that he should know the man who stood over him with a pistol; we were all over prospect.

* Marginal note.—At the previous Sittings of the Court, Brothers and two others were acquitted of the felony, there being no sufficient proof of Identity.—J.W.
or Seven entered that I could observe; One of the Men struck me as they came to the Door; they were there an hour; they dragged me back to a back place. Colloghan was put there, one man stood Sentry over me. I don’t know whether he was tall or short; there is no other Man I should know. I saw the Man with a Pistol. I think he had a handkerchief over his face. I could not see his face; you could only see it partially. I cannot tell any one. I was further than Colloghan was. I could not tell whether his face was blackened or not.

Judgment and Sentence—John Cahill

By the Court, Guilty, Death.

Memorandum.

By the Charter of Justice establishing the Court, it is ordained “that execution of any Judgment of Death should not be had or done on any Offender unless five Persons present sitting in Judgment should concur in adjudging such Offender, so accused and tried, to be Guilty, until the proceedings in the Trial of such Offender shall have been transmitted to His Majesty and his pleasure shall have been expressed thereon.”

In respect of the above Judgment four members only of the Court concurred; and further the Court Recommended the Prisoner to Mercy, at least, so far as to Commutation of Capital Sentence.

Jno. Wylde, Judge-Adv., N.S.W.
Sydney, New South Wales, 16 August, 1823.

Prisoner’s Defence.

The King on the Prosecution of Thomas Colloghan vs. John Cahill.

May it please Your Honor and Gentlemen,

The strangeness of this Prosecution must excite, within the Breasts of those before whom I now stand, surprize, mingled with doubt. If your Honor looks over the Minutes of Evidence given by Prosecutor, when Brothers and others were arraigned for the Robbery, I humbly think that you will find that, on the question being put to him, as to the Identity of any of the Persons, who entered his House, on the Night of the Robbery, He says that, owing to their faces being disguised, he could not swear to any of them. On which the Prisoners were all acquitted. How strange then, Your Honor and Gentlemen, must it appear, before the Impartial Seat of Justice, to hear this Man Swear positive to me, A Man, your Honor and Gentlemen, whom he has been acquainted with nearly 3 Years, and who has been in his

1823.
27 Nov.

Report by Judge-advocate on trial of John Cahill.
Written defence of J. Cahill at his trial.

1823.

27 Nov.

If I was Guilty of the offence, why not take me into Custody before this. He knew my place of residence and knew my person well.

I have, Your Honor and Gentlemen, 3 or 4 Witnesses to prove that on the Night of the Robbery, I was never from the place where I was at work, but being destitute of Money Could not Subpoena them. I have another witness to prove that he was in company with me at Collogan's Before the Robbery. A List of the Names of Such Witnesses I forwarded to your Honor, a few Days ago, Stating my forlorn distress and Situation. Their Evidence were Material and Necessary to prove my Innocence.

It was almost a Similar circumstance that Sent me into this Country and, after my embarkation, proofs were adduced satisfactorily of my not being Guilty; And my Free Pardon was forwarded after Me.

It is by the Sweat of my brow and honest Industry that I obtain my living, not by cohabiting with nightly Depredators to destroy the Property of my Neighbours or other Individuals.

For I solemnly protest before this Court that, since my arrival in this Colony, I never wrong'd Man or Mortal and little did I think any one would attempt So materially to injure Me (without Cause) as the Prosecutor has this Day.

To the judicious and penetrating Judge, before whom I now stand, and the Honorable Members of this Tribunal, I rest my hopes, and to my God who knows my Innocence, My whole trust, looking forward with firmness for that Verdict which will restore me to liberty.

JOHN CAHILL.

28 Nov.

Return of convict applicants for passages for their wives and families.

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked “No. 17 of 1823,” per ship John Bull.)

Government House, Sydney, New South Wales, 28th November, 1823.

I derive great satisfaction from being able to assist in carrying into effect the benevolent intentions of His Majesty’s Government by transmitting herewith the accompanying list of Convicts capable of maintaining their families on arrival in this Colony.

I have, &c.,

THOS. BRISBANE.

[Enclosure.]

[This return contained the names of eighty-nine applicants.]
BRISBANE TO BATHURST.

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked "No. 18 of 1823," per ship John Bull; acknowledged by Earl Bathurst, 17th August, 1824.)

Government House, Sydney, New South Wales,

My Lord,

29th November, 1823.

I have had the Honor of receiving your two dispatches, Nos. 21 and 22 of the same date, also No. 23 written the day after, on the subject of the alteration which I had deemed it expedient to introduce into the terms, upon which land had hitherto been bestowed by the Crown, whereby I restricted the confirmation of future grants to those applicants only, who would undertake to maintain free of expense to the Crown "one convict labourer for every hundred acres so to be granted." Your Lordship observes that "Unquestionably, if the Grantees were willing to take the land upon these terms, the result would be highly beneficial to the interests of His Majesty's Government";—but You are "not sanguine enough to anticipate that many grants will be accepted upon the terms proposed," and Your Lordship therefore considers that it would be much more desirable "to impose in the first instance on each grant a quit rent to commence at the sixth year," redeemable in so liberal a manner that the grantee by payment for thirty acres will always be able to purchase rent free his farm of one hundred. Yet in the last of these dispatches, Your Lordship states it to be impossible for You "to do more than to lay down as a principle that Such conditions of cultivation ought to be imposed as will shew a real intention on the part of the occupier to effect a progressive improvement in his land without exhausting it; and in the case where he has employed a certain number of Convicts free of expense to the Crown, that test should be considered as complete without reference to any other."

I beg to express my regret in the first place that any ambiguity in my dispatch of the 21st of April, 1822, should have prevented it from appearing clearly, whether the form of a grant of land therein enclosed was applicable only to the promises of land made by General Macquarie, or whether I proposed it as a general form to be adopted by myself in all future cases. This latter is my meaning. I consider the new regulation to be a measure of general utility, and would be sorry to see it restricted to the promises of General Macquarie. Before the receipt of your dispatches a great many grants had already been completed under this regulation. One hundred and seven grantees had willingly taken them with all their obligations; while three hundred and five bonds had been executed for the maintenance of convicts upon properties, the deeds of which will not be ready to be
1823.
29 Nov.

Settlers' reasons for accepting new conditions.

delivered for some time. The desire, thus manifested to comply prematurely with a condition which has been represented as so exceedingly burdensome, has arisen from my having deemed it expedient, when I became acquainted with the superabundance of animal food in the territory and foresaw as its consequence the present low price of meat, to reduce the overgrown establishment of Crown Stock and lessen thereby the greatest temptation to the plunder of Government, by lending a Cow to every settler during the continuance in force of the Bond that he might execute for the maintenance of a convict. Thus these three hundred and five bonds are three hundred and five arguments to prove that the profit of a Cow during ten years, to be replaced at the end of this term by an animal of the same value, is greater than the expence of the maintenance and clothing of a Convict during an equal period. The Commissioner of Inquiry estimated justly the annual cost of every Convict in the employment of Government, at the time of his visit to the Colony, at £24 14s. Now, however, in consequence of the low prices of grain and meat, and the reduction that has taken place in the quantity of the Government Ration, this charge is considerably lessened. At an expence still less must the annual cost of the Convict be rated when placed on the estate of a Settler. The Six months provisions for seven persons that are allowed to a proprietor, promised, for instance, two thousand acres of land, if expended with good husbandry, would soon enable him to raise a sufficiency of grain for the twenty he will be obliged to support ultimately; and a very small sum of ready money, laid out in swine, would ensure him a Stock of meat more than adequate to the wants of his men in a climate favorable to the multiplication of this most prolific animal. The mimosa would manufacture the leather required for the shoes of his servants with a facility unknown in the northern hemisphere; the straw of his wheat would be plaited into hats for light coverings to their heads; while the european flax, growing with luxuriance in a latitude requiring clothes of linen only, would readily supply every other want. Therefore, notwithstanding that the master might advance subsistence and clothing to a certain degree, exactly in proportion to this anxiety to take his quota of convicts at an early date, yet they would soon cost him nothing besides the trouble of Superintendence; and his outlay at the Beginning would be ultimately restored. The Superintendence of these convicts, which would be requisite to ensure their subsisting and clothing themselves, would not interfere with a proprietor's attention to the growth of fine wool, the staple of the Colony, but would rather promote it by fixing his residence on his estate;
every grant of two thousand acres under the new regulation containing twenty strong arguments to encourage such residence instead of living in a dissipated Capital and thereby giving the reins to that course of stock plunder which from this very cause has run to such lengths in Van Diemen’s Land.

The Convict-barracks of New South Wales remind me of the Monasteries of Spain. They contain a population of consumers who reproduce nothing. If however the capital of any country can only encrease in proportion to the number of its productive Labourers, the suppression of monasteries throughout a roman catholic people would not act more efficiently in producing the revival of industry there, than the regulation here which obliges every emigrant settler, who obtains a grant of two thousand acres of land, to take out of Sydney barrack twenty convicts. The many criminals annually convicted in England may be fairly attributed to the multitude of her manufactures, for the vices inseparable from a crowded population are well known to be many. It is the recommendation of the Commissioner of Inquiry to remove the mass of convicts out of the County of Cumberland. For the County of Cumberland no arrangement can be better. But he proposes still to cluster them only a little nearer the line. “Ubi Papa, ubi Roma”; and I much fear congregated any where, there will be laid the foundation of a Second Sydney.

But the principle of all others, upon which I attempt the defence of the measure which is the Subject of this dispatch, is its efficaciousness as a check by which persons are stopped from asking for Land, who do not intend to make a proper use of it: And my only complaint arises from having found that even this check is not sufficient. Your Lordship, having seen the picture which Mr. Bigge has drawn* of the great confusion and violence which took place upon one occasion, when he was present at the Government House, from “the number of the applicants consisting of every rank and condition and their eagerness to offer their petitions,” must be already apprised of the keenness of this appetite for land. By its cravings, Governor Macquarie had been so interrupted as to be obliged to limit the reception of these applications to one day in the year; and I would have been compelled to continue this regulation had not the rule of a convict for every hundred acres come to my relief. Even as it is, a large portion of my time, diverted from subjects of much greater importance, is engaged in refusing land. Already had I promised one hundred and sixty three thousand acres to persons pressing forward and stating their eagerness to obtain land under all its conditions, and I had nevertheless been obliged to refuse more applications than even the ones I had granted, when I received

* Note 41.
with inexpressible satisfaction Your Lordship's late dispatch ordering me to augment the Quit rents. Not a Cow calves in the colony but her owner applies for an additional grant in consequence of the encrease of his stock. Every person to whom a grant is made receives it as the payment of a debt; every one to whom one is refused turns my implacable enemy. Seated in this situation, I cannot but call to mind the French King, who exclaimed from a similar feeling "by every gift that I bestow, I create one ungrateful person and ten enemies!" From being deeply impressed with these sentiments, it is that I principally entreat the continuation of the present rule, or the commencement of some more efficacious regulation, by which I shall be enabled to comply with a majority of the applications for Grants of Land.

The case of Mr. Macarthur* will give Your Lordship an insight into the feelings, which attend the refusal of every request concerning Land. On the receipt of Your dispatch of the 10th July, 1822, I immediately embraced the opportunity of an interview with that Gentleman to express to him the pleasure I would derive from carrying the instructions of Your Lordship into full effect. He addressed to me in consequence the accompanying enclosure; to the proposals contained in which I did not consider I ought to yield. In the first place, I thought it probable that Your Lordship had not been apprized, at the date of your dispatch, of the two grants amounting together to two thousand three hundred acres of Land, which had been taken from the Cow pastures by Governor Macquarie for the two sons of Mr. Macarthur. And in the next place, I was certain that Your Lordship could not have been informed of the 4,568 acres of Land, which I had already given to him in the Cow pastures, before the arrival of your Commands, in payment for the Merino rams whose purchase had been sanctioned by your despatch of the 24th July, 1820, but which land, it was expressly stipulated in the agreement made with Mr. Macarthur, he was not to be permitted to receive adjoining his old property. Notwithstanding that by these gifts Mr. Macarthur and his two sons possess an area in the Cow pastures of 15,498 acres of Land, I nevertheless thought that Your Lordship would not object to allow the five thousand additional acres (You had ordered him) to be measured to the South of the grant which he has named Brisbane. Nothing would satisfy Mr. Macarthur however except the Cancellation of this deed, and two former ones, and the surrender in their stead into his hands of the Government establishment at Cawder, and the grounds which had been always reserved for a Church, a School, and a Town. As I considered it impossible to Yield to this demand, Mr. Macarthur is in consequence daily displaying

* Note 42.
irritation; and the enclosed reply to a letter addressed to Mr. James Macarthur, in obedience to your desire conveyed to me in a dispatch bearing date the 26th of last March, to offer the appointment of a Magistrate to this gentleman or to his Brother, seems to have been dictated by the same spirit.

The measure of a convict for every hundred acres was certainly received on its introduction with every mark of dissatisfaction; and I make no doubt that many representations have been exhibited to Your Lordship setting forth the ruin to the Colony, which should be the effect of its adoption. Clamour however is nowhere a long liver; and its day is past here already. Loud as the objections were at its first operations, I have nevertheless the satisfaction to know also that the cry was equally noisy against the clause of clearing, &c., cultivation introduced at the Commencement of the Administration of the late Governor. There are few now, however, who do not acknowledge that the effects of the new regulation have been beneficial; and with delight I witness the progress made already by late settlers under its auspices, and the contentment and plenty which reign at Bathurst and Newcastle. It was a measure which could not have been popular; and yet I am convinced that the measure was necessary. It could not have been popular with those to whom grants had been promised, because the love of liberty is too deeply implanted in our breasts to be pleased with any restriction. It could not have been popular with the old Settlers, because the prosperity of the colony is so closely allied in their habits of thinking with ten Shillings a bushel for their wheat that any measure tending evidently, by destroying the market of three thousand unproductive consumers in Sydney, to reduce the price of this grain to what it brings in France or America, must in their notion annihilate the Colony. And yet I do think that if, from the present low price of wheat, we are able, as we must be, to enter into competition with the grain of Bengal, in the market of the Isle of France, and pay for the sugars we consume with this produce instead of Treasury Bills, I ought to be considered as the Colony's Friend, and not as her Enemy.

Having thus humbly submitted to Your Lordship the grounds upon which I am induced to request a continuation of the existing rule of a convict for every hundred acres, I shall await your final decision with every desire to carry into the fullest effect whatever you may ultimately resolve. But I do trust, that Your Lordship will take under your most serious consideration the weight of odium, which must overwhelm every Governor without the establishment of Some efficacious check to the applications which are hourly crowding for land. If Your Lordship
determine on the permanence of the old clearing and cultivating clauses, perhaps You would not think it unadvisable to fix an invariable proportion of land to be cultivated in every grant. At present the proprietor of thirty acres engages to cultivate a third, but of two thousand a twentieth:—to render the Species of cultivation demanded definite; at present it may be grain, or it may be grass; to make the condition of clearing less unequal; Newcastle is a thick forest; Argyle a British nobleman's park; at Bathurst there is scarcely a tree:—But above all, to appoint a Commission of Escheat, because since the judgment, which Mr. Field felt himself bound to pronounce in open Court, that without Office found the Crown could not enter the land under forfeiture, the clearing and cultivating clauses have become a dead letter. And so fully convinced of their inefficacy was Governor Macquarie, that I introduced the late Change only after consultation with Him; when he expressed himself satisfied that it was the measure of all others calculated to effect that permanent improvement of the land which he had been long endeavouring ineffectually.

I have, &c.,

THOS. BRISBANE.

[Enclosure No. 1.]

MR. JOHN MACARTHUR TO SIR THOMAS BRISBANE.

Parramatta, 29th November, 1822.

Sir,

I beg to return Your Excellency my respectful and grateful thanks for the obliging and ready manner in which you have been pleased to express your desire of carrying into effect the instructions of Lord Bathurst, with respect to the additional grant of Five Thousand Acres of Land directed to be given me, adjoining my former Grant in the Cowpastures.

In obedience to your Excellency I have now the honor to submit a plan for the measurement of the additional 5,000 Acres, and for the consolidation of the whole of my Lands in the Cowpastures; which will, I humbly conceive, ensure, as far as is now practicable, the fulfilment of his Lordship's wishes, "that a tract of Land should be secured to me for preserving my flocks in their present state of purity and perfection, without incurring the risk of loss or interruption from the establishment of neighbouring Settlers."

I will not dwell upon this topic, being well aware that Your Excellency has always considered the increase, purity and progressive improvement of my flocks, objects of great public importance, and has long been aware that the vigilant Superintendence of my Sons (which has been rendered much more difficult by the situation of the estates of other Gentlemen) and the interposition of fences, against the trespasses and contamination
of adjoining diseased or unimproved Sheep, will be the best
security against a recurrence of evils that have more than once
alarmed us for the safety of the whole establishment.

The Grants of 1,150 Acres each given to my Sons James and
William by Your Excellency's Predecessor, and a considerable
part of Brisbane, are from the want of Water and difficulty of
access nearly useless, except during a very small portion of the
Year. I would therefore beg permission to resign these three
Grants, which with the 5,000 Acres, ordered by Lord Bathurst,
make a total of 11,868 Acres.

By a reference to the accompanying Chart, Your Excellency
will observe a red line running from the termination of Hunter's
Rivulet, to the West boundary of West Camden; including the
whole of the Government reserved land, and a part of Brisbane:—
and containing about 12,500 Acres. This tract of Land may be
fenced at a moderate expense; it abounds in excellent Sheep
pasture, and, from its consolidated form and contiguity to Cam­
den, would enable us to place all our flocks within limits less
difficult, to be daily inspected. The Estate being completely
separated by good boundaries from other proprietors, we should
look forward with more confidence, under Your Excellency's
liberal auspices, to the completion of the object that I have so
many years laboured to attain.

Should Your Excellency be pleased to sanction the proposed
arrangement, I would cheerfully allow for the expense of the
fences and Buildings that have been erected; and as the quantity
of Land somewhat exceeds what I may be strictly entitled to,
perhaps Your Excellency would not object to accept payment for
the surplus in Stock for the improvement of the Public Herds
and Flocks.

I have, &c.,

JOHN MACARTHUR.

[Sub-enclosure.]

[A copy of the chart will be found in the volume of charts and
plans.]

[Enclosure No. 2.]

MR. JAMES MACARTHUR TO SECRETARY GOULBURN.

Sir,

Parramatta, 17th October, 1823.

I have the honour to acknowledge the receipt of your
Letter of the 7th Instant, wherein you inform me that My Lord
Bathurst having desired the Governor to offer the Commission
of a Magistrate to my Brother or myself, a notification of my
appointment will take place on an early occasion, "should I feel
anxious to undertake the duties of this Office."

We are both deeply impressed with gratitude for the highly
flattering mark of distinction, conferred upon us by My Lord
Bathurst, but many painful local considerations make us the
reverse of anxious, at present, to undertake the responsibility of any public Office. Whenever these may cease, nothing will more gratify my brother and myself than zealously to devote our humble Services to the support of His Majesty's Government, and the promotion of the peace and happiness of our Native Land.

Having had the Honor to explain myself very fully, in a personal interview with His Excellency the Governor this morning, I feel it unnecessary on the present occasion to trespass longer upon your attention. I have, &c.

JAS. MACARTHUR.

SECRETARY HARRISON TO SIR THOMAS BRISBANE.

(Despatch per H.M.S. Tamar.)


Brisbane In reply to Your letter of the 20th March last, I am commanded by The Lords Commissioners of His Majesty's Treasury to acquaint You that it was by no means their Lordships' intention to render you in any respect personally liable for the application of the Money, raised by the negotiation of Commissariat Bills, because they requested you to countersign all such Bills; their Lordships' reason for so doing was an additional Security that the Commissariat Officer should not draw Bills upon this Board, without your knowledge and approbation, and for sums exceeding those which may be warranted by the Estimates submitted for Your Approval. Upon the Establishment however of a Branch of the account department of the Commissariat at New South Wales, for which directions have been given, The Officer in charge of that department will Countersign all Bills drawn by the Commissariat, and it will be his Duty to take care that no greater amount of Bills are drawn for than are authorized by Your Warrant.

I am, &c,

GEO. HARRISON.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch per ship Alfred.)

22 Dec. Sir, Downing Street, 22d Decr., 1823.

Appointment I have the honor to acquaint you, by direction of Lord Bathurst, that Mr. Mackaness has been appointed Sheriff* of the Colony of New S. Wales, and as an opportunity offers of taking his Passage in a Private Ship, he has determined to proceed to the Colony without waiting for his official appointment from Lord Bathurst which will be despatched with as little delay as possible. I therefore take the liberty of introducing him to you, and beg to recommend him to your attention and good Offices.

I have, &c,

R. WILMOT HORTON.

* Note 43.
BRISBANE TO TAYLOR.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch per H.M.S. Tamar.)

Sir, Downing Street, 24th Decr., 1823.

In consequence of some favorable circumstances which have been represented to the Lord Lieutenant of Ireland with respect to William Fitzgerald, a Convict who was tried under the Insurrection Act in the County of Clare and Sentenced to be Transported, His Excellency has been pleased to Grant him a free Pardon; and the said William Fitzgerald having been embarked on board the Medina, which Sailed from Cork on the 5th Septr. last for New South Wales, I am to desire that you will give the necessary directions in order that William Fitzgerald may be sent back to this Country by the first opportunity.

I have, &c.,

BATHURST.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch per H.M.S. Tamar; acknowledged by Sir Thomas Brisbane, 8th November, 1824.)

Sir, Downing Street, 24th Decr., 1823.

With reference to my letter of the 5th June last, respecting the embarkation of the 48th Regt. for Madras on the arrival of four companies of the 40th Regt. at New South Wales, I am directed by Earl Bathurst to acquaint you that as arrangements have been made by the Navy Office for providing Transports for the purpose, you will only be required to have the 48th Regiment in readiness to embark on the arrival of a sufficient number of the 40th Regt., which will sail for the Colony early in the ensuing Spring.

I have, &c.,

R. WILMOT HORTON.

SIR THOMAS BRISBANE TO MAJOR-GENERAL SIR HERBERT TAYLOR.

(Despatch per ship Competitor.)

Government House, Parramatta, New South Wales, 29 Decr., 1823.

In reply to your letter of the 22nd May with its enclosures, which I have just had the honor to receive, I have to regret that H.R.H. The Commander in Chief should consider my recommendation of a Staff Surgeon in this Colony as unnecessary or inexpedient, and I beg to offer, for the reconsideration of H.R.H., my reasons for urging the necessity of such an appointment.

The population of New South Wales and Van Dieman's Land, which is constantly and rapidly increasing, being scattered over more than a thousand miles of territory, requires that the Troops
should occupy very distant stations, and the number of these stations, necessarily increasing in proportion to the increase in colonization renders it impossible to separate the sick soldiers from the convicts, an evil which I conceive to have the most pernicious tendency in a Colony such as this, and for which I am not aware of any other remedy than the one I have proposed, namely, a sufficient number of Army Medical Officers under a proper superintendence to attend to the Troops only.

It is true, as stated in Mr. Merry's letter, that, with the two Regiments now here, there is an accession of two Medical Officers to the number we lately had, but only one more than had been for years as the 48th till the late reduction had two assistants. But if it be considered that in the whole of Van Dieman's Land there is no Army Surgeon, and that only one can be spared for detachment in this Colony, the accession will at once appear to fall far short of our real wants; for in all the out stations the sick soldiers, if they have any medical attendance at all, are unavoidably mixed with the convicts; and even with this disadvantage, although we uniformly endeavour to place the Troops where they are most likely in case of need to procure assistance from the civil Staff, this assistance is rendered exceedingly precarious from the distance between stations and from the frequent necessity the Medical Officers are under of visiting the widely scattered population of their respective country districts, a circumstance which renders them inadequate to attend to the wants of the convict population alone.

For these reasons, together with the growing importance and rapidly extending population of the two Settlements of Hobart town and Port Dalrymple in Van Dieman's Land, both of which will require the present number of Troops to be increased, an Army Surgeon must be sent to each, leaving but one of each corps for all the duties of this extensive Colony.

I would beg to observe that, in the Deputy Secretary at War's letter, there is more importance given to the number and efficiency of the Civil Medical Staff than their real state warrants, and only arises from his not taking into consideration the variety of duties they have to perform, and the great extent of the country they are employed in.

In the two Colonies, the numbers doing every sort of duty connected with the Medical Establishment consists of twelve, four of whom are in Van Dieman's Land, and one at each of the distant penal settlements of Newcastle and Port Macquarie.

The principal Surgeon, who acts as Inspector, attends when not on his tours in the country at the General Hospital at Sydney with two assistants, one of whom has sufficient employment in
the charge of the Apothecary and other Stores belonging to the Establishment; so that for the whole of the other towns and the settled country districts extending over a range at least ten thousand square miles, with a considerable population of both free people and convicts in the public employ, there are but three Medical Officers. Indeed so far are the Civil Staff at present from being sufficient for the duties its members are called on to perform, that it has long been in contemplation to solicit an augmentation of its numbers with the addition of such advantages as would induce men properly qualified to settle in the country.

I have also to remark that no part whatever of the medicines and stores, sent out by Government for the use of the Troops, are, or ever were, in charge of the Principal Surgeon of the Civil Staff as stated in Mr. Merry’s letter. These Medicines and Stores are sent for the use of the Troops by the Army Medical Department, and are totally distinct from those for the Civil Establishment. They have hitherto been under the care of whoever happened to be the Senior Military Surgeon at the Station; but there is no particular person responsible for the care of them or for their proper distribution.

I beg leave in conclusion to say that I recommend this appointment from my own knowledge of the wants of the Colony over which I have the honor to be placed, from considering the state of it in all its bearings, and from a thorough conviction that much benefit will arise from it, both to the Soldier and to His Majesty’s Service generally.

I have, &c.,

THOS. BRISBANE, M.-Gen’l.

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EARL BATHURST TO SIR THOMAS BRISBANE.

(A circular despatch per H.M.S. Tamar.)

Sir,

Downing Street, 31st December, 1823.

In consequence of the great inconvenience, which has arisen from the omission to report to me regularly for His Majesty’s information such vacancies, as occur from time to time in the Civil Offices on the Establishment of the Governments of His Majesty’s Foreign Possessions, I have received His Majesty’s Commands to desire that in future you will not fail to notify to me such vacancies, immediately as they occur, and you will at the same time take care to report the names of the persons, whom you may think it necessary to appoint to such vacant Offices, until they shall either be superseded by other individuals appointed by His Majesty, or eventually confirmed; and I have further to acquaint you that I shall not feel myself at liberty to sanction

1823.
29 Dec.

Reasons in advocacy of appointment of stuff surgeon for the colony.
the issue of any Salary, which may have been issued to Officers provisionally appointed by you for any period antece dent to your notification of their Appointment.

With respect to those Offices, to which it has been usual for you or your Predecessors to appoint Individuals residing in the Colony, I have to request that you will send me a list of the Dates of those several appointments, and report to me quarterly such changes as may in future occur in them.

I have directed that a copy of this Instruction may be transmitted to the Lords Commissioners of His Majesty's Treasury for the information and guidance of the respective Boards of Audit.

I have, &c.,
BATHURST.

Recommendations of Settlers.*

DURING the year 1824, letters of recommendation from the under secretary were forwarded to Sir Thomas Brisbane on behalf of the following settlers:

<table>
<thead>
<tr>
<th>Date of Letter</th>
<th>Name of Settler</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 Feb.</td>
<td>Mr. W. Bucknell</td>
</tr>
<tr>
<td>23 Feb.</td>
<td>Mr. W. M. Stewart</td>
</tr>
<tr>
<td>17 March</td>
<td>Mr. G. Galbraith</td>
</tr>
<tr>
<td>7 April</td>
<td>Mr. Alex. Hood</td>
</tr>
<tr>
<td>24 April</td>
<td>Mr. Wm. Wise</td>
</tr>
<tr>
<td>3 May</td>
<td>Mr. F. Benson</td>
</tr>
<tr>
<td>30 June</td>
<td>Mr. J. Gandell</td>
</tr>
<tr>
<td>10 July</td>
<td>Mr. R. N. Parker</td>
</tr>
<tr>
<td>16 Aug.</td>
<td>Mr. A. Still, Jr.</td>
</tr>
<tr>
<td>4 Oct.</td>
<td>Mr. Duguid</td>
</tr>
<tr>
<td>29 Oct.</td>
<td>Mr. R. Jones</td>
</tr>
<tr>
<td>— Novr.</td>
<td>Mr. J. S. Speering</td>
</tr>
<tr>
<td>20 Dec.</td>
<td>Mr. W. Wilkinson</td>
</tr>
</tbody>
</table>

Orders for Land Grants.*

DURING the year 1824, the following persons received orders from Earl Bathurst for land grants, and advice of the same was given in letters as under:

<table>
<thead>
<tr>
<th>Dates of Letters</th>
<th>Names of Persons</th>
<th>Place of Grant</th>
</tr>
</thead>
<tbody>
<tr>
<td>1824.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21 February</td>
<td>Mr. W. Nichol</td>
<td>N.S.W.</td>
</tr>
<tr>
<td>21 February</td>
<td>Mr. G. Cavenagh</td>
<td>&quot;</td>
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<tr>
<td>21 February</td>
<td>Mr. John Evans</td>
<td>&quot;</td>
</tr>
</tbody>
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* Note 1.
ORDERS FOR LAND GRANTS—continued.

<table>
<thead>
<tr>
<th>Dates of Letters</th>
<th>Names of Persons</th>
<th>Place of Grant</th>
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<tbody>
<tr>
<td>1 March 1824</td>
<td>Mr. Wm. Urquhart</td>
<td>N.S.W.</td>
</tr>
<tr>
<td>5 March 1824</td>
<td>Lt. C. Pannack</td>
<td></td>
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<tr>
<td>22 March 1824</td>
<td>Mr. G. Burn</td>
<td></td>
</tr>
<tr>
<td>3 April 1824</td>
<td>Mr. David Carfrae</td>
<td></td>
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<tr>
<td>17 April 1824</td>
<td>Mr. McIntyre</td>
<td></td>
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<tr>
<td>17 April 1824</td>
<td>Mr. H. Batten</td>
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<tr>
<td>19 April 1824</td>
<td>Mr. Francis Benson</td>
<td></td>
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<tr>
<td>26 April 1824</td>
<td>Mr. Wm. Wise</td>
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<tr>
<td>3 May 1824</td>
<td>Mr. James Benson</td>
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<tr>
<td>5 May 1824</td>
<td>Mr. Francis Benson</td>
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<td>14 May 1824</td>
<td>Mr. D. Anderson</td>
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<tr>
<td>17 May 1824</td>
<td>Mr. W. Williams</td>
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<td>21 May 1824</td>
<td>Mr. W. Dean</td>
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<tr>
<td>21 May 1824</td>
<td>Mr. J. Pike</td>
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<tr>
<td>6 July 1824</td>
<td>W. G. Walker</td>
<td></td>
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<tr>
<td>6 July 1824</td>
<td>T. Gourlay</td>
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<tr>
<td>6 July 1824</td>
<td>W. Dangar</td>
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<tr>
<td>18 July 1824</td>
<td>Benjn. Boyes</td>
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<td>28 July 1824</td>
<td>R. Redfern</td>
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<td>28 July 1824</td>
<td>F. Dixon</td>
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<td>26 August 1824</td>
<td>Peter Cunningham</td>
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<td>6 September 1824</td>
<td>Thomas Lyon</td>
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<td>13 September 1824</td>
<td>E. Cox</td>
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<td>17 September 1824</td>
<td>W. Ascough</td>
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<tr>
<td>23 September 1824</td>
<td>W. Forsyth</td>
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<tr>
<td>11 October 1824</td>
<td>S. Moore</td>
<td></td>
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<tr>
<td>28 October 1824</td>
<td>J. Olding</td>
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</tr>
<tr>
<td>28 October 1824</td>
<td>R. Jones</td>
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<tr>
<td>11 November 1824</td>
<td>E. Jones</td>
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<tr>
<td>11 November 1824</td>
<td>W. Phillips</td>
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<tr>
<td>11 November 1824</td>
<td>J. Roberts</td>
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<tr>
<td>12 November 1824</td>
<td>J. Inches</td>
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<tr>
<td>17 November 1824</td>
<td>J. Carmichael</td>
<td></td>
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<tr>
<td>17 November 1824</td>
<td>T. W. M. Winder</td>
<td></td>
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<tr>
<td>19 November 1824</td>
<td>T. Holmes</td>
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<tr>
<td>26 November 1824</td>
<td>C. De la Hunt</td>
<td></td>
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<tr>
<td>26 November 1824</td>
<td>W. Connell</td>
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<tr>
<td>26 November 1824</td>
<td>D. Peach</td>
<td></td>
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<tr>
<td>10 December 1824</td>
<td>P. Gardner</td>
<td></td>
</tr>
<tr>
<td>20 December 1824</td>
<td>G. Adair</td>
<td></td>
</tr>
</tbody>
</table>
EARL BATHURST TO SIR THOMAS BRISBANE.
(Despatch No. 1, per H.M.S. Tamar.)

Sir,
Downing Street, 5th Jany., 1824.

His Majesty having been pleased to appoint Mr. Mills to be Registrar* of the Supreme Court in New S. Wales, I am to desire that you will put him in possession of his Office and afford him every support and assistance in your power.

The following are some of the duties which will devolve upon him:

First.—In his Office all Writs will be sued out and prepared for the Signature of the Judge. He will receive and record all Declarations, Pleas, and other written Pleadings, both at Law and Equity. He will be charged with the Custody of these Records. He will prepare and issue Official copies of them.

Secondly.—He will always be present in Court at all Civil Proceedings. He will take a Procès Verbal of all that passes. He will draw up from the Notes thus taken all Judgments, Decrees, Orders and Sentences, that is to say the adjudication of the Court in its different Jurisdictions, as a Court of Law and of equity, as a criminal and as an Ecclesiastical Tribunal. He will of course be assisted by Clerks, who with leave of the Court may sit for him occasionally, but he will not be allowed to act by Deputy.

You will not understand these directions as an accurate specification of the duties to be executed by the individual, but merely as a general summary for your guidance.

With reference to the above duties, I think it necessary to inform you that Mr. Mills should receive a Nett Salary of £800 per annum, which should arise from the fees payable to him as Registrar, and the Chief Justice should be directed to draw out a Docket of Fees, which will on an average afford him the above sum. If however they should exceed £800 per annum, Mr. Mills will be directed to pay the Surplus into the Police Fund; and in the event of their not amounting to that sum, the deficiency should be made good from the Colonial Revenue.

I have, &c.,
BATHURST.

EARL BATHURST TO SIR THOMAS BRISBANE.
(Despatch No. 2, per H.M.S. Tamar.)

Sir,
Downing Street, 5th Jany., 1824.

His Majesty having been pleased to appoint Mr. Wm. Carter to be Master* of the Supreme Court in New South Wales, I am to desire that you will put him in possession of his Office.

* Note 42.
and afford him every support and assistance in your power. The following are some of the principal duties which will devolve upon him:

First.—He will have to tax the Costs of all proceedings in Actions at Law, in Suits in Equity, in Ecclesiastical Suits, and upon Criminal Informations.

Secondly.—He will be the Officer to whom the Court will entrust the duty of investigating all accounts. In Suits in Equity, he will further be required to investigate and report to the Court upon all disputed questions of fact with the exception of those which may be proved by depositions in the cause, or those which the Court may see fit to refer to a Jury.

Thirdly.—He will be required to prepare for the approbation of the Court all Conveyances, Leases, and other Instruments of a legal nature, which the Court may require any of the parties to a Suit to execute.

Fourthly.—All the details as to the management of the Estates of Minors, Lunatics, and other Persons, whose property is under the control of the Court, will be committed to him, subject to an Appeal to the Court itself.

Fifthly.—He will act as Examiner, that is he will take the Depositions of all Witnesses who by Law are to be examined, not viva voce in open Court, but upon written interrogatories.

Finally.—He will be bound to attend, as often as may be required, in Court in order to assist the Judge, with information as to the practice and proceedings of the Department of the Court over which he is to preside.

You will not understand these directions as an accurate specification of the duties to be executed by the Individual, but merely as a general summary for your guidance.

With reference to the above duties, I think it necessary to inform you that Mr. Carter should receive a Nett Salary of £600 per annum, which should arise from the fees payable to him as Master, and the Chief Justice should be directed to draw out a Docket of Fees which will on an average afford him the above Sum. If however that should exceed £600 per annum, Mr. Carter will be directed to pay the Surplus into the Police Fund; and in the event of their not amounting to that Sum, the deficiency should be made good from the Colonial Revenue.

I have, &c,

Bathurst.
HISTORICAL RECORDS OF AUSTRALIA.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch per H.M.S. Tamar.)

Downing Street, 15th Jany., 1824.

Sir,

I have the honor to transmit to you herewith the copy of a letter addressed to my Under Secretary by Mr. Hobhouse, dated 22d ulto., enclosing a Pardon for William Davison, otherwise John Davison, who was convicted of cutting and maiming in September, 1822, and had Sentence of Death passed upon him; and I am to desire that the Instructions contained in Mr. Hobhouse's letter may be carried into effect. I have, &c.,

BATHURST.

[Enclosure.]

UNDER SECRETARY HOBHOUSE TO UNDER SECRETARY HORTON.

Sir, Whitehall, 22 Decr., 1823.

I am directed by Mr. Secretary Peel to acquaint you, for the information of Lord Bathurst, that He has deemed it right to consult the Attorney and Solicitor General, respecting the Cases of Wm. Davison and Walter Rotton, which were transmitted in your Letter of the 31st July last.

The Law Officers think that both the Cases (tho' relating to Offences created by different Acts of Parliament, viz. 39th Geo. 3d, Cap. 85, and 43 Geo. 3d, Cap. 58), turn entirely upon the true construction of the Act, 27th Geo. 3d, Cap. 2, by which the Criminal Judicature for New South Wales was established. And they are of Opinion, from the Words of the latter Act, that it was the Intention of the Legislature to put the Criminal Law of that Settlement on the same footing as that of England, not merely with reference to the Period at which the Act was passed, but also with respect to the future. It will be seen that this construction of the Act is strongly confirmed by the 34th Geo. 3d, C. 34 establishing a Criminal Court in Norfolk Island.

In pursuance of this Opinion, Mr. Peel has not deemed it right to recommend to His Majesty's Mercy the case of Walter Rotton, who is under Sentence of Transportation. But, as William Davison is under Sentence of Death, His Majesty has, in consideration of the doubt existing in the Colony as to the nature of the Crime, been graciously pleased to Grant to him a Conditional Pardon, but in order that the construction of the 27th Geo. 3d may be clearly understood in future, it has not been thought fit to reduce the commuted punishment below that of Transportation for Life.

The Warrant for that purpose is enclosed, and Mr. Peel requests that the Grounds upon which it proceeded may be communicated to the Governor.

I am, &c.,

H. HOBBouse.
EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 3, per H.M.S. Tamar; acknowledged by Sir Thomas Brisbane, 1st November, 1824.)

Sir,

Downing Street, 19th Jany., 1824.

It being provided by the Act of 4th George 4th Cap. 96 statute that His Majesty may, by Warrant under His Royal Sign Manual, constitute and appoint a Council for the Colony of New South Wales, and that the Governor with the advice of such Council shall have Power and authority to make Laws and Ordinances for the Peace, Welfare, and Good Government of the said Colony, I have the honor herewith to transmit to you His Majesty's Mandamus nominating the Five principal Officers of the Colony to be Seats in the Council.

I am to desire that you will particularly explain to the Gentlemen selected that the nomination of the present Council is only intended to be Pro Tempore, and that the Warrant will be revoked as soon as I shall have received from you the Names of Ten of the Principal Merchants and Land holders, whom you may consider eligible to form the Council, from which His Majesty will select as many as may be deemed proper. I however reserve to myself the Power of submitting the names of any of the Members of the present Council for reappointment, should I consider it to be advisable.

I have, &c.,

BATHURST.

[Enclosure.]

WARRANT APPOINTING A COUNCIL IN THE COLONY OF NEW SOUTH WALES.

George R.

Trusty and Wellbeloved, We Greet you Well. Whereas by an Act of Parliament passed in the Fourth Year of Our Reign, entitled an Act to provide until the first day of July, 1827, and until the end of the next Session of Parliament, for the better Administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual Government thereof and for other purposes, It is amongst other things enacted that it shall and may be lawful for Us, Our Heirs and Successors, by Warrant under Our or their Sign Manual, to constitute and appoint a Council to consist of such persons resident in the said Colony not exceeding Seven nor less than Five, as We, Our Heirs and Successors, shall be pleased to appoint, and, upon the Death, Removal or absence of any of the Members of the said Council,

* Note 44.
in like manner to constitute such and so many other person or persons as shall be necessary to supply the vacancy or vacancies. Now We do hereby, in pursuance of the said Act of Parliament and in execution of the power and authority thereby vested in Us as aforesaid, nominate, constitute and appoint Our Trusty and Wellbeloved William Stewart, Esquire, Our Lieutenant Governor of Our Settlement in New South Wales, and Our Trusty and Wellbeloved Francis Forbes, Our Chief Justice of Our said Settlements, and Our Trusty and Wellbeloved Frederick Goulburn, Esquire, Our Colonial Secretary of Our said Settlements, and Our Trusty and Wellbeloved James Bowman, Esquire, the principal Surgeon of our said Settlements, and Our Trusty and Wellbeloved John Oxley, Esquire, the Surveyor General of Our said Settlements, to be the Members of Our Council of Our said Colony of New South Wales for and during Our Will and Pleasure. And We do hereby authorise, require and command them to do all such Acts and Deeds, Matters and Things, as under and by virtue of the said Act of Parliament may lawfully be done and performed by the members of our said Council; and in case at the time of the execution of these presents all, or any, or either of the persons before named, should be dead, then and in that case We do hereby constitute and appoint such other person or persons as shall have lawfully succeeded to Our said Lieutenant Governor of Our said Settlement, Our said Chief Justice of Our said Settlement, The said Colonial Secretary of Our said Settlement, The said principal Surgeon of Our said Settlement, and the said Surveyor General of Our said Settlement, in their or any of their said Offices, to act as, and be, for and during Our Will and Pleasure, a Member or Members of Our said Council in the place and stead of the person or Persons to whose Office or Offices he or they may have so lawfully succeeded as aforesaid. Given at Our Court at Carlton House, the First day of December, One thousand Eight hundred and Twenty three. In the Fourth year of Our Reign.

By His Majesty's Command,

(Countersigned) BATHURST.

To our Trusty and Wellbeloved Sir Thomas Brisbane,
Knight, Commander of the most Honorable Military
Order of the Bath, Major General of Our Forces,
Captain General and Governor in Chief in and over
Our Territory of New South Wales and its depen-
dencies, or to the Lieutenant Governor or Com-
mander in Chief of the said Territory for the time
being.
Sir,

Downing Street, 20th Jany., 1824.

In reference to the 20th Clause of the New South Wales Act* (4 Geo. 4th, Cap. 96), I have it in command from His Majesty to issue the following Instructions for your guidance with respect to the erection of Courts of Requests in the Colony under your Government.

Considering the great and increasing number of small Settlers in New S. Wales and the importance of providing the means of adjusting at a small expense and with the least possible delay the causes of a civil nature and of a small amount, in which they may be interested, it has been thought right that you should forthwith carry into execution the power of constituting Courts of Requests, with which you are invested by the Act of Parliament.

You will therefore, with all convenient expedition after the receipt of this Despatch, cause a Commission to be issued, in His Majesty's Name, under the Seal of your Government, erecting five distinct Courts of Requests, one of which is to be held in each of the Towns of Sydney, Parramatta, Liverpool, Windsor and Newcastle, and you will by that Commission appoint such times for the holding of each of those Courts as may best suit the convenience of the Public at large. Upon this point you will exercise your own discretion, observing only that the Courts should be held in each Town at such short intervals as may prevent any improper accumulation or arrear of business.

As it is considered of great importance that the Commissioner, who may preside in these Courts, should be a person of adequate legal attainments and of unexceptionable character, and as it would not be easy to obtain a sufficient number of competent Commissioners, if each district Court were to be held by a separate Commissioner, it has further been decided that the same individual should preside in each of the Courts of Requests in the five Towns above mentioned, and the times for holding the Courts must therefore be so arranged as to allow the Commissioner to attend successively in each. If it should appear that the amount of business is too considerable to be properly discharged by one person, or if the increase of the Colony should hereafter render necessary any addition to the number of such Courts, you will not fail to transmit to me the necessary information in order that the expediency of appointing one or more additional Commissioners may be considered. At present it does not appear that more than one person can be required for performing the whole

* Note 33.


1824.
20 Jan.
Appointment of John Stephen as commissioner of courts of requests.

Reasons for issuing separate commissions.

Salary of commissioner.

of this duty throughout the Colony, and therefore His Majesty would not deem it right to approve the granting a Salary to more than one Officer of this description.

I am further to acquaint you that His Majesty has been pleased to nominate John Stephen, Esqre., Barrister at Law, the late Solicitor General of the St. Christopher's Government, as the Commissioner of the several Courts of Requests which are to be at present established in New South Wales. You will therefore cause five separate Commissions to be issued in His Majesty's Name, under the Seal of your Government, appointing this Gentleman to act as Commissioner in each of His Majesty's Courts of Requests at Sydney, Parramatta, Liverpool, Windsor and Newcastle.

The convenience of issuing separate Commissions for holding each distinct Court will be felt, if it should hereafter be necessary to increase the number of Commissions, since in that event the present Commissioner might retain such of his Commissions as it might be deemed right upon a future arrangement to entrust to him, and such only of those Commissions would be recalled as upon such an arrangement it might be thought proper to commit to some other person.

In pursuance of the Act of Parliament, you will consider what salary might be allowed to the Gentleman at present to be entrusted, having regard to the Salaries of the other Legal Officers in the Colony, and to the amount of Labor and the responsibility attached to the Office. It does not appear that a smaller Salary than £600 per annum could be properly given as a remuneration for his Services, and you are therefore authorised to pay to the Commissioner of the Courts of Requests out of the Colonial Revenue a Salary amounting at least to £600 per annum, until you have had an opportunity of reporting to me your Judgment upon this point, and of receiving His Majesty's Commands in relation to it.

Mr. Stephen proceeds to New South Wales by the earliest conveyance to assume the duties of his Office.

I have, &c.,
BATHURST.

EARL BATHURST TO SIR THOMAS BRISBANE.
(Despatch No. 5, per H.M.S. Tamar.)

21 Jan.
Appointment of John Stephen as solicitor-general.

Sir,
Downing Street, 21st Jany., 1824.

I am to acquaint you that His Majesty has been pleased to appoint John Stephen, Esqre., Barrister at Law, the late Solicitor General of the St. Christopher's Government, to be His Majesty's Solicitor General of New South Wales.

* Note 45.
BRISBANE TO BATHURST.

It is not proposed to attach any Salary or Allowance to this Office. The Solicitor General will by virtue of his appointment be considered as the legal Adviser of His Majesty's Government in the Colony, either in cases where the sickness or absence of the Attorney General or any other unavoidable cause may render it necessary to employ a substitute for that Office, or in cases which for their peculiar difficulty or importance may require that the Attorney General should have the professional assistance of another Counsel. But it is to be distinctly understood that the Solicitor General of New South Wales is not to be officially consulted or employed in any case in which the Attorney General may be able properly to conduct the Public Business without such assistance.

I have, &c,
BATHURST.

SIR THOMAS BRISBANE to EARL BATHURST.

(Despatch marked “No. 1 of 1824,” per ship Competitor.)

Government House, Parramatta, New South Wales.

My Lord, 21 January, 1824.

I consider it my bounden duty to bring the name of Judge Field before your Lordship, under circumstances of no ordinary considerations. I should have thought but little that during the two years I have been in the Colony that he had never once entered Government House, but I cannot allow the notorious fact to pass unnoticed that he has embraced every opportunity of falsely and foully slandering me and my Government as Contemptible to various Individuals. I can ascribe no cause for His unwarrantable Conduct, as I had uniformly treated Him with the utmost consideration; and never once used an expression to offend Him; I must therefore impute it to His having allowed Himself to become the head of a faction, with which He had been identified during the whole of this period, who seemed guided by no moral restraints in order to accomplish their ends. I wish I could allow myself to believe that the Court, over which He presided, had been free from this Spirit of Party.

Your Lordship is no Stranger to the Opposition which He evinced also to my Predecessor, and I must have brought His proceedings to your Notice long ere this, had I not been guided by expediency, and buoyed up by the hope of His Speedy recall.

I have, &c.,
THOS. BRISBANE.
EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 6, per H.M.S. Tamar.)

Downing Street, 22d Jany., 1824.

Sir,

His Majesty having been pleased to appoint Mr. Mackaness to be Sheriff of New South Wales, I am to desire that you will put him in possession of his Office and afford him every support and assistance in your power. The following are some of the principal duties which will devolve upon him.

He will have to execute by himself or his Deputies all the Judgments, Decrees and Orders of the Court. In Criminal Proceedings he will by himself or his Deputy receive the Bodies of Offenders for safe custody till Trial. He will make Returns of all Prisoners to the Court on the first day of every term. He will be present at all Sittings for the Trial of Offenders. He will carry into execution by himself or his Deputies the Sentence of Death or any minor sentence which may be pronounced.

In Civil Proceedings he will serve upon the Defendants the process of the Court to compel an appearance; he will arrest those who are to be held to bail; in default of Bail he will keep them in Custody till Judgment is had on the Action. He will seize and put up to Sale the Goods and Estates of Defendants against whom Judgment may be given. He will on the first day of every term make a Return to the Court of all the Writs and Orders he has received and of the manner in which he has executed and obeyed them.

In Revenue matters, he will superintend all enquiries as to the property of the Crown by executing Extents &c. He will seize all escheated property and will preside at Inquests as to damages done to the Lands of the Crown, the banks of Rivers &ca.

He will discharge the duties of Coroner and those of Marshal of the Admiralty, that is, he will enquire into the causes of any sudden Deaths, and will seize and hold subject to the Court all Ships and Maritime Property which may be the subject of Litigation.

You will not understand these directions as an accurate specification of the duties to be executed by the individual, but merely as a general summary for your guidance.

With reference to the above duties, I think it necessary to inform you that Mr. Mackaness should receive a Net Salary of £1,000 per annum which should arise from the Fees payable to him as Sheriff; and the Chief Justice should be directed to draw out a Docket of Fees which will on an average afford him the above Sum; if however they should exceed £1,000 per annum,
Mr. Mackaness will be directed to pay the Surplus into the Police Fund, and in the event of their not amounting to that sum the deficiency will be made good from the Colonial Revenue.

As it would not be easy for Mr. Mackaness on his arrival, as a stranger in the Colony, to procure Securities to any considerable amount for the punctual payments of such Monies as he may receive in the execution of the Duties of his Office, you will, within Six months at latest after he shall have entered upon them, require him to enter into such a recognizance to His Majesty in the Supreme Court of Judicature of New South Wales in the sum of £1,000 with at least one sufficient Surety for securing the due and regular execution of his Official Duties.

To prevent the improper accumulation of the money of Suitors in the hands of the Sheriff, he will be required to file on the second Monday in every month in the Office of the Registrar of the Supreme Court, first, an affidavit stating the particulars and amount of his Receipts as Sheriff during the preceding Month, and the mode in which they have been applied, and stating what was the exact balance of such receipts and payments remaining in his possession on the last day of that month; and Secondly, a Certificate from the Colonial Treasurer stating that he has received and holds in his possession, subject to the order of the Court, the exact balance mentioned in the affidavit. In default of filing this Affidavit and Certificate by the second Monday of each month (unless a reasonable cause to be allowed by the Chief Justice), the Sheriff will ipso facto be superseded from his Office.

You will understand that this communication contains the outline of those provisions on the subject of the Sheriff's Office, which it is proposed to embody in the Order in Council which will shortly be passed in pursuance of the New S. Wales Act of the last Session.

As the duties of Sheriff in England expire at the end of a year, and as the situation of Sheriff in New S. Wales is exactly analogous, you will consider that Mr. Mackaness's Office expires annually, and will therefore take care to reappoint him without any further instructions from me.

I have, &c.,

Bathurst.

Under Secretary Horton to Sir Thomas Brisbane.

(Despatch per H.M.S. Tamar.)

Sir,

Downing Street, 23d Jan'y., 1824. 23 Jan.

I am directed by Lord Bathurst to transmit to you the copy of a letter from the President of the Royal Society stating that an Admeasurement* of an Arc of the Meridian of New South

* Note 46.
Wales would prove of importance to the interests of Science, and as his Lordship concurs in Sir Humphry Davy's recommendation you will consider yourself authorised to employ competent persons, and to defray the expence from the Colonial Revenue.

I have, &c.,

R. Wilmot Horton.

[Enclosure.]

SIR HUMPHRY DAVY TO EARL BATHURST.

My Lord, Royal Society, 21st Novr., 1823.

The Right Honble. His Majesty's Secretary of State for the Home Department having done me the honor to inform me that your Lordship was favorably disposed to an undertaking, which the Council of the Royal Society consider as important to the interests of Science, Viz. the Admeasurement of an Arc of the Meridian of N. S. Wales, I take the liberty of transmitting at their request this letter to your Lordship.

Several Arcs have been measured in the Northern Hemisphere, but one only, and that at a time when Instruments were very imperfect, in the Southern.

The present moment appears peculiarly favorable for such a work to the Council, as there are persons at Parramatta, who are able Astronomers and who are in possession of the necessary Instruments with the exception only of a Zenith Sector.

The measure of an Arc in N. S. Wales would not only be of importance to Astronomy in affording data for determining correctly the figure of the Earth, a matter of great interest to Navigation, but would likewise be useful in laying a foundation for a correct Survey of our Colonies in that great and unexplored Country.

Your Lordship's liberal and enlightened mind will I am sure require no apology for this communication, which, as President of the Royal Society, the interests of Science call upon me to make.

I have, &c.,

Humphry Davy.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch per H.M.S. Tamar.)

Sir,

Downing Street, 23d Jany., 1824.

I am directed by Lord Bathurst to transmit to you the copy of a Memorial from Mrs. Redfern, dated 13th inst., requesting that an additional Grant of Land may be made to her husband
on his arrival in New South Wales, and to acquaint you that his Lordship has no objection to Mr. Redfern’s receiving a Grant of Land proportioned to his Capital under the usual conditions of cultivation and improvement within a limited period.

I have, &c.,
R. WILMOT HORTON.

[Enclosure.]

THE MEMORIAL OF MRS. SARAH REDFERN ON BEHALF OF HER HUSBAND MR. WILLIAM REDFERN.

To the Right Honorable Earl Bathurst, K.G., His Majesty's Principal Secretary of State for the Colonies &c. &c. &c.

Sheweth,

That your Memorialist's husband, Mr. William Redfern, late of New South Wales, and now temporarily residing at the Island of Madeira for the benefit of his health, is about to return to that Colony per the Ship Alfred now under immediate dispatch, there permanently to reside.

That Mr. Redfern possesses in New South Wales upwards of Fourteen hundred head of Horned Cattle, Four thousand Sheep, and several Horses. But the quantity of Land he possesses (the greater part obtained by purchase) is not nearly sufficient to subsist his Herds and Flocks.

That Mr. Redfern has gone to very considerable expence in the purchase of Merino Sheep, which he is about to convey to New South Wales for the purpose of improving and increasing the production of fine wool in that Colony. And he has also engaged Vine Dressers and procured Vines at the Island of Madeira, at considerable expence, to proceed to New South Wales for the purpose of cultivating the Vine there.

That it is now impossible to procure Land by purchase in New South Wales; as the quantity Mr. Redfern holds is entirely insufficient for the subsistence of his Stock of Horned Cattle and Sheep, and in consideration of the expence Mr. Redfern has gone to in procuring and conveying Vine Dressers, Vines, and Merino Sheep to that Colony, Your Memorialist most respectfully solicits your Lordship to direct that a Grant of Land may be made to Mr. Redfern in New South Wales.

As Your Memorialist, Mr. Redfern, &c., are to proceed in the Ship Alfred to sail in a very few days for New South Wales, the favour of an early communication of your Lordship’s pleasure is respectfully requested.

S. REDFERN.

33 Rockingham Row, Kent Road, London,
13th January, 1824.
HISTORICAL RECORDS OF AUSTRALIA.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.
(Despatch per ship Prince Regent.)

Sir, Downing Street, 24th Jany., 1824.
Sir,

His Majesty having appointed Mr. Wm. Carter to be Master of the Supreme Court of New South Wales, I am directed by Lord Bathurst to introduce him to your notice and to request that you will afford him every facility in the execution of his Office.

I am, &c.

E. W. HORTON.

SIR THOMAS BRISBANE TO EARL BATHURST.
(Despatch marked “No. 2 of 1824,” per ship Elizabeth.)

Government House, Sydney, New South Wales,

My Lord, 27th January, 1824.

In favor of the enclosed Memorial addressed to the Lords Commissioners of His Majesty’s Treasury by the Merchants, Traders and Settlers of this Country, engaged in the interesting experiment of trying to Supply the Market of Great Britain with the Cedars and Gums of New Holland, I respectfully entreat your Lordship’s powerful intercession. The Elizabeth, the bearer of this dispatch, being fraught also with a Cargo of wood, her owner will acknowledge an early, as gratefully as a favourable, decision upon the important question of the duty of £3 16s. the ton, said to be levying in England upon Timber, the produce of the Colony.

I have, &c.

THOS. BRISBANE.

[Enclosure.]

THE MEMORIAL OF THE UNDERSIGNED MERCHANTS, TRADERS AND SETTLERS OF THE COLONY OF NEW SOUTH WALES.

To the Right Honorable The Lords Commissioners of His Majesty’s Treasury.

Your Memorialists beg leave most respectfully to represent to their Lordships that they learn a Duty of £3 16s. Pr. Ton is levied upon that description of wood called Cedar of the growth of the Colonies on its arrival at home. That your Memorialists, from the Act 3 Geo. III, Chap. 96, were under the impression of the woods of the growth of these Colonies being admitted to Entry Duty Free, have made Several Shipments to the Mother Country, having in fact no other export, with the exception of wool; that procuring this wood on the coast is a tedious operation, and attended with much risk to the Shipping so employed; that the expense of falling and preparing it for Shipment is considerable; that such Expence forms the means of existence for a considerable number of the lower Classes of Society; that, Should your
BRISBANE TO BATHURST.

Lordship think proper to enforce this duty, it will be attended with ruinous consequences to all the Parties concerned, and put a stop to the rising efforts of the Colonists to find an Export in this Article.

That your Memorialists beg to call the attention of their Lordships to the quantity of Tonnage entered at this Port from Great Britain between the 1st Jan., 1823, and 20 Jan., 1824, amounting to 15,994 Tons, out of which 7,235 Tons have and are returning to Great Britain with Cargoes consisting of Wood of different descriptions and Wool (both of the growth and Produce of this Country) and the remaining part of their Cargoes consists of Oil, taken by Vessels at Sea; that the annual export of Wool does not exceed 100 Tons in weight, and taking the Annual Shipments of Oil, which is at all times uncertain, but which never exceeds 600 Tons, leaves 6,535 Tons to be provided for with Cargoes, which your Memorialists have no other means of doing than by the purchase and Shipment of Wood.

That your Memorialists humbly hope that their Lordships will take into their consideration the relative value of the Cedar of this Colony and that of the Mahogany of Honduras, when they will at once see the former cannot possibly be brought into competition with the latter, should the heavy duty now paid be still enforced.

Your Memorialists beg to State that the prices of Cedar in Logs, in the London Markets during the last year, have been 54d. to 5½d. pr. Superficial Foot, when Mahogany from Honduras at the same time realized 10½d. and 11d. pr. Superficial Foot and both pay the Same Duty; that these duties are not only ascertained from Private resources, but from Public Sales at Greenway's Coffee House.

Their Lordships will also be pleased to have in mind the great length of the Voyage compared to that from the Bay of Honduras, consequently the increased freightage the former are Subject to.

That your Memorialists, residing and prosecuting their Several Callings under the care and protection of the Representative of their Sovereign, have every confidence in the Representation of His Excellency the Governor, whose attention is called forth and bestowed upon every measure calculated to aid and assist in producing an export to the Mother Country, tending thereby to better the condition of the free labouring Classes, to improve in a variety of ways the resources of these interesting Colonies, and above all to encourage that exertion in the Merchants, Traders and Settlers so essentially necessary to the lessening the burden of the Colony upon the Mother Country.
Your Memorialists conclude by praying their Lordships will be pleased to take this Statement into their favorable consideration.

ROB. CAMPBELL.
For the Australian Co.,
A. WARREN.
BERRY AND WOLLSTONECRAFT.
RAINE AND RAMSAY.
T. W. M. WINDER.
JNO. AND HENRY OWEN.
RILEY AND WALKER.
DAVID MAGUIRE.
THO. MACVITIE.
ALEXR. MACLEOD.
THOMAS ICELY.

H. MACARTHUR.
J. BLAXLAND.
For JNO. MACARTHUR,
JAS. MACARTHUR.
A. K. MACKENzie.
ASPINAL, BROWNE & Co.
JOHN STREET.
J. B. L. De ARRIETTA.
ADOL. JAS. ROss.
ROB. TOWNson.
V. JACOB.
P. DE MESTRE.

Sydney, 24th January, 1824.

SIR THOMAS BRISBANE TO UNDER SECRETARY HORTON.
(Despatch per ship Elizabeth.)

Government House, Sydney, New South Wales,

Sir, 28th January, 1824.

I had entertained the hope of being able by the present opportunity to return the form transmitted with your letter of the 19th of last May filled up in the manner pointed out in Lord Bathurst's Circular of the 31st March, 1822. This detailed information respecting the financial resources of His Majesty's Colony of New South Wales and the several branches of its Expenditure being required however to be furnished in a form altogether new, is attended with so much labor that my hopes have not been realized. I solicit therefore that you will do me the favor to request His Lordship to accept the enclosed Summary of the Colonial resources and Expenditure for the year 1822 as a temporary Substitute for this Omission.

I have, &c,
THOS. BRISBANE.

[Enclosure.]


<table>
<thead>
<tr>
<th>Description</th>
<th>£</th>
<th>s</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duty on £25.073 12s. Goods Sold by Auction</td>
<td>376</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Entry of 15 Vessels in Government Service</td>
<td>11</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Ditto , 55 Vessels not in Government Service</td>
<td>82</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>Clearances of 68 Vessels to foreign Countries</td>
<td>17</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Entry of 30 Colonial Vessels from the Hawkesbury</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Clearances of 46 ditto to ditto</td>
<td>4</td>
<td>12</td>
<td>0</td>
</tr>
<tr>
<td>Entry of 58 Vessels from Newcastle or the South Settles</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clearances of 64 ditto from ditto</td>
<td>16</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
**BRISBANE TO HORTON.**

*Colonial Customs—continued.*

<table>
<thead>
<tr>
<th>Description</th>
<th>£</th>
<th>s</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duty on £101,834 Os. 9d. Imports not British</td>
<td>5,223</td>
<td>3</td>
<td>24</td>
</tr>
<tr>
<td>Ditto 15,077 Gallons of Wine</td>
<td>572</td>
<td>17</td>
<td>9</td>
</tr>
<tr>
<td>Wharfage on 60,943 Packages</td>
<td>1,523</td>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td>Wharfage Commutation upon 3144 ton of Iron</td>
<td>94</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>Ditto upon 290 ton of Salt</td>
<td>38</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>Duty on 119 Solid feet of Rose Wood</td>
<td>5</td>
<td>19</td>
<td>0</td>
</tr>
<tr>
<td>Ditto on 90,205½ lbs. of Tobacco</td>
<td>2,255</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>Two Vessels use of Govern't Heaving down place</td>
<td>8</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>On ditto Mooring Chains</td>
<td>5</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Wood and Water for 70 Vessels 22,378 tons burden</td>
<td>241</td>
<td>15</td>
<td>0</td>
</tr>
<tr>
<td>Duty on 39,068 Gallons of Spirits</td>
<td>29,880</td>
<td>10</td>
<td>9</td>
</tr>
<tr>
<td>Price and Metage of 942 tons of Coal sold at New Castle</td>
<td>504</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>Price of 178,140 Superficial feet of Wood ditto</td>
<td>742</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>41,621</td>
<td>0</td>
<td>44</td>
</tr>
</tbody>
</table>

Deduct Naval Officer's Commission 5 per Cent. ... 2,081 0 11

Net produce of the Customs for the Year 1822 ... 39,539 19 5

1822.

*The Colonial Fund.*

**Sydney.**

<table>
<thead>
<tr>
<th>Description</th>
<th>£</th>
<th>s</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Engineer</td>
<td>182</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>Assistant ditto</td>
<td>137</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Civil Architect</td>
<td>40</td>
<td>19</td>
<td>0</td>
</tr>
</tbody>
</table>
| Overseers of Town Gangs                                                   | 1,022 | 17 | 11
| Road Parties                                                              | 548 | 16 | 11 |
| Hyde Park Barracks                                                        | 180 | 16 | 0  |
| Carters' Barracks                                                         | 388 | 1  | 6  |
| Grose Farm                                                                | 195 | 4  | 4  |
| Longbottom                                                                | 128 | 6  | 0  |
| Lumber Yard, Clerks, Constables and Watchmen                              | 211 | 8  | 3  |
| Yeast for Hyde Park Bks. and Longbottom                                   | 102 | 13 | 24 |
| 2,408 lbs. of White Lead                                                  | 84  | 16 | 0  |
| 24 Dozen of Spades                                                        | 63  | 12 | 0  |
| 3 Cwt. of Steel                                                           | 17  | 10 | 0  |
| Leather                                                                   | 87  | 5  | 11 |
| Cordage                                                                   | 35  | 0  | 11 |
| 31 Cross Cut Saws                                                        | 79  | 0  | 0  |
| 12½ Dozen Shaved Bazils                                                  | 14  | 0  | 0  |
| Thermometers and Barometers                                               | 0   | 10 | 0  |
| Burning Lime                                                              | 27  | 10 | 1
| Convict Clothing                                                          | 174 | 18 | 3  |
| 48 Reams of Foolscape paper                                               | 86  | 8  | 0  |
| 2,000 Quills                                                             | 6   | 10 | 0  |
| Sundries for the Public Market                                            | 13  | 16 | 74 |
| Ditto for the Public Works                                                | 74  | 1  | 5  |
| Rewards to Active Overseers                                               | 20  | 0  | 0  |
| House for Supdt. of Police                                                | 250 | 7  | 9  |

**Total** ... 4,113 11 81
Statement of the revenue and expenditure of the colony for the year 1822.

<table>
<thead>
<tr>
<th>Division</th>
<th>Description</th>
<th>£</th>
<th>s</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial</td>
<td>Two Crown Solicitors</td>
<td>600</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Clerk to the Supreme Court</td>
<td>80</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Arrears to the late Clerk of the Peace</td>
<td>729</td>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Cryer to the Criminal Court</td>
<td>25</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Stationary for ditto</td>
<td>44</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>767 Evidences on Crown Prosecutions</td>
<td>833</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Rewards on prosecuting to Conviction</td>
<td>143</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Copying Government Orders</td>
<td>13</td>
<td>12</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Howe's Indemnity</td>
<td>43</td>
<td>17</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td><strong>Total Judicial</strong></td>
<td>2,512</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Police</td>
<td>Superintendent and Treasurer</td>
<td>200</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Expenes of a Muster</td>
<td>4</td>
<td>15</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Coroner</td>
<td>112</td>
<td>18</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Constables</td>
<td>1,238</td>
<td>16</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Fuel for the Gaol and Watch houses</td>
<td>194</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Provost Marshal Lodging money</td>
<td>75</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Stationary and Sundries for ditto</td>
<td>44</td>
<td>12</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Services to the Police</td>
<td>83</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Apprehending 148 Runaways</td>
<td>170</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td><strong>Total Police</strong></td>
<td>2,124</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Surveyors</td>
<td>Assistant Surveyors</td>
<td>335</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Clerk to the Surveyor General</td>
<td>25</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Inspector of Roads</td>
<td>31</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td><strong>Total Surveyors</strong></td>
<td>391</td>
<td>9</td>
<td>6</td>
</tr>
<tr>
<td>Secretary's</td>
<td>Colonial Secretary</td>
<td>82</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Chief Clerk</td>
<td>45</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Clerk to the Governor</td>
<td>74</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Two Junior Clerks</td>
<td>60</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Clerk to His Late Excellency</td>
<td>13</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Muster Clerks</td>
<td>30</td>
<td>10</td>
<td>0</td>
</tr>
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<td></td>
<td>Government Printer</td>
<td>60</td>
<td>0</td>
<td>0</td>
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<tr>
<td></td>
<td>Colonial Botanist</td>
<td>91</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Fees on 600 Certificates of Freedom</td>
<td>91</td>
<td>10</td>
<td>4</td>
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<tr>
<td></td>
<td>Bookbinding</td>
<td>1</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Copying Clerks</td>
<td>34</td>
<td>17</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td><strong>Total Secretary's</strong></td>
<td>585</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Dock Yard</td>
<td>Master Attendant</td>
<td>100</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Boatswain of the Yard</td>
<td>88</td>
<td>17</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Overseers of ditto</td>
<td>373</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Light-House Superintendent</td>
<td>48</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Governor's Crew</td>
<td>40</td>
<td>0</td>
<td>0</td>
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<td></td>
<td>Naval Stores</td>
<td>375</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Two Telegraph Masters</td>
<td>24</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td><strong>Total Dock Yard</strong></td>
<td>1,049</td>
<td>8</td>
<td>9</td>
</tr>
</tbody>
</table>
BRISBANE TO HORTON.

The Colonial Fund (Sydney)—continued.

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>£</th>
<th>s</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical</td>
<td>Assistant Surgeons</td>
<td>237</td>
<td>17</td>
<td>6</td>
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<tr>
<td></td>
<td>Stationary Servants</td>
<td>95</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>House Rent for prin’l Surgeon</td>
<td>31</td>
<td>6</td>
<td>4 1/2</td>
</tr>
<tr>
<td></td>
<td>Commissariat—</td>
<td>364</td>
<td>3</td>
<td>10 1/2</td>
</tr>
<tr>
<td></td>
<td>Loan for the Public Service</td>
<td>19,000</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Rent of the Bonded Store</td>
<td>200</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Sup’t of Government Mill</td>
<td>24</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Sup’t of Govt. Slaughter House</td>
<td>63</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Store Gang Overseer</td>
<td>15</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Supplies for Ditto</td>
<td>5</td>
<td>12</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Clerical—</td>
<td>19,307</td>
<td>17</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Clerk &amp; Steeple Keeper of St. Phillips</td>
<td>25</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Candles for Ditto</td>
<td>6</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Music and Musicians for ditto</td>
<td>14</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Master of the Male O. School</td>
<td>100</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Master &amp; Matron of the Poor house</td>
<td>50</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Donation to Ditto</td>
<td>400</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Roman Catholic Clergyman</td>
<td>75</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Roman Catholic Schoolmaster</td>
<td>7</td>
<td>15</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Clerk to the Catholic Chapel</td>
<td>3</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Rent of a Parsonage</td>
<td>100</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Parramatta—</td>
<td>782</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Coroner</td>
<td>30</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Constables</td>
<td>418</td>
<td>8</td>
<td>10 1/2</td>
</tr>
<tr>
<td></td>
<td>Overseers</td>
<td>450</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Hospital Attendants</td>
<td>39</td>
<td>15</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Native Institution Expenses</td>
<td>539</td>
<td>1</td>
<td>0 1/2</td>
</tr>
<tr>
<td></td>
<td>Ditto. Feast</td>
<td>13</td>
<td>2</td>
<td>1 1/2</td>
</tr>
<tr>
<td></td>
<td>Lime</td>
<td>53</td>
<td>7</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Yeast for the Barracks</td>
<td>16</td>
<td>11</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>36 Bushels of Hair</td>
<td>2</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Sup’d’t of the Lunatic Asylum</td>
<td>50</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Supplies for Ditto</td>
<td>74</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Pennant Hill Overseers</td>
<td>99</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Sup’d’t of the Factory</td>
<td>15</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Overseers at Ditto</td>
<td>107</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Supplies for Ditto</td>
<td>180</td>
<td>19</td>
<td>10 1/2</td>
</tr>
<tr>
<td></td>
<td>Supplies for Govern’t House</td>
<td>18</td>
<td>17</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Overseer of Govern’t Garden</td>
<td>21</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Fencing Glebe</td>
<td>152</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Salary to Watch house Keeper</td>
<td>6</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Crown Stock—</td>
<td>2,318</td>
<td>5</td>
<td>11 1/2</td>
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<tr>
<td></td>
<td>Superintendent</td>
<td>75</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Overseers of Ditto</td>
<td>150</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Castrator</td>
<td>25</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Three Bulls</td>
<td>94</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Stock Yard and Paddocks</td>
<td>122</td>
<td>2</td>
<td>8</td>
</tr>
</tbody>
</table>

28 Jan. 1824.

Statement of the revenue and expenditure of the colony for the year 1822.
<table>
<thead>
<tr>
<th>Location</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Windsor—</td>
<td>£ 2,630 19 3</td>
</tr>
<tr>
<td>Coroner</td>
<td>64 5 8</td>
</tr>
<tr>
<td>Constables</td>
<td>44 5 0</td>
</tr>
<tr>
<td>Overseers</td>
<td>32 0 0</td>
</tr>
<tr>
<td>Lime</td>
<td>97 14 8</td>
</tr>
<tr>
<td>New Court House</td>
<td>1,800 0 0</td>
</tr>
<tr>
<td>Sundries for Public Works</td>
<td>57 11 5</td>
</tr>
<tr>
<td>Government House Keeper</td>
<td>10 0 0</td>
</tr>
<tr>
<td>Expences of the Muster</td>
<td>15 7 6</td>
</tr>
<tr>
<td>Schoolmaster</td>
<td>6 5 0</td>
</tr>
<tr>
<td>Carriage of Convict Baggage</td>
<td>4 0 0</td>
</tr>
<tr>
<td>Remaking the Richmond Road</td>
<td>100 0 0</td>
</tr>
<tr>
<td>Liverpool—</td>
<td>£ 796 18 6</td>
</tr>
<tr>
<td>Coroner</td>
<td>58 10 7½</td>
</tr>
<tr>
<td>Constables</td>
<td>218 16 3</td>
</tr>
<tr>
<td>Overseers</td>
<td>78 6 8</td>
</tr>
<tr>
<td>Lime</td>
<td>19 10 0</td>
</tr>
<tr>
<td>Sundries for the Public Works</td>
<td>418 19 11½</td>
</tr>
<tr>
<td>Carriage of Convict Baggage</td>
<td>2 15 0</td>
</tr>
<tr>
<td>Campbell Town—</td>
<td>£ 805 13 10½</td>
</tr>
<tr>
<td>Constables</td>
<td>80 14 0</td>
</tr>
<tr>
<td>Clearing Glebe</td>
<td>131 14 7</td>
</tr>
<tr>
<td>Fencing ditto</td>
<td>39 9 6</td>
</tr>
<tr>
<td>Lime</td>
<td>27 17 2 ½</td>
</tr>
<tr>
<td>Carriage of Convict Baggage</td>
<td>3 0 0</td>
</tr>
<tr>
<td>Building Church</td>
<td>444 11 1</td>
</tr>
<tr>
<td>Rent of Parsonage</td>
<td>100 0 0</td>
</tr>
<tr>
<td>Temporary Goal hire</td>
<td>8 12 6</td>
</tr>
<tr>
<td>Evan—</td>
<td>£ 867 5 7½</td>
</tr>
<tr>
<td>Coroner</td>
<td>37 16 0</td>
</tr>
<tr>
<td>Constables</td>
<td>118 13 3</td>
</tr>
<tr>
<td>Fencing Glebe</td>
<td>54 12 0</td>
</tr>
<tr>
<td>Clearing Ditto</td>
<td>46 10 2</td>
</tr>
<tr>
<td>Ditching &amp; fencing Burial ground</td>
<td>24 4 3</td>
</tr>
<tr>
<td>Emu Plains Superintendent</td>
<td>7 5 0</td>
</tr>
<tr>
<td>Deputy</td>
<td>66 8 3</td>
</tr>
<tr>
<td>Overseers</td>
<td>225 18 4 ½</td>
</tr>
<tr>
<td>Sundries for Ditto</td>
<td>212 3 4</td>
</tr>
<tr>
<td>Carriage of Convict Baggage</td>
<td>6 0 0</td>
</tr>
<tr>
<td>Miscellaneous—</td>
<td>£ 349 6 4</td>
</tr>
<tr>
<td>Melville and Bathurst</td>
<td>52 11 2</td>
</tr>
<tr>
<td>Police—</td>
<td>£ 73 16 6</td>
</tr>
<tr>
<td>Bringelly and Cook</td>
<td>78 10 6</td>
</tr>
<tr>
<td>Minto and Camden</td>
<td>150 6 4</td>
</tr>
<tr>
<td>Appin and Illawarra</td>
<td>16 13 4</td>
</tr>
<tr>
<td>Argyle</td>
<td>51 5 0</td>
</tr>
<tr>
<td>Bathurst—</td>
<td>£ 73 16 6</td>
</tr>
<tr>
<td>Commandant</td>
<td>60 0 0</td>
</tr>
<tr>
<td>Barometer</td>
<td>4 16 6</td>
</tr>
</tbody>
</table>

The Colonial Fund (Sydney)—continued.

Statement of the revenue and expenditure of the colony for the year 1822.
### BRISBANE TO HORTON.

The Colonial Fund (Sydney)—continued.

<table>
<thead>
<tr>
<th>Location</th>
<th>Commandant</th>
<th>Engineer</th>
<th>Superintendents and Overseers</th>
<th>Barometer</th>
<th>Port Macquarie—</th>
<th>Pensions—</th>
<th>Van Diemens Land—</th>
<th>Military—</th>
<th>Total expenditure for the Year 1822</th>
<th>Balance in Hand, 31st December, 1822</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newcastle—</td>
<td>273 7 6</td>
<td>94 15 0</td>
<td>85 2 11</td>
<td>4 16 6</td>
<td>171 5 0</td>
<td>125 0 0</td>
<td>132 0 0</td>
<td>150 0 0</td>
<td>£41,487 6 9 94</td>
<td>8,733 17 8</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>125 0 0</td>
<td>125 13 10</td>
<td></td>
<td>400 4 0</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>428 2 2</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>£50,221 4 5 4</td>
<td></td>
</tr>
</tbody>
</table>

### The Colonial Revenue.

<table>
<thead>
<tr>
<th>Item</th>
<th>£</th>
<th>s.</th>
<th>d.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seven eighths of the Net produce of the Customs</td>
<td>34,597</td>
<td>9</td>
<td>6 1</td>
</tr>
<tr>
<td>Tax upon 21,125 Tons of Shipping in Support of the Light House</td>
<td>176</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>Duty upon 2,043 Head of Cattle Slaughtered for Govt. use in Sydney</td>
<td>600</td>
<td>12</td>
<td>6</td>
</tr>
<tr>
<td>105 Spirit Licenses</td>
<td>3,032</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>14 Beer Ditto</td>
<td>70</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>8 Brewing Ditto</td>
<td>200</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1 Hawker's Ditto</td>
<td>20</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Tolls and Market Dues</td>
<td>1,571</td>
<td>14</td>
<td>6</td>
</tr>
<tr>
<td>Net produce of the Customs and Excise for the Year 1822</td>
<td>£40,288</td>
<td>7</td>
<td>5 1</td>
</tr>
<tr>
<td>Balance in Hand, 31st December, 1821</td>
<td>9,032</td>
<td>17</td>
<td>0 4</td>
</tr>
</tbody>
</table>

| Total                                           | £50,221 | 4 | 5 4  |
SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch per ship Elizabeth.)

Government House, Sydney, New South Wales,

My Lord,

I do myself the honor to forward for your Lordship's information the General Monthly Returns of the Troops Serving in this Territory from 25th October to 24th December, 1823, inclusive.

I have, &c.,

THOS. BRISBANE.

[Enclosures.]

[Copies of these returns are not available.]

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch per ship Elizabeth; acknowledged by Earl Bathurst, 21st July, 1824.)

Government House, Sydney, New South Wales,

My Lord,

I have the honor to request your Lordship's instructions as to whether James Dunleary, who was a private Soldier in the 84th Regiment, and who was convicted before a Criminal Court in this Colony in 1820 and Sentenced to Suffer death, but, his case having been submitted home, His Majesty was pleased graciously to extend His Royal Mercy to the Convict, is now to be considered as belonging to the 84th, or a free man.

I have, &c.,

THOS. BRISBANE, M.-Gen'l.

[Enclosure.]

EXTRACT of a letter from the Right Honble. Earl Bathurst to Major-General Sir Thomas Brisbane, K.C.B.

"Downing Street, 28th March, 1823.

"I TRANSMIT to you a Copy of a letter from Mr. Hobhouse respecting the Trials and Sentences of James Dunleary and George Frederick Jackson.

"In Dunleary's Case the Offence appears only to have amounted to Manslaughter, and His Majesty has therefore been graciously pleased to extend His Royal Mercy to the Convict, and the warrant is herewith enclosed.

"BATHURST."
SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked "No. 3 of 1824," per ship Elizabeth.)

Government House, Sydney, New South Wales,

My Lord,

31st January, 1824.

The progress of a Committee, consisting in the first place of the two Judges and the Deputy Commissary General, assembled to investigate into the conduct of the Engineer Department while under the superintendence of Major Druitt, having been delayed upon many occasions (altho' most important in itself) by the pressure of other business more important even than it, has been brought to its close lately. I have therefore the honor to transmit to Your Lordship by the present opportunity the result of this board of enquiry condensed into a folio of 372 pages; at the 332nd of which the decision* will be found, whereupon I have deemed it my duty to rest, detailed in a letter from the Colonial Secretary written to Major Druitt, which concludes by delivering it as my opinion that "the Justice of the Case would only be met by ordering him to give back the possession of the Crown Land upon which he has been suffered to reside hitherto. But, willing to allow every due weight to the length of time during which the enquiry has been unavoidably protracted, His Excellency determines not to act upon this decision until the whole Case shall have been referred to His Majesty's Ministers. Therefore he will be allowed a prolonged possession of the Land he at present occupies, but its Grant will not be confirmed without orders from England."

In addition to this, I have only to observe that Major Druitt had been ordered by Major General Macquarie, in a letter addressed to the Surveyor General, from which I forward an extract, Six thousand Acres of land, and has been in actual possession during the progress of this enquiry of the first thousand of these acres, and brought into improved culture a very large proportion.

I have, &c,

THOS. BRISBANE.

[Enclosure No. 1.]

[This voluminous enclosure has been transferred to a volume in series II.]

[Enclosure No. 2.]


"To Major George Druitt, 48th Regt., One Thousand (1,000) Acres of Land out of the Rooty Hill Government Allotment on Ross's Creek, in remuneration for his extra services for Four

* Note 47. † Note 48.
years as Chief Engineer, with a Clause in said Grant making the same subject to the approval of His Majesty's Principal Secretary of State for the Colonies, and which Grant is to be surrendered again to Government if not approved of at Home.

"To reserve One Thousand Acres of Land for the said Major George Druitt as Compensation for his extra duties as Chief Engineer, in case of such compensation being sanctioned and approved of at Home; but no Grant to be made out or given thereof until such sanction and approval is notified from home."

"To reserve Two Thousand (2,000) Acres of Land for the said Major George Druitt as a Free Settler, but no Grant to be given thereof, till notice of his resignation being accepted is received from Home."

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked "No. 4 of 1824," per ship Ocean.)

Government House, Sydney, New South Wales,

My Lord,

2nd February, 1824.

Along with this letter I have the honor to transmit the returns required in your despatch of No. 9 of the year 1822, which has been made as correct as the deficiency of many public records and the indigestion of those that are extant would allow; and I am of opinion it will be found tolerably accurate, although, in order that it might reach England before the close of this year's Session of Parliament, the completion has been hurried, for Mr. Bigge's estimate was not too high, when he stated in the 144th Page of his first report, referred to in your Lordship's letter, that a "perfectly accurate investigation of those Cases of Individuals convicted in the Colony for felony, Subsequent to the periods of their emancipation, required more time and a more tedious reference than he was enabled to bestow or to make," even during a residence in the Territory of two years and upwards.

I have, &c.,

THOS. BRISBANE.

[Enclosure.]

RETURN of 153 Individuals (out of 1,605 the total Number tried) who after receiving Remissions of their Sentences from His Majesty or from any of the Governors of New South Wales or Lieutenant Governors of Van Diemen's Land, as well as of those who, after the expirations of their Sentences, have been Convicted of Felony in the Colonial Courts between the 12th March, 1810, and 22nd February, 1823, both Days inclusive.

[This return detailed the place and date of the original conviction, and the sentence passed, the ship by which the convict
BRISBANE TO BATHURST.

arrived in the colony, the form and date of the remission of sentence, and the crime, date of trial, and sentence passed on the colonial conviction.

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SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked “No. 5 of 1824,” per ship Elizabeth; acknowledged by Earl Bathurst, 22nd July, 1824.)

Government House, Sydney, New South Wales,

My Lord,

3rd February, 1824.

In compliance with the instructions conveyed to me in your letter of the 9th September, 1822, the Surveyor General was despatched on the 22nd of last October in His Majesty’s Cutter Mermaid to examine* Port Bowen, Port Curtis and Moreton Bay, with the Country immediately adjoining; and his report upon the Capacity of the two latter for the purposes of Convict Settlements I have now the pleasure to enclose, as it commences a new era in the History of the Continent of New Holland by the discovery of a large and important river.

The first part of your Lordship’s Commands having been thus carried into its fullest effect by the zeal and Intelligence of Mr. Oxley, the Second will be proceeded upon the moment that the rainy Season concludes, by the Establishment in Moreton Bay of a few, not exceeding fifty Souls for the purpose of providing accommodation for themselves, and for the reception of any number of Convicts it may be deemed expedient to send hereafter.

I have, &c,

THOS. BRISBANE.

[Enclosure.]

SURVEYOR-GENERAL OXLEY TO SECRETARY GOULBURN.

Sir, Surveyor-General’s Office, 10th Jany., 1824.

I have the honour to report to you, for the information of His Excellency Sir Thos. Brisbane, my proceedings in the execution of the instructions contained in your letter of 19th September last.

I sailed from this Port in H.M. Cutter Mermaid on the 23rd Otr. last, and on the 5th November following I anchored in Port Curtis after a tedious passage occasioned by adverse N.E. Winds and strong Southerly currents.

From the description of the Islands forming the N.E. Side of this Port by Captn. Flinders, I considered that the purpose of my Mission would be best effected by commencing the examination of the Country on the South West Side or Mainland, and I now respectively Submit, for His Excellency’s Consideration, the

* Note 49.
result of a Minute examination of the Southwest coast of this Port, extending from the North Head of Bustard Bay to Mt. Lacom, and in which I was occupied Sixteen days.

Port Curtis is a very difficult Harbour for Shipping to enter, numerous land Shoals extend off from the Main land nearly to Facing Island: these Shoals are not distinguishable until nearly low water, the rapidity of the Tides causing the water to assume the same turbid appearance in the deep Channels as on the Banks. The best and most marked Channel for large Ships is the one close to Facing Island, which must not be approached nearer than 5 fms.; from that depth the water Shoals Suddenly to the Bank or Reef which Surrounds the Island, and which does not Shew itself except at low water. When Gatcomb Head on Facing Island bears North, the Channel widens considerably and Ships may anchor in security under the guidance of the Lead. A S.E. wind and Ebb tide cause a considerable Sea, and there being no Coves in which Small Vessels might lay out of the Set of the Tides, it cannot be considered as a good Harbour for Vessels of small burden.

The Coast of the Mainland is covered with Mangroves intruding in some places more than half a mile back, and the Shore at low water is rendered almost inaccessible by extensive Mud Flats. South Shore Head is the only point on the Main where a good landing could be effected at any time of Tide. The Country between South Trees Point and Mt. Lacom is broken into low Stony ridges; in the Valleys, the Soil is a poor Sand, and, in a Space of eight Miles by Four in that, I did not see 200 acres of even tolerable ground.

The Hills all terminate in Mangrove Swamps on the Harbour, and the whole of the Tract is bounded in by steep rocky Hills covered with quartz and coarse Sandstone. Near to South Trees Point, the Hills appear Somewhat better, as they are thinly timbered and better covered with grass. The principal rocks are of Slate, and the whole Surface of the Country is thickly covered with small pieces of quartz, granite and a species of Shale.

On the west side of South Shore Head, a small rill discharges itself into a Salt Water Creek; nearly four miles from this is another Smaller one, but it is lost among the Mangroves.

On the banks of the first Stream, a few acres of the best land, I saw, is to be found; a low range of Grass Hills bounding this Flat terminates at South Shore Head.

Both the Streams, I have mentioned, derive their Source in the rocky mountainous country to the S.W., their course is very short; and, insignificant as they are, they appear from the Flood marks to be in the rainy Season the channels of considerable
BRISBANE TO BATHURST.

torrents. With the exception of these rivulets, I saw no other fresh water, and as the Country was Strictly examined between the head of the Inlet round South Trees Point (which proved to be an island, half covered at high water) and Mt. Lacom, I feel satisfied no other waters exist in that tract except during the rainy Season, when a few Ponds (dry when I saw them) in some of the vallies will of course be filled.

The Timber in the Tract of Country above described consists entirely of a diminutive Species of Eucalyptus, quite useless for domestic purposes and fit only for fire wood; neither did the view obtained of the more distant Country warrant the probability of any timber of a better description being found, as I saw nothing but rocky hills on which it was impossible for anything like Timber to grow.

South from Gatcomb Head on the Shore of the mainland, we discovered a rapid mountain Stream, which received the name of the “Boyne”; the entrance is nearly blocked up by sand banks, but at high water there may be from 10 to 12 feet in the Channel; about 3 miles above the entrance the rapids commence. It is however navigable at high water about 4 miles further, where, the River becoming Fresh, the depth is diminished to a few inches. Between this Point and the entrance, I did not see any fresh water. The Country on both Shores rose with low forest Hills of a better description than those about South Shore Head, but so stony as to be almost incapable of cultivation. There were also several small Flats, composed of a good light Sandy Soil, apparently much flooded, as between this Point and the entrance marks were observed 25 feet above the usual level. From the Hills marked A,* the Anchorage under Facing Island was seen and Signals from Gatcomb Head might be distinguished. A plain of good land extends a short distance to the N.W. from the Hill, and was bounded by open thinly wooded Hills affording very good pasturage. To the South, the country rose into lofty rocky ranges, but to the South west the Country though Considerably elevated and broken appeared grassy and open.

The River was examined 12 or 14 miles further, the boat being dragged over a succession of rapids separating deep and picturesque Reaches of the River; much rich alluvial land was seen, and the Hills though rocky were covered with grass. The floods appear to rise between 40 and 50 feet, and all the Flats bore marks of being deeply flooded. No fresh water was found except in the River, the natural banks of which, though in some places half a mile wide, are insufficient to afford a Channel for the great accumulation of waters, which seems to be periodically discharged from the mountainous and rocky region in which the Sources of

* Note 50.
218

HISTORICAL RECORDS OF AUSTRALIA.

1824.
3 Feb.

Examination and description of Port Curtis.

this River are to be found. The Hills rest on a base of Granite, though in two or three places where the soil has been washed away by the Torrents, large masses of blue slate rock of good quality were discovered. The Timber was generally small and useless, a few large trees growing on the flooded land can scarcely be called an exception, as they consisted of an inferior description of Eucalyptus; a few acres of Brushland in the recesses between the Hills produces the light timber trees common to Port Hunter and the Five Islands. The flooded lands on the banks of the River are of no great extent. The Soil is of a deep rich sand capable of producing any crops suitable to the Climate. Many of the Hills, though very Stony, might possibly be applied to the cultivation of the Coffee tree, while the general openness and grassy nature of the Country seem not ill adapted for grazing, if the apparent Scarcity of water, except in the River, did not greatly diminish the chance of its profitable application to that purpose.

Facing Island, which protects Port Curtis from the Sea, is so scantily Supplied with good water, at least in this Season (November), that (independent of its being generally unfertile and destitute of useful timber) it does not appear to be capable of affording subsistence to half a dozen families; there were many indications of mineral substances existing on the Island, and some trifling specimens were procured which appeared to contain Copper and Tin.

Having Viewed and examined with the most anxious attention every point that appeared in any degree eligible for the Site of a Settlement, I respectfully submit it as my opinion that Fort Curtis and its vicinity does not afford Such a Site; and I do not think that any Convict Establishment could be formed there that would return, either from the natural productions of the Country, or as arising from the produce of agricultural labour, any portion of the great expense which would necessarily attend its first formation; in short, it did not appear to me that the Country, taking it in an extended sense, could either afford subsistence to, or supply the means of profitable labour for a large Establishment; and even for one on the Smallest Scale, the greatest difficulty would arise from the Scarcity of timber for building and Bark and Shingles for covering. The Station the best watered and of easiest access is the Inlet to the west of South Shore Head, and for Agricultural purposes the Station marked A. on the Map of the River Boyne.

The coast between the Boyne River and the North Head of Bustard Bay afford two other Inlets, the easternmost of which is of considerable extent with good anchorage and Shelter for
Vessels of all descriptions. The country was examined in the Vicinity of this last Inlet, but no permanent fresh water being found or any timber fit for building and the general character of the country being precisely Similar to that Surrounding Port Curtis, it will be needless to enter into a detailed description of it, it being generally destitute of those natural advantages which might act as inducements to form a Settlement on its shores.

At this period of the year, this country Seems forsaken by the Natives; we saw no recent marks of its having been Visited by them. I think indeed that their Visits are confined to the Rainy Season, when, the Swamps and ponds being filled, an easy Subsistence might be obtained in the Fish which abounded in every Inlet.

The winds during our stay in Port Curtis had prevailed almost constantly from the N.E. and still continuing from that Quarter, together with the length of time consumed in the examination of the Country, the approaching Rainy Season and the excessive heat of the weather, induced me to defer the examination of Port Bowen to a more favourable Season, when greater time could be devoted to it. I therefore returned to the Southward and, entering Moreton Bay on the 29th November, anchored the cutter close to Point Skirmish at the entrance of Pumice Stone River.

Pumice Stone River had been so thoroughly examined and well described by Captain Flinders that, conceiving it would answer no useful purpose to go over the same ground, and aware that the West Shore of Moreton Bay had been but cursorily examined, I determined to trace it round in the hope to find in Such an extensive Inlet Some opening which would render an apparently fine surrounding country of more utility and value than it would otherwise be, if the accounts of the scarcity of fresh water in the Bay were correct.

Our first day's Survey terminated a little above Red Cliff Point. The Shores were in general low and covered with Mangroves, off which extend considerable Mud Flats at low water; but to this remark the Shores in the Vicinity of Red Cliff Point are an exception. The channel is here deep within a short distance of the Shore, and boats can land at any time of tide. The Country is open forest land of inferior quality; a few miles to the west the country again becomes low and is apparently wet, but it Soon rises into open forest hills of good appearance. There was no want of permanent fresh water, but not in Streams, and in one Inlet marked B. navigable for Boats, is abundance of good timber of the Eucalyptus Species, and also great quantities of Pine.

Early on the Second day (Decr. 2nd) in pursuing our examination, we had the Satisfaction to find the tide Sweeping us up a considerable Inlet, opening between the first Mangrove Island
and the Mainland. The muddiness and taste of the water, together with the abundance of fresh water Mollusca, assured us we were entering a large River, and a few hours ended our anxiety on that point by the water becoming perfectly fresh, while no diminution had taken place in the Size of the River, after passing what I called "Sea Reach."

Our progress up the river was necessarily retarded by the Necessity we were under of making a running Survey during our passage. At Sunset we had proceeded about 20 miles by the River; the Scenery was peculiarly beautiful; the country on the Banks alternately hilly and level, but not flooded; the Soil of the finest description of Brush woodland, on which grew Timber of great magnitude, and of various Species, some of which were unknown to us, among others a magnificent Species of Pine was in great abundance. The Timber on the hills was also good, and to the S.E. a little distance from the River were Several Brushes of the Cupressus Australis of very large size.

Up to the Point, the River was navigable for vessels not drawing more than 16 feet water; the Tide rose about five feet being the same as at the entrance. The next day, the examination was resumed and with increased Satisfaction we proceeded about 30 miles further, no diminution having taken place either in the breadth or depth of the River, except in one place, for the extent of about 30 yards, a ridge of detached rocks extending across, having no more than 12 feet on them at high water. From this point to Termination Hill, the River continued of nearly uniform size, the country on either Side of a Very Superior description and equally well adapted for cultivation or grazing, the timber abundant and fit for all the purposes of domestic use or exportation. The Pine trees, if they should prove of good quality, were of a Scantling Sufficient for the topmasts of large Ships, some measured upwards of 30 inches in diameter, and from 50 to 80 feet without a branch.

The Boat's Crew were so exhausted by their continued exertions under a vertical sun, that I was reluctantly compelled to relinquish my intention to proceed to the termination of Tidewater at this time. At this place, the tide rose about 4 feet 6 inches, the force of the Ebb tide and current united being little greater than the Flood tide, a proof of its flowing through a very level country. Having concluded upon terminating at this Point the examination of the River (being 70 miles from the Vessel and our Stock of provisions expended, not having anticipated Such a discovery), I landed on the South Shore for the purpose of examining the surrounding Country. On ascending a low hill rising about 25 feet above the level of the River, we saw
a distinct Mountain (which I conjectured to be the *High Peak* of Captain Flinders) bearing S. 1° 1/2 E., dist’t from 25 to 30 miles round from the Point; to the N.W. the Country declined considerably in elevation, and had much the appearance of immense extended Plains, of low and undulating hills and Vales, well but not heavily wooded, the only elevations of magnitude were some Hills 700 or 800 feet high, which we had passed to the Northward. The appearance and formation of the Country, the slowness of the Current even at Ebb tide and depth of water, induced me to conclude that the River will be found navigable for vessels of Burden to a much greater distance, probably not less than 50 miles. There was no appearance of the River being even occasionally flooded, no mark being found more than 7 feet above the level which is little more than would be caused by the Flood Tide at High Water forcing back any unusual accumulation of waters in Rainy Seasons.

A consideration of all the Circumstances, connected with the Appearance of the River, justify me in entertaining a Strong belief that the Sources of this River will not be found in any mountainous country, most probably from some large collection of Interior Waters the reservoir of those Streams crossed by me during an expedition of discovery in 1818, and which had a northerly Course; whatever may be its origin, it is by far the largest fresh water River on the Eastern Coast of New South Wales, and promises to be of the utmost importance to the Colony, as, besides affording a water Communication with the Southern Countries bordering upon the Liverpool Plains, it waters a Vast extent of Country, a great portion of which appeared to me Capable of Supporting the Cultivation of the richest production of the Tropics. I afterwards proceeded a few miles to the S.E. from the River through a gently broken Country of good Soil, declining in elevation towards the South, the *South Peak* before mentioned being the only remarkable eminence from N.E. to South.

As the position of the entrance of the River was still to be fixed and the channel examined, I lost no time returning down the River with the Ebb Tide, and I stopped for the Night at the base of Green Hills, the highest of which was ascended the next morning and the View from it more extensive than I anticipated. The high coast range, of which Mt. Warning is the nucleus, appeared gradually to lose itself to the westward and with the exception of the Peak before mentioned, and which appears to be the termination of the North entrance of Mt. Warning Range, there was Sarcely an elevation above the ordinary level of the Country to be Seen; if any such range of Hills had place within 50 or 60 miles, it could not have escaped observation.
So much time was spent in the examination of the Country about Sea Reach that it was quite dark when we got to the entrance of the River, which, out of respect to His Excellency the Governor under whose orders this Bay was examined, was now honoured with the name of Brisbane River. The whole of the next day was spent in Sounding the entrance and traversing the Country in the Vicinity of Red Cliff Point; and we did not reach the Vessel until late in the night of the 5th Decr. amply gratified in the discovery of this important River, as we sanguinely anticipated the most beneficial consequences as likely to result to the Colony by the formation of a Settlement on its Banks.

I feel it impossible to enter into a nautical description of so extensive an Inlet as Moreton Bay. The draft given of it by Captn. Flinders is, so far as it comprehends the Tract passed over by him, extremely correct; it does not profess to be a Survey of the whole Bay, and there are so many Sand banks separated by deep water channels of various depths and magnitudes that it would require many months to make a complete Marine Survey of it, and which after all would prove of little Service unless the different channels were buoyed. I do not think however that there would be any great difficulty in taking a Ship, whose draft of water does not exceed 18 feet, as high as Red Cliff Point. Above this point to the entrance into Brisbane River, the Channels would require to be well ascertained before Ships of large burthen could proceed. There is, however, no great danger, as the Shoals are of soft mud and the water quite smooth. A narrow Bank of land appeared to me to extend across from Cape Moreton at the entrance of the Bay to the Main land. On this Bank, I did not find more than 3 fms. at low water; but, as the distance across is full 12 miles, many deeper channels may have escaped my observation.

Pumice Stone River affords good anchorage for Vessels not drawing more than 12 feet water, and the best Channel to enter by will be found closer to the main land. There is plenty of fresh water in the Vicinity of Point Skirmish close to the beach; and, although the Soil is poor and Sandy, the Country is covered with good timber. Among other Species, the Cupressus Australis is the most abundant. It may be procured of considerable size, readily shipped, and appears well adapted to most of the purposes connected with buildings.

Should it be deemed expedient to establish a Settlement in Moreton Bay, the Country in the vicinity of Red Cliff Point offers the best Site for an Establishment in the first instance; it is centrical in the Bay, and there is no difficulty in effecting a
landing at all times of Tide, though the Soil immediately on the Sea Shore is but indifferent. Communication can easily be opened with the Interior; it is about 10 miles to the north of the Entrance into the Brisbane River, and must be passed by all Vessels intending to enter. Red Cliff Point must however be viewed as being better adapted for a Military Post and Stores than as the Site of a Principal Settlement; the Brisbane River presents so many superior situations that, although a Post here may be indispensable, I think a permanent Settlement would be more advantageously formed on the West Side of the River at the termination of Sea Reach. The River here is not fresh, but there is plenty of fresh water, the Country open, and no obstacles exist from Swamps or hills to prevent a ready communication with the Interior either by the River itself or at a distance from it. From a hill near this last Station the entrance of the Bay can be seen; and by clearing away a few trees, a communication by Signal may be held with Red Cliff Point. The ground is dry, the Soil good, and it receives the full force of the Sea breezes.

The Bay abounds with fish of all descriptions common to this part of the Coast. The Natives, in the intercourse we had with them, appeared to possess a most friendly disposition. They are very numerous, and are to a certain extent Superior in their domestic habits to the Savages inhabiting the more Southern coast. For a more detailed description of these people, I beg to refer you to my Journal.*

There are Several Islands in the upper part of Moreton Bay, to the Southward of the Entrance into the Brisbane River, two of which are formed of good dry Soil with water on them; the others are mere mangrove Swamps. We had little opportunity of making any nautical additions to the Charts of Captain Flinders. We however discovered that the land of Point Lookout is an Island, and that Moreton Bay extends as far South as Lat. 28 S., where it communicates with the Sea by a Shoal Channel through a Sandy beach navigable for Boats. We had also the Satisfaction to ascertain that the waters, having their Source in the high land of Mt. Warning, formed a considerable Stream, the entrance into which is closed to Point Danger; Across there is a Bar having 12 feet on it at half tide, there may be probably 14 feet at high water. I had not time to proceed up this River beyond a few miles, Sufficiently far however to perceive that the River has its source to the westward of Mt. Warning. The Country on the Banks appeared to be good and abounded with useful timber. I considered the Knowledge of this River useful in establishing the point that the Brisbane River does not receive its waters from the lofty ranges of the Sea coast, and as

* Note 51.
the course of that River had been already traced beyond the N.W. entrance of the Coast ranges, it appeared still more probable that it derived its supply from some part of the S.W. Interior.

From the observations of others, joined to my own limited experience of the winds and weathers on this Point, I think that considerable difficulty will be experienced by vessels bound to the northward from the month of October to February. To the North of Break Sea Spit, the N.E. Wind (varying occasionally to the S.E.) prevails during those months blowing in Strong Gales; to the Southward of Break Sea Spit the winds are more variable, being much influenced by the direction of the Coast which to that Point heads nearly North and South. The currents to the South of Break Sea Spit, at a distance of 15 or 20 miles from the Shore, Set Strong to the South; near the Shore there is little current, and I have then found it occasionally setting to the North. In order to make a good passage to the Northward during the Summer Season, I would recommend Vessels to keep the land close on board. There are no hidden dangers, and besides being out of the Strength of the Current, considerable advantage is obtained by being within the influence of the Land Winds, which commonly blow off it during the night during the Winter and Spring months. The winds will be found variable, but blowing more frequently from the West and N.W. than any other quarter. As an example of the general tendency and Set of the Currents, the following facts may be adduced. A log of Cedar with a Staple in it was found on the Sea Shore of Moreton Island, which must have floated either from Newcastle or Port Macquarie; and on the same Island a cask and part of a New Zealand Canoe were recognized as having belonged to the Echo Whaler, which ship was cast away on Wreck Reef* about three years ago. These Articles must have come from an opposite direction to the log of Cedar. On my return from Moreton Bay, keeping a distance of 12 or 14 miles from the Coast, the Vessel was set 58 miles to the South in 22 hours, and a current of nearly equal strength accelerated our return from Port Macquarie to Sydney.

The existence of a strong Southerly current at this Season of the year, and the situation of its greatest strength with respect to the Coast, are points tolerably well known to the Masters of Vessels sailing out of this Port.

I have the honor to transmit herewith a daily journal† of my proceedings, together with a correct map‡ of Moreton Bay including Brisbane River, and also some alterations in the Coast line about Point Danger; the alterations and additions are coloured Red; detached drafts of the Inlets in the Vicinity of Port Curtis also accompany this Report.

* Note 52. † Note 51. ‡ Note 50.
From Lieut. Stirling of the Buffs, who accompanied me by direction of His Excellency, I derived the greatest assistance, and it is principally owing to his skill in the rapid and accurate delineation of the surface of the positions of Country we examined, that we were enabled to complete the Service described in this Report in so short a space of time.

I have, &c.,

J. Oxley, Surveyor-General.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch per H.M.S. Tamar.)

Sir,

Downing Street, 9th Febry., 1824.

I am directed by Lord Bathurst to transmit to you the Medical stores enclosed account of Medical Comforts, which have been supplied to the Hospitals at New South Wales and Van Diemen's Land, and to desire that you will cause the same to be duly accounted for.

I have, &c.,

R. W. Horton.

[Enclosure.]

[A copy of this account is not available.]

SIR THOMAS BRISBANE TO MAJOR-GENERAL SIR HERBERT TAYLOR.

(Despatch marked "Private," per ship Ocean.)

My dear Sir, G't House, N. S. Wales, 9th Febry., 1824.

This Letter will be delivered by Mrs. Mackay, Widow of the late Capt. Mackay of the 48th Regt., who died here lately, and I have sent in the Papers through the regular official channel for Lt. Vandemeulin to succeed by purchase to the Vacancy, as they had gone home previous to the event. As it is perhaps her all that she will have to depend upon, I should feel much indebted by your being so kind as to use your influence in her behalf. Also as it is a novel case, and no precedent, I have directed the Amount of her Passage Home, viz., £92, to be paid out of the Colonial Revenue here, which she is to repay out of the sale of
1824. 9 Feb.
Passage money advanced to widow.

11 Feb.
Necessity for private secretary to governor; and for under secretary in colonial office.

14 Feb.
Proposed annual shipment of presents for natives.

HISTORICAL RECORDS OF AUSTRALIA.

1824.

the Commission; but I trust H.R.H. The Commander in Chief will sanction it after a Husband's faithful Service to the Crown of upwards of 20 Years, and in which Service he terminated his Career. Trusting you will forgive me for the trouble I am giving you, I have, &c.,

THOS. BRISBANE.

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked “No. 6 of 1824,” per ship Ocean; acknowledged by Earl Bathurst, 18th August, 1824.)

Government House, New South Wales,

My Lord,

as I am of opinion it would be productive of extensive benefit to His Majesty's interest, not only in this Colony but amongst various of the Islands Scattered throughout these Seas, I should beg leave to recommend that your Lordship would be pleased to direct the sending out annually a few gaudy Articles, such as those presented to the Chiefs of the North American Tribes, with a few fowling Pieces and Tomahawks, as I feel confident it would be the means of greatly attaching these Chiefs to His Majesty's Government, and become an inducement for them to render service generally to any British Subject.

The amount of the presents I should propose not to exceed £20, and to accompany the other requisitions.

I have, &c.,

THOS. BRISBANE.

* Note 53.
BATHURST TO BRISBANE.

SIR THOMAS BRISBANE TO EARL BATHURST.

(Despatch marked "No. 8 of 1824," per ship Ocean.)

Government House, New South Wales,

My Lord,

14 Feb., 1824.

A Custom has prevailed here many years which I am not aware is sanctioned by any authority viz.—that of Saluting a Judge. However as Judge Bent refused to land unless Saluted, and as I have acted upon that precedent, I should be glad to learn your Lordship's pleasure thereon. I have, &c,

THOS. BRISBANE.

EARL BATHURST TO SIR THOMAS BRISBANE.

(Despatch No. 7, per H.M.S. Tamar; acknowledged by Sir Thomas Brisbane, 12th August, 1824).

Sir,

Downing Street, 17 February, 1824.

A proposition* having been submitted to His Majesty's Government for establishing a British settlement on the North West Coast of New Holland, and the result of my Enquiries on the Subject convincing me of the importance of forming the proposed Settlement, both in a Commercial and Military point of view, I have considered it my duty to adopt a measure which appears to hold out such extensive advantages, and have accordingly recommended to His Majesty the expediency of dispatching a Ship of War without loss of time to the North West Coast of New Holland for the purpose of taking formal possession in the name of His Majesty of that part of the said Coast, contained between the Western Coast of Bathurst Island and the Eastern side of Cobourg Peninsula, including the whole of Bathurst and Melville Islands and the said Peninsula.

Captain Bremer of His Majesty's Ship Tamar has been selected for this Service. He has been directed in the first instance to make the best of his way to Sydney Cove, and, after delivering to you this dispatch, he will proceed in the further execution of the duties with which he is entrusted.

You will furnish to him, if they can be spared, a small Detachment of Troops and such stores and necessaries as may be deemed proper to occupy and form an Establishment on such part or parts of the Island or Peninsula above mentioned, &c, as, after a due examination of the respective advantages they may be found to hold forth, shall be considered as most expedient and best calculated for the Good of His Majesty's Service, and the objects which, in taking possession of this part of New Holland, His Majesty's Government have in View.

It now becomes necessary that I should explain to you what those objects are.

* Note 54.
1824.
17 Feb.

Objects in forming settlement in north Australia.

Selection of site for settlement.

Formal possession to be taken of Bathurst and Melville islands and Cobourg peninsula.

Instructions given to J. Bremer.

HISTORICAL RECORDS OF AUSTRALIA.

1st. As it regards the Commerce of the United Kingdom and its Indian Dependencies, it is considered that, by the Establishment of a British Settlement on that part of the Coast above mentioned, a market would be opened to the British Merchant for the direct disposal of articles of British Manufacture with which he can now only supply the demands of the several Islands in the Eastern Archipelago by first Exporting the Articles to some of the Dutch Settlements, where they are subjected to a high duty with other vexatious Restrictions and impediments, before they can be re-shipped to the other Islands with a View to their ultimate disposal.

2ndly. As a Military Station involving the security of our important possessions and valuable Trade in that part of the World. The Establishment of the British in the Proposed Situation would, in the opinion of the best informed Persons who have been consulted, not only furnish the necessary Protection to our Trade in that Quarter, but would give security to the East India Company's and the Indian Private Trade to China by the Eastern Route.

Apsley's Channel between Melville and Bathurst's Islands and Port Essington on Coburg Peninsula appear from the recent survey of Captain King to be well adapted to planting Settlements on some part of their Shores in the first instance, and in either of which His Majesty's Ship employed upon this Service may lie in perfect security until the locality of the surrounding Coast shall have been examined and the important point ascertained whether water of good quality and in sufficient quantity is to be procured. In case of disappointment however in that respect, Captain Bremer is instructed to explore the neighbouring Country and particularly the Liverpool River, which is understood to be fresh at no great distance from its mouth. But wherever the first settlement may be established, it is highly important that formal possession should be taken of, and His Majesty's Colours hoisted upon each of the three points mentioned herein, namely Bathurst Island, Melville Island, and Cobourg Peninsula, the Naval Commander's attention therefore has been particularly drawn to this point.

He will be further instructed to remain in the neighbourhood of the New Settlement until the Officer commanding the Troops, whom you may be able to spare for this purpose, shall have made his arrangements and feels himself secure from any hostile attacks on the part of the Natives, who are understood to be of a ferocious disposition; and for the better protection of the Settlers, I have to direct that you will furnish a Colonial Schooner or some other description of Vessel either to attend His Majesty's
BRISBANE TO BATHURST.

Ship or to follow her as speedily as possible. In the event of a King’s Ship being already on the station, Captain Bremer has been authorised to take her along with him.

The Bays, Creeks, and Harbours of the Northern Coast of New Holland being stated to His Majesty’s Government to be very much frequented by Malays for the purpose of carrying on the Fishery of Trepang, the Naval Commander has been instructed not to molest them in this pursuit but on the contrary to give them the strongest assurances of friendship and protection, holding out encouragement for visiting and trading with the Settlement about to be established, a line of conduct which you will not fail equally to impress upon the Officer whom you may detach in command of the Troops, as being of not less consequence to the Security of the Infant Colony than to the accomplishment of the views which have led to its formation.

The Commander of His Majesty’s Ship Tamar has been further directed in the event of any other power having anticipated His Majesty’s intention with regard to this part of New Holland, and having actually taken possession of either of the Islands or the Peninsula herein mentioned, to abstain from any Act of hostility and to proceed forthwith and plant a Settlement on some part of the Country adjacent to Liverpool River.

As it is probable that some persons may be desirous of following the Expedition from Sydney with the view of becoming Settlers in the New Colony, you will consider yourself at liberty to give any person, upon whose character you can depend, permission to that effect, and you will allow any Merchant of respectability the privilege of supplying the Settlers and the Troops, detached for their protection, with those Articles with which they will necessarily require at an early period to be provided.

I have, &c,

THOS. BRISBANE.

SIR THOMAS BRISBANE TO EARL BATHURST.

(My Lord, Government House, New South Wales, 19th February, 1824.

Lieut. Colonel Cimetiere having applied to me for a proportion of the Lieut. Governor’s allowance, in consequence of leaving this for India, and having done the Duty of Lieut. Governor Erskine for the last 12 months, I was not prepared to state until a reference should be made to Your Lordship what proportion should be decided upon in the present, or in future Similar occasions, to be appropriated for that purpose.

I have, &c,

THOS. BRISBANE.)
1824.
21 Feb.

Sir Thomas Brisbane to Earl Bathurst.

(Despatch marked "No. 10 of 1824," per ship Ocean.)

Government House, Sydney, New South Wales,

My Lord,

21 Feb., 1824.

By the Act for instituting a Supreme Court of Judicature in New South Wales, enclosed in your dispatch No. 29 of the year 1823, the receipt of which is hereby acknowledged, I find myself authorized from time to time to institute Courts of Civil Jurisdiction to be called "Courts of Requests," each of the said Courts respectively being to be held by a Commissioner to be appointed by me, with such Salary as I, with the approbation of His Majesty, shall think proper to appoint.

Viewing the Appointment as yielding in importance to no other in the whole Act, I feel pleased at having been able to find in the Colony an individual possessing moral and intellectual qualities meet to adorn it. This is Dr. Douglass, whom I have nominated to the new Office; but have felt it nevertheless necessary to enjoin him to proceed immediately to England; for I am very anxious to be made intimately acquainted with the opinion of your Lordship with respect to this Court determining Appeals from decisions of Magistrates, exercising their jurisdiction under the authority of Governor Macquarie's Proclamation of 21st November, 1818, as recommended at the 58th page of the second part of the Report of Mr. Commissioner Bigge*; and I consider it also to be of great importance to press upon your Lordship's consideration my recommendation that the Court, in order to preserve uniformity in its practice, should be held by one ambulatory Commissioner rather than (as seems to have been contemplated by the Act) by Commissioners in different parts of the Colony.

To Dr. Douglass I can properly refer your Lordship as to a gentleman well qualified in every way to afford His Majesty's Ministers correct information on these, as well as on all other questions connected with the welfare of the Colony, or its administration during the last two years. In compliance with the Act of Parliament authorizing his appointment, I submit that his Salary should be fixed at £500 each year, exclusive of the charges incidental to his travelling expenses, which I hope may meet with His Majesty's approbation; and, if your Lordship should view the utility of his visit to England in the light in which I behold it, I jointly anticipate that the expenses will be defrayed by Government of both his Voyages, as well as of his Sojourning in the Capital which I trust will be short, for I can but ill spare, in executing the duties of his new office, his immediate Service.

I have, &c.,

Thomas Brisbane.

* Note 55.
BRISBANE TO BATHURST.

SIR THOMAS BRISBANE TO UNDER SECRETARY HORTON.

[It is probable that the letter of introduction for H. G. Douglass, dated 21 Febry., 1822 (see page 624, volume X), was intended to bear the above date.]

SIR THOMAS BRISBANE TO EARL BATHURST.

Government House, Sydney, New South Wales,

My Lord,

While enclosing the accompanying application from Mr. Thomas Cudbert Harrington, soliciting the Grant of Six thousand Acres of Land, I deem it to be my duty to observe Simply that the Applicant is a gentleman of considerable talent, and of praiseworthy purity of private life. I have, &c.,

THOS. BRISBANE.

[Enclosure.] 

MR. T. C. HARINGTON TO EARL BATHURST.

Elderslee in New South Wales,

My Lord,

Having proceeded to this Country from India, and being therefore unable to bring with me the proper sanction of the British Government to my receiving lands, I now beg leave with the approbation of His Excellency the Governor to address You personally on the subject.

In June, 1820, I arrived in the Colony possessed of such small actual funds as induced His Excellency Governor Macquarie to assign me 600 Acres of land. But the sale of a considerable property in India has since put me in possession of a Sum amounting to Sicca Rupees 65,790 or something more than £6,500 Sterling, of which I have already had the honor to submit to His Excellency the original documents and now enclose an authenticated Copy. Ere I proceed to state any final request, founded on the amount of Capital, permit me first in few words to lay before Your Lordship the principles on which Grants appear heretofore to have been apportioned.

In compliance as I believe with instructions from Your Lordship in 1821, Governor Macquarie limited future Grants to "2,000 Acres as the Maximum except upon special circumstances." And by a letter from the Surveyor General, from which the above passage is extracted and of which a Copy is also enclosed, the Scale was graduated in the following manner, viz.:

"To persons proposing to employ a Capital of
£500 . . 500 Acres  £1,500 . . 1,000 Acres  £2,500 . . 1,760 Acres
1,000 . . 800 "  2,000 . . 1,500 "  3,000 . . 2,000 "

1824, 23rd February, 1824.
and in explanation of "the particular circumstances" contemplated above, an observation is added "It is not probable that a greater sum than £3,000 will be often employed in the Cultivation and stocking of a Farm in this Country, more especially if the Capital so employed was required to be principally in money and not in goods which at present is often the case. If a greater Capital is intended to be bona fide invested, such a circumstance would certainly be taken into consideration by Your Excellency." This Scale is still adhered to, so far that I believe Grants of an extent greater than 2,000 Acres are never given without the special permission of the British Government. But the qualification demanded is so modified that a Capital of £1,500 is no longer indispensable for the acquisition of 1,000 acres, or of £3,000 for 2,000 Acres, provided the Applicant undertake to relieve Government during ten Years of the whole expense of one Convict for every hundred Acres allotted him.

Your Lordship is no doubt already acquainted with these particulars, but as they are all relevant to my present request I trust it will not appear impertinent to have brought them thus connectedly under review.

The Capital introduced by me into this country amounts as already stated to £6,500 Sterling, or more than double the Maximum contemplated in the writing of the above letter. It is exclusively my own, that is, it is not contingent on Credit or burdened with any Claims whatsoever; consists solely of actual money without the addition of a single article of merchandise; if not the first, it is among the very first and largest yet introduced under these circumstances into this Colony; and finally a considerable portion of it is bona fide already vested in Agricultural Speculations in this place, and the remainder will be similarly employed so soon as the extent of Your Lordship's assistance shall be ascertained and fitting opportunities present themselves.

Upon a comparison of the several parts of this representation, the large grants heretofore assigned to smaller capitals, the still lower qualifications subsequently demanded, the special prospective reservation (in the Governor's instructions to the Surveyor General) in favor of cases like my own; the extent and nature of my Capital; and the value of the pledge I have already given that it shall in truth be employed in improving the lands now to be bestowed; upon this review, I confidently hope Your Lordship will not deem presumptuous a request founded thereon for a Grant of Six Thousand Acres. If any additional argument were necessary, I would beg leave further to remark that the physical character of the country has a tendency (principally from its
being so decidedly favorable to the cheap subsistence of live-
stock on the natural herbage) to create and uphold an Opulent
Gentry, an effect with which the policy of the British Govern-
ment appears to have been wisely in unison; that by the extensive
discoveries recently made, all apprehensions of a scarcity of
fertile lands are removed; that Individuals have heretofore
received similar indulgences to a yet greater extent; and that
the amount now solicited does not exceed the proportion of one
Acre for every Pound Sterling, a proportion which is usually
deemed moderate and which I trust will so appear to Your
Lordship.

Of myself, personally, if Your Lordship shall require any more
particular account, I beg to add that my Father is at present a
Member of the Supreme Council of Calcutta; that, after my
arrival in this Colony, I was for twelve months engaged in the
place, whence this is dated; that, during the last two years, I have
had the honor to be employed in H.M. Commissariat Department;
and at the recommendation of my Superior Officer, Deputy Com-
missary General Wemyss, have in that time received from His
Excellency Sir Thomas Brisbane a regular appointment, after-
wards confirmed by the Lords Commissioners of H.M. Treasury.
Since this change in my private circumstances, Depy. Commy.
Gen'l Wemyss has been pleased to accept my resignation, but at
the same time has had the goodness to express himself in such
terms that I should not have hesitated to request his signature
to this paper, had I not reason to hope that the affixture of His
Excellency's recommendation would supersede the necessity of
other testimonials.

In conclusion allow me to express a hope that Your Lordship
will be pleased by an early opportunity to convey to the Local
Government an express permission to grant to myself 6,000 Acres
of land (exclusive of 600 already bestowed by Governor Mac-
quarie) in any part of the Colony which is not already appro-
priated.

I have, &c.,

THOMAS CUDBERT HARINGTON.

[Sub-enclosure.]

EXTRACT of a letter addressed to T. C. Harington, Esq., Sydney,
New South Wales.

"Calcutta, 31 Jany., 1823.

"I wrote you a short letter on the 11th informing You of the
Sum I had received for You from W. Hawes, fifty seven thousand
six hundred and ninety three rupees (57,693) and deposited in
the hands of Alexander & Co., who I find have an Acct. with
You. Wm. Hawes also wrote to you, and I now enclose another
HISTORICAL RECORDS OF AUSTRALIA.

1824.
23 Feb.
Letter from him relative to a Bond for 8,000 Rs.,* which he has sent to me in your name, payable a Year after date and bearing Interest at 8 per Cent.

"J. H. Harington."

a Copy:—W. WEMYSS, J.P.
Certified to be correct: F. GOULBURN, Col. Secty.

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EARL BATHURST TO SIR THOMAS BRISBANE.
(Despatch No. 8, per ship Mangies.)

Sir, Downing St., 28 Feby., 1824.

I have received your dispatch No. 9 transmitting for my consideration a memorial from Mr. William Evans, lately an Assistant Surgeon on the Establishment of New South Wales, soliciting the Half-Pay or Pension usually allowed to the same Class of Officers in His Majesty's Sea and Land Forces.

As I am not aware of any instance in which Half-pay has been awarded to Persons in Mr. Evans' situation, I am the more unwilling to establish a Precedent, which may lead to the burthening the Establishment of New South Wales with a provision for Officers employed in the Service of the Colony who have not hitherto been considered entitled to this indulgence; and upon an examination into the circumstances on which Mr. Evans has grounded his claim, I am sorry that I do not observe them to be of that special or public nature to justify my authorizing a compliance with the object of his Petition.

The accident by which that Gentleman's left hand has been disabled, how much soever to be regretted, does not afford a claim for public consideration, unless it can be shewn that the circumstance arose in the actual performance of a public duty; and the other reasons which he has urged in support of his application do not appear to me to be sufficiently strong to entitle him to a pension. At the same time I see no objection to your making a Grant of Land to Mr. Evans in proportion to what you may consider to be the value of his Services and according to the means which he may possess of bringing the same into Cultivation.

I am, &c.,
BATHURST.

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UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.
(Despatch per ship Mangies.)

My dear Sir,
Downing St., 28 Feb., '24.

Lord Bathurst has desired me to transmit to you the enclosed petition which has been presented to him on behalf of Mr. Gray, Superintendent of the Orphan's Farm at New South

* Marginal note.—57,693 + 8,000 = 65,693.
Wales. Lord Bathurst has not thought it advisable to authorize at once a compliance with the Petitioner's request, not knowing how far it might be objectionable on public grounds to make a grant of Land to Mr. Gray immediately contiguous to the Farm of which he has the management, but he has desired me to state that, if you consider the measure unobjectionable, there is every disposition on his part to comply with the request. At all events, his Lordship is anxious that a Grant of Land should be made to Mr. Gray in proportion to his Capital, and that every reasonable facility should be afforded to him in the selection of the spot.

I remain, &c.,

R. W. Horton.

[Enclosure.]

[A copy of this petition is not available.]

SIR THOMAS BRISBANE TO MAJOR-GENERAL SIR HERBERT TAYLOR.

February, 1824. — Feb.

The following extract of this letter alone is available:—

I beg to be permitted to take the present Opportunity of suggesting the propriety of furnishing Me with the means of camping at least One Wing of a Regiment; it would be most desirable, and indeed necessary on occasions like the present, the relief of Corps.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch per ship Mangles.)

Sir, Downing St., 4 Mar., 1824. 4 March.

I am directed by Lord Bathurst to enclose to you a copy of a letter conveyed to his Lordship by Sir John Owen, the Brother in law of Mr. Edward Lord. I am desired by His Lordship to inform you, with reference to Mr. Lord's application, that provided that no blame should permanently attach to Mr. Lord with respect to the charge* preferred against him by Mr. Moody, his Lordship would have no objection to allow him an additional Grant bearing proportion not to the Capital already vested by him in the Colony, but to the Capital which he has now the means of employing in this new Grant for which he applies.

You will easily understand that this direction is given according to the spirit of the general instructions† which Lord Bathurst sent to you last year on the subject of Grants of Land.

I have, &c.,

R. W. Horton.

* Note 56. † Note 57.
MR. EDWARD LORD TO SIR JOHN OWEN.

My dear Sir John,

London, 23 February, 1824.

As you are aware, I am now on the point of returning to Van Diemen's Land, and as it must be well known in Downing Street that I am one of the earliest (being one of the first that settled there) and I hope not one of the least useful Settlers; then it has occurred to me that the noble and enlightened Secretary for the Colonies will on the following statement of facts (which let me entreat you to submit to him, and which you can also prove to his Lordship) see it right to grant me those Indulgencies, which have so readily and so largely been given to others, who have neither previously resided in the Settlement or had to contend with the many and great difficulties and privations of the early residents, and who have not taken out and vested any thing like in amount the Capital embarked by me in that Colony.

You will remember making personal application to the late Lord Castlereagh for a Grant of Land for me at Van Diemen's Land, as far back as the year 1807, when his Lordship was Colonial Secretary of State, and that his Lordship then assured you that he would give directions for my receiving, as an Officer in the Royal Marines stationed at the Colony, Three thousand Acres of Land, which circumstance was acknowledged by him in an answer to your Letter, as far back as 1812, when his Lordship (to use his own expressions) says he imagined "I had long enjoyed," which Letter was at that time laid before Earl Bathurst. I may be allowed to remark that in this way many Grants to Officers have been made, who never resided in the Colony after their period of service. It will be readily admitted that the grant above alluded to, which I received by the kind interposition of my Lord Bathurst, was not made to me in the Character of a Settler or in consideration of any Capital embarked, as I continued a Military Officer in the Colony for many years after Lord Castlereagh had directed the Governor to grant the Land to me. In the adoption of these views, which induced me to relinquish my profession and become a Settler in that Colony, I did, as you are also aware, obtain Letters from my Lord Bathurst to the Governor of New South Wales to grant me lands proportionate to the Capital embarked by me as a Settler in Van Diemen's Land. I am still sensible and grateful for the kind intentions of his Lordship, and for the handsome manner in which he expressed his concern for my interests and prosperity; but a grant of three thousand acres was only allotted to me, and which

* Note 58.
HORTON TO BRISBANE.

I am convinced his Lordship will consider as greatly disportioned to the large extent of Capital vested by me, so far back as 1812, and still remaining in that Colony.

This extent of Capital, you can most readily prove to the Colonial Office, exceeded Thirty Thousand Pounds, as yourself furnished me with £20,000, besides my own fortune at that time of £10,000, every shilling of which was embarked by me, which, together with my exertions ever since, the Colony has derived great benefit from.

I am very sensible of his Lordship's intentions that my Grant of Land should have been commensurate with this Capital, and that, as my Capital was infinitely beyond all others who have settled either in New South Wales or Van Diemen's Land, I should at least have received a Grant of the first Extent. I therefore beg leave to state to his Lordship that there are many others (of comparatively inconsiderable Capital) who have received much larger Grants from Governor Sir Thomas Brisbane than myself, Vizt. Berry and Wolstoncroft, Acres 10,000, Mr. Lawrence, Acres 8,000, and Mr. Nowland, 7,000 Acres; there are many others, but I mention these as his Lordship may from their being recent have an easy reference.

With these facts, I hope and trust you will wait on my Lord Bathurst and Mr. Wilmot Horton, and obtain from the Colonial Office an adequate and specific Grant, of which I trust his Lordship will allow me to be the bearer.

I am, &c,

EDWARD LORD.

UNDER SECRETARY HORTON TO SIR THOMAS BRISBANE.

(Despatch marked “Private,” per ship Countess of Harcourt.)

My dear Sir,

Downing Street, London, 10 March, 1824.

I do myself the honor of transmitting to you the accompanying copies of Papers which have been forwarded to me by Mr. Bootle Wilhbram, Member for Dover, connected with the case of a Prisoner of the name of Matthew Gregson, who pleaded Guilty to an indictment charging him with feloniously embezzling certain Bills of Exchange and other money, the property of Messrs. Taylor, Potter and Livingston of Liverpool, with whom he lived as Clerk, and for which Offence he was sentenced to be transported for seven years.

As the connexions of the prisoner are represented to be persons of the highest respectability, and the Prisoner himself appears to be sincerely penitent, as well as anxious to do everything in his power to atone for the crime of which he has been convicted, Lord Bathurst finds it to be impossible not to feel an interest in the fate of the person in the unfortunate situation of the Prisoner, whose abilities and education, if rightly employed, may yet