That several of Memorialist’s friends having suggested to him the advantage of selling his land in small Allotments for the erection of Buildings along the Margin of Sullivan’s Cove, the Late Lieutenant Governor Sorell, finding by the report of the Surveyor that the road reserved for the Crown could not be constructed without great expense, consented to give up the Margin of the River* in consideration of a broader way being allowed to pass through Land granted to Your Memorialist.

That, in consequence of this arrangement, several Allotments were sold with permission to Erect Stores on the Bank of the River; but, Your Excellency having disapproved of the arrangement under a doubt of its existence as regarded the Government, all the purchasers, with two exceptions only, have either refused to honor their Bills or claimed exorbitant compensation for their losses real or supposed.

That Memorialist stands therefore in the peculiar situation of having disposed of his property without paying the debt, and likewise become subject to New Actions for non-fulfilment of his engagements to the purchasers.

That Your Excellency’s Memorialist begs to accompany this by a Letter and Certificate of the Late Lieutenant Governor in support of the allegation of this Memorial (1 and 2), which led to Memorialist’s present situation; and, as this matter materially affects the improvements of the Town and public convenience, Memorialist trusts that Your Excellency will take such steps, as may lead to his relief, and not suffer an Individual to sustain any loss for public utility.

And your Memorialist as in duty bound shall ever Pray,

REVD. ROBERT KNOPWOOD.

Hobart Town, 31st Decr., 1825.

[Sub-enclosure No. 1.]

LIEUT.-GOVERNOR SORELL TO REVD. R. KNOPWOOD.

Dear Sir,

London, 20th May, 1825.

I have been duly favoured with your Letter in duplicate, announcing the difficulty that had arisen as to the Division of your Grant for building, and that no Official record of my approval of the alteration of the road had been left in the Surveyor’s Office.

The plan, which was laid before me by the Deputy Surveyor General, should have had my signature affixed; it is to be regretted that you did not now send it; but, as the matter now stands, the only thing that I can do is to send you a certificate to the effect that, prior to your Grant being sold, a Plan was laid before me for its Division into allotments for building, by

* Note 60.
1826. 3 May.
Approval of the plan.

by W. Sorell.

which plan the road, which the Grant entitled Government to reserve on the water side, was carried back and higher up, so as to admit of a row of buildings being erected along the Water side. I cannot certify the plan, because I have it not, but I presume the affidavit of Mr. Evans, who could prove that I had approved the plan verbally, and who could also prove the identity of the plan, which to me is impossible, would equally suffice to shew that, at a given time, a given plan was approved by me, Lieutenant Governor for the time being.

W. SORELL.

[Sub-enclosure No. 2.]

Certificate of approval.

I certify, that I, as Lieutenant Governor of Van Diemen's Land did, in the early part of the Year 1824, sanction and approve a plan, which was left in the Office of the Deputy Surveyor General, for changing the road that was reserved to the Crown, in the Revd. Mr. Knopwood's Grant, from the Water side along the front of the Grant upon Sullivan's Cove further back, so as to allow a Range of Buildings to be erected along the Margin of the Cove.

W. Sorell.

[Enclosure No. 14.]

MR. J. T. COLLICOTT TO CAPTAIN MONTAGU.

Sir, Hobart Town, 20th July, 1824.

Request for confirmation of plan.

I beg to hand you a letter from Mr. Hamilton one of the purchasers of land sold by me at Public Sale at Cottage Green on the 6th May last, being part of the Estate of The Revd. Robert Knopwood, and to request that you will please to lay it before His Honor the Lieutenant Governor for his sanction to the Road being made at the place laid down by the Surveyor by the direction of His Honor the Late Lieutenant Governor Sorell, as any deviation from that course would involve several persons in Law Suits as well as materially deteriorate the value of the Estate.

Any explanation His Honor may require I shall feel most happy to furnish.

I have, &c.,

Jno. Thos. Collicott, Auctioneer.

[Enclosure No. 15.]

MR. W. H. HAMILTON TO MR. J. T. COLLICOTT.

Sir, Hobart Town, 1st July, 1824.

Cancellation of purchase.

I have this day received an Official letter from the Naval Officer, conveying an intimation from His Honor the Lieutenant Governor that he has no Knowledge of the arrangement sanctioned by the late Lieutenant Governor Sorell for making a road through that portion of the Reverend Mr. Knopwood's property.
which was sold by you at Auction of the 6th May last, conformably with a plan then exhibited, a part of which property I purchased (as you are aware) under your express guarantee that the Beach in front was included in such purchase and that the Naval Officer might be removed by me from the Wharf, he now occupies, whenever I might think it necessary; and the Lieutenant Governor's consequent refusal to authorize the Naval Officer to cede the right of occupancy of the spot, on which the Government Wharf is built, rendering null the Sale of this property, so far as I am concerned, I beg you will have the goodness to return my acceptances for the amount of the purchase money, and consider the transaction between us at an end.

I am, &c,

W. H. HAMILTON.

[Enclosure No. 17.]

MR. G. W. EVANS TO CAPTAIN MONTAGU.

Hobart Town, 29th July, 1824.

You will find upon reference to The Revd. Mr. Knopwood's Grant that a reserve only of Eleven yards is allowed by the Surveyor Harris along the Margin of the Cove for a Road and which is short of what is necessary; the Eleven yards embrace the steep slope of the Bank only, and to make a practicable Road it will be necessary to form a Terrace.

Previous to the Land being laid out in allotments for public sale, Lieutenant Governor Sorell directed me to make a plan and to lay the Road down clear of the fall of the Bank; and which Mr. Knopwood agreed should be the usual width of 22 Yards. I furnished the plan accordingly, which was approved and handed by him to the Agents of The Revd. Mr. Knopwood (Mr. Collicott and Dr. Hood). I am unable to give further reasons; I only acted as I was required by His Honor the Lieutenant Governor.

I have, &c,

G. W. EVANS.

[Enclosure No. 18.]

LIEUT.-GOVERNOR ARTHUR TO REVD. R. KNOPWOOD.

Government House, 27th Jany., 1826.

I have the honor to acknowledge the receipt of your letter of 31st ultimo referring to the surrender of your land at Cottage Green, and accompanied by a letter and Certificate you had received from Colonel Sorell upon the same question.

I regret, from the hurry of business, I have been prevented earlier replying to your letter; the subject of your Communication was at first I believe brought under my consideration in
Refusal of G. Arthur to confirm exchange of roads.

1826.
3 May.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.

(Despatch marked "Separate"; acknowledged by Earl Bathurst, 9th February, 1827.)

Government House, Hobart Town,

My Lord,

I have the honor to acknowledge the receipt of Your Lordship's "Circular" of 14th October last, requiring a return of all Civil and other Officers, who have been accommodated with houses or lodgings at the Public expense to the present period.

I have now the honor to enclose the particulars, which Your Lordship requires, and which I hope will be found to embrace all the information desired by Your Lordship's Circular.

In my annual report* of the Colony for the last year, the particulars now transmitted to Your Lordship have been already fully detailed.

I have, &c.,

GEO. ARTHUR.

* Marginal note.—Despatch No. 10, 3 July, 1825.
RETURN of all Civil and other Officers in the Colony of Van Diemen's Land, who received Lodging Allowance, or were accommodated with Crown Houses to the 31 December, 1825, distinguishing the value of the House and the Authority under which it was granted.

<table>
<thead>
<tr>
<th>Department</th>
<th>Officer</th>
<th>Value of House occupied belonging to the Crown</th>
<th>Rent paid for House hired of Individuals</th>
<th>Authority under which the Allowance has been granted</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary's</td>
<td>Secretary</td>
<td>£100 Sterling</td>
<td>£100</td>
<td>Lieut. Governor</td>
<td>Ordered now by Earl Bathurst to be increased to £200.</td>
</tr>
<tr>
<td>Law</td>
<td>Chief Justice</td>
<td>£16 1s. 4d. Ditto</td>
<td>£100 House</td>
<td>The King</td>
<td>Ditto Discontinued.</td>
</tr>
<tr>
<td></td>
<td>Attorney General</td>
<td>£4 14s. Office</td>
<td>£150 Office</td>
<td>Ditto</td>
<td>Ditto Discontinued.</td>
</tr>
<tr>
<td></td>
<td>Master Supreme Court</td>
<td></td>
<td>£100</td>
<td>Ditto</td>
<td>Ditto Discontinued.</td>
</tr>
<tr>
<td></td>
<td>Sheriff</td>
<td></td>
<td>£100</td>
<td>Ditto</td>
<td>Ditto Discontinued.</td>
</tr>
<tr>
<td>Treasurer's</td>
<td>Colonial Treasurer</td>
<td></td>
<td>£100</td>
<td>Ditto</td>
<td>Ditto Discontinued.</td>
</tr>
<tr>
<td>Engineer's</td>
<td>Superintendent of Public Works</td>
<td>£40 Sterling</td>
<td>£40 Sterling</td>
<td>Ditto</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Inspector of Public Works</td>
<td></td>
<td>£200</td>
<td>Ditto</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Superintendent of Convicts at Launceston</td>
<td>£200</td>
<td>Ditto</td>
<td>Ditto</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Two Superintendents of Road Parties</td>
<td>£25 per Barracks</td>
<td>£25</td>
<td>Ditto</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Superintendent's Lumber Yard</td>
<td></td>
<td>£25</td>
<td>Ditto</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Store Keeper</td>
<td>£200</td>
<td>7s. per Week</td>
<td>Ditto</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Two Clerks</td>
<td>£50</td>
<td></td>
<td>Ditto</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Gate Keeper</td>
<td>£50</td>
<td></td>
<td>Ditto</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Sergeant in Charge of Magazine</td>
<td>£100</td>
<td>£100</td>
<td>Ditto</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Two Overseers Pub. Works</td>
<td>£50 per week</td>
<td>£50</td>
<td>Ditto</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Thirteen Overseers in Huts £5 ea.</td>
<td>£90</td>
<td>£90</td>
<td>Ditto</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Nine Signal Men</td>
<td></td>
<td></td>
<td>Ditto</td>
<td>Ditto</td>
</tr>
</tbody>
</table>
Return of all Civil and other Officers in the Colony of Van Diemen's Land, etc.—continued.

<table>
<thead>
<tr>
<th>Department</th>
<th>Officer</th>
<th>Value of House occupied belonging to the Crown</th>
<th>Rent paid for House hired of Individuals</th>
<th>Authority under which the Allowance has been granted</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>Superintendent</td>
<td></td>
<td>£24 Office, £10,  2s. 4d.</td>
<td>Lieu. Governor.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Superintendent at Launceston</td>
<td></td>
<td>£20 Office, £10,  2s. 4d.</td>
<td>Lieu. Governor.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Superintendent of Factory</td>
<td></td>
<td>£30 Office, £10,  2s. 4d.</td>
<td>Lieu. Governor.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Keepers of Gaols</td>
<td></td>
<td>£40 Office, £10,  2s. 4d.</td>
<td>Lieu. Governor.</td>
<td>Ditto</td>
</tr>
<tr>
<td>Clerical</td>
<td>Chaplain Hobart Town</td>
<td>£1200</td>
<td>£20 Office, £10,  2s. 4d.</td>
<td>The King.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Launceston</td>
<td>£700</td>
<td>£10 Office, £10,  2s. 4d.</td>
<td>The King.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Sorel</td>
<td>£1000</td>
<td>£10 Office, £10,  2s. 4d.</td>
<td>The King.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>New Norfolk</td>
<td>£500</td>
<td>£5 Office, £10,  2s. 4d.</td>
<td>The King.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Eleven School Masters</td>
<td>£300</td>
<td>£3 Office, £10,  2s. 4d.</td>
<td>The King.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>House</td>
<td>£200</td>
<td>£2 Office, £10,  2s. 4d.</td>
<td>The King.</td>
<td>Ditto</td>
</tr>
<tr>
<td>Naval Office</td>
<td>Five School Mistresses</td>
<td>£100</td>
<td>£1 Office, £10,  2s. 4d.</td>
<td>Lieu. Governor.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Naval Officer, Hob. Town</td>
<td>£400</td>
<td>£3 Office, £10,  2s. 4d.</td>
<td>Governor in Chief.</td>
<td>Ditto</td>
</tr>
<tr>
<td>Medical</td>
<td>Col. Surgeon, Hob. Town</td>
<td>£600</td>
<td>£5 Office, £10,  2s. 4d.</td>
<td>Governor in Chief.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Launceston</td>
<td>£400</td>
<td>£3 Office, £10,  2s. 4d.</td>
<td>Governor in Chief.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>4 Ass't. Ditto Hobart Town</td>
<td>£120</td>
<td>£2 Office, £10,  2s. 4d.</td>
<td>Governor in Chief.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>1 Ditto Launceston</td>
<td>£800</td>
<td>£2 Office, £10,  2s. 4d.</td>
<td>Governor in Chief.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Dispenser</td>
<td>£200</td>
<td>£1 Office, £10,  2s. 4d.</td>
<td>Governor in Chief.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Clerk</td>
<td>£300</td>
<td>£2 Office, £10,  2s. 4d.</td>
<td>Governor in Chief.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Overseer</td>
<td>£200</td>
<td>£1 Office, £10,  2s. 4d.</td>
<td>Governor in Chief.</td>
<td>Ditto</td>
</tr>
<tr>
<td>Surveyor</td>
<td>Surveyor General</td>
<td>£200</td>
<td>£1 Office, £10,  2s. 4d.</td>
<td>Governor in Chief.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Two Assistant Ditto</td>
<td>£120</td>
<td>£3 Office, £10,  2s. 4d.</td>
<td>Governor in Chief.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>One Ditto</td>
<td>£80</td>
<td>£2 Office, £10,  2s. 4d.</td>
<td>Governor in Chief.</td>
<td>Ditto</td>
</tr>
<tr>
<td></td>
<td>Colonial Architect</td>
<td>£200</td>
<td>£3 Office, £10,  2s. 4d.</td>
<td>Governor in Chief.</td>
<td>Ditto</td>
</tr>
</tbody>
</table>
EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 17.)

Sir,
Downing Street, 10 May, '26.

I have to acknowledge the receipt of your dispatch of the 1st of April in last year.

The grounds on which you have recommended that additional assistance should be given to the Naval Officer in conducting the business of his Department are perfectly satisfactory. I am sorry that the objections I entertain to the employment of Assistants in the several Departments prevent me from sanctioning the Appointment of an Assistant Naval Officer; but you will consider yourself authorized to raise the Salary of the Situation of Clerk, for which Mr. Smith was first selected, to be £150 pr. ann., the Salary which you proposed to assign to the other situation.

There appears to be no objection to the substitution of a regular Salary by way of remuneration to the person acting as Naval Officer at Port Dalrymple, instead of remunerating him, as at present, by a per-cent age on the Collections; and, in fixing the Sum to be granted to him, you will be guided by an average of the profits derived under the former arrangement for a period of three years.

I have, &c.,
BATHURST.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.

Government House,
My dear Sir,
Van Diemen's Land, 10th May, 1826.

I have had the honor to receive your note of the 10th November last, introducing to my notice and protection Mr. James Spence, who had been strongly recommended to Lord Bathurst by the Earl of Elgin, and who you believed to be next in rotation to Mr. Scott in the Medical Department.

Mr. Spence appears to be a respectable young Man, and executes his duties in a satisfactory manner; and you may be assured the expression of Lord Bathurst's wish will command my best attention towards him. But it is proper I should mention he is not as you suppose the next in succession to Mr. Scott, being two years junior to Mr. Owen in the Department.

I have, &c.,
GEO. ARTHUR.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 18; acknowledged by lieut.-governor Arthur, 30th January, 1827.)

Sir,
Downing Street, 12 May, 12 May.

I have to acknowledge the receipt of your dispatch of the 15th of May, 1825, in reply to a Circular directing that all
1826.
12 May.

Instructions re returns of vacancies in civil appointments.

Vacancies to Civil Offices be notified immediately as they occur, accompanied by a report of the names of such persons as may be appointed to fill them; and, in compliance with the desire which I therein expressed, you have transmitted a list of such New Appointments as had occurred in Van Diemen's Land subsequent to the 14 May, 1824.

I deem it necessary to explain to you, that the Circular Instructions in question originated in consequence of many Officers, in the administration of Governments abroad, having omitted to furnish the information which those Instructions required. They were however intended only to apply to those higher Appointments in the Service, to which persons were usually nominated by His Majesty on the recommendation of the Secretary of State, and consequently sent out from home.

I have the honor further to observe that the minor appointments, referred to in the last Paragraph of your dispatch, do not by any means come within that Class, respecting which, in case of Vacancies, it was my wish to receive an Official Report; you will therefore continue to exercise your own discretion with respect to those Situations, as you have hitherto done.

I have, &c.,
BATHURST.

14 May.
Regulations proposed re land grants.

Sir,
Downing Street, 14 May, '26.

I have the honor to acknowledge the receipt of your dispatch No. 11 of the 10 August last, submitting for my consideration such observations, as have occurred to you to offer, with reference to the late Regulations under which it has been determined that Land should henceforth be granted both in New South Wales and Van Diemen's Land.

Having already transmitted to you copies of my dispatches to Sir Thomas Brisbane on that subject, I do not think it necessary to forward to you any additional Instructions for your peculiar guidance in this matter; the arguments, which you have used to shew how inapplicable to Van Diemen's Land many of the Regulations are, which have been directed to be established in New South Wales with regard to the employment of Convicts by the Settlers and the terms upon which Lands may be granted to them, not appearing to His Majesty's Government sufficiently satisfactory to induce them to sanction the introduction into Van Diemen's Land of a different system.

* Note 61.
In the first place, I am at a loss to account for your recommendation that no deduction* of quit-rent should be allowed to the Settlers in Van Diemen's Land in the proportion to the number of Convicts employed, according to the system which has been directed to be pursued; for if, as you have alleged, the Colonists under your Government (more especially the growers of Corn) are so straitened in their circumstances as to find a difficulty in continuing to cultivate their lands (the low rate, at which the Grain is now sold in the Colony, not yielding a fair remunerating price to the Proprietor) instead of withdrawing from them any of the advantages to which, by the new Regulations, they are entitled, the object should be to compensate them from any losses to which they may be now exposed owing to the measures to which the Government have lately resorted. If the fact be, as you state in one part of your letter, that the number of Convicts in Van Diemen's Land is so limited that their Assignment to Settlers is a matter of favor, it will be easy for you by a judicious distribution of them to shew favor to those persons, who from their activity and good conduct may appear the most deserving of encouragement, and at any rate, as each succeeding year will add to the number of Convicts maintained in the Colony, the scarcity of Servants, of which you complain, can only be felt as a temporary inconvenience; and I conclude that it is to the improvement which may be expected on this point that you allude when you dwell upon the advantages which the Government might derive from affording assistance to the Agricultural Undertakings of the Colonists, from the increased means of employing Convicts which the landed Proprietors would then have at their disposal.

I am happy to observe that you have taken upon yourself the superintendance of the Assignment of the Convicts as Laborers amongst the Settlers established in the Country, and that you have devoted so much of your time to this important point, out of which arises a system which, as you truly observe, affords the best chance of the moral improvement of these people. I am persuaded that the attention, which you have given to the subject, will enable you to suggest to the Settlers proper measures for preventing their assigned Laborers from escaping to the Woods, and thus becoming Bushrangers, as according to your account is at present the case; and it is the more necessary that immediate steps should be taken for putting a stop to this evil, by which the safety of the Colony would be ultimately endangered, as independently of the injury which is done to the Settlement by the lawless course of life to which these Convicts have taken, the Settler, who ought to suffer for his neglect of the

* Note 61.
common precautions for securing the Services of those who are assigned to him, is receiving remuneration from the Government for their maintenance and support. There are various modes, which might be suggested for preventing these irregularities for the future, and I trust that you will without delay adopt that which appears to you, on consideration, the most effectual. Those Settlers to whom Convicts are assigned should be called upon to produce proof at certain periods that those Convicts are actually under their charge, without which no deduction of quit-rent should be allowed, and some good security for their good behaviour might also be exacted.

In regard to your observation "that it is very possible for a Settler to receive Crown Servants without cultivating his Land," I must beg to remark that, although in some distant quarters of the Colony, this might certainly occur, yet, under a vigilant system of Control and a threat held out that such Servants would be taken away from those Settlers to whom they were assigned, if not properly employed, this abuse would be prevented from being carried to any considerable extent among the Settlers.

Although it is very probable that, by abolishing the practice of paying fixed prices for grain and adopting the more wholesome system of purchasing that Article by Tender, some derangement in the farming Speculations of Individuals in Van Diemen's Land may have been occasioned, yet I cannot hold out to you any hope that His Majesty's Government will feel themselves at liberty to sanction a recurrence to the former system; nor do I think, under the easy terms on which land is acquired in the Colony, and the advantages which are held out by the employment of Convicts, that the further interference of Government can fairly be required to assist those who have embarked in the cultivation of Grain. The regular demands of the Commissariat, as well as of the Inhabitants in general, will shortly be calculated with a degree of accuracy, which will materially assist those employed in Agricultural Speculations. The annual produce will then become limited by the extent of the home Market, or other Channels will be opened for disposing of the Corn, which is grown beyond what the consumption of the Settlement may require. Fresh encouragement will thus be given to the Farmers, whose prospects have been checked by that change of measures, which has lately been adopted by His Majesty's Government, and which, though it may be productive of present inconvenience to the Colonists, cannot fail to lead to their ultimate advantage.
There is too much truth, I am afraid, in your remark that the best Land in the Colony has already been disposed of, and perhaps if the inferior nature of those parts of the Island, which have not yet been located, had been known at the time, the more fertile tracts would have been granted in a more provident manner. To this point, I am desirous of calling your serious attention; and, although the Instructions* for the Reservation of Crown Lands does not appear to have reached the Colony so early as could have been wished, yet His Majesty's Government relies upon your taking the most effectual and prompt measures for remedying this omission.

I have, in a separate dispatch, detailed the arrangements which I have thought proper to make in regard to the more effectual Establishment of the Surveyor's Department. It is very essential that the Instructions,* which have been sent out in regard to the allotment of Lands, should be carried into effect with as little delay as possible; and I feel satisfied that the measures, which have been taken for augmenting the number of Surveyors and encreasing their Salaries, will effectually relieve you from any difficulty on that subject.

I have, &c,

BATHURST.

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EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 19; acknowledged by lieut.-governor Arthur, 3rd March, 1827.)

Sir,

Downing Street, 17 May, '26.

In conformity with the arrangement communicated to you in my dispatch of the 1st Instant, I have the honor of acquainting you that I have appointed Mr. George Frankland to be the first Assistant Surveyor at Van Diemen's Land, with a Salary of £250 pr. annum, the same rate of remuneration which, according to the Scale I have forwarded to you, I have assigned to Mr. Scott, whom it is my intention to appoint to the head of that Department, whenever the retirement of Mr. Evans shall take place. In the mean time its Establishment will consist of the following persons:—

1. Mr. Evans, Surveyor General.
2. Mr. Scott, Deputy Surveyor General.
3. Mr. Frankland, First Assistant.
4. Mr. Wedge, Second do
5. Mr. Sharland, third do

As Mr. Frankland's qualifications render him eligible for higher employment, it is my wish that he may be appointed to

* Note 62.
HISTORICAL RECORDS OF AUSTRALIA.

1826. 17 May.
G. Frankland to be promoted.

20 May.

G. Frankland to be fitted, and to which I may not have nominated a different person. I have, &c., Bathurst.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.


I am directed by Earl Bathurst to introduce you to the notice the Bearer of this letter, Mr. George Frankland, whom Lord Bathurst, as you are aware, has appointed one of the Assistant Surveyors at Van Diemen's Land. Mr. Frankland, besides being a person of Education and Science, has had very considerable experience as a Trigonometrical Surveyor, having been employed in India for some years in that capacity; and, as he possesses much zeal and enterprize, his Lordship anticipates that he will prove himself eminently useful in conducting a general survey of the Colony, for which undertaking, from his acquaintance with the superior branches of his profession, he is peculiarly qualified. He may also at the same time be employed in collecting information in regard to Geology and the Natural History of the Country in which he is about to take up his residence. You will therefore be pleased to recommend him to the Surveyor General in such manner, as shall induce him to avail himself of Mr. Frankland's Services in the way best calculated to turn the Talents which he possesses to the advantage of the Public.

I remain,

R. W. Hay.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.

(Despatch No. 26.)

Government House, Van Diemen's Land,

My Lord,

Agreeably to Mr. Peel's request, as notified in Your Lordship's Dispatch, No. 21, of the 15th September last, I have the honor to enclose herewith, a statement of the Names of all the Convicts, who have made their escape from Van Diemen's Land up to the present period; and in future I will take care to transmit to Your Lordship a similar return annually.

I have, &c., Geo. Arthur.
UNIVERSITY HAY TO LIEUT.-GOVERNOR ARTHUR.

1826.

(Despatch acknowledged by lieutenant-governor Arthur, 23rd March, 1827.)

Dear Sir,

Downing Street, 21 May, '26.

I enclose you copies of a correspondence and various communications, which have been made to this Department on the subject of Convicts, and more especially to the admitted fact of the danger and inconvenience arising from the presence of educated Convicts as Settlers in New South Wales and Van Diemen's Land. The course which Lord Bathurst is disposed to take (after having duly balanced the Arguments on one side and the other) is to the following effect:

1st. It is understood that no educated Convicts will be sent to New South Wales or Van Diemen's Land for a less term than 14 years or for life.

2nd. It must never be permitted, under any conceivable circumstances, that an educated Convict, that is to say, a Convict who has not been subjected to hard labor during his Punishment, should be allowed to settle either in New South Wales or Van Diemen's Land as a free Settler.

3rd. In the case of a 14 years' Convict, it must be provided that, when his term is expired, he shall be obliged to quit the Colony and not to return.

4th. As Lord Bathurst is decidedly of opinion that a Penitentiary system would be impracticable, either in England or in any other Colonies than New South Wales and Van Diemen's Land, and, as great doubts exist as to its practicability even there, I am directed to invite your particular attention to the subject with reference to the principles laid down in the enclosed papers. But even setting aside the question of a Penitentiary system, Lord Bathurst is anxious to receive from you a detail of any arrangements which may be made for the location of Educated Convicts apart from any thickly-peopled Districts in the Colony, where all the objects of a penitentiary system may be accomplished without the confinement or expense; and the Punishment of absenting themselves from such a Situation might be a removal to Norfolk or Maria Island.

You will naturally confer with the Chief Justice and your Council on this subject, and you may commence to act upon the system previously to your receiving Official Instructions, as a system initiated by yourself.

Due Instructions will be sent to you when your Report shall have been received.

A similar letter has been sent to General Darling with respect to the location of Convicts in New S. Wales, and as the same system, which may be recommended to be adopted in the one
HISTORICAL RECORDS OF AUSTRALIA.

1826.
21 May.
Consultation with R. Darling.

1826.
22 May.
Recommendation of Piddocke.

Colony, may be introduced with advantage (under certain modifications) into the other, you will probably agree in considering it advisable to put yourself in communication with him on the subject, in order that your measures may be concocted together.

I remain,
R. W. HAY.

[Enclosures.]

Copies of these papers were forwarded to Governor Darling with a despatch, dated 31st May, 1826; see page 340, volume XII, series I.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.
(Despatch acknowledged by lieut.-governor Arthur, 10th November, 1826.)

My Dear Sir,
Downing Street, 22 May, 1826.

The enclosed copy of a letter received from Colonel Sorell will acquaint you with the wishes of that Gentleman with respect to Mr. Piddocke the Bearer of this letter, who I am directed by Lord Bathurst to introduce to your protection and good offices.

Mr. Piddocke is about to proceed to Van Diemen’s Land for the purpose of practising as an Attorney in the Courts of Law; and I am to request that you will make to him a Grant of about 50 Acres of Land in some eligible situation which may happen to be unappropriated.

I am, &c.,
R. W. HAY.

[Enclosure.]

A copy of this letter is not available.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

Sir,
Downing Street, 22 May, 1826.

In consequence of the representations contained in your letter of the 13th September last respecting the delay, which had taken place in providing and forwarding to the Colony under your administration certain Stores for the use of the Engineer Department there, a communication on the subject was addressed to the Department of the Treasury. From the enclosed copy of the reply from Mr. Hill, you will perceive that the delay complained of has originated from the circumstance of the Requisitions not having been forwarded to England in sufficient time to admit of the several articles being provided sooner; and to prevent the recurrence of the same inconvenience, I am directed by Earl Bathurst to call your attention to the expediency of an earlier transmission of these requisitions in future.

I have, &c.,
R. W. HAY.
BATHURST TO ARTHUR.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.
(Despatch No. 27.)

Government House, Van Diemen's Land,

22nd May, 1826.

My Lord,

I have the honor to acknowledge Your Lordship's Dispatch of the 4th of December last, No. 24, communicating the change in the destination of Mr. Percival, and notifying the Appointment of Mr. Charles Ellis as Colonial Secretary.

In my Dispatch No. 17 of the 20th April, I have submitted to Your Lordship the temporary arrangement I have adopted for the discharge of the duties of the Colonial Secretary, a measure which I found myself urgently required to adopt to prevent the arrear of the Public Business, which is excessive in this Colony, much beyond any thing I believe Your Lordship contemplates.

In the Appointment of Mr. Ellis, I venture to hope Your Appointment of Lordship has given me the aid of an Officer accustomed to Public Business, from whose Abilities I may derive effectual assistance, and, on my part, Your Lordship may be assured no support shall be wanting to enable him to discharge, with benefit to the Service, and satisfaction to himself, the multifarious duties which will devolve upon him.

I availed myself of the first opportunity after the separation of this Colony from New South Wales to modify some of the Public Offices; and Your Lordship will perceive by the system laid down in the Government Order, which I have the honor to enclose, that there will be abundant occupation for the Colonial Secretary, since it is through him, that all Official communications will be made, and all reports received for the information of the local Government.

I have, &c,

GEO. ARTHUR.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.
(Despatch No. 21.)

Sir,

Downing Street, 23 May, '26.

I have received from Mr. Gellibrand, His Majesty's Attorney General at Van Diemen's Land, a letter in which he transmits copies of a Correspondence, which appears to have taken place between yourself and him, upon several points of difficulty which had occurred arising out of the construction of the present Act of Parliament* for the better administration of Justice in that Colony, accompanied by such practical observations as have presented themselves to him upon the subject.

I regret that it did not occur to Mr. Gellibrand that the more regular course for transmitting Papers of this description for the consideration of His Majesty's Government was through the

* Note 64.
1826. 23 May.


Transmission of correspondence re administration of justice.

Experience of trials in supreme court.

regular Channel of the Governor, in order that I might at the same time have before me any remarks which his suggestions may have called for, either from you or the Chief Justice, whom it would be proper to consult before any alterations, founded upon the Attorney General's representations, are made in the present system. Under these circumstances, I do myself the honor of forwarding copies of the papers in question to you, with the request that you will submit them for the opinion of the Chief Justice, whose report you will transmit to me, accompanied by any additional remarks, which you may deem it necessary to offer thereon for the information of His Majesty's Government.

I have, &c.,

BATHURST.

[Enclosure.]

ATTORNEY-GENERAL GELIBRAND TO EARL BATHURST.

My Lord,

Hobart Town, September, 1825.

I have the honor of enclosing a copy of the correspondence, which has taken place between His Honor the Lieutenant Governor and myself upon various points connected with the Interest and welfare of his Colony, and which I feel it my duty to lay before Your Lordship, for the purpose of explaining some of the obstacles which have arisen upon the construction of the present Act of Parliament for the better administration of Justice in this Colony; and also of presenting to Your Lordship such practical observations as have occurred to me upon them; and which I understand, from my friend Mr. James Stephen, Your Lordship would be desirous of receiving.

In the papers No. 1 to No. 9, Your Lordship will find the difficulties fully stated which I have experienced in putting several Clauses of the Act of Parliament into operation, especially the 19th section* which regulates the proceedings of the Quarter Sessions.

I would also respectfully draw Your Lordship's attention to the observations on the Act of Parliament. No. 3, which I submitted to His Honor on the 24th September, 1824, and which twelve months' additional experience enables me to confirm; but as I was unable at that time to give an opinion upon a very material feature in the Act, viz., the Trial in Civil cases, I will avail myself of this opportunity of so doing.

I have been engaged in every case of consequence which has been tried in the Supreme Court, the whole of which have been by the Chief Justice and the Assessors, for the spirit of contention has been such that, when the Plaintiff has been desirous of having the case tried by a Jury, the Defendant has refused, and vice versa.
In some cases the Assessors have not been on friendly feelings with the parties, and I know that the Verdicts in some cases have not given satisfaction.

I am of opinion that the mode of trial by Assessors is generally speaking the least expensive and in trifling cases decidedly the best; but, instead of requiring the Assent of both Parties, it appears to me that the best plan would be for either party to be at liberty to apply to the chief Justice for an Order to have the case tried by a Jury, leaving it to his discretion to take it out of the usual course, if proper grounds can be shown for it.

The letters No. 10 to No. 15 are upon the subject of the fees payable under an order of Your Lordships in Criminal prosecutions; in these letters, I have entered so fully into the present state of the Colony, and the effect which I firmly believe will be produced by the proposed regulation, that it will only be necessary for me to solicit Your Lordship's perusal of them; Your Lordship will perceive by the list of fees that, up to January last, 166 cases were tried by the criminal court, the expenses of which, upon the very moderate scale made out by the Chief Justice, were £1,078 8s. 6d.; and, although the Criminal Court has now been sitting for six weeks, half the cases are not tried; this has arisen from the powers given to the Quarter Sessions being limited to try offences, which are not punishable with Death, and in as much as all Larcenies above ten pence are of that class, unless the party prays for, and is entitled to the benefit of Clergy, it is doubted whether they can try for any offence above that sum, as the Court is at present constituted under the Act of Parliament; by this, I regret to state that the Court of Quarter Sessions has afforded very little assistance to the Supreme Court; and from the great number of Prisoners who are obtaining their certificates of Freedom, I am afraid there will not be any diminution of Crime.

The letters No. 17 to No. 27 relate to prosecutions for libel; in the conducting of which, Your Lordship will find that I have had great difficulty in making a distinction, between those in which I was bound as the Attorney General to prosecute ex-officio, and those where I had to deal with them as the Grand Jury.

Feeling well satisfied that party feeling is at all times most violent in a small Community, and especially upon matters of this description, I drew His Honor's attention to the circumstance so early as May, 1824, and pointed out a mode by which I intended to proceed, which at that time met with His Honor's approbation.
In the month of October, a base and wicked libel was published upon the Lieutenant Governor, whose attention I immediately drew to it by the letter No. 20, and was anxious to prosecute as such. His Honor was pleased by his letter, No. 21, to express his pleasure to the contrary; but, fearing the consequence of this levity and at the same time anxious to shew my zeal for his welfare, I still pressed it by the letter, No. 22, and His Honor on the next day, in a conversation which I had with him on the subject, refused his sanction to the measure.

Your Lordship will perceive, by the subsequent correspondence, that various articles afterwards appeared in the Gazette very offensive to the Lieutenant Governor, the Chaplain and the Acting Naval Officer, and that His Honor then called my attention to the publications, desiring me to prosecute in all these cases, as well as in the former one.

I now felt myself placed in a most painful situation, having a most anxious wish to protect the Governor, his measures, and his Officers to the utmost extent of my power. I could not conscientiously follow his wishes to the full extent, because, although as the law Officer and adviser of the Crown, I was bound to protect and support the Government, yet I also felt that a duty was cast on me to protect the Rights of the people; and consequently I could not fill an ex-officio Information in a case, when I know that power could not be and never was exercised in England under these circumstances. I wrote to the Lieutenant Governor explaining my views of the case, in the letter No. 24, to which I earnestly entreat Your Lordship’s attention; after this point had been explained by me, I was applied to by the Acting Naval Officer upon the same subject (with the authority of the Lt. Governor for the purpose); I gave him the same explanation; but he still called upon me for my opinion and advice, etc., as fully set forth in the correspondence No. 28 to 34.

The tone of this Gentleman’s letters (being so contrary to that used towards an Officer holding my rank in the Colony) calling upon me for explanations as to my conduct, I found myself under the necessity of laying the letters before the Lt. Governor in the letter No. 33, the answer to which I also enclose to Your Lordship, No. 34.

I cannot refrain from expressing my deep regret that His Honor should have formed an opinion upon these proceedings, which appeared to me to be contrary to the practice adopted in England on similar occasions, and that, by the line of conduct which I pursued, I may have incurred his displeasure; but I trust that Your Lordship will consider the peculiar situation in which I am placed, that I have two duties to perform, one as
Attorney General, the other as Grand Jury, which are rather repugnant to each other; and I trust Your Lordship will also be of opinion that it would have been highly imprudent in me to have involved the Government in the result of a prosecution of a private libel; and, as the Jury also that would try the cases must by the Terms of the Act of Parliament be Officers,* nominated by the Governor himself, the prosecution ought not in any case to emanate from the Crown, if it can possibly be avoided; here I have felt it my duty to make a stand, and I look with confidence for Your Lordship's approbation upon my conduct on this occasion.

I have thus endeavoured, as briefly and succinctly as possible, to present to Your Lordship a faithful statement of facts, by which I trust Your Lordship will be able to trace my line of conduct and sentiments, from tense to tense, from the first establishment of the Court to the present period; how these duties have been executed, I submit to Your Lordship's judgment, assuring you that I have at all times acted faithfully in the trusts reposed in me, and studied the stability of His Majesty's Government and the welfare of his people.

I have, &c.

J. T. GELLIBRAND.

[Sub-enclosure No. 1.]

ATTORNEY-GENERAL GELLIBRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir, Hobart Town, 29th May, 1824.

I beg leave to call Your Honor's attention to the provisions of the 19th Sectiont of the late Act of Parliament for the better administration of Justice in this Colony, by which the Magistrates are to hold Quarter Sessions (in a manner similar to those held in England) for the trial of free persons, and to Act in a Summary way upon the trial of Offenders, who have been transported to this place; by this section of the Act, the powers of the Magistrates in this Colony are materially enlarged, and they will now have the power of trying all offences committed (not capital), which, if properly exercised, will considerably lessen the labours of the Chief Justice. I cannot however refrain from pressing upon Your Honor's consideration the necessity of appointing a Gentleman conversant with the Laws of England, and properly qualified to sit as Chairman, and also of appointing an efficient person to Act as Clerk of the Peace, and of the Bench of Magistrates; and, when you consider that it will be incumbent upon the Chairman to determine as many questions of Law as a Judge in the Criminal Court, I feel satisfied that Your Honor will be duly sensible of the importance and the responsibility of the Office.

I also wish to draw Your Honor's attention to the construction of the Section, whether the Trial of Free persons is to be by a Jury as in England, and the summary manner against Convicts without a Jury, and by whom and in whose name the prosecutions are to be brought; whilst I am upon this subject, it is necessary that I should inform Your Honor that all the examinations, laid before me from the different Magistrates (and upon which alone I am justified in preferring

1826.
25 May.

Reasons against filing ex officio information.

Statement submitted.

* Note 66.  † Note 64.
1826.
23 May.
Informality of examinations by magistrates.

Transmission of observations on statute.

an Information) are in most cases illegally taken, and the facts stated in such a superficial and inaccurate manner that it is impossible for me to take the cases into Court with any confidence, and the Chief Justice has been under the necessity of noticing the circumstance in Court; one example will suffice on this head; in an Information for Burglary, it appeared by the examinations that only one witness could prove the fact, which rendered the case doubtful; but, upon my examining that witness on the Trial, it appeared that the facts could be proved and confirmed by other witnesses, whom I sent for and examined; the case occupied five hours, and seven witnesses were examined and the Prisoner found guilty.

I have the honor to enclose for your perusal copy of a letter, which was sent to the Bench upon this subject; but it appears by the Papers sent me since that period that there are many points to which it is very desirable the Magistrates should in their examinations pay more attention than at present.

I have, &c,

J. T. GELLIBRAND.

[Sub-enclosure No. 2.]
ATTORNEY-GENERAL GELLIBRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir, Hobart Town, 26th September, 1826.

Your Honor having expressed a wish that I should communicate to you my opinion upon the Act of Parliament, passed for the better Administration of Justice in New South Wales and Van Diemen's Land, and whether any alterations appear requisite for carrying into effect the intentions of the Legislature; I therefore beg leave to submit to Your Honor some general observations upon the Act, wherein it appears to me that the same is deficient and requires alterations; and, in transmitting to Your Honor an opinion upon the same, I beg to observe that there are some parts of the Act, which have not yet been fairly put into operation for want of the Rules and Regulations of the Civil Court, and other parts upon which there has not yet been sufficient practice to form a decided opinion; and Your Honor will therefore be pleased to take these points into your consideration in requiring from me so early an opinion upon the operation of this Act of Parliament.

I have, &c,

J. T. GELLIBRAND.

[Sub-enclosure No. 3.]

OBSERVATIONS UPON THE ACT OF PARLIAMENT.

The second section* of the Act of Parliament appears to give the Chief Justice of the Supreme Court powers equal to the Courts of King's Bench, Common Pleas and Exchequer at Westminster; but the Chief Justice, upon my application to him for a commission of Information as to the goods and chattels of a Felon and for an Extent against the persons, who have possessed themselves of the same, has entertained very considerable doubts whether the King has not deprived himself of such remedies and I have had some difficulty in procuring a process to that effect; the objection appears to be threefold; first, That there are no such Rights recognized in the Act of Parliament. Secondly, That such a commission partakes in its nature of an Action at Law, and the King cannot be informed by any other means than by two Magistrates as Assessors, or a Jury, which cannot be obtained except by the consent of the Party to be affected; and it is unknown who may be affected till the Jury inform the Crown who have possessed themselves of the property, such consent cannot be obtained. Thirdly.

* Note 67.
If the King is informed by a full Jury, and the parties affected traverse the inquisition, the finding of that Jury may ultimately be reversed by the decision of the Chief Justice and the two Assessors. It appears to me that the King is not deprived of any of his rights by implication, and that all the rights of the Crown are in full force in this Colony so far as the circumstances will admit. That a commission of Information does not partake in its nature of an action at Law, and therefore is not within the meaning of the sixth Section* of the Act, but is an exercise of the Jurisdiction of the Court under the Second section, and that the Act of Parliament is sufficiently extensive to carry these Rights into execution.

The fourth section* of the Act of Parliament has been put into extensive operation by the trial of a number of prisoners for almost every species of offence on this side of the Island and also at Port Dalrymple. I think the Legislature has very wisely placed the Lives of Offenders in the hands of such a Jury as is provided by the section; for the spirit of Party feeling is at present so extensively felt by all persons and in all places, that it would not be safe to place this Trust in any other hands; the prisoners are tried by Men of Education, discernment, and Humanity, and I am bound to say that they have (if possible) a more impartial trial than in England.

There has been an occasional difficulty in procuring a Jury, because the Act only authorizes the Governor to nominate Magistrates in case there should not be a sufficient number of Officers within fifty miles of the place of holding the Court; and therefore, so long as seven Officers are within that distance (and though they do not attend), a Jury cannot be made up with the Magistrates; it appears to me that there should not be sufficient number of Officers in attendance as Jurymen, by which means the operation of the Court would never be suspended. We have not been able to make a Jury in Hobart Town without requiring the attendance of several halfpay Officers, who have been obliged to leave their Farm and Families at great personal inconvenience and expense, without receiving any compensation.

In England, the Criminal Law abounds with Technicalities, which (it is universally admitted by the highest Authorities) too frequently obstruct the course of Justice in prosecuting the numerous offenders. I have followed the forms used in England omitting some of the unnecessary parts; but the Chief Justice seems inclined to put all the objections, which exist there, in full force in this Colony, the effect of which is too obvious for me to remark upon.

Upon the several clauses of the Act relating to the Civil proceedings of the Court, I cannot offer any observations to Your Honor, because the same have not been put in operation.

I would wish particularly to draw Your Honor’s attention to the 19th Section† of the Act, extending the powers of the Magistrates and establishing General or Quarter Sessions; by this Section, it appears that the Court is to have “power and authority to take cognizance of all matters and things cognizable in Courts of Quarter Sessions in England so far as the circumstances and conditions of this said Colony shall require and admit,” and power and authority in a summary way to take cognizance of all crimes and misdemeanours not punishable with death, which shall be committed by any Felon.” The Courts of Quarter Sessions in England take cognizance of all matters by Indictment, presented to the Court by a Jury, and the matter is tried in a

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* Note 67. † Note 64.
similar way; and it appears to me that the Courts of Session in this Colony must proceed in a similar way so far as regards the trial of Offences by Free persons, because the power given to me of prosecuting by Information is confined by the fourth Section* to offences cognizable in the Supreme Court, and the Jury of Commissioned Officers is limited in a similar manner. This conclusion appears the more evident, because Felons are to be tried in a summary way; by which I understand they are to be tried by the Bench of Magistrates, who will judge of the fact and sentence them accordingly. It therefore appears to me essentially necessary that the provisions of this Section (which are of great importance to the Colony, in as much as the Court of Sessions will have immediate Jurisdiction which will tend materially to lessen Crime), should be amended, and the manner, in which the Offences are to be tried, clearly defined.

The attention of the Supreme Court has been drawn to the 22nd Section* of the Act on the application of an Insolvent in custody, shewing his Debts and credits, and that he was unable to pay 20s. in the pound; no Judgment has yet been pronounced upon this application, but the Chief Justice expressed his opinion that, though this application was within the letter of the Act, it was not within the Spirit of it, and that this Section was framed for the protection of the Creditor against the Debtor and not for benefit of the Debtor. It appears to me that the Section is for the protection of both, on the one hand to prevent a vindictive Creditor from prosecuting a Debtor, who was willing to give up his property, and by this measure throw himself upon the Body of his Creditors for protection by his certificate, and on the other hand to prevent a litigious debtor from wasting the Estate of his Creditors. It does not follow, because a Debtor in custody applies to the Court and gives up all his property under the provisions of the Act, that he will be discharged from custody; he can only obtain his liberation, either by the assent of the detaining Creditor, or by procuring his certificate under the provisions of the Act. The other sections of the Act of Parliament not being yet put into execution, I am unable to make any practical suggestions upon them.

24th Sept., 1824.

J. T. GELLIBRAND.

[Sub-enclosure No. 4.]

ATTORNEY-GENERAL GELLIBRAND to LIEUT.-GOVERNOR ARTHUR.

Sir,

Hobart Town, 17th November, 1824.

The Jury, which was summoned to enquire what Debt was due from the late Naval Officer and Treasurer of the Police Fund to the Crown, met at the Court House on Monday afternoon for the purpose of signing the Inquisition, which, with the Commission, was returned into the Supreme Court on the following day by the Commissioners.

As soon as this return was made I applied to Mr. Commissary Moodie to make the necessary Affidavit to grant an application to His Honor The Chief Justice for an immediate Extent; this affidavit and The Writ of Extent were laid before the Chief Justice yesterday afternoon for the purpose of being sealed.

I have this morning had an interview with the Chief Justice, who declines putting the Seal of the Court to the Writ, because he is of opinion that the commission cannot legally issue from the Court and consequently the debt of record, which has been found by the Jury, is not legal.

* Note 67.
The objections of the Chief Justice upon this subject have been already noticed in "The observation upon the Act of Parliament," submitted by me to Your Honor under date 24th September last, and as the Chief Justice intends to communicate to me his objections in writing, I shall transmit them to your honour with such observations as may appear necessary.

If the Chief Justice persists in his refusal to sign the Writ, the proceedings in the Court have been useless, and I shall be under the necessity of again travelling through this complicated case, and Doctor Bromley will obtain further time to remove his personal property and Securities, which must be highly injurious to the Crown.

I have, &c,

J. T. Gellibrand.

[Sub-enclosure No. 5.]

LIEUT.-GOVERNOR ARTHUR TO ATTORNEY-GENERAL GELLIBRAND.

Sir, Government House, Hobart Town, 22nd Feb., 1825.

I do myself the Honor to enclose you a New Commission of the Peace for this Colony with a proclamation* of the Governor of New South Wales, appointing certain times and places for holding the Court of Quarter or General Sessions, and also appointing that Courts of General Sessions shall be holden at such times and places, as any two Justices shall direct; and I have to require that you will consider these instruments and advise me, previous to their being advertised, in what manner the difficulties had best be provided for, which are likely to arise upon the questions of the Jury and the supercession of the General Quarter Sessions by the Opening of the General Sessions.

You are aware that there has been a decision* given by the Chief Justice at Sydney upon the question of the Jury, of which you may avail yourself in the consideration of this very important point.

I have, &c,

GEO. ARTHUR, Lt. Gov.

[Sub-enclosure No. 6.]

ATTORNEY-GENERAL GELLIBRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir, Hobart Town, 22nd February, 1825.

I beg to acknowledge the receipt of Your Honor's of this date, Letter enclosing for my perusal the New Commission of the Peace and the proclamation of His Excellency the Governor in chief appointing the times and places for holding the General or Quarter Sessions, and requiring my opinion thereon with reference to the questions of presentment and Trial by Jury, and the supercession of the General Quarter Sessions by the opening of the General Sessions, and the decision given by the Chief Justice at Sydney on the question of the Jury.

I have already communicated to Your Honor, under date the 24th September, 1824, my opinion upon the 19th Section of the Act of Parliament for the better administration of Justice in New South Wales and Van Dieman's Land, which was that this Section of the Act was imperfect, and that it could not be put fully into operation without amendment; and, as I still entertain an opinion similar to that conveyed to Your Honor upon that occasion, notwithstanding the decision of the Chief Justice of New South Wales, I am anxious to explain to Your Honor more fully my views upon this subject and the reasons why I still differ in opinion with the learned Chief Justice.

By the fourth Section of that Act of Parliament, it is enacted * That all Crimes, Misdemeanours and Offences, cognizable in the Supreme Court, shall be holden at such times and places, as any two Justices shall direct; and, as I still entertain an opinion similar to that conveyed to Your Honor upon that occasion, notwithstanding the decision of the Chief Justice of New South Wales, I am anxious to explain to Your Honor more fully my views upon this subject and the reasons why I still differ in opinion with the learned Chief Justice.

I have, &c,

J. T. GELLIBRAND.
1826.
23 May.

Jurisdiction of criminal court; and of courts of sessions.

By the nineteenth Section it is enacted "that Courts of General or Quarter Sessions shall be holden, and the said Courts of Sessions respectively shall have power and authority to take cognizance of all matters and things, cognizable in Courts of General or Quarter Sessions in England, so far as the circumstances and condition of the said Colony shall require and admit, and the said Courts shall have power and authority in a summary way to take cognizance of all crimes and Misdemeanours not punishable with Death, which have been or shall be committed by any Felon."

It is quite true that offences are found in England by a Grand Jury at the Quarter Sessions, and tried by a Petit Jury, and the right of Trial in a similar manner existed in this Colony previous to the passing of the late Act of Parliament, although such right was never exercised.

It appears to me that the Rights of Trial by Jury is altogether taken away by the present Act of Parliament, excepting the trial on the Criminal side by Officers, and on the Civil where both parties agree, and that the power of further introducing Trial by Jury is vested in His Majesty alone by order in Council by the 18th Section of the Act.

I am of opinion that the Trial of free persons at the Quarter Sessions should be by Information in the name of the Attorney General and not by Indictment, and that the Right of Trial by Jury, except it is expressed in the Act of Parliament, is taken away, and can only be further introduced by an Order of Council, and that, this construction not being repugnant to the Act of Parliament, an Act of Council of New South Wales might be passed to give it this explanation.

With respect to the Trial of Prisoners of the Crown, I am of opinion that neither Information or Jury is requisite, but that the substance of the charge against each Prisoner should be entered in the Record book of the Bench by the Clerk of the Peace, the evidence taken down, and the Guilt or innocence of the party determined by the Magistrates, and also the quantum of punishment, which must be recorded.

With respect to the Question of General Quarter Sessions and General Sessions, I am of opinion that the safest course of the Bench to pursue will be to establish the Quarter Session in February, May, August, and November, and to adjourn the same from time to time to the several places mentioned in His Excellency's proclamation, which will avoid any question which may arise as to the General Sessions superseding the General Quarter Sessions, which I am of opinion it would do.
There will be considerable difficulty in punishing offences (committed by Prisoners) of Drunkenness, Insubordination, etc., because it is enacted by the 19th Section that all offences of that description are to be cognizable by the Magistrates in Session only; whereas it will be necessary that they should be cognizable out of Session as well as in Session, otherwise the parties will be put to the trouble and expense of prosecuting every case in Sessions however trifling, and the Magistrates will have no power of proceeding summarily. I therefore beg to recommend to Your Honor that an Act of Council should be submitted to His Excellency, giving two or more of the Magistrates power and authority in a summary way out of Sessions to take cognizance of all complaints, made against any Felons for the several Offences, given to the same number of Magistrates in Sessions by the Act of Parliament; by this course, the Offender will be tried in the same manner as pointed out by the Act of Parliament, with this difference that, if Guilty, he will be immediately punished.

If General Sessions are to be held between the Quarter Sessions, it will be necessary that such Sessions should be held three days in the week on this side of the Island, and then held by adjournment for the other three days on the other side, and then adjourned back to Hobart Town for the following week, because there cannot be two Courts of General Sessions at one and the same time; or, which perhaps would be a better plan, if separate Commissions of the Peace were made out for the County of Buckinghamshire and the County of Cornwall, by which means Separate General Quarter and General Sessions could be held for each County.

I am of opinion that so much of the business of the Quarter Sessions as relates to free persons cannot at present be put into operation, but as regards prisoners of the Crown, which is by far the most extensive and important, that it can be acted upon in the way that I have pointed out.

Entertaining the greatest respect, which I am bound to do for the opinion of those who think differently upon the subject, I feel some diffidence in offering my opinion in this matter; but I have given it every consideration, and cannot feel any doubt upon the subject, but think it very desirable that the judgment of the Supreme Court of Van Dieman's Land should be obtained by a motion for a Mandamus.

I return Your Honor the Commission and proclamation, the former of which is dated on a Sunday, and in the sixth year of the King's Reign instead of the fifth and must therefore be altered.

I have, &c.,

J. T. Gellibrand.

[Sub-enclosure No. 7.]

ATTORNEY-GENERAL GELLIBRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir, Hobart Town, 22nd February, 1825.

I have the Honor of forwarding for your perusal the Draft* of an Act of Council to restrain persons from selling spirituous Liquors except by License.

The Excise Laws in England are so numerous, and in many instances oppressive in their operation, that I have found much difficulty in extracting so much of them as will be necessary to carry Your Honor's Instructions into effect without introducing some of the several measures.

I would recommend that the Licenses to the Merchants should not exceed £10, and to the retail Dealers £20; that the Licenses should be

* Note 69.
granted by the Naval Officer to the Merchants and by the Magistrates to the retail Dealer; that the power of searching premises and seizing spirits should be granted to the Officer of Excise and his Assistants, for which latter purpose some of the Constables should hold that appointment nominally.

As the great object of this measure is to counteract the effects of the private Drinking Houses, I think the power given to those Officers to seize all spirits found in Houses of that description, in addition to the Penalty imposed by the Act, will effectually put an end to this baneful System.

I have, &c.,

J. T. GELLIBRAND.

[Sub-enclosure No. 8.]

ATTORNEY-GENERAL GELLIBRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir,

Hobart Town, 26th March, 1825.

I beg to acknowledge the receipt of Your Honor's letter of the — and the — Instant, enclosing the letters of the Clerk of the Bench of Magistrates, and calling my attention to the Act of Council of New South Wales* for regulating the granting of Licenses for the sale of Spirits, etc., in New South Wales and Van Dieman's Land, and requiring my opinion thereon.

The Act in question is to restrain all persons from vending any Malt or Spirituous Liquors in a less quantity than five gallons, without first obtaining a License in the manner directed by the Act under the penalty of 100 dollars to be recovered in a summary way before any Court of General or Quarter Sessions, and also directing that the Certificate to be granted by the Magistrates on the 19th February; the certificates not being all obtained in New South Wales within that time, it has been deemed necessary by the Council to pass another Act for the express purpose of enlarging the time until the 2nd of March; but the Magistrates of the Colony have not been able to grant licenses under the Acts, because the existence of them has not been known until some time posterior to the 2nd Instant.

Whether the Act of Council is under these circumstances binding in this Colony, and operating as a repeal of the Rules and Regulations heretofore existing, or whether it is to be considered as an impossible Act as regards this Colony and without the benefit of the Certificate or License repugnant to the Laws of England, are questions which have required a considerable portion of Study and research to determine; but, without troubling Your Honor with any Legal authorities or argument upon this subject, I am prepared to advise Your Honor that the Act has not repealed the rules and regulations heretofore existing in this Colony; That the present System of licensing may continue, and the penalties be recovered as heretofore; and amongst others, for the following reasons:—that the time for granting the license under the Act is expired, and never could have been acted upon in this Colony; that all fines and penalties are to be recovered in Quarter Sessions, which are not yet in existence in this Colony; that, if the Act repeals the former Laws, and imposes fines for selling in less quantities than five gallons without a License, and at the same time prevents the retail dealer from obtaining the License, a penalty is imposed which cannot be recovered, and the same is, in my opinion, repugnant to the Laws of England.

Under these circumstances, I would advise Your Honor to act for the present upon the old system, until an Act of Council is passed in Sydney to enable us to put the Act first referred to in my letter into operation.

* Note 70.
Whilst I am upon this subject, I would draw Your Honor's attention to the necessity of some Official communication being made to the Officers of this Colony what acts of Council are passed; at present they are only to be collected from the Newspapers.

I have, &c.,

J. T. GELLIBRAND.

[Sub-enclosure No. 9.]

ATTORNEY-GENERAL GELLIBRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir, Hobart Town, 22nd August, 1825.

I beg leave to inform your Honor, that I presented to the Information supreme Court on Saturday last an Information against John Broad- head, John Evens, Charles Bradbury and William Bucky, charging them with a Burglary in the dwelling house of Mr. Hayward on the 12th of July last, and also with stealing a considerable quantity of property amounting to upwards of £200 in value.

From the encouragement and assistance, which have been afforded as well by prisoners as by Free settlers to Brady and McCabe, and other persons who have committed divers Felonies, I consider it to be of great importance, in this case to prosecute those persons, who had harboured and concealed the first mentioned persons, with the utmost severity of the Law, in order that the punishment, consequent upon such a Crime, might through the medium of the Newspapers be publicly known throughout the Colony, which is Death: and I therefore prosecuted John Ray, Charles Jackson, and John Taylor as accessories after the fact.

After a most patient investigation of the case for ten Hours, the Jury returned a verdict of guilty against all the prisoners, and, upon my praying the judgment, sentence of Death was passed upon them.

With respect to the cases of Jackson and Taylor, I would humbly suggest to Your Honor that some doubts may arise, in as much as they were lodgers in the House of Ray; and, although there can be no doubt of their participation in the plunder, there may be some as to their legal Guilt of the crime of harbouring, concealing and maintaining; I draw Your Honor's attention to this fact for the purpose of enabling you to obtain the opinion of the Chief Justice upon it, and that their sentence may be commuted into transportation, if Your Honor shall see fit, under the circumstances of this case, to extend the Royal prerogative of Mercy to the prisoners.

I have, &c.,

J. T. GELLIBRAND.

[Sub-enclosure No. 10.]

ATTORNEY-GENERAL GELLIBRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir, Hobart Town, 18 May, 1824.

The Act of Parliament for the better administration of Justice in this Colony having directed that all offenders shall be prosecuted by Information in the name of the Attorney General, I have the Honor to request that you will be pleased to inform me whether such proceedings are to be instituted and carried on at the expense of the Crown, or the prosecutors, i.e., The Parties injured?

In England, the Indictments are presented to the Grand Jury and carried on to Judgment at the expense of the prosecutor, the Judge having the power in certain cases (by Act of Parliament) to direct a sum of money to be paid the prosecutor out of the County rate for his expenses, which is generally about half the amount of the expense Practice in England for payment of fees.
incurred. In this Colony, the principal expense will arise in compensating the witnesses for their loss of time and expense of attending the Assize, which I should think upon the average will amount to £15 or £20 each case; but, whether it will be prudent in the present state of the Colony to impose this expense upon the Settlers, it is for Your Honor alone to determine.

I take this opportunity of informing Your Honor that a great number of Colonial regulations* have been made by His Excellency, which form part of the Law of this Colony; I cannot find any collection of these Laws or any other manner of being made acquainted with them than by making a selection from the Sydney Gazettes for the last 20 years, a task which Your Honor must be aware it is difficult to perform but which circumstances render of imperious necessity.

I have, &c.,

J. T. GELLIBRAND.

[Sub-enclosure No. 11.]

ATTORNEY-GENERAL GELLIBRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir, Hobart Town, 5th May, 1825.

I beg to enclose to Your Honor a statement of the expenses payable to His Majesty's Government upon the criminal prosecutions in the Supreme Court, agreeably to the table of Fees drawn and settled by the Chief Justice, and which was forwarded to me by Your Honor on the 15th of March last; previous to which time, all the prosecutions mentioned in the enclosed List had been carried on by me officially.

By this statement, Your Honor will find that the Sum of Money due to the Crown is £1,078 8s. 6d.; but it is hardly necessary for me to state that, from the poverty of many of the Prosecutors and the length of time which is elapsed (independent of the question as to their liability), a very small portion of this Sum will ever be collected for the use of the Crown.

It would be improper in me to offer any observations to Your Honor on the policy of imposing the expense of criminal prosecutions upon the prosecutor in a Colony composed of such a class of persons as this; but I cannot refrain from impressing upon Your Honor's consideration the result of my experience in the Criminal Court.

I have found great disinclination on the part of prosecutors to attend the Supreme Court, because their absence from home is attended with great inconvenience and risk, and they are put to great expense in travelling and supporting themselves; and, although I endeavour to suit the convenience of those who come from a Distance as much as possible, they are frequently detained from home 8 or 10 days; they have repeatedly complained of the expense and inconvenience they are put to, that they receive no compensation for their trouble or expenses, and that in future they shall let the offence pass unpunished.

If in addition to this they are to pay the whole expense of the prosecution out of their own pockets, I believe that many offences will be committed and pass unnoticed; the result of which, it is evident, will be the increase of Crime.

With respect to the table of Fees settled by the Chief Justice, Your Honor will perceive that the allowances are in many cases not at all commensurate with the trouble; as instances of which I refer Your Honor to the cases of Butler and others for stealing the Sheep of Lieutenant Governor Sorell, which occupied 18 hours; Frazer and others for Forgery, 12 hours; Stanfield and another for Arson, 12 hours; Buckley for Murder; and Tibbs for Manslaughter.

* Note 71.
As a Criminal Court will be held, I presume, in the course of a few weeks, I intend, if it meets Your Honor's approbation, to publish the scale of Fees in the Hobart Town Gazette, and, as soon as the examinations are sent me by the Magistrates to apply to the prosecutors to pay into the hands of the Colonial Treasurer a Sum of Money sufficient to cover the expenses, which will be ultimately payable on the prosecutions; and, upon a Certificate of such sum of Money being paid to the Colonial Treasurer being handed to me, I shall prosecute the Offenders.

I have no doubt that many, if not the majority of the prosecutors, will be unable and all of them unwilling to pay the expense of the prosecutions; and it is therefore incumbent upon me to draw Your Honor's attention to these facts and receive Your Honor's instructions, whether I am to refrain from prosecuting a party, who has offended against the Laws of his Country, because the Prosecutor cannot or will not pay the expense of the Prosecution.

I have abstained from offering any advise to Your Honor upon this subject for several reasons. First. Because it appears, by the table of Fees, it is drawn out by the Chief Justice pursuant to the directions, contained in a letter of the Right Honorable the Earl Bathurst under date the 26th October, 1825.
Secondly. Because Your Honor is sufficiently enabled by the length of Your residence in this Colony to form an opinion how far such a regulation will prove beneficial or otherwise; and 3ly Because I am only desirous of obtaining Your Honor's directions as to the line of proceeding to be adopted by me, and am not aware that Your Honor requires any opinion as to its probable operation or policy.

I have, &c.,

J. T. GELLIBRAND.

[Sub-enclosure No. 12.]

LIEUT.-GOVERNOR ARTHUR TO ATTORNEY-GENERAL GELLIBRAND.

Sir,

Government House, Hobart Town, 23 May, 1825.

I have the honor to acknowledge the receipt of your Letter of the 5th Instant, enclosing a statement of Fees payable upon sundry criminal prosecutions, agreeably to a scale of Fees settled by the Chief Justice, and intimating your intention, if it meets my approval, of publishing the scale of Fees in the Hobart Town Gazette, and, as soon as the examinations are sent to you by the Magistrates, to apply to the prosecutors to pay into the hands of the Colonial Treasurer a sum of money sufficient to cover the expenses, which will ultimately be payable on the prosecutions, and that, upon a certificate being presented of such a sum of money being paid to the Colonial Treasurer, you will prosecute the offender.

I am sorry I have not earlier replied to your letter; but the subject has appeared to me so important and delicate to touch, that I have found a difficulty in making up my mind upon it, and, without much fuller advise upon this subject, I am not disposed to do so.

By whom are these Fees payable? and to whom do they belong? are questions which arise and upon which I should rather ask your opinion than give any decision of my own. Without coming to any determination, it strikes me that with regard to all the Fees the Government stands thus with the several Public Offices. We will appoint you to an office, the Fees of which ought to produce a given sum, they may produce more or less, but still this can be ascertained; we will
guarantee you the given sum, upon condition that you account to us for the fees. If the fees produce an excess you (accounting for all) must pay over the excess to us; if they fall short, we will make up the deficiency; in this view of the case, the officer may direct those who are to pay to make the payment where he pleases, if not to himself, but he is accountable. If he or his appointees receive the fees, he will be charged with a receipt; if he or they do not receive them, he would be equally chargeable, generally or at least in any case in which he could not make it appear that, having used the proper and usual means to recover them, he had failed. Now was I to sanction the scheme you propose and determine that the fees belong to Government, all consideration of this subject would be passed over, and Government becomes burthened with all the trouble and inconvenience of collecting and receiving the fees, as well as all other losses attendant thereon.

Again after stating the probable inability of some and unwillingness in all the prosecutors to pay these fees, you ask whether you are in prosecutions. To refrain from prosecuting a party, who has offended against the laws of his country, because the prosecutor cannot or will not pay the expense of the prosecution. This must be founded upon the assumption that you have nothing to do with the fees. It either is or is not your duty to prosecute without receiving any instructions from me; and, upon this point, you should make up your mind, and distinctly state your opinion to me, as I do not think it would be safe for me to give any instruction without having your positive opinion previously before me. You appear to intimate that Government ought to pay the expense of prosecutions; and, as to this, I can only observe that it seems to have been clearly the intention of lord Bathurst that, at least in the first instance, the prosecutor should incur them, or why should the Chief Justice be directed to draw out a scale of fees; and, if not paid by the prosecutor, by whom are they to be paid; these are questions, as I have already observed, extremely difficult, and with my present information I can only come to a conclusion on one point, which is that I do not feel I ought to sanction the notice to be given in the Gazette.

I have, &c.

GEO. ARTHUR.

[Sub-enclosure No. 13.]

ATTORNEY-GENERAL GELLIBRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir,

Hobart Town, 24th May, 1825.

In acknowledging the receipt of your Honor's letter of the 23 Instant referring to the several points, upon which I found it my duty to draw your Honor's attention in my letter of the 5 Instant, and upon which your Honor is now pleased to require my opinion, I esteem to offer some general observations for your Honor's consideration upon the present state of the colony, the effect likely to be produced by imposing the expense of the prosecutions upon the public, and then to answer the queries contained in your Honor's letter.

It is notorious that the convict population in this colony are in proportion to the free in the ratio of 3 to 1, and in the crimes committed, as brought before the supreme court, 8 or 10 to 1: for the punishment of these offences, his Majesty's government have thought fit to provide an officer, who should exercise the functions of a grand jury, and who should afterwards conduct the prosecution either to conviction or acquittal. The wisdom of this measure is apparent from various causes, the most prominent of which are, that it prevents the
possibility of a Felony being compounded, and that it insures a just and impartial Trial; the case is entirely taken out of the hands of the prosecutor, and he has not the power of choosing his own advocate, neither can he hasten or procrastinate the Trial.

With the exception of the cases which occur in Hobart Town, they are principally Felonies, committed upon the property of Settlers in the Country, the body of whom are at the present moment in the greatest penury and distress, obliged to trust their little property to the care of Convict Servants, who take every opportunity afforded them, by their Master's absence, of embezzling and purloining that which is left. The object of imposing Criminal enactments and establishing Courts for the punishment of offenders is to prevent the commission of Crimes, and the best way to carry that object into effect is to impress, upon the minds of the people at large, a decided conviction that the commission of Crime will be followed by punishment, and that every facility and encouragement will be afforded by Government for that Purpose.

If the expense of the prosecution is to be charged upon the prosecutor, I am decidedly of opinion (when the sentiments of Government are made known upon this subject) that it will operate very injuriously to the moral interest of this Colony; the distance which the generality of Settlers are at from any Magistrate, the loss of time, expense and inconvenience they are put to in the primary investigation of their cases, added to a reluctance felt by most to criminal prosecutions, deter many at the present moment from prosecuting, and will then induce many others to follow their example, the effects of which I have endeavoured to show Your Honor in my letter of the 5th Instant.

With respect to the queries contained in Your Honor's letter, I will endeavour to dispose of them in the order in which they naturally arise.

The first is whether any of the Fees, contained in the scale drawn up by the Chief Justice, can be legally recovered? this is a question of considerable difficulty; and, as I am desirous that Your Honor should fully understand the question, I am induced to trouble you at length upon it. The Master, the Registrar and the Sheriff are officers of the Court, over whom the Court has a Jurisdiction, and whose duties it has the power of compensating by making rules of practice and payment of Fees. The Court has no Jurisdiction over the Attorney General; it cannot compel him to prosecute or to assign any reason why he does not prosecute; he is the prerogative officer of the Crown, and accountable to the Crown only and perfectly independent of the Court; there are certain extra judicial duties imposed upon him by the Act of Parliament, and, unless that Act of Parliament authorizes him to demand fees for the discharge of those duties, I am of opinion that they cannot be legally recovered.

It is impossible in this case to find a Precedent, and it is therefore necessary to go upon Principle. The Grand Jury in England are never paid for their trouble in presenting Indictments, and, with the exception of the charges of drawing and engrossing the information, the subpoenas and services, I am of opinion that the fees cannot be recovered, as they are the Acts of Counsel for which no action will lie.

Your Honor will be pleased to understand that this opinion refers to the business, which has been done without any payment being made, the particulars of which are forwarded to Your Honor in my letter of the 5th Instant.
When Your Honor sent me a Scale of Fees with an authority to collect the accounts for the several Prosecutors, I did not venture to offer to Your Honor any opinion upon it for the reasons stated in my letter of the 5th Instant, but to draw Your attention to some of the difficulties, which must inevitably arise in putting those directions into effect; and if, as I assume from Your Honor's letter of the 23rd Instant, the Crown will consider me responsible for all Fees which may be payable to me under this scale, although not received, it would then become my duty in justice to myself to compel the Parties to pay in advance, that is before the prosecution is closed.

I trust Your Honor will allow me to impress upon your mind the utter impossibility in most cases of procuring payment of the expenses in prosecution; and, if a discretionary power is given of enforcing payment in some cases and relinquishing it in others, it will produce much inconvenience and give rise to much observation.

From the knowledge I have of this Colony at large, I feel no hesitation in expressing my decided conviction that it will tend materially to benefit the Colony by continuing the entire control in Criminal matters in the Attorney General, and the expense of prosecutions being borne by the Community at large, which is effected by charging the expense on the Colonial fund.

In suggesting these observations to Your Honor's consideration, I have perhaps gone more into detail than my official situation may have required; but, as it is a subject in which the interests of the Colony as well as the welfare of Your Honor's Government are materially concerned, I beg you will attribute it to my good wishes for the one, and zeal for the other.

J. T. GELLIBRAND.

[Sub-enclosure No. 14.]

LIEUT.-GOVERNOR ARTHUR TO ATTORNEY-GENERAL GELLIBRAND.

Sir,

Government House, Hobart Town, 27th May, 1825.

I have received and fully considered your letter of the 24th instant, and am obliged for the information which it contains.

The second paragraph of your letter gives a clear and distinct opinion of the Office and duties of the Attorney General, which is the more acceptable to me, as I have had considerable difficulty in making up my mind upon it; for, although Commissioner Bigge in his report points out the Office and duties of the Attorney General to be very much what you describe, yet it has not appeared to me clear that parliament had closed with the proposition.

The only remaining difficulty is whether you embrace all criminal offences or confine yourself to Felonies; the Act of Parliament draws no distinction, nor do you make any in your letter, which I am now considering; but yet, in your letter to the Acting Naval Officer of the 21st of May, which I have this moment before me, you do make a distinction; for therein you state that you do consider it your duty in a Criminal proceeding for Libel simply as Grand Jury to file a Bill and then leave the Parties to prosecute the information under the direction of such legal advisers as they choose to select. In Your letter of the 26th May of last year, you also state this as your intended proceeding on such cases, and to which I gave my assent, understanding at the same time that it met the concurrence of the Chief Justice as I expressed in my letter. I beg you will understand that I do not state this, as tho. I had discovered any inconsistency in your communications, for I doubt not it is capable of explanation; but it is not clear to me at present.

* Note 72. † Note 73.
With regard to the Fees, my second question, you have not touched. To whom do they belong? And upon this all my difficulty hangs, as stated in my letter of the 23rd Instant; as far as your office is concerned, I am persuaded that practically it will not be important, but with respect to other Officers, it is I conceive very important, and hence my objection to come to any decision without a clear and distinct opinion from you. I can have no hesitation in saying that, if the Fees are legally the property of the Crown, the Government will be disposed to act with the utmost liberality, and certainly never cause them to be rigidly exacted from those, who are incapable of paying them, or who could not be called upon in perfect Justice and propriety to pay them; but, at the same time, I could not take upon myself to abandon Fees altogether, which are required by the Instructions, which notify to me your appointment, to be raised upon a Scale fixed by the Chief Justice.

It is a subject, however, well worthy the consideration of His Majesty's Government, and I will take the earliest opportunity of laying it before Lord Bathurst.

I have, &c.,

GEO. ARTHUR.

[Sub-enclosure No. 15.]

ATTORNEY-GENERAL GELLIBRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir, Hobart Town, 30th May, 1825.

In obedience to Your Honor's letter of the 27th Instant, I have the Honor of submitting for your consideration some further explanation upon the criminal proceedings in the Colony in addition to those already laid before Your Honor in my Letter of the 24th instant.

The Act of Parliament, which regulates the proceedings in the supreme Court only directs the manner in which offences are to be brought within the cognizance of the Court, vizt., in the name of the Attorney General, and does not direct in express terms that the prosecutions are to be conducted by that Officer; but, taking the report of Mr. Commissioner Bigge* as a Key to the Act of Parliament, I have, for reasons contained in my letter of the 24th instant, considered it a Duty implied that the prosecutions should be conducted by the Attorney General.

I have invariably pursued this course with respect to Felonies and all offences of that description; Libels and Assaults, altho' they are classed as Criminal proceedings are clearly distinguishable from the above cases and are instituted at the instigation of a Private Prosecutor, and for the purpose of obtaining civil redress; the distinction which exists upon this subject, I endeavoured to explain to Your Honor in my letter of the 26th May, 1824, and the reasons why I deemed it expedient that I should merely act in the latter cases as the Grand Jury in finding the Bill, and which met with Your Honor's concurrence at that time, supported as I understood by the opinion of the Chief Justice on the subject.

With respect to the Fees payable to the Attorney General and the several Officers of the Court, I am of opinion that such as are legal are the property of the several persons, to whom they are payable, the circumstance of their being paid to the Colonial Treasurer for the use of the Crown being a matter of private arrangement between the Government and the several Officers, and which does not affect the legal Rights of the Parties.

I have, &c.,

J. T. GELLIBRAND.

* Note 72.
1826.
23 May.

Application by R. L. Murray for criminal information for libel.

Prerogative of attorney-general in actions for libel.

Proposed nomination of officer by G. Arthur.

Objections to filing information by attorney-general.

Procedure in England in private suits for libel.

ATTORNEY-GENERAL GELLI BRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir,
Hobart Town, 21st May, 1826.

I beg leave to inform Your Honor that an application has been made in the Supreme Court by a Mr. R. L. Murray* for a Criminal Information against several of the Merchants and one of the Magistrates of this Town for the publication of a Libel, reflecting upon his private character; and that, upon the argument of the case, the Honourable Chief Justice Pedder expressed an opinion that there was no Officer in the Court, in whose name he could direct the Information to be filed; he could only refer Mr. Murray to me that I might judge of the case under the powers vested in me by the Crown.

I had the honor of submitting to the Court that this Prerogative was only to be exercised by me where the state was affected; that it was never intended that my Office was to be the Depository of all the private Libels of the place; and that, if it was otherwise, it would be impossible for me to be kept clear from that violent party feeling, which this Paper (the subject matter of complaint) has given birth to. I then submitted to the Court that, by the Act of Parliament, the power and Jurisdiction of the Court was declared to be equal with the Courts of Westminster, and therefore that this case was peculiarly within its Jurisdiction, and that, if no one of the Officers named in the Charter of Justice could file such proceedings of the Court, that a power was given in that Charter to create such further Officer (with the concurrence of Your Honor) as may appear to be necessary.

I deem it necessary, in addition to the reasons stated in the Court, to offer to Your Honor's consideration a few others why this duty should not be imposed upon me. If I file the Information, it must be carried on by me to Trial and Conviction at the expense of the Crown; and the purpose from which I have been restrained from acting as a Solicitor and only allowed to act as an Advocate (although the Solicitors here are allowed to act as Advocates as well as Solicitors contrary to what I understood the arrangement in England) will be entirely frustrated by making me a Party prosecuting.

The process in England is simply that an application is made to the Court by any Advocate for a Rule calling upon the Party accused to shew cause why a Criminal Information should not be filed in the name of the Master of the Court; the application is made upon Affidavits denying the truth of the Libel, which Affidavits are filed upon the records of the Court. The party accused is entitled to take Office copies of the same, and the charge is answered by Affidavits in reply; by this means, the whole case is brought before the Court, the matter publicly argued and frequently settled by the recommendation of the Court. If the Rule is made absolute, the Information is prepared by the Solicitor of the prosecutor, the name of the Master being used pro forma for the King, the Law Officers of the Crown not being concerned in the case unless employed as any other Counsel; and I have known Instances where the Attorney General has been employed and acted for the Defendant.

I have entered fully into this subject, in order that Your Honor may understand the legal bearing of it, and, as the subject is to be

* Note 21. † Note 23.
renewed on Monday next, I trust Your Honor will in the mean time
make such arrangement with the Chief Justice as may relieve me from
the Difficulty.

I beg to suggest to Your Honor that the duties under consideration
may safely be added to those of the Registrar or Master without
putting the Crown to any other expense than the small additional
Duties will require.

I have, &c.,

J. T. Gellibrand.

[Sub-enclosure No. 18.]

ATTORNEY-GENERAL GELLIENBRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir, Hobart Town, 26th May, 1824.

The Chief Justice having decided that the application of Mr. Murray for a Rule to file a criminal Information cannot be entertained by the Court, and that the application must be made to me as exercising the functions of a Grand Jury, I have in obedience to such Judgment informed Mr. Murray of my intention to receive any application he may be advised to make.

In case it shall appear necessary to file an Information for the Libel in question, I intend, if it meets Your Honor’s approbation, merely to act in the business by presenting the information to the Court, compelling the Parties to appear and plead, and to leave in all cases of this description the arrangement of the case, the trial, etc., to the Prosecutors or their Solicitors; and for them to employ whom they choose to conduct the case, so that the Crown will not be any way interested therein further than by acting in the first Instance in presenting the Information.

I have, &c.,

J. T. Gellibrand.

[Sub-enclosure No. 19.]

LIEUT.-GOVERNOR ARTHUR TO ATTORNEY-GENERAL GELLIENBRAND.

Sir, Government House, Hobart Town, 27 May, 1824.

In reply to your communication of yesterday’s date informing me of the Decision of the Court upon Mr. Murray’s application, and of the course you intend to take in such cases, I beg to acquaint you that, as the Chief Justice on your stating the matter this morning concurred in the propriety of the arrangement, the I entirely approve of its adoption.

I have, &c.,


[Sub-enclosure No. 20.]

ATTORNEY-GENERAL GELLIENBRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir, Hobart Town, 8th October, 1824.

Upon an attentive perusal of the Article inserted by the Editor of the Hobart Town Gazette of this afternoon* relative to the proprietorship of the paper, I am of opinion that it is a gross Libel upon Your Honor and has a tendancy to bring your Government into disrepute, or as the Lawyer’s term it “hatred and contempt”; feeling (as I trust I shall ever feel) tenderly alive to the true Interests of the Colony, the first of which is a proper respect to the King’s Representative, I intend, if it meets with Your Honor’s concurrence, to file a criminal Information against Mr. Bent forthwith, which I think will make obscure “his serene and cloudless anticipations.”

I have, &c.,

J. T. Gellibrand.

*Note 74.
HISTORICAL RECORDS OF AUSTRALIA.

[Sub-enclosure No. 21.]

LIEUT.-GOVERNOR ARTHUR TO ATTORNEY-GENERAL GELLIBRAND.

(Marked “Private.”)

Dear Sir,

Monday Evening, 11th October, 1824.

I have fully turned over the matter respecting Bent in my mind, and am still quite decided in the propriety of avoiding mixing myself up with such a person.

If you have obtained the particulars when the Press and Type are to be procured, I will desire Captain Montague to write to a Gentleman whom I know will very readily undertake the matter.*

I thank you for the suggestion respecting the propriety of taking security from the Successor of Doctor Bromley, but it had not escaped me; and I had already intimated that it would be required to half the amount you mention.

I have, &c.

GEO. ARTHUR.

[Sub-enclosure No. 22.]

ATTORNEY-GENERAL GELLIBRAND TO LIEUT.-GOVERNOR ARTHUR.

Dear Sir, Hobart Town, 11th October, 1824.

Although your private feelings will induce you to forego any prosecution against the publisher of the Hobart Town Gazette, yet, when that lenity will be misconstrued and may have an effect of misleading others, I trust you will concur in the propriety of my taking the publication into consideration. The reasons, which you have alleged for not prosecuting, will, when the Defendant is brought up for Judgment, shew to the world that you are actuated by better feelings than those ascribed to you in the present Libel.

I have, &c,

J. T. GELLIBRAND.

[Sub-enclosure No. 23.]

LIEUT.-GOVERNOR ARTHUR TO ATTORNEY-GENERAL GELLIBRAND.

Sir, Government House, Hobart Town, 18 March, 1825.

I do myself the honor to enclose a Copy of a Letter, which by my direction has been addressed to the Naval Officer.

Previous refusal When you advised me in the month of October last to sanction your prosecuting the Editor of the Hobart Town Gazette for the libellous tendency of the leading Article of the Journal of the 8th of that month, I was opposed to the measure under the impression that it might have been the mere unpremeditated effusion of very excited personal feelings, and that no injurious tendency would result from passing it unnoticed. But, seeing that he has continued week after week to insert in the Gazette, both in the leading article and under various signatures, the grossest falsehoods, and is systematically endeavouring to degrade the public Functionaries of this Island, and to scandalize the Government, I can no longer hesitate in desiring you to prosecute forthwith the various Libels, which have appeared in the Hobart Town Gazette on and since the 8th of October last, reflecting either upon the Government or the Government Officers.

Appointment of A. Stephen as solicitor-general.

Although I have not received an official Information from the Governor of New South Wales upon the subject, it has been intimated to me that His Excellency has been pleased to approve of the nomination of Alfred Stephen, Esquire, as Solicitor General of this Island. As the prosecutions in question are highly important to the Government, it is probable that further assistance may be desirable in getting up

* Note 75.
the cases, and consequently I feel it my duty to anticipate the official appointment of Mr. Stephen and approve of your availing yourself of his services on this occasion.

I have, &c.,

GEO. ARTHUR.

[Sub-enclosure No. 24.]

SECRETARY MONTAGU TO MR. W. H. HAMILTON.

Sir,

Secretary’s Office, 17th March, 1825.

The Lieutenant Governor has had under his consideration the affidavits of Mr. Lawrence Read, late Wharfinger, and connecting it with several letters which have appeared in the Hobart Town Gazette, to which you have drawn his attention, His Honor is of opinion that you are very justly entitled to the protection of the Government and under that impression he desires you will lay the papers before His Majesty’s Attorney General.

I have, &c,

JOHN MONTAGU.

[Sub-enclosure No. 25.]

ATTORNEY-GENERAL GELIBRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir,

Hobart Town, 23rd March, 1825.

I beg to acknowledge the receipt of your Honor’s letter of the 18th Instant drawing my attention to the several libels, which have been published in the Hobart Town Gazette against the Government and some of its Officers, and also conveying a wish that in the prosecution of such papers, as I may find to be libels, that I should receive the assistance of Mr. Stephen in getting up the cases.

Your Honor is already aware of the distinction, which I have considered it my duty to draw between filing Information ex-officio, and filing them ministerially as exercising the functions of the Grand Jury, and as one if not more of the libels will come under my consideration ex-officio and the others be considered as libels upon Individuals altho’ Officers of the Crown, I consider it advisable to communicate with Mr. Stephen at once upon the subject, and determine which were libels, and how and in what manner the latter class should be brought to Trial.

I am of opinion that the leading Article* of the 8th of October is a Libel on the Governor, and, as such, I shall as soon as possible file an ex-officio Information against the Author.

I am of opinion that the Article† upon the subject of Bible Society in the paper of the 21st January, if false, to be a gross libel upon the W. Bellford, Chaplain, who has the management of it, and also that signed “Rusticus” upon the subjects of the Glebe and Sheep; but that they ought to be considered as libels upon an Individual and not upon the Government, and therefore it would be more prudent to have them prosecuted as such.

The letters signed “Q” and “Colonist” have engaged a considerable portion of my attention; they are written in such guarded language and those passages, which at the moment strike the attention as libellous, when minutely examined are so connected with the previous or subsequent passages or put into such suppositious manner that I am not at present prepared to pronounce any part of them libellous.

I have directed the attention of Mr. Stephen to the subject, and we shall meet again for that express purpose in a day or two, when I will communicate to Your Honor the result of the meeting.

[Note 74.]

Although it appears to me that it would be unconstitutional and impolitic to bring these cases of private Libel before the Court by an

* Note 74.  † Note 76.
1826.
23 May.

Private prosecutions.

Anxiety of J. T. Gellibrand to protect government.

ex-officio Information, and that the parties should be left to prefer them in the usual manner and at their own expense, I am by no means prepared to say that such expense ought to be borne by the individuals injured, but, as I am restricted from acting in any other capacity than as an Advocate, must be entrusted to some other person.

I trust Your Honor will do me the justice to believe that there is no person more anxious to protect the Government and person of Your Government from contempt than myself, and that nothing but the positive veto of Your Honor should have restrained me from long since bringing the parties to that condign punishment, which the Libel merited; the toleration of which in the first instance may perhaps have led to the publications of others; but, whilst I possess these feelings on the one hand, I should betray my duty to you and His Majesty's Government, if I were not to point out the Danger of mixing up the Government by Ex-Officio Information in cases of libels upon individuals, where the guilt is very doubtful, and in which the parties in England would not have any such remedy; it is a power which I wish to exercise with great moderation, but, when exercised, at all times to press to conviction.

I have, &c.,

J. T. GELLIBRAND.

[Sub-enclosure No. 26.]

LIEUT.-GOVERNOR ARTHUR TO ATTORNEY-GENERAL GELLIBRAND.

Sir, Government House, Hobart Town, 23rd March, 1826.

I have the honor to acknowledge the receipt of your letter of the 23rd Instant, in reply to mine of the 18th Inst, upon the subject of the several libels which have appeared in the Gazette.

As to ex-officio informations, I fully accord with you that they should only be resorted to on very special occasions; my main feeling is that, although some of the libels in question have been nominally directed against individuals, the intent and effect of them has been to bring the Government into disrepute, and therefore those public and official characters have a just and fair claim to be protected by the Government.

Keeping this in view, it seems to me of little importance, so far as I understand the distinction, whether the parties are proceeded against by ex-officio or by Judicial Information; but I should certainly wish to be clear upon this point before the Government gives any further instructions upon the subject, and would therefore request to see you and Mr. Stephen upon the subject, if you are not likely to be detained in Court, at 3 o'clock this afternoon.

I have, &c.,

GEO. ARTHUR.

[Sub-enclosure No. 27.]

LIEUT.-GOVERNOR ARTHUR TO ATTORNEY-GENERAL GELLIBRAND.

Sir, Government House, Hobart Town, 15th June, 1826.

Act proposed for control of press.

In conformity therewith with the instructions, which Lord Bathurst has given respecting the enactment of new laws for V. D. Land, I have to request that you will prepare the drafts of a law for preventing the printing of any paper in this Island without a license under the hand of the Lieutenant Governor.

* Note 77.
BATHURST TO ARTHUR.

There is a vessel now bound for Sydney from the North Side, and I will cause her to be detained for this paper, as I consider it important to settle the point without delay.

I have, &c,
GEO. ARTHUR, Lt, Gov.

[Sub-enclosure No. 28.]

MR. W. H. HAMILTON TO ATTORNEY-GENERAL GELLIBRAND.

Sir, Naval Office, Hobart Town, 12 May, 1825.

I beg leave to bring your recollection to the subject, on which I communicated with you some weeks ago by direction of His Honor the Lieutenant Governor, with a view to the prosecution of the Editor of the Hobart Town Gazette and others for the publication of certain libels on me as a public Officer, when you promised to look through the papers, said to contain the libels, and decide on the course it would be proper to pursue.

As the Criminal Session of the supreme Court draws nigh, it is necessary this matter should be proceeded in, if you deem it advisable so to do. I therefore beg leave to request that you will favor me with your opinion, whether any and what steps ought to be taken, that I may be enabled to render you such assistance as you may require in conducting the prosecution for me in behalf of His Majesty's Government.

I enclose a Copy of the letter, which was addressed to me by the Secretary of His Honor, authorizing my application to you herein.

I have, &c,
W. H. HAMILTON, Acting Naval Officer.

[Sub-enclosure No. 29.]

ATTORNEY-GENERAL GELLIBRAND TO MR. W. H. HAMILTON.

Sir, Hobart Town, 14th May, 1825.

I have the Honor to acknowledge the receipt of your letter of the 12th inst., calling my attention to several letters which have appeared in the Hobart Town Gazette, reflecting upon your conduct as the Acting Naval Officer, and which Letters you deem libellous, and that the same ought to be prosecuted by the Crown.

I have perused the several letters referred to by you; but I should not be justified in filing an ex-officio Information upon any one of them as far as you are concerned, as, if libellous, they are fit matters for private prosecution only, and upon which I cannot advise you in this state of the proceeding.

I have, &c,
J. T. GELLIBRAND.

[Sub-enclosure No. 30.]

MR. W. H. HAMILTON TO ATTORNEY-GENERAL GELLIBRAND.

Sir, Naval Office, Hobart Town, 20th May, 1825.

In acknowledging the receipt of your letter of the 14th inst., in reply to mine of the 12th on the subject of a prosecution, I am desirous shall be instituted against the publisher of certain Libels in the Hobart Town Gazette, I beg leave to intimate that I am in some difficulty as to the purport of the sentiments, you are pleased to convey in the letter alluded to; and I would therefore request the favor of your opinion on the following points to enable me to see clearly the ground on which it may be advisable for me to proceed.

1. Whether any and (if so) which of the letters in question contain matter libellous on me as a public Officer?

* Note 78.
2. What course you deem it proper I shall pursue for obtaining legal redress?

3. Whether I am to have your assistance in conducting the prosecution and in what character, as the Crown's Lawyer or as my private Advocate?

I will take the liberty to bring to your recollection the fact of my having communicated, in the conversation I held with you in the month of March last on this matter, that I had no desire that you should in my behalf file an ex officio Information against the libeller, but that you should, in your capacity of Grand Jury, if you thought fit so to do, file the common Information, and then prosecute in your other capacity of Attorney General.

I now beg to repeat my solicitation that you will at your earliest convenience favor me with your opinion on the points I have herein submitted.

I have, &c.,

W. H. HAMILTON, Acting Naval Officer.

[Sub-enclosure No. 31.]

ATTORNEY-GENERAL GELLIBRAND TO MR. W. H. HAMILTON.

Sir, Hobart Town, 21 May, 1825.

I have the honor to acknowledge the receipt of your letter of the 20th inst. upon the subject of the letters published in the Hobart Town Gazette, which you consider libellous; and requesting my opinion upon that point; and wishing to know whether my assistance is to be afforded in conducting any prosecution which may be instituted.

Informations can only be presented to the Court in two ways one ex-officio as Attorney General, the other in my capacity as the Grand Jury. You are already acquainted with my reasons why I cannot present an Information in the former Character, and with which you appear entirely to concur; and it therefore follows that, if any Information is presented by me, it must be in the latter capacity.

The course, which I have invariably pursued, has been to decide upon the case by the evidence alone, and not to receive any explanation or give any opinion upon the subject, and by that means assimilate the proceedings as nearly as possible to those of the Grand Jury in England; when I have determined that the matter is libellous, I have directed an Information to be prepared, which I have presented to the Court and have then left the parties to prosecute the Information under the direction of such legal adviser as they choose to select. Under this view of the subject, it is evident that I cannot consistently advise you whether the matter is libellous, or how or in what manner you should prosecute.

I assure you that I am at all times anxious to afford every facility and an explanation to those connected with His Majesty's Government, and that I am only restrained, for the reasons above assigned, in not complying with the requests contained in your letter.

I have, &c.,

J. T. GELLIBRAND.

[Sub-enclosure No. 32.]

W. H. HAMILTON TO ATTORNEY-GENERAL GELLIBRAND.

Naval Office, Hobart Town, 23rd May, 1825.

I have given due attention to your communication of the 21st inst., wherein you explain the course you have invariably pursued in filing Informations, and state that you cannot, consistently with
the view there taken of the subject, advise me whether the matter of
which I complain is libellous or how " or in what manner I should
proceed."

I regret that I am still under the necessity of giving you the
trouble to resolve the difficulty, in which I am placed, by the view you
have given me of your twofold Character and practice.

When His Honor the Lieutenant Governor directed me to apply to
you for an opinion on the matter, which I deem libellous, and for your
assistance in bringing the authors thereof to Justice, my application
was beyond all doubt to be made to you as Attorney General; in that
character it was that you were accordingly applied to by me, and it
is in that character alone that you can afford me the protection which
His Majesty's Government has been pleased to consider me entitled to
receive, at your hands. In answer to my application you state in effect
that you cannot assist me in that character, because you are to exer-
cise in the case your other capacity as Grand Jury also. But this, you
will excuse my remarking, I really cannot comprehend; and probably
you will be so good as to supply me with further information before I
am compelled to take your definitive rejection of my claim (if it be
definitive) in the view in which alone I can at present understand it.

His Majesty's Government directs me to apply to you to Act as
Attorney General and your reply is (so far as I can collect your
meaning) that you will act as Grand Jury only. If indeed I had
already obtained professional assistance, had procured a favorable
opinion from my own legal adviser, had been counselled upon the
proper evidence to be adduced, and were now to resort to you simply
to "find the Bill," then you would act as Grand Jury alone; but this
would be a very strange and unintelligible mode of affording to me
the protection of Government, since it would be open to me, in my
private character or to any other Individual, so to apply to you on
any occasion and under any circumstances. But, as yet your Functions
of Grand Jury are not called into exercise, the previous steps are not
taken by me. It is to you, as Attorney General in your ministerial
capacity, that I am directed by His Honor to apply to you for the very
purpose of taking those steps, and your reply is that, as such, you
must decline to act, and that you will only on this occasion exercise
your other and very distinct judicial functions of Grand Jury.

If this be indeed your final reply, allow me to ask how are public
prosecutions for Felony instituted? are they not by your preparing the
case, arranging the evidence, and drawing the Indictment in the first
instance as Attorney General, and then by your finding the Bill or
Information so drawn as Grand Jury? Or is a man to be tried for his
life upon an ex-officio Information without any of these preliminary
measures? And (except in the difference of the Crime in magnitude),
how is my case upon principle to be distinguished from these or any
other public prosecutions? In common cases, would you as a private
Advocate refuse to give any opinion on the criminality or liability to
prosecution for a particular Act merely because you might be called
on to deal with the matter as Grand Jury? And, if you decline giving
me your assistance in the way I solicit it, do you not tell me that you
will not give me that very protection, which His Majesty's Government
expressly directs me to apply to you to afford, and that you will in my
case exercise only one function, whereas in all other Government prose-
cutions you invariably exercise two.

With respect to the subject of prosecution itself, it is a series of
most gross and peculiarly offensive libels in the only Newspaper upon
the spot upon me, in my official and public capacity, for discharging duties expressly imposed on me by that Office, and which I have faithfully and conscientiously performed. These libels are of a stamp, which I would conceive you ought to be the first to notice and to reprehend; and Government is (as I humbly conceive) bound to protect me by instituting a public prosecution against the Libellers. His Honor the Lieutenant Governor has been good enough (as I understood his letter) to take the same view of the question, and therefore has directed me to apply to you as the head Crown Lawyer, to extend that protection to me. It would appear that you differ from him on the expediency of doing so, and doubtless you have reasons for it. I had not however imagined that it was necessary for me to convince you that His Honor is correct, but that my course was simply to resort to you for compliance with His Honor's Commands.

Under these circumstances, I again am compelled to address you, and beg again explicitly to know from you, as Attorney General, whether the letters I complain of be not in point of Law libellous? And to request, if they be so, that you will be pleased to prepare the proper Information and furnish me with your Instructions as to the requisite evidence, that I may be prepared therewith and enable you afterwards as a Grand Jury to sign the Information, or in other words "to find the Bill."

The anxiety, which you state yourself to possess to afford every facility and explanation to persons connected with His Majesty's Government, will I am sure readily anticipate every excuse, which I might deem it necessary to offer for this renewed application.

I have, &c,

W. H. HAMILTON, Acting Naval Officer.

[Sub-enclosure No. 33.]

ATTORNEY-GENERAL GELLIBRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir,

Hobart Town, 24th May, 1825.

I am under the necessity of enclosing for Your Honor's perusal a correspondence between the Acting Naval Officer and myself, respecting some of the recent publications in the Hobart Town Gazette reflecting upon that Gentleman's character.

In these letters, I am called upon to peruse the several papers and advise what are and what are not Libels, to advise upon the evidence necessary to support them, and then I shall be under the necessity of acting Judicially upon them.

I have replied to Mr. Hamilton's application, pointing out, as clearly as lay in my power, that it was impossible for me to act in the case until the Information was presented; and I trust Your Honor will be of opinion that this explanation was afforded with the best feelings towards that Gentleman, and every wish to serve that Gentleman, consistent with public Justice.

I have this day received a reply, in which I am told that I am acting contrary to the commands of Your Honor, and in which that Gentleman evidently wishes to excite some difference between Your Honor and myself, because I cannot conscientiously give an extra judicial opinion.

In explanation of some of the statements in that letter, it is due, not only to myself but to the Office which I have the honor of holding, that I should most unequivocally declare that I have never given an opinion either verbal or written to any persons upon any subject,
which could be brought before me judicially, and although Your Honor perhaps might have wished that, in the case of Mrs. Von Bibra, I should have intimated what might be the result of my opinion upon those examinations, you will find that I continuously abstained from so doing; and I trust that I shall never be induced to violate the sanctity of that office.

I am quite satisfied that Your Honor never intended that Your Secretary's Letter of the 17th March, 1825, should bear the forced construction put upon it by the Naval Officer; and I hope there is no part of my conduct in this business, which can justify the Naval Officer in calling upon me, in my official capacity, for a Justification of my conduct to him, which is implied, if not expressed, in his letter of the 23rd Instant.

I have, &c,

J. T. GELLIBRAND.

[Sub-enclosure No. 34.]

LIEUT.-GOVERNOR ARTHUR TO ATTORNEY-GENERAL GELLIBRAND.

Sir, Government House, Hobart Town, 27th May, 1825.

I beg to acknowledge the receipt of your letter of yesterday's Date with the correspondence which accompanied it, herewith returned, acknowledged.

between the Acting Naval Officer and yourself.

Mr. Hamilton is perhaps mistaken in not having sufficiently distin-
guished your Office as Attorney General from that of your Functions of Grand Jury; and, in his letter, he must rather intend to seek for explanation than to call upon you to justify your conduct, which he must know he can have no right to do. This I shall communicate to him accordingly; at the same time it strikes me that the difficulty might have been easily adjusted by a little mutual friendly explanation.

Mr. Hamilton, there can be no doubt, as a public Officer, has been very injuriously treated by the several publications in the Hobart Town Gazette, and, as I feel that he has faithfully discharged his duty to the Crown, I consider it is my duty to afford him protection as far as may be, without directly making the Government a party, and to this extent I certainly wished Captain Montagu's letter to be understood.

I have, &c,

GEO. ARTHUR.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

(Despatch acknowledged by lieut.-governor Arthur, 23rd March, 1827.)

Dear Sir,

Downing Street, 23 May, 1826.

Lord Bathurst, in his official dispatch of this date, has forwarded to you a letter addressed to him by the Attorney General, suggesting certain modifications in the present mode of administering Justice at Van Diemen's Land, which Mr. Gellibrand conceives would be an improvement upon the existing system.

There are many observations contained in Mr. Gellibrand's letter which are certainly deserving of consideration; but, as he has not thought proper to submit them either to the Chief Justice or yourself, previously to transmitting them to England, Lord Bathurst has been obliged to adopt the preliminary step
MR. J. STEPHEN, JR., TO UNDER SECRETARY HAY.

Sir, Whitehall, 1st April, 1826.

In compliance with your directions, I have perused and considered a Letter addressed to Lord Bathurst by Mr. Gellibrand, the Attorney General of Van Diemen's Land, dated at Hobart Town in September, 1825, with its various inclosures, and I am to report to you, for his Lordship's information, my opinion how far the remarks of Mr. Gellibrand upon the provisions of the New South Wales Act (Stat. 4 Geo. 1. c. 96) appear to be well founded.

I shall therefore notice each of Mr. Gellibrand's remarks in the order in which they occur in the various papers he has transmitted.

1. First then, Mr. Gellibrand expressed his opinion that the mode of trying Civil Actions prescribed by this Act, that is, by the Judge and two Assessors, "is in trifling cases decidedly the best." He observes, however, that "in some cases the Assessors have not been on friendly terms with the parties"; and that their Verdicts have not always "given satisfaction." He recommends that the Judge should have the power of granting a Trial by Jury on the application of either party, remarking that the spirit of contention has been such that the opposite parties have always refused to concur in making application for a Jury. Unless they agree, the Judge (see sec. 6 of the Act) has no power to make an order to this effect.

The question of introducing Trial by Jury involves many political considerations with which, as it is scarcely necessary to say, I have no concern. My opinion, however, is that some change in the present Law ought to be made. When the Act was drawn, the very difficulty, which Mr. Gellibrand has stated, 

* Note 79. † Note 80. ‡ Note 67. § Note 81.
HAY TO ARTHUR.

was foreseen and discussed; and it was proposed to give the Court the right of deciding, at the instance of either party, whether a Jury should be summoned or not. This proposal was resisted by the Gentlemen connected with the Colony, who were disinclined to the Trial by Jury altogether. The Act was drawn in its present form as a compromise between the extreme opinions advanced by the opposite parties on either side of this controversy.

If Lord Bathurst is of opinion that this Colony is ripe for the introduction of Trial by Jury generally, and without restriction, it will be unnecessary to discuss the subject further. But if his Lordship is disposed to extend the trial by Jury in a qualified and restricted form, then I would humbly suggest whether the following rules might not be advantageously adopted.

First. In Actions brought for the recovery of debts or for any certain sum of Money, or Property, not of the value of £20, I would prefer the present mode of Trial by Assessors,* because it is more economical and more expeditious; and because, in a Country so thinly settled, great inconvenience must attend the being compelled to act as a Juror. In other words, I should think, with Mr. Gellibrand, that in "trifling cases" this mode of Trial "is decidedly the best." I would confine this rule to the cases, I have mentioned, of Actions for Debt and for Sums certain, because Actions for Assault, Libel, Defamation, Criminal Conversation, and so on, in which the Plaintiff seeks an uncertain amount of Damages, are peculiarly within the province of Juries, and have an importance far more than commensurated with the mere pecuniary questions involved in them.

I would further propose that the Chief Justice should be enabled to direct a Trial by Jury at the instance of either party. The disinclination of one party to such a mode of Trial may often afford a valid reason for subjecting him to it. In the Court of Chancery in England, the Judge has the power to refer disputed facts to a Jury on the application either of the Plaintiff or the Defendant.

I would in the next place suggest, whether it might not be right to enable the Chief Justice to refer any particular case to a Jury, even when both of the parties dissented. He might, in many cases, have reason to distrust the impartiality or the intelligence of his Assessors. He might, in other cases, think the question at issue peculiarly fit for a Jury, as requiring some particular knowledge, local or technical, for the solution of it. Other cases might arise, such as Libels and Assaults, in which twelve men taken from the people would be more competent Judges of the proper amount of damage, than the Chief Justice.

* Note 81.
and his assessors could be. But, in these cases, both the Plaintiff and the Defendant might decline to apply for a Jury. In such a contingency, it would seem that the Chief Justice ought to have a discretionary power to call a Jury for his own assistance.

Other cases again might arise, in which so small a society might be unable to furnish impartial Jurymen. Take, for example, the case of a Libel on a public officer, who had incurred a general unpopularity. If an Action were brought in such a case, it would seem desirable that the present mode of trial should be retained; and therefore it would seem fit to leave the Judge the power either to grant or refuse trial by Jury in civil cases as he, in his discretion, might think right.

Whatever alterations it may be thought right to make on this subject may be introduced, by Order in Council, under Sec. 8 of the Act.*

Jurisdiction of Quarter Sessions.

Secondly. Mr. Gellibrand next remarks† that the powers granted by the Act to the Courts of Quarter Sessions being restricted to the Trial of offences, which are not punishable with Death, a great variety of cases are excepted from this jurisdiction, such, for example, as Larcenies above tenpence; that therefore these Courts are much less efficient than they might have been, and relieve the Supreme Court from but little of its labors.

I confess that I cannot understand this remark. The 19th Sec. of the Act authorizes the Quarter Sessions “to take cognizance of all matters and things cognizable in Courts of General or Quarter Sessions in England.” There is then a further power given to take cognizance, in a summary way, of all the crimes of Convicts “not punishable with Death.” Therefore there is no apparent ground for Mr. Gellibrand’s remark that the Jurisdiction of the Quarter Sessions is confined to cases not capital. It extends to all cases to which it extends in England. Over Convicts it may be exercised in a summary way; only this summary method is not to take place when the life of the Convict is in jeopardy. It appears to me that the Act upon this point is so perfectly unambiguous, that I am quite at a loss to conjecture how any other construction can have been put upon it.

Mr. Gellibrand urges the necessity of a Lawyer being appointed to preside at the Sessions. There cannot, I apprehend, be any doubt as to the propriety of this measure. I understand that Mr. Hone, the Master of the Court, a Barrister of long standing in England, is at present acting as Chairman.

Thirdly. Mr. Gellibrand proceeds to state† that the Chief Justice considers himself unable to issue a Commission to enquire of what Goods and Chattels a Felon was possessed, or to grant an extent for seizing them to the use of the Crown. I
entirely agree with Mr. Gellibrand, for the reasons he has given, that the King has not deprived himself of this Prerogative within the Colony. But as the subject is important, and the Chief Justice entertains an opposite opinion, it will probably be thought right to set the question at rest whenever the Act of Parliament is renewed.

4. *Fourthly.* Mr. Gellibrand approves entirely of the mode of Trial provided by the Act in Criminal cases, observing however that the Rule requiring the attendance of officers, if stationed within fifty Miles from the place of Trial, has been found inconvenient; and he suggests that, if a sufficient number of officers should not be in attendance, the Governor should be authorized to nominate Magistrates to supply their place. Upon this, I would observe that, supposing Mr. Gellibrand to be right in his approbation of Military Juries, he is apparently incautious in proposing this method of supplying their place. The duty of acting as Jurymen cannot but be irksome; and if, as a matter of course, Magistrates were substituted for absent Officers, there seems reason to fear that, in no long time, the officers would be always absent. I would suggest, therefore, whether the distance, from which officers may be summoned, might not be reduced from 50 to 20 Miles; and whether it might not be convenient to allow such a remuneration for their attendance as would either overcome their reluctance to attend, or justify the imposition of a fine upon their absence. If, after all, they made default, then I should think with Mr. Gellibrand that their place ought to be supplied by the Magistrates.

5. *Fifthly.* It is stated that the Chief Justice requires all pleadings in Criminal Actions to be framed precisely on the English Model, and that he gives effect to every technical objection, which would prevail in England. I conceive that Mr. Gellibrand's dissatisfaction with this practice is perfectly reasonable. It seems objectionable to enforce in a Society, at once so immoral and so ignorant, a variety of Rules which, even in England, are continually impeding the course of Justice. But, as far as His Majesty's Government is concerned, the remedy has been already provided. The Order in Council, issued in pursuance of the 17th Sec. of the Act, has enabled the Chief Justice to regulate "the manner of proceeding, practice, and pleadings" upon all Indictments, in whatever manner "may be best adapted to the circumstances and condition of the Colony." I am not aware that more can be done in England.

6. *Sixth.* The next question discussed by Mr. Gellibrand has been much agitated in these Colonies. He enquires whether the Court of Quarter Sessions can proceed without a Jury, and
Opinions re trial by jury in courts of quarter sessions.

concludes that they have no authority to depart, in this respect, from the English practice. On this point, I would observe that the 21st sec. of the Act* was framed with the intention of avoiding all doubts of this nature. That Section authorizes the Governor, with the assistance of the Chief Justice, to settle and establish all necessary Rules of practice and proceeding for the conduct and dispatch of business in these Courts. Some Rules have been made for this purpose; but they are silent respecting the question of Juries. In the absence of any Rule on the subject, I agree with Mr. Gellibrand that a Jury is indispensable on the Trial of free persons. The Chief Justice however of Van Diemen's Land has decided otherwise; and in that Island the Quarter Sessions proceed without Juries. The Chief Justice of New South Wales, on the contrary, has decided that Juries are necessary; and there accordingly that method of Trial takes place. Whenever the Act may be renewed, this question ought, as I conceive, to be settled. The opposition of opinion and practice in the two Colonies must be the source of great inconvenience. How the question should be settled is rather a matter of general policy than of Law.

7th. Seventh. The 22nd Sec. of the Act* relates to the distribution of the Estates of insolvent persons. The Chief Justice of Van Diemen's Land is said to be of opinion that he could not discharge a person declared insolvent upon his own application, accompanied by an offer to pay all his Debts in full. This Case is stated so shortly and so imperfectly that I cannot collect what the real difficulty may be. It is not intelligible why a person, who can pay all his Debts should apply to the Court to discharge him. It is in his own power to effect his own liberation.

8th. Eighth. The Act of Parliament has enabled the Quarter Sessions to punish Convicts for Drunkenness, insubordination, and other offences of the same class. Mr. Gellibrand observes that great delay and inconvenience will arise in punishing Convicts for these offences, if, in every case, the prosecution must be postponed till the return of the Sessions, and that, in many cases, these difficulties will lead to the impunity of the Criminal. This evil has already been anticipated, and the remedy, suggested by Mr. Gellibrand, has been supplied by the Statutef passed in the last Session of Parliament on this subject.

9. Ninth. Certain questions are stated respecting the operation, in Van Diemen's Land, of Laws passed in New South Wales. The erection of the Island into a distinct Colony renders it unnecessary to enter upon any discussion of these questions.

10. Tenth. The next topic to which Mr. Gellibrand adverted is of considerable importance. The remuneration of this officer

* Note 82.  † Note 83.
arises from the fees of his office, but with a proviso that, if they exceed £600 per annum, the excess is to be paid into the public Treasury, and that, if they fall short of that sum, the deficiency is to be made up at the Public expense. The Chief Justice has settled a Table of fees. In this Table, the fees of the Attorney General, upon Criminal Prosecutions, are ascertained. The general Rule of Law being that the Prosecutor is to bear the expence of the prosecution, the Attorney General has to recover these fees from private persons, who are often unable, and always unwilling, to pay them. The hardship of defraying the expence of a Criminal prosecution is of course very sensibly felt in a Society, where Criminals are so numerous, and where there are no Circuits. The Prosecutor and his Witnesses must often incur great expence and inconvenience in attending in Hobart Town from the remote parts of the Island; and, if to this is added the additional charge of paying the public prosecutor, it is not difficult to perceive that many Criminals must escape punishment. The Lieutenant Governor agrees with the Attorney General that the poorer class of Prosecutors ought to be relieved from this burthen. But, as it respects the fees of the Attorney General, there is a contrariety of opinion. The Lieutenant Governor maintained that it is the duty of the Attorney General to collect his own fees from Prosecutors of competent ability, and stated that this officer must be debited in his accounts with the Crown for the amount of fees, payable by any such persons, whether actually received or not.

To this the Attorney General answered by proposing that he should be permitted to exact his fees from all Prosecutors of competent ability, before commencing the prosecution, observing that it was doubtful whether, in point of Law, he was entitled to recover them afterwards, and that, whatever might be his legal right, the difficulties of proceeding at Law against the Prosecutors would be almost insuperable. The Lieutenant Governor however declined to sanction this Proposal.

I would submit to you my opinion that the Attorney General has great reason in the view which he takes of this question. It appears to me that, if his official income is to depend upon fees payable by Prosecutors, some effectual means should be devised for enabling him to compel the payment of them. I think that at present he has no such power. It appears to me also that the plan of making the payment of fees a condition, precedent to the commencement of the prosecution, is open to numerous and conclusive objections. Among others, it may be observed that the amount of the fees cannot be known till the prosecution is concluded, and that the accused persons must
remain in prison, without trial, as long as the Fees are with-held. I therefore conceive that the Lieutenant Governor was right in refusing to sanction this measure. Further, it appears to me that Mr. Gellibrand is right in his opinion, that the distinction between persons, who were, and persons who were not, of competent ability to pay their fees, could scarcely be introduced in practice without inducing very inconvenient consequences.

With reference then to the practical question what ought now to be done, I have humbly to suggest that Lord Bathurst should signify his decision whether fees are to be taken from any class of Prosecutors. Upon that question, I am not competent to offer an opinion. If his Lordship thinks proper to abolish all such fees, then there will be an end of the question as it affects the personal interest of the Attorney General; if, on the contrary, Lord Bathurst should be pleased to direct that these fees should be paid only by Prosecutors of competent ability, then it appears to me that the Attorney General ought to be armed, by an Act of the Governor in Council, with the power of recovering them by some summary method after the close of the prosecution; and I apprehend that in any case where he could shew that the loss of a fee payable by a Prosecutor was not attributable to his own negligence, that loss ought to be borne, not by him but by the Public.

All the arrangements to be made on this subject may be carried into effect by an Instruction from the Secretary of State.

11. Eleventh. A large proportion of the Papers transmitted by Mr. Gellibrand relate to the proceedings against the Publisher of the Hobart Town Gazette for Libels on the Lieutenant Governor and acting naval officer, Mr. Hamilton. I am not aware that any useful object would be answered by entering into an explanation of the controversy, which arose on this subject between Mr. Hamilton and the Attorney General. But the abstract question of Law, which that controversy involved, is highly important.

The Act of Parliament requires that all offences shall be prosecuted by Information in the name of the Attorney General, or other officer duly appointed for that purpose by the Governor. It follows that the functions of a Grand Jury in England are transferred to this officer. But, in virtue of this office of Attorney General, the same officer can present Informations ex-officio. He has therefore two distinct characters. He represents the Grand Jury in England, and is at the same time the public Prosecutor on behalf of the Crown.

A Libel was published against Mr. Hamilton in the Hobart Town Gazette, and this Gentleman, under the authority indeed
of the Lieutenant Governor, applied to Mr. Gellibrand for his opinion whether a criminal Information would lie against the Author, what Witnesses would be necessary to support it, and what measures it would be proper to take to secure the conviction of the Libeller.

To these questions, Mr. Gellibrand, in effect, answered that the case was not one which affected the interests of the Crown or the Public; and that therefore he could not file an Information ex-officio; but that Mr. Hamilton must be considered in the same light as any other private Prosecutor. He added that, tho' a libel on a private person was, in strictness of Law, a breach of the public peace, yet that it was in reality, and was always regarded by the Courts as a private injury; that, in England, persons thus injured preferred Indictments before the Grand Jury, or applied to the Court, thro' their own Counsel, for leave to file a criminal Information; that therefore in Van Diemen's Land, where the proceeding could only take place in his the Attorney General's Name, it behoved him to act with the same impartiality as that of a Grand Jury in England; that consequently he must consider the propriety of acceding to Mr. Hamilton's request for the filing of a Criminal Information, without holding any private or confidential communications with him on the subject; and that consequently, until the Information was filed, he could afford him no advice respecting the conduct of the ulterior proceedings.

It appears to me that Mr. Gellibrand took a very accurate view of his own duties on this occasion. Whether indeed the Libel was such as ought to have been prosecuted by an Information filed ex-officio, it is impossible to decide; since no Copy of it is transmitted. But, assuming that it was only a private Libel, the Attorney General had to exercise the functions of a Judge rather than those of an Advocate in deciding whether the publisher could be prosecuted or not. In forming that decision, he could not, without impropriety, have consulted with the aggrieved party.

But, though it seems to me that, in the particular case, Mr. Gellibrand was right, I cannot but think it a question highly deserving consideration whether some change should not be made in this part of the Law. In all the ordinary cases of crime, the offence is against the Public substantially as well as technically; and the Attorney General, as acting for the Public, may and ought to consult with the Prosecutor before preferring an Information; for the Prosecutor has no private Interests in the result. But, in the case of libel and other similar offences, where the injury is substantially a private rather than a public injury,
the Attorney General may, as the Law now stands, appear in two distinct and perhaps inconsistent characters. First of all, as representing the Grand Jury, he puts the Defendant on his trial: and then, as a private Advocate for the Prosecutor, he appears in Court against him. This inconvenience might easily be remedied, either by directing him not to act as an Advocate in any such case, or by giving to the Court power to grant criminal Informations at the instance of private persons according to the practice in England. In that case, the Attorney General might act for or against the prosecution, since the filing the Information would not be his act but the act of the Court itself. If the latter course were adopted, Parliament must sanction the measure. If the former method of terminating this difficulty be thought more convenient, the Attorney General might, of course, be prevented from acting as an Advocate in these cases by an Instruction from the Secretary of State.

I have, &c,
JAS. STEPHEN, Jun.

24 May.

Earl Bathurst to Lieut.-Governor Arthur.
(Despatch No. 22.)

Sir,
Downing Street, 24 May, '26.

I have the honor to acknowledge the receipt of your letter of the 12th September, and of the Memorial enclosed from Mr. Jellicoe, a Settler, on the subject of a loss sustained by him in consequence of the defalcation of the late Colonial Treasurer, with whom he had deposited his Money.

The losses, which have resulted to Mr. Jellicoe from the confidence reposed by him in Dr. Bromley's integrity, are certainly much to be lamented. Colonel Sorell may have (as indeed appears by the enclosed extract of a letter from him) suggested to Mr. Jellicoe the placing his money under the care of a public Accountant, as a means of security; but, as that advice appears to have been given to Mr. Jellicoe upon his own solicitation, I do not consider that any claim for pecuniary assistance or otherwise from His Majesty's Government arises out of that Transaction; at the same time the very favorable manner, in which you have brought Mr. Jellicoe's name under my notice, induces me to authorize your making such an additional Grant of Land to Mr. Jellicoe, as his circumstances (exclusive of the outlay of Capital which has taken place on his former Grant) may enable him to bring into cultivation.

I have, &c,
BATHURST.
BATHURST TO ARTHUR.

[Enclosure.]

COLONEL SORELL TO UNDER SECRETARY HAY.

Sir, Messrs. Childs, Temple Bar, 12 April, 1826.

I have had the honour of receiving your Letter of the 14 Ult., with the Copies (herewith returned) of a Letter addressed to Earl Bathurst by The Lieutenant Governor of Van Diemen's Land, and of a Memorial addressed to that officer by Mr. Jellicoe, a Settler, on the subject of a loss sustained by the latter in consequence of the defalcation of the late Colonial Treasurer.

I have to regret that my reply should have been so long delayed, owing to an accidental mistake with respect to forwarding your Letter.

I perfectly recollect Mr. Jellicoe (as did several other Settlers who brought out specie) stating to me, upon his arrival, the difficulty in which He found himself as to any secure place for lodging a sum of money, which He had brought with him, the Bank not then being established. My reply in all these cases was, “I have no means of assisting you, but there are two public Accountants and Keepers of publick Money here for whose offices means of security are afforded by Government in Sentinels or Constables, The Commissariat officer in Charge and The Colonial Treasurer; perhaps one of these may oblige you by taking charge of your specie for a time, but I can make no order on the subject.”

The reputation, which attached to Dr. Bromley, no doubt formed a guarantee which induced any Settler, whose specie He consented to receive into his Custody, to consider himself perfectly secure and personally obliged. The losses, which have resulted to any of those Persons, are certainly much to be lamented.

I have, &c.,

W. SORELL.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 23; acknowledged by lieut.-governor Arthur, 29th January, 1827.)


With reference to the Thirty-first and Thirty Second Paragraph* of the Instructions, which were addressed to Sir Thomas Brisbane under date of the 1st January, 1825, (copies of which were communicated to you), explaining the Principles on which Grants of Land were in future to be made in New South Wales and Van Diemen's Land, I have to express my desire that no additional Grant shall be made to any Settler, who cannot prove to the satisfaction of the local Authorities that besides

* Note 84.
1826.
25 May.
Instructions re additional land grants.

1826.
26 May.

Particulars required re G. W. Evans.

1 June.
Convicts per ship Woodman.

HISTORICAL RECORDS OF AUSTRALIA.

having laid out the necessary expenditure on the cultivation of the Land which has been already given to him, he has sufficient funds in hand to employ on the additional Grant for which he applies, in proportion to the improvement which the Regulations require.

I have, &c.,
BATHURST.

UNDER SECRETARY HAY to LIEUT.-GOVERNOR ARTHUR.

Downing Street, 26 May, '28.

Dear Sir,

As whatever may be the result of the explanations which Mr. Evans may have the means of offering with respect to the circumstances referred to in Mr. W. Horton's letter of the 20th June, 1825, and Lord Bathurst's dispatch of the 7th Ultimo, it would be impossible for his Lordship to decide as to the amount of pension to which he would be entitled on his retirement without being informed of his Age, and the full amount of the Salary and Emoluments of the Situation held by him in Van Diemen's Land, Lord Bathurst desires that you will furnish him with those particulars with as little delay as possible, and that they may be accompanied by Medical Certificates of the state of Mr. Evans's Health, in conformity with the provisions of the Act of 3d Geo. 4, Cap. 113.

I have, &c.,
R. W. HAY.

LIEUT.-GOVERNOR ARTHUR to UNDER SECRETARY HAY.

Government House, Hobart Town,
1st June, 1826.

Sir,

I have the honor to acknowledge the receipt of your Letter of 3rd December transmitting the assignment of One Hundred and Fifty Male Convicts, shipped on board the Woodman. This Transport arrived at Van Diemen's Land on the 29 April; and I regret to state that the Surgeon Superintendent, Mr. Rodwell, with Four of the Prisoners, having died on the Voyage, it was obliged to put in at the Cape of Good Hope, where Mr. Cornelius Kelly of the Royal Navy was placed in charge as Surgeon Superintendent.

The Woodman appears to have been kept in good order, and every proper attention paid to the comfort and discipline of the Prisoners, on whose part there was no complaint.

Two of the Prisoners, discovered to have been Convicts, who had absconded from this Colony, are ordered to be removed to Norfolk Island.

The remaining One Hundred and Forty four were assigned on being landed to the service of Settlers, or placed in charge of the Principal Superintendent.

* Marginal note.—Geo. Meetham, John Marsden.
James Davis asserts there has been a Mistake in the Indent respecting the period of his sentence. His case is therefore stated in the accompanying Memorandum, that the error may be corrected, if any exists.

I have, &c.,
GEO. ARTHUR.

[Enclosure.]

MEMORANDUM of the Case of James Davis, transported in the Woodman—sailed 8 December, 1825, from England—arrived at Van Diemen's Land 29 April, 1826.

JAMES DAVIS is stated in the assignment to have been tried at Gloucester, 10 August, 1825, sentenced to be transported for Life.

The Prisoner in question, by his own statement, was tried at Haverfordwest, 9 April, 1825, and received sentence 14 years' transportation for stealing in the dwelling house of Eleanor Williams, having been tried with two other Men, named James Grimes and Thomas Howell, whom he left on board the Justitia Hulk.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.

Government House, Hobart Town,

2nd June, 1826.

I have the honor to acknowledge the receipt of your letter of 28 October last, transmitting to me, by direction of Earl Bathurst, a letter from Mr. Baldwin, respecting a Mr. Bryan, who emigrated to this Colony under the expectation of receiving a grant of two thousand acres of land; but, it having been represented that one thousand acres only have been assigned to him, you call my attention to the latter part of Mr. Baldwin's letter, and acquaint me, with the desire of My Lord Bathurst that Mr. Bryan's grant may be augmented to two thousand Acres, if he be enabled to cultivate them, and there should appear no objection to the Measure.

When Mr. Bryan arrived in this Colony, he exhibited a Schedule of his property, amounting to £2,012 Is. 10d., including £500 invested in the Ship Ardent, which not being available to the cultivation of Land, Mr. Bryan received an order (according to the Scale established by Governor Macquarie) for 1,000 Acres, with a promise that an additional 500 Acres should be given, as soon as the £500 per Ship Ardent was imported into and rendered available to the Colony.

In the month of March, 1825, Five Hundred Acres of Land were added to Mr. Bryan's grant, as an encouragement for the outlay of Capital and improvements, observable upon his original farm; and, in the Month of November following, a further order for five hundred Acres was transmitted to the Surveyor's Office in favor of Mr. Bryan, in consideration of the Five Hundred

* Note 85.
Pounds, previously invested in the Ardent, having been remitted to him. This Gentleman therefore at present enjoys the maximum grant of two thousand Acres of Land. I have, &c.,

GEORGE ARTHUR.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.
(Despatch No. 28; acknowledged by under secretary Hay, 28th June, 1827.)

Government House, Van Diemen’s Land,

My Lord,

2nd June, 1826.

I have the honor to report to Your Lordship that, on the Augmentation of this Garrison by the arrival of the Head Quarters of the 40th Regiment, the Appointment of a Barrack Master became necessary with a view to the control of the regulated issues and supplies, as well as the care and repair of the Barracks and Barrack Furniture, under the Established Regulations of the Army.

Subject to Your Lordship’s approval and confirmation, I have appointed Captain Malcolm Smith to act as Barrack Master, and placed him in charge of the Barracks throughout the Colony; and, the Office being wholly connected with the Military, I have the honor to suggest that the expense should be defrayed through the Military Chest in the same manner as is directed in New South Wales under the General Order of the 22nd November, 1825, copy of which I have the honor to enclose.

I have, &c.,

GEORGE ARTHUR.

[Enclosure.]

GENERAL ORDERS.

Head Quarters, Sydney, 22nd November, 1825.

Pay and allowances of Mr. King, as Barrack Master, is to be 10s. Sterling per Diem, being the rate allowed generally to Barrack Masters in England, to be issued from the Military Chest in the same manner as the Pay of Staff Officers; and, from the same date, he is to be placed on the same footing in respect to rations, fuel and Candles as a Captain in the Army; All Pay and allowances received by Mr. King from the Colonial Fund are to be discontinued from the date above mentioned.

The Pay of the Barrack Serjeant is also to be paid from the Military Chest from the 25th of the present Month.

JOHN OVEN, Major of Brigade.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.
(Despatch No. 29.)

Government House, Van Diemen’s Land,

3rd June, 1826.

My Lord,

I have the honor to report to Your Lordship that, on my arrival in this colony, there was no Officer appointed to conduct
the detail of Military duties in the Garrison; and consequently, no defined arrangements existed for the issue of Arms and ammunition or for the rationing and movements of the parties on duty in the Interior.

Sir Thomas Brisbane in consequence was pleased to approve the appointment of Captain Lockyer, of the 3rd Regiment, to act as Staff Adjutant, authorizing a charge to be made against the "Canteen" to defray the expense of the office.

This measure, I submit, is a very objectionable means of making any charge; it appears much more clear that the "canteen" should be let to the highest bidder by Public Tender, giving full credit in the Public Accounts for the amount, and charging distinctly the Pay.

On the Head Quarters of the 40th Regiment being sent to this Colony, I submitted to Lieutenant General Darling that an Officer of that corps should be named in succession; and His Excellency was pleased to approve of the Senior Captain of the Regiment (Brevet Major Turton) being appointed Major of Brigade, charging the amount of Pay upon the Colonial Fund, until Your Lordship's approval of the appointment could be known.

I have the honor to lay before Your Lordship copy of the General Order from New South Wales, notifying the appointment, and beg to recommend the same for Your Lordship's confirmation, submitting that the charge should be henceforth defrayed from the Military Chest, as is the case, I believe, with an appointment so purely Military in all other Garrisons.

I have, &c,

[Enclosure.]

Geo. Arthur.

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1. The Lieutenant General requests that Colonel Arthur will make the Half-Yearly Inspection of the 40th Regiment, and forward His Confidential Report to Head Quarters at his earliest convenience.

2. The Lieutenant General has been pleased to approve of the appointment of Brevet Major Turton of the 40th as Major of Brigade on the Colonial Establishment of Van Diemen's Land at the request of the Lieutenant Governor.

Henry Gillman, Major of Brigade.

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Lieut.-Governor Arthur to Under Secretary Hay.

(Despatch acknowledged by Earl Bathurst, 20th February, 1827.)

Government House, Van Diemen's Land,

Sir, 4th June, 1826.

I have had the honor to receive your letter of the 30th of November last by the Transport "Providence" on the 18th
1826.
4 June.
Statute re transportation of convicts.

Regulation of assignment of convicts to settlers.

Ultimo, transmitting for my information, in answer to a point submitted in my communication to Mr. Horton, Copy of the Transportation Act 5 Geo. 4th, Chap. 84, of which I was not before in possession, or I should not have troubled Mr. Horton upon the question respecting the Deed of Assignment by the Ship "Henry."

The Perusal of this Act leads me to address you without delay upon the provisions of the 8th Section, which is of much importance.

One of the most anxious duties in this Colony is the assignment of Prisoners to prevent their falling into improper hands. To this end it has hitherto been an established regulation that no Settler should on any account re-assign or transfer a Crown Servant, or suffer him to be employed in any manner out of his own immediate Service, on pain of being deprived of such Servant by the sentence of a Magistrate and excluded from further indulgence.

The evil though extensive (as many persons make a profit from allowing their assigned Servants to be on their own hands) has been greatly checked by this Regulation; but, by the 8th Section of the Act in question, it now appears to be made legal for any Person, having a Crown Prisoner once assigned to him, to re-assign that Prisoner at his pleasure, a measure which must produce the worst consequences!

Temporary measures have been adopted to prevent the injurious operation of this section, and, annexing Copy of the existing Regulations, I have the honor to request you will have the goodness to submit the subject to Earl Bathurst's earliest consideration.

I take this opportunity of submitting that it is very important that all Acts relating to this Colony should be transmitted for the information and guidance of the local Government.

I have, &c,

GEO. ARTHUR.

[Enclosure.]

Extract from a Government and General Order, published by Governor Macquarie, 24th July, 1813.

It being discovered to be a common Practice amongst a certain Description of Settlers, to whom Male Convicts are Assigned on the Store, to hire them out to others, or to suffer them to go at large or employ themselves for their own Account, when they have no Work for them themselves, it is His Excellency's positive Orders, that this fraudulent Practice be henceforth discontinued, on pain of such Settlers being entirely deprived of the Services of such Government Men and excluded from any further Indulgence from Government. Whenever a Settler has no longer any Work or Employment for the Government Man Assigned to him, he is hereby required and directed forthwith to return him again to Government.
BATHURST TO ARTHUR.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

(Despatch acknowledged by lieut.-governor Arthur,
10th November, 1826.)

Dear Sir,

Downing Street, 10 June, 1826.

The friends of Mr. Piddocke, whom I have by a separate
letter introduced to your notice, are desirous of placing at his
disposal the Sum of £60, but not until after his arrival in the
Colony. With a view to the accomplishment of that object, Lord
Bathurst has received from them the above Sum which will be
delivered to the Agent to be passed to the credit of the Colonial
Government; and it only therefore remains for me to request
that you will authorize a corresponding Sum to be given to Mr.
Piddocke on his delivering to you this Letter.

I remain, &c,
B. W. HAY.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 24; acknowledged by lieut.-governor Arthur,
30th January, 1827.)

Sir,

Downing Street, 12th June, 1826.

I do myself the honor to transmit to you herewith, for
your information, the enclosed copy of a reply which I have
received from Messrs. Rawson and Thackery to a communication,
which I directed to be made to them on the receipt of your Dis-
patch of the 14th September enclosing a Copy of the letter,
addressed to you by Mr. Gellibrand respecting the charges which
they had alleged against him, by which you will perceive that
they positively deny the truth of his assertion "that, previous
to his leaving England, he settled all his accounts, and did not
leave one Debt either legal or moral unpaid." I have informed
Messrs. Rawson and Thackery that I should send a copy of their
communication officially to you with Instructions to give any
assistance, which may be in your power with a view of aiding
them in the recovery of their claims, if they are possessed of the
requisite means to substantiate them: And I have therefore to
desire that you will take the necessary measures for that purpose,
whenever they may think proper to institute regular proceedings
against him in the Colony for the amount of their demand.

I have, &c,
BATHURST.

[Enclosure.]

MESSRS. RAWSON AND THACKERY TO EARL BATHURST.

My Lord,

We have the honor of acknowledging the receipt of a Letter
dated 15th March last addressed to us by Mr. Hay under
your Lordship's direction, inclosing copy of a letter addressed by
Mr. Gellibrand, his Majesty's Atty. General at Van Dieman's Land to the Lieut. Governor of that Colony, in refutation of the charges made by us to your Lordship against Mr. Gellibrand, respecting the nonpayment of a Bill of Exchange accepted by him for £400, and the conduct pursued by him previously to his departure from England for the purpose of evading the ends of justice, and delaying the recovery of our just demands upon him; we beg to apologize for not having replied earlier to your Lordship's Letter, which has arisen from an impression that Mr. Gellibrand would as stated in his Letter have been induced, through the medium of his Agent, to lay certain papers before your Lordship explanatory of his conduct, in which case we had anticipated the honor of a communication from your Lordship. What explanation Mr. Gellibrand can give is to us inexplicable; we most positively deny the truth of his assertion "that previous to his leaving England he settled all his Accounts and did not leave one Debt either legal or moral unpaid," as we shall be able to prove to your Lordship on the oath of various Creditors that the contrary is the fact, altho' we have no wish to enter upon any unnecessary aspersions against the character of Mr. Gellibrand; we have as previously stated to your Lordship succeeded in setting aside the Writ of Error, sued forth by him, and obtained final judgement against him, an Office Copy of which Judgement was transmitted to Van Dieman's Land in July last by the Marquis of Hastings, Captn. Ostler, for the purpose of enforcing Payment of our Demand there against Mr. Gellibrand; and we humbly submit to your Lordship the strong claim we have to your Lordship's protection to the amount of our Judgement debt of £470 10s., which we earnestly hope your Lordship will reserve from the Salary due and to accrue due to the said Mr. Gellibrand agreeable to our application to your Lordship of the 12 Decr., 1823, and that your Lordship will be pleased to retain it until Mr. Gellibrand has satisfied your Lordship of the truth of the declaration contained in his Letter to the Lieut. Governor under date of the 13 Sepr., last.

We have, &c.,


EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.
(Despatch No. 25.)

Sir,

Downing Street, 17 June, 1826.

I have the honor to acknowledge the receipt of your Dispatch, No. 21, of the 12th December last, reporting the arrival of Lieut. General Darling at Van Diemen's Land, and the measures which had been adopted for giving effect to His Majesty's
Order in Council dated 14th June, 1825, whereby the Island of Van Diemen's Land is made independent of the Government of New South Wales, and transmitting a Proclamation, which, with the advice of the Executive Council, you had issued on the departure of the Governor in Chief for the latter Colony: In signifying to you His Majesty's Approval of that Proclamation, I am commanded to express his satisfaction at the readiness with which you appear to have afforded General Darling the information which he required on all points relating to your Government; and the expressions, which have accompanied both his and your communications, of the good understanding which has been established between you, cannot fail of being equally gratifying.

I have, &c.,

BATHURST.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 26; acknowledged by lieut.-governor Arthur, 3rd March, 1827.)

Sir,

Downing Street, 18 June, 1826.

I have the honor to acknowledge the receipt of your Dispatch, No. 22 of the 16th Decr. last, recommending to my favorable consideration the Memorial of Mr. Evans, Deputy Surveyor General of Van Diemen's Land, praying that he may be permitted to retire from the duties of his office, which, from a severe rheumatic affection, have become too arduous for him to execute.

As you have been induced to authorize the payment of a retired allowance to Mr. Evans, I am led to suppose that the circumstances connected with Mr. Lawrence's Grant have admitted of a satisfactory explanation; and I have therefore recommended to His Majesty to confirm the allowance which you have assigned to him, without requiring any further investigation to be instituted into his proceedings on that occasion.

It appears also from your Dispatch that the practice of receiving presents by the Surveyor General was not entirely unsanctioned by the Officer, who preceded you in the Government; I shall not therefore revert to that subject, further than to avail myself of the opportunity which it affords of directing that a stop should be immediately put to so objectionable a proceeding, in whatever shape it may have existed; and, as the salaries, not only of the Surveyor General but of the subordinate officers of his Department, have lately been very considerably augmented, there will no longer remain that excuse, in its favor, which the inadequacy of their emoluments may hitherto have afforded. I think it necessary therefore to state that His Majesty will visit with the strongest mark of His Displeasure any future instance of an Officer receiving a present in execution of his public duty.

* Note 86.
The arrangements, which were communicated to you in my Dis­
patches of the 1st and 17th of May, by which Mr. Scott has been
appointed to succeed Mr. Evans, places it out of my power to
confirm Mr. Dumaresq in the appointment, which you have pro-
visionally conferred upon him; and, as it appears that you are
perfectly satisfied with the Services of Mr. Scott, so far as they
have been hitherto tried, there is no sufficient reason for my
making any change in those arrangements.

I can therefore only regret that I am unable to avail myself of
the Services of a Gentleman, whose qualifications would appear
to render him a very proper person to succeed Mr. Evans, had
not the claims of another Individual interfered with such an
appointment.

With respect to the amount of remuneration proposed by Sir
Thomas Brisbane to be given to the Commissioners, whilst em-
ployed in the new survey of the Island, I am happy to find that
you have anticipated the sentiments, which I have already ex-
pressed to the Governor of New South Wales on that subject, as
the allowance, which he has sanctioned to the Commissioners in
that Colony, having been considered larger than the circum-
stances of the case required, General Darling has been instructed
to reduce it from £500 a year, the rate at which it was fixed
by Sir Thomas Brisbane, to one Pound per day, including all
Expences. The Salary received by the Surveyor General being
intended to include all Services of this nature, he will of course
receive no Extra remuneration during the period he may be
employed on this survey.

I have, &c,

BATHURST.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.
(Despatch No. 27; acknowledged by lieut.-governor Arthur,
5th December, 1826.)

19 June. Sir, Downing Street, 19 June, 1826.

I have received your Dispatch No. 23,* enclosing a letter,
which had been addressed to you by several of the Inhabitants of
Hobart Town, together with a Memorial, the object of which is
to obtain for the Minister of the Presbyterian Church of Scot-
land resident at Van Diemen's Land, an augmentation to the
Salary which he at present receives.

I do myself the honor of acquainting you, in reply, that, under
the circumstances which you have stated, I am disposed to admit
the necessity of a small increase to the Revd. Mr. McArthur's
stipend; but, considering that the allowance granted to the Revd.
Dr. Laing,* the Presbyterian Minister at New South Wales,
amounts to £250, and not, as you have supposed, to £300 a year,
ARThUR TO HAY.

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I am of opinion that a Salary of £150 per annum is as much as can be given (particularly in the present unfavorable state of the finances of the Island) to the Presbyterian Minister officiating at Hobart Town; and you will accordingly consider yourself authorized to increase his Salary to that amount from the 1st January, 1826.

I have, &c.,

BATHURST.

UNDEr SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

(Despatch acknowledged by lieut.-governor Arthur, 1st December, 1826.)

Dear Sir,

Downing Street, 20 June, 1826.

Lord Bathurst has already had occasion to call your attention to the expediency of your sending home by every opportunity regular series of the Colonial Newspapers. I have no doubt that, previously to the receipt of this letter, you will have taken measures for complying with Lord Bathurst's wishes upon this point; but, as much consequence is attached to our possessing them, his Lordship has desired me to mention the subject again to you, for fear you should have omitted to give directions for their being regularly forwarded to England; and he desires me to take the same opportunity of requesting that the annual Returns of Revenue and Expenditure, which Returns are denominated by us "The Blue Book," may be sent home with as little delay as possible, after they shall have been completed.

I remain, &c.,

R. W. HAY.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.

(Despatch acknowledged by under secretary Hay, 3rd March, 1827.)

Government House, Van Diemen's Land,

Sir,

20th June, 1826.

I have the honor to acknowledge the receipt of your letter of the 9th of Decr. last, transmitting by Earl Bathurst's direction the Assignment of One Hundred Female Convicts shipped on board the "Providence" for this Colony.

The "Providence" arrived here on the 17th May, and landed Ninety Nine Female Convicts, one having died on the Passage.

It is with much regret I report, that the conduct of the Surgeon Superintendent, Mr. Burnside, Surgeon of the Royal Navy, has been of a most disgraceful nature, having cohabited during the greater part of the Voyage with one of the Females, Julia Mills, and frequently allured others into his Cabin to drink. He has also in other respects conducted himself most unworthy of the trust reposed in him.
It appears also that the Master of the Vessel, Mr. John Wauchope, has connived at, and even been a party in some instances to the irregularities of the Surgeon, and, certainly, has in no way exerted himself in an earnest manner to prevent the improprieties, which have existed on board the Vessel.

Under these circumstances, I have refused to grant any Certificates beyond the actual landing of the Women and Stores, and I take the liberty of requesting that my Lord Bathurst will be pleased to cause such communication to be made to the Commissioners of the Navy Board as may prevent these Individuals from receiving the usual gratuity from that Department, or being employed again on this service.

I have the honor to enclose the Documents on which I found this recommendation, and I take the liberty of annexing a Schedule of their Contents for your more immediate reference and information.

I also take the liberty of enclosing Copy of the Local Regulations for the government of the Surgeons Superintendant arriving here with Prisoners; and, in order to prevent any future excuse of their not duly receiving these Instructions from the Naval Officer, either from their anchoring late at night or other casual circumstance, I venture to suggest the advantage which might result if a Copy was officially issued to the Surgeon Superintendant by the Navy Board previous to his leaving England, the Regulations being modified in any manner my Lord Bathurst may think proper to direct.

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I have, &c.,

GEO. ARTHUR.
BATHURST TO ARTHUR.

No. 7. The Colonial Secretary, 24th May, 1826.—Apprizes Mr. Burnside of the Report of Board.

No. 8. Mr. Mw. Burnside, May, 1826.—His reply denying the Charges made in the Report—Requests an interview.

No. 9. The Colonial Secretary, 26th May, 1826.—Will be happy to see Mr. Burnside, but a detailed explanation is previously necessary.

No. 10. Mr. Mw. Burnside, 27th May, 1826.—His explanation to the Charges alleged against him.

No. 11. The Colonial Secretary, 24th May, 1826.—Calls upon Mr. Wauchope, the Master, to explain why the alleged irregularities are not recorded in the Log Book.

No. 12. Mr. J. Wauchope, 25th May, 1826.—His reply to the best of his Knowledge all transactions were fully recorded in the Log Book.

No. 13. The Principl. Superint. of Convicts, 30th May, 1826.—Reports the great irregularity and delay occasioned in landing the Female Prisoners from the “Providence.” Several irregularities represented.

No. 14. The Principl. Superintendt. of Convicts.—Encloses Copies of a Correspondence between the Surgeon Superintendt. of the “Providence” and himself, to be laid before the Lieut. Governor.

Memorandum, 2nd June, 1826.—Desiring the Principl. Superintt. will state how the Slop Clothing by the “Providence” has been disposed of. His reply to the same stated.

No. 15. The Colonial Secretary, 5th June, 1826.—Calls upon the Surgeon Superintt. for a report upon the preceding Correspondence respecting Bedding.

No. 16. Mr. Mw. Burnside, 5th June, 1826.—His reply to the Colonial Secretary respecting the Bedding.

No. 17. Quartermaster Johnston, 57th Regt., 20th May, 1826.—Reports the immoral conduct of Surgeon Superintendt. Burnside of the Providence.

No. 18. Quartermaster Johnston, 57th Regt., 3rd June, 1826.—Encloses Copies of a Correspondence between the Capt’n of the Providence and himself, upon the conduct of the Surgeon.

No. 19. Quartermaster Johnston, 57th Regt.—His statement on Oath respecting the Surgeon Superintendt.’s immoral conduct.

No. 20. Mr. J. Wauchope, 10th June, 1826.—Requests to know the reason why a Certificate of his conduct during the Passage has been refused by the Lieut. Governor.

No. 21. The Colonial Secretary, 10th June, 1826.—His reply stating the Lt. Govr.’s objection to granting the Certificate.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 28; acknowledged by lieut.-governor Arthur, 3rd December, 1826.)

Sir,

Downing Street, 21st June, 1826.

I do myself the honor of transmitting to you herewith the copy of a letter addressed to me by Mr. Gellibrand, His Majesty’s Attorney General at Van Diemen’s Land, dated Launceston, 4th January, 1826.

I deem it necessary to call your particular attention to that part of Mr. Gellibrand’s letter, which refers to the case of six prisoners, who, having absconded from Macquarie Harbour and

Transmission of letter from J.T.Gellibrand, 21 June.

Schedule of enclosures.
Criticism of 
adминистration 
of criminal 
justice.

1826. committed "various felonies of a very atrocious nature," for 
which they were tried and convicted, were not executed "for the 
space of some months" after sentences of Death had been passed 
on them.

The ill effects of delaying to carry into execution these awful 
sentences of the Law are so evident that I am under the neces­ 
sity of calling upon you for an explanation of the reasons, which 
induced you to delay the execution of those persons; and I am 
therefore to desire that you will report to me on each of those 
cases for the Information of His Majesty's Government, as well 
as upon the case of "Ray," the Receiver of the stolen Property, 
to whom the prerogative of mercy is stated by the Attorney 
General to have been very injudiciously extended.

I have, &c.,

BATHURST.

[Enclosure.]

ATTORNEY-GENERAL GELLIBRAND TO LIEUT.-GOVERNOR ARTHUR.

Launceston, Van Dieman's Land,

My Lord, 4th January, 1826.

Altho' I have not had the Honor of receiving from Your 
Lordship any specific instructions as to the nature or Duties of 
my office in this Colony, or the subjects upon which Your Lord­ 
ship would expect me to communicate with His Majesty's Gov­ 
ernment, yet, when I am persuaded that various causes connected 
with the judicial proceedings in the Criminal Court of this 
Colony and others of a political nature have to a very consider­ 
able degree produced the present distressed and embarrassing 
situation of the Colony, I feel it my Duty to communicate to 
Your Lordship the causes, which have produced these effects, so 
far as they have fallen within my observation, more especially 
as I am inclined to think that erroneous views are entertained 
upon these subjects, by those whose Duty it may be more immedi­ 
ately to address Your Lordship upon them.

I would first observe to Your Lordship that, at the period of 
Col. Sorell relinquishing into the hands of His Excellency Lt. 
Governor Arthur the reins of Government, the most perfect har­ 
mony and unison subsisted between the Government and the 
people, and the most anxious desire was shewn by the latter to 
support and strengthen the Administration of the new Gover­ 
nor, from whom much was expected as regards the moral state 
of the Colony, and from the increased powers with which he was 
understood to be visited; and I can assure Your Lordship no 
Governor entered upon his Duties under more favorable auspices.

By degrees a coolness and indifference has arisen (to speak 
in the mildest terms) between the Government and the People;
difficulties have been often experienced in personal communication; Crime has rapidly increased, until it is extended over the whole Colony; Security and protection to the Settlers and their families no longer exist, and Rapine, Murder and Discontent have succeeded.

In the statements forwarded to Your Lordship, I believe no difference will exist upon the present state of the Colony, but only as to the causes; and, as the Lt. Governor has publicly expressed his opinion upon this point and attributed the whole “to the factious principles of a licentious press,” I beg to draw Your Lordship’s attention to some other potent causes, arising out of the peculiar state of this Colony, as connected with the Administration of Justice, leaving the other political causes to some other pen or a future opportunity.

Your Lordship is well aware of the small proportion the free Emigrant bears to the other Classes of Society here, all of whom are more or less exposed in their persons, properties or families; if ever the necessity of Examples and prompt and vigilant execution of Laws was required for the better regulation of Society, it is here; and I am quite satisfied that the Criminal Court is the great engine, by which Crime will be suppressed and the Morals of the Colony improved; but that must be done by firmness, promptitude and an occasional exercise of mercy; to establish this position, I deem it necessary to mention to Your Lordship that 9/10ths of the Prisoners tried at the Supreme Court are Convicts, the majority of whom have already forfeited their lives in England; that every exertion is used in their behalf on the trial; and that they are tried by a Judge and Jury distinguished for Humanity. The property in this Colony consists of Merchandize, Cattle and Sheep; the Majority of the Capital Cases are Burglary to obtain the former, and, from the Insecurity of the Property of Settlers, Larceny of the latter, to the extent of 100 at a time. Feeling the absolute necessity of affording some better protection, I advised the Lt. Governor a year ago to publish an Order for every Constable and Settler in the Colony to muster the Servants especially the Road parties for three successive Sundays, and make fully known to them that these offences were Capital, that these Crimes had increased, and that the Sentence of the Law upon all future cases of this Description would therefore be put into operation.

Shortly after the Bushrangers had absconded from the penal Settlement at Macquarie Harbour and spread terror thro’ the Colony, six of them were apprehended; they were brought into Hobart Town on a Tuesday Evening; the examinations were laid before me in the Court (which was then sitting on the
Wednesday afternoon) for the purpose of making an immediate example; I filed an Information that Day, put them upon their Trial, and they were all found Guilty, and, before a crowded Court, the awful sentence was passed upon them all; but, from some cause of which I am ignorant, that Sentence was not put into execution for the space of some months, and, when it was, it produced a feeling of sympathy for the Sufferers instead of being an example and an object of terror.

In the month of August last, I was under the necessity of prosecuting four other men, who had absconded from the Public Works and taken to the Bush, and who had committed various felonies of a very atrocious nature; they had received considerable assistance from a Man in Hobart Town, named Ray, who had harboured them in his House, and received the stolen property to the amount of £200, and in whose House they were apprehended with all their arms, etc.

The efforts of Government to apprehend Brady and McCabe (two of the Bushrangers from Macquarie Harbour) having proved wholly abortive for twelve months, in consequence of the assistance afforded them not only by Stock Keepers but in some instances by Settlers, I deemed this a fit opportunity to make an example of Ray; and, therefore instead of prosecuting him as a receiver of the stolen property, he was charged with a capital harbouring, etc. offence for harbouring, etc., and, after a trial of ten hours, they were all found guilty and Sentence of Death passed upon them at once.

Upon this occasion, I felt it my duty to explain to the Lt. Governor my reasons for prosecuting this man capitally; and in the first Instance I did by a Letter dated 22nd August, 1825, and on the same day more fully explained in person.

Upon this occasion, the Lt. Governor was pleased to take a different view of the subject to that suggested for his consideration, and the prerogative of mercy was extended to Ray, and he has been sent to Norfolk Island; the effect of which, I was persuaded, would prove so detrimental to the Interests of the Colony in paralizing the efforts of the Court, and also of those who were anxious to assist the Governor that I forwarded to Your Lordship a Copy of that Letter in my Dispatch of the 1st Sept. last, and a Duplicate of which letter I now have the Honor of enclosing.

Since that period these desperate Men have traversed the Country with impunity, robbing, murdering and in some instances imprisoning; others have and are daily following their example; and I have not the least hesitation in stating that, if they are not speedily taken, other parties should follow their example (which
is recently the case on this side the Island commencing with Murder), that the safety of His Majesty's Government is endangered and the lives and property of His Subjects.

The feeling throughout the Colony (and it is one in which I assure Your Lordship that I entirely concur) is that the operation of the Law has been unwisely suspended; that the efforts of the Supreme Court have been paralyzed, and ceased to have that wholesome and moral effect, which it is capable of producing; and that the prerogative of mercy has been too frequently and almost indiscriminately exercised, which has proved highly injurious to the Interests of the Colony, for the object of the Criminal Law is not to punish but to prevent Crime by the force of example.

The feelings, which have been engendered by this line of conduct, have naturally produced considerable dissatisfaction, which added to some political causes upon which I shall not at present trouble Your Lordship, have in my humble opinion tended materially to bring the Colony into its present distressing state and separated the Governor and the governed.

Whatever representations may be made to Your Lordship, I can safely assure you that, in this Colony, the strongest feelings of loyalty and attachment are cherished towards His Majesty's Government and His Representative, and all that is wanting is Conciliation combined with prompt and vigorous measures in the due protection of the Interests of the Colony.

I beg Your Lordship will distinctly understand that I am actuated solely by a sense of the Duty, which I owe to His majesty's Government, faithfully and humbly to convey to Your Lordship my view of the present alarming state of the Colony, and which I have felt great pain in doing.

I have not considered it necessary to enter into the subject of the licentiousness of the Press, as stated by the Lt. Governor, because I entered so fully into that subject, when I had the writing of writing to Your Lordship under date the 1st Sept. last; but I cannot help again expressing my regret that if the evils are to be attributed to this cause, that I should have been restrained from destroying this evil, when it first appeared, instead of allowing it to gain Strength.

As I have been under the necessity of addressing Your Lordship from this place, where the Court will be engaged for a month in the trial of Prisoners, and my time is wholly taken up in Court, I trust Your Lordship will pardon the hasty manner in which this letter is written. I have, &c.,

J. T. GELLIBRAND.
1826.
21 June.

[This was a copy of sub-enclosure 9 to Earl Bathurst's despatch, dated 23rd May, 1826; see page 249.]

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.
(Despatch No. 30; acknowledged by Earl Bathurst, 10th February, 1827.)

Government House, Van Diemen's Land,

My Lord, 21st June, 1826.

1. It was not until the arrival of the Transport "Woodman" on the 29th of April last that I had the honor to receive the Book from Your Lordship's Office to be filled up with an exhibition of the Net Revenue and Expenditure of this Colony for the Year 1825.

It has been immediately prepared, but I am sorry there is no prospect of any opportunity by which I may forward it to England for some weeks.

2. In laying this return before Your Lordship, I beg to have the honor of accompanying it with some general observations upon the state of the Colony during the period to which it relates.

3. The Year 1825 was a period of continued anxiety arising from causes which it was not in my power to prevent, nor was I enabled throughout the Year to subdue them, and the effects operated most injuriously upon the growing prosperity of the Colony.

The Faction, which was formed very early after my arrival, (the particulars of which I have already elsewhere detailed) was unceasing in its measures of opposition, and, through the powerful instrumentality of a prostituted Press, kept up a degree of irritation in the Community which it otherwise never could have accomplished. To this cause, I have, in a great degree, ascribed the remarkable success of the several Gangs of Bushrangers which distressed the Settlers in the Interior by their atrocities and robberies, harassed the Military to the last degree, and impeded every measure of improvement by commanding the attention, and exhausting the whole energies of the local Government both by Land and Water; for some months, indeed, there was almost an entire suspension of every undertaking, except the pursuit of Bushrangers!

4. From the extraordinary drought of the Season, the Harvest was exceedingly deficient, and the consequent want of the means of supporting their Men comfortably led to a good deal of discontent between the Settlers and their assigned Servants.
At the period I am now addressing Your Lordship, the state of affairs is altered to a very great extent; but I am describing the past Year, and, under such an accumulation of untoward events, the advance of the Colony in prosperity could scarcely be looked for; but it is most gratifying to me to report that the Revenue* far exceeded my anticipation, shewing an increase over the Year 1824 of Eleven Thousand, One hundred, and thirty nine Pounds, Sixteen Shillings, and two pence, Sterling; and, notwithstanding the reduction of the Duty on Spirits, and the augmentation of Expenditure from the Judicial Establishment, and heavy expenses arising from the Police and armed Parties employed in the Interior, the Loan† from the Commissariat, in aid of the Colonial Revenue, is under Ten thousand Pounds Sterling, which has been carried into account with the Sydney Government.

5. I am in the expectation of being honored with Your Lordship's Commands upon my Annual Report of last Year, in which I submitted a proposition for regulating the expenditure of Van Diemen's Land in it's complex character as a Free Colony and a Penal Settlement, and the more I have considered the subject, the more I am impressed with the advantages of the arrangement.

6. I further submitted an Outline of the various Buildings required in the Colony, the expense of which, if my proposition was favorably entertained by Your Lordship, would fall either upon the Home Government or Colonial Fund according to the Service for which the Buildings were destined; but, throughout the Year 1825, every expense, without any reference to the object, has been met by the Colonial Fund, relieved by the aid of which I have stated of Nine thousand, five hundred, and thirty three Pounds, Six Shillings and eight pence Sterling from the Commissariat.

7. Your Lordship will perceive by the Quarterly Accounts here-with transmitted, the Sum of Two thousand, eight hundred, and seventy eight Pounds, eight Shillings Stirling has been incurred on account of Commissariat Disbursements, and which, in strictness, ought not to have been defrayed through the Colonial Revenue, so that, in point of fact, the whole Loan from the Commissariat, in aid of the Colonial Fund, has only amounted to Six thousand, six hundred, and fifty five Pounds, eighteen Shillings and eight pence Stirling.

* Marginal note.—Revenue for the Year 1824, £21,712 11s. 1ld. Stg. ; for 1825, £32,552 8s. 1d. Stg.
† Marginal note.—£9,533 6s. 8d. Stg.
8. The Imports from Great Britain show an increase over the Year 1824 of Twenty one thousand, two hundred and four Pounds Sterling, and the Exports of Seven thousand, Nine hundred and twenty One Pounds Sterling, and, amidst existing difficulties, gave a promise of the still greater augmentation which has followed during the Current Year.

9. The troublesome times I have described, when the Prisoners were excited by a most mischievous Faction, and when a daring band of their associates was in open arms, was no season to introduce reformation by the imposition of greater restraints. I cannot, therefore, gratify Your Lordship by representing that the wise and salutary System so often inculcated by His Majesty's Government to be observed in the treatment of Convicts, has been introduced to any extent. The most that could be done has been to prevent matters from becoming worse; but Your Lordship may be assured that I will not lose sight of your Instructions upon this important point until the end is attained; at the same time, it must be borne in mind that nothing effectual can be done, until proper places for the accommodation and confinement of the Prisoners, with substantial Jails, etc., are erected, an undertaking, which, with every energy I can exert, must be a work of some time.

10. I have already given Your Lordship to understand that the great mass of Settlers, who have emigrated to this Colony, are necessitous persons; many indeed have made a great show of Capital in their Schedules for the purpose of obtaining Land, but, in reality, were possessed of little means. The improvement of the Island has not, therefore, been as rapid as might be expected from it's natural advantages; but, the face of the settled Districts is now beginning to assume a pretty general aspect of cultivation, and, if Bush-Banging and Sheep-Stealing can be subdued, the Colonists will not be long in struggling through their difficulties, and Your Lordship's most sanguine expectations of the capabilities of the Colony will be fully developed.

11. I have the honor to transmit an annual numerical Return of Convicts transported to Van Diemen's Land during the Year 1825, together with a Book containing the Name and Employment of every Convict in the Colony alphabetically arranged, which, with Your Lordship's permission, may prove a useful Record in the possession of the Colonial Agent.

I have, &c.,

[Unsigned.]

[Enclosures Nos. 1 and 2.]

[These voluminous accounts of the colonial revenue and expenditure and of the police fund have been omitted.]
[Enclosure No. 3.]

**ANNUAL RETURN of Convicts Transported from Europe and other British settlements to Van Diemen's Land for the year ending 31st Decr., 1825.**

<table>
<thead>
<tr>
<th>Arrivals, etc.</th>
<th>Distributions, etc.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total remaining 31st December, 1824.</strong></td>
<td>5,790 333 180 172 4 2 22 6,509</td>
</tr>
<tr>
<td>Arrived per Lady East, 23rd April, 1825.</td>
<td>308 2 7 248 257</td>
</tr>
<tr>
<td>Arrived per Medows, 14th September, 1825.</td>
<td>138</td>
</tr>
<tr>
<td>Arrived per Medows, 14th December, 1825.</td>
<td>0</td>
</tr>
<tr>
<td>Forfeited Conditional Emancipation.</td>
<td>0</td>
</tr>
<tr>
<td>Colonial Sentences.</td>
<td>64</td>
</tr>
<tr>
<td>Free by Service.</td>
<td>3</td>
</tr>
<tr>
<td>Sentences of Transportation Expired.</td>
<td>333</td>
</tr>
<tr>
<td>Conditional pardons.</td>
<td>2</td>
</tr>
<tr>
<td>Transported to Norfolk Island.</td>
<td>7</td>
</tr>
<tr>
<td>Transported to Macquarie Harbour.</td>
<td>248</td>
</tr>
<tr>
<td>Abandoned from the formation of the Colony, 1st April, 1825.</td>
<td>257</td>
</tr>
<tr>
<td>Abandoned in 1825.</td>
<td>114</td>
</tr>
<tr>
<td>Died.</td>
<td>74</td>
</tr>
<tr>
<td>Executed.</td>
<td>57</td>
</tr>
<tr>
<td>Invalids.</td>
<td>39</td>
</tr>
<tr>
<td>In Hospital.</td>
<td>41</td>
</tr>
<tr>
<td>Transferred to Sydney.</td>
<td>4</td>
</tr>
<tr>
<td>Married in the Public Works throughout the Colony.</td>
<td>1,383</td>
</tr>
<tr>
<td>Artificers on loan to settlers.</td>
<td>18</td>
</tr>
<tr>
<td>Assigned to the Service of settlers.</td>
<td>2,603</td>
</tr>
<tr>
<td>Tickets of Leave.</td>
<td>500</td>
</tr>
<tr>
<td>Constables.</td>
<td>48</td>
</tr>
<tr>
<td>Missing.</td>
<td>101</td>
</tr>
<tr>
<td><strong>Total.</strong></td>
<td>6,509</td>
</tr>
</tbody>
</table>

Deduct:—Sentence of Transportation Expired .......... 333
Conditional Pardons .................................. 2
Transported to Norfolk Island ....................... 7
Died .................................................. 74
Executed .............................................. 57
Transported to Sydney .................................. 4

Total number of Prisoners Remaining, 31st Decr., 1825....... 6,082

6,509

**JOHN LAKELAND, Principal Superintendent of Convicts.**
EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 29; acknowledged by lieut.-governor Arthur, 11th December, 1826.)

Sir,

Downing Street, 22nd June, 1826.

I am commanded by The King to direct that you will signify to Mr. Gellibrand that His Majesty has been pleased to remove him from the Office of Attorney General to the Government of Van Diemen's Land. You will, therefore, be pleased to appoint some fit and proper person in the Island to fill that situation, until Mr. Gellibrand's Successor shall arrive, issuing to the person, who may be thus provisionally appointed to discharge the duties of Attorney General, a remuneration equal to half of the Emoluments enjoyed by the Officer lately filling that situation.

I have, &c,

BATHURST.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 30; acknowledged by lieut.-governor Arthur, 22nd September, 1827.)

Sir,

Downing Street, 23rd June, 1826.

I have had the honor to receive your Dispatch No. 4 of the 9th of January last, reporting the difficulties which had occurred in carrying into effect the Instructions, which I addressed to you on the 27th of June, 1825, respecting Mr. Abbott's appointment as Civil Commandant at Port Dalrymple.

That arrangement was pointed out to me as a mode of obviating the difficulty, which was found to exist of providing for Mr. Abbott on his return to the Colony in a manner suitable to his wishes, which I was anxious, as far as was possible, to consult under the circumstances which occasioned his removal from an advantageous situation, which he had enjoyed for many Years, and which took place in consequence of the new Charter of Justice having superseded his duties as Deputy Judge Advocate. I certainly however should have endeavoured to provide for him differently, had I been aware at the time he was promised the situation of Civil Commandant at Port Dalrymple that such very strong objections, as those to which you have alluded in your Dispatch, existed against a civil appointment, and that the effect would be to supersede an Officer of Colonel Balfour's reputation and activity, whose continuance in the command of that part of the Island appears to be so highly necessary to the Interests of the Colony.

Although I should extremely regret, on ordinary occasions, to disappoint the expectations of any public Officer by withdrawing from him an appointment, which he may have been promised, yet
the Interests of the public are above every other consideration, and I have no hesitation therefore in directing that Lieut. Colonel Balfour should be immediately reinstated in the Office of Commandant, with the authority, both civil and Military, which he formerly possessed, and that Mr. Abbott should be removed to some other situation.

It was my intention originally to have appointed Mr. Abbott to the Office of Commissioner of the Court of Requests with a Salary of £400 a year, exclusive of his Pension; but this appointment was deemed incompatible with the situation of a Member of Council, and Mr. Abbott therefore preferred a reduced Salary, with a seat in that Assembly to a larger Emolument without it. As there does not appear to be any necessity for dividing the duties, which devolve upon the Commissioner of the Court of Requests, as proposed in your Dispatch, I see no other means of providing for Mr. Abbott than by the mode first intended; and you will therefore acquaint that Gentleman that he will be required to take upon him the duties of Commissioner of the Court of Requests and Chairman of the Bench of Magistrates in the room of Mr. Hone, whom I authorized you to continue in that situation until a person should be appointed from home.

You will direct the payment of a Salary to Mr. Abbott at the rate of £600 a year, exclusive of any other allowances or advantages whatever, as a remuneration to him for discharging the duties of Commissioner; during his tenure of which situation, the Pension, which he at present receives, must be reduced, so as to confine the whole of the Income received by him from the Public to £800 per annum. This arrangement will of course remove Mr. Abbott from his seat in the Council, as it is not deemed expedient to admit to be a Member of that Board any person holding a Legal situation, with the exception of the Chief Justice; and you will take the necessary steps for filling up the vacancy thus occasioned, reporting to me the name of the person upon whom you may have fixed, in order that I may obtain His Majesty’s Approval of the appointment.

I have, &c.

BATHURST.

P.S.—In making known to Mr. Abbott the subject of this communication you will not fail to assure him that no personal objection exists towards him; and that in the event of circumstances admitting of my removing Mr. Abbott hereafter to a situation, which may not be incompatible with the duties of a Member of Council, I shall have much pleasure in recommending to His Majesty to avail himself of his Services in that capacity, should the number not be already complete.
1826.
25 June.

Despatch re land grants for E. Abbott.

Reserves authorised by W. Sorell.

Lands formerly granted to E. Abbott.

Confirmation of large but refusal of small grant.

HISTORICAL RECORDS OF AUSTRALIA.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 31.)

Downing Street, 25 June, 1826.

Sir,

I have the honor to acknowledge the receipt of your Despatch, dated in January last, upon the subject of the reserve of 3,210 Acres, which, on the representations made to me previously to Mr. Abbott's departure for the Colony, I had directed to be confirmed to him.

The application, addressed to me by Colonel Sorell on the subject of the Land in question, was to the following effect: "In consequence of the approaching termination of Mr. Abbott's official Functions, after a long Service, civil and Military, in the Australian Colonies, and at his request, some time prior to my surrender of the Government, I ordered a reserve of Land to be made, which Sir Thos. Brisbane sanctioned as a Crown Reserve, in order that Mr. Abbott might be enabled to receive whatever benefit Earl Bathurst might be pleased to sanction in Land.

"The amount of the Reserves ordered was three thousand Acres on the South Esk River, and two hundred and ten Acres near Launceston."

Had I been aware of the circumstances with which you have now acquainted me, or that so much favor had been already shewn to Mr. Abbott by his having received a Grant consisting of 2,000 Acres in New South Wales, which he appears to have sold, and a second Grant to the same extent in the neighbourhood of Hobart Town, which, without improving, he had let at an annual Rent of £210, I should have felt considerable hesitation in confirming to him the additional Grant, alluded to in Mr. Horton's Letter of the 27th June, 1825. At present, however, as you state that possession of the Grant of 3,000 Acres has been given to Mr. Abbott under that authority, I feel reluctant to take any steps for cancelling it; but, as you have very properly deferred confirming the separate location of 210 Acres in the vicinity of Launceston, until the arrival of further Instructions, the same difficulty with respect to the latter does not exist; and you will therefore abstain from locating to Mr. Abbott this Land, which you state to be so desirable for the Crown to retain. I cannot sanction, however, any diminution of the rate at which the Quit Rent is chargeable on the larger location of 3,000 Acres, by way of compensation for the loss of the 210 Acres thus retained, and whilst so great an exception appears to have taken place in Mr. Abbott's favour with respect to the two previous Grants which have been made to him.

I have, &c,

BATHURST.
HAY TO ARTHUR.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

Sir, Downing Street, 27 June, 1826.

I have submitted to Earl Bathurst the observations contained in your letter of January last respecting the conduct of Lieut. Blair, R.N., whom Lord Bathurst was induced, upon the application of Messrs. Scott, Fairlie and Co., to recommend for a Grant of Land; and, under the circumstances which you have stated, his Lordship trusts that you will not have shewn any Indulgence to one so little deserving of it, as Mr. Blair has shewn himself to have been.

I have, &c,

R. W. HAY.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 32; acknowledged by lieut.-governor Arthur, 6th December, 1826.)

Sir, Downing Street, 30 June, 1826.

With reference to my Dispatch No. 15 of the 4th July, 1825, in which you were informed that Mr. Hamilton would be allowed to receive the Salary, which you had assigned to him up to the time of his Successor's arrival, and that Mr. O'Ferrall would draw half Salary from the date of his embarkation, I do myself the honor to acquaint you that it appears that, owing to some inadvertence, full Salary was issued to the latter Gentleman from the above period; and I have therefore to request that you will desire Mr. O'Ferrall to refund half his Salary from the date of his embarkation from this country to that of his arrival in the Colony.

I have, &c,

BATHURST.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

Sir, Downing Street, 1st July, 1826.

I am directed by Earl Bathurst to acquaint you, in reply to your Dispatch on the subject of Dr. Hall's Lands in Van Diemen's Land, that his Lordship entirely concurs with you in your view of the necessity of enforcing, in the most effectual manner, the conditions upon which Land is granted to Settlers, of which residence and cultivation are the most important; and I have therefore to convey to you his Lordship's directions that, under the circumstances of the case, as represented by you, which were not known when Mr. Horton's letter on this subject was addressed to you, Dr. Hall's Grant should not be confirmed.

I have, &c,

R. W. HAY.
300

HISTORICAL RECORDS OF AUSTRALIA.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.
(Despatch No. 33; acknowledged by lieut.-governor Arthur, 4th December, 1826.)

Sir,
Downing Street, 3rd July, 1826.

I do myself the honor to acquaint you, that, Mr. Gelli-brand having been removed from the Office of Attorney General at Van Diemen's Land, His Majesty has been pleased to appoint Mr. McCleland to be his Successor, with a Salary of £900 per annum, of which half-Salary is to be paid to him from the Date of his embarkation to the Date of his arrival in the Colony.

Mr. McCleland will lose no time, after the completion of the necessary arrangements, in taking his departure from this country, in order to enter as soon as possible upon the discharge of his official duties.

I have, &c.,
BATHURST.

[Enclosure,]

WARRANT FOR APPOINTMENT OF T. McCLELAND.

To Our Trusty and Well Beloved Ralph Darling, Esquire, Our Governor and Commander in Chief of Our Island of Van Diemen's Land and its Dependencies, or in his absence to Our Lieutenant Governor or Officer administering the Government of Our Said Island for the time being.

GEORGE R.

Trusty and Well Beloved We Greet you well Whereas We have taken into Our Royal Consideration the Loyalty, Integrity and Ability of Our Trusty and Well Beloved Thomas McCleland, Esquire, We have thought fit hereby to authorize and require you to cause Letters Patent to be passed under the Great Seal of Our Island of Van Diemen's Land constituting and appointing him the said Thomas McCleland, Attorney General of Our said Island, to have hold, exercise and enjoy the said Office unto him the said Thomas McCleland during Our Pleasure together with all and singular the Rights, Fees, Profits, Privileges and Advantages thereunto belonging or appertaining in as full and ample manner as he ought of right to hold and enjoy the same and you are to cause to be inserted in the said Letters Patent a clause or Proviso obliging him the said Thomas McCleland to actual residence within Our said Island of Van Diemen's Land and to execute the said Office in his own person except in case of sickness or incapacity and all such other clauses and Provisoes as are requisite and necessary in this behalf And for so doing this shall be your Warrant Given at Our Court at Carlton House the third Day of July, One Thousand Eight Hundred and Twenty Six In the Seventh Year of Our Reign.

By His Majesty's Command,
BATHURST.
EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 34; acknowledged by lieut.-governor Arthur, 12th December, 1826.)

Sir,

Downing Street, 10th July, 1826.

Your Dispatches of the 1st April and 7th May, 1825, relative to the arrangements introduced into the Naval Officer's Department at Van Diemen's Land, having been brought under the consideration of the Commissioners of Customs, I do myself the honor of transmitting to you for your information and guidance the enclosed Report, which has been addressed by them to the Lords of the Treasury, in order that you may instruct the Officers, employed in collecting the Custom's Revenue, to act in conformity thereto.

I have, &c.,

BATHURST.

[Enclosure.]

REPORT BY COMMISSIONERS OF CUSTOMS.

May it please Your Lordships.

Your Lordships having referred to Us the annexed Letter from Mr. Hay, transmitting Copies of two Dispatches received from the Lieutenant Governor of Van Diemen's Land, reporting the arrangements which he had introduced into the Naval Officer's Department with a view to the Greater efficiency of that Branch of the Public Service, by placing it on a footing, as far as circumstances would allow, similar to that of the Custom Houses in England; and requesting to be favored with an opinion on the arrangements adopted by the Lieutenant Governor with reference to their conformity with English practice;

We report,

That the Act of 3d Geo. 4th, Chap. 96, Sec. 2, authorizes the Governor of New South Wales to impose (by Proclamation or Order) the following Duties upon all Goods imported into that Colony and its Dependencies.

Vizt.: Upon all spirits, the Produce of the United Kingdom, or Rum the produce of the British West Indies imported direct from the United Kingdom, a Duty not exceeding 10s. per Gallon.

Upon all other Spirits .............. 15s. per Do.
Upon all Tobacco ................. 4s. per lb.
Upon all Goods, Wares and Merchandize (not being the produce of the United Kingdom) 15 pr. Cent, upon the Value.

By Section 3d—"The Governor may reduce or discontinue any such duties as occasion may require, and afterwards revive any
Duties so discontinued or reduced; but he must not levy a higher rate of Duty than above mentioned."

By Section 4th—"The Governor is to make such Rules and Regulations, as he may deem proper for the effectual collection of the said Duties."

And by Section 5th—"He is accountable for such Duties to the Commissioners of His Majesty's Treasury in the United Kingdom."

Under the two latter Sections of the Act, the Governor is responsible for the due collection of any Duties which may be imposed by his proclamation or order under the authority of the said act. He may therefore appoint whom he pleases as his Deputy; and the 7th Section of the Act "recognizes the Naval Officer as a proper Person to collect the Duties."

That the principal grounds of complaint, made by the Merchants against the proceedings of Mr. Hamilton, the Naval Officer, and who succeeded Dr. Bromley, are,

1st. That a Duty of £15 pr. Cent. has been exacted upon all wines imported from England.

2nd. That 10 per Cent. has been added to the invoiced Price before levying the Duty.

3d. That the Duty of 15 Per Cent. has not been charged at Sydney, New South Wales.

4th. That the Duties are exacted previously to the Goods being landed.

In answer to the 1st; We have to state that the Duty of 15 pr. Cent. is clearly due upon all Wines imported from England, unless they are of British Produce. To exempt Wines or any other Goods from this duty, they must not only be imported from the United Kingdom, but must be the Growth or Produce thereof.

As to the 2nd; The addition of 10 pr. Cent. upon the invoiced price, before charging the ad valorem Duty, is only to be made when the officer of Customs conceives that the Goods have been under-valued, agreably to the 7th Section of 3d. Geo. 4, Cap. 96; If therefore Mr. Hamilton has invariably made this addition without first viewing the Goods, and objecting to the value put upon them by the importer or Proprietor, such a proceeding would not be in accordance with the Section abovementioned.

With respect to the third; We are not aware upon what ground this Duty has not been levied upon Wines and other goods imported into Sydney.

And as to the fourth; The Duties are imposed upon the importation of the Goods, and therefore We are of opinion that
Mr. Hamilton was fully justified in demanding the Duties upon the Entry of the Goods and before Landing, or of securing the same by deposit or otherwise. That the other matters of complaint appear to be fully answered in the enclosed papers; and the principles, adopted by Mr. Hamilton in the regulation of the Customs and for the security of the Duties, are, in our opinion, in unison with the practice in British America and in the United Kingdom.


Custom House, 4th July, 1826.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.
(Despatch acknowledged by lieut.-governor Arthur, 1st December, 1826.)

My Dear Sir, Downing Street, 11th July, 1826.

I am directed by Earl Bathurst to transmit to you the enclosed Copy of a letter, addressed to his Lordship by Mrs. Hannah More, with whose wishes, on behalf of Mr. Simmons, his Lordship would be glad to comply as far as may be consistent with the claims to promotion of other deserving Individuals employed under your Government; and I am therefore desired by his Lordship to bring the name of Mr. Simmons under your particular notice, with a view to his removal to a more advantageous Situation than he at present holds, whenever a favorable opportunity may offer for that purpose.

I remain, &c.,

R. W. Hay.

[Enclosure.]

[A copy of this letter is not available.]

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.
(Despatch No. 35.)

Sir, Downing Street, 12 July, 1826.

I have the Honor to acknowledge the Receipt of your Dispatch, N. 6 of the 1st February, 1826, accompanied by a letter from the Revd. P. Conolly soliciting an encrease of Salary; and I regret to inform you, in reply, that the rates of remuneration, received by Roman Catholic Priests in the other Colonies, would not justify me in complying with your recommendation in favor of Mr. Conolly.

I have, &c.,

Bathurst.
LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.
(Despatch No. 31; acknowledged by Earl Bathurst,
12th February, 1827.)

Government House, Van Diemen's Land,
12th July, 1826.

My Lord,

In my Dispatch No. 20,* I had the honor to bring under
Your Lordship's consideration the subject of the establishment
of the Seat of Government of this Island, which, in reference to
the various Public Buildings requiring to be constructed, had
become an important point to be finally disposed of.

All the objections to Hobart Town I treated upon at large, as
far as they had come within my own observation, as well as the
advantages of New Norfolk; and I submitted likewise the opinion
of the Executive Council, and the grounds on which the Members
unanimously advised that the General Survey should be ordered
with a view to making New Norfolk the Seat of Government;
and I further submitted my recommendation that our future
operations should be progressively carried forward upon the prin­
ciple of that arrangement.

2. In the furtherance of this plan, and to ascertain every pos­
sible local information, the Engineer was dispatched to commence
the erection of a temporary Log Building for the accommodation
of the Prisoners employed at New Norfolk. It happened, as I
consider very providentially, that this was commenced in the
midst of the rainy Season, and a very violent Flood in the Der­
gwent afforded abundant proof that the Land, which stretches
along the Margin of the River at New Norfolk would prove
very insecure for Warehouses, Stores, etc.

3. Upon receiving the Engineer's Report, I directed the Com­
missioners appointed under His Majesty's Instructions to survey
and value the Lands in the Colony to proceed to New Norfolk,
and, having made the most minute Survey of the whole District,
to report upon it's capabilities in relation to its being determined
upon as the future Seat of Government; and I further invited
those Gentlemen to state their opinions freely and broadly upon
the general policy of the measure.

4. Copy of the Report of the Commissioners I have the honor
to transmit, by which Your Lordship will perceive that they very
carefully examined into the subject, and state many strong and
some substantial objections to New Norfolk; they are not, how­
ever, unanimous in their opinion, the Surveyor General viewing
the advantages of New Norfolk in a much stronger light than
his Colleagues, although he coincides with them that at present
the Colony could not well bear so important a change.

* Note 88.
5. This Report I lost no time in taking into consideration in Council; the opinion of the Chief Justice and of Mr. Thomas were shaken by this statement of the Commissioners, in as much as several important local advantages, viz., the navigation of the River, internal communication, etc., etc., which were before considered as established facts, were now rendered questionable. Mr. Humphrey, whose long experience and extensive local knowledge* give great weight to his opinion, remains unaltered in his conviction of the superior advantages of New Norfolk, and of the policy of at once directing the efforts of the Government in that Quarter; and he certainly successfully rebutted many of the Arguments of the Commissioners who attended the Council.

6. In this conflicting state of opinions, I have considered that two points should have great weight in a final decision upon the case: the one is, the urgent necessity of immediately erecting a Jail, Factory, and Barracks for the safe custody and accommodation of the Prisoners, since further delay on this is a positive increasing evil! the other, the comparative expence in erecting these Buildings at Hobart Town and New Norfolk, as well as others which must progressively follow!

Upon these points I have bestowed the utmost attention, and, upon the best judgement I can form, being the result of the most unlimited enquiry, they are both decidedly in favor of proceeding at once with these Buildings at Hobart Town. Time will certainly be saved, which is of much importance in the present state of the Colony in organizing the various Institutions and Departments of the Government as connected both with the Public and the Prisoners; and there will be decidedly a considerable saving of expence.

7. The superior situation of New Norfolk is as manifest to me as ever, and two of the Commissioners have certainly in their Report advanced some very needless objections, and passed by some very decided advantages; and, moreover, they have erroneously looked upon the change as a sudden one, in place of contemplating a direction of measures to embrace an object to be gradually effected. The Subject is of great importance, and the Community are quite divided in opinion upon it; for, undoubtedly the extreme distance of Hobart Town from the Interior and the difficulty of access is most inconvenient and most injurious to the Agricultural Interest; the full consideration, therefore, which has been bestowed upon it, will be a satisfactory Record hereafter; and I am desirous not only to decide wisely, as far as depends upon myself, according to the present means, circumstances and condition of the Colony, but of so fully placing the subject before Your Lordship that there may be an abundant
answer to those who succeed me, and to whom, no doubt, the apparent advantages of New Norfolk will be as evident as they are to myself.

8. A proposition has been made by that Class of the Community, who feel most sensibly the disadvantage and injury of crossing the Derwent, to erect a Bridge at their own expense across the River at New Norfolk, provided a moderate Toll is allowed by an Act of Council to remunerate them for the expense and interest of their Money.

This proposition I shall consider in Council, and, if it is deemed advisable to entertain it, and a Market is established to aid the undertaking, natural advantages will gradually work their way, and New Norfolk may at no remote period become a populous Township without any serious effort of the Government, and thus draw off a proportion of the Convict Population from which it is so desirable to relieve the Sea Port. I have, &c.

GEO. ARTHUR.

[Enclosure No. 1.]

MESSRS. R. O'CONNOR AND P. MURDOCH TO
LIEUT.-GOVERNOR ARTHUR.

Sir,

New Norfolk, 5th July, 1826.

We proceeded according to your Excellency's instructions to New Norfolk for the purpose of making such reserves and valuation as our Commission authorized us to do, and to survey and report upon the natural and political advantages and disadvantages of Elizabeth Town as the proposed Site for the Chief Town of this Colony.

2. We find that a small church has been built, a burial ground laid out, roads planned, a Glebe measured and the site of a New Town we conceive in the best situation that the confined limits of the place will afford.

3. 1st with regard to the situation and convenience of communication with the settled District generally.

New Norfolk is so situated with regard to Launceston, and the most thickly settled Districts in the interior that we cannot perceive the advantage it would confer on any part of the Country except the Clyde and its immediate neighbourhood.

4. 2d as to its local advantages or disadvantages.

New Norfolk from its situation we do not consider to be at all the proper place for a Chief Town; one great disadvantage is its being too high on the River and completely out of the reach of Shipping, except by a tedious and expensive navigation; another great disadvantage is that it is by no means central; it possesses no good land in its vicinity, being as it were pent up among unprofitable Hills; on the other hand, it contains the
necessary essentials for building, and may from its position be a pretty, thriving Town, tho' it has no properties to qualify it to become the Capital of the Island.

5. 3rd as to the supply of Water, building materials, etc., etc., etc., for the foundation of a large Town.

A Rivulet called the Thames or Lachlan runs at the rear of the Town; in the Winter it is a considerable Stream, affording abundance of Water for every purpose; in the Summer, it gives but a sufficient quantity to turn Mr. Terry's Mill, so as to enable him to grind three bushels and a half an hour; had his Mill been above the Town, it would have been of no consequence whatever, as the Water could have been conveyed into the Street afterwards; but unfortunately the Mill is so placed, being at the very Mouth of the Stream, that without destroying Terry's premises altogether, (which of course cannot be done without purchase) a supply of Water cannot be obtained during the Summer Months; at that Season the Tide, in consequence of the Derwent being low, comes up beyond the Town, and renders it unfit for use.

6. We viewed the Bricks made by the Government Men; they are of a fair quality. No stone fit for building purposes has as yet been discovered at this side of the River, but there is abundance of free Stone at a short distance from the opposite Bank. Timber can be had not far from the Town; but, where the Sawyers and Shingle Splitters are at present, it is not of a good quality by any means.

7. 4th as to the practicability of throwing a Bridge across the Derwent.

There is such a depth of Water at all times (Six or seven fathoms) and particularly so in case of high floods, in that part of the River along the Town, the Banks also are so low, that the expense of building a Bridge on piles would be enormous; the only situation proper in our idea, for so truly useful and desirable an object, would be immediately above the first falls; there either a Stone or Wooden Bridge could with ease be erected; an excellent free stone Quarry lies within half a Mile or a Mile at most, and abundance of Stone Lime, also a ledge of Rocks runs completely across the River, forming as it were a natural abutment; and, as the Water is there very shallow, the expense would be trifling, in comparison to the immense advantages that would result from so valuable an acquisition.

8. Having given the subject all the attention in our power, and having gained all the information we possibly could on so momentous a change as is contemplated, we beg to lay our opinions before Your Excellency; we can have no views separate from the best interest of the Colony; Your Excellency has
1826.
12 July.

Comparison of advantages of Hobart town and New Norfolk.

Communication with interior from New Norfolk.

10. When the first fleet arrived here in 1803, it was the intention of the Persons, deputed to establish the settlement of the Colony, to commence a Town at Kangaroo Point; that notion was soon abandoned on finding that the Water was not at all adequate to the supply and that it was of a bad quality; the place where Hobart Town now stands was then fixed on as the

entrusted us with an important charge, and, to the utmost of our ability, we shall perform our duty; we now take the liberty of drawing a comparison between the advantages of Hobart Town and New Norfolk, confident that your Excellency's mind is wholly unprejudiced, and anxious only to confer every possible benefit on this infant Colony.

9. New Norfolk is not sufficiently removed from Hobart Town to be at all central, or to afford a more rapid communication with the interior; the distance from New Norfolk to Launceston is as great as from Hobart Town; should we seek a passage to the interior, we find difficulties arise; a road, at least one hundred miles long, would run thro' a Country mountainous and unprofitable in the extreme, and which can never be inhabited or cultivated to any extent; that road completed, it would not advance New Norfolk towards the interior, nearer than it is at present to Hobart Town; a road would still be required thro' a barren district under the Dromedary Mountain, and by the black Brush to Bagdad, the Cross Marsh, the Tea Tree Brush, Brighton, the Coal River, and all that fertile quarter would be removed as far as ever from the Capital; we therefore do not see how any one part of the Island would be benefitted except the Clyde and that neighbourhood; a Bridge thrown across the Derwent would satisfy all the Settlers in that quarter completely; the price of the Punt, and the delay attending it, is a total bar to industry. A Bridge would enable them to bring their work, wheat, etc., to the Shipping Port at a trifling expense, where it would always obtain the highest price, and where it could be exchanged for any merchandize, the Settler may want, at the cheapest rate, instead of buying it from the Merchant at New Norfolk, who would charge a great additional price in consequence of the expense of the navigation to New Norfolk at particular seasons of the year; a continual fresh produced by the great floods, with a strong wind blowing for at least four months of the year from the North and North West, renders the passage of the River slow and uncertain for Boats of even three or Four Tons Burden, laden with commodities; to add to that, flats of mud and sand run in all directions of the Derwent from above Cove Point, so that in no instance can a Vessel of more than twelve or fifteen tons work up to New Norfolk.

Difficulties of water carriage to New Norfolk.

Selection of site for first settlement.
ARTHUR TO BATHURST.

Scite for a Capital, from its having one of the finest Harbours in the world and possessing a Rivulet capable of affording an abundant supply for every purpose. Mr. Bigge came out here as Commissioner, and he was the first to recommend* a removal; Brighton was then pitched upon; the soundings of the River were taken; every means were tried to carry the plan into effect, but it was found impracticable. New Norfolk was then for the first time thought of. Hobart Town, however, had been chosen; that it is not the most eligible situation for a Capital, no one can deny, principally, and indeed entirely, owing to its being separated from the remainder of the Island by a large River the crossing of which is both tedious and expensive in the extreme; but all the available capital of the Colony has been expended by the Merchants and other individuals in trade and buildings of one description or other; the People are satisfied with it; the whole of their property being sunk, there they must remain; the roads and Streets are in an unfinished and deplorable state in many places; should the Prisoners be removed to commence operations in another quarter, those improvements, already begun and not completed, would reduce Hobart Town to a miserable situation, and render it totally unfit to live in; the expense of erecting a few public buildings such as a good Stone jail, a Penitentiary sufficiently large to contain and lodge all the Prisoners, so as to prevent them from roaming about the Town, would be trifling in comparison to commencing every thing de novo; putting out of view altogether the enormous expense of removing the Capital, we do not consider that the Colony has arrived to that state of maturity as to require such an expenditure; the building of a new Town (admitting that it was the best possible situation) is not of such importance in our opinion as the making of good Roads and the construction of Bridges, so as to enable the Settler to bring his produce to Market at the least possible expense and trouble; nothing that the Government could do would be so acceptable, nor is there any he would feel so grateful for.

Another cause for removing the Capital is said to be the want of sufficient Water; we have no hesitation in saying that there are various modes of obtaining abundance; two or three Reservoirs could be made so as to contain all the Water that runs Waste into the Harbour. Wells could be sunk, and water could be found to supply a population, one hundred times the amount that it is at present.

Should Your Excellency wish that we should give examples to bear us out in our opinion that Hobart Town should remain the Seat of Government, we shall instance the City of London,

* Note 49.
Examples of cities in other countries.

Examples of cities in other countries. Built no higher on the River than where the Navigation for large Vessels ceases. Liverpool extends no farther than her Docks have been found to answer her Shipping. Leith, and Edinburgh, of Scotland, Dublin, the Capital of Ireland, New York, Philadelphia, Washington, New Orleans, all the principal Cities of South America, Bombay, Bengal, Calcutta, Canton, all are founded on the Sea Coast or on navigable Rivers; and it is not until a population increases rapidly, and that Manufactures and the Arts flourish, that they rise to wealth and importance.

13. Hobart Town has been commenced but Three and Twenty years ago; the buildings and improvements in that short space of time speak forcibly as to its remaining the Chief Town of the Island. A Government may assist, may foster, but can never force a Colony into Trade and opulence, if the seeds are not within itself; neither the Wealth nor the present Population demand an increase of Towns; to attempt too much, therefore, particularly at this awful crisis, when the Parent Country is plunged into difficulties which no nation could ever extricate themselves from but the English, would, in our humble opinion, have a most injurious tendency.

14. We have ventured to deliver our sentiments to Your Excellency; we have given our candid and unbiased opinion on a subject deeply involving the prosperity of the Colony, and we repeat that the proposed change will not benefit the Island, on the contrary, that it will retard its progress; and, for the reasons which we have submitted to Your Excellency, we have come to the conclusion that New Norfolk should not be the seat of Government.

We have, &c.,

Roderic O'Connor.
Peter Murdoch.

[Enclosure No. 2.]

ACTING SURVEYOR-GENL. DUMARESQ TO LIEUT.-GOVERNOR ARTHUR.

Sir,

Survey Office, 10th July, 1826.

Differing in opinion with my Colleagues respecting some important points of their report on New Norfolk, I beg to have the honor of acknowledging separately Your Excellency's Letter of the 29th June, having reference to our Instructions and desiring us to Consider the Capabilities of the Township of New Norfolk as the future Chief Town of this Colony, and to report on the Principal Points.

1stly. Regarding its situation and convenience of Communication with the settled Districts generally.

I considered this to be its principal advantage, as compared with Hobart Town. All communication with the settled Districts on this side of the River Derwent and the greater part of
the Island (which is N.W. of Hobart Town and New Norfolk at present unexplored) must be through New Norfolk, which being 21$\frac{1}{2}$ Miles distant the Communication is by so much facilitated, and, about $\frac{1}{2}$ of a Mile beyond the Township, a Bridge may be thrown across the Derwent with very little difficulty or expense; by this means, the communication with the interior and across the Island generally would be greatly facilitated as Compared with Hobart Town, from which there cannot be Communication except by Ferries over a broad Estuary.

2ndly. As to its local advantages and disadvantages.

Its principal local advantage is being the place in the whole Island nearest to the Interior having Water Carriage; and hence it will naturally become the Depot for the greater part of the produce of this side and of the Centre of the Island which is raised for Exportation. For some years, however, the navigation would certainly be tedious and expensive, as the Shoals and confined width of the River, the last half of the way to New Norfolk, would not admit of any good navigation except by Steam Boats constructed for the purpose.

Compared with Hobart Town, this is its only local disadvantage; in every other respect, it is naturally far superior in its adoption for the Seat of Government and Capital of the Island.

The Districts immediately beyond, and to which these lead, on the Rivers Derwent, Clyde, Ouse and Shannon, comprize some of the finest tracts of Land which the Colony can boast of.

3rdly. As to the supply of Water, Building Materials, and requisite essentials for the foundation of a large Town.

The Township of New Norfolk is supplied with Water by the Thames, which is a superior Stream to that which supplies Hobart Town. The descent in the Bed of the Thames is so rapid that, within one Mile from the Township, Water may be conducted by an open Cut over any part of it tho' situated on the Rise called Richmond Hill. The Water of the Derwent is fresh during the greater part of the year; but, of this, the Town will be quite independant. Good Bricks are made in the Township, and there is an abundance of Stone in and near it of various qualities, including some of the best.

There are extensive Forests in its vicinity, The Timber of which is of a similar Description to that found in the other forests of the Island.

4thly. As to the practicability of throwing a Bridge across the Derwent and the situation to be selected for it.

On this subject, I beg to refer to my report of the 3rd of March last, a Copy of which I have the honor to transmit herewith.
I have long considered the policy and expediency of removing the seat of Government to New Norfolk, and am decidedly of opinion that it naturally possesses advantages, adapting it for the site of the Chief Town, very superior to those of Hobart or any other place in the Colony. Briefly for these reasons; it is the most central of any place having water carriage, and communication with the interior and across the island is not (as at Hobart Town) impeded by a broad river or an arm of the sea. But nevertheless the following objections, stated by my colleagues to a removal, are unanswerable and insuperable.

"All their available capital has been expended by the merchants and other individuals in trade and building at Hobart Town. The people are satisfied with it. The whole of their property being sunk there, they must remain. The roads and streets are in an unfinished and wretched state, and, should the prisoners be removed to commence operations in another quarter, the improvements, which have been commenced, could not be completed." The expense of removing the capital would be greater than the infant state of the colony can bear, and the consequence would be that not one good town would exist in the colony during twice so many years, as will be required for the foundation of one, if no removal takes place; at present there is nothing of so much importance to the public, as making good roads and bridges, the improvements and construction of which would be retarded by building a new town.

I need only add that I agree with my colleagues in the opinions expressed in the latter part of their report (Paragraph 10 to 13). And, after a deliberate consideration of this very important subject, I have arrived at the following conclusion: That New Norfolk is certainly, from its natural advantages, the best calculated for the seat of government and capital of the island: But to remove it now requires a greater exertion than so young a colony can bear, would not accelerate but very much retard its progress, and be too great a sacrifice of the interest and comforts of the present generation.

I have, &c.,


[Sub-enclosure.]

REPORT ON THE SUBJECT OF A BRIDGE AT NEW NORFOLK.

Sir,

Survey Office, Hobart Town, 3rd March, 1826.

I have the honor to report for the information of His Excellency the lieutenant governor that, in company with
Mr. Degraves of this place, I examined the River at New Norfolk from the Ferry to above the first Falls (2 Miles and 1 Quarter). The first Falls are formed by three ledges of Rocks, over which there is only a few inches of Water at Low tide, and not more than from 3 to 5 Feet at High Water, Spring tides. These Rocks would form a fine Foundation for Piers.

Nearly Half a mile lower down the River, there is another ledge of Rocks but over which the Water is one or Two feet deeper.

Opposite Mr. Abel’s Inn, nearly one mile from the Falls, there is a large Bank in the middle of the River, quite dry at Low Water; but it is formed of Gravel and loose Stones, which would not afford a ready laid foundation.

Opposite the Township, the depth of Water is no where less than 12 Feet, and, either here or at Mr. Abel’s, it would be necessary to build a Foundation which would very considerably and seriously increase the expense of the Bridge, compared with what it will be, where the Rocks form a Foundation ready laid.

Thos. Gay, an old Settler (who has resided in the District of New Norfolk ever since Norfolk Island was abandoned), pointed out on the Door of His House the exact height, to which the greatest Flood rose, which has ever been known: on taking levels, we found this to be 12 feet above high Watermark or seventeen feet above the Water at the time we took the levels; levels were also taken at other parts of the River from the informations of other settlers, and They corroborated Thos. Gay’s account.

All circumstances considered, I think the Rocks, which I have first described at the First Falls, for the most eligible Spot for throwing a Bridge across the River and that it should either be a wooden One of Two Arches, Supported in the middle by a Strong Stone pier, on similar principles to those represented by the accompanying Plans, or a Bridge of rather a less durable Nature might be constructed (in much less time and with less labour) upon Piles fastened into Beams (Sleepers) fixed to the Rocks.

As it is desirable that the Bridge should be finished with all expedition, and time and labour are so valuable in a young Colony, this last plan is I think the most adviseable. The advantages of the first mentioned Bridge on arches are being more durable and less liable to injury from the Shocks of Trees floating down the River during the High Floods; the advantage of the 2nd Kind of Bridge is the great saving of time and labour, which would much more than counter balance the disadvantage of being less durable; and, though it is more liable to injury from the Trees brought down by Floods, yet means may be
devised to protect it in a great measure without much expense; but, even if some part should be injured, it would not affect the whole and might speedily be repaired. Moreover, such Floods as would do much mischief are not of Frequent occurrence.

I have, &c.,


14 July.

Necessity for police office at Hobart town.

Government House, Van Diemen's Land,

My Lord, 14th July, 1826.

I have the honor to report to Your Lordship that, although in no part of the World is there perhaps greater necessity for a good Police Office than in Hobart Town, none has yet been regularly established.

A wretched Room only, in the very contracted private Residence of the Police Magistrate, has hitherto been set apart for general business to the great inconvenience of himself and all the other Magistrates, but for which a Charge has been annually admitted in the Police Accounts of thirty two Pounds Sterling.

The representation of the Magistrate residing in Hobart Town, which I have the honor to enclose, will set before Your Lordship the extreme inconvenience and positive prejudice to all justice, resulting from the present Police Establishment and the urgent necessity of some commodious Building for the regular transaction of its multifarious business.

Under these circumstances, I hope Your Lordship will approve of my having authorized the purchase of a suitable and more convenient Building, which has been offered to the Government at the very moderate Sum of One Thousand, Six Hundred Pounds, and which has been charged upon the Colonial Fund.

The Building has been surveyed and reported to be worth Two Thousand Pounds Sterling.

I have, &c.,

GEO. ARTHUR.

[Enclosure No. 1.]

The Bench of Magistrates to Lieut.-Governor Arthur.

Sir,

Hobart Town, 26th Jany., 1826.

We beg leave to represent to Your Excellency the extreme unfitness of the Building appropriated as the Police Office, and the great personal inconvenience suffered by us in the performance of our Weekly duties therein. It is known to you that the public business is conducted in one Room of a small house, which has, for many Years, been the residence of the Superintendent of Police.
This room is confined, low, and in a ruinous condition; the entrance to it is through a back yard of the premises; it is crowded with Clerks and papers and subject to consequent confusion and noise from the constant applications for passes, permits, etc.; and at this Season its proximity to the Kitchen of the House, and enclosure by Trees, render it not only intolerably hot, but exceedingly unhealthy.

The prisoners, who are held in Custody for examination, witnesses, Constables, etc., are all huddled together in the back yard before mentioned, which is open to the Street, and thus affords every facility for escape, individual communication and irregularity. These evils appear to be irremediable in that House; We therefore entreat Your Excellency to direct that some fitter place be chosen, where the business of the Police can be conducted with more facility, Secrecy and effect.

We have, &c.,

REVD. R. KNOPWOOD.  JOCELYN THOMAS.
J. Scott. W. H. HAMILTON.

[Enclosure No. 2.]

GOVERNMENT ORDER.

Colonial Secretary's Office, 20th June, 1826.

A BOARD, consisting of the Colonial Architect and the Barrack Master, will assemble to inspect the Building in Elizabeth Street, Known as the "Waterloo Store," Tendered to Government by Mr. Butler.

The Board will report the strength of the Building, its capacity and fitness for the Office and residence of the Police Magistrate, for which purpose it will be appropriated if purchased, and also their opinion as to it's value in sterling money.

By Command of His Excellency,

W. H. HAMILTON,
(Acting) Colonial Secretary.

[Enclosure No. 3.]

REPORT of a Board of Survey, consisting of the Colonial Architect and Barrack Master, held by Order of His Excellency Lieut. Governor George Arthur, Upon the state of a House in Elizabeth Street, Known as the Waterloo Store, tendered to Government by Mr. Butler.

Hobart Town, 4th July, 1826.

The Board, having assembled according to order, proceeded in the survey of the above mentioned House and found it as follows, viz.:—

A Brick house nearly new, forming the corner of Elizabeth Street and Bathurst Street, enclosed on two sides by a high and substantial brick wall, forming a commodious yard in the rear.
The House on the basement Story consists of a very extensive Cellar; The ground floor consists of a large Store, two small Parlours and a Kitchen. The upper Story contains an excellent Drawing-room, three good bed rooms and another large Warehouse with a narrow passage between; in the roof over all is a very good Loft.

The whole is in a very excellent and substantial state, and, from its centrical Situation as well as construction, is a fit residence for a Police Magistrate and Office; some alterations will be essential and may amount to about Three hundred pounds.

The Value of this house and Premises we consider to be Two thousand pounds Sterling.

DAVID LAMBE, Colonial Architect.
MALCM. L. SMITH, Barrack Master.

[Enclosure No. 4.]
MR. G. BUTLER TO CAPTAIN MONTAGU.
Sir, Hobart Town, 29th March, 1826.

Tender of Understanding that the Government are in want of Premises suitable for a Police Office, I beg leave to offer for sale the Premises in Elizabeth Street, corner of Bathurst Street, Known as “the Waterloo Stores,” at the Sum of Two Thousand Pounds in Dollars at 4s. 4d. ea. or a Bill on England for £1,000 and Two Thousand Acres of Land, to be taken in two separate Grants of 1,000 each. I also beg to enclose a description of the Premises,

And have, &c.,
G. BUTLER.

[Enclosure No. 5.]
DESCRIPTION OF THE WATERLOO STORES.

A commodious, Brick-built, two Story House, situate in Elizabeth Street, corner of Bathurst Street, Known as “Waterloo Stores” consisting of,

On the Ground Floor, a large roomy Store or Shop, with front and back entrance, and a spacious lofty light and dry Cellar underneath the same, with folding doors and steps leading into the Yard at the back of the premises. One large parlour. One small ditto and Kitchen, with private entrance leading into Bathurst Street. On the first Floor, a large lofty sitting Room, and three Bed-rooms; a large Store on the same floor, convertible into two or three good Rooms; an extensive loft over the above. Yard Walled all round 9 or 10 feet high, Chaise house, four Stall Stable and Fowl-house, and other Out-buildings.
HAY TO ARTHUR.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

(Despatch acknowledged by lieut.-governor Arthur, 10th February, 1827.)

Sir, Downing Street, 16 July, 1826.

I am desired by Earl Bathurst to forward to you the Transmission of correspondence respecting Mr. Spode, late Clerk of the Supreme Court in Van Diemen’s Land, who states that he has been under the necessity of resigning that situation owing to the smallness of the Salary attached to it; and I am to request that, whenever it may be in your power, you will appoint Mr. Spode to some civil situation, provided his conduct should be found to merit such an indulgence.

I am, &c.,

E. W. HAY.

[Enclosure No. 1.]

MR. S. SPODE TO THE HON. E. J. LITTLETON.

Hobart Town, Van Diemen’s Land,

Sir,

15th February, 1826.

I trust that the circumstances I shall relate will operate as a sufficient Excuse for the liberty I take in thus addressing you, permit me, as a Branch of a respectable family in your County, of which you have always been a friend, to solicit the favor that you will kindly take into your consideration and render your assistance to my case.

In the year 1821, I left Staffordshire for these Colonies. In the month of October, 1824, I was appointed, by His Honor Colonel George Arthur, Lieutenant Governor of Van Diemen’s Land, to the Situation of Clerk of the Supreme Court. I have filled that appointment up to the 31st December last, as will appear by the authenticated Copies of Certificates now in my possession, which I have the Honor to transmit for your perusal and satisfaction. I trust these Testimonials will satisfactorily show to you, Sir, that I have performed my Duty while an officer of the Supreme Court with credit to myself and to the entire satisfaction of my Superiors and Equals. The duties of the Clerk of the Supreme Court, while I held the office, were at all times difficult and frequently very laborious, requiring a very close application to business with a Competent Knowledge of the Law. The Clerkship of the Supreme Court at Sydney is performed by a Gentleman of respectability at a salary of £500 per annum; but I had not held the office more than Six Months, before His Honor The Chief Justice Pedder gave his opinion that my Salary was totally inadequate to my share of the Duties of the Court, and very much too small to enable me to support a family with respectability. His Honor the Chief Justice, nine Months back, kindly and considerately recommended a
competent Increase of Salary to me; but, although I have been
since that time constantly making applications here, I have not
been able to obtain any satisfactory decision. In consequence of
the actual loss I was sustaining by holding the Situation, the Salary
being so inadequate to my real wants, I was under the painful
necessity of resigning an Appointment I really liked and filled
with credit and usefulness, (it being in the particular profession
for which I have been regularly educated in the office of Messrs.
T. and R. Fenton of Newcastle under Tyne).

I filled the situation 15 months; during that period, the whole
Emoluments of my office, and all I have received, amount to
£193. I have a family of a Wife and Three Children, and my
actual Expenditure, though on the most prudent and moderate
scale, has been nearly five hundred pounds. Consequently I
consider that, in point of fact, I have lost three hundred pounds
by holding the office.

However, though I have hereby met with such serious dis­
appointment and loss, I indulge the Hope that this Statement,
made known in the proper quarter through your Medium, and
favored with your kind Interest, may procure me the restoration
of the Clerkship of the Supreme Court or the appointment to
the situation of Prothonotary (now vacant) at such a Salary as
will at all events enable me to support my family with respecta­
bility.

I shall feel for ever the warmest gratitude, if you will in this
instance give me your kind Consideration and assistance. My
Father was, till his end, most warmly interested in and attached
to your Family and Interests; but he was unfortunate, and died
leaving me to make my way in the world without property. I
have always borne a fair and honorable character, and, if you,
Sir, think me worthy your notice, I have no doubt I shall receive
from England (for I have not Interest sufficient here) the Ap­
pointment again to the Clerkship of the Supreme Court or to
the office of Prothonotary, at such a Salary as will afford me a
Competent Support.

With the most sincere respect, I beg leave to subscribe myself,
Sir, &c.,

SAML. SPODE.

[Sub-enclosure.]

CERTIFICATES OF SERVICE.

I HEREBY certify that Mr. Samuel Spode acted as Clerk of the Supreme
Court from the 25th of October, 1824, until the 31st of December,
1825, and that, during that time, I found him very attentive to the
duties of his office, which he performed to my entire satisfaction.

J. L. PEDDER,
Chief Justice of The Supreme Court of Van Diemen's Land.
Hobart Town, 15 February, 1826.
HAY TO ARTHUR.

I have known the within named Samuel Spode for the space of Eighteen Months last past, and, for the last twelve months as Clerk of the Supreme Court of Van Diemen's Land. In every situation of life, whether as a Husband or Father or as a public officer of the Crown, I believe him to have acted in the former with Affection and Regard, and in the latter with Assiduity and Integrity.

J. T. Gellibrand,
30th Septr., 1825.
Attorney General of V. D. Land.

[Enclosure No. 2.]

MR. S. SPODE TO THE MARQUIS OF STAFFORD.

Hobart Town, Van Dieman's Land,

My Lord,

17th Feb., 1826.

Most respectfully do I entreat that Your Lordship will pardon the liberty I am taking in thus addressing you, and entertain the belief that nothing save the Difficulties and Losses, which I have met with since my Residence in this Colony, could have induced me to be so bold as to trouble your Lordship on the following subject.

I had the high honor to bring to this country a letter of Recommendation from Your Lordship, which would have proved of the utmost benefit to me at that time, had not all the Situations and Offices under the Government been then filled up. In the month of October, 1824, I was appointed by His Honor Colonel George Arthur, the new Lieutenant Governor of Van Dieman's Land, to the Situation of Clerk of the Supreme Court. I faithfully filled that Office up to the 31st of December last, as will appear by the authenticated Copies of Certificates now in my Possession, and which I most respectfully beg leave to transmit for Your Lordship's perusal. I flatter myself that these Testimonials will very satisfactorily shew to Your Lordship that I have performed my duty, while an Officer of the Supreme Court, with Credit to myself and to the entire satisfaction of my Superiors and Equals. The Duties of the Clerk of the Supreme Court, while I held the Office, were at all times difficult and frequently very laborious, requiring at all times a very close application to business with a competent knowledge of the Law. The Clerkship of the Court at Sydney has been for some time performed by a respectable Gentleman at a Salary of £500 sterling per annum. When I obtained the Situation, I was appointed with a Salary of only £150 sterling per annum; but I had not held the office more than six months, when His Honor the Chief Justice Pedder gave his opinion that my Emolument was totally inadequate to my portion of the Duties of the Court, and very much too small to enable me to support a family with any degree
of respectability. His Honor the Chief Justice has nine months back most kindly and considerately recommended a Competent Increase of Salary to me; but, after repeated applications to the Authorities here, I have not been able to obtain any satisfactory decision. In Consequence of the actual loss I was sustaining by holding the office, the Salary being so totally inadequate to my real wants, I was on the 31st December last under the painful necessity of resigning an Appointment, which I really liked and filled with Credit and respectability to myself and usefulness to the public (it being in the very profession for which I was regularly educated, in the Office of my relative Thomas Fenton, Esquire, of Newcastle under Tyne).

I filled this Situation fifteen months, and, during that period, the whole Emoluments I received altogether amount to £193. I have a family of a wife and three Children, and my Expenditure to keep them respectably, though on a moderate and prudent Scale, has been nearly five hundred pounds. Consequently I consider that I have been a Loser of three hundred pounds by having so far filled the situation.

May I most respectfully venture to solicit your Lordship's kind and powerful Patronage and Interest to enable me to regain this Office, which I have, from the circumstances before mentioned, been as it were obliged to relinquish; and I am persuaded that, if Your Lordship extends to me your favorable Consideration, I shall receive from England the Re-appointment to the Office of Clerk of the Supreme Court, or the Appointment to the Office of Prothonotary (now vacant) at such a just and liberal Salary as will afford me the means of a competent support for my family.

Should Your Lordship be pleased to afford me your kind consideration, in the event of both of these Appointments being filled up by others more fortunate than myself, I shall feel grateful for and be happy to embrace the opportunity of any other Employment your Lordship could procure me. My own family having been reduced by misfortune, I came here with a small property which has most unfortunately for me been greatly damned by unforeseen accidents and Losses. This Colony is a Country, which is, to those who have been in any wise genteelly and liberally educated, a sad place to struggle with misfortune in; and I should be most happy to leave this country and embrace any opportunity of Employment or any situation in England, that would afford me a support for my family. I am a young man of sober, regular and industrious habits, of tolerable ability in many respects, and would render myself particularly useful in
many other situations than those connected with my own profession. And I have it in my power to say that, in many Instances in which Confidence to an almost unlimited Extent has been reposed in me, I have always proved worthy of it and have universally given satisfaction to my Employers.

With every feeling of the most Profound Respect and a due sense of Gratitude for the favor Your Lordship heretofore afforded me, I beg leave to have the honor to subscribe myself, &c.,

SAML. SPODE.

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LIEUT.-GOVERNOR ARTHUR to UNDER SECRETARY HAY.


In the Report* of The Reverend Archdeacon Scott upon his visitation of this portion of the Archdeaconry, he has pointed out certain articles of furniture, which are much required for the Service of the Churches.

A requisition for these, I have the honor to enclose, and beg to request you will lay the same before Lord Bathurst, and solicit his Lordship's instructions that the Colonial Agent may be authorised to provide them with as little delay as possible.

I have, &c.,

GEO. ARTHUR.

[Enclosure.]

REQUISITION for the Service of the Churches of Van Diemen's Land, under the Report of Archdeacon Scott.

Four Coverings for the Communion Table, each 5 feet by 2 feet 10 Inches.

Four Cloths and Cushions for the Reading Deck, each 4 feet by 1 foot 6 Inches.

Four Cloths and Cushions for the Pulpit, each 3 feet by 2 feet 6 Inches.

The whole to be of Crimson Silk Velvet with suitable fringe and Tassels.

Four Plated Cups.

Eight Salvers, moderate dimensions.

Eight Linen Napkins.

Four Quarto Altar Services.

Four Scarlet Coverings for the Table.

Four Large sized Bibles

Four Ditto Prayer Books for the Desk.

Four Smaller Prayer Books for the Clerk.

* Note 90.
322 HISTORICAL RECORDS OF AUSTRALIA.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.
(Despatch No. 36; acknowledged by lieut.-governor Arthur, 3rd June, 1827.)

Sir, Downing Street, 30th July, 1826.

With reference to my Dispatch* to Sir Thomas Brisbane of the 1st of January, 1825, and to the communication conveying to you, through his Excellency, the result of the deliberations of His Majesty's Government on the granting and settlement of the waste Lands of the Crown in New South Wales and Van Diemen's Land, and accompanied by a Copy of the paper* delivered to persons in this country applying for information on that subject, I do myself the honor to transmit to you herewith a Memorandum, lately drawn up for distribution, in which you will find that some alterations have been made from the Terms of the former Paper; and I have to desire that you will follow as nearly as possible the Regulations laid down in this Memorandum, any departure from the Provisions of which must lead to great disappointment among those, who may be induced by it to proceed as Free Settlers to either Colony.

I have, &c.,

BATHURST.

[Enclosure.]

[A copy of this memorandum will be found on page 462, volume XII, series 1.]

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.
(Despatch acknowledged by lieut.-governor Arthur, 14th March, 1827.)

Sir, Downing Street, 1st Augt., 1826.

Lord Bathurst has desired me to transmit to you the accompanying letter, detailing the circumstances under which a Native Boy of Van Diemen's Land had been brought to this Country about Six years since, and to acquaint you that, although his Lordship did not feel at liberty to charge the Colonial Funds with the support of this Boy, yet, understanding by a subsequent letter from the Colonial Agent (also enclosed) that so favorable an opportunity has occurred for his return to the Colony, his Lordship is desirous of recommending him to your protection, and for any employment for which he may appear qualified.

I am, &c.,

R. W. HAY.

[Enclosure No. 1.]

MR. E. BARNARD TO UNDER SECRETARY HAY.

Sir, Parliament Street, 25th July, 1826.

I have the honour to enclose to you the Extract of a letter from Colonel Sorrell respecting a Native Boy, who was

* Note 91.
taken some years since in the woods in Van Dieman's Land, and
has since that time been brought to this Country, where he has
been hitherto supported by Charity, but for whose support and
Education Colonel Sorrell now solicits the assistance of Govern-
ment under the circumstances detailed in his letter; I beg leave
therefore to request that you will submit the same to Earl
Bathurst for his Lordship's consideration.

I have, &c,

ED. BARNARD.

[Enclosure No. 2.]

MR. E. BARNARD TO UNDER SECRETARY HAY.

Sir,

No. 2 Little Charles Street, 5th August, 1826.

I have received a letter from Mr. William Kermode re-
specting the Native Boy of Van Diemen's Land, who was the
subject of a former Communication to you. Mr. Kermode in-
forms me that the Boy is still at Liverpool, but that an opportu-
nity offers to take him back to Hobart Town in a Vessel, in which
Mr. Kermode himself is about to embark, and that he will under-
take the Charge during the Voyage, but is naturally anxious
for his future support.

Although after the decision of Earl Bathurst communicated

I have, &c,

EDWD. BARNARD.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 37; acknowledged by lieut.-governor Arthur,
27th January, 1827.)

Sir,

Downing Street, 2d August, 1826.

Although I can scarcely give credit to a statement, which
I have lately seen in one of the daily London Newspapers that
Savery, a Convict recently sent out from this Country for For-
gery, has been employed ever since his arrival in Van Diemen's
Land as a Clerk in the Colonial Secretary's Office, yet I do not
feel at liberty to disregard the report without referring to the Colony for information on the subject, to which the Paragraph alludes.

I can scarcely imagine that you have so completely mistaken the duties of the high situation, which you fill in the Colony, as to have authorized an appointment of this nature, which is calculated to produce the worst effects on the minds of the Convicts in the Colony, as well as to lessen the terror of transportation, which it has been recently the wish of His Majesty's Government to impress upon the Public in this Country.

A Convict may indeed, by a long course of good conduct and correct behaviour, so far redeem his crimes as to render his employment in a Public situation of a subordinate character not objectionable, where men of sufficient ability and unblemished character are not easily met with; but it would be a very mistaken leniency to shew equal indulgence to a person of this stamp on his first arrival in the Colony without any proof having been given of amendment, or security for future good behaviour; and there can be no possible excuse for the obvious indiscretion of trusting an Individual of this description in a confidential situation, such as that in which the person, who seems the subject of the Newspaper Paragraph in question, is stated to be employed. Should it, therefore, unfortunately be the case that the Report, which has reached England, is well founded, I have to express to you the strong disapprobation of His Majesty's Government of the line of conduct, which you have pursued in this instance, and to direct that Savery be immediately dismissed from his Employment and restored to the condition, to which all other Convicts are subjected, and from which, when the circumstances of his case are considered, he ought not to have been taken.

I have, &c.,
Bathurst.

Under Secretary Hay to Lieut.-Governor Arthur.
(Despatch acknowledged by lieut.-governor Arthur, 8th January, 1827.)
Sir,
Downing Street, 10th August, 1826.

Mr. Giblin, the Bearer of this letter, who has for so many years conducted a School at Kingston, intends for the support of a large family to proceed to Van Diemen's Land, with a view of establishing a School in that Island. I am directed by Earl Bathurst to request that you will afford to him every reasonable facility in the furtherance of his object, and that, if any opportunity should offer of employing Mr. Giblin, you will avail yourself of it in his favor.

I am, &c.,
R. W. Hay.
Government House, Van Diemen's Land,

My Lord,

14th August, 1826.

1. I have had the honor to receive Your Lordship's Dis-patch of the 22nd April last, in reply to the communication I submitted to Your Lordship respecting the case of Major De Gillern, and Mr. Peevor.

Your Lordship's commands in both these cases I shall proceed to carry into effect at once; should the few observations, which I have now the honor to offer, produce any alteration in Your Lordship's sentiments, it can be subsequently acted upon.

2. The urgent distress of both these Gentlemen, as well as the cause of it, I have fully represented in my former Dispatch, and the apparent inconsistency upon which Your Lordship has remarked, of the means resorted to for their releif by the aid of a Grant of Land will be, I hope, immediately removed by the explanation that, as the usual restriction of non-Alienation of the Land for five Years was not imposed, they were enabled to sell any part of it, and by the immediate acquisition of Funds arising therefrom (although at the partial sacrifice of their Half Pay and retired allowance) it was in their power to proceed with other undertakings, or, at least, to save themselves from pending incarceration at the moment.

Thus Your Lordship will observe that I proceeded on this occasion of extraordinary distress entirely upon the principle, which Your Lordship has more recently directed for the releif of Mr. Meredith:* It was scarcely to be apprehended that the instance in question would lead to many similar applications, as there are but few in the Colony, who have it in their power to offer such a sacrifice of Half Pay, and none but Men reduced to the last emergency would be disposed to exercise it; but, to guard against the possibility of any injurious precedent, it was notified to the Parties that the arrangement required the ratification of Your Lordship's approval.

3. The only question, which, in behalf of Major De Gillern and Mr. Peevor, I would further submit to Your Lordship, is, as to the amount of Quit Rent, from which I have never exempted any Individual under any circumstances.

4. By Your Lordship's Dispatch, No. 21, addressed to Sir Thomas Brisbane, I was instructed to charge Quit Rent at the rate of 1½ per Cent. according to the estimated value of the Land, and it was intimated that Land was to be so charged for the space of five years.

* Note 12.
In the Month of August last, therefore, when the arrangement with Major De Gillern and Mr. Peevor was entered into, 1½ per Cent. was the regulated Quit Rent imposed, and no Crown Land had ever been estimated higher than 10s. per acre, which was the condition, on which this negociation was arranged.

The sacrifice of the Half Pay was an additional imposition to be altogether depending upon Your Lordship’s pleasure; but, as Your Lordship’s Dispatch,* No. 22, directing the higher rate of Quit Rent of 5 pr. Cent., did not, indeed could not, reach me for many months subsequently, I submit whether the Land should be charged at that valuation.

5. The distinction, which Your Lordship has observed I made in the cases of Major De Gillern and Mr. Peevor, rested simply upon this; the one was wholly ruined by a very sudden and most unexpected measure of the Local Government; the other had more time to prepare for the event, and was not so directly affected by it, and, with superior management, might, as it appeared to me, in some degree have saved himself from the extremity of distress to which he was reduced.

I have, &c.,
Geo. Arthur.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.
(Despatch marked "Private.")

My dear Sir,
Government House, Van Diemen’s Land,
15th Augt., 1826.

I have had the pleasure to receive your private letter of the 21st of April upon the subject of my communication to Mr. Horton respecting the conduct of Mr. Gellibrand.

About this period, I conclude my Official Budget* with every particular respecting that very distressing transaction, together with Mr. Gellibrand’s set off in detail, will reach the Colonial Office, and my Lord Bathurst, having the whole case before him, will be able to decide finally upon, its merits. It caused me unspeakable trouble and indescribable perplexity, for, as all the legal Characters were more or less Parties concerned, I could scarcely be advised by any, and was obliged to be guided by my own very imperfect information in such matters.

As far as I am individually concerned, I have never in any one instance up to the present hour had the smallest personal misunderstanding with Mr. Gellibrand, so that there would have been no private feeling to impede such an adjustment as my Lord Bathurst recommends. All that transpired was purely on

* Note 92.
official grounds, and as such I invariably treated it, seeing clearly, from Mr. Gellibrand's acuteness and tact, that, although his disgraceful measures and conduct were as evident as the Sun, he would continue to spread such a cloud around his transactions, as would obscure the truth and render proof extremely difficult, if he did not succeed in baffling all investigation.

My Lord Bathurst will I hope be persuaded, when he has perused the Documents which have been transmitted, that it was quite impossible to take any other course than that which was ultimately pursued in suspending Mr. Gellibrand, though, I believe, if I had earlier taken higher ground, I should have cut short a great deal of irritable feeling, and saved myself as well as others the labour of a most vexatious and tedious investigation.

In the transaction of Public Business, gentlemanly habits and acquirements, although most desirable, may be dispensed with; but so much depends on sincerity and good faith, that no attainments nor abilities can possibly supply the absence of these qualifications, of which, I may affirm, Mr. Gellibrand is wholly destitute.

I do not wish to take advantage of a private communication to say more to the prejudice of Mr. Gellibrand than has been introduced in my Official Dispatch; but I may sincerely assure you that, with the extraordinary powers vested in the Attorney General by the N. S. Wales Bill, the consequences of Mr. Gellibrand's intriguing and mercenary conduct must have been productive of the most serious and distressing results; but, from the firm and up-right conduct of the Chief Justice, my measures in the Administration of the Government, with whatever errors they may have been accompanied, and without intentionally reflecting upon any Individual for the past, have been directed in a plain straight-forward way to the suppression of abuses; in this most unpleasant, most unpopular, but most necessary work, the Attorney General ought to have assisted me, and his talents well qualified him to render important aid, had they been properly directed; but I had repeated proof that it was impossible to depend upon him in any one transaction, if his personal interest lay the other way.

I avail myself of this opportunity of saying it is probable a representation may be made to Lord Bathurst in behalf of Mr. Samuel Hood, an Assistant Surgeon on the Half Pay of the 6th Foot, who was a particular friend of my Predecessors, upon a circumstance which transpired a few Months since connected with some repeated insults which this Gentleman thought proper most gratuitously to offer me.
As it is not very usual I find for the Settlers to represent things exactly as they are, will you allow me briefly to say that, as Mr. Hood's conduct was rather calculated to excite my personal feelings, I thought it better to avoid the possibility of being under their dominion, and, therefore, referred the case for the opinion of the Executive Council, and I acted in entire accordance with their advice, one of them being the personal friend of Mr. Hood. I may perhaps be anticipating a case which may never come before you, but I have thought it better to offer a few words in explanation. You can form no idea of the manner in which I have been beset, and it has only been within the last three or four Months that the Storm subsided, and I rejoice to say without my having yielded one tittle to the faction that assailed me.

I have, &c.,
GEO. ARTHUR.
the principle on which it is intended that the expenses of the Civil Establishment of the two Colonies shall in future be defrayed.

It is, as it appears to me, of the greatest importance that the Commissariat Accounts should at once be examined on the spot by an Officer of the Account Branch, for which Governor Darling's Order provides, and transmitted to England direct for final Audit, as early as possible after the termination of each Quarter.

3. Assistant Commissary General Moodie's conduct has been, during my Command, uniformly zealous and correct, and, whilst I concur fully in the strong testimonial given him by Lieutt. Governor Sorell, I may venture to add that it is scarcely possible any Appointment can involve greater responsibility in a Country where every degree of ingenuity is exhausted to devise means for plunder and robbery.

It is therefore but due to Assistant Commissary General Moodie that I should recommend his application to Your Lordship's favourable consideration.

4. Deputy Assistant Commissary General Roberts, who is unhappily under mental incapacity, is ordered to return to England, and I beg to submit that the Services of the two Officers of that Rank applied for by Mr. Moodie are of urgent importance to the Department.

I have, &c.,

GEO. ARTHUR.

[Enclosure No. 1.]

GOVERNOR DARLING TO LIEUT.-GOVERNOR ARTHUR.

Government House, Paramatta,

Sir,

In reference to the Communication, which I had the honor of making to you personally at Van Diemen's Land on the subject of the separation of the Commissariat, employed in that Island, from the Commissariat stationed at the Head Quarters of this Command (in order to prevent the inconvenience which would otherwise be experienced, Van Diemen's Land being no longer a Dependency of this Government), I take this opportunity of forwarding for your Excellency's information the enclosed Copy of a General Order, which I have issued on the subject, and which has been transmitted to the Lords Commissioners of His Majesty's Treasury for their Approval.

I have, &c.,

RA. DARLING.
ASSIST. COM.-GENL. MOODIE TO LIEUT.-GOVERNOR ARTHUR.

Commissariat Office, Hobart Town,

Sir, 18 Aug., 1826.

The uniform kindness and attention both of a Public and
Private nature, I have at all times received from Your Excel­lency during the period I have had the honor of serving under
Your Excellency’s Command, induces me to take the liberty of
addressing you at present in reference to the General Order of
1st July last, issued at Sydney, directing that this Island, being
no longer dependent on the Government of New South Wales,
the Commissariat Establishment here shall, from 25th September
next, be considered as separate and distinct from the Commiss­ariat of that Colony.

Your Excellency is aware that the duties of the Commissariat
here are of no Common Kind, and which, on account of the
Convict Establishments, are attended with more labour and
difficulty than in any other Colony whatever. From the flatter­ing manner in which Your Excellency has been pleased to ex­press yourself, I believe you are sensible of the anxious Solici­tude, with which I have endeavoured to discharge these duties;
and, as the Separation, alluded to, must considerably add to the
responsibility of my Situation, I humbly trust Your Excellency
will not deem it improper, if I request you on this occasion to
recommend me to His Majesty’s Government for Promotion.

I beg to enclose Copy of a letter addressed to me by Lieut.
Governor Sorell upon the Conclusion of his administration; And
to add that I remain,

Your Excellency’s, &c,
A. MOODIE, A.C.G.

LIEUT.-GOVERNOR SORELL TO ASSIST. COM.-GENL. MOODIE.

Government House, Hobart Town,

Sir, February, 1824.

Upon the conclusion of my Administration and Command
in this Colony, I have to perform to you the pleasing duty of
testifying to you my acknowledgements and my entire approba­tion of your Conduct of the Commissariat Department in this
Island from the period of your taking Charge of it in 1821.

I request you to accept besides the Assurance of the esteem
and regard with which,

I remain, &c.,
WM. SORELL.
**ARThUR To BATHURST.**

[Enclosure No. 3.]

**Assist. Com.-Genl. Moodie To Mr. W. H. Hamilton.**

Commissariat Office, Hobart Town,

Sir,

I do myself the honor to enclose a Return of the Commissariat Establishment in Van Diemen's Land, which I request you will be pleased to submit to His Excellency Lieut. Governor Arthur; and, in reference to a verbal Communication I have had with His Excellency, that you will be pleased to inform him that, in consequence of Dep. Asst. Com. Gen. Roberts having been ordered to proceed to England, and the increasing duties of this Department, I consider the Services of two additional Officers of that rank as indispensable in this Colony.

I have, &c.,

A. Moodie, A.C.G.

[Sub-enclosure.]

Return of the Commissariat Establishment in Van Diemen's Land, on the 22nd August, 1826.

<table>
<thead>
<tr>
<th>Rank or Designation</th>
<th>Name</th>
<th>Daily Pay</th>
<th>Where Employed</th>
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<tbody>
<tr>
<td>Asst. Com. General</td>
<td>Afleck Moodie</td>
<td>14s. 3d</td>
<td>Hobart Town</td>
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<td>Dep. Asst. Com. Gen.</td>
<td>William Fletcher</td>
<td>9s. 6d</td>
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<tr>
<td>Clerk</td>
<td>Robert Neill</td>
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<tr>
<td>Storekeeper</td>
<td>James Neill</td>
<td>5s.</td>
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<td>John L. Roberts</td>
<td>5s.</td>
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<tr>
<td>Storekeeper</td>
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</tr>
<tr>
<td>Asst. Clerk</td>
<td>James Lloyd</td>
<td>2s. 6d</td>
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<tr>
<td>Dep. Ass. Com. Gen.</td>
<td>George Hull</td>
<td>9s. 6d</td>
<td>Launceston</td>
</tr>
<tr>
<td>Storekeeper</td>
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<td></td>
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<tr>
<td>Ass. Storekeeper</td>
<td>Thos. H. White</td>
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<tr>
<td>Asst. Clerk</td>
<td>Wm. Tildesley</td>
<td>1s. 6d</td>
<td></td>
</tr>
<tr>
<td>do</td>
<td>Fras. Denman</td>
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<tr>
<td>Storekeeper</td>
<td>Wm. Kneale</td>
<td>5s.</td>
<td>George Town</td>
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<td>do</td>
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<td>5s.</td>
<td>Macquarie Harbour</td>
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<tr>
<td>do</td>
<td>T. J. Lempriere</td>
<td>5s.</td>
<td>Maria Island</td>
</tr>
<tr>
<td>do</td>
<td>J. C. Cumming</td>
<td>5s.</td>
<td>New Norfolk</td>
</tr>
<tr>
<td>do</td>
<td>Edwd. Nowell</td>
<td>5s.</td>
<td>Lemon Springs</td>
</tr>
<tr>
<td>Asst, Store Keeper</td>
<td>James Simpson</td>
<td>2s. 6d</td>
<td>Ross</td>
</tr>
<tr>
<td>do</td>
<td>Alexr. Laing</td>
<td>1s. 6d</td>
<td>Sorell</td>
</tr>
</tbody>
</table>

Commissariat Office, Hobart Town, 22nd Augt., 1826.

A. Moodie, A.C.G.
1826.
19 Aug.

Applications by convicts for passages for families.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.

Government House, Hobart Town,

Sir,

I have the honor to transmit Applications from several Convicts, resident in Van Diemen's Land, for their Families to be sent from England to this Colony, and, as it has been stated that these persons have the means to support their Families should they arrive, I beg to recommend them to the favourable consideration of Earl Bathurst.

I have, &c.

GEO. ARTHUR.

20 Aug.

Increased salary for J. L. Pedder.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.

(Despatch No. 35.)

Government House, Hobart Town,

My Lord, 20th August, 1826.

I had the honor to receive on the 13th Ultimo Your Lordship's Despatch No. 12, informing me that, on the representation of the Chief Justice of this Colony, Your Lordship had been pleased to recommend to His Majesty the augmentation of Mr. Pedder's Salary to Fifteen Hundred Pounds per annum; at which rate, it will be in future issued agreeably to Your Lordship's instructions.

I have, &c.,

GEO. ARTHUR.

21 Aug.

Letter of introduction for A. Beauvais.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

(Despatch acknowledged by lieut.-governor Arthur, 8th January, 1827.)

Sir, Downing Street, 21st Augst., 1826.

As it is probable Mr. Beauvais, who is on his way to New South Wales with a view to employment in that Colony, may be detained for a short time at Van Diemen's Land, I take the liberty of giving him this letter of Introduction to you and to solicit, in his favour, any little attention which it may be in your power to shew to him.

I am, &c.,

R. W. HAY.

22 Aug.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 38.)

Sir, Downing Street, 22d August, 1826.

I do myself the honor of transmitting to you the accompanying Copy of a letter from Mr. Samuel Cock, together with
the Copy of the answer which I have directed to be returned to him on the question proposed in his letter, which as it involves a subject of much importance to persons, who may be about to make Shipments of Spirits to Van Diemen's Land, I deem it necessary to furnish you with an explanation of the circumstances of the case, in order to prevent any inconvenience arising to the parties from the existence of a different scale of measurement in the Colony from that which is now in force in this Country.

The Act of the 5th Geo. 4, Cap. 74, a Copy of which is enclosed, appears to have been framed without reference to any of the Colonial Possessions, and, as none of them are consequently named therein, the provisions of that act do not in point of Law extend their operation to the Colonies.

The confusion, however, which will arise, if a different scale of weights and measures exists in England and in Van Diemen's Land, requires the adoption of some immediate remedy of the evil; and I am therefore to direct that you will issue Instructions to the Naval Officer to adopt the Parliamentary Scale of weights and measures in calculating the amount of duties, which may become payable to the Colony on any Articles to which the provisions of the Act may apply; and, as this method would be a partial and imperfect remedy, so long as the weights and measures used in the Colony in internal transactions differed from those used in England, I am to request that you will bring under the consideration of the Legislative Council the propriety of passing a Colonial Act to introduce throughout the Colony the Provisions of the Act of Parliament to which I have referred.

I have, &c,

BATHURST.

[Enclosures.]

[Copies of these two letters will be found on pages 504 and 505, volume XII, series I.]

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.

(Despatch No. 36.)

Government House, Van Diemen's Land,

My Lord, 25th August, 1826.

I had the honor to receive by the “Woodman” on the 29th of April, Your Lordship’s Despatch, No. 22, enclosing copy of a document delivered in England to all Persons emigrating to Van Diemen’s Land, and applying at Your Lordship’s Office for Grants of Land, of which due notice was given in the Hobart Town Gazette.
In my Despatch No. 11,* arising out of a communication which I had received from Sir Thomas Brisbane, upon the general Survey of this Island, I submitted to your Lordship some observations, in detail, upon the subject of Lands, and in my Despatch No. 11, I laid before Your Lordship copy of the Commission and Instructions for carrying that measure into full effect.

Some serious difficulties and most important results being at issue upon this subject, I have required a detailed report from the Surveyor General, which will be taken into consideration by the Executive Council as soon as I can receive the assistance of the Chief Justice, and hope in the course of a few weeks to have the honor of transmitting a very ample report on this subject for Your Lordship's Information and Instructions.

I have, &c.,

GEO. ARTHUR.

Lieut.-Governor Arthur to Earl Bathurst.
(Despatch No. 37; acknowledged by Earl Bathurst, 17th February, 1827.)

29 Aug.

Government House, Van Diemen's Land.

My Lord,

29th August, 1826.

I have the honor to report to Your Lordship that I have this day sanctioned the purchase of the Brig Cyprus for the service of the penal settlement of Macquarie Harbour, for the sum of Seventeen Hundred Pounds Sterling, and directed the same to be defrayed by the Commissariat, to be charged upon the Funds applicable to the maintenance of convicts.

From the emergency of the case, Your Lordship will I hope approve of my having authorized this purchase, without having obtained Your Lordship's previous sanction.

The brig Duke of York had been long in a very decayed state, and, in the month of May last year, was surveyed and found unseaworthy; a communication was immediately made to Sir Thomas Brisbane thereupon, who informed me in reply that a vessel expected, then nearly built at Sydney, should be appropriated to the service of this colony.

Under this engagement, with much difficulty and some loss and expense, temporary means of communicating with Macquarie Harbour were resorted to, until the promised vessel should arrive.

On the 31st March last, a letter from Mr. McLeay announced, to my great disappointment, that the pressing services of the government of New South Wales would not allow the transfer of

* Note 94.
any Vessel; and it therefore became urgently necessary immediately to resort to other measures to keep up the regular communication with Macquarie Harbour.

I have the honor to enclose the documents connected with this transaction; and it is satisfactory to me to state that no advantage has been taken of the necessity of the Government, and the Vessel has been purchased on fair and reasonable terms.

I have, &c.,

GEO. ARTHUR.

[Enclosure No. 1.]

MESSRS. KELLY AND HOBBS TO CAPTAIN COTTON.

Sir, Hobart Town, 25th May, 1825.

We the undersigned have this day been on board His Majesty's Colonial Brig Duke of York in compliance with your directions to examine the state of that Vessel and report accordingly.

We find that many of her Timbers and fastenings are much decayed and several of them totally gone, the whole of her Copper quite worn out, and the general appearance of the Vessel is such, we do not consider her Sea worthy without getting a thorough repair, which would be attended with a heavy expense.

We are, &c.,

JAMES KELLY, Harbour Master.
JAMES HOBBS, Wharfinger.

[Enclosure No. 2.]

COLONIAL SECRETARY MACLEAY TO CAPTAIN MONTAGU.

Colonial Secretary's Office, Sydney, 31 March, 1826.

I have had the honor to receive and to lay before the Governor your letter of the 14th January last, addressed to my Predecessor, on the subject of expediting the departure from hence of a schooner, which a communication of Sir Thomas Brisbane had previously informed Lieutenant Governor Arthur was building for the service of Van Diemen's Land.

In reply, I am directed to acquaint you, for the information of Lieutenant Governor Arthur, that, in consequence of the number of Out Settlements and the constant necessity of sending Vessels to some of them, His Excellency Lieutenant General Darling regrets that none of the Colonial Vessels can at present be spared from hence for the use of Van Diemen's Land.

I have, &c.,

ALEXR. MCLEAY
1826.
29 Aug.

MR. J. BRIGGS TO MR. W. H. HAMILTON.

Sir, Hobart Town, 6th June, 1826.

I beg leave to tender, for the use of His Majesty's Service, the brig Cyprus of One hundred and eight tons 55/94ths register burthen; this vessel possesses every requisite quality for the coasting trade, Sails well, and carries a large Cargo; She was coppered at London in September, 1824, over patent felt and wood sheathing, with stout Copper; at the same time she had new Masts, lower rigging and Sails, Anchors and Cables and in every respect thoroughly repaired, and fitted for five years. Should such a vessel be required, further particulars will be furnished together with a complete inventory.

I have, &c.,

JNO. BRIGGS.

[Enclosure No. 4.]

MR. J. BRIGGS TO MR. W. H. HAMILTON.

Sir, Hobart Town, 19th June, 1826.

I beg leave to tender for the use of the Colonial Government the Brig “Cyprus,” with all her tackle apparel and Stores, as pr. the enclosed Inventory, for the sum of one thousand five hundred pounds in Spanish dollars at 4s. 4d. each, and One thousand five hundred Acres of unrestricted land in this Colony.

I have, &c.,

JNO. BRIGGS.

[Enclosure No. 5.]

MR. J. BRIGGS TO MR. W. H. HAMILTON.

Sir, Hobart Town, 22nd June, 1826.

Having duly considered your verbal communication of this morning as the substance of His Excellency's views relative to the purchase of the Brig "Cyprus," I now beg to acquaint you with my final terms.

I am willing to revise the tender already made, and accept in payment for the Vessel Seventeen hundred pounds in British Sterling money.

I have, &c.,

JNO. BRIGGS.

[Enclosure No. 6.]

MINUTE.

Government House, 23rd June, 1826.

It appearing, by the accompanying Report from the Superintendent of Government Vessels and the Wharfinger, two
experienced Seamen, that the Brig Cyprus is well adapted for the Public Service, and the Owner having offered her to the Government for the sum of One Thousand, Seven Hundred Pounds Sterling, it is desirable (another Vessel being urgently required in place of the Brig Duke of York) that it should be fully considered and reported.

1st. The fitness of the Brig Cyprus for the purpose of conveying Prisoners, Stores and Provisions, to the Penal Settlements, more especially Macquarie Harbour, and of bringing from thence supplies of Timber and other Articles to the Rivers Derwent and Tamar.

2ndly. The fair and reasonable value of the Brig Cyprus.

For this purpose the following Committee of the Board for General Purposes will assemble as early as convenient on board the Cyprus and report accordingly.

The Acting Colonial Secretary.
The Naval Officer.
The Colonial Treasurer.

GEO. ARTHUR, Lt. Govt.

[Enclosure No. 7.]

REPORT ON BRIG CYPRUS.

Sir,

Hobart Town, 27th June, 1826.

In obedience to the Commands of your Excellency, signified in a Minute, dated the 23rd Instant, we beg leave to report that we have inspected the Brig Cyprus, with a view to ascertain her condition and fitness in particular for the conveyance of Timber from Macquarie Harbour, and generally for the service of the Government. Having required the attendance of the Superintendent of Government Vessels and the Harbour Master, and availed ourselves of their practical information, we are of opinion that this Vessel is well calculated for the purposes adverted to; her condition is apparently good; her Masts, Yards and rigging sound; her copper perfect; her capacity for Stowage, and accommodation for Prisoners or Troops ample; and her draught of Water such as to admit of her sailing over the Bar at Macquarie Harbour with seventy measurement Tons of Huon Pine and a considerable number of Prisoners.

In any situation where a local obstacle of this nature did not present itself, we think the vessel would carry One Hundred and Forty Tons of Timber, her Register Tonnage being only One Hundred and Eight.
Regarding her value we find that under all circumstances she is worth One Thousand Seven Hundred Pounds Sterling.

We have, &c.,

W. H. HAMILTON, Acting Colonial Secretary.

JOCelyn THOMAS, Col. Treasurer.

ROLLo O’FERRALL, Naval Officer.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 39; acknowledged by lieut.-governor Arthur, 4th June, 1827.)

Sir, Downing Street, 31st August, 1826.

With reference to the Instructions which have been addressed to the Governor of New South Wales, explaining the condition on which Lands were in future to be held in that Colony and Van Diemen’s Land, (Copies of which Instructions have been forwarded to you for your guidance), I do myself the honour of transmitting to you the enclosed Copy of a further Dispatch, which I have addressed to General Darling, connected with that subject; and I am to signify to you The King’s Commands that you be guided by the directions therein contained.

I have, &c.,

BATHURST.

[Enclosure.]

[This despatch was dated 26th August, 1826; see pages 502 and 503, volume XII, series I.]

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.

(Despatch No. 38; acknowledged by Earl Bathurst, 18th February, 1827.)

Government House, Van Diemen’s Land.

My Lord,

1st September, 1826.

1. I have the honor to acknowledge Your Lordship’s Dispatch, No. 26, on the representations which had been made to Your Lordship by Mr. Meredith respecting the loss and inconvenience, to which he states himself to have been subjected in consequence of the length of time which elapsed until his Claim to the Land* disputed by Mr. Talbot was adjusted.

Upon Mr. Meredith’s representation, Your Lordship is pleased to express yourself disposed to consider him entitled to the same remuneration on account of his losses, viz.: an additional Grant of 1,000 Acres of Land, as appears to have been given to Mr. Talbot, and further to direct, in consideration of the loss Mr. Meredith has sustained by the destruction of his Warehouse.

* Note 12.
by fire, that he may be released from the restriction of non-
alienation of part of his Grant to assist him in cultivating the
remainder, or, should the mode of disposing of the question be
liable to objection, Your Lordship is pleased to approve of the
employment of Mr. Meridith's services as a Public Officer.

2. From the tenor of Your Lordship's observations I cannot
entertain a doubt but that Mr. Meridith's representation has
been extremely incorrect, and, if it was worthy of consideration,
I might with much justice complain that he has acted very
unhandsomely towards the local Government.

3. The duty Your Lordship assigned to me of adjusting the
difference so long existing between Mr. Meridith and Mr. Talbot
was not easily accomplished. Had it been possible to arrive at
the real state of the facts, a just conclusion might without diffi-
culty have been drawn; but this was not the case, and the state-
ments were so conflicting upon the four leading points, which
Your Lordship laid down for my guidance, that it seemed impos-
se to reconcile them, unless both parties were present; but,
unfortunately, when brought together, their long cherished feel-
ings of animosity always overcame their better judgement, and
the effects equally deprived me of the possibility of correctly
tracing up, as to time and circumstances, the points on which
the question was to turn.

In the result there was, as it appeared to me, scarcely a shade
of difference in their pretensions; it was quite evident that both
had manifested the most unjustifiable resentment, and brought
upon themselves all the injury they complained of; and I finally
gave my decision in favour of Mr. Meridith, because it was
absolutely necessary to come to some decision, and because Your
Lordship's Instructions inclined that way, rather than from
any clear conviction that he was right and Mr. Talbot was wrong.

4. As the case stood, as between the Government and the
Parties, it seemed to me demonstrated that neither had the
smallest claim whatever to indemnification, and, if remuneration
was admitted in this instance as a Claim, there would be no end
to representations; for, I lament to say, there are many other
cases of infinitely greater hardship which only require Mr. Meri-
dith's perseverance and address to convert them into very strong
appeals for indemnification. To a degree, these difficulties are
inseparable from the first colonization of an unsurveyed Country,
although I think they might in many cases have been prevented
by more circumspection on the part of the Surveyor General.

5. The arrangement upon my decision (and both Parties were
pleased to signify in writing their great obligation for the
HISTORICAL RECORDS OF AUSTRALIA.

1826. 1 Sept.

Terms of settlement of dispute.

Claims not admitted by G. Arthur.

Compensation given to W. Talbot.

Advantages derived by G. Meredith.

Proposed additional grant to G. Meredith.

patience and impartiality with which the investigation was conducted) was that Mr. Talbot was to be dispossessed of his 2,000 Acres of Land, and surrender to the Government his House and all the Buildings and Improvements of every kind thereon, which he asserted had not cost him much less than a Thousand Pounds, receiving a Grant in the Interior of 3,000 Acres.

Mr. Meredith was to take possession of the Land vacated by Mr. Talbot on the Coast, together with all the Buildings and Improvements, etc., making Compensation to the Government at a fair valuation.

6. Throughout the whole discussion with these Gentlemen, it never was admitted for one moment by me that either had the slightest claim upon the Government, nor did the least evidence come before me on Mr. Meredith’s shewing to establish any such claim; but Mr. Talbot, having agreed to abandon his House and his Lands with all his improvements, and to surrender the whole into the hands of the Government upon my bare decision without referring to any legal determination, had I thought on that account strong pretensions to favourable consideration, and it was purely on this ground, as I expressly stated to the Parties, and not because he had sustained any injury at the hands of the Government, that I awarded him the additional 1,000 Acres, and which was, in point of fact, doing nothing more than paying Mr. Talbot in Land one half the sum he represented he had expended in Buildings and Improvements, the whole of which he delivered up to the Government. But Your Lordship is not to suppose that Mr. Meredith had no beneficial participation in this arrangement, for he was forthwith put in possession of Mr. Talbot’s Land, together with the whole of the Buildings and Improvements thereon, without ever having been called upon to pay the valuation of one single Dollar.

Thus, without being subject to the same losses or making the like sacrifice, Your Lordship will perceive that Mr. Meredith was actually remunerated in a far greater degree than Mr. Talbot, monopolizing almost the whole of Swan Port and reaping the entire Fruit of the Labour and Expense of his opponent.

7. But, disregarding the positive and substantial benefit which Mr. Meredith derived at the close of this transaction, I beg, in answer to Your Lordship’s Instruction to possess Mr. Meredith with an additional 1,000 Acres of Land for the purpose of placing him on the same footing with Mr. Talbot, to observe that Mr. Meredith is already in the occupation of more than three times the quantity of Land without possessing one half the means of cultivating it.
8. The accompanying Sketch from the Surveyor General's Office, together with the Schedule annexed, will exhibit to Your Lordship the extraordinary indulgence and accommodation which has been extended to Mr. Meredith, and, if this Gentleman had not by other measures afforded me a good insight into his character, I should be quite surprised at his venturing to ask for indemnification.

9. With regard to the destruction of Mr. Meredith's Warehouse by Fire, I had never heard of the event until the receipt of Your Lordship's Dispatch; and I should have considered it a very improbable one from the circumstance of Mr. Meredith being himself the Inhabitant only of a most commodious Hut; but I have caused full enquiry to be made into the subject, and the District Constable has reported that Mr. Meredith set fire to the Grass near his House (a practice so injurious and dangerous that it is prohibited by Regulation), which communicated to a thatched Hut made of Earth used by Mr. Meredith as a Store, and which caused the destruction together with its contents.

10. Amongst other items of Land in Mr. Meredith's possession, Your Lordship will observe 2,000 Acres granted to his Cousin; this Gentleman Mr. John Meredith obtained a Maximum Grant of 2,000 Acres, and, without improving it, returned to England leaving the land in the possession of Mr. George Meredith since the Year 1822.

According to Regulation, this land, which was most improperly measured in three distinct situations, should have been immediately resumed by the Crown; but, as Mr. Meredith states that his Cousin is engaged in England in pressing his Claim for indemnification upon Your Lordship, although it is generally understood in the Colony that he is employed in a very different pursuit, I have caused the operation of the Regulation to be suspended; nor shall I allow the least advantage to be taken of his absence, or any demand to be made upon Mr. Meredith for Mr. Talbot's House and Improvements until Your Lordship's further pleasure is known.

Mr. Meredith seems to have impressed the belief on his coming to this Colony that he possessed considerable capital, but I may with great truth observe that he has given no proof of the fact!

I have, &c.,
Geo. Arthur.

[Enclosure No. 1.]

[A copy of this plan will be found in the volume of charts and plans.]
HISTORICAL RECORDS OF AUSTRALIA.

[Enclosure No. 2.]

Schedule of land granted to and occupied by Mr. George Meredith and Family at Great Swan Port and Jericho, Van Diemen's Land. N.B.—The Figures marked on the Chart in red Ink correspond with the first Columns of this Schedule.

<table>
<thead>
<tr>
<th>Number in Grant</th>
<th>Name of Grantee or Occupier</th>
<th>Quantity and by what Tenure held</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>George Meredith</td>
<td>2,000 Acres granted by Gov. Brisbane, June, 1823.</td>
<td>It was the manner in which this Grant was surveyed that caused the dispute with Mr. Talbot.</td>
</tr>
<tr>
<td>2</td>
<td>George Meredith</td>
<td>2,000 Acres Reserve by order of Lieu. Gov. Novell, 8 July, 1822.</td>
<td>There has been no interference with Mr. Meredith's occupation of this reserve since his first Establishment.</td>
</tr>
<tr>
<td>3</td>
<td>Government</td>
<td>2,000 Acres</td>
<td>Part of this land was vacated by Mr. Talbot, which lying between Mr. Meredith's Grant and reserve is occupied wholly by him.</td>
</tr>
<tr>
<td>4</td>
<td>Government</td>
<td>4,500 Acres</td>
<td>Mr. Meredith put up a Pensive from the Swan River to the Large river not yet named by which he enjoys the exclusive privilege of 4,500 Acres of good grazing Land.</td>
</tr>
<tr>
<td>5</td>
<td>Geo. Meredith, Junr.</td>
<td>500 Acres granted by Gov. Brisbane, 30 June, 1823.</td>
<td>The Son of Mr. Geo. Meredith, residing with his Father.</td>
</tr>
<tr>
<td>6</td>
<td>John Meredith</td>
<td>1,000 do. granted by Ditto, 30 June, 1823.</td>
<td>The Cousin of Mr. Geo. Meredith, who returned to England in the year 1822, leaving his Land in the hands of Mr. George Meredith.</td>
</tr>
<tr>
<td></td>
<td>John Meredith</td>
<td>300 (Acres granted by Ditto in the year 1823.</td>
<td>Three Lands are situated at Jericho and Jericho Lagoon 50 or 60 miles from Swan Port, having by special permission been separated from the above Grant of 1,000 Acres.</td>
</tr>
</tbody>
</table>

13,000 Acres........................ Total of the Land in possession of Mr. George Meredith and Family.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.

Sir,

Government House, Hobart Town,

1st September, 1826.

I have the honor to acknowledge the receipt of your letter of the 22nd April transmitting Assignment list of one Hundred and Sixty Male Convicts, shipped on board the Earl St. Vincent for conveyance to this Colony.

This Transport arrived here on the 13 August, and the whole of the Prisoners were landed a few days afterwards in a clean and healthy condition, none of them having preferred any complaint of treatment during the Passage.
Eleven of the Convicts have been sent on to Sydney; thirty-seven retained in the Government Works, and the remaining one hundred and twelve assigned to the service of Settlers.

It affords me much satisfaction to state, that the Surgeon Superintendent, Mr. James McKerrow, and the Master, Mr. Middleton, appear to have fulfilled their respective duties with great zeal and ability.

I have, &c.,

Geo. Arthur.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

Sir, Downing Street, 3d Sept., 1826.

I have the honour to acknowledge the receipt of your letter of the 21st March last, relative to a Grant of 2,000 Acres of Land, which you had directed to be made to Mr. Jellicoe, the Gentleman whose Memorial, praying for relief in consequence of the loss he had sustained by the defalcation of Mr. Bromley, you submitted in your dispatch of the 12 September, 1825.

Lord Bathurst's dispatch of the 24th May last will have informed you that Mr. Jellicoe's claim to compensation was considered inadmissible, and as it may therefore lead to an inconvenient precedent, if the Grant of Land which has been made to him be regarded as an equivalent for those losses, I am directed by Lord Bathurst to acquaint you that, in authorizing an augmentation to be made to Mr. Jellicoe's original Grant, his Lordship was uninfluenced by any of the circumstances adverted to in the Memorial in question, Lord Bathurst having no other intention than that Mr. Jellicoe should, in common with any other Settler, receive such an addition to his property as would be in proportion to his means, and which, in his particular case, were represented to be adequate to the cultivation of a larger Grant than that which he already occupied.

I have, &c.,

R. W. Hay.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

Sir,

Downing Street, 3d Sept., 1826.

I have had the honour to receive and lay before Earl Bathurst your letter of the 20th of March, in answer to one which I had addressed to you by the direction of his Lordship relative to Mr. Hobbes's application for a Grand of Land. Lord Bathurst desires me to acquaint you that he approves of the course which you have adopted in this case, and I am at the same time to request that you will follow a similar one on every future application of the same kind.

I have, &c.,

R. W. Hay.
LIEUT.-GOVERNOR ARTHUR to EARL BATHURST.

(Despatch No. 39; acknowledged by Earl Bathurst, 4th February, 1827.)

Government House, Van Diemen’s Land, 4th Septembr., 1826.

In reference to my Despatch No. 21, I have the honor to transmit to Your Lordship, Duplicates of Fifteen Free and Three Conditional Pardons granted to Prisoners of the Crown under the Proclamation* for the Apprehension of Bushrangers, and to which these men have been judged entitled after the fullest investigation and report upon their several cases by a Bench of Magistrates.

I have, &c.

GEO. ARTHUR.

LIEUT.-GOVERNOR ARTHUR to UNDER SECRETARY HAY.

Government House, Van Diemen’s Land, 4th September, 1826.

I have had the honor to receive your private letter of the 22nd of December, requesting some further information upon the passage in my Dispatch to Lord Bathurst respecting Doctor Bromley’s affairs, in connexion with Mr. Charles Robertson’s representation to Colonel Sorell of a deficiency of the Public Money, and inviting my observations upon the Penal Settlement of Macquarie Harbour.

Upon the first point, I fear it is not in my power to answer you satisfactorily; Colonel Sorell’s Statement as to the Sale of Timber, and the manner in which it was carried to account, is perfectly correct; but I must confess my inability to understand what connexion that transaction has with the case in point; and poor Mr. Charles Robertson, who was the only Person capable of explaining it, or through whom any positive information could be derived, was barbarously murdered a few months since.

It so happens that the Timber Account for the Year 1823 has never been finally settled to this day; and I beg to enclose you the Copy of a Report, which I have just received from a Committee appointed to investigate the Claim of the Assistant Engineer, in case it should throw any light upon the subject of your Enquiry.

With regard to the Penal Settlement of Macquarie Harbour, I think you must be under some mistake in supposing Colonel Sorell to have represented the Soil to be productive: It is it’s barren sterile Soil, added to the severity of it’s Western aspect, surrounded by bleak lofty Mountains, that renders it a place of

* Note 95.
such severe punishment to the Prisoners; a few acres of Potatoes have by unwearied care and attention been cultivated with partial success, but this measure was only resorted to lately to prevent the Scurvy among the Prisoners; for a total absence of every appearance even of comfort is an essential consideration in the punishment of the Culprits, and appears to have had a very powerful effect upon their minds.

The Settlement cannot well receive more than two Hundred and fifty Prisoners, and I am sorry to say there are invariably a much larger number of Candidates for it of the very worst description. The comparative severity of the Climate of Macquarie Harbour, its dreariness, uniformity, and the total privation of Spirits and Tobacco, to which may be superadded very hard labour in felling the Huon Pine, Sawying, and dragging out the Timber, conspire to render the Settlement a place well adapted to the end for which it was destined. On the other hand, the Settlement being situated on the Main, thereby affording the means of occasional escape, is objectionable, and, as the Colony becomes more and more populated, the barrier between these wretched Criminals and the rest of the Community will be decreased, and escape will consequently become more easy. The Wind incessantly blowing from the Westward ten Months in the Year renders the Voyage to the Settlement always uncertain and difficult, and sometimes very dangerous, and the expense of provisioning the Station by Water is considerable; there is also a Bar across the Harbour, which encreases the danger and prevents our bringing away Timber in Vessels of much capacity, and the result of the labour of the Convicts has not therefore been as productive as might otherwise have been expected; but this last objection may I think be partially removed by the employment of a different class of Vessel, and one has very lately been purchased for the Service, and is now on the point of making her first trip.

It has afforded me much satisfaction that Lord Bathurst has approved the occupation of Maria Island;* but I beg you will understand that I consider it a mere temporary Establishment, and that the Commandant has been obliged to accommodate himself and the Establishment generally with very little extra assistance by means of the labour of the Prisoners, who have been removed there to the great relief of the over-crowded Jail at Hobart Town; this Settlement will I trust answer well as a place of secondary punishment, and enable the Government to make some better classification of the Prisoners; but it is much too

* Note 53.
1826.

4 Sept.

Report proposed on penal settlements.

Penal settlement proposed at King Island.

Inability to complete reorganisation.

near the settled Districts on the Main Land to be regarded as a safe depot for very desperate Offenders.

The insight, which I have obtained of the view of His Majesty’s Government by my Lord Bathurst’s late Despatches, respecting the distribution of the Prisoners, will naturally lead me to look to the Penal Settlements as permanent Establishments; and I will take an early opportunity of drawing up a full report upon the subject.

It has always appeared to me that King’s Island, which is situated at the Western extremity of Basse’s Straits, is a much more desirable Penal Station than either Macquarie Harbour, Maria Island, or Norfolk Island; the softness, indeed, of the Climate of the latter, its natural beauty, and contracted limits, all combine to render it perhaps rather an unfit place for Offenders transported from these Colonies, whose fate should certainly be the very last degree of misery consistent with humanity. In the course of the present Spring, King’s Island shall be thoroughly and accurately surveyed, and I will do myself the honor to communicate to you the result.

The right management of these Penal Stations is of great importance, and I have no doubt they may be altogether put on a much better footing; but I must freely confess to you, although my labour has been unremitting for the last two years, there has not been any corresponding appearance of improvement: Regulations are required for every thing, and the detail of business has so wholly occupied my time, that I have left many points untouched which are susceptible of great modification: Matters, however, seem now to go on a little more smoothly, and I trust I may shortly have it in my power to make a report of my proceedings more satisfactory to you, and more gratifying to myself.

I have, &c.,

GEO. ARTHUR.

[Enclosure No. 1.]

GOVERNMENT ORDER.

Colonial Secretary’s Office,

25th August, 1826.

THE Colonial Treasurer and The Clerk of the Council will assemble as a Committee of the Board for General Purposes to investigate the claim of Mr. John Lakeland to reimbursement of the sum stated in the accompanying letter to have been advanced by him, on account of the Proceeds of a Public Sale of Huon Pine, the property of His Majesty’s Government, made by him as Assistant Engineer.

By Command of His Excellency,

W. H. HAMILTON,

(Acting) Colonial Secretary.
[Enclosure No. 2.]

REPORT ON CLAIM OF JOHN LAKELAND.

Board Room, 30th August, 1826.

The Undersigned, having formed a Committee of the Board for General purposes, in pursuance of the foregoing instructions, and having fully investigated all the circumstances set forth in Mr. Lakeland's various communications to the Government, respecting the debt due by Mr. Wells to the Crown for Timber sold by Auction in May, 1823, and which has been advanced by Mr. Lakeland as Government Salesman on the occasion, do find that Mr. Lakeland's statement is fully borne out by the facts of the case, and that Government is at this moment equitably indebted to him for £100 8s. 0½d. Currency, the amount so advanced by him on Mr. Wells' account.

The Undersigned have ascertained, however, that, on another occasion, Mr. Lakeland is Debtor to the Crown for £3 19s. 3½d. as a balance of Account. They therefore recommend that this sum should be deducted from £100 8s. 0½d. and that the payment of the balance or £96 8s. 9½d. Cy. should be ordered to be made to Mr. Lakeland by the Lieutenant Governor's Warrant on the Colonial Fund.

JOCELYN THOMAS, Coll. Treasurer.
JOHN MONTAGU, Clerk of the Council.

[Enclosure No. 3.]

MR. J. LAKELAND TO LIEUT.-GOVERNOR ARTHUR.

Sir,

Hobart Town, 16th July, 1824.

I beg leave to enclose Your Honor a list of persons who are indebted to Government to the amount specified therein for pine, purchased at the Government sales on Credit.

I have made frequent applications to the parties to discharge their obligations, to no effect; and my public accounts are now standing open unsettled.

Lieutenant Governor Sorell gave permission to Mr. Wells to discharge his debt by serving H.M. Stores, either with Meat or Wheat, which he has never complied with.

I have to beg the favour of your Honor's instructions how I am to proceed to recover the debts due to the Crown. I have applied to the Attorney General, and he informs me that he cannot act upon the documents which I produced to him without some instructions.

I am, &c.,

JOHN LAKELAND.
**HISTORICAL RECORDS OF AUSTRALIA.**

[Sub-enclosure.]

**LIST OF DEBTS DUE TO THE CROWN.**

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Amount £ s. d.</th>
</tr>
</thead>
<tbody>
<tr>
<td>May, 1823</td>
<td>Thomas Wells</td>
<td>100 5 0 1/2</td>
</tr>
<tr>
<td>March, 1824</td>
<td>John Lepine</td>
<td>27 9 7</td>
</tr>
<tr>
<td>February, 1824</td>
<td>John Dean</td>
<td>40 1 4</td>
</tr>
<tr>
<td>March, 1824</td>
<td>William Walton</td>
<td>14 6 6</td>
</tr>
</tbody>
</table>

- **Total:** £225 7 10 1/2

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**CROWN SOLICITOR STEPHEN TO CAPTAIN MONTAGU.**

Sir, Macquarie Street, 5th January, 1826.

I have the honor to report to you, for the information of His Excellency, that Mr. Thomas Wells, who is indebted to His Majesty's Government in about £156 Currency, has at length, after numerous applications to him on my part for payment, proposed to liquidate the amount (if permitted the indulgence) punctually in three instalments payable at the end of the three next harvests; £56 part of this sum is due to the Naval Officer, the remainder to the Lumber Yard.

Mr. Wells has been a Prisoner in Gaol for debt for some time; I do not believe that the Crown would be likely to obtain payment of its claim by any other means than those which Mr. Wells submits: and I have made every enquiry upon the subject.

If, therefore, His Excellency approves of my so doing, I would on the part of the Crown accede to this Arrangement, Mr. Wells executing bonds for the due effectuation of the same, and the two last instalments being made subject to the payment of interest.

I have, &c,

ALFRED STEPHEN, Crown Solicitor.

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**MR. J. LAKELAND TO LIEUT.-GOVERNOR ARTHUR.**

Sir, Hobart Town, 11th August, 1826.

About three months after the Arrival of your Excellency, you will perhaps remember, I made a statement of certain sums of Money, which were owing by various individuals to the Crown for Huon Pine purchased at the Government Sales, at which I acted as Salesman, the documents of which were in my possession and which I was unable to recover from the parties concerned. I was directed to place them in the hands of the Attorney General Gillibrand, and they remained in his possession for a considerable length of time without any thing being...
done for their recovery; they were afterwards handed over to A. Stephen, Esqr., Crown Solicitor, who informs me that he has recovered on all, excepting one Bill against Mr. Wells for £100 0s. 0d. Currency, which I am sorry to add was paid by me to the Colonial Treasurer on the 23rd October, 1823; but, as I was unable to get that amount from Mr. Wells, I handed the Bill with the other papers to Mr. Gillibrand.

The only manner, in which I can account for paying this sum, arose from my being appointed Salesman for disposing of the Government pine; and, to carry my accounts straight forward, the amount of the Sale, at which Mr. Wells was a considerable purchaser, was paid by me in advance; Mr. Wells admits the claim as just, having lately mentioned it in a transaction he had with Government; The total amount of claims, which Mr. Stephen had from me including Mr. Wells' bill, amounted to £219. of which he has recovered £118 12s. 0d., which he retains as a Sett of against the balance due by me to Government, appearing by my books to be £122 11s. 34d.

I respectfully request your Excellency will be pleased to cause Request for an Investigation into this with a view to my indemnification, inquiry.

I beg to add that at the time Mr. Gillibrand had Mr. Wells' claim in his hand, that it is my belief he had property sufficient to pay the amount; I therefore trust I cannot fairly be considered responsible for its non-recovery. I have, &c,

JOHN LAKELAND.

[Enclosure No. 6.]

**Account of Pine sold by auction on account of Government.**

<table>
<thead>
<tr>
<th>Dr.</th>
<th>By Amount of Sale</th>
<th>£</th>
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<td>100 2 10s</td>
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<td>Do Do</td>
<td>115 11 2</td>
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<tr>
<td>Apr. 25</td>
<td>Do Do</td>
<td>149 14 25</td>
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<td>May 1</td>
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<td>160 17 10</td>
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<td>June 10</td>
<td>Do Do</td>
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<td>May 20</td>
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<td>June 25</td>
<td>Do Do</td>
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<td>171 18 41</td>
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<tr>
<td>Novr. 6</td>
<td>Do Do</td>
<td>£ 1.420 1 0s</td>
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<th>Cr.</th>
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<td>Do Do</td>
<td>94 3 2</td>
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<td>Do Do</td>
<td>£ 1.420 1 0s</td>
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3 Promissory Notes amounting to...
Cash to Balance...

£ 1.420 1 0s

E.E. JOHN LAKELAND, Princ'l Super't.
EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 40.)

Sir, Downing Street, 5th Sept., 1826.

I have the honour to acknowledge the receipt of your despatch of the 4th April, marked Separate, in which (with reference to the directions conveyed to you for the Appointment of Mr. Stephen Adey, the Agent of the Van Diemen's Company, to be a Magistrate in the particular district in which the Company's Establishment may be situated), you apprise me that it has been a principle observed that no Magistrate shall personally decide on matters relating to his own Servants, and which is also expressly provided for by an Act of the Legislative Council.

I, therefore, take this opportunity of acquainting you that the Appointment of Mr. Stephen Adey, as a Justice of the Peace, was only intended by me to give him that degree of authority in the District which he may inhabit, which would ensure to him the means of preserving a proper subordination over the numerous persons under his charge; but that it was by no means my Intention that any local Regulations, with respect to the Jurisdiction of the Magistrates, should be infringed in the case of that Gentleman; and you will therefore confine his Authority within those limits, which the Regulations on that subject may prescribe, excepting in so far as you may judge it expedient to dispense with them in his favour.

I have, &c.,

BATHURST.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.

Government House, Van Diemen's Land,

My dear Sir,

In my Dispatch of the 2nd June, No. 28, which is transmitted by the present opportunity, I have notified the necessity of the Appointment of a Barrack Master, and beg to intimate to you that Captain Smith, whom I have named to act subject to My Lord Bathurst's approval and confirmation, was recommended to my attention by His Lordship for some office in a Letter, dated 27th June, 1825, at the particular intercession of Lord St. Helens.

I have, &c.,

GEO. ARTHUR.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 41.)

Sir,

I have the honour to acknowledge the receipt of your despatch No. 14 of the 11th April last, communicating the successful
result of the measures which you had adopted with a view to check the proceedings of a desperate Gang of Felons, who, under a leader named Brady, had long infested the interior of the Island, and had hitherto eluded the vigilance of the Civil and Military Parties, which had been sent out against them. I trust that the example, which you have made of these persons, whose daring outrages on the Settlers have created such general alarm throughout the Colony, will produce a salutary effect upon other desperate Characters, who might have been disposed to join (at the first favorable opportunity) in a similar course of life, and will operate equally as a warning to the other description of persons, adverted to in your dispatch, through whose means the Gang, under Brady, were enabled to dispose of their Booty, and to escape, for so long a period, the punishment due to their crimes.

You have been already apprized of the arrangements which have been adopted for augmenting the Military resources both of New South Wales and Van Diemen's Land; and I cannot now hold out to you the expectation that any further addition will be made to the Troops under your Command, the necessity for which, indeed, must be considerably lessened, since the capture and execution of those Culprits by whom the tranquillity of the Colony could be alone endangered.

The question relating to the Commandant at Port Dalrymple having been set at rest by the reinstatement of Colonel Balfour in his former situation, it is unnecessary for me to advert further to that subject.

I have, &c.,

BATHURST.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 42; acknowledged by lieut.-governor Arthur, 5th March, 1827.)

Sir,

Downing Street, 7th Sepr., 1826.

I have the honor to acknowledge the receipt of your dispatch of the 16th February, in which you inform me, with reference to my former Instructions respecting the issue of half Salary in all cases where you may be called upon to provide for the temporary discharge of the duties of any official Situation, that you have been unable to carry that measure into effect in two instances, which have recently occurred, vizt., in the case of Mr. Hone, whom you had appointed to succeed Mr. Gelli-brand, as Attorney General; and in the case of Mr. Dumaresq, who was appointed to the Office of principal Surveyor on the retirement of Mr. Evans; Mr. Hone having refused to undertake the labor and responsibility of the Office of Attorney General for a less sum than the full Emoluments, and the inadequacy of the

* Note 96.
Salary of the Surveyor General not admitting of your making any other arrangement with respect to that Department.

The inconvenience, which the Instruction, above alluded to, was intended to remedy, will not occur in the case of Mr. Dumaresq's provisional appointment, as Mr. Scott, who is already in the Island, having been appointed to fill that situation, no double payment will consequently take place; and I have no hesitation, therefore, in approving of the payment to Mr. Dumaresq of the full Salary of the Office, which he has thus temporarily occupied, up to the date of Mr. Scott taking upon himself the duties of Surveyor General, in conformity with the arrangement communicated to you in my dispatch of the 17th May last.

I am not disposed, however, to view the arrangement adopted with respect to Mr. Hone in the same favorable light, although the observations, which I shall have occasion to make on that subject, proceed not so much from your having complied with his proposals (the difficulty of your situation, after the suspension of Mr. Gellibrand, leaving you no other alternative) as from Mr. Hone having refused to give the Government the benefit of his Services, when required, without first prescribing his own condition.

When I consider the circumstances, under which I was induced to appoint Mr. Hone to a legal situation at Van Diemen's Land, and that he has been for a long time permitted to enjoy, in addition to his Office of Master of the Supreme Court, that of Commissr. of the Court of Requests, the united Emoluments of which, added to one half of those of the Attorney General exceed by £650 pr. annum the amount of Salary enjoyed by Mr. Gellibrand, it is not without considerable surprize that I have learnt that Mr. Hone should have considered himself inadequately remunerated for the additional exertions, which might have been required of him, so long as he held this temporary Appointment; but, as it seems scarcely possible for him to perform at the same time the duties of all the three situations (if those of the Attorney General are as laborious as are represented), either he must of necessity give up less of his time to his other Employments, or the business of the latter must be proportionately neglected; in the one case, a great part of the Emoluments, which he nominally received for the other and distinct situations, would in fact be a remuneration to him in his new capacity; in the other, he could have no claim to the full Salary of an Office, the duties of which could only be imperfectly executed.

Under these circumstances, I am sorry I cannot convey to you my unqualified approbation of the arrangement, which you have
adopted in the case of Mr. Hone; I have no objection, however, to his receiving the full Salary of the Attorney General from the time of his entering upon the duties of that Office, until the date of the embarkation from England of Mr. Gellibrand’s Successor, from which latter period I can only sanction the payment to Mr. Hone of one half of the Emoluments, the other half belonging to the person, whose appointment as Attorney General I have already had the honor of notifying* to you, and who will embark some time in the course of the following month for Van Diemen’s Land.

I have, &c.,

BATHURST.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

(Despatch acknowledged by lieut.-governor Arthur, 3rd March, 1827.)

Sir,

7th Septr., 1826.

I am directed by Earl Bathurst to transmit to you the Transmission of enclosed Copies of two letters, with their enclosures, which have been addressed to his Lordship by a person named Watkins, whose Son Francis Nettleville Watkins, after having been indicted at the Old Bailey Sessions and discharged, appears to have proceeded as a free person to Van Diemen’s Land.

It is stated in the enclosed Papers that Mr. Watkins has been so far regarded as a Prisoner, as to be restricted from leaving the Island, and that this interference with his liberty has proceeded from Instructions communicated to the local Authorities from home. As it does not appear that any Instructions to that effect have been sent out to the Colonial Govr., nor that the case of this person has ever been brought under the notice of H.M. Govr., with a view of subjecting him to any restrictions which were not warranted by Law, his Lordship feels persuaded that the facts, which have been stated, will be proved, on enquiry, to be found without foundation. Lord Bathurst deems it advisable, however, to require from you a report with reference to the circumstances, which are alleged in the accompanying papers, and to request that you will be pleased to transmit the same to him by the earliest opportunity.

I have, &c.,

B. W. HAY.

[Enclosure No. 1.]

MR. R. WATKINS TO EARL BATHURST.

My Lord,

I beg leave to call your Lordship’s attention to the case of a Young Man named Francis Nettleville Watkins, a resident in Hobart Town, Van Dieman’s Land. In this stage of the business, I shall merely state to Your Lordship the case without
Trial and conviction of F. N. Watkins.

It will be necessary to state this Young Man was a Clerk to Sir John Wm. Lubbock and Co., and it is avowed that this Person committed an act of Felony in taking from his Employers Country Bank Notes to the value of £250 or thereabouts; he was detected: the money was all found on the premises of Sir John Wm. Lubbock after being in the Young Man's Possession nearly two months. As the subject of this enquiry had ever proved himself, while in the service of his Employers, as being without exception the most industrious, unassuming, economical person in their employ, suspicion was the last to alight on him; the consequence was that accusations were levelled against persons, who were innocent, and Sir John Wm. Lubbock declared that, if ever the guilty person was discovered, prosecution should await him; he was accordingly indicted for Felony at the Old Bailey Sessions, April, 1825. He pleaded Guilty and the Judgment of the Court was respited until the following Sessions, when without being placed at the Bar he was ordered to pay a fine of one shilling and be discharged (as per extract from the records of His Majesty's Goal of Newgate, enclosed). Sir John Wm. Lubbock, altho' compelled to prosecute, caused the indictment to be laid so lightly that it was presumed that, without the interference of any Person, his sentence at the utmost would not have exceeded twelve months' imprisonment; but Alderman Wood, who presided with the Recorder who tried the Young Man, was so struck with his appearance, the Character given him, and the cause for which he took the money, which was not for lavishing on idle and profligate pleasure, and the wish of the Firm of the House to save him from further imprisonment, that he Alderman Wood interfered with his friends; and it was arranged that the mild sentence before mentioned should be passed, on the said Friends pledging their honour they would send him abroad.

He was accordingly discharged the latter end of May, 1825, and of his own free will embarked on board the Lang, Merchant Ship, 23rd Augt. following for Van Dieman's Land as a Free Settler, thus being at large fourteen weeks, and, as he was under no obligation to go abroad, his consent to the decision of his Friends not being asked of him, he did it from motives of honour that his Friends might not risk the accusation of collusion. He was fitted out at a great expense and arrived at Hobart Town in Decr. last. From the letters of introduction procured him by
his Prosecutor, Sir John Wm. Lubbock, he obtained immediately an eligible situation with a Merchant, Willm. Wilson, Esqe., whose kindness to him is depicted in the enclosure. I have enclosed a faithful Copy of the Young Man's letter to me (his Father), and humbly beg your Lordship's attention may be drawn to the marked lines which display the nature of the grievance which your Lordship is humbly desired to redress.

My Lord, this is a Case in which the Liberty of the subject is involved, on the blessings of which I will not here descant. I have endeavoured to shew that His Majesty's Government could have no hold on my Son with reference to his Crime. That, when he was discharged from Newgate, I humbly submit he was free as Air, Master of his own Actions, and not even bound to fulfil what his Friends had promised he should do. From a sense of honor, he quits his Country because his Friends had said he should so do. He arrived at his destination, pursued his avocations, and in four short months afterwards he has it disclosed to him, to use the Lieut. Governor's idea, "that his captivity may not be meant for Life, but at the same time will require some Interest to do away with it." My Lord, can such things be. God forbid. Am I to be told in this free and happy Country that a Subject aggrieved cannot meet redress by his own application; that there is no attention paid to humble individuals but through the mediums called Interest. To suppose for a moment that the Edict in question issued from under your Lordship's hand is so revolting, so contrary to what I had ever heard of your Lordship's disposition, that I am bold to say that, if such an Edict is in existence, purporting to be your Lordship's signature that it is a Forgery. My Lord, the Young Man seems to labour under an impression that some part of his Family has applied to your Lordship to detain him; I say again it is impossible that your Lordship would lend yourself a party to Family Feuds on an ex parte statement. My Lord, I am so confident of my Son's meeting redress by your Authority that I am bold to say that Pardon is not what I ask for, as that would add much to the publicity of my Son's case by being published in the Hobart Town Gazette; but I request, if such an Order is in force, that it may be revoked sub sigillum silentia; and if contrary to my expectation any report to your Lordship on my Son's case requesting his detention should be found in the Colonial Department, I humbly beg of your Lordship to cause me to be furnished with a Copy thereof.

I have, &c.

Richard Watkins, Purser, Royal Navy.

2 South Place, Dalston, Middlx., 28th Augt., 1826.
Francis Netterville Watkins, Standing Indicted for Felony at the Old Bailey Sessions, April, 1825, pleaded Guilty, and the Judgement of the Court was Respited until the following Sessions, when he was ordered to pay a fine of one Shilling and be discharged.

SAML. BARRETT, Deputy to the Keeper of Newgate.

H.M. Gaol of Newgate, 26 August, 1826.

Mr. R. Watkins to Earl Bathurst.

My Lord, 2 South Place, Dalston, 12 Sept., 1826.

Since my letter of the 28th August which I had the honor of addressing Your Lordship on the case of Francis Netterville Watkins of Hobart Town, Van Dieman's Land, and to which application I have received from the before mentioned Person, another Letter,* dated Hobart Town, 19 April, as in my opinion it throws a degree of information on the statement of his case, I have taken the liberty of troubling Your Lordship with the following faithful extract from the letter:—

"I was told casually by a Clerk in Mr. Betheune's House that he knew for certain that I was considered a Prisoner for Life; owing to a letter which the Governor received from Lord Bathurst by the Medway, which Ship arrived here ten days before the Lang, stating the Ship I was coming out in giving a Description of my Person, the Offence I had committed, and also saying that, on account of the great Interest which had been made in my behalf, I was allowed to Transport myself on heavy Security being given not only to send but to keep me here; that I was not to be enrolled as a Prisoner, but to be considered as under the Crown, as far as leaving the Island was concerned. I further learnt from the same Person that both Mr. Wilson and Mr. Betheune were acquainted with it, and had been so from a few days after my arrival. As the kindness of Mr. Wilson could not be exceeded, I considered it prudent to ask his advice on the subject: he told me he was aware I could not mention the circumstance to him or Mr. Betheune; on my arrival therefore, he did not consider I had deceived him, and, on his being informed of it, he made every enquiry as to the truth of the Statement, and, when he found it was too true, he endeavoured to the utmost of his power to hush the matter up: he and Mr. Betheune mutually agreeing not to mention it to me or to any one, but they naturally supposed that I was not ignorant of being a Prisoner and were

* Note 98.
much surprised when I declared that I was not. Mr. Wilson's advice is not to make any enquiries into the matter, which would only cause the Governor to be suspicious, but to inform my friends in England, as the Order here will always remain in force until countermanded from home by the Secretary of State for the Colonial Department."

My Lord, I think from the foregoing extract the conclusion to be drawn is, that an Order (whether original or false) bearing Your Lordship's signature is extant at Hobart Town, directing my Son to be considered as a Prisoner in regard to his leaving the Island. He says, Mr. Wilson the Merchant, with whom my Son is Clerk, made the necessary enquiries, and he found it was too true; That my Son is under restraint, there is no doubt. In regard to his past offence, I do not imagine His Majesty's Government can have any hold on him, for the offence he committed he has received his Sentence, which was to be fined one shilling and be discharged; that is on record, and no more. Therefore I humbly submit that whatever Agreement his friends entered into with his Prosecutor or Alderman Wood, being of a private nature, could not come under the cognizance of His Majesty's Government; and, when he was discharged from Newgate on paying his Fine, he was de facto a privileged Citizen, and received again into the bosom of the Constitution. What His Majesty's Government can have to do with him more than other privileged Citizens, I am yet to learn. He is abroad and a Prisoner; how he is so, I humbly beg information of Your Lordship.

I have, &c.,

RICHD. WATKINS, Purser, Royal Navy.

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EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 43.)

Sir, Downing Street, 8th Sept., 1826.

I have the honour to acknowledge the receipt of your dispatch, dated the 8th of March, respecting the arrangements which you have adopted with a view to the commencement of the General Survey of the Island of Van Diemen's Land in conformity with the Instructions, which have been communicated to you upon that subject; and I have to signify to you His Majesty's approbation of the Appointment of Messrs. Dumaresq and Murdock as two of the Commissioners for carrying the same into effect: Their Salaries, however, must be subject to the considerations, stated in my dispatch of the 18th June last.

The Instructions, under which these Appointments have been made, having contemplated the nomination of three
Commissioners only, of which the Surveyor General is to be one, and Mr. Scott’s Appointment to that Office placing him in the situation of First Commissioner, I regret that I am not able to confirm the Appointment of Mr. O’Connell, of whose Services as one of the Commissioners, I should have had much pleasure in availing myself under other circumstances.

I have, &c.,
Bathurst.

Under Secretary Hay to Lieut.-Governor Arthur.

Sir,
Downing Street, 9 September, 1826.

I have had the honour of receiving your letter, dated the 19th of April last, submitting the importance of a Public Seal being provided for the use of the Colony of Van Diemen’s Land. On the separation of that Government from New South Wales, the usual communication was made to the Privy Council on the subject; but I am afraid that a considerable time must yet elapse before the Seal will be ready to be forwarded to you, although it shall be prepared with as little delay as possible.

I have, &c.,
R. W. Hay.

Earl Bathurst to Lieut.-Governor Arthur.

Sir,
Downing Street, 26th Septr., 1826.

His Majesty’s Govert. having occasion to believe that very erroneous notions are entertained in this Country respecting the condition of those Persons, who have been banished for their crimes to New South Wales and Van Diemen’s Land, and that, from this cause, the dread of Transportation is very much diminished amongst the lower Classes in this Country, I am to direct that you will transmit to me, without loss of time, a statement of the precise Regulations, as they at present exist, for the safe Custody and good conduct of the Convict, in order that I may observe how far the Orders have been carried into effect, which have been issued from this Department with respect to
the Discipline and management of the Convict Population, and with the further view of adopting measures for giving publicity to those Regulations in this Country, and thereby to remove that dangerous misconception, which is understood to prevail in regard to the state of those persons, who remain under the sentence of the Law in those Colonies, as well as for the further abridgement of any Indulgencies still permitted to be enjoyed by the Convict, which may be considered inconsistent with the terms and spirit of his Sentence.

In addition to the alterations in the treatment of the Convicts, which I have directed to be introduced since you were appointed to the Govr. of Van Diemen's Land, I consider it very essential that the Services of those Convicts, who may be assigned to the Settlers, should, as far as may be possible, be transferred to persons established up the Country, with a restriction which may prevent their being afterwards employed elsewhere, in order that the Convicts may be placed out of the reach of pleasures, which are open to those who reside at Hobart Town, and which prevent transportation from being either an object of Terror, or the means of reformation to such persons as have rendered themselves liable to that description of punishment.

I have, &c.,

Bathurst.
from Europe renders our comparative separation less striking; but it would certainly be thought inconsistent at Home to ship articles for Gibraltar by a Vessel bound to Malta, and our relative situations with respect to England are much the same; the length of the passage from Hobart Town to Sydney may generally be estimated from 10 days to 3 weeks, and the expense of freight and other charges, attending the transhipment from Sydney, are nearly as great as the Original cost of conveyance from England.

I have taken the liberty of thus addressing you, because it is only my wish to bring the subject under consideration, and by no means to prefer any thing like a complaint; but, as the Commissariat Branch of the two Colonies is now entirely separated, it is still more essential that there should be no confusion in the supplies of Stores; and you will probably have the goodness to move my Lord Bathurst that the necessary communication may be made to the several Departments through which they are usually forwarded.

I have, &c,

Geo. Arthur.

28 Sept.

Statement re Mrs. Jones.

Instructions re legacy.

Request for pension for mother of R. R. Priest.

HISTORICAL RECORDS OF AUSTRALIA.

1826.
27 Sept.

Time and cost of reshipment.

Necessity for regulation of supplies.

1826.
28 Sept.

Sir,

Downing Street, 28th Sept., 1826.

I have received the directions of Earl Bathurst to trans­mit to you the accompanying statement which has been delivered to his Lordship by the Brother of the Lady whose history is therein detailed; and, as his Lordship has been given to under­stand that her Son, the late Richard Rowland Priest, who was killed by the Bushrangers near Launceston in March last, made a bequest in favour of his Mother who is in very distressed cir­cumstances, I am directed to request that you will give every pos­sible facility in remitting to this Country the proceeds of what Mr. Priest may have bequeathed to his parent.

I have, &c.,

R. W. Hay.

[Enclosure.]

A BRIEF history of the Mother of the unfortunate Rich. Rowland Priest, who was Killed by the Bushrangers, near Launceston, Van Diemen's Land, March 26, 1826.

She is the daughter of the late Rowland Williams, Esquire, of Hen­dredenny Hall, near Cardiff, who was upwards of 30 Years one of His Majesty's Justices of the Peace for the Country of Glamorgan.

She first married a Mr. Priest of Bristol, who fell in a Duel, leaving his Wife and the said Richard Rowland Priest, then a Child, quite destitute of Support; she and the Child were therefore returned to her father, who brought up and educated him and fitted him out at a very considerable expense to the place of his unfortunate Destination.
About five Years after the Death of her first Husband, Mr. Priest, she married a Mr. Jones, who, in connexion with Sir Robert Salisbury, Bart., at Newport in Monmouthshire, became unfortunate and failed, leaving his Wife again without any means of support; and she has since been maintained by her late Father and Brothers, with the assistance of part of the Pay of her lamented, estimable Son, which he carefully remitted her, but which Support has been very inadequate to render her tolerable comforts; and it is to be lamented much beneath what her former respectability had entitled her to.

It is humbly submitted that, from the irreparable loss which she has now sustained by being cruelly deprived of her dear and only Child, her only Hope for decent Support, connected with her otherwise unfortunate situation and circumstances, that His Majesty will be graciously pleased to provide for her by Pension or otherwise as may be thought most expedient.

To the Right Honorable The Earl of Bathurst.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 45.)

Sir, Downing Street, 1 Octr., 1826.

I have the honor to acknowledge the receipt of your Dispatch, N. 17 of the 20th of April, detailing the circumstances under which you had been induced to appoint Captain Montagu to the Situation of Clerk of the Council in preference to Mr. Beamont, late Provost Marshal, whose appointment to that situation was inadvertently omitted to be notified to you at the time that Mr. Beamont was himself apprised of my intention of naming him to that Office. By my Dispatch, however, of the 15th April, the appointment was officially communicated to you; and, as in the observations which you have offered with respect to the unfitness of that Gentleman for the situation in question, you have not stated any satisfactory grounds for his removal, I do not feel that I can, with any degree of propriety, alter the arrangement with which you have been already made acquainted, nor provide for Capt. Montagu by admitting the Appointment of a Clerk for the Executive as well as the Legislative Council.

I have, &c.,

BATHURST.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 46; acknowledged by lieut.-governor Arthur, 19th March, 1827.)

Sir,

Downing Street, 1st Octr., 1826.

I do myself the honour of transmitting to you herewith a Copy of the Instructions, which I have this day addressed to Lieut. Genl. Darling, in furtherance of a General Order issued by the Horse Guards with the approbation of His Majesty, respecting the encouragement held out to the Officers of the Army, more especially those on Half-pay, to become Settlers in

Inducements for half-pay military officers to become settlers,
New South Wales and Van Diemen's Land; and I have to desire that you will act up to these Instructions so far as they relate to the Colony of Van Diemen's Land. I have, &c.,

BATHURST.

[Enclosure.]

[A copy of these instructions will be found on page 593 et seq., volume XII, series I.]

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 47; acknowledged by lieut.-governor Arthur, 5th April, 1827.)

Sir,

Downing Street, 2d Oct., 1826.

In consequence of the circumstances which are reported in your Dispatch of the 21st April last, as requiring the nomination of an additional Member to the Legislative Council, I have submitted to His Majesty, on your recommendation, the name of Mr. Thomas Anstey as a fit person to become a Member of that Body; and, His Majesty having approved of the same, I have to desire that Mr. Anstey may be permitted to take his Seat at the Board accordingly.

I have, &c.,

BATHURST.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

(Despatch acknowledged by lieut.-governor Arthur, 12th March, 1827.)

Sir,

Downing Street, 4th October, 1826.

I am directed by Earl Bathurst to transmit to you copies of two letters, which have been addressed to his Lordship by Mr. Samuel Hood, in explanation of the circumstances which have given rise to the publication in the Colonial Gazette of a Government Notice, in which his name is recorded in a manner very distressing to his feelings; and I beg at the same time to express to you Lord Bathurst's opinion that, although Mr. Hood's conduct was certainly very indecorous on the occasion in question, yet that more notice was taken of it than the case appears to have demanded, and that the more dignified course for you to have pursued would have been to have treated his communication with the most perfect indifference.

I have, &c.,

R. W. HAY.

MR. S. HOOD TO EARL BATHURST.

Hobart Town, Van Diemen's Land,

22nd April, 1826.

My Lord,

I beg leave respectfully to enclose to your Lordship a government notice issued by His Excellency Lt. Governor Arthur in the official Gazettie of the 22nd Curt., in which His Excellency
has been pleased to charge me with addressing a letter to him in his official character, the terms of which are stated to be equally unprovoked and insulting, and that His Excellency has been pleased to record my name with a view to my being excluded from participating in any favor or indulgence from the local Government.  

Having held His Majesty's Commission as Assistant Surgeon in the Army for upwards of six years, and also the situation of Secretary to the Government of this Colony, and at one time Naval Officer and Treasurer of the Police fund, I am desirous of removing from Your Lordship's mind any unfavourable impression, which may arise upon the perusal of this public document, and for that purpose, I have the Honor of enclosing to Your Lordship a copy of the letter which has given rise to this official communication, and of the Explanations since afforded to His Excellency.  

Having held the above situations in this Colony, I naturally expected that I should have received at the hands of His Excellency those civilities which are invariably shewn to Public Officers or those who have filled Public situations; instead of which from the period of Governor Arthur's arrival to the present moment, I have never been invited to any of his private or public entertainments, except on the last anniversary of his Majesty's birthday, when I was confined to my bed from a serious injury I received, and which will I fear render me an invalid for life, and which was well known to His Excellency.  

Having filled these situations without having even the slightest resentment at breath of reproach cast against me, I could not help feeling the treatment of His Excellency as intended in some manner to injure me in the estimation of those who were admitted to His Excellency's table and the Gentlemen of the Colony, and also of those whose interests are especially committed to my care.  

Under these circumstances I respectfully submit to Your Lordship that there is nothing in my letter than can bear the construction put upon it, and much less justify the public imputation which is thus passed upon me by the Government Gazette of the 22nd Inst. and I trust Your Lordship will give the necessary instructions to have this order rescinded.  

I have, &c.,  
S. Hood.

[Sub-enclosure No. 1.]  

MR. S. HOOD TO LIEUT.-GOVERNOR ARTHUR.  

Sir,  
Hobart Town, 18th April, 1826.  
I have the honor to acknowledge the receipt of Your Excellency's invitation Card for St. George's Day. Your
1826.
4 Oct.
Refusal of
invitation from
G. Arthur.

Excellency is now almost two years in this Colony, during which
period I have been treated, both as an Officer in His Majesty's
Service and as an individual, with the most absolute neglect by
yourself and suite. I am, therefore, under the painful necessity
of declining the honor of dining with Your Excellency on the
23rd Curt.

I have, &c.,
S. Hood.

[Sub-enclosure No. 2.]

MR. S. HOOD TO LIEUT.-GOVERNOR ARTHUR.

Sir, Hobart Town, 22nd April, 1826.

I regret very much that Your Excellency should have
demed it necessary to have issued the Government notice of the
19 Curt, in which I am charged with writing a letter to Your
Excellency in terms equally unprovoked and insulting and that
I am to be excluded from participating in any further favor or
indulgence from the local Government.

I beg to disclaim the slightest intention of conveying to Your
Excellency any insult, nor am I aware that any part of my
letter can possibly bear such a construction, and I shall therefore
be under the necessity, in justice to myself to make as public as
the Government notice the letter which appears to have given
Your Excellency such offence.

I have the Honor to remind Your Excellency that individually
I have not received any favor or indulgence from the local Gov­
ernment, but that I am sole Agent for the extensive concerns of
Mr. Edward Lord and cotrustee for Colonel Sorell, Mr. Robert
Bethune and Mr. Kermode, whose interests I am well assured
Your Excellency will not allow for one moment to be prejudiced
by any personal feeling, which may have been excited on this
occasion by my letter.

I have, &c.,
S. Hood.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

(Despatch acknowledged by lieut.-governor Arthur, 14th March, 1827.)

Sir, Downing Street, 6 Octr., 1826.

I am directed by Earl Bathurst to transmit to you the
accompanying Copy of a letter, which has been addressed to him
by the Commissioners of Victualling submitting to his Lord­
ship's consideration whether the Medical Stores, which may
remain after the arrival of Convict Ships at New South Wales
and Van Diemen's Land, might not be appropriated to the Pub­
llick Service there, instead of being sent home, as has hitherto
been the practice, at an expense of Freight nearly commen­
surate with the value of the Articles; together with a Copy of
the answer which has been returned to the Commissioners' letter;
and I am to request that you will carry into effect the arrange-
ment which they have suggested, should there not appear to be
any objections, of which his Lordship may not be aware.

I have, &c.,
R. W. Hay.

[Enclosures.]
[Copies of these two letters will be found on pages 605 and 606,
volume XII, series I.]

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.
(Despatch acknowledged by under secretary Hay, 21st March, 1827.)

Government House, Van Diemen’s Land,
6th Octobr., 1826.

I have the honor to submit for the favorable consideration
of Earl Bathurst a subject, which has long attracted my notice
as important to the prosperity of this Colony.

The result of several limited experiments, which have been
made in raising Flax and Hemp, has fully establish’d that the
Soil and Climate of Van Diemen’s Land are peculiarly well
adapted to their growth, and, whether the cultivation of these
Articles is regarded as profitable for the employment of the
capital of the Settlers or as the means of reducing the Public
Expenditure of the Marine Department, it appears equally
deserving of attention.

The difficulty of finding employment for the Prisoners confined
in the Gaols, and the Females in the Factory, has hitherto ap­
peared to increase with the necessity; but I am sanguine in the
expectation of not only providing ample but profitable occupa­
tion for any number by the introduction of Hemp and Flax, and
upon the importance of this consideration it is unnecessary for
me to enlarge.

Should you concur in the view I entertain upon this subject,
may I request you will submit to my Lord Bathurst the pro­
priety of forwarding to this Colony a considerable quantity of
Hemp and Flax seed for distribution amongst the Settlers at
their cost price and charges, which, being imported in the Gov­
ernment Transports, will be very trifling. Great attention should
be paid to the quality of the Seed, as, if it be old or kiln dried,
it will be useless; and it should be packed in Air-tight cases.

As a means of carrying the plan fully and advantageously
into effect, I further propose the establishment of a Rope Yard
of sufficient capability to supersede the necessity of the importa­
tion of Cordage for the Service of the Marine or any other
Public Purpose; and, to effect this, it will be necessary that a
person thoroughly competent to conduct such an undertaking
1826.
6 Oct.

Proposed introduction of English grasses.

Request for plants and seeds.

Successful cultivation of hop plant.

List of Seeds and Plants desirable to be obtained, and which are likely to answer well, in Van Dieman's Land.

1. Small quantities of all the different varieties of Wheat and other farinaceous grains now cultivated in England. These should be sent out in a pure and unmixed state and perfectly free from Weeds. There is scarcely such a thing in Van Dieman's Land as a field of one unmixed sort of Corn. The consequence is...
the Crop ripens unequally, is partly lost in the Ground, and the flour is inferior and of less quantity than it might otherwise be. Barley, as well as Peas, is very commonly mixed with Wheat. But a Worse evil is occasioned both in fields and gardens by the seeds of Weeds imported among the corn and Garden seeds: so that in almost every garden or field, which has been under cultivation for some time, the ground is over run with English Weeds; Among these are Chickweed, Wild Geranium, sow-thistle, and many others, but chiefly the species of Polygonum called Aviculare or Knotgrass; snakeweed overspreads and predominates in the Clayey and aluminous soils of this Island. It very much obstructs the Crop, and, when it is cut down, the stubbles are completely pastured over with it. Sheep, however, and Cattle eat it sparingly. This importation of Weeds is the more to be regretted, because the newly broken up land is always singularly clean and free from native Weeds. It is therefore a matter of very great importance to shew a few fields of clean corn, which will ripen uniformly; and I place some clean seed corn, as the first desirable importation.

There is neither Rye or Buck-Wheat in the Colony: both useful Plants.

2. Every variety of
   Tare; Hemp; Flax; Carraway; Anise; Assafetida; Coriander.

3. Seeds of the different Species of Grass, in a clean and unmixed state. The deep rooted Kinds are the best suited for this Island to withstand the drought of Summer.
   Saintfoin; Lucern; Burnet; Clover most especially desirable; Mangel Wurzel.

4. The best and most approved sorts of Beans and Peas. The Pea called the Partridge Pea, which produces so largely and surpasses any for fattening Hogs, is very rare in the Colony.

5. All the varieties of Turnips, especially the early Dutch Kind.
   Rape or cole seed; Mustard (red and White); Capsicum; Furze; Broom; Juniper; Castor Oil plant; Rhubarb (both sorts); Myrrh, and seeds of all the Medicinal herbs grown in England.

6. The Seeds of all the useful and ornamental forest Trees, as the
   Larch (at least one cwt.); The other Species of Fir; Cedar; Oak; Cork Tree; Beech; Alder; Birch; Elm; Hornbeam; Poplar and Aspen; Ash; Chesnut (Horse and Spanish); Hazel; Filbert; Wallnut; Almond.
7. The Berries, and fruits of Trees, and Shrubs, usually propagated by roots and cuttings, as the Bay; Laurel; Portugal Laurel; Barberry; Elder; Mulberry; Holly; Hawthorn (black and white); Gooseberry; Currant; Raspberry; Strawberry.

8. Plants and roots of
All the varieties of the Potato and the Yam; Common English Daisy; Polyanthus; Primrose; Camomile; Tulip; Hyacinth; Crocus; Snow-drop; Anemone; Ranunculus; Jonquil.

The Kinds, which have been introduced into the Colony, have degenerated through inattention and are good for nothing.

9. All the varieties of the Rose; Myrtle; Heath and Geranium.

10. A supply of the best Kinds of grafted Fruit Trees, carefully packed dry, and sent by a vessel sailing early in the Autumn, as soon as the sap descends and the Leaf begins to decay.

11. If hardy two years plants of the Larch, and other trees, of the Box for edgings, and many others, were well dried and packed in an Air Tight Vessel, they would come out safe.

12. A collection of seeds of the best Kinds of Auricula; Polyanthus; Primrose; Cowslip; Sweet William; Pink; Carnation; Columbine, Lilly, and others.

It would be vain to Attempt to bring roots alive, except in an Artificial Garden, well Attended in the Ship.

13. All the creeping, and climbing Plants for Arbours and other out buildings, as Woodbine; Jasmine; Clematis; Ivy; Passion Flower.

14. Ornamental Shrubs, as the Lilac; Gelder Rose.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.
(Despatch No. 40.)

Government House, Van Diemen's Land.

My Lord,

7th October, 1826.

In obedience to Your Lordship's Commands, conveyed in Dispatch No. 21 of the 15th September last, I have the honor to forward one complete set of the Hobart Town Gazettes from its first publication, and Your Lordship's Instructions to have two separate series in future, the one for Mr. Secretary Peel and the other for Your Lordship's Department will be regularly complied with.
BATHURST TO ARTHUR.

In transmitting these Gazettes, it is unnecessary I should repeat the observations I have already submitted to Your Lordship in my Dispatch No. 5 respecting this Paper. I found it on my arrival conducted by an emancipated Convict, and, owing to our great distance from England and the impossibility of providing Materials here, it has hitherto been out of my power to place the Gazette on a more respectable footing; but the Government is in no way responsible, nor has the least connexion with any Article it contains beyond the Public Orders, Regulations, Notices, etc., which bear an Official Signature.

I have, &c.,
GEO. ARTHUR.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.
9th October, 1826.

[This copy of this despatch, acknowledged by under secretary Hay, 21st March, 1827, is not available.]

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.
(Despatch marked "Private.")

Government House, V. D. Land,

My Dear Sir,

10th October, 1826.

As it will be necessary to pass another Act for these Colonies during the next Session, I conclude you will desire some information upon the working of the present Act. Under this impression, I have endeavoured to invite remarks from the Law Officers, and intended to throw some of my own together upon the subject, and forward by the present opportunity; but it has been quite out of my power.

Another vessel is to sail in two or three weeks, and by her I will submit all such local information as I think you may desire to possess in framing the New Court Act.

You will acquit me in this matter, when I assure you that, with much duty to attend to out of my Office, I am never in it less than ten hours every day.

I have, &c.,
GEO. ARTHUR.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.
(Despatch No. 48.)

Sir,

Downing Street, 14th Octr., 1826.

I have the honour to acknowledge the receipt of your dispatch N. 16 of the 20th April last, pressing upon my attention the necessity which exists for your being allowed the assistance.
of an Aid-de-Camp, in consequence of the encrease of Military duties from the outrages committed by Runaway Convicts and Bushrangers.

At the time the above dispatch was written, Mr. Burnett, the Colonial Secretary, could not have arrived at Van Diemen's Land; but I have no doubt that the assistance, which you will derive from this Gentleman's services, will considerably diminish the labors which you have hitherto experienced, and leave you more at leisure to attend to Military Matters; should you, however, still find it absolutely necessary to have the assistance of a Personal Staff, you will consider yourself authorized to appoint an Aid-de-Camp with the pay of 10s. per diem and the allowances usually attached to this Appointment.

I have, &c.,

BATHURST.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.
(Despatch acknowledged by lieut.-governor Arthur, 26th May, 1827.)

Dear Sir,

Downing Street, 15 Octr., 1826.

As it is very necessary that we should be in possession of every periodical Paper published in Van Diemen's Land, whatever their Political opinions may be, I am to request that you will transmit to this Department a Series* of the "Colonial Times" from the commencement of this year, and, at the same time, give directions for its being forwarded regularly, together with the Hobart Town Gazette, as mentioned in Lord Bathurst's dispatch N. 21 of the last year.

I have, &c.,

R. W. HAY.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.
(Despatch No. 41; acknowledged by Earl Bathurst, 3rd April, 1827.)

Government House, Van Diemen's Land,

My Lord,

17th Octobr., 1826.

I have the honor to lay before Your Lordship a letter addressed to me by Lieutenant Gunn, on the Half Pay of the Bourbon Regiment, with a Memorial to the Secretary at War, praying that he may be placed on the Pension list of Officers, who have lost their limbs in the service of their Country.

During the recent pressing emergency of affairs, when the Bush Rangers spread such terror and devastation over the Country, I was under the necessity of inviting the aid of the most active and enterprising young men to assist in the apprehension of these Monsters; and of the many, who very handsomely exposed themselves to the greatest danger, and became consequently obnoxious to the Convicts, Lieutenant Gunn stood

* Note 102.
pre-eminent. He led a party of the 3rd Regiment, and afterwards of the 40th, with unwearied zeal for many Weeks, and captured the first Gang, consisting of five Bushrangers.

Being a person of remarkable personal strength and stature, Lieutenant Gunn became quite the terror of these Ruffians, and their utmost attention was turned towards his destruction; and, at length, whilst in charge of a detachment of the 40th Regiment, he received, in a rencontre with the Bushrangers, a severe wound in the breast and right Arm, which was immediately, from necessity, amputated near the Shoulder.

Although this wound was received when in the actual command of a military party, I am not certain that it can be distinguished as a Service, which entitles Lieutenant Gunn to receive a pension for the loss of his arm; but never did an Officer more zealously exert himself or more deservedly merit reward.

If the case can be considered to justify the claim, I am quite sure his memorial will receive Your Lordship's support; and I beg therefore, very humbly to present it to Your Lordship's most favorable consideration.

I have, &c.,

GEO. ARTHUR.

[Enclosure No. 1.]

LIEUTENANT GUNN TO LIEUT.-GOVERNOR ARTHUR.

Sir, Hobart Town, 23 August, 1826.

I beg to inclose to your Excellency a Memorial addressed to the Secretary at War, praying that I may be placed on the Pension List of Officers, who have lost Limbs in the service of their Country, which I earnestly hope your Excellency will be pleased to forward, with such recommendation as Your Excellency deems my Services in this Colony merit.

I have, &c.,

W. GUNN.

[Enclosure No. 2.]

The humble Memorial of Lieutenant William Gunn on the Half-pay of the Bourbon Regiment,

To the Right Honorable the Secretary at War, etc., etc., etc.

Respectfully Sheweth,

That your Memorialist emigrated to Van Diemen's Land in the year 1822, having it in contemplation to reside there until an opportunity presented itself of his reemployment in the Military profession.

That, on the outrages of the Bushrangers in June, 1824, your memorialist was honored with the command of a Military party, and, having apprehended and secured five of the Gang in the first rencontre, was in the second so severely wounded as to require the amputation of the right arm at the shoulder.
That Memorialist begs to direct your attention to the enclosed certificates confirmatory of his statements that his services were officially required, and that amputation of his right arm was necessary.

Under these circumstances, your memorialist humbly hopes that his case will be considered worthy of the pension granted to Officers for loss of limbs, etc., in the service and as in duty bound,

Your memorialist will ever pray,

W. GUNN.

Hobart Town, Van Diemen's Land, 1st August, 1826.

[Sub-enclosures.]

Certificates.

This is to Certify that, on the 26th November, 1825, I attended at Pitt Water Lieutenant William Gunn on Half Pay of the Bourbon Regiment, who, while employed in apprehending a Banditti of desperate Bush Rangers, received many Musquet and Buck Shot in the right arm fracturing the radius and ulna, as also the Humerus, wounding the principle Blood Vessels, and lacerating the parts to that degree as to render it necessary to Amputate the Arm near the Shoulder Joint.


I saw Lt. Gunn shortly after he was wounded and concurred with Mr. Scott that amputation was the only means of saving his life.


Van Diemen's Land, 30th November, 1825.

I CERTIFY that I was ordered by Colonel Arthur the Lieutenant Governor to detain Lieut. Gunn in Hobart Town, from his Situation at North West Bay to take command of a Party of Military Party sent in pursuit of Brady's Gang of Bushrangers; and that he continued in charge of a Party, until he was severely wounded and his Arm Amputated.

H. F. LOCKYER, Staff Adjt. and Capt., 3rd Regt.

1826.
17 Oct.
Memorial of W. Gunn soliciting pension.

18 Oct.
Instructions re pardons for educated convicts.
ARTHUR TO HORTON.

The necessary intimation has this day been made to the Chief Justice for carrying Your Lordship's Instructions into full effect. I have, &c.,

GEO. ARTHUR.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HORTON.

Government House, V. D. Land,

My Dear Sir,

I must beg to say a few words respecting Mr. George Spain, in whose welfare you took an interest and recommended him to my protection.

At the period of his arrival, there was no situation at the moment open, but I assured him in the course of two or three Months I had little doubt something would present itself, and in the mean time I would attach him to the Colonial Secretary's Office with a small Salary.

After a very few days, Mr. Spain intimated to the Colonial Secretary that he had an objection to the confinement of an Office and saw very little prospect indeed, believed it was not in the power of the Lieut. Governor to give him such an Appointment as was suitable to his expectations and intimated his intention of proceeding to N. S. Wales.

On receiving from him the enclosed Note, I endeavoured to reason with him on the step he meditated, and recommended him to reconsider the matter; but in a day or two afterwards I received from him the Note No. 2, and found he had actually taken his departure for Sydney.

As you so particularly interested yourself respecting Mr. Spain, I have felt quite uncomfortable at his proceedings and cannot be satisfied without explaining the nature of his very extraordinary movements, especially as, by your letter which he shewed me, it appeared no prospect beyond a very moderate situation was held out to him.

I have, &c.,

GEO. ARTHUR.

MR. J. H. SPAIN TO ACTING COLONIAL SECRETARY HAMILTON.

Dear Sir,

Having Weigh'd ye matter well over in my mind, I think I shall proceed to Sydney to deliver a few letters, none however of any consequence, relating to business. Should His Excellency be so indulgent as to give me an Appointment and you be so kind as to write me addressed "Post Office, Sydney," I will proceed to Hobart Town forthwith.

Yours, &c.,

J. H. SPAIN.
1826.
20 Oct.

Thanks for interest of G. Arthur.

MR. J. H. SPAIN TO LIEUT.-GOVERNOR ARTHUR.

Sir,

I now return you my sincere thanks for your kind attention to me whilst in this Colony, and leave it, fully convinced that you had every intention and inclination in furthering my views to the utmost of your power.

I am, &c.,

J. H. SPAIN.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.

(Despatch No. 43.)

Government House, V. D. Land,

Despatch I have the honor to acknowledge the receipt of Your Lordship's Dispatch No. 7, informing me of the accounts transmitted to His Majesty's Government of the conduct and connexions of Mr. Gellibrand, the Attorney General of this Colony, and conveying to me the expression of His Majesty's disapprobation, and pointing out the mode I am to adopt to bring Mr. Gellibrand to a proper sense of his duty.

In my Dispatch No. 5, the whole proceedings and report of the conduct of Mr. Gellibrand is so fully detailed, that I conceive it to be unnecessary to trouble Your Lordship with a recital of them; but I cannot withhold from Your Lordship the satisfaction I experience in having anticipated so precisely the Instructions conveyed to me of the manner of proceeding against Mr. Gellibrand.

I have, &c.,

GEO. ARTHUR.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.

(Despatch No. 44.)

Government House, Van Diemen's Land,

Despatch acknowledged.

I have the honor to acknowledge Your Lordship's Dispatch No. 9, enclosing copy of the Reverend Dr. Poynter's communication, respecting the Revd. Mr. Coote; and directing a compliance with the Reverend Gentleman's desire that the countenance and support of the Local Government might be withdrawn from Mr. Coote, in consequence of his improper conduct.

In reply I have the honor to state to Your Lordship that Mr. Coote had previously left this Colony, with an intention of returning to England.

I have, &c.,

GEO. ARTHUR.
My Lord,

I have the honor to acknowledge the receipt of Your Lordship's Dispatch No. 4 communicating the appointment of Mr. John Burnett to the Office of Colonial Secretary of this Island in the room of Mr. Charles Ellis, whose arrival Your Lordship had previously led me to expect to fill that important situation.

In my Dispatch No. 17, I made known to Your Lordship the arrangements I had found it necessary to adopt for the Dispatch of the Public Business, until the arrival of the Colonial Secretary; and I have now only to express my hope that I shall receive from Mr. Burnett that cordial assistance, which the multifarious duties of this Government so urgently require from the Colonial Secretary.

I have, &c.,

GEO. ARTHUR.

My Lord,

I have the honor to acknowledge the receipt of Your Lordship's Circular, transmitting for my information and guidance Copies of all the recent Acts of Parliament* relating to Trade and Navigation.

I have, &c.,

GEO. ARTHUR.

My Lord,

I have the honor to acknowledge Your Lordship's Dispatch No. 10, communicating Your Lordship's Instructions upon the points I had the honor to submit respecting the Land located to Mr. W. E. Lawrence and the claim of Mr. B. Horne for an additional Grant.

It has been my earnest endeavour to obtain from Mr. Evans, the late Deputy Surveyor General, every possible explanation of his conduct in the transaction relating to the measurement of Mr. Lawrence's Land; but I regret to state that I have elicited nothing more satisfactory than Your Lordship is already in possession of; but, as Mr. Evans proceeds to England by the Vessel which conveys this communication, and as he has pledged himself

* Note 103.
Permission for G. W. Evans to retire.

I have already submitted* the grounds on which, subject to Your Lordship's confirmation, I have approved of Mr. Evans's retirement; and I have reason to believe it was a most necessary arrangement prior to the commencement of the General Survey and Valuation of Lands under Your Lordship's Instructions.

It is not possible that I can justify Mr. Evans's conduct, but, upon a full consideration of his Services, I hope he may not be deprived of the retirement I have had the honor to recommend.

I have, &c.,
GEO. ARTHUR.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.
(Despatch No. 48.)
Government House, Hobart Town,
My Lord, 25th Octobr., 1826.
I have the honor to acknowledge Your Lordship's Despatch No. 3,† acquainting me with His Majesty's pleasure that the practice, which has hitherto obtained in this Colony of paying Convicts for their labor by Cattle or Sheep, which are placed with Settlers on what is termed a compact of Thirds, should be prohibited.

Immediately upon receipt of Your Lordship's instructions, I took measures for giving effect to His Majesty's commands; and the enclosed Government Order, to which I have the honor to refer Your Lordship, will shew that Your Lordship's directions have been fully adopted.

I have, &c.,
GEO. ARTHUR.

[Enclosure.]
GOVERNMENT NOTICE.
Colonial Secretary's Office, 30 Sept., 1826.
VARIOUS Intimations having at different Periods been given of the Sentiments of the Colonial Government relative to the improper Treatment, Employment, and Payment of Convict Servants by Settlers, without producing the desired Effect, it becomes the Duty of the Lieutenant Governor to Notify, That the Irregularities adverted to have at length occasioned, through the Right Honourable the Secretary of State for the Colonies, the Expression of His Majesty's Displeasure. In order, therefore, that these objectionable Points may be clearly understood and more rigidly prohibited for the future, they are recapitulated for Public Information:—
1. It is usual to pay Convicts for their Labour in Cattle or Sheep. This mode of Remuneration is highly improper, as affording the Means for secreting stolen Stock, and also for enabling Settlers to occupy

* Marginal note.—Despatch No. 22, dated 18th December, 1826. † Note 104.
their Land with Property not their own, and to subsist on that Species of Profit commonly termed "the Thirds," arising from the Depasturage of Animals belonging to Prisoners. The Earl Bathurst has explicitly declared that this Method of acquiring Capital will not be admitted as a Fulfilment, in any degree, of the Terms on which Land has been uniformly located; much less will it entitle Individuals to an Extension of their original Grants. It should never be lost sight of that an Expenditure of imported Capital in the Improvement of the Soil is the leading Stipulation, which accompanies its Gift; and that where, at the Expiration of the prescribed Period, a Neglect of this condition shall be apparent, the Possession of Cattle or Sheep in any Number or of any Value will not be considered sufficient, and the Land will be subject to Resumption by the Government.

2. It is the practice of some Settlers to apportion small Allotments on their Farms to be cultivated by their assigned Servants for the exclusive Advantage of the latter. This, also, being pregnant with Mischief, equally merits Reprehension.

3. Prisoners are occasionally permitted to Work for themselves as a Reward for good Behaviour or extra Exertion, and frequently at a Distance from the Dwellings of their Masters. A little Reflection will shew the Evils likely to result from this indiscreet Indulgence, and render further observation unnecessary.

By the strict Investigation which the Cases of the Wretched Criminals, who so lately paid the forfeit of their Lives, underwent in Council, the Attention of the Lieutenant Governor to these Abuses has been most particularly and painfully excited. The flagitious Proceedings of several of these Men were clearly traced to have had their Source in the Weakness or improper Treatment of their Employers, whose illjudged Neglect of Discipline or corrupt Toleration of Irregularity had contributed to entail Consequences so awful on those Victims to offended Justice. To the Conduct of Masters of this Description, a vigilant Scrutiny will in future be applied, in which the Magistrates are strictly and earnestly enjoined to assist the Government.

If, hereafter, it shall be ascertained that any Settler makes Payment to Convict Servants in live Stock, or apportions to them Land for their exclusive Benefit, or suffers them to be employed in any other than his immediate Service, every Support and Indulgence of the Crown will be withdrawn, and thenceforward withheld from the Person who may be guilty of so direct a Breach of the Regulations now promulgated and so gross a Dereliction of the Duty he owes to the Community.

By Command of His Excellency,

W. H. HAMILTON.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 49.)

Sir,

Downing Street, 1 Novr., 1826.

I have received and have laid before the King your dispatch, dated the 22d April, 1826, and numbered 21, with which you have transmitted to me thirteen free Pardons and seventeen conditional Pardons for His Majesty's Approbation and allowance in conformity with the Statute made in the 4th year of His Majesty's Reign, Cap. 96, Sec. 35.*

* Note 105.
The names of the Persons in favor of whom these pardons have been granted are enumerated in the Margin.

I have received His Majesty's Commands to signify to you that, in pursuance of the before mentioned Statute, and in exercise of the Authority thereby vested in him, His Majesty is graciously pleased to approve and allow the thirteen free pardons and the seventeen Conditional pardons transmitted with your before mentioned Dispatch, and that the same are approved and allowed accordingly.

Bathurst.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 50; acknowledged by lieut.-governor Arthur, 26th March, 1827.)

Sir,

Downing Street, 1 November, 1826.

In my dispatch of this date N. 49, I have signified to you His Majesty's gracious approbation and allowance of thirteen free Pardons and seventeen conditional Pardons, which you have transmitted to me with your dispatch of the 22 April, 1826, N. 21. It now becomes necessary that I should advert to the question of Law to which you have directed my attention in that dispatch.

It appears that the acting Attorney General of Van Diemen's Land is of opinion that the Statute, 30th Geo. 3d, Cap. 47, is still in force, and that, in pursuance of that Statute, all remissions of the Sentences of Convicts, which may be granted by the Governor or Lieutenant Governor of the Colony, must be included in the next general pardon which may pass under the Great Seal.

It must of course be admitted that the Statute, 30 Geo. 3d, Cap. 47, is in force, since it is recognised and referred to in the 35th Section of the 4th Geo. 4th, Cap. 96, as the Act under the authority of which all remissions of Sentence are to be issued; but it does not, therefore, follow that the method of proceeding prescribed by the 30th Geo. 3rd, Cap. 47, is now to be followed; and, for your guidance in future, it may be convenient to enter into the following explanation of the reasons by which Parliament was influenced in passing the recent Statute.

The 30th Geo. 3d, Cap. 47, by requiring that the remissions of Sentence granted by the Local Government should be perfected in the next general Pardon under the Great Seal, had given rise to great difficulties. The habit of issuing general Pardons having latterly fallen into disuse, the pardons granted by the Governors of New South Wales continued in many cases incomplete from the want of this additional Solemnity, the Convict consequently remained an attainted person and laboured under all the Legal
disabilities incident to that condition. From this cause, embar- rassing questions had arisen respecting the titles to Lands, and the power of a numerous body of persons to hold certain Civil Offices, and even to give evidence in Courts of Justice.

The object of the 35th Section of the Statute, 4th Geo. 4, Cap. 96, was, therefore, to provide a simple and convenient method by which persons pardoned in New South Wales and Van Diemen's Land might, within those Colonies, be restored to the enjoyment and exercise of all Civil rights, notwithstanding any previous attainder in England. That method is the signification of His Majesty's pleasure through one of the Principal Secretaries of State, and that course has, therefore, been pursued at present, and will be followed on all future occasions.

Considering the great importance of preserving an authentic record of the names of all persons, who may thus receive a complete remission of their Sentences, you will transmit a Copy of my dispatch of this date N. 50 to the Chief Justice of the Colony, with an instruction conveying my desire that it should be deposited and preserved in the Registry of the Supreme Court. A transcript of the same dispatch must also be registered in the Office of the Colonial Secretary.

I have, &c.

BATHURST.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.
(Despatch acknowledged by under secretary Hay, 21st March, 1827.)

Van Diemen's Land, Government House,

Sir, 1st November, 1826.

I have the honor to acknowledge your letter of the 14th April last, transmitting the Assignment List of One Hundred Male Convicts by the Transport “Chapman.”

The Vessel arrived here on the 7th inst. and disembarked Ninety Eight Prisoners in a clean and healthy condition.

The two Prisoners, named in the Margin, I regret to report escaped from the Vessel whilst laying at Rio de Janeiro on the night of the 18th July, the particulars of which circumstance have been investigated by a Board.

The Report I have the honor to enclose, by which you will perceive that the escape is ascribed to the following causes.

1st. To the imperfect fitting up of the barricading round the hatch, which ought to have been carried up to the deck between the beams and the Coming.

2nd. To a want of vigilance on the part of the Sentries.

* Marginal note.—Robert Snelling, Joseph McDonald.
Methods for prevention of escapes.

Arrival of ship Chapman.

Escape of convicts at Rio de Janeiro.

Report re prisoners.

3rd. To the boat not having either been moved at a distance or hoisted up during the Night.

Upon the first cause, I submit it will be desirable the Navy Board should be apprized that security in the particular alluded to may not in future pass unnoticed.

Upon the second, I would observe the want of vigilance on the part of the Sentries is highly censurable and has been severely reprimanded.

In the matter of the 3rd cause, ordinary prudence should I think have induced the Master to have used greater vigilance in securing the Ship's Boat; but, he seems to have been otherwise very active and very attentive; and, as such extreme boisterous weather as the Vessel encountered for such a length of time, and her crippled and disastrous state appear to have overcome every one with fatigue, labour, and anxiety, I am upon the whole willing to put the most favorable construction upon the transaction and have not withheld from the Master the usual Certificate.

No complaints were preferred by the Prisoners, and I am happy to bear my testimony to the zealous manner in which the duties of the Surgeon Superintendent appear to have been rendered throughout the Passage from England.

I have, &c.,
Geo. Arthur.

[Enclosure No. 1.]

ACTING COLONIAL SECRETARY HAMILTON TO LIEUT.-GOVERNOR ARTHUR.

Sir, Colonial Secretary's Office, 7th October, 1826.

I have the honor to report that I have visited the Transport Ship "Chapman," Milbank Master, which arrived this Morning from England, having on Board Ninety Eight Convicts. It appears that, having lost her Mainmast in a Severe gale of Wind in Latitude 32 South, she was compelled to put back to Rio de Janeiro to refit, where two Convicts escaped by cutting a small cross beam at one of the sides of the Hatchway; but, as I am unable to decide whether blame be attributable to any person, I beg leave to suggest the propriety of causing a formal enquiry to be made into the Circumstances.

The Prisoners express themselves satisfied with their treatment, and admit the receipt of their proper rations during the Voyage, except that of Sugar for the last fortnight: which Article, owing to the great length of the Voyage, ran Short. The Master offered Molasses in lieu, which the prisoners refused to accept.

There are only Six Men sick on Board, one of whom is confined to Bed. The Ship generally I found in a proper and
ARTHUR TO HAY.

Cleanly condition, and nothing objectionable in the Conduct of the Surgeon Superintendent has been adduced by any one on board.

I have, &c.,

W. H. HAMILTON, Colonial Secretary.

[Enclosure No. 2.]

MR. J. H. HUGHES TO LIEUT.-GOVERNOR ARTHUR.

Sir,

Chapman Convict Ship, 7th October, 1826.

It is with extreme regret I have to report to your Excellency that, of the One hundred Male Convicts embarked at Woolwich, the 4th of April last, on Board the Chapman Convict Ship, John Milbank Master, two named in the list, Robert Snelling and Joseph McDonald, effected their escape from the Chapman while lying at Rio Janeiro in the Night of the 18th July Ultro.

I beg leave to state that the Chapman, while on her progress in Latitude 32° 45' S. Longitude 28° 40' W., met with a severe gale of Wind and Much bad Weather; Lost her Main Mast with all its Sails, Yards and Rigging, also her Mizen Topmast and rigging; her larboard Bulwarks stove in, and her larboard Quarter Boats and davits carried away, with other damage. That, in this Crippled State and the Wind at S.E., it was impossible to proceed, when Captain Milbank for the general Safety bore up to Rio Janeiro. This Crippled State and accident happened on the Morning of the 20th June last and we arrived at Rio Janeiro on the 28th of the same Month, where we proceeded to refit as well and soon as could. That, in this damaged and distressed state, while every kind of work was going on to make good her repairs, in the Night of the 18th July and which was a most tempestuous night, with thunder, lightening and rain, but Moonlight, the two prisoners Robert Snelling and Joseph McDonald escaped. At Sunset, they had been seen and were mustered with the rest, all below and right. The Prisons were secured and the Keys returned to the Chief Mate as usual and the Guard set. Lieut. Vachell on board, Lieut. Wilford absent. That, between eleven and one o’Clock in the morning, the escape occurred, unknown and unperceived by the Sentries on Duty. There were two Boats out, one on each Side secured to the far end of the guess-warp Boom with their Painters in board made fast to the Gangways; the davits of one of the Boats were Carried away in the Gale. That no Knowledge of their being gone was Known till the Morning break of day (4 o’Clock), when Mr. Mawe 3rd Mate, having a Special Charge over the Prisoners, mustered them with the Chief mate, and found them gone. He immediately made it Known, and at full daylight the prisoners were
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escape of
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again mustered and examined all on Deck, the said two Convicts Missing; on inspecting the prisons, discovered that they had made their way over and thro' the upper part of the lower Barricade, and to enlarge the Space had perforated, apparently with a Gimblet and broke in the loose pieces, the lower part of the combings of the forehatchway and through the main hatchway had got upon the Deck, unknown and unperceived by the Sentries, seized one of the Ship's Boats and went ashore. The same morning at Daylight, Captain Milbank went ashore and picked up the Boat below the town of Rio Janeiro and brought her on board very shortly after.

On investigating the affair, it appeared the Petty officers of the Guard and Sentries, when relieved, had taken no notice of the loss or missing of the Boat. One reported he had not seen it at the 12 o'Clock relieve; and another that he did. In fine the Boats were not taken notice of at all. One of the Guard, who was on duty at the Starboard Gangway side the Boat was lost from, I understand, acknowledged to Lieut. Wilford that he had quitted momentarily the gangway for some minutes. This Circumstance was related to Captain Milbank by Lieut. Wilford the day after. At Seven o'Clock, the Prisoners were all well examined, could not discover any abettor or aid; no instruments could be found only a Jacket belonging to one of them and one set of Leg Irons. The other afterwards found thrown into the hold. At Eight o'Clock, Self and Captain waited upon the Admiral Sir George Eyre, etc., then lying in the River, with all the particulars and their descriptions; when the Admiral said he could do nothing in it; on which, we immediately went to the Consul's Office to consult measures, and obtained a letter to the Portuguese Intendant General of Police with their description, etc., for their Apprehension; and further, Captain Milbank added a Reward of 100 Dollars on Apprehension. I afterwards again saw the Intendant General; who said he had given orders for their search, and would do all in his power for that purpose; Captain Milbank went on board the receiving Ship for impressed Men, and among other Shipping, Self in other directions in the Town, All without effect. After a few days, were informed that two Englishmen answering to them were seen at house in the town. The Guard was procured, Searched that and every other suspected house. Further that they were seen at a little Town, called Port Fogo, Six Miles off. The third mate Mr. Mawe was sent several times and had the Guard of Police to assist him before daylight and again at Night, and this for several days; all without any purpose; the opposite side of the River was attended to with equal ill success; the Mountains affording every
facility to them. The Consul having advised every possible means to recover them but without Success, and the Ship now (8th August) completely ready for sea, we were obliged to relinquish the pursuit.

Most respectfully submitting to your Excellency that, on enquiry, no blame can be attached to the Ship's Officers or myself, presuming as when they were mustered below every night, with the prison secured with the Guard set (in No. 5), One on the Main hatchway, One on the Poop; and one on the Forecastle, whatever might be the state of the Ship, with every one jaded from fatigue of some Kind, notwithstanding which the Crew kept their regular Watch. Altogether, trust justified the retiring to Bed, in full confidence of every due Security of all the prisoners. Humbly relying on your Excellency's high sense of Justice and liberal feelings,

I have, &c.,
Jos. H. Hughes,
Surgeon, R.N., and Superintendent.

[Enclosure No. 3.]

GOVERNMENT ORDER.
Colonial Secretary's Office,
11th October, 1826.

A COMMITTEE to consist of The Major of Brigade, The Colonial Surgeon and The Superintendent of Vessels will assemble on board the transport "Chapman" to investigate the Circumstances attending the escape of two prisoners from that Ship at Rio de Janeiro, and report thereon for the information of The Lieutenant Governor.

The Committee will call upon the Surgeon Superintendent, Master and others, to give all necessary information.

By Command of His Excellency,
W. H. Hamilton,
(Acting) Colonial Secretary.

[Enclosure No. 4.]

REPORT OF COMMITTEE OF INQUIRY.
Hobart Town, 12th October, 1826.

We, the undersigned having, by direction of His Excellency the Lieutenant Governor, formed a Committee on board the Male Convict Ship "Chapman" to investigate the particulars relative to the escape of two Convicts from on board that Ship, have obtained the following information from the Surgeon Superintendent, the Officers of the Guard, the Master, and mates of the Ship, as also from the Log Book of the Master and Journal of the Surgeon.

The Ship Chapman, having experienced Stormy Weather and suffered the loss of her Main Mast and other severe damage, was
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obliged to bear up for Rio de Janeiro, where they were occupied about Six weeks in repairing damages. The Weather was Occasionally very Stormy, with much thunder and rain, and particularly so during the night of the 18th July.

Precautions were taken to prevent the escape of the Convicts during the Stay of the Ship in Harbour. Shore Boats were not allowed to come alongside except under special permission. Five Sentries were posted, vizt., One at each Gangway, One at the prison Door in the Main Hatchway, One on the Round House, and one on the Forecastle.

At 5 o’Clock in the Evening of the 18th July, the Prisoners were mustered, and locked up in the Prison. The Mate of the Ship states that he had possession of the Keys until day light next morning; at which time it was discovered that the Boat was missing, and, on mustering the Prisoners, it was found that Robert Snelling and Joseph McDonald had escaped out of the Prison by cutting and tearing away a part of the bottom of the coming of the forehatch on the larboard side; and, being small Men, they had got out between it and the top of the barricading placed round the hatch. There not being any prison Door opening to the Fore hatch, there was no Sentry posted there.

The two Prisoners must have crept from the forehatch to the Guess Warp boom, from whence they let themselves down to the Boat, which was moored to it.

We attribute the escape of the Prisoners—

1st. To the imperfect fitting up of the barricading round the hatch, which ought to have been carried up to the deck, between the Beams and the Coming.

2nd. To a want of Vigilance on the part of the Sentries.

3rd. To the Boat not having either been moored at a distance or hoisted up during the night.

The Circumstance appears to have been reported to the Admiral at that Station, and every means taken to regain the prisoners but without effect.

RICHARD TURTON, Major of Brigade.
J. SCOTT, Col. Surgeon.
J. WELSH, Supt. Govt. Vessels.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

(Despatch acknowledged by lieut.-governor Arthur, 14th May, 1827.)

Sir,

Downing Street, 2d Novemr., 1826.

I am directed by Earl Bathurst to transmit to you the enclosed Memorial from a Convict at Van Diemen’s Land, named Joseph Firth, who appears to have been tried and convicted at
ARTHUR TO HAY.

York in September, 1820, of High Treason, and to acquaint you that, in the event of this person's Character and Conduct during his residence in the Colony having been such as to meet the approbation of those Officers of your Government, who may have had opportunities of judging of the same, Lord Bathurst will approve of your affording to the Memorialist any indulgence that can with propriety be shewn to him.

I am &c.,

R. W. HAY.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

Dear Sir,

With reference to Lord Bathurst's dispatch of the 1st of October last, in reply to the objections raised by you to the appointment of Mr. Beamont as Clerk of the Council at Van Diemen's Land, his Lordship has desired me to acquaint you that, although he did not consider it expedient to sanction Mr. Beamont's removal, yet as it appears to his Lordship very doubtful whether it would, under all the circumstances of the case, be for the Interests of the Publick Service that he should be continued in that situation excepting so long as he cannot be otherwise provided for, Lord Bathurst desires that he may be transferred the first opportunity to some other Appointment of equal value to that which he at present holds, and his Lordship will be happy to hear that you have been able to effect such an arrangement without affording any cause of dissatisfaction to Mr. Beamont.

I am &c.,

R. W. HAY.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.

Sir,

2nd Novembr., 1826.

I have the honor to reply to your letter of 13 January, transmitting by direction of Earl Bathurst, copy of letter addressed to His Lordship by Lieutenant Thomas Dutton, R.N., and communicating His Lordship's desire that I would make him a grant of land on his arrival here in proportion to his means of cultivation.

Your letter to Mr. Dutton, to which you refer me, has by mistake been omitted to be enclosed; but I presume Mr. Dutton will put me in possession of the original upon his reaching this Colony; and I can only therefore assure His Lordship that his directions in favor of Lieutenant Dutton will be fully complied with.

I have, &c.,

GEO. ARTHUR.
1826.
3 Nov.

Despatch acknowledged re seat of government.

Sir,

Downing Street, 3d Novr., 1826.

I have the honour to acknowledge the receipt of your despatch of the 22d of April last, submitting to my consideration the reasons which induce you to recommend the removal of the present Seat of Governt. in Van Diemen's Land to a more favorable and centrical situation within the Island.

The variety of Interests, which must be affected by a measure of so important a character, will preclude His Majesty's Government from sanctioning any Proposition of this nature without a more accurate examination of the subject in all it's bearings than I am at present enabled to enter upon from the materials with which you have furnished me; and I regret that you should have embarked so hastily, as you appear to have done, in the prosecution of a scheme, in which so many Interests both publick and private are so materially involved.

I do not feel at liberty under these circumstances to discuss the comparative Advantages, which attach to the situation of Hobart Town with those belonging to the two places, to one of which it has been proposed to remove the Seat of Government.

But, so far as I can judge from the information which I have obtained and from the Report* made of its local situation by Commissioner Bigge, I should be inclined to pronounce that Brighton would be the most judicious spot to fix upon for the future Capital, not only as it affords an easy communication with Hobart Town (which, under any change would still remain the principal Sea Port) but as it would be more readily accessible than Hobart Town from all parts of the Island.

The selection, however, of the precise situation to which a preference should be given, whenever it may be finally determined to remove the Seat of Governt. to a different part of the Island, is of minor Importance compared with the evils which may follow from the agitation of a question of this nature by throwing doubts on the value of Property in Hobart Town and by unsettling the future plans of its present Inhabitants. Whenever the circumstances of the Colony may be such as to meet the expense, the removal of the Publick Establishments to some other preferable quarter may be a matter for consideration; but, at the present moment I confess that I do not see how the great expenses attendant on such an experiment can possibly be provided for, and it will be your duty, therefore, to carry into effect the Instructions which you have received in regard to such publick

* Note 49.
HAY TO ARTHUR.

Buildings as are required for the purposes of your Government, and to adopt the most economical mode of supplying this deficiency in the present Capital. I have, &c.,

BATHURST.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.

Government House, Hobart Town,

Sir, 3rd Novembr., 1826.

I have the honor to acknowledge the receipt of your letter of 22 April, enclosing, by direction of Lord Bathurst, a list of such prisoners amongst those embarked on board The Earl St. Vincent, as were deemed proper objects by His Majesty's Government to be transferred to a place of punishment, separate from the other Convicts; and, in reply, I beg to acquaint you, for the information of His Lordship, that these men were forwarded to Sydney by the first opportunity for the purpose of being sent to Norfolk Island. I have, &c,

GEO. ARTHUR.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.

Government House, Hobart Town,

Sir, 3rd November, 1826.

I have the honor to acknowledge your letter of 4 March, enclosing copy of a memorial addressed to My Lord Bathurst by Lieutenant Thomas Ritchie, R.N., praying for an increased grant of Land.

Enquiry shall be made of the extent of Lieutenant Ritchie's property; and of the circumstances under which he claims an additional grant; and the strictest attention will be paid to the instructions conveyed to me in Lieutenant Ritchie's favor.

I have, &c,

GEO. ARTHUR.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

(Despatch acknowledged by lieut.-governor Arthur, 1st May, 1827.)

Sir,

Downing Street, 4 Novr., 1826.

With reference to my letter of the 4th of October last, respecting a Governt. Order which appeared in the Colonial Gazette of the 22d April last relative to the conduct of Mr. Samuel Hood, I am requested by Lord Bathurst to ascertain from you what is the precise meaning, which is intended to be conveyed by the concluding part of the Order in question. Lord Bathurst is prompted to make this enquiry by perceiving that a construction has been put upon it, which his Lordship cannot
believe to be correct, but which it is important should not be allowed to remain without contradiction. Lord Bathurst has desired me to forward to you a Copy of the reply which has been given to Mr. Hood's Communication upon this Subject.

I am, &c.,

R. W. Hay.

[Enclosure.]

Under Secretary Hay to Mr. S. Hood.

Sir,

Downing Street, November, 1826.

I am directed by Earl Bathurst to acknowledge the receipt of your letters,* dated the 22nd and 30th of April last, complaining of an Order published by the Colonial Government, in which remarks are made on your conduct, and explaining the circumstances which induced you to address a letter to Colonel Arthur in consequence of which the Order in question appears to have been issued.

Lord Bathurst desires me to acquaint you in reply that, had you confined yourself to simply declining the invitation which you received, the Lieutenant Governor would not have been justified in taking a public Notice of your refusal to accept the intended civility; but, by assigning the reasons which you did for your declining the invitation to the Government House, you were guilty of a gratuitous Act of incivility, which could scarcely be considered by the Lieut. Governor in any other light than as a marked proof of disrespect towards him.

In the absence of all information from Colonel Arthur on this subject, Lord Bathurst has deemed it proper to defer all further observations.

I am, &c.,

R. W. Hay.

Lieut.-Governor Arthur to Under Secretary Hay.

Sir,

Government House, Hobart Town,

4th November, 1826.

I have the honor to acknowledge your letter of 14 April acquainting me, by desire of Mr. Secretary Peel, with an error which had arisen in the indent of James Davis, arrived per Woodman, May, 1826, with a view to its being corrected in the Police records of this Colony.

In my letter of 1st June, stating the arrival of the Woodman, a memorandum of this man's case was brought under your notice, to which I beg to refer you, and to state that the necessary alterations in the record of his Sentence have now been made.

I have, &c.,

Geo. Arthur.

* Note 106.
LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.

Government House, Hobart Town,

4th November, 1826.

Sir,

I have the honor to acknowledge the receipt of your letter Despatch of 3rd March, transmitting copy of letter addressed to Earl Bathurst by Mr. James Salter, praying that a conditional location of two hundred acres may be confirmed to him, and that he might receive an extended grant of Land in proportion to his means.

Agreeably to His Lordship's desire, the 200 acres, which were thus located to Mr. Salter, have been confirmed to him; and his property appearing to justify the increase I have also ordered him one hundred and twenty Acres in addition, making his present location Three Hundred and Twenty Acres.

I have, &c.,

GEO. ARTHUR.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.

(Despatch acknowledged by under secretary Hay, 19th July, 1827.)

Government House, Hobart Town,

8 Nov., 1826.

Sir,

I have the honor to transmit a memorial from Corporal Thomas Homer of the New South Wales Royal Veteran Company, praying that his Wife's two children by a former husband may be sent from England to this Colony.

This man being now employed as Overseer of a Road Party, a station in which he may probably continue for a considerable period, I beg to recommend his case to the favorable consideration of The Earl Bathurst.

I have, &c.,

GEO. ARTHUR.

[Enclosure.]

THE Petition of Thomas Homer, Corporal, N.S.W. Royal Veterans, most humbly Sheweth,

To His Excellency Coll. Arthur, etc., etc., etc.

That his wife has two Children, Thomas and Margt. Cutts, in the Royal Military asylum Chelsea, by a former Husband who was killed in Action in North America.

That, previous to your Petitioner's leaving England, he was promised by Lieut. Coll. Williamson, commanding the Asylum, that the said Children should be sent to any part, at which he might be stationed.

Petition of T. Homer praying passage for step-children.
HISTORICAL RECORDS OF AUSTRALIA.

That your Excellency's Petitioner, through the Medium of his Commanding Officer, humbly solicits that your Excellency would be pleased to interest yourself so far as to obtain the removal of the Children to Van Diemen's Land.

And Your Excellency's Petitioner as in duty bound will ever pray, &c.,

THOMAS HOMER, Corpl., N.S.W. E.Y.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.

My Dear Sir,

Government House, V. D. Land,

10th November, 1826.

I have the honor to acknowledge the receipt of your letters of the 22nd May and 10th of June, introducing Mr. Piddocke to my protection and good offices, and enclosing copy of Colonel Sorell's letters to you respecting him.

Mr. Piddocke arrived here by the "Hugh Crawford," and, as far as any means come within my power, you may feel assured of the readiness with which I would at all times second the expression of Lord Bathurst's wishes; but, from this Gentleman's exhibition at several of the Public Offices in a state of inebriation, I ought in candour to state to you that he has habits which but ill-accord with a successful prosecution of his profession in this Colony.

The Sum of Sixty Pounds which you mention to have been placed to the account of the Colonial Agent, has been paid to Mr. Piddocke by the Colonial Treasurer, but I fear it will very hastily be most improvidently expended. I have, &c.,

GEO. ARTHUR.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.

(Despatch No. 49; acknowledged by Earl Bathurst, 7th March, 1827.)

Government House, Hobart Town,

My Lord,

13 Novembr., 1826.

I have the honor to refer to my Despatch No. 38, respecting the claim* of Mr. Meredith, in which I have fully submitted the case to Your Lordship.

Since addressing Your Lordship, I have had an interview with Mr. Meredith, and, although his explanations and statements make not the slightest alteration in the view I have ever taken of the subject, I have felt it to be my duty, in submission to Your Lordship's instructions, to confirm the grant of 2,000 Acres and the additional grant of the like quantity, and to sanction the alienation of such portion as he may think proper to dispose of.

* Note 12.
Copy of the letter, which I have directed to be addressed to Mr. Meredith, subsequent to his recent interview with me, I have the honor to enclose; by which Your Lordship will perceive that he is still non-content, and is very desirous to make a further appeal to Your Lordship through Colonel Sorell.

As I feel very well assured that Mr. Meredith's statement to Your Lordship would have admitted of some explanation, had it passed through my hands, I have expressed to Mr. Meredith, in answer to his earnest desire to address Your Lordship through Colonel Sorell, that I can have no objection to his appealing to Your Lordship in whatever manner he may think proper; but it is impossible for me to offer any observation upon a statement, which does not pass through the hands of the local Government.

I have, &c.,

GEO. ARTHUR.

[Enclosure No. 1.]

ACTING COLONIAL SECRETARY HAMILTON TO MR. G. MEREDITH.

Sir, Colonial Secretary's Office, 17 October, 1826.

In reference to your interviews with the Lieutenant Governor on the 13th and 14th inst. and the Surveyor General's representations concerning your Land, I am commanded by the Lieutenant Governor to acquaint you that His Excellency is apprehensive, you may have led the Earl Bathurst into an Error by intimating that the principle of indemnification had been admitted in the adjustment of your difference with Mr. Talbot, by the extension of that Gentleman's grant to three thousand Acres, Whereas His Excellency having stated from first to last that in his Judgment neither yourself nor Mr. Talbot had in any way the slightest claim upon the Government, nothing could have been further from his intention towards either party than the recognition of such a principle.

The additional Grant of 1,000 acres was made to Mr. Talbot upon the express condition of his surrendering to the Government his House, improvements, etc.; and, whether or not this acquisition was to you of the full represented value, the possession must have been of very high importance, seeing that it determined most conclusively the points so long in dispute.

As you have expressed a Wish that His Excellency's Verbal observations should be conveyed to you in writing, I am to repeat that, if you have any claim against the Government, it must arise from some injury suffered under the Administration of Colonel Sorell, and, although the Lieutenant Governor must decline resuming the investigation, (which would be to revive the entire consideration of the differences between Mr. Talbot and yourself), still he can have no objection to your making an
appeal to his predecessor, who is best able to Judge, as to the responsibility (if any) of the Government, arising out of the transaction in question.

Notwithstanding the Lieutt. Governor is of opinion that your reserve of Land should have been taken conformably to the Earl Bathurst's approval, adjoining the original Grant, directions will be issued to the Surveyor General not to raise any objection on that account. The Grant will be subject to the quit rent imposed only at the period the location was ordered in 1820, and, although dated in 1824, will be free from the restrictions of non alienation so that you may dispose of any part you may think proper. The reserve will be made an additional Grant from the 10th August, 1824, subject in like manner to the quit rent of that period and you will readily perceive that this Arrangement will be greatly to your Advantage.

I have, &c,

W. H. HAMILTON.

[Enclosure No. 2.]

MR. G. MEREDITH TO ACTING COLONAL SECRETARY HAMILTON.

Sir, Hobart Town, 31st October, 1826.

I duly received your letter of the 17th inst., upon the subject of my long standing Claim to Compensation on account and of the official Suspension of the Grant of Land originally located to me by the direction of Lieutt. Governor Sorell; and, having this day received from the Lieutt. Governor's Secretary a Copy of His Excellency's decision of the Land question, dated 6 July, 1824, I beg to state my intention of transmitting these documents to the Earl Bathurst, and Copies thereof to Colonel Sorell, for the purpose of the latter officer reporting upon the Case for his Lordship's final Consideration and determination.

I have, &c,

GEO. MEREDITH.

[Enclosure No. 3.]
MR. G. MEREDITH TO ACTING COLONIAL SECRETARY HAMILTON.

Sir,

Hobart Town, 9th November, 1826.

In acknowledging your Letter of this day's date, I beg to say, in reference to the transmission by me of the Documents in question to The Earl Bathurst, that I previously notified to you the course I intended to pursue, and fully understood you to signify your entire approval, My Original Appeals, during the Administration of Colonel Sorell, as well as my subsequent one in July, 1824, having been forwarded direct without passing through the hands of the Lieutenant Governor in either case.

The Lieutenant Governor having at the interview of the 13th Ultimo signified his desire to see a Copy of my Letter to Lord Bathurst upon the subject of Compensation, I then stated to His Excellency that I had no Copy in Town, but that, immediately on my return to Great Swan Port, a Copy thereof should be transmitted and which I shall take care to enclose to you without loss of time.

I have, &c.,

GEO. MEREDITH.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.

Government House, Hobart Town,

My Lord, 14th November, 1826.

I have had the honor to receive your Lordship's Despatch of the 23rd of April, in which your Lordship has considered in detail the Sources of Revenue in this Colony, and directed my attention to the execution of the principle on which it is intended that the expenses of the Civil Establishment shall in future be defrayed.

The statement, which your Lordship requires in order that the Treasury may be informed of the probable amount of the Bills which they may expect to be called upon to pay annually on this account, cannot at present be made, the introduction of a system for the future expenditure, as free from intricacy as the circumstances and nature of the Colony will admit, demanding mature consideration; and I am not sufficiently satisfied with any view that has yet presented itself to my mind, unreservedly to recommend its adoption.

In explanation of this practical difficulty, which may not immediately occur to your Lordship, I would beg to submit that many of the Establishments are of a mixed nature, and, to any separate arrangement, a little unbending: for instance, the Departments of the Sheriff and Police: Both would be required, were this Colony no longer a penal Settlement, and in that light
1826.
14 Nov.

Adjustment to be made.

Anticipated expenditure.

chargeable upon the Colonial Revenue; but nevertheless, both are upon a scale, which, under other circumstances, would be quite unnecessary, and therefore the Colonial Fund is entitled to relief.

These are, however, only difficulties in the way of an arrangement in every respect most desirable and advantageous, and, as no Bills have been drawn since the 5th of July on account of Colonial Salaries, an adjustment may easily be directed for the guidance of the Treasury and the Assistant Commissary General, according to your Lordship's Instructions.

Under these circumstances, I am desirous to postpone immediately submitting the particulars of the information required; but I believe I shall not greatly err in stating that a sum of about Twelve Thousand Pounds Sterling will become chargeable under the new arrangement for the Year 1827; but this amount, the Assistant Commissary General has included in the Estimate he transmits to the Lords Commissioners of His Majesty's Treasury by the present opportunity.

I have, &c.,

GEO. ARTHUR.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.
(Despatch No. 51; acknowledged by Earl Bathurst, 18th April, 1827.)

My Lord, 14th Novembr., 1826.

I have the honor to submit that one of the advantages proposed to Your Lordship for the formation of the Van Diemen's Land Company was the employment of Convicts who were represented to be a burden upon the Crown; accordingly under the 5th head* of Provisos, Limitations, and Restrictions in the Company's Charter, it is provided "that the said Company shall employ upon the Lands so to be granted to them such a number of Convicts as shall at the least be equal to the number of free Labourers employed thereupon, if the Governor, Lieutenant Governor, or other person administering the Government for the time being of the said Island and its Dependencies, shall be able and willing to supply a sufficient number of Convicts for that purpose."

Under the 9th, 10th, 11th and 12 Heads,* for the burden thus supposed to be imposed upon the Company, it is consented that a set-off shall be made in the Quit Rent, which may become due upon the very low valuation placed upon their Lands, and, in consideration of the employment of a certain number of Convicts, the Company is to be altogether discharged from the payment of all Quit Rent, credit being given to the Company at the rate of £16 annually for any Convict they may employ.

* Note 107.
In Mr. Curr's letter* to Your Lordship, under the 3rd, 4th, and 5th Heads, Your Lordship’s attention is specially drawn to this point, and, on the plea of the saving to the Crown, Instructions are requested to be forwarded to the Local Government to pay the most favorable attention to the applications of the Company’s Agents for Mechanics, husbandry Servants, and Labourers, and Your Lordship’s Instructions to me are framed accordingly.

In my Dispatch No. 11,+ I have already submitted in explanation to Your Lordship the mistake which has existed of there being a superfluous number of Convict Labourers in this Colony:

We have, it is quite true, a large body of the most abandoned, vicious characters upon the hands of the Government; our Penitentiary, and Jails, and Chain Gangs, and Penal Settlements are crowded with them; and of these I apprehend neither the Company nor any Private Settler will be disposed to relieve the Government; but, of the better class of Convicts, there neither is, nor is there likely to be, a number equal to the probable demand of the Settlers.

As the Colony advances in prosperity, free labour not being proportionably attainable, the Settlers must seek for the Assignment of Convicts to their Service; and whilst I have taken the liberty of respectfully pointing out to Your Lordship the practical objection and very serious evil of giving any bonus to any Individual as an inducement for taking Prisoners off the hands of the Crown, still I would by all means encourage their assignment when they can be usefully employed in the Service of Agriculturists. Under no other circumstances, I am quite confident will they take any care of them!

At this moment I have not the returns before me; but I may venture to state that, at the period of Mr. Curr’s arrival and up to this hour, applications are registered for at least 800 Prisoners by free Settlers who are most anxious and pressing to obtain their Services, and, without seeking the slightest gratuity, would esteem the Assignment as a great favour: It therefore would seem most contradictory to draft them off to the Van Diemen’s Land Company with the Stipulation annexed of allowing them £16 for every Prisoner they thus receive.

On receiving Mr. Curr’s first application for Servants, I have thought it proper, as far as lays in my power, to guard against the operation of the condition, and to leave Your Lordship unshackled in the further consideration of the point. My argument with Mr. Curr, as Your Lordship will perceive by the Colonial Secretary’s letter, is this: The Government understood they were to place a burden upon the Company, and were disposed to

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* Marginal note.—31st August, 1825 (See note 107).
† Marginal note.—10th August, 1825.
1826.
14 Nov.

Difficulty in making decision.

Conditional assignment of convicts to V.D.L. company.

Application by E. Curr for assigned convicts.

HISTORICAL RECORDS OF AUSTRALIA.

compensate them for bearing it: the reverse, however, turns out to be the fact; there is no burden to impose, and it therefore does not appear reasonable to advance the claim for Compensation. To this, Mr. Curr answers that he considers the obligation entered into at Home binding, and that I ought not to interfere with the negotiation there concluded.

In this state of things, my aim is so to proceed that I may at least do no injury to the cause until Your Lordship's judgement can be obtained upon it, but the difficulty lies in this: If I avail myself of the words of the Proviso (if the Lieutenant Governor is able and willing to assign them) and, pleading my inability and unwillingness, withhold Convicts altogether from the Company, their Agents cannot proceed with any operations; if I do assign them under any circumstances, then the question arises whether, according to the terms of the Charter, the Company may not hereafter insist upon the stipulated reduction of Quit Rent?

My decision therefore has been to grant the Company the Convicts they desire, as I would on no account be the means of suspending their operations, or give them occasion to ascribe their failure to the measures of the local Government, but to notify to their Agent that he is to understand I have done so purely from the desire to relieve the Government.

This system I shall pursue until I am honored with Your Lordship's Commands, and I conceive I may do so with strict propriety under the terms of Mr. Hay's guarded letter* to Mr. Curr, in which, in answer to the several points solicited by the Company's Agent, Your Lordship is pleased to promise the Company further support and assistance in the prosecution of their ulterior views so far as may not be injurious to the general Interests of the Settlers, or as may not on other accounts be objectionable.

I have, &c.,

GEO. ARTHUR.

[Enclosure No. 1.]

MR. E. CURR TO MR. J. LAKELAND.

Company's Office, Hobart Town,

Sir,

I have to request that Twenty five men may be assigned to the Van Diemen's Land Company. The description of Men most wanted except Mechanics, of which I understand none can be assigned, are Farm Laborers, one or two Gardeners, and Timber fellers and Splitters.

I have, &c.,

EDWARD CURR, Company's Agent.

* Marginal note.—10th September, 1825.
[Enclosure No. 2.]

ACTING COLONIAL SECRETARY HAMILTON to Mr. E. Curr.

Colonial Secretary’s Office,

6 October, 1826.

Sir,

Your Application for twenty five Convicts to be assigned to the Van Diemen’s Land Company having been laid before the Lieutenant Governor, I am commanded to communicate to you that, reference having been made to the Earl Bathurst’s Despatch, transmitting a Copy of his Lordship’s letter* to you, dated the 15 April, 1825, as well as to the 5th Clause of the Charter of incorporation, it appears evident that such an assignment is contingent on the ability and willingness of the Lieutenant Governor, and that, by the plainest interpretation of the passages adverted to, convict Labour is to be regarded in the light of a tax, which the Government is disposed to admit, as a Sett off in reduction of quit rent.

2. His Excellency deems that in forming such an arrangement with the Company, His Majesty’s Government laboured under a Misapprehension as to the State of the Colony; for, instead of a pecuniary allowance being made to individuals for relieving the Crown by employing Convicts, it is not to be denied that, at this time, Settlers would cheerfully give a bonus for a very considerable number of useful Men of fair Character. There would consequently be great apparent injustice, were the Company, under a peculiar reading of their Charter, to obtain Servants on more advantageous terms than Settlers.

3. In the view taken by His Excellency of the Stipulation in question, He is “neither able nor willing” to assign any prisoners to the Service of the Company; yet, in order that their operations may be assisted rather than impeded, measures will be adopted for Complying with your requisition at all times to the utmost that the State of the public Works and the pressing Wants of individuals will allow; but this will be done with the express understanding that the Crown is in no degree relieved from any burthen thereby, and that you will receive them on the same terms, as would Settlers generally, until the Lieutenant Governor can be honored with the Commands of the Secretary of State, to whom the point will be submitted.

4. I am to add that it is hoped no prejudice to the interests of the Company can arise out of this mode of procedure; as, should the Sentiments of the Earl Bathurst differ from those of the Lieutenant Governor, you will stand precisely in the same Situation, as if no such reservation had been made; and I am also to assure you that He has no disposition to put any other than a liberal

* Note 107.
construction on the privileges granted to the body you represent, or to interfere with them further than is rendered imperative by a sense of duty to the Crown.

I have, &c.,

W. H. HAMILTON.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.

(Despatch No. 52; acknowledged by Earl Bathurst, 18th April, 1827.)

Government House, V. D. Land,

15th November, 1826.

My Lord,

I have the honor to submit that, notwithstanding the pains which were taken at Home to prevent any misunderstanding in settling the Van Diemen's Land Company after the arrival of their Agents in the Colony, some points have presented themselves, which appear to me too important to be settled finally without reference to Your Lordship's consideration and decision.

In my Dispatch No. 12,* I submitted that a question had arisen upon the construction of Your Lordship's definition of the extent of the District out of which the Company was to select its Land, and that, upon Mr. Curr's positive assurance of Your Lordship's intention, I had ceded the point in favour of the Company.

Very shortly afterwards, the Company's Agent reported that he had visited the Tract of Land contemplated by the Company, and felt it necessary to report that Captain Malcolm Smith (a free Settler who had just before located Land under Your Lordship's special recommendation) had fixed upon a Grant of 2,000 Acres within, as he believed, the Limits of the District proposed to be reserved for the Company.

Although I had, under Mr. Curr's assurance, ceded the points to the Company as to the extent in which the Company was at liberty to select, still Your Lordship's Dispatches to myself, together with the several communications which had transpired at Home* between the Colonial Department and the Company, had left a strong impression on my mind that it was Your Lordship's decided intention that the Company should occupy Land in a remote Quarter of the Island far beyond any settled Districts; a question of difficulty, therefore, so immediately arising between the Agent of the Company and a Free Settler, as to the boundaries, attracted my attention in a very particular manner, and led me again to give the subject the most careful reconsideration, and the correspondence ensued between the Colonial Secretary and Mr. Curr, which I have the honor to transmit.

Considering the character under which Mr. Curr came to this Colony, I felt myself bound to respect his solemn assurance that

* Marginal note.—4th April, 1826.
it was fully understood at Home that the Company might select their Land at Port Sorell; on the other hand, every part of your Lordship's negotiation with the Gentlemen concerned, as well as the plain and obvious reading of many Passages of Your Lordship's Dispatches to myself, appeared to me convincing that the situation of the Company was intended to be infinitely more remote than Port Sorell, which is less than three hours' sail from the Heads at George Town, and not more than four hours' walk from York Town on the River Tamar, at the Head of which Launceston is situated!

In this perplexity, the line I pursued was to adhere to my original concession of suffering Mr. Curr to occupy Port Sorell, and the Land extending due South and West from it, but giving him fully and clearly to understand that he did so on his own responsibility; if he was right in his construction of Your Lordship's intentions, all would be well; if in error, he must be prepared to abide the consequences of an order to remove.

After due deliberation, Mr. Curr renounced the intention of occupying Port Sorell, and has decided upon taking the Company's Land at Circular Head (Cape Grim). He, however, makes a merit of the concession, and implies that the Company is entitled to some indulgent consideration, which I cannot admit, for they have still a most desirable situation on the Coast, and Land communication, I have no doubt, will soon be opened with the settled Districts.

I cannot pretend to deny that the understanding might have existed as stated by Mr. Curr, and I plainly perceive that Colonel Sorell pointed out, in his letter to Your Lordship for the Company's selection, the Country extending from Port Sorell; but I do not perceive any where that Your Lordship closed with that proposition, and Your Lordship's whole description of the remote Station of the Company's Land, and the concessions made thereupon in Quit Rent and otherwise, is at entire variance with the localities of Port Sorell and the Country adjacent to it.

I have much pleasure in stating that the question has been agitated, discussed and settled in the best spirit between the local Government and the Company's Agent; and, whilst Mr. Curr has pleaded the understanding which existed, I have urged the plain reading of Your Lordship's Instructions; and, if it is advanced that Your Lordship intended to allow the Company to settle at Port Sorell, it must be admitted that the most erroneous impression of its situation was conveyed to Your Lordship's mind.

As the Directors will most probably renew the subject at Home, I hope the correspondence will afford a full explanation
Probable difficulty in interpretation of instructions re character of land.

Anticipated grant of quarter of island.

Upon all such points as Your Lordship may desire, and I have endeavoured to compress in a Minute the Heads of the discussion for Your Lordship's more immediate reference.

According to Mr. Curr's present idea of the quality of the Land to be selected as coming within the description "of Land capable of being used in Pasturage or Tillage," and which he thinks will comprehend several Millions of Acres, I fear we shall be again at issue. I submit it would have been better to have given the Company at once a Million or even two Millions of Acres upon the principle of admeasurement observed towards the Australian Company;* and, indeed, hitherto towards all Free Settlers in both Colonies; for, from the unequal quality of the Soil, and rugged features of a large portion of Van Diemen's Land, the manner of taking the Company's Land must lead to their occupying a vast extent of Country; and of this, from his previous personal knowledge of the Colony, Mr. Curr was fully aware, and availed in his negotiations at Home in behalf of the Company.

I should collect from some expressions in Mr. Curr's letter† that Your Lordship had early entertained a very just doubt whether so large a Tract as the Company required could be found available in this Colony, and their expectation of getting from 3 to 5 Hundred Thousand Acres seems to have been negatived, which leads me the more to question whether Your Lordship ever contemplated such a vast extent of Country as must be comprehended in the Company's Grant; indeed, according to Mr. Curr's present idea, founded upon the survey and examination of the Country which has been very superficially made, he informs me that scarcely less than one fourth of the whole Island, the whole North West Quarter, will give such a Grant as to quality, as it was intended by Your Lordship that the Company should possess; so that, if this statement proves on actual Survey to be correct, Mr. Curr, although setting out from Cape Grim, may yet anchor the Company's Vessel which he is steering in the much desired Haven of Port Sorell.

I have, &c,

Geo. Arthur.

[Enclosure No. 1.]

Minute.

Analysis of Correspondence with Mr. Curr respecting the Limits of the Van Diemen's Land Company.

No. 1. Captain Montagu to Edward Curr, Esqr., 8th March, 1826.

Acquaints him that the Lieut. Governor has perused with attention all the Documents relating to the Van Diemen's Land Company Establishment with a special view to the Company's Limits:

* Note 108.  † Marginal note.—22nd March, 1825 (see note 107).
ARTHUR TO BATHURST.

That, although Earl Bathurst's Dispatches in strictness limit the space within which the Company is restricted, yet the impression on the Lieut. Governor's mind, under Mr. Curr's express assurance to that effect, is that it may be considered that His Lordship contemplated the whole boundary as described by Colonel Sorell.

Instructions will accordingly be given to the Surveyor General with the understanding that the part of the Island so apportioned was subject to the King's Instructions for the General Survey of the Colony and reservation for Church and School Estates.

No. 2. Edwd. Curr, Esqr., to The Lieut. Governor, 17th June, 1826.

Acquaints the Lieut. Governor that he has lately returned from the examination of the Tract of Land contemplated for the Company. That the Secretary of State had promised a Reserve should a Protest against be made of the Country Westward of Port Sorell, until the Company's Land should be finally selected, and that Captain M. Smith had located a Grant of 2,000 Acres in the neighbourhood, and, as he believed, within the Limits of the District reserved for the Company.

No. 3. Surveyor General to The Coll. Secretary, 27th June, 1826.

Mr. Curr's communication being referred to the Surveyor General, it is reported that the Grant to Captain Smith does not come within the District or Limits reserved for the Company.

No. 4. Colonial Secretary to Edwd. Curr, Esqr., 28th June, 1826.

Acknowledges his letter, and apprizes him of the substance of Surveyor General's Report.

Expresses the Lieut. Governor's regret that a question of interference had arisen so early, and that, to obtain a clear view of the point at issue, he had carefully perused the whole of the Correspondence in relation to the formation of the Company. Notices that he finds Mr. Curr himself, in his letter to Earl Bathurst, 31st August, 1825, expressly contemplates "the extreme North West," at the distance of "several days' journey from the inhabited Districts"; and, on a very full consideration of Earl Bathurst's Dispatches, in allusion to Quit Rent and other conditions, expressly founded on the remoteness of the Company's Lands, the Lieut. Governor entertains great doubt whether it was not His Lordship's intention to confine them strictly to the particular Tract of Land so specially marked out by Mr. Curr, viz.: The extreme North West.

Admits that a passage in Colonel Sorell's Letter to Earl Bathurst contains a suggestion that the selection may be made
between Port Sorell and Cape Grim; but nothing in any of Earl Bathurst’s Dispatches to the Lieut. Governor warrants the conclusion of His Lordship’s approval.

In intimating this impression on the Lieut. Governor’s mind, it may seem to be opposed to the Secretary’s communication of the 8th March, but the Lieut. Governor is not disposed to withdraw the permission then given for considering Port Sorell as the Eastern Boundary; it may be still so held subject to confirmation at Home.

No. 5. Edwd. Curr, Esqr., to The Lieut. Governor, 24th July, 1826.

Encloses Copy of a Letter, addressed by himself to Earl Bathurst, 1st Septr., 1825, requesting His Lordship at once to impose an equitable price upon the Land to be granted to the Company.

His Excellency will collect from His Lordship’s reply that the remoteness of situation formed no part of the arguments which influenced a low rate to be fixed, but that the rate had its basis chiefly upon the rates fixed for Individuals, who had the liberty of selection where they pleased.

The remoteness of situation was considered only as a ground for Military protection.


Acknowledges the preceding, and acquaints him that his inference as to Earl Bathurst’s inducement for fixing so moderate a Quit Rent is not quite correct.

Encloses an Extract of a Dispatch 12th Sepr., 1825, which explains most clearly Earl Bathurst’s motives on this point, and which shews that, if Mr. Curr did not adduce the remoteness as an argument in favour of a low Quit Rent, such was the consideration which influenced His Lordship.

No. 7. Edwd. Curr, Esqr., to The Coloni. Secretary, 27th July, 1826.

Acknowledges letter of the 28th June and 26th July.

Admits that he understands the confirmation of the view, taken of the situation of the Grant by the Secretary’s letter of the 8th March, depends upon the Home Government.

Prolongs the discussion therefore for the purpose only of ad­ucing arguments in support of the ground, which he has taken with respect to the Boundaries of the District, and as an inducement to warrant the exclusion of Captain Smith from the Grant which he has located.
ARTHUR TO BATHURST.

Contends that the Surveyor General's Report is founded upon an erroneous view of the subject, as the question depends upon the decision to be made by Lord Bathurst.

Argues that no Individual can substantiate his Title to Land Westward of Port Sorell, if it should turn out that this District was included in Lord Bathurst's intention, and comprehended therefore by him as ungranted Land at the period of the receipt by the Lieut. Governor of Lord Bathurst's Instructions.

That no circumstances should be taken into consideration, but such as were known to His Lordship; and that the accidental case of an Individual having taken his Grant in this particular spot does not invalidate the correctness of the designation of the District, as being agreeable to Lord Bathurst's Instructions in other particulars.

Observes that it will be hopeless to endeavour to reconcile the expression of opposite tendencies, which are to be found in the correspondence.

Argues that Lord Bathurst distinctly conceded to the Company the right to select in the North West District, Part, or Quarter of the Island.

That, although Lord Bathurst has not clearly defined what he intended by the North West District, yet his Words, taken by themselves, admit but of the construction put upon them by Mr. Curr.

That almost every accidental expression in the correspondence, either is applicable to Port Sorell or was applicable according to the information which was then possessed in England.

Quotes in support of these positions certain Words* of Lord Bathurst's, and the last Paragraph† of Colonel Sorell's letter.

Considers and discusses these two Sentences, and deduces from them that some latitude in the selection was evidently intended, but could not be given unless by reading them in the manner contended for by Mr. Curr.

Comments on additional expressions‡ of Lord Bathurst's, and applies their meaning to the same point.

Contends that Colonel Sorell's letter§ completely corroborates his solution, that it varies in no respect from Lord Bathurst's Instructions, but only defines the same thing more explicitly than His Lordship had done.

Expresses his solemn assurance that he was privy to the whole negotiation, and that he always understood the argument as he now explains it.

* Marginal note.—Paragraph No. 8, Page No. 10.
† Marginal note.—Page No. 11.
‡ Marginal note.—Paragraphs No. 11 and 12, Page No. 14.
§ Marginal note.—Page No. 16 (see note 109).
Trusts that, upon a reconsideration of the question, His Excellency will feel satisfied with the decision conveyed by the Secretary of 8th March, and that he will act upon that decision in the case of Captain Smith.

No. 8. By a Note as P.S.

States that the assurance as to his personal knowledge of the sense of the agreement between Lord Bathurst and the Company extends only to the Northern Boundary, and that he gathers that the Westward limit extends to Macquarie Harbour from written Documents solely.


Acquaints him that the Lieut. Governor has given the fullest attention to all the arguments contained in his letter of the 27th July, but that his opinion upon the subject is in no respect changed.

A review of all Lord Bathurst's Instructions still appears to confirm the view he had already taken, and to confine the Company to the extreme North West Quarter of the Island, Basse's Straights on the North, and the Ocean on the West, being unalterable Boundaries.

Admits that Colonel Sorell had suggested more extensive limits, but there is nothing to shew that Lord Bathurst closed with the suggestion. The Lieut. Governor however is disposed to act upon Mr. Curr's solemn assurance; but is anxious to impress that the concession is made solely on his assertion, and that it is at direct variance with the Governor's reading of Lord Bathurst's Instructions.

His Excellency considers it would be disingenuous not to state that, in his opinion, every part of Earl Bathurst's Despatches is perfectly consistent, taking it for granted that Cape Grim was the basis from whence His Lordship intended the Company should commence their Boundaries.

No. 10. Edw. Curr, Esq., to Colonial Secretary, 30 October, 1826.

Acquaints him that, jointly with Mr. Adey, he had determined upon selecting the Land, according to the view of the instructions taken by the Lieutenant Governor. That, in having formed this determination, no change has taken place in his opinion respecting the intention of Lord Bathurst; but that they have arrived at this result, under the possibility that His Lordship may not precisely recollect all that has passed; and, as he admits, that the Despatches are capable of bearing such a construction, it is possible His Lordship may interpret their reading unfavorably to the interests of the Company.
That, as a different and superior selection to that now taken might have been chosen, should His Lordship's despatches have failed to convey his real intention, the Company will have an equitable claim to compensation. That he shall state to the Court of Directors his opinion, that an injury has been sustained, and point out his view of the Compensation to which they are entitled.

That he by no means relinquishes the benefit conceded by Lord Bathurst of being allowed to make a location in the Islands in Bass Straits.

Concludes by saying that he is prepared to commence the survey of the lands selected, upon the footing on which the subject was placed by Lord Bathurst.

[Enclosure No. 2.]

CAPTAIN MONTAGU TO MR. E. CURR.

Sir, Secretary's Office, 8 March, 1826.

I am directed to inform you that the Lieutenant Governor has read with Attention all the documents in his possession referring to the Establishment of the Van Diemen's Land Company. Although Earl Bathurst's despatches in Strictness seem to limit the Space within which the Company is restricted to take its Lands, yet the impression on the Lieutenant Governor's mind is, that it may be fairly considered His Lordship contemplated the whole boundary as described by Colonel Sorell, more especially, under your assurance, that such was the decided impression when the arrangement was finally concluded at home.

Instructions therefore will be conveyed to the Surveyor General that you are at liberty to select the grant for the Van Diemen's Land Company within the limits described by Colonel Sorell in his letter to Lord Bathurst.

It must be understood, however, that the portion of the Island, thus set apart for your Selection, is subject to the King's Instructions for the General Survey of the Colony and reservation of the Lands for the Church and School Estates; but this the Lieutenant Governor hopes and thinks, with a little concession on either side, may be arranged, not only without prejudice but rather to the benefit of the Company.

I am further instructed to inform you that there need not on account of the Government be one day's delay in your proceeding to select the exact Situation of your Grant.

The County, in which you take your Land, will be called "Horton," and, as soon as you have made your election, you will be so good as to notify the same to the Surveyor General, who
HISTORICAL RECORDS OF AUSTRALIA.

1826.
15 Nov.

Examination of country west of Port Sorell.

I have, &c.,

JOHN MONTAGU.

[Enclosure No. 3.]

MR. E. CURR TO LIEUT.-GOVERNOR ARTHUR.

Sir, Hobart Town, 17 June, 1826.

I have to inform your Excellency that I have lately been engaged in examining that part of the Island, which lies to the Westward of Port Sorell and within Thirty five Miles of the North Coast, with a view to the selection in that quarter of the Lands to be granted to the Van Diemen's Land Company.

The Secretary of State for the Colonies was pleased to promise, that a reserve should be made of the Country which lies to the Westward of Port Sorell until the Company's lands should be finally selected; and I have to state to your Excellency that an Individual, Captain Malcolm Lang Smith, in ignorance probably of such reservation having been made, has located a grant of two thousand Acres of land in that neighbourhood and, as I have every reason to believe, within the district reserved for the Company's selection.

I regret that the interest of any individual should be affected by the Company's claims; but it is of so much importance to that body that its boundary should not be broken in upon by detached properties lying within it, that I am reluctantly compelled on behalf of the Company to solicit that your Excellency will protect its interests by preventing the Land in question being confirmed to Captain Smith, until the Commissioners for the Company have Completed their Survey and made their selection, and that your Excellency will ensure the Company possession of the ground in question, in case it should eventually be comprised within their Selection.

When your Excellency reflects that the Company's permission to select is confined within very narrow limits, and that Individuals are, with that small exception, free to chuse their lands in any quarter of the Island, I trust you will see the equity of the claim, I now make, not to have those narrow limits unfairly and unnecessarily invaded.

I have, &c.,

EDWARD CURR.

[Enclosure No. 4.]

ACTING SURVEYOR-GENL. DUMARESQ TO ACTING COLONIAL SECRETARY HAMILTON.

Sir, Survey Office, 27 June, 1826.

With reference to the Report of the Chief Agent of the Van Dieman's Land Company that Captain Malcolm L. Smith...
ARTHUR TO BATHURST.

appeared to have incroached on the limits to be reserved for the choice of the Company's Land, I have the honor to state that, on reference to the Correspondence and instructions on the Subject, it appears to me evident that the land selected by Captain Smith has not fallen within those limits.

I have, &c.,

[Enclosure No. 5.]

ACTING COLONIAL SECRETARY HAMILTON TO MR. E. CURR.

Sir,
Colonial Secretary's Office,
28th June, 1826.

The Lieutenant Governor having directed me to acknowledge and reply to your letter of the 17th Instant, representing that Captn. Malcolm Smith had chosen his location of land within the limits prescribed for the Selection of the Grants given by Charter to the Van Diemen's Land Company, I have the honor to acquaint you that reference has been made to the acting Surveyor General thereon, by whose report (a Copy of which is inclosed) it will appear that Captain Smith's Choice has not fallen within the space allowed to the Company.

I am to state to you, it has occasioned the Lieutenant Governor much concern to find a question of interference has arisen at so early a period, and that, in order to obtain a clear view of the point at issue, His Excellency has reperused with great attention the whole of the Correspondence which has passed in relation to the establishment of the Company more especially as affects the precise situation in which their land was to be chosen.

By your letter* to 'the Earl Bathurst, under date 31 August, 1825, paragraph , it appears that you have in express terms stated that the part of the Island, in which the Company's Lands are to be located, is the extreme North West at the distance of several days' Journey from the "Inhabited districts, indeed, being as far as it is at present known wholly inaccessible by Land"; and, on a full consideration of the Earl Bathurst's expressions in allusion to the rate of Quit rent and other conditions on which his Lordship's assent to the formation of the Company was given, the Lieutenant Governor entertains great doubts whether it was not his Lordship's intentions to confine them to the particular Tract pointed out by yourself in so special a manner.

It is true, as you have observed, that a passage upon the Subject, which you have addressed by Colonel Sorell to Lord Bathurst, conveys a Suggestion that you were to be at liberty to

* Note 110.
select between Port Sorell and Cape Grimm, but nothing in His Lordship's dispatches to the Lieutenant Governor conveys any correspondent instruction.

In adverting to the Communication made to you on the 8th March last by Mr. Secretary Montagu and the impression of a contrary nature to that now intimated, which then existed in the mind of His Excellency, supported by your decided assurance of its accuracy (which assurance he has never for an instant doubted), I am commanded to inform you that he is not disposed to withdraw, as far as depends upon himself, the permission then given for your considering Port Sorell for your Eastern boundary; but you are, of course, aware that the final confirmation must be received from home. I have, &c.,

W. H. HAMILTON.

[Enclosure No. 6.]

MR. E. CURR TO LIEUT.-GOVERNOR ARTHUR.

Sir, Hobart Town, 24th July, 1826.

I beg to enclose to your Excellency a Copy of a Letter* of 1st Sepr., 1825, which, as Secretary to the Van Diemen's Land Company, I addressed to Lord Bathurst, requesting him at once to impose an equitable price upon the Lands to be granted to the Company.

Your Excellency will gather, from this and from His Lordship's reply of the 13th Sepr., 1825, that the remoteness of the Situation, in which the Company's lands were intended to be located, formed no part of the Argument submitted to His Lordship in favor of a low rate of Quit rent, and that, as far as appears from the Correspondence, the rate of Quit Rent, if low, was conceded nevertheless principally upon the basis of the rates, which up to that time had been charged upon lands granted to individuals who had the opportunity of selecting them in the most eligible Situations.

Upon reperusal of the correspondence, I remark that the remoteness of situation was mentioned only as a reason why sufficient Military protection should be afforded to the Company. I refer Your Excellency to Paragraph 6 of my letter* of 31 August, 1825, addressed to Lord Bathurst, of which you possess a Copy.

I have, &c.,

EDWARD CURR.

[Enclosure No. 7.]

ACTING COLONIAL SECRETARY HAMILTON TO MR. E. CURR.

Colonial Secretary's Office, 26 July, 1826.

Sir,

I have the honor to acknowledge the receipt of your letter of the 24th Instant, transmitting a copy of the letter, which, as

* Note 110.
ARThUR TO BATHURST.

Secretary to the Van Diemen’s Land Company you addressed to the Earl Bathurst on the 1st Septr., 1825, requesting His Lordship to impose at once an equitable price on the Lands granted to the Company in preference to its being valued by Commissioners; and I am Commanded by the Lieutenant Governor to intimate that the inference, you have drawn from His Lordship’s Silence as to His inducement for fixing so moderate a Sum as 2s. 6d. per acre, is not quite correct.

The enclosed extract* from a despatch addressed to the Lieutenant Governor, dated the 12 September last, places in the most unquestioned light His Lordship’s motives on this point; and it is thereby apparent that, although you did not on the behalf of the Company adduce the remoteness of the Situation you proposed to select as an Argument in favor of its being taxed at a low value, His Lordship has nevertheless conveyed to the Lieutenant Governor, in the most distinct terms, that such was the Consideration, which influenced His Lordship’s mind.

I have, &c,

W. H. HAMILTON.

[Enclosure No. 8.]

MR. E. CURR TO ACTING COLONIAL SECRETARY HAMILTON.

Company’s Office, Hobart Town,

Sir, 27 July, 1826.

1. I have to reply to your Letter of the 28th June (received on the 25 Instant), and of the 26th July relative to the situation in which Lord Bathurst intended the Van Diemen’s Land Company’s Grant should be located.

2. The former letter confirmed the Concession made in Mr. Secretary Montagu’s letter of the 8th March, but adds “that I am of course aware that the final Confirmation must be received from home.” Of this, I certainly was aware, and to it I must submit, tho’ I was not prepared to expect the specific mention of such a reservation which is somewhat prejudicial to the Company’s lease as it is calculated to raise a doubt on Lord Bathurst’s Mind, on a Subject, on which I must still contend, no doubt ought to exist. With the full and perfect knowledge which I possess, of the true intent of the arrangement entered into by the Company with Lord Bathurst, I cannot feel the least apprehension in leaving the final Confirmation to His Lordship. Having so far settled the question, if I now prolong the Correspondence, it can only be with the view of pointing out such arguments as appear to me not only to Warrant His Excellency in permitting the selection to be made from Port Sorell to Port

* Note 110.
Grimm, but also in excluding Captain Smith from that district, if it shall appear that he has made his selection within it.

3. To the Surveyor General’s Letter of the 27th June, I am not clear what meaning to Attach. He cannot intend to say that Captain Smith’s Selection has not fallen to the Westward of Port Sorell. He possesses I believe no information on that point, but what has been furnished by the Company’s Surveyors, and that, as far as it goes, clearly places the land in question to the Westward of Port Sorell. But if he means to say that, having satisfied himself, by reference to the Correspondence and instructions, that Lord Bathurst did not intend the Company to Select from Cape Grim to Port Sorell, and that it appears to him, upon that ground, evident that the Land, selected by Captain Smith, has not fallen within the limits intended for the Company’s Selection, it is for you to inform him that he has taken up a question already disposed of, the Governor having decided to put a different Construction on Lord Bathurst’s instructions.

4. It is for me to regret ‘that a question of interference with an individual should so early have arisen”; but I must submit that such an unforeseen Occurrence cannot in any way affect the Judgment, which is to be formed of Lord Bathurst’s intentions; I mean to urge that the fact of an individual having selected his lands to the Westward of Port Sorell can neither entitle him to a Confirmation in those Lands, if it should ever appear that they are within the limits intended by Lord Bathurst for the Company, and were Chosen subsequently to His Lordship’s instructions to reserve for the Company having been received by the Lieutenant Governor; nor can it in any way tend to shew that Lord Bathurst did not intend the Company to have permission to select near Port Sorell. If, because the Company’s Lands have been described in the Correspondence with Lord Bathurst as intended to be situated at a distance of several days’ Journey from the inhabited districts, it should be insisted that the Selection should not be made in any situation, which would not tally with that part of the description; and, if the fact of Captain Smith having located his Lands in the district Westward of Port Sorell were adduced to prove that the district was not within his Lordship’s intention, such a principle, if assumed, might have operated to the total exclusion of the Company from the Island. Suppose an extreme case: that Captain Smith and others had located themselves at Circular head, I apprehend the Lieutenant Governor might equally have expressed his regret that a question of
interference had arisen so early; and found great difficulty in complying with Lord Bathurst's expressed intentions, as Cape Grim would not then tally with them, not being as his Lordship designed "several days' journey from the inhabited districts."

5. What I mean to deduce from these Considerations is this simple principle, that, in explaining Lord Bathurst's real intentions, no circumstance should be taken into consideration but such as were known to his Lordship; and that the accidental fact of an individual having located his lands in such a situation as to render one Circumstance in Lord Bathurst's description inapplicable to a district, otherwise pretty clearly designated, should be left out of consideration altogether. Indeed Lord Bathurst himself appears to have supposed the Case of Lands being ad interim granted, where the Company was intended to have a right of selection, when he says in his letter* of 15th April, 1825, paragraph 21, "within that district, the Company will be at liberty to select any ungranted Lands at their own discretion," an expression quite inconsistent with the idea that the accidental fact of lands being located by individuals in a district, otherwise designated as subject to the Company's privilege to select, should constitute a reason why such district should not be considered as subject to the Company's selection.

6. I believe this truth must be admitted that such expressions in the Correspondence, as tend to point out the intended district, are in some instances slightly at variance with each other, and that, in endeavouring to arrive at His Lordship's intentions, the hope of reconciling expressions of opposite tendencies must be relinquished.

7. I proceed then to select from the whole Correspondence the passages connected with the Subject, to each of which I shall append such commentaries, as I believe to be fair and just, and in so doing I propose to establish these three facts:—

1st. That Lord Bathurst has distinctly conceded to the Company the right to Select in the North West "district," "part" or "quarter" of the Island.

2nd. That, although His Lordship has not clearly defined what he intended by the north west district of the Island, yet his words taken by themselves can admit but one construction, and the one which I have put upon them, namely, as regards one side, the Land included between Cape Grim and Port Sorell, and which Construction is amply corroborated by other circumstances and expressions.

* Note 110.
3rd. That almost every accidental expression in the correspondence used subsequently to the permission to select being conceded, and which may perhaps appear in some instances to point to a more distant district than the one contended for, either is actually applicable to Port Sorell and the district adjoining it to the Westward, or was applicable to it according to the best information which was then possessed in England.

8. The first passage, which occurs on the Subject is as follows from Lord Bathurst’s Letter* of 15th April, paraph. 21.

“With respect to the grant and Selection of the Lands to be conceded to the Company the following rules will be observed.

“The Company will receive their grant in the north west district of the Island, that district being for the present purpose considered as bounded on the North by Bass’s Straights, on the West by the Ocean, and on the East and South by lines drawn from either shore, so as to afford the necessary depth of Country. Within that district they will be at liberty to select any ungranted lands at their own discretion.”

9. The next passage connected with this Subject is in Colonel Sorell’s letter of the 2nd April, the last Paragraph,

“With reference to the locality and measurement of the grant of Land to the Company, the North West quarter of Van Diemen’s Land appears to me, under the imperfect information which I had the means of procuring upon the remote parts of the Island, to be the best suited for this grant. I beg leave to suggest to your Lordship that the tract of Country, between Port Sorell and Cape Grimm, bounded on the North by Bass’s Strait, on the West by the Ocean, and on the East and South by two lines drawn from either shore, so as to afford the necessary depth required, might be allowed for the Selection of the Company’s grant,” etc.

10. Before proceeding further, let the above passages be considered.

The obvious meaning, the first impression conveyed by the quotation from Lord Bathurst’s letter, surely is, that some latitude of selection shall be allowed to the Company; and it is equally evident that no Selection can take place, unless the district, within which the Selection may be made, is larger than the lands to be selected. It may however be thought that I am

* Note 110.
even now assuming too much. His Excellency once (in conversation) thought it possible that this passage might be meant, as a paraphrase upon a varied mode of expressing the same idea, as is more clearly stated further on in the paragraph in the following Words:—

"The whole quantity of useful land, that is of Land capable of being used in Pasturage or tillage, to be contained in this square is two hundred and Fifty thousand Acres. Whatever useless and unprofitable land may be unavoidably included in order to complete the square figure will be granted to the Company gratuitously."

Distinguishing between the useful and useless Land is a sort of selection, and his Excellency seemed to think might be the selection to which Lord Bathurst had referred in the clear and perspicuous passage I first quoted. But, as you have not so argued in the letters to which I am replying, and as I am convinced His Excellency on further reflection would not put such a forced and untenable Construction upon so perspicuous a passage, I will continue to assume that the first quoted passage does really give, what it professes to give, some latitude of Selection at the Company's own discretion.

11. I will now proceed to examine his Lordship's words more minutely.

"The Company will receive their grant in the North West district." He does not say "will consist of the North West district."

12. "That District being for the present purpose considered," etc. From this, it is clear his Lordship did not intend the Word "district" to convey the same meaning as in the King's Instructions, when it is stated to consist of Five hundred thousand acres or thereabouts; but his Lordship Attaches a Special meaning to the Word calculated as he says to serve "the present purpose."

13. That district being considered as bounded "on the North by Bass's Streights, on the West by the Ocean, and on the East and South by lines drawn from either Shore, so as to afford the necessary depth of Country." Your interpretation of this passage is that the Company's grant is to consist of the smallest square figure containing 250,000 acres of useful Land bounded as above described. My interpretation is that Lord Bathurst is here describing not the district of which the Company's grant shall consist, but the district in which the Company shall receive their grant. Upon your view of the passage what becomes of the next sentence,
"Within that district, they will be at liberty to Select any ungranted lands at their own discretion"; with you, it must mean "Within that district of which I have directed their Lands should consist," in other words "Within the lands granted to them, they may select any ungranted Lands at their own discretion." His Lordship cannot be supposed Capable of producing such a passage. With me, the passage means something. It means "within that district in which I have directed their lands should be received, they may select any ungranted Lands at their own discretion." This at least is sense.

14. This district, His Lordship says, shall be “considered as bounded on the north by Bass's Streights." Here I pause to ascertain the northern Boundary; Bass's Straights extends from Cape Grimm to Cape Portland, and as much of the Straits as is consistent with keeping within the north west district is to be considered the northern boundary of the district, within which the Company may select. If the north coast be divided into two equal parts, the division will fall about Port Sorell; all to the Eastward of that point will be both north and east or North-east, and all that is not North East will be North-West. By a similar process we limit the Western boundary on the Ocean to the North side of Macquarie Harbour.

15. Those two lines are certain; the extent of the other two is uncertain and depends upon the quality of the Country, when that shall have been ascertained. I take it for granted they are to be drawn from the extremity of the other two lines, and they are to be drawn "so far as to afford the necessary depth of Country." The use of the Word "depth" is remarkable. To have borne out your interpretation, His Lordship should have used the Word "extent."

16. Now permit me to remark to you how completely Colonel Sorell's letter* corroborates my Solution, and it is remarkable that, although this letter is of previous date to His Lordship's, it is written subsequently, for it sets out with stating that the Writer has before him both the Company's Application of the 22nd March and the reply, which His Lordship proposes to return to that Application. It must, therefore, I submit be considered not as recommending Lord Bathurst to do what afterwards he may do or not, but as approving of what he knows his Lordship has decided to do; and Colonel Sorell's letter varies nothing from his Lordship's, but is only somewhat more explicit in defining what Lord Bathurst defines to the same purport.

* Note 110.
17. If any thing be wanting to complete the Evidence as to his Lordship's intention, I do now repeat most solemnly that I was privy to the whole negociation, and that I always understood the Agreement to be as I now explain it, and that I never entertained a doubt or supposed that a doubt could be entertained until His Excellency, on my arrival in the Colony, pointed out to me the different sense in which he understood it.

18. The third fact, which I proposed to establish, is that almost every expression respecting the district intended either is applicable to the district West of Port Sorell or was according to the best information then possessed in England.

19. The first passage calculated to throw a doubt upon the proposition, which I have maintained, is in my letter of the 31 August, addressed to his Lordship, and is as follows: "The part of the Island, in which the Company's lands are to be located, is in the extreme North West at the distance of several days' Journey from the inhabited districts, indeed being as far as is at present known wholly inaccessible by Land. Connecting this with the Circumstance of the Company having a number of Convicts in a State of Compulsory employment," etc., and the passage goes on to request that Military protection may be granted. The only word, which is not applicable to the district West of Port Sorell, is the word "extreme"; the rest is all applicable. It is in the North-west; it is, (at least the Centre of it is) several days' journey from the inhabited districts. I state, without fear of Contradiction, that a cart cannot be taken in seven days' from Mr. Dry's, the last Farm marked in Scott's map,* to Port Sorell. It was as far as then known wholly inaccessible by Land. When this was written, the Colony had been established three and twenty years, and who at that time had ever been at Port Sorell? Mr. Hardwicke who went by Water! Of Captain Rolland's Journey, the difficulties of which almost cost him his life, I never saw the accounts until my arrival here, and I can safely assert that his Lordship had not seen them. Let any person, who knows the nature of the Western mountains, inspect Scott's map of the Island, and say if he would not consider those mountains as an effectual Barrier, and, taken together with the Asbestos range, would he not say that the Country West of Port Sorell was as far as then known wholly inaccessible by Land? And, when it is considered that the Application grounded upon this passage is only for Military assistance, the use of the word "extreme" ought not to be too much insisted on.

20. In the same letter, I have spoken of the district as being the north west Angle of the Island. In this surely there is no

* Note 111.
discrepancy; a little further on we read "the Company being on that ground" (namely under Certain Circumstances there mentioned) "restricted from locating their lands in any situations, which might interfere with their grazing Grounds."

This restriction is proposed by the Company, and it is clear it could only be proposed by them to take effect in other districts than the northwest, in case Lord Bathurst should be pleased to permit the Company to select in any other.

21. These or similar remarks will apply to the extract from His Lordship's dispatch of 12th September, 1825, enclosed in your letter to me of the 28 instant, and I have only to repeat that this and every other passage in the Correspondence will apply to the actual State of the district West of Port Sorell.

22. I trust, when His Excellency has reconsidered the demand, which I have felt myself bound to make on behalf of the Company, he will not only feel satisfied with the decision conveyed to me in Mr. Secretary Montagu's letter of the 8 March, but that he will act upon that decision in case of Capt'n Smith's claim.

23. Difficulties and disappointments of this nature, occurring in the early Stage of the Company's operations in the Colony must amount to a degree of injury which His Excellency would not willingly inflict. I beg to repeat the full reliance which I place in His Excellency for protection and to subscribe myself,

Sir, &c.,

EDWARD CURR, Company's Agent.

I beg to explain that the assurance as to my personal knowledge of the sense of the Agreement between Lord Bathurst and the Company contained above in Paragraph 17 is only to be understood as to apply to the Northern Boundary. Nothing was ever said about the Company's Lands being near Macquarie Harbor. When I contend that the Western limit of the district within which the Company is permitted to select extends Southward to Macquarie Harbor, I gather this from the Written documents solely.

E.C.

[Enclosure No. 9.]

ACTING COLONIAL SECRETARY HAMILTON TO MR. E. CURR.

Sir,

Colonial Secretary's Office, 4 August, 1826.

Having laid your letter of the 27th Ulto. before the Lieutenant Governor, I am directed to inform you that His Excellency has given the utmost attention to the whole of the Arguments, which you have adduced on the various points connected with the Situation of the Grant of Land to the Van Diemen's Land Company, and that the doubt, which had previously existed in His Excellency's mind as to the correctness of your construction of the Earl Bathurst's intention, is in no degree removed.
Upon reviewing and connecting the whole of His Lordship’s correspondence, it will appear to His Excellency that His instructions decidedly confine the selection of the Company to the extreme North West quarter of the Island; Bass’s Straits on the north and the Ocean on the West being unalterable Boundaries and extending from Cape Grimm East and South until they Comprehend a space in which the Company may select as far as possible in a square figure 250,000 Acres of Land of the description His Lordship intended they should possess.

The Lieutenant Governor is free to admit that Colonel Sorell had proposed more extensive limits; but it does not appear that the Earl Bathurst closed with the suggestion; on the Contrary, His Excellency considers the whole of His Lordship’s observations as to quit rent, Military Force, etc., as affording proof that he had Contemplated the grant being made in the extreme North-west Corner of the Island.

His Excellency is nevertheless disposed to rely and to act upon your solemn assurance “that you were privy to the whole negotiation, and that you always considered the Agreement to be as you explain, namely that it was The Earl Bathurst’s determination clearly understood at home to allow the Company to select within the district extending from Cape Grimm to Port Sorell on the Northern Coast.” But the Lieutenant Governor is anxious that you should clearly understand that this concession is made solely on your assertion, and in direct variance from His Excellency’s reading of His Lordship’s instructions.

As it is the Lieutenant Governor’s wish to avoid any thing controversial, he declines noticing in detail those passages, to which you refer and which you urge as having a Contradictory tendency; I am to observe that His Excellency considers it would be disingenuous on His part, were he not to assure you that, in his opinion, every part of The Earl Bathurst despatches is perfectly consistent, taking it for granted that Cape Grimm was the point from whence His Lordship intended the Company should Commence their Boundaries.

I have, &c.,

W. H. Hamilton.

[Enclosure No. 10.]

Mr. E. Curr to Acting Colonial Secretary Hamilton.

My Dear Sir, Belle Vue, 7 Augt., 1826.

The Assurances contained in my Letter of the 27th, paragraph 17, seem to apply to a passage to which I did not intend they should be considered as referring, and I explained this to His Excellency when I had the Honor of seeing him on the Subject as you will remember.
1826.
15 Nov.
Assurance given by E. Curr.

To set this matter right, I should be glad to add to that letter by way of postscript words to the following effect:—

"I beg to explain that the assurance as to my personal knowledge of the sense of the Agreement between Lord Bathurst and the Company, contained above in paragraph 17, is only to be understood as applying to the northern Boundary; nothing was ever said about the Company's Lands being taken near Macquarie Harbor. When I contend that the Western limit extends southward to Macquarie Harbour, I gather this from the Written documents solely."

If I am permitted to add so much to my letter, it will be necessary that you should make a corresponding erasure of Sir Words in the penultimate paragraph of yours of the 4th August.

Most, &c.,

EDWARD CURR.

[Enclosure No. 11.]

MR. E. CURR TO ACTING COLONIAL SECRETARY HAMILTON.


1. I beg leave to notify to you, for the information of His Excellency the Lieutenant Governor, that, in conjunction with Stephen Adey, Esqre., the Second Commissioner for locating the Company's Lands, I have decided upon accepting the location of those Lands in the Situation which, by order of His Excellency, you have pointed out in your letter to me of the 4th August, as that to which it appears to His Excellency that his instructions decidedly confine the Selection of the Company.

In conveying to His Excellency this determination, I beg leave to state that it is my unaltered opinion that the Words of Lord Bathurst's various despatches, which, in the Course of the Correspondence, has been so frequently quoted, do clearly Authorize the Company's Commissioners to select their Lands any where within the north-west quarter of the Island; but it is not inconsistent with this opinion to admit that the different view, which His Excellency has taken of His Lordship's meaning, proves that reasonable doubts may be entertained whether I have correctly understood that meaning or not. It is more than probable that, when the question is referred to Lord Bathurst, His Lordship will know nothing from recollection and will only be able to ascertain what his intentions were, from what appears on the record of the despatches, which His Lordship wrote at the time. His Excellency had shewn me that a conclusion diametrically opposite to that, which I have arrived at, may be drawn from those despatches; there would be a considerable risk, therefore, in acting upon my own understanding of them, tho' his Excellency leaves me at liberty so to do; for, should I
be in Error, the consequence would be that His Lordship would not confirm the grant selected for the Company; much time and money would have been expended upon Lands which afterwards must be vacated, a risk which I do not feel myself authorized to incur.

3. It is my opinion that a different and a superior selection might have been made within the Northwest quarter of the Island; and, if no question had been raised on the subject, I have no doubt that a different Selection would have been made. If then it was his Lordship's intentions, or rather, if the Contract between the Government and the Company was as I maintain it to have been, that the latter should receive its Lands in any part of the North West quarter of the Island at the option of the Company's Commissioners, and his Lordship has omitted clearly to convey that intention, or His Excellency has erroneously interpreted the Contract, in either case it must be admitted that the Company has sustained an injury to the extent of the difference between the value of the Lands actually located, and the best location which might have been made in the north West quarter of the island.

4. Now, though I cannot but feel a degree of delicacy in claiming compensation for what may in some sense be considered rather as a negative than as a positive injury, as it consists in giving a grant somewhat less valuable than it was His Majesty's gracious intention should be given to the Company, and, though I would not be supposed to forget for a moment the grateful acknowledgement which will ever be due from the Company for the benefits it will still receive from the Crown in the Lands actually located, yet it is not for me in any manner to relinquish without equivalent any part of the gifts or privileges so graciously bestowed; and I shall state to the Court of Directors my opinion that a certain injury has been sustained and point out at the same time the nature of the Compensation, which I believe will give the Company most nearly the advantages, which I have maintained were originally designed for it.

5. In what I have here said, I mean in no degree to relinquish the benefits of the Concession, made by Lord Bathurst as to the locating under certain circumstances a part of the Company's Lands in King's Island or any other Islands in Bass's Straits.

6. In conclusion, I have to request His Excellency may be informed that I am prepared to arrange with the Surveyor General for commencing the Survey of the Lands as early as it may be practicable. It was originally arranged, that the Measurement of the Company's Lands should be made by five commissioners; Lord Bathurst afterwards acceded to the Company's request that the
Commission might be dispensed with, provided the Company's Agents were satisfied with such award as might be proposed by the Crown Surveyor; and upon this footing I beg to place it.

I have, &c.,

EDWARD CURR,
Company's Agent and 1st Commissioner.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.
(Despatch No. 53; acknowledged by Viscount Goderieh, 17th July, 1827.)

Government House, V. D. Land,

My Lord,

15th November, 1826.

In obedience to my Instructions, I have the honor to transmit for Your Lordship's information the Minutes* of the Executive Council for the Half Year terminating on the 30th June last.

Extracts of the points of material importance, as particular occasion required, have from time to time been already laid before Your Lordship; and there is no point in which a difference of opinion has existed between the majority of the Council and myself except upon the question of the measures most advisable to be pursued for the suppression of Bush-Ranging, and the protection of the Settlers in the Interior, brought under consideration on the 16th, 17th, and 15th of May and 14th of June.

Upon this subject, I have recorded my opinion at large upon the face of the Proceedings, according with one Member and differing from the other two; and I have since, as occasion has required, partially introduced the measures therein proposed with the unanimous advice of the Council.

The delicacy, which seems to have influenced the opinions of the Chief Justice and Mr. Humphrey as to the employment of the Military Officers in the Commission of the Peace, I must think very unnecessary in such a Colony as this, where, in my judgement, every means should be combined for the general security and protection of the Inhabitants and for the suppression of those outrages, which are continually occurring without the slightest jealousy of the Military.

There are some measures, which I have proposed to the Council and received their concurring advice upon, which nevertheless have not been carried into effect from the pressure of Public Business; but all these points will invariably form the subject of distinct Dispatches, and in that manner be more immediately submitted to Your Lordship's Judgement.

I have, &c.,

GEO. ARTHUR.

* Note 112.
ARTHUR TO HAY.

Lieut.-Governor Arthur to Under Secretary Hay.

Government House, V. D. Land,
15th November, 1826.

Sir,

I have the honor to submit that, as the New South Wales Bill expires during the present Session, and as a new Act must from necessity be passed, it will no doubt be desirable, that my Lord Bathurst should possess the most detailed information from the Colonies as to the working of the present Act.

I regret that the unfortunate situation, in which I have been placed with respect to the Attorney General, Mr. Gellibrand, prevents my affording any remarks from the channel through which they should most properly be derived; but the Solicitor General has, in the midst of much very bad Health, given this important subject some consideration, and conveyed his sentiments in a Letter, which I have the honor to enclose; and I think it will be found to contain some valuable and useful observations in drawing the New Act.

A difference you are aware has arisen between the Judges of the two Courts of New South Wales and Van Diemen’s Land in the construction of some of the Provisions of the present Act, more especially upon the very important Jury Question.

It is not my province to consider which has been the correct determination upon this Clause; but I must unhesitatingly declare it to be my opinion that this Colony is in no way prepared for the unlimited admission of Trial by Jury, and that it would be very injurious and dangerous to disturb the existing system.

The introduction of some Clause in the Act as to Lands were it only to recognize the justice of resumption in cases wherein the conditions shall have been violently broken, is of great importance, both as concerns the Government and the tranquillity of the Colony.

I have, &c.,

Geo. Arthur.

[Enclosure.]

Solicitor-General Stephen to Lieut.-Governor Arthur.

Sir,

Hobart Town, 9th October, 1826.

In obedience to Your Excellency’s directions, conveyed through the Acting Colonial Secretary, I have to the best of my ability carefully considered the whole of the Australian Court Act,* in a view to the suggestion of such alterations or additions, if any, as I might conceive to be desirable upon occasion of its anticipated renewal during the next Session of Parliament; and I have now the honor most respectfully and with much diffidence to offer the observations contained in this letter, as the result

* Note 64.
of the best consideration which the pressing nature of other public business in my Office has permitted me to give the subject.

It has occurred to my mind that, in every point of view, it would be more convenient to Your Excellency for me, throughout this letter, to content myself with simply noticing the inconveniences, which, in my humble judgment, either exist or are likely to arise under the Act in its present form, omitting to suggest any particular mode by which I might conceive they may be avoided; Because, if right in my Statement of the evil, the greater experience of others will point out the best and most effectual means of remedy. In a few instances, however, I shall be compelled to depart from this course, altho' I fear at the risk of being guilty of a great degree of presumption.

Sec. II. It is, as I understand, decided in this Island that the Court has no power to issue a writ of Extent, altho' a Court of Exchequer, by reason that there is no Jury, which could be impannelled, to try any traverse taken in respect of seizures under it. This point, in a Colony where there are necessarily so many Crown debtors, yearly increasing in number, is one which it would be very desirable to set at rest by Legislative Enactment. It would indeed be advantageous to the interests of the Crown to give additional and unusual facilities for the recovery of its debts, at all events for enforcing payment of the Sums reserved on Grants and Leases of Land, the source from which its largest revenue will one day be derived. It may be considered whether the Crown should not, also, in all cases of refusal to pay, be entitled to Costs.

Whilst on the subject of Land, I am led to notice a circumstance of great importance to the whole community. The Governor's Grants, I apprehend, are by law not matters of record, and nothing has been done by the Legislature to give them the same effect as records. This state of things has given occasion, I have understood, to a decision, the effect of which is to shake the title, as against the Crown, of every man to each Acre of Land that he may possess.

I would here also remark that neither in this second nor the ninth Section* of the Act is the general jurisdiction of the Lord High Chancellor or the Court of Chancery given to the Supreme Courts. They are indeed entrusted with the equitable Authority of that Court. But the many important powers, appertaining to the Common Law Side of it, are I apprehend with-held.

Section III. The wording of this Section† has given rise to a question whether the jurisdiction of the Supreme Courts is not confined to offences committed on the Sea * by the Master or

* Note 67. † Note 113.
The words under Commas, in all probability were meant to apply only to offences committed in New Zealand, etc. But a transposition of sentences would remove all doubt.

It is enacted that these offences shall be subject to the same penalties (not as if committed in England, but) "as persons convicted of the same would be liable to" if tried in England. But, by what law can an Offence committed in New Zealand be tried in England? and how therefore could the Offender ever be there convicted?

The same kind of remark applies to the Criminal law generally, as it is to be administered in these Colonies. According to the law as administered by the old Courts, if I am not mistaken, offences committed here were considered in all respects as if they had been committed in England. The consequence followed that all questions, whether particular Statutes extended here or not, were avoided, and the single enquiry became, what is the law at home. As the present Act however has placed this subject, many Statutes, perfectly (I might say peculiarly) suited to the circumstances of the Colony, are not in force here, and many more are of very doubtful applicability. That important Act, Lord Ellenborough's, has reference in its terms only to offences committed "in England or Ireland." The Act relating to the execution of murderers is held not to extend here; and I might enumerate others.

But this state of things, as respects criminal justice, exists, and is far more severely felt in the administration of the law in civil Cases. It has been questioned whether the Statute of Anne respecting Promissory notes extends here. Whether the Statutes regulating Arrests in Actions, as to the amount of the debt, and as to frivolous or vexatious arrests, also as to Bail by the Sheriff, the Statute of Uses, the Statute of Limitations, the Acts for the protection of Magistrates, and many more, extend; and in truth no man can say where the Catalogue would terminate.

Now, it cannot be disputed that, under any general Act of Parliament, declaratory or otherwise, many Statutes, and parts of even the common law, would not be in force here. Such Acts and Customs, for instance, as in the nature of things could not apply, nor from the want of requisite machinery continue in operation, even if introduced. The same, I apprehend, with respect to laws, unequivocally and on the face of them solely local, as to the mischief and the remedy, and for the existence of which in the Colony, there could be neither expediency nor
1828.  15 Nov.

Validity of English statute law in colony.

reason. The Usury laws, therefore, seeming to belong to the latter class, have been rejected in all the Colonies as by universal consent. The Statutes of Mortmain and others fall within the same rule. But I have troubled Your Excellency at such length, upon this topic, because the inconveniences, which daily result from uncertainty and ignorance respecting the actual State of Statute law in the Colony, are numerous and heavy, and appear to me to require, and to admit of, legislative interference.

The smuggling of Spirits, as is well known, is carried on in this Colony to a great extent, to the injury not only of the revenue and the fair trader, but of the wretched Convicts to whom chiefly the rum is afterwards retailed. It would, I humbly conceive, be desirable to afford means for checking this practice, by extending to the Colony some of the Acts for punishment of persons committing such offences in England.

It appears to me convenient to introduce in this place certain other subjects unnoticed by the Court Act; but upon which legislative enactments appear to be necessary in order to protect individual property, and promote the general welfare of the Colony.

A previous question may arise here; in what respect is the interference of Parliament necessary, when a legislative power is conferred by the Act upon the Governor, who is resident upon the spot? To answer this, I must refer to Section 24, which gave him that power, and authorized the creation of a Council to assist him with their advice in exercising it.

It has been considered that the words there used have given the Governor in Council very restricted and limited legislative powers, the exercise of which demands perpetually the utmost caution. No act passed by him is to be "repugnant to the laws of England, but consistent with such laws, so far as the circumstances of the Colony admit." The clause, it is presumed, does not provide that the acts are to be in no greater degree repugnant to the laws of England than the peculiar circumstances of a Convict Colony, in other words, a large Gaol, appear to the Governor and Council to require. They are under no circumstances to be repugnant to those laws: but, further, they are also to be, as nearly as may be, consistent with them. The difficulties thus thrown in the way of legislation, I should conceive, must have been seriously felt, especially by His Honor the Chief Justice, on whom devolves the weighty responsibility of reporting upon the proposed laws and sanctioning them by his signature. In India, I believe, the plan is different. Each ordinance requires only to be registered in Court; and, if imagined by any party to be contrary to the spirit and principles of English law,

* Note 113.
it may, as it appears, be appealed from. But, into the comparative advantages of the two modes, it is not my province to enquire.

Under these circumstances, the power of the Governor to make laws, of the nature to which I am about to advert, may probably be made matter of serious doubt. Can he create a new felony, entirely unknown to the law of England? Can he prohibit English or Colonial Vessels, however essential to make the restriction, from sailing to Bass' es Straits, but under peculiar regulations? True, they are within the Jurisdiction of his Government; but they are nevertheless part of the high sea. Yet, assuming that Your Excellency has not the power, who that witnesses occasionally the alarming state of the Country from attacks of roving armed Banditti, supported and alone enabled to continue their scenes of blood and rapine by the criminal and daring assistance, which they receive in various ways, not subjecting the guilty parties to adequate punishment; who, that hears of the barbarous outrages committed in the various little Islands to the Northward, and of the wanton manner in which our important Seal Fisheries there are daily brought nearer to total extinction, would not desire that those powers were in the fullest manner confided to you? Can the Governor pass a Law, renewing in the Colony the old and excellent practice of Detainers? Can he substitute the separate examination of a married woman, for the levying of a fine in order to bar her Dower? or give to the registration of a deed the effect, which by the law of England is only produced by the suffering of a Recovery? Can he pass an Act compelling persons to register all deeds? Yet I need not say that every one of these laws would be beneficial to the Colony in the highest degree; and the latter especially would tend more to prevent Sales and assignments in fraud of the Crown and of Creditors, than any other measure which could be devised. Concluding, however, that Your Excellency does in fact possess the power in question, as relates at least to the last three subjects, they are nevertheless, as I apprehend, peculiarly fitted for home legislation, and especially proper to be embraced by a Court Act.

I have spoken of Detainers. This practice had its rise in the old Port Regulations, and was enforced by the old Courts. No person was permitted to leave either Colony, without a clearance from the Secretary's office. To obtain this, he had to produce a Certificate from the Judge Advocate that there was no "detainer" against him. This was, as I collect, a species of Caveat, which any Creditor of the party might lodge, upon filing a plaint and
making oath of a debt. When time did not allow, the plaint was, I believe, dispensed with. The party nevertheless was not without immediate remedy. Upon giving security for payment of the Sum sworn to, the detainer was discharged. If he disputed the amount or entire demand, both parties were instantly heard, and the caveat was thus occasionally got rid of. The plaintiff in the action might nevertheless proceed in due course to trial. I do not know whether a detainer could be lodged upon a Judgment, but I presume that it could.

The present state of things is widely different. The debtor may be oppressed, and the creditor is less protected. It is perfectly easy for a debtor to quit the Colony at any moment, without the least risk of his intention being suspected. He may be a convict, with a forged Certificate. Now the only officers likely to recognize his person, or discover the fraud, are the Chief clerks of the police Magistrate or of the Colonial Secretary. But they neither see nor hear of him, and his escape is effected. The free debtor, however, requires no concealment. All writs are returnable only in term. But, by the old colonial practice still retained, no Capias can, in cases above £50, issue, until a Summons has been served and returned. If this last mentioned Writ therefore be taken out in Vacation, the debtor has the whole intervening period to make arrangements and depart, and the creditor loses his debt. If on the other hand the debtor be arrested in Vacation, the Sheriff is (according to the prevailing opinion of the law on that point) not compellable to take bail; and, although the Court on application will release him, yet it can only be by giving bail to the Action, and not for his appearance only. It may be presumed that the Insolvent clause of the Court Act will eventually afford him relief. But, upon that point, I shall have to notice hereafter the difficulties which have occurred.

In the sequel, however, whether an arrest takes place or not, it in most cases occurs that proceedings at law against debtors terminate in a Sheriff's sale; and the land of the distressed Settler is conveyed to others for one tenth of its value. Now, upon this subject, some important considerations arise.

1st. In most instances, land is the only source to which the Creditor, levying under an execution, can look for payment. He has perhaps advanced the owner money, or furnished him with goods, which may have enabled the Settler to carry on his operations with benefit to himself and the Community. Is such a Creditor not to be permitted to levy upon and sell the only property which will repay him?

2dly. On the other hand, if persons had not such facilities for obtaining payment, money would not be lent nor goods on credit
be obtained. We should consequently have less useless proprie-
tors and more serviceable labourers. The owner of land would
live more within his means, and goods and labour would be
procured at cheaper rates.

3rdly. Upon these considerations depends the question, what
species of title the purchaser of land at a sheriff's sale ought in
Justice or policy to acquire?

A question, however, of more immediate importance to the
whole Colony is, to what extent a title has hitherto in fact been
gained by such a purchaser; and 1st where the plaintiff himself
has bought; 2ndly where a stranger has purchased. In the
former case, and the plaintiff remaining in possession, it is
conceived that a Court of Equity would compel re-delivery on
payment of the debt, interest, and costs. This state of the law.
however, once acted upon, would involve the Community in end­
less litigation. But, how, if the plaintiff have subsequently sold
to a bonâ fide purchaser without notice? The case of the stranger
is a point of much greater difficulty. There are so many persons
in both these situations and the subject generally is of such
importance that, I humbly conceive, all questions with respect to
it should be set at rest by Parliament. Probably it would be
deemed the best plan to adopt measures, as to past transactions,
for quieting all such purchasers in their estates, after the expira­
tion of a short period, to be limited for that purpose; enacting
that, after such period, they shall hold as the defendant did.
Any course as to Sheriff's sales in future, I do not presume to
point out. It will of course be for consideration whether Dower
is, or not, to be barred, and also whether a Sheriff's sale of land
under an execution, before the expiration of the 5 years men­
tioned in the grant, is, or not, to be held void, as being contrary
to the spirit of that condition imposed by the Crown. Most of
the preceding remarks, however, will apply also to future cases
of original purchases from the Crown.

The resumption of lands by the Crown, for breach of the
conditions on which granted, being a most important topic, and
a measure about to be resorted to in very many instances of gross
violation, I would respectfully suggest that additional facilities
for enabling the Crown to effect such resumption would be
very desirable. It has indeed been questioned whether the
Crown possesses at present, under all circumstances, any means
whatever in the Colony of compelling restitution of lands by law,
if possession be obstinately retained. In New South Wales how­
ever, an Information of Intrusion was filed and pleaded to, and
the case was tried without any objection taken. But, in fact,
the adoption of any summary simple mode of proceeding and trial, calculated, without technicality of pleading, for raising and deciding the single point of "condition, broken or not," would be materially in ease of the defendants. In gross or fraudulent cases of breach of condition, it would be desirable to enable the Court to award the Crown costs.

Sect. IV.* The inconveniences and difficulties, resulting from the provision in this Section as to the Attorney General, seem to be as follows:—1st one man, and that man the principal law officer of the Crown, concentrates in himself all the high, important, and delicate powers of an English Grand Jury, without control, restriction, or appeal. He is thus at once Crown Lawyer, Grand Jury, and Prosecutor also. 2. No rules are laid down for his guidance either in filing the Information or conducting the cases. He may, I apprehend, allow individuals to prosecute in misdemeanors, and refuse them the permission in felonies; at least so the practice has been. He may, therefore, if he should see fit so to do, reverse his practice in that respect, or even personally prosecute for one felony, and surrender to an individual the privilege in another. But why is not every private prosecutor to possess a right at least to conduct the case at the trial himself, should he have a wish to do so. If indeed the parties were compelled so to prosecute, it would assuredly be of pernicious consequence. Few prosecutions would occur, and many a Criminal would escape from Justice. Even at present, such are the inconvenience and loss sustained by witnesses in attending Trials, the difficulties and heavy expense of travelling, and the certainty of plunder by convicts during the Master's absence, that it is an incitement to the compromising of crime, and submitting at once to a loss, that will infallibly prove the least of the two. 3. It is doubted, whether by this Section the Governor has authority to appoint a Master of the Crown Office, or other Officer, to act concurrently with the Attorney General; and therefore, whether the Supreme Court is not deprived of the power, possessed by the Court of King's Bench, of directing Criminal Information to be filed. In New South Wales however, it would seem that no such point has been made; and a Master of the Crown Office is there appointed. This certainly removes one objection to the clause. 4. It is not provided that the Attorney General may not file informations for felony, except after evidence on oath, taken before a Justice of the peace.

Whatever plan (if any) is substituted by the wisdom of parliament for this mode of placing men in these Colonies on their trial, it will, I conceive, be desirable to provide that the individual, or Body, exercising the functions of a Grand Jury,

* Note 67.
should be permitted to find the bill alone on Examinations taken by the committing Magistrate, or on vivâ voce evidence before them, at their discretion; and should have power in all cases to send for and examine persons on oath.

No power is given to summon and compel the attendance of Jurymen and Assessors, or to the Court, upon the unexpected absence or illness of a Jurymen or Assessor, to nominate and compel the attendance of one in his place, or on the application of prosecutor, and consent of the prisoner, or application of both parties in civil cases, to nominate a bye-stander. An entirely new precept has been hitherto required. The smallness of the number of Assessors has, in my humble opinion, been found in some instances inconvenient. It is not declared whether the verdict of the Seven officers is to be unanimous, or the result of the opinions of a majority.

It is under the sixth Section* that the difficulty, already spoken of with respect to Extents, has arisen. I omitted to mention, however, that it has also been questioned, whether the Statute of Henry 8th of Extents is in force in the Colony. The Section contemplates solely “actions at law, in which the parties, plaintiff and defendant” have joined issue. How then, if, under the seizure, a third person claimed the property, is the question to be tried?

Sect. XI. It would be very beneficial to extend the advantages of this useful Section to cases of Goods sold, and of monies lent, or had and received. The Court could probably do all parties more Justice, if power were given to put the Garnishee on oath as to the property actually in possession. It would be of advantage to the Colony also, further to extend the Section to cases of Non est inventus returned to a writ of Capias ad satisfaciendum upon a Judgment.

Sec. XII. Under this Clause, it has been the practice, in Actions wherein the plaintiff has chosen to lay his damages above £500, which he can in all cases do, to cause the evidence to be taken down in writing. This impediment to the dispatch of business cannot be avoided by the Court at present; for no power is given to it or the Master to cause the real Sum at issue to be ascertained. This might be done, by Summons and order thereon, at the instance of the defendant, to reduce the damages laid to the Sum or value actually in question between the parties.

It is provided that no objection be allowed to the competency of witnesses except for Interest. No exception is made in cases of perjury, or the want of religious belief.

* Note 67.
Sect. XIII.* Remarks of a similar kind, to those made in the last paragraph but one, apply equally to this Section. I apprehend, also, that the word “Final” should be introduced before “order” whenever it occurs; otherwise each party might, in Equity Cases, appeal from every succeeding order throughout the Suit.

Sec. XV.* The appeal to New South Wales has, of course, by the Separation of the Colonies ceased; and no other appeal is substituted for it. It has occurred to me that the Establishment in each Colony of a Court of Appeals from the Supreme Court of the other would be free from objection, and for many reasons be highly desirable.

Sec. XVII. The powers, by this Section vested in the King, have been by His Majesty’s order in Council, perhaps necessarily, transferred to the Judges of the Supreme Courts. They may make rules, and the same from time to time alter. But no authority is given to them to make such rules from time to time, pro re natâ, nor to substitute new Rules for any which may be revoked. Nothing is provided in the Section respecting fees and poundage to be taken by the Sheriff or his officers. It is enacted that all rules, established by order in Council, shall be of equal force with the Act itself. There is, however, no such provision for rules made, under any order in Council, by the Judges. The words, Provost Marshal, in this Section, are unnecessary.

Sec. XIX.* It has been questioned, whether, under this clause, the Courts of General or Quarter Sessions can take cognizance of any offences whatever, committed by free persons. In point of fact, prisoners only are there tried. But, even in this respect, the Sessions have been of trivial relief to the Supreme Court. The distinction between General and Quarter Sessions appears not sufficiently adverted to. The former, it would appear, can no more be holden without the Appointment of the Governor, than can the latter. If a General Session could in all cases assemble in any part of the Country, as occasions arose, and try and sentence prisoners without delay, the Colony would be benefitted. Of their intention so to assemble, the Magistrates should however give sufficient notice, and not less than three should be sufficient to constitute a Sessions. But, at present, these offenders are committed for trial; the Supreme Court is generally sitting; the gaol is crowded; and in the Supreme Court they are accordingly tried. The most trifling case of Assault or other misdemeanor by a free man can be disposed of only in

†Marginal note.—It would be very inconvenient and almost entirely unavailable.—G.A.
the Supreme Court; where the expenses of the trial, the bringing over of Witnesses, and the necessity for adhering to the established forms of Indictments, are so many impediments in the way of cheap and substantial Justice.

The meaning of the words "summary way" has been subjected to much doubt. The interpretation, to ordinary minds, would probably be that formal written accusations accurately penned, technical pleadings, process to answer, regular committals, were thereby dispensed with. But the introduction into New South Wales of all rules of English Sessions practice rebuts such a construction.

There, however, Juries have also been introduced into the Courts of Quarter Sessions, and free persons are there tried in those Courts. But, upon these topics, I do not presume to offer any opinion. It is for me merely to notice them, trusting that, for the peace of the Colony, the possibility of doubt in future will be effectually removed by the highest authority.

Neither in this, nor the 36th Section, is any power given to sentence Convicts to be worked in chains on the roads or elsewhere; a species of punishment, at once effective and beneficial to the Colony: often, indeed, the only punishment from which the hardened offender shrinks.

I have by inadvertence omitted another most important point of difficulty in this Section. The Courts of Quarter Sessions have jurisdiction only over offences "not punishable with death." These words have been understood to mean offences, the legal or Common law punishment of which is death without reference to benefit of Clergy. The consequence is that the Sessions try solely cases of petty larceny, and their authority is reduced to a shadow.

Sec. XX.* It would, I apprehend, be desirable to confine the Jurisdiction of the Court of Requests to bona fide cases of indebitatus assumpsit alone. Under this section, however, not only can questions, arising out of breaches of the most special contracts, but the most complicated cases of trover, trespass, and tort generally, (not affecting title to Land) be there tried and decided. No Jury. No appeal. It is undoubtedly not provided that a Judgment in the Requests may be pleaded in bar to proceedings in the Supreme Court. But this very omission is, as I humbly apprehend, one which, if the authority of this Court were confined within proper limits, ought to be in a new Act supplied.

In order to compel the resort of persons to this useful and merciful Court, it would, I humbly conceive, be beneficial to

* Note 115.
authorize the Supreme Court, in cases of *indebitatus assumpsit*, where it shall be made to appear to the Judge that the sum or balance due was known by the plaintiff to be under £10, to deprive such plaintiff of his Costs.

Sec. XXII.* It seems admitted on all hands that this clause is in the nature of a Bankrupt Law and not an Insolvent Act. Upon this principle, it has been decided that proceedings under it must be initiated and carried on by Creditors only; and that any collusion between them and the debtor would effectually deprive the latter of relief. The Application can only be made on the return of the writ; of the issuing of which the other Creditors know nothing. The plaintiff is seldom disposed to become a petitioning Creditor. If the return day be lost, or the Insolvent be once taken in Execution, however honest or deserving, he has no resource but payment to the injury of his other Creditors, or a lasting residence in Gaol.

Sec. XXXVI.* It is provided that Convicts may, for transportable offences, be sentenced to detention in the Colony for so many years (according to the degree of the Offence) beyond the original term of transportation. How can this be effected in the numerous cases of original transportation for Life? In these and other cases, it would therefore be desirable to permit Sentences to work in irons, as already recommended.

This Section applying only to Convicts, it is important that express power should be, in like manner, conferred on the Supreme Court to transport free persons convicted here of any such Offence by ordering their removal to any secondary penal Settlement, either in the Colonies themselves or in one of their dependencies.

To render the clause, however, effectual in any shape, it would, I conceive, be essential to extend the penalty of death to persons so transported, being found at large without lawful cause in any other part of the Colonies. The punishment could at present only be inflicted for being so at large in Great Britain. The dreadful outrages of Bushrangers, the most daring of whom have in frequent instances been those whose address and perseverance have effected for them an escape from Maria Island or Macquarie Harbour, afford but too strong an argument for this provision.

I have now, I believe, brought under Your Excellency's observation all the points that have occurred to me, or that I have been able to collect from conversation with others on this important Act.

I have, &c.,

ALFRED STEPHEN.

* Note 115.
LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.

(Ge dispatch marked "Private"; acknowledged by under secretary Hay, 21st March, 1827.)

Government House, V. D. Land,

My dear Sir,

15th November, 1826.

It has been suddenly determined by the Consignees that the Ship "Henry," by which I have now the pleasure to address you, shall sail immediately, which obliges me in a very hasty manner to close my Dispatches to Lord Bathurst upon the points under discussion with the Agent of the V. D. Land Company.

I hope I may have placed the matter perspicuously before His Lordship, but, failing in so doing, the private letter, which I had the honor to address you on the 10th October, 1826, (duplicate of which you will now receive) will I trust help to explain any seeming obscurity.

I have not permitted any interruption to take place in the good understanding which has hitherto existed between the Company's Agent and myself: My arguments with Mr. Curr have been founded entirely upon the reasonableness of the objections; and, although he is very anxious to remove them to the Interest of the Company, he is, I believe, sensible that they are brought forward and naturally arise out of circumstances not fully anticipated at Home.

In my Dispatch No. 52 of this date to Lord Bathurst, I have represented the probable extravagant extent of Country over which the Company's Grant will stretch, upon the principle of measurement directed to be observed under His Lordship's Instructions; and, if, on actual Survey, this from the nature of the Country proves to be the fact, it will be quite necessary to have recourse to the alternative provided, that of locating part of the Company's Land to the Dependencies of the Settlement! But here another difficulty arises: in my Dispatch No. 12, 4th April, 1826, I submitted that, if the Company occupied Circular Head, Cape Grim, it would endanger the security of the Prisoners at the Penal Settlement of Macquarie Harbour; and, in the expectation of this result, I have directed a Survey to be made of King's Island which lays about 20 leagues to the Northward and Westward of Cape Grim, so that, if necessity renders the measure absolutely unavoidable, I may be prepared for the event. I know however of no other Island at all suitable for the Company's purposes, and it is impossible that King's Island can be occupied in part by the Company, and in part as a Penal Settlement. A Survey sufficiently correct to give some general idea of its capacity will be completed I should hope in the course
1826.
15 Nov.

Location of company at Circular head.

Proposed abolition of penal settlement at Macquarie harbour.

Proposal for occupation of country near Western port.

Objections to settlement at King George's sound.

of two or three Months; but, until more accurate information is possessed, it is not possible to arrive at any just conclusion, and consequently I am unprepared to offer any recommendation for its future appropriation.

The Company having occupied and commenced their Establishments at Circular Head, that point must to an extent be considered as determined, and I should hope without any very opposite feeling as to the description of land, which the Company is bound to receive and without their limits extending over such a Tract as may be seriously detrimental to the future colonization of Free Settlers, that we may find at least 100,000 Acres of Land available in the North West District. If the whole extent of 250,000 can be found within any moderate boundary, I am quite clear in every view that it will be advisable to establish the Company upon it, rather than suffer them to emigrate to an Independence; but I am obliged to consider the probability as being the other way.

Admitting the Company to receive 100,000 Acres in the North West District, my present impression is that the Penal Settlement of Macquarie Harbour must be abandoned (although there are some very serious objections to the step), and still the Company will remain unprovided for without approaching the Settled District; and it must be considered where they are to be placed.

It has occurred to me that the occupancy of Western Port, and the line of country extending from thence in a Westerly direction along the Coast of New Holland towards King George's Sound comprehending Kangaroo Island, is highly worthy of attention; and I have had some conversation with Mr. Curr upon the subject; and I find he would greatly desire occupying, as part of the Company's Land, either King's Island, if it is fit for the Company's purposes, or the Country near Western Port; but, although that Port is not within the limits* as I believe of the Government of N. S. Wales, still neither is it within the limits of this Government, although it is no more than four hours' run from George Town on the Tamar.

King's George's Sound he considers rather too remote; but, if the suggestion is at all worthy of attention, it might be made the subject of consideration with the Directors at Home. I would, however, submit that nothing definitive should be arranged until we actually see the operations of the Company fairly developed in V. D. Land, although it is highly desirable that I should be in possession of Lord Bathurst's sentiments upon it.

Wholly uninformed of the ultimate views of His Majesty's Government, I dare do no more than privately throw out these

* Note 116.
If it is the intention to extend the Government of New South Wales to the Eastward, in which direction their present Settlements lay, there possibly may be no objection to enlarge the area of this Government by the Establishment of two or three Settlements commencing to the Westward of 129 Degrees* of East Longitude, and with which we may have a very ready intercourse across the straights.

My earnest wish is to accommodate the V. D. Land Company within our present limits; but I cannot approve of their occupying such a space as must operate in a very great degree to the exclusion of future Settlers; but I do all that duty requires in submitting the state of affairs, and leaving to your better judgement, founded upon more general principles of Colonial Policy, what is most advisable to be done.

You will be gratified to hear that the system of Bush ranging is in a great degree kept under; but, as one evil is extinguished, another seems to kindle up, and we are now very much embarrassed by the Aborigines, who have lately been extremely troublesome and committed some very barbarous Murders amongst the distant Stock keepers.

I have, &c,

GEO. ARTHUR.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.
Government House, Hobart Town,
Sir,
15th November, 1826.

I have the honor to transmit the enclosed applications from several Convicts resident in this Colony, requesting that passage for their Wives and Families may be sent from England: and, it having been stated that they possess means for their support, should they arrive, I beg to recommend their solicitations to the favorable consideration of The Earl Bathurst.

I have, &c,
GEO. ARTHUR.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.
Government House, V. D. Land,
My Dear Sir,
20th November, 1826.

Mr. William Lyne arrived here about three weeks since and delivered to me a recommendatory note from yourself to General Darling, written under the supposition that he was destined to settle in that Colony.

A note from Lord Apsley, which he has presented for my perusal, recommending N. S. Wales as a “safer soil,” seemed to

* Note 116.
have filled poor Mr. Lyne’s mind with the most terrifying apprehensions of our condition before his arrival; but, after a good deal of arguing amongst some friends whom he has found here, he has recovered his spirits, and given his election in favour of this Colony, and, as Lord Bathurst takes some interest in his welfare, you may be assured I will most readily assist and advise him.

Do pray let Lord Apsley know that the arrangements for the suppression of Bush-Ranging and the better control of the Prisoners are beginning to have their effect; and, although with such a population, I will not ask His Lordship to advise respectable Yeomen to emigrate, and take upon himself the responsibility of recommending us, still I hope he will form a better opinion of V. D. Land henceforth than to deprive me of an accession of that class of settlers, which of all others is decidedly the most suited to improve the moral character of the people, and infuse a proper feeling and some industry into the colony.

Some of the Bush-Rangers, it must be admitted, have acted with great desperation; but I have even found that wicked men are in the main errant Cowards; and I am quite sure that, if the free settlers can be brought to stand their ground, resist violence, and defend their houses by that ordinary resolution, which is generally found in English farmers, we shall have as much tranquillity as can reasonably be expected in a penal colony.

I have, &c,

GEO. ARTHUR.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

22 Nov.

22nd November, 1826.
[A copy of this despatch, acknowledged by lieut.-governor Arthur, 20th April, 1827, is not available.]

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.

(Despatch No. 54 A.)

23 Nov.

Government House, V. D. Land,

My Lord,

I have the honor to acknowledge Your Lordship’s dispatch No. 4,* notifying the appointment of the Colonial Secretary, and I now beg to report that Mr. Burnett arrived yesterday, and will forthwith undertake the duties of his department.

I have, &c,

GEO. ARTHUR.

* Marginal note.—6th March, 1826.
Sir, Downing Street, 1 Decr., 1826.

With reference to your letter of the 10th of February last, accompanied by several Requisitions for Stores required for the Service of Van Diemen's Land, I am directed by Earl Bathurst to transmit to you the enclosed Copy of a letter from the Secretary of the Treasury, together with a Copy of their Lordship's Minute, dated the 9th of November, on the subject of the requisitions in question. You will perceive that with the exception of the following Articles; vizt.:

12 Peices of Green Baize; 3 Dozen of Table Covers; 12 Peices of Carpeting; 6 Church Bells; 6 Church Clocks; 4 Circumferenters (the same number of these Instruments being included in another requisition);

The different Stores, for which you have applied, have been ordered to be provided: But, with respect to the objectionable Articles above enumerated, I am to request that you will report to Lord Bathurst the grounds upon which they have been included with the other Articles, and that in future you will limit your Requisitions for Stores to those Articles, which it has been usual to forward from England.

I am, &c.,

R. W. HAY.

[Enclosure.]

Mr. W. Hill to Under Secretary Hay.

Sir, Treasury Chambers, 24th November, 1826.

I am commanded by The Lords Commissioners of His Majesty's Treasury to transmit to you for the Information of Earl Bathurst a Copy of their Lordships' Minute of the 9th Instant, on your Letter of the 11th of September last, enclosing a dispatch from The Lieutenant Governor of Van Dieman's Land with nine requisitions for the Supply of Stores for that Colony; And I am to desire you will call Earl Bathurst's attention to the Letter of this Board of February, 1825, in regard to the Supply of Ordnance required for the Service of Van Dieman's Land. I am also to acquaint you that My Lords have for the present declined to give any order for providing Green Baize, Table Covers, and Carpetting, as they are not aware that any public Offices in that Colony are entitled to receive such Articles at the Public Expence.

Their Lordships have also declined to give any orders for providing Church Bells and Clocks, as such Articles should not form an Item in Requisitions of this Nature; but the particular
1826. 1 Dec.

Churches, to which they are supplied, should be stated, and also the grounds upon which application is made to the Public to supply them.

I am, &c.,

W. HILL.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

(Despatch acknowledged by lieut.-governor Arthur, 21st May, 1827.)

Sir,

Downing Street, 1 Decr., 1826.

I have received and laid before Earl Bathurst your letter of the 22d April last, complaining of the quality of the Shoes which are annually supplied for the use of the Colony of Van Diemen's Land.

Your communication having been forwarded to the Treasury, I am directed by Earl Bathurst to transmit to you the Copy of a Report, which has been made upon this subject by the Officer whose duty it is to provide Articles of this description, and to request that you will communicate to his Lordship your opinion upon the expediency of employing the Convicts at Van Diemen's Land in manufacturing their own Shoes, in the manner suggested by the Ordnance Department.

I have, &c.,

E. W. HAY.

[Enclosures.]

[Copies of these two letters will be found on page 710, volume XII, series I.]

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.

Government House, V. D. Land,

Dear Sir,

1st Decr., 1826.

My Dispatch No. 40 will have anticipated the request contained in your letter of the 20th June last, and you may rely on the strictest attention being paid to the early transmission of the Hobart Town Gazettes in compliance with my Lord Bathurst's desire.

It has been my earnest endeavour to transmit all Returns required by His Lordship with the least possible delay; but obstacles will occasionally occur by which an opportunity is lost, and delay is rendered unavoidable; but this has not been the case in the Returns of the Revenue and Expenditure, denominated the Blue Book, as my Dispatch No. 30 to His Lordship will explain.

I assure you it is my anxious desire that there should be no arrears of business of any kind, and I hope now, if Mr. Burnett
has experience and dispatch in conducting the detail, that there may be none; but I can assure you the labours of a Colony of this nature are wearing beyond description.

I have, &c.,
Geo. Arthur.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.
(Despatch marked "Private.")

Government House, V. D. Land,
My dear Sir,

1st December, 1826.

By the "Woodford" Transport, I had the honor to receive your letter of the 11th July, 1826, covering one from Mrs. Hannah Moore in favour of Lieut. Simmons, and acquainting me with the desire of Lord Bathurst that you should bring the name of this Gentleman under my particular notice, with a view to his removal to a more advantageous situation than he at present holds, whenever a favourable opportunity may offer for that purpose.

In reply, I have the pleasure of informing you that I have lately improved Mr. Simmons's situation, and he is now in receipt of a Salary of £100 per annum; but, I am sensible, even with this addition, he must experience much difficulty in supporting his Family with any degree of comfort.

Whenever an opportunity occurs to enable me to comply with Lord Bathurst's wishes in favour of Lieut. Simmons, I shall not fail to avail myself of it, but, at the same time, His Lordship is aware that I have other Claimants in very anxious expectation under His Lordship's recommendation.

I have, &c.,
Geo. Arthur.

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.
(Despatch No. 52; acknowledged by lieut.-governor Arthur, 3rd September, 1827.)

Sir,

Downing Street, 2d Decr., 1826.

In consequence of the representations contained in your letter, dated the 22d of April last, I do myself the honour of acquainting You that I have appointed Mr. John Archer to fill the situation of Civil Engineer at Van Diemen's Land with a Salary at the rate of five hundred pounds per annum.

As Mr. Archer was employed for a period of six years under the late Mr. Rennie, and has subsequently been engaged in some very extensive Works in Ireland, no doubt can be entertained as
1826.
2 Dec.

Payment of salary to J. Archer.

Mr. Archer will not be entitled to receive the full emoluments of his Office until he shall have arrived at Van Diemen's Land; but half Salary will be issued to him from the date of his embarkation for that Island.

I have, &c.,
Bathurst.

Lieut.-Governor Arthur to Earl Bathurst.

(Despatch No. 54 B; acknowledged by Viscount Goderich, 6th July, 1827.)

Government House, Van Diemen's Land,

My Lord,

3rd Dec., 1826.

I have the honor to acknowledge the receipt, on the 22nd Ultimo, of Your Lordship's Dispatch No. 28, transmitting the Copy of a Letter addressed to Your Lordship by Mr. Gellibrand, dated from Launceston.

Mr. Gellibrand, actuated, as he asserts in his letter, solely by a sense of duty, which he owes to His Majesty's Government, conveys to Your Lordship his view of the alarming state of the Colony at that period and very broadly imputes the causes to errors in my Administration of the Colony, partly connected with the Judicial Proceedings in the Criminal Court and partly with matters of a political character. He describes the harmony which subsisted between the Government and the People at the period of my arrival, and is of opinion that no Governor could have entered upon his duty under more favorable auspices.

This state of things he represents to be totally changed, that coldness and mildness and indifference is manifest between the Governor and the People, that difficulties have arisen from personal communication, and that Crime had rapidly increased until it has extended over the whole Colony.

Mr. Gellibrand is of opinion that no difference would exist in the statements forwarded to Your Lordship upon the condition of the Colony, but only as to the causes, and that, as the Lieutenant Governor had attributed the whole "to the factious principles of a licentious Press," he desires to draw Your Lordship's attention to other causes, and, leaving to another Pen my Political errors, he takes upon himself to set forth those connected with the Administration of Justice.

It is very true, My Lord, that much seeming harmony subsisted between the Government and the People at the time of my arrival; but how can Mr. Gellibrand state that no Governor
could enter upon his duty under more favorable auspices, recollecting that one of his earliest communications to me was that nothing but one continued system of corruption existed throughout the Government; and, further, that he would undertake to expose it, if I would place at his disposal some secret Service Money! The proposition was instantly rejected, and it is not necessary to examine whether his statement to Your Lordship or to myself is correct, but the discrepancy is obvious.

My Political errors will no doubt, as Mr. Gellibrand had good grounds for predicting, have come before Your Lordship through some other quarter, worked up by the very able Pen of Mr. Lathrop Murray, but bearing the signature of some Hobart Town Merchant, and not improbably presented to Your Lordship by some Gentleman of real respectability in London, who, by business or otherwise, is connected with this Colony; at least this has hitherto been the ordinary way of getting up representations, and arraigning Governors in these Colonies; but, through whatever channel they may flow, should Your Lordship be pleased to refer them for my Report, I trust I may be capable of answering them as satisfactorily as it is in my power to dispose of that branch which Mr. Gellibrand has taken upon himself to advocate, and to which, agreeably to Your Lordship's Instructions, I shall now more especially limit my present communication.

Mr. Gellibrand describes to Your Lordship the state of this Community in January, 1826, (the period when his own most improper conduct was under consideration, and eighteen Months after the event had transpired which he describes as having been attended with such very baneful results), the vicious habits and predatory character of nine tenths of the Population, and the exposure of the peaceful Settlers to depredation; and, considering the Criminal Court as the grand Engine by which Crime will be suppressed, and the morals of the Colony improved, he infers the necessity of speedy example, and of prompt and vigilant execution of the laws, and that the morals of the Colony are to be improved by firmness, by promptitude, and by an occasional exercise of Mercy.

Acting upon this principle himself, Mr. Gellibrand describes the vigour of his own Proceedings against Six Bush-Rangers who had been apprehended, as well as against another Party of Bush-Rangers who had been harboured and maintained by a Person named "Ray"; but states that all his energetic measures had proved abortive from my supineness; that, in the first case, from some unaccountable cause, the sentence was not carried into effect for the space of some Months, and, in the second, the
prerogative of Mercy was unwisely extended, the whole producing the effect, most detrimental to the Colony, of paralyzing the efforts of the Court, and of those who were anxious to assist the Government; and Mr. Gellibrand joins in the feeling, which he says prevailed at the time he was writing throughout the Colony, that the prerogative of Mercy had been too frequently and indiscriminately exercised, and that this line of conduct had produced considerable dissatisfaction, and, added to some political causes, had tended to bring the Colony into its distressed state.

From the situation which Mr. Gellibrand held, Your Lordship could not doubt that the premises, from which he drew all his conclusions, were founded in truth, and, therefore, Your Lordship has required from me an explanation of the reasons which induced me to delay the execution of the Six Bush-Rangers in question, as well as to report upon the Case of "Ray," the Receiver of the stolen Property, to whom the prerogative of Mercy is stated by the Attorney General to have been so injudiciously extended.

On the perusal of Your Lordship's Dispatch, it occurred to me that the explanation, which Your Lordship required would come much better from an Individual unaccused; and who was most competent to determine how far any measures of the Government had injuriously operated upon the efforts of the Supreme Court; and I therefore immediately referred Your Lordship's Dispatch with its enclosures to the Chief Justice, and requested a Report from him upon the points on which Your Lordship especially required information.

Copy of my Letter, with Copy of the answer which I have received from the Judge, I have the honor to enclose, and by which Your Lordship will perceive that Mr. Gellibrand is left without the shadow of extenuation for the palpable untruths he has imposed upon Your Lordship.

The Six Bush Rangers, whose Executions he represents to have been suspended for Some Months, made their first irruption from Macquarie Harbour into the settled Districts on the 10th June, 1824; they were apprehended on the 23rd, and were tried, condemned, reported, and executed, within the space of One Month; viz., on the 19th July!

Moreover Mr. Gellibrand has led Your Lordship to suppose that some circumstances of an aggravated nature marked the conduct of these Men, but he made a distinct Report to me of the very reverse, Copy of which I have the honor to enclose!

But admitting that these wretched Men had committed great enormities, and that the Public Mind was agitated to the last degree, is it not at such a moment, My Lord, that the Individual
administering the Government should be most dispassionate, and that he should free every measure of the Executive from even the imputation of hurry?

The Case of "Ray" is fully stated by the Chief Justice, together with the grounds on which a conditional Pardon was granted to him. No Man had ever been capitally tried in Van Diemen’s Land for the same Offence; it was not even known to be Capital; and it was hoped, and as the Chief Justice has expressed, and as the Attorney General himself declared to be his only object for trying this Man under the statute in question, that the publicity given to this case, and the awful sentence pronounced, would be sufficient to deter others from the Commission of a Crime, the dreadful penalty of which was generally unknown. “Ray” was transported to Norfolk Island for Life!

I have not considered it to be my duty to require the Judge to lay his Report before me at any stated period; but I have from the first moment of administering this Government deemed it of great importance that the Sentences of the Law should be carried into effect without any possible delay; and, under this conviction, I have repeatedly stated to the Chief Justice that I was at all times ready to lay aside every other duty, and give my immediate attention to this, and I have most scrupulously acted up to it on every occasion without any exception whatever. The principle, by which I was governed in considering the reported cases of Criminals before the Executive Council was appointed, is fully described by the Judge, and I have since observed the same with the difference of receiving the Report in Council.

My measures in the Administration of the Colony will be better determined by their effects, than by Mr. Gellibrand’s assertions. Much more might have been done, but I have the satisfactory assurance that not one known Bush-Ranger is now at large in the Colony; that the Faction, still worse in principle than any Bush-Rangers, headed by Lathrop Murray, and secretly but warmly supported by Mr. Gellibrand, has not only been kept at Bay, but thoroughly exposed and prevented from doing all the mischief they contemplated; that the Convicts are much more orderly, are required to do more work, and can scarcely escape for one week into the Bush without being apprehended; that the abuse in permitting the Prisoners to be upon their own hands has been considerably checked; that the traffic in Land has greatly abated; that outward morality is much more observed throughout the Colony; and transportation begins, I hope, to assume something of the character of Punishment.

It was not to be supposed that former Habits could be interfered with, that Indulgences, however injurious, should be
discontinued, and private interest thus touched, without giving
offence to a certain Class of the Community; but I am under a
very great delusion, if my measures have not received the cordial
support of, and given general satisfaction to every Settler whose
opinion and support are worth consideration. But this has not
been the end I have had in view, my object has been to do my
duty, and to do it with the utmost conciliation.

I do not mention these things, My Lord, in any vain spirit,
and make no pretension to infallibility; on the contrary, I have
no doubt others may have discovered errors and imperfections
in my measures, of which I am unconscious myself; but, if they
exist, there seems to be less reason that my Accusers should
depart from the truth, as Mr. Gellibrand has done on this occa­
sion, and arraign me on a point purely of opinion and conscience
for the purpose of bringing matter of accusation against my
Government.

I beg Your Lordship’s excuse, whilst I offer one further ob­
servation on a point, in which I consider it to be my duty to be
explicit to Your Lordship. Mr. Gellibrand observes that difficul­
ties have arisen in personal communication, and this has been a
constant theme of railing with his friend, Mr. Lathrop Murray,
and some others of the same Clan. These Gentlemen always
express themselves with obscurity. It is known to every Indi­
vidual that I am prepared to see any one and every one, without
distinction, upon matters of Business; but the personal inter­
course they would have is of another kind, a point, upon the
impropriety and impolicy of which my mind is so perfectly made
up, that no consideration would induce me to seek popularity by
such means. The time expired or emancipated Convict has still
been a Felon, and, in my judgement, if it is desirable to distin­
guish between Virtue and Vice, he is thereby for ever precluded
from being the private friend or companion of a Public Officer
in a Penal Colony. But, on this subject, I have never made any
open declaration of my sentiments, and have done no more than
regulate my own conduct by the principle, which, upon convic­
tion, I think is proper.

I have, &c.,
Geo. Arthur.

[Enclosure No. 1.]

Lieut.-Governor Arthur to Chief Justice Pedder.

Government House, Hobart Town.

Sir,

I have the honor to transmit to you Copy of a Letter from
Earl Bathurst, dated 21st June last, with an enclosure from Mr.
Gellibrand, dated 4th January last.
You will perceive His Lordship has called my particular attention to that part of Mr. Gellibrand's letter, which refers to the Case of Six Prisoners, who, having absconded from Macquarie Harbour, and committed various felonies of a very atrocious nature, for which they were tried and convicted, were not executed for the space of some Months after sentence of Death had been passed upon them.

Although I am perfectly prepared to afford His Lordship the explanation, which he has been pleased to require, I consider it will be more satisfactory that it should bear the confirmation of your Report upon those cases, as well as upon the case of the Prisoner "Ray," to whom, after consultation with you, the prerogative of Mercy was extended.

I beg further to draw your attention and invite your observations upon the other parts of Mr. Gellibrand's letter.

I have, &c.,

Geo. Arthur.

[Enclosure No. 2.]

Chief Justice Pedder to Lieut.-Governor Arthur.

Sir,

Hobart Town, 30th November, 1826.

I have the honor to acknowledge the receipt of Your Excellency's letter, dated the 23rd instant, together with a Copy of a letter from Earl Bathurst to Your Excellency dated the 21st June last, and a Copy of a letter addressed to His Lordship by Mr. Gellibrand, dated the 4th January last.

And having read the statements contained in Mr. Gellibrand's letter, as to the execution of the Bush Bangers, whom he mentions to have been taken and tried soon after their escape from Macquarie Harbour, and, as to the case of one "Ray," I find myself under the necessity of reporting to Your Excellency that the first statement is absolutely untrue.

I remember the case of the Bush Rangers perfectly well: These Men, six in Number, were tried on the 24th June, 1824, for a Burglary committed by them, and others of a party of fourteen; and being convicted, immediately received sentence of Death. But, so far is it from true that the sentence was not put into effect for the space of some Months, as stated by Mr. Gellibrand, that two of the Six having been pardoned, the other four (together with such of the rest of the Capital Convicts of the same Session as had been left for Execution) were hanged on Monday, the 19th of July, that is, within one Month from the day of their conviction, and exactly one fortnight after the adjournment of the Session, in which they were convicted.

For the Court being in a Session of Oyer and Terminer and Gaol Delivery, and engaged in delivering the Gaol at Hobart...
1826.
3 Dec.

Passing of sentence on bushrangers.

Town, when these Men were put upon their Trial, I continued
to try the remaining Prisoners in that Gaol until Friday, the
second of July, on which day the last case was tried; on Mon­
day, the fifth of July, sentence was passed on all the Convicts,
who had not received sentence at the conclusion of their respec­
tive Trials, and the Session was adjourned to Launceston, for the
purpose of delivering the Gaol there.

Mr. Gellibrand proceeds to state that, when the Sentence was
carried into effect, “it produced a feeling of sympathy for the
sufferers, instead of being an example and an object of terror.”
As to this, I can only say that I never heard of the existence of
such a feeling, and that I do not believe it did exist, since the
facts, which are stated to have produced it, are untrue.

Mr. Gellibrand shews such an evident anxiety to attribute
solely to Your Excellency the fault of any delays which may have
occurred in the execution of Criminals sentenced to Death that
I am very anxious to avow that, if the interval between the
adjournment of the Session and the Execution of these four Men
should be thought longer than it ought to have been, to me some,
if not the greater part, of the blame is attributable, for no
execution can take place till the cases are reported to Your
Excellency.

I have no Memorandum, which enables me to say on what day
I made my Report of the cases of that Session, nor of the length
of time during which, when made, it was under Your Excellency’s
consideration. At that period I was under the necessity of
making out my Reports myself from the Informations, having
no Officer of the Court of sufficient experience to intrust with
this duty; and, as the Report contains an Abstract of every In­
formation tried, it is probable that it took me some time to draw
it. And, when I recollect that it was Your Excellency’s prac­
tice to require me to give the fullest details of the facts of each
Case, and to make enquiries of the Police Magistrate and Chap­
lain, and other Persons capable of affording Information as to
the character of the Prisoners convicted, I cannot doubt that
this Report must have occupied Your Excellency many days. By
a Letter of the 16th July. I received Your Excellency’s final
determination on several cases, including those of the two whom
I have mentioned to have been pardoned. On Saturday the
17th, I delivered the Calendar to the Sheriff, and on the 19th
the Executions took place.

Of the two pardoned, it will be in Your Excellency’s recollec­
tion that Saxton, who was pardoned unconditionally, was a mere
lad; he had not personally been guilty of any violence at the
Commission of the Burglary, and he has taken the earliest
opportunity of seceding from the rest of the Gang, and had surrendered himself voluntarily; and the Report of his general character was favorable to him. The same mitigating circumstances appeared in favour of the other (Lacey) excepting that he had not surrendered himself, and was not so young as Saxton. But there was strong ground to believe his assertion, that he had been forced by the leaders of the Gang to join them in making their escape from Macquarie Harbour, and in this he was confirmed by the declaration of his Companions. He was pardoned on condition of remaining in the Territory a Prisoner for Life.

It was hoped that the Mercy extended to these two Men would have the effect of preventing the outrage and cruelty, which might be expected from persons in the desperate condition of the rest of the Gang, and might induce the voluntary surrender of such of them as had been forced or persuaded to join it by the ringleaders.

Such I know were the grounds on which, when I had the honor of being consulted by Your Excellency, I advised the pardon of these two Men.

With respect to the case of "Bay," I am sure his conditional Commutation of Pardon was suggested to Your Excellency by me. His case was a prosecution under the Statute for harbouring burglars, a prosecution which rarely takes place at Home, and of which, as I understood, no instance had been then known in these Colonies, with the exception of one, which had very recently before taken place at Sydney.

I do believe that the existence of the statute was not known here before. The conviction and sentence created a great sensation, and, considering the case in the nature of a first conviction under a new Law, it was hoped that the notoriety of it, and of the sentence pronounced, would be sufficient to deter others from the commission of a Crime the dreadful penalty of which was before generally unknown.

The only other part of Mr. Gellibrand's letter, which seems to call for any particular observations by me, is that which contains the general assertion that the prerogative of Mercy "has been too frequently and almost indiscriminately exercised."

Whether this prerogative has been too frequently exercised, or not, is rather matter of opinion than matter of fact, and depends rather on the nature and quality and particular circumstances, than upon the number of the cases in which pardons have been granted; and upon the effects thereby produced.

Considering it in this way, I can safely say that I do not think that pardons have been granted too frequently, because I do not think that they have had, or were calculated to have,
the effect of weakening the wholesome terrors of the Law, by
begetting in the people an opinion that capital Crimes might be
committed with comparative impunity.

But, that Mr. Gellibrand should have asserted that this pre­
rogative has been exercised almost indiscriminately, using this
term, as I understand him to use it, in it’s popular sense, does
appear to me extraordinary.

Mr. Gellibrand could not have forgotten that, out of 36 Per­
sons capitally convicted in the Session immediately preceding
that during the adjournment of which his letter was written, 15
had suffered Death.

On the day after the date of his letter, he might have known,
and I believied did know, and he must have known before his letter
was dispatched, that, of those which had been capitally convicted
during the Session then adjourned, the numbers left for Execu­
tion were in the proportion of 2 to 1 of those pardoned.

Since that time, of 56 capitally convicted and reported to Your
Excellency, between the 6th of January and the 18th of Sep­
tember, 1826, 39 have been executed, and in the fourteen Months
from the 18th July, 1825, to the 18th September, 1826, not fewer
than 60 Persons have been executed for crimes of which they
were convicted during that time.

I have only to add that, having had the honor of being con­
sulted in all cases of capital convictions, I have never known an
instance of a Pardon having been granted by Your Excellency,
until after a careful enquiry into the particular facts of each
case, and a full consideration of the prevalence of each particular
Crime, and of the state of Crime generally in the Colony, nor,
if I may be permitted to add, without my entire concurrence of
opinion in the propriety of the measure.

I have, &c.,
J. L. PEDDER.

[Enclosure No. 3.]

ATTORNEY-GENERAL GELLIBRAND TO LIEUT.-GOVERNOR ARTHUR.

Sir,
Hobart Town, 24th June, 1824.

I beg leave to inform Your Honor that the undermentioned
Prisoners have this afternoon been tried for Burglary, and found
Guilty, and the Sentence of Death has been passed upon them,
but they do not appear to have committed any act of Cruelty.

I have, &c.,
J. T. GELLIBRAND.

PRISONERS.

John Thompson; Isaac Walker; James Tierney; Patrick
Conolly; George Lacey; George Saxton.
ARThur to Bathurst.

[Enclosure No. 4.]

Extract from the Attorney General’s Letter to His Excellency the Lieutenant Governor, dated the 22nd of August, 1825.

“From the encouragement and assistance which have been afforded, as well by Prisoners as by free Settlers to Brady and McCabe, and other persons who have committed divers felonies, I considered it to be of great importance in this case to prosecute those persons, who had harbored and concealed the first-mentioned persons, with the utmost severity of the law, in order that the punishment, consequent upon such a crime, might, through the medium of the Newspapers, be publicly known throughout the Colony, which is Death, and I therefore prosecuted John Ray, Charles Jackson and John Taylor as accessories after the fact.”

Lieut.-Governor Arthur to Earl Bathurst.

(Despatch No. 55.*)

Government House, V. D. Land,

My Lord,

4th Decembr., 1826.

I have the honor to acknowledge Your Lordship’s Despatch, No. 33, notifying that His Majesty has been pleased to appoint Mr. McCleland to the Office of Attorney General to the Government of Van Diemen’s Land upon the removal of Mr. Gellibrand, and that Mr. McCleland was to receive Half Salary from the date of his embarkation.

I have, &c.

Geo. Arthur.

Lieut.-Governor Arthur to Earl Bathurst.

(Despatch No. 57.)

Government House, Hobart Town,

My Lord,

5th Decembr., 1826.

I have the honor to acknowledge the receipt of Your Lordship’s Despatch No. 27, transmitting the Warrants His Majesty had been graciously pleased to issue, authorising free pardons to the Prisoners named in the margin,† and I have the honor to acquaint Your Lordship that the necessary measures have been taken for extending to them the benefit of the Royal Mercy.

I have, &c.

Geo. Arthur.

* Note 117. † Marginal note.—Owen Reardon, William Tiday, John Clayton.
1826.
5 Dec.

Convicts per ship Woodford.

Disposal of convicts.

Conduct of surgeon and master.

LIEUT.-GOVERNOR ARTHUR TO UNDER SECRETARY HAY.

Government House, Hobart Town,
5th December, 1826.

Sir,

I have the honor to acknowledge the receipt of your letter of 3rd August, transmitting Assignment list of one hundred Male Prisoners per Ship Woodford.

This Transport arrived in the Derwent on the 22 November; and Ninety nine of the Convicts were disembarked in a clean and healthy condition, one having died during the passage.

Of those who were landed, eighty three have been assigned to the service of Settlers; fourteen have been retained in the employ of Government; and two are in confinement, to be sent to a penal Settlement, having been reported by the Surgeon Superintendent to be guilty of extreme misconduct on board the Woodford.

It affords me pleasure to state that the conduct of the Surgeon, Mr. Dixon, and that of the Master, Mr. Chapman, appear to have been such as to justify my speaking of them in terms of approbation.

I have, &c.,

GEO. ARTHUR.

6 Dec.

Despatch acknowledged re salary of R. O'Ferrall.

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.

(Despatch No. 58.)

Government House, Hobart Town,
6th Decembr., 1826.

My Lord,

I have the honor to acknowledge Your Lordship’s despatch, No. 32, acquainting me that full salary had been inadvertently issued to Mr. O’Ferrall in England, previous to his embarkation for this Colony, and directing that he should be called upon to refund one half for the period during which he was on his passage.

In reply, I have the honor to refer Your Lordship to the enclosed copy of correspondence which has taken place with Mr. O’Ferrall upon the subject, by which it appears that he has already received half salary only for the period specified.

I have, &c.,

GEO. ARTHUR.

[Enclosure No. 1.]

ACTING COLONIAL SECRETARY HAMILTON TO MR. R. O’FERRALL.

Colonial Secretary’s Office,
29th November, 1826.

Sir,

I am directed by the Lieutenant Governor to acquaint you that, by instructions lately received from The Earl Bathurst, His Excellency is informed that, instead of half Salary, full pay

* Marginal note.—Charles Lucas, Mark Wix.
was issued to you as Naval Officer from the date of your Embarkation in England, and that, consequently, I am to require you will refund a Moiety of the sum which you have received from that period to the day of your arrival in this Colony.

I am also to intimate that as the Statement, which you made, is at variance with this representation, some error must have arisen at home upon this subject.

I have, &c.,

W. H. Hamilton.

[Enclosure No. 2.]

Mr. R. O’Ferrall to Acting Colonial Secretary Hamilton.

Sir,

Naval Office, 2 December, 1826.

I have the honor to acknowledge your Letter No. 2 of 29th November, wherein you were pleased to express His Excellency’s direction to call upon me to refund a moiety of Salary, received for the time between the date of my embarkation and arrival in this Colony; I beg to state, for His Excellency’s Consideration, that this reduction has already been made, and that I received only half Salary for the time specified.

I have, &c.,

Rollo O’Ferrall.

Lieut.-Governor Arthur to Earl Bathurst.

(Despatch No. 59; acknowledged by Viscount Goderich, 13th July, 1827.)

Government House, V. D. Land, 7th Decembr., 1826.

I have the honor to transmit for the consideration of Your Lordship a Memorial addressed to His Majesty by Ten Prisoners of the Crown, stating that, with Ten other Individuals, they were arraigned at York Castle in the Month of September, 1820, on a charge of “High Treason” to which they pleaded Guilty, and were transported to this Country for Life.

The Petitioners state themselves to be informed of the Royal Mercy having been extended to their Ten fellow Prisoners, who were detained in England, and, therefore, humbly pray His Majesty’s gracious consideration towards themselves.

Not having the immediate means of ascertaining the correctness of the statements contained in the Memorial, I can do no more than transmit it to Your Lordship, accompanied by the Police Office Report of the conduct and characters of the Prisoners since their arrival in this Colony.

Your Lordship will perceive that the Men whose Names are in the Margin* have not been found guilty of any Offence in this

Rec[ommendation by G. Arthur.]

1826. 7 Dec.


To the King's Most Excellent Majesty.

May it please Your Majesty,

We, Your Majesty's most humble Petitioners, beg leave to approach Your Majesty in the Anxious hope that Your Majesty's well known paternal benefaction towards every class of Your Majesty's subjects, and particularly towards the unfortunate, may be extended to us under the very peculiar circumstances of our case.

We beg leave most humbly to submit to Your Majesty that Your Majesty's humble Petitioners, with ten other individuals, vizt., George Burkinshaw, John Ferryman, James Flowers, George Bryant, Abraham Hanger, John Vallance, John Hobson, William Holland, Nathaniel Buckley, and Thomas Blackburn, were, in the Month of September, 1820, arraigned at York Castle on a Charge of High Treason, and, having pleaded guilty, were sent in the Lady Ridley Transport Ship to this Country under sentence of transportation for our lives.

We beg leave most humbly to submit to Your Majesty that we have been informed that it has been Your Majesty's most gracious pleasure to extend your Royal Mercy to the ten individuals above mentioned, who were arraigned and convicted with us, Your Majesty's most Humble Petitioners, at the same time and place, and under the same circumstances for the same offence, who are thereby restored to the blessings of liberty and the enjoyment of the society of their families.

That your Majesty's most humble Petitioners, without presuming to offer anything in mitigation of our offence, further than most humbly to submit to your Majesty that we were the Dupes of Artful and designing Men, who acted upon our distresses and our ignorance, caused us to be involved in our present unhappy situation, most humbly pray of your Majesty to be pleased to take the premises into your Majesty's most gracious
consideration, and to extend to us your Majesty’s Royal Mercy, as it has been your Majesty’s pleasure to bestow it upon our late fellow prisoners.

And your Majesty’s most humble Petitioners as in Duty bound will ever pray, &c.

[Here follows police office record of ten men, omitting Benjamin Anson and John Downing, also Mr. Humphry’s certificate of its correctness, dated 17th Sept., 1826.]

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 53; acknowledged by lieut.-governor Arthur, 25th May, 1827.)

Sir, Downing Street, 11th Decr., 1826.

In reference to your dispatch of the 21st April last, in which you submit a question of difficulty, which had arisen as to the propriety of Mr. Curr’s admission to take his Seat at the Council, in consequence of his being a Member of the Church of Rome, and of his having declined to take the Oaths which had been tendered to him in common with the other Members of the Legislative Council, I do myself the honor of acquainting you that, as the Declaration and Oath of Supremacy which Mr. Curr has declined to subscribe to or to take, as being a Roman Catholic, are not required by the 32d Section of the Statute 4 Geo. 4th, Cap. 96, to be taken by the Members of the Legislative Council, I do not apprehend that Mr. Curr is disqualified on account of such refusal from taking his Seat among that Body.

By my dispatch of the 2d of October last, you were informed Appointment of that His Majesty had been pleased to approve of the Appointment of Mr. Thomas Anstey as a Member of the Legislative Council; I now do myself the honour to forward to you a Warrant under the Sign Manual including the name of Mr. Anstey, and also that of Mr. Thomas Archer, in the room of Major Abbott, whose name it has been found necessary to withdraw from that Office for the reasons already explained to you in a former Dispatch;* and, although the residence of Mr. Archer on a distant part of the Island may not admit of his Attendance at the Council Board so frequently as could be wished, yet, after this gracious mark of favour shewn to him by His Majesty, I should hope that he would not allow any important question, on the deliberation of which his assistance might be required, to pass the Council without making any endeavour to be present.

I have, &c.,

BATHURST.

* Note 118.
1826.
11 Dec.


GEORGE R.

Trusty and Well Beloved 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 relating thereto," 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 in like manner to constitute such and so many other Person or Persons as shall be necessary to supply the vacancy or vacancies And Whereas by the said recited Act it is further enacted that in case it should at any time seem fit to Us Our Heirs and Successors to constitute and erect the Island of Van Diemen's Land and any Islands, Territories or Places thereto adjacent into a separate Colony independent of the Government of New South Wales it shall and may be lawful so to do And Whereas We have thought fit to erect the said Island and Territories or Places thereto adjacent into a separate Colony And Whereas in pursuance of the said Act of Parliament and in execution of the Power and Authority thereby vested in Us We did on the Seventeenth of July, 1825, by Warrant† under Our Sign Manual nominate, constitute and appoint Our Trusty and Well Beloved John Lewis Pedder, Esquire, Our Chief Justice of Our said Island Our Trusty and Well Beloved Dudley Montagu Perceval, Esquire, Our Colonial Secretary of Our said Island, Our Trusty and Well Beloved Edward Abbot, Esquire, Our Trusty and Well Beloved William Henry Hamilton, Esquire, Our Trusty and Well Beloved Adolarius William Henry Humphrey, Esquire, and Our Trusty and Well Beloved Edward Curr, Esquire, to be the Members of Our Council of Our said Island of Van Diemen's Land and its Dependencies for and during Our Will and Pleasure And Whereas We have thought

* Note S. † Note 119.
fit to revoke and annul such Our Warrant and the nomination and appointment thereby made as aforesaid. Now therefore in pursuance of the said Act of Parliament and in execution of the Power and Authority thereby vested in Us as aforesaid We do hereby revoke and annul Our said Warrant of the 17th day of July, 1825, and the nomination and Appointment of the said several persons therein named to be Members of Our Council of Our said Island of Van Diemen’s Land and its Dependencies And We do hereby in further execution of the said Power and Authority nominate, constitute and appoint Our Trusty and Well Beloved John Lewis Pedder, Esquire, Our Chief Justice of Our said Island, Our Trusty and Well Beloved John Burnett, Esquire, Our Colonial Secretary, Our Trusty and Well Beloved William Henry Hamilton, Esquire, Our Trusty and Well Beloved Adolarius William Henry Humphrey, Esquire, Our Trusty and Well Beloved Edward Curr, Esquire, Our Trusty and Well Beloved Thomas Anstey, Esquire, and Our Trusty and Well Beloved Thomas Archer, Esquire, to be the Members of Our Council of Our said Island of Van Diemen’s Land and its Dependencies for and during Our Will and Pleasure And We do hereby authorize and 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 of the Death or Resignation or Departure from Our said Island of the said John Lewis Pedder and John Burnett or either of them We do hereby constitute and appoint such other Person or Persons as shall have lawfully succeeded to Our said Chief Justice or Our said Colonial Secretary in their or either 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 Provided nevertheless and We do hereby declare that these Presents shall not have or be deemed to have any force or effect or virtue until the same shall have been received in Our said Island by Our Governor Lieutenant Governor or Officer administering the Government thereof for the time being and that until the same shall have been received Our said Warrant of the Seventeenth day of July, 1825, doth and shall continue and remain in full force and virtue as fully to all intents and purposes as if these Presents had not been made. Given at Our Court at Windsor this Tenth day of December, One Thousand and Eight Hundred and Twenty Six, In the Seventh Year of Our Reign. By His Majesty’s Commands, Bathurst.
HISTORICAL RECORDS OF AUSTRALIA.

1826.
11 Dec.

Lieut.-Governor Arthur to Earl Bathurst.
(Despatch No. 60.)

Government House, V. D. Land,
11th December, 1826.

My Lord,

I have had the honor to receive Your Lordship’s Dispatch,
No. 29, conveying to me the Commands of His Majesty to re­
mov Mr. Gellibrand from the Office of Attorney General to the
Government of Van Diemen’s Land, which has been duly notified
to him through the Colonial Secretary.

The arrangement made provisionally by the temporary Ap­
pointment of Mr. Hone has been already notified to Your Lord­
ship, and it has been intimated to that Gentleman that, from
the date of the embarkation of Mr. Gellibrand’s Successor, he
will upon the principle of Your Lordship’s regulation be only
entitled to half Salary.

I have, &c,
Geo. Arthur.

12 Dec.

Despatch acknowledged re naval office.

Lieut.-Governor Arthur to Earl Bathurst.
(Despatch No. 61.)

Van Diemen’s Land, Government House,
12th Decembr., 1826.

My Lord,

I have the honor to acknowledge Your Lordship’s Dis­
patch No. 34 in reply to the Communications which I addressed
to Your Lordship, and am much gratified to find that the mea­
sures introduced into the Naval Officer’s Department at Van
Diemen’s Land have been so much in unison with the arrange­
ments approved by the Commissioners of His Majesty’s Customs.

I have, &c,
Geo. Arthur.

13 Dec.

Transmission of acts of council.

Proposal by J. T. Bigge re colonial ordinances and acts of council.

Lieut.-Governor Arthur to Earl Bathurst.
(Despatch No. 62.)

Van Diemen’s Land, Government House,
13 Dec., 1826.

My Lord,

I have the honor to transmit for the information of Your
Lordship, in conformity with a provision of the New South
Wales Act, copies of the several Acts, which have hitherto passed
the Legislative Council of this Colony.

It has been already submitted to Your Lordship, in the report* of Mr. Commissioner Bigge, that a considerable difficulty in the
way of legislative enactments† exists in the dispersed and un­
digested form, in which the old orders and regulations were
formerly published; and, at the same time, he recommends a

* Marginal note.—Report 3rd, Page 82.
† Note 120.
legislative authority for Acts which differ from, or exceed in their operation, the laws of England, but which, however, are rendered necessary by the particular nature of this population.

Being impressed that there are several regulations, which are indispensable for the proper administration of this Colony, I have been anxious that such should be prepared for the purpose of being laid before the Legislative Council; but the Law Officers of the Crown have represented to me so strongly their inability to proceed from the imperfect manner, in which they are enabled to refer to the Acts of Parliament and Orders in Council, passed at the early settlement of New South Wales, that I have the honor to request Your Lordship will be pleased to give directions that a Copy of every Act of Parliament or Order in Council, which affects these Colonies, passed from their first formation to the present period, may be provided and sent by the earliest opportunity.

I beg to submit to Your Lordship that this is of great importance.

I have, &c,

GEO. ARTHUR.

[Enclosures.]

[These Acts were (1) For the Summary Punishment of Female Convicts. 1/8/26. (2) For the sale of Ale, Beer, Wine, Spirits, etc., 7/9/26, and (3) To promote the Circulation of Sterling Money, etc., 22/9/26.]

EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 54; acknowledged by lieut.-governor Arthur, 12th May, 1827.)

Sir,

Downing Street, 14th Decr., 1826.

With reference to the latter part of your dispatch, N. 10 of the 3rd of July, 1825, I have the honour to acquaint you that the three Individuals named in the margin,* who have been strongly recommended to me, both on account of their activity and intelligence, and have been selected for the purpose of taking upon themselves the duties of Police Officers at Van Diemen's Land.

The first and last mentioned Persons have been some years Police Officers of the Metropolis, and the other, although not accustomed to this occupation, yet, having latterly given his attendance at the Police Offices, I am induced to hope that he will not be found less efficient; and that the expectation, which I have formed of them individually, will be realized by the Services, which they will hereafter render to the Colonial Government.

1826.  14 Dec.

Salary and allowances for two officers:

and for third officer.

You will issue to the two first mentioned Officers a Salary at the rate of £100 per annum each, to increase £10 every year until they reach the maximum of £200 per annum with the further advantage of Lodging Money, and the usual allowance of Rations and Coals; and you will consider yourself authorized to provide each of them with a Horse and Forage for the same, should it be deemed expedient to employ them as Mounted Patrole.

With respect to the Salary of the third Officer, I do not deem it necessary to place him at present upon the same footing with the other two; and he will, therefore, only receive £100, with an increase of £10 each year, until his Pay shall amount to £150 pr. annum with the same allowances, which the others are to receive, until, by the death or removal of either of them, you shall have an opportunity of supplying the vacancy by promoting him to one of the superior Situations.

I have, &c,

BATHURST.

20 Dec.

UNDER SECRETARY HAY TO LIEUT.-GOVERNOR ARTHUR.

20th December, 1826.

[A copy of this despatch, acknowledged by lieut.-governor Arthur, 10th July, 1827, is not available.]

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.

(Despatch No. 63; acknowledged by Viscount Goderich, 7th July, 1827.)

Van Diemen's Land, Government House, 20th Decemb., 1826.

1. I have the honor to transmit the accompanying Requisition from the Principal Superintendent for Slop Clothing for the use of the Convicts in this Colony.

The heavy expense incurred by His Majesty's Government in the annual supply of Clothing provided for the Transported Convicts, and the defects which it appeared to me existed from the want of an improved system in issuing and accounting for these Stores led me to the consideration of this subject, and, with the intention of some general revision and economy in the future appropriation of Clothing, I directed a Committee to investigate the subject, and have the honor to transmit Copy of their Report.

2. Not being entirely satisfied with the Report of the Board, I brought the subject under consideration in the Executive Council chiefly for the purpose of discussing the propriety and justice of issuing a new suit of Slop Clothing with every Prisoner on
his assignment, and charging his Master at once with the original Cost and Expenses, viz., £1 10s., which appeared to me much more advisable than opening and keeping a Clothing Account with the Settlers for broken periods, as proposed by the Board.

In this proposition the Council unanimously concurred with me, and I am led to understand, whilst a very considerable Sum will be saved to the Government, the Settlers universally express themselves highly satisfied with the arrangement.

3. The Government Order, which has been promulgated, I have the honor to enclose together with Copy of the Regulations which have been established.

Very great inconvenience has also resulted from the want of some established scale of Rations for the Crown Servants in the employment of the Settlers, for, whilst some allowed their Men both in Money and Provisions the most extravagant remuneration, others on the contrary have absolutely stinted them and caused much discontent.

This subject has therefore undergone the most deliberate investigation in the Executive Council: the payment of the Prisoners in Money or Property of any kind has been interdicted, and a very liberal Ration substituted, founded on the average Allowance which has for many years been granted by the most respectable Settlers to their Servants.

4. The Government Orders issued upon this subject, I have also the honor to submit for Your Lordship's consideration, together with the Regulations, which prescribe and define the Labour of the Prisoners in the employment of the Crown, who are formed into Classes and worked respectively according to their merits or Offences.

It remains for me to solicit Your Lordship will be pleased to direct the supply of the Clothing required by the Principal Superintendent, and, as distinction in dress has been found to be conducive to discipline amongst the Prisoners, I have further to request Your Lordship will be pleased to sanction the quality and description applied for.

I have, &c.,

GEO. ARTHUR.

[Enclosure No. 1.]

Government Order.

The Lieutenant Governor, having reason to believe that considerable defects exist, in the present mode of issuing Slop Clothing and bedding, from the Public Stores, as regards the number and quality of the articles, the persons to whom they are supplied, and the purposes to which they are appropriated, deems it essential that the whole should...
undertake minute examination and revision with a view to greater economy in this branch of the expenditure. His Excellency has consequently directed that a Board shall be constituted of the Lieutenant Colonel Commandant at Hobart Town, The Colonial Treasurer, and the acting Major of Brigade; and to those Officers he confides this important Trust.

All necessary information will on their requisition be furnished from the several departments; and His Excellency anticipates so comprehensive a report, as will at once enable him to place the issue of Slop Clothing on a footing which may prove permanently Advantageous. The report of the Board will further embrace any suggestions that may appear to them important, in relation to the quantity, quality, or description, of the Slops sent from England.

By Command of His Excellency,

W. H. HAMILTON,
Acting Colonial Secretary.

RECOMMENDATIONS BY BOARD OF ENQUIRY.

Sir,

Board Room, 29th June, 1826.

In compliance with the Government Order of the 9th Ultio. stating that considerable defects are believed to exist in the present "mode of issuing Slop Clothing and bedding from the Public Stores, as regards the persons to whom they are supplied, and the purposes to which they are appropriated," and directing that we, the undersigned, do form a board for the purpose of instituting a minute examination and enquiry into this Subject, with a view to greater economy in this branch of the Public expenditure.

We, the board, have the honor to State that we have met from time to time, for the above object, and have obtained, from the Heads of Departments, The examination of the Storekeeper's Accounts and the inspection of the Articles of Clothing and bedding, the information which enables us to form the several conclusions, and answers, to the Series of memoranda, with which we have been furnished; And also to frame the Code of new Regulations hereto annexed, which we have the honor to submit.

We have, &c.,

W. BALFOUR, Lt. Col.
JOCELYN THOMAS, Col. Treasurer.
RICHARD TURTON, Brigade Major.

MEMORANDA for the consideration of the Clothing Board with replies.

Q. Whether the Articles of Clothing and Bedding sent from England are of proper description and quality? A. We are of opinion that the Grey Cloth Clothing sent from England is of a proper description and quality.
ARTHUR TO BATHURST.

Q. Whether any others in addition thereto, or alteration in the Materials, size or otherwise, be desirable? A. We do not conceive that any addition is necessary nor alteration in the Materials, size or otherwise of this description of Clothing; but we recommend that the Duck clothing should be discontinued and Cloth substituted in its stead.

Q. Whether it would be expedient to procure the Materials only from England and have them made up in this Colony? A. If the Leather and Materials for shoes were imported from England, we are of opinion they would be made with Advantage by forming a Shoemaking Establishment in the Prisoners' Barracks. The shoes sent from England are of inferior and quality, and do not last two months. The Leather is good but the Workmanship very bad. The Hemp becomes rotten during a voyage from England.

Q. If so, whether an Establishment of Tailors in the prisoners' Barracks, and Sempstresses in the Factory, or other place, could be formed equal to the undertaking? A. From the great scarcity of buildings for Male and Female prisoners and there not being any separate Rooms for the Division of Labour, we are of Opinion that all other Articles of Clothing must be brought from England.

Q. And whether any Materials of Colonial Manufacture can be procured, equal in quality and in costs to those imported? A. There is not any Woollen or Cotton Manufactory in this Island at present; therefore the materials cannot be supplied here.

Q. Whether the Suit of Clothing now issued is sufficient or otherwise? A. We are of Opinion that two Suits of Grey Clothing of good quality will be sufficient for the year.

Q. Whether a Cap of a particular Construction or Colour would answer as a distinguishing mark for prisoners? A. We recommend some distinction in the Clothing for the prisoners' Barracks.

Q. Whether it is essential to have Winter and Summer Clothing? A. We do not think it necessary to have Summer and Winter clothing, Cloth for both.

Q. Whether a more frequent issue of these Articles is necessary? A. We are of opinion that there should be a monthly issue.

Q. And if so, at what periods, and in what Numbers? A. according to the plan and regulations annexed.

Q. Whether Boatmen, Field Police, Surveyors' Men and others Similarly employed, should be furnished with Clothing of a stronger description? A. We are of opinion that the Boats' Crews, Surveyors' Men and others so employed should have clothing made up here of a stronger description to consist of:—Boatmen, Flushing trowsers, 3 pair; Do. 2; Waistcoats, 2; Shoes, 3 pair; Leather Hat, 1. Field Police, Surveyors' Men and others so employed; Cloth Trowsers, 2 pair; Bound Jackets, 2; Waistcoats, 1 red, 2; Shoes, 4 pair.

Q. Whether the proposed outfit of the Javelin Men* by the Sheriff is expedient? A. We are of opinion that the mode of Clothing for the Javelin Men, as proposed by the Sheriff, should be adopted.

Q. Whether a Commutation should be allowed for Clothing, etc., to Convict Writers employed in the Public Offices; if so, What amount per Annum or per suit? A. We are of opinion, that the Sum of Five pounds per Annum should be given to the Clerks and Writers in the public Offices, in lieu of Slop Clothing.

Q. Whether a commutation to Magistrates and others for their present allowance of Slop clothing, etc., is recommendable, and if so The amount pr. Annum. or per Suit? A. As long as an allowance of Slop

* Note 121.
Clothing shall be made to the Magistrates, so long will it be an accommodation to them to receive it in kind; and not attended with more expense to the Government.

Q. Whether the present system of Supply to the Colonial Hospital can be improved either as to the fitness of the Articles, Numbers, or Economy in the expenditure? A. We are of opinion the system of clothing the Colonial Hospital should be regulated by the Colonial Surgeon and his assistants.

Q. Whether the System of Supply to the several Gaols can be improved in any of the before mentioned respects? A. We beg leave to refer the plan and regulations proposed by us for the answer to these queries.

Q. Whether any and what steps should be taken on the assignemt, transfer, or return to the Public works of a Crown Servant, for ascertaining the Clothing and Bedding, he may or ought to have in his possession, and enforcing the delivery thereof?

Q. Whether it will be proper to compel Settlers to furnish a Specific quantity of Clothing to their Servants to supersed the necessity of paying them any wages whatever; if so, The Number and description of the Articles and the periods of supply? Whether Settlers should be compelled or have the option to procure from the Government Stores Clothing and bedding at fixed prices, and if so The price of each Article? A. And we are of opinion that a certain regular issue of Slop Clothing to their assigned Servants would prove very beneficial to the Settlers and prevent much disagreement and evil practices which at present exist especially in the Remote Stations and Stock-runs. We do therefore recommend a Government Order to the following effect, vizt.: 1 Cap or Hat per Annum; 2 Cloth Jackets Do; 2 pr. Cloth Trowsers; 4 Shirts; 3 pair of Stock keepers' Boots, vizt., 1 Pair every 4 Months. The above Clothing to be of the same quality as the Government Clothing, And to be in lieu of all Wages whatever.

Q. The persons to whom extra Clothing should be issued and the quantity? A. Previously explained and also in the regulations herewith submitted.

Q. The amount of annual Issues to each Branch of the Service and the value?

Q. The probable increase or decrease of expense by the proposed change of System? A. From the many defects of the present System of issuing Slop Clothing, the liability to error and abuse, the imperfect manner in which the accounts have been kept, frequent Issues on Verbal orders, etc., etc., We feel confident that the System, which we have the honor to propose, will be attended with Benefit to the prisoners of the Crown and a considerable Saving of Expence to the Government; but, from the Want of any fixed Data to proceed on, we cannot hazard an opinion as to the future probable amount.

Whenever a radical change in any system of expenditure takes place, some must suffer. In the present instance, it may appear a hardship to withhold Bedding as pointed out in the annexed regulation; much abuse must prevail in the irregular issue of that Article; the Board therefore, after giving this point every consideration, can arrive at no other conclusion than that, in cases of peculiar hardship, Government must decide as to the quantum of remuneration in Money, which it may be necessary to allow.

W. BALFOUR, Lt. Colonel.
JOCelyn THOMAS, Col. Treasurer.
RICH. TURTON, Major of Brigade.
Regulations respecting the Issue of Clothing to the Convicts in the Government Employ.

1. The Allowance of Clothing to Men in Government employ is two Suits in the year, consisting (without any distinction as to the season of the year at which it is issued) of the following Articles, vizt.:—

   1 Cloth Jacket; 1 pr. Cloth Trowsers; 1 Shirt; 1 pr. Shoes; 1 Cap or Hat.

2. There will be an issue of Clothing to such as are entitled to it on the 1st of each Month.

3. Those Men, who are not constantly in Government employ, will receive clothing only for the actual Number of days, during which they may be so employed, at the rate above mentioned.

4. A Clothing Register will be kept under the direction of the Principal Superintendent of Convicts; and all Applications for Clothing are to be made at least two days previous to the first of each Month.

5. When a Man is removed to, or from, Government Employ, the date is to be entered opposite his name in the register, so that it may easily be ascertained what number of days he has been in Government employ.

6. When a Man becomes entitled to Clothing in the Middle of a Month, the broken period is not to be reckoned.

7. The Convicts in the Penitentiary, as likewise those in the Gaol, will receive clothing of a particular description; which is to belong to the Establishment, and not to the individuals; and the period, during which they are confined, is not to be reckoned in their claim for Clothing.

8. When a Man is sent to the Penitentiary or Gaol, his clothing is to be taken from him; and it is to be returned on his leaving the Establishment.

9. The Police Constables, Surveyors' Men, Javelin Men and Boatmen, will also receive clothing of a particular description, under special regulations; and the period, so employed, is not to be reckoned in their claim for clothing when they return to Government employ.

10. No extra issue of Clothing is to be accounted for in the Register. The particular department, requiring such extra issue, is responsible, and each will apply to the Colonial Secretary accordingly.

11. The Clothing to Magistrates for their Servants may be received when due on the 1st of each Month, on application to the principal Superintendent of Convicts, who will keep a Separate account of the expenditure.

12. The Principal Superintendent of Convicts will make his requisition for clothing on the Ordnance Storekeeper, specifying merely the number of Articles required, which is to be certified by the Colonial Secretary.

13. When a convict is assigned to private Service, a Notification is to be made by the Principal Superintendent of Convicts to His Master, stating the period to which he has received Clothing; and, until that term, the Master is not obliged to give him any Clothes.

14. When a Convict is returned to Government employ by direction of a Magistrate, the Master will furnish him with a sufficiency of Clothing to last until the period, at which the Master is entitled to Clothing from Government, which is ascertained by the notification sent with the servant when he was assigned; or, should it be more convenient to the Master, the Servant may receive clothing from the
Government immediately on his return to Government employ, provided
that the Master pays at the rate of 3d. per diem from the time when
the Servant would then receive Clothing, before that at which he would
otherwise be entitled to it.

15. Any man, who receives rations from the Public Stores under
proper Authority, but are not actually employed in the Public Works,
will receive Clothing as "men in Government employ," without refer-
ce to the name of the persons under whom they are employed, and
the issue will be entered accordingly in the Register. This will apply
to Servants of Public Officers, Messengers, invalids and probably some
others. The first issue of Clothing under the regulation should be
certified by the Colonial Secretary.

16. The Penitentiary and all other Establishments intended for the
Lodging of Convicts, etc., as likewise the Gaol, will be furnished with
Bedding; but, except that which a Man receives on disembarkation
from England, no bedding is to be issued to Individuals.

W. BALFOUR, Lt. Colonel.

JOCELYN THOMAS, Col. Treasurer.

RICHD. TURTON, Major of Brigade.

[Enclosure No. 5.]

GOVERNMENT NOTICE.

Colonial Secretary's Office, 9 Aug., 1826.

The Prisoners' Barrack in Hobart Town, which has hitherto been con-
sidered as a Penitentiary only, will, in future, be appropriated to the
Reception of Prisoners in the Service of Government generally, with a
View to the more effectual Application of their Labour and the
Prevention of Offences arising from so many Men being at large.

The Lieutenant Governor, being nevertheless desirous to extend to
those of good Character all reasonable Indulgence, has directed the
following Classification to be observed, so far as it may be practicable,
throughout the Colony, and which is therefore published for the In-
formation of all concerned:

The Heads of Departments are required to make the same known
to the Prisoners under their Charge, and to explain that, while the
Industrious and well-conducted will not fail to receive due Encourage-
ment, even beyond what is now promulgated, those of irregular Habits
will assuredly be compelled to Labour without Remission through the
several Gradations, until, by the Expiation of their Offences and im-
proved Demeanour, they shall be considered worthy to be restored
to the Privileges annexed to the Second and First Classes, or to the
still higher Privilege of being placed in the Service of respectable
Settlers:

First Class.

To consist of such Men, whether Mechanics or Labourers, as from
especial good Conduct will be permitted to Sleep out of Barracks, and
to Work for themselves the Whole of each Saturday.

Second Class.

Those for whom Barrack Accommodation shall be provided, and who,
subject to a continuance of good Behaviour, will be allowed to Work
for themselves the Whole of each Saturday.

Third Class.

Men employed on the Public Roads, who will be released from Work
at Noon every Saturday, subject however to the Condition of good
Conduct.
ARTHUR TO BATHURST.

Fourth Class.

Refractory or disorderly Characters, to Work in Irons, either in the Towns or on the Roads, under the Sentence of a Magistrate.

Fifth Class.

Men of the most degraded and incorrigible Character, who will be worked in Irons under the Sentence of a Magistrate, and kept entirely separate from other Prisoners.

Sixth Class.

Men removed to Maria Island, subject to the Classification of the Commandant there.

Seventh Class.

Men removed to Macquarie Harbour, subject to the Classification of the Commandant there.

By Command of His Excellency,

W. H. HAMILTON.

[Enclosure No. 6.]

GOVERNMENT NOTICE.

Colonial Secretary's Office, 30 Sept., 1826.

Frequent References and Complaints having been made to the Lieutenant Governor of the unreasonable Demands and lavish Expenditure of Clothing and Food by Prisoners of the Crown, His Excellency has given to the Subject His particular Attention in Council, and has directed the following Regulations to be published for general Guidance:

1. In order that no Excuse for the Non-performance of a just Proportion of Labour may be adduced by the Convict, it will be the indispensable Duty of his Master to furnish him with the following Rations:

- Meat 10½ Pounds
- Flour 10½ ditto
- Sugar 7 Ounces
- Soap 3½ ditto
- Salt 2 ditto

Any further Quantities of these Articles, or any Tea or Tobacco, are to be supplied at the Discretion of the Master, in Case he shall think them proper or necessary, as a stimulus to Industry, or under special Circumstances.

2. It will also be the Duty of the Master to furnish each Servant with

- Woollen Slop Clothing. 2 Suits
- Stock keepers' Boots ... 3 Pairs
- Shirts ............... Four
- Cap or Hat ............ One
- Bedding—to consist of a Palliass stuffed with Wool, two Blankets and a Rug, to be considered the Property of the Master, and retained by him on the Discharge of the Servant.

3. The Supply of Food and Clothing above specified, with comfortable Lodging and Medicine in the Event of Illness, being deemed fully equivalent, no Payment of Wages is in future to be demanded by the Convict, and it is strongly recommended that none should be allowed.
Notice or regulations for rations and clothing of assigned convicts.

4. The Arrangements thus prescribed will be specified in an Instrument of Assignment, the Conditions of which will be rigidly enforced.

5. When a Prisoner is in future to be assigned to a Settler, he will receive a Complete Suit of Slop Clothing from the Public Stores, for which his Master must pay, on Delivery, the Cost Price and Charges of Importation. The Rate of a Suit is, for the present, fixed at One Pound Ten Shillings. By this Mode it is hoped to obviate the Dissatisfaction which has been frequently expressed at receiving Servants from the Government insufficiently clothed.

By Command of His Excellency,
W. H. HAMILTON.

[Enclosure No. 7.]
MR. J. LAKELAND TO ACTING COLONIAL SECRETARY HAMILTON.
Principal Superintendent’s Office,
17 Octr., 1826,
In reply to your letter of yesterday’s date, requesting me to report to you what sort of Clothing would be most eligible for the prisoners confined in the Prisoners’ Barracks and Gaol.

For the former I should recommend Yellow Jackets and Trowsers, as being the most conspicuous; the Clothing, which has heretofore been sent out of this description, has generally been of a sufficient quality, but deficient in point of Size. I beg to recommend that Clothing of a larger description be sent.

For the Gaols, I beg to recommend a party dress of Jackets and Trowsers; one half of which should be yellow, and the other half black.

I have, &c.,
JOHN LAKELAND,
Princl. Superintendent.

[Enclosure No. 8.]
REQUISITION
Required for the use of the Principal Superintendent of Convicts department.

4,000—Four Thousand yellow Cloth Jackets.
6,000—Six Thousand do do Trowsers.
1,500—Fifteen Hundred Grey Jackets.
1,500—Fifteen Hundred Grey Trowsers.
1,000—One Thousand party Coloured Jackets.*
1,000—One Thousand do do Trowsers.*
7,000—Seven Thousand Stripped Cotton Shirts.
10,000—Ten Thousand pairs of Shoes.

JOHN LAKELAND,
Princl. Supert. of Convts.
Principal Supert. of Convicts Office, Hobart Town, Van Diemen’s Land, 6th Novr., 1826.

* Marginal note.—For the use of prisoners confined in Gaols Yellow and Black would be preferable.
EARL BATHURST TO LIEUT.-GOVERNOR ARTHUR.

(Despatch No. 55; acknowledged by lieut.-governor Arthur, 5th July, 1827.)

Sir, Downing Street, 21 Decemb., '26.

With reference to your dispatch No. 13 of the 12 August, 1825, respecting the purchase of Mr. Edward Lord of a small piece of ground, consisting of 24 Acres, which it had been deemed necessary on public grounds to obtain, I have now the honor of transmitting to you the Deeds duly executed by the necessary parties consisting of an Assignment of a Bond from Mr. Lord to George Maule, Esqre., the Crown Solicitor, for Trust for His Majesty, and a Bargain and Sale from Mr. Lord, and Mr. John Ingle to His Majesty, the latter of which has been enrolled in the Court of Chancery, by which the conveyance is completed.

As the form of Conveyance, which you had proposed with respect to the piece of Land in question, was considered objectionable, I beg to transmit, for your information, copies of the correspondence, which has taken place between the Crown Solicitor and this Department upon this subject.

I have, &c.,
BATHURST.

[Enclosure No. 1.]

MR. G. MAULE TO UNDER SECRETARY HAY.

Sir, Lincoln's Inn, 21 April, 1826.

With reference to your letter of the 3d Inst., transmitting a Despatch with accompanying Documents upon the subject of the purchase of a parcel of Land in Van Dieman's Land, made by the Colonial Government of Mr. Edward Lord, and requesting me to prepare the necessary Deeds as required by Colonel Arthur, I beg leave to acquaint you that it appears to me, under the advice of the Conveyancer with whom I have consulted, that, unless there be some particular object in making the proposed Conveyance as suggested in the Documents sent to me to Trustees, it will be more expedient in the present Instance to convey the Land directly to His Majesty. The reason for this opinion is that the proposed Trustees appear to be resident in Van Dieman's Land, and the Conveyance is intended to be perfected in this Country; consequently it may happen that at the time when it is made that the Trustees or one of them may not be living. Should it however be desirable that the Conveyance be made in Trust for and not immediately to the Crown, the contingency above stated may be guarded against by conveying to a Trustee in this Country in the first Instance, In trust to convey to the Trustees named who are resident abroad.
I have to beg the favor of Lord Bathurst's directions as to which of these modes of Conveyance his Lordship may be pleased to prefer.

I am, &c.,

GEO. MAULE.

[Enclosure No. 2.]

UNDER SECRETARY HAY TO MR. G. MAULE.

Sir, Downing Street, 31 May, 1826.

I have received and laid before Earl Bathurst your Letter of the 21st ultimo, in which you state that the form of conveyance, proposed by the Crown Solicitor in Van Diemen's Land with respect to the piece of Land purchased of Mr. Edward Lord by the Colonial Government, is not approved by the Counsel whom you have consulted, and you refer for his Lordship's decision the question whether the form of the conveyance shall be a Grant directly to the Crown, or a Grant to some person in trust for the future Trustees of the Crown.

Lord Bathurst desires me to acquaint you, in reply, that he is not aware of any fact or consideration, which should influence the question respecting the form of the Deed, excepting only such as are to be found in the various Enclosures in Lieut. Governor Arthur's Dispatch. As those papers have been laid before the Counsel whom you have consulted upon the subject, Lord Bathurst is of opinion that it would be advisable to prepare the Instrument in whatever form such Counsel might deem most convenient and effectual; but his Lordship is not apprized of any reason for resorting to the circuitous plan of interposing two successive sets of Trustees, nor why an immediate conveyance to the King might not be properly made.

I am, &c.,

R. W. HAY.

P.S.—The Documents connected with this subject are herewith returned.

[Enclosure No. 3.]

MR. G. MAULE TO UNDER SECRETARY HAY.

Sir, Lincoln's Inn, 9 June, 1826.

With reference to your letter of the 3d of April last, transmitting a despatch with its accompanying Documents, here with returned, upon the subject of the purchase of a Parcel of Land in Van Diemen's Land made by the Colonial Government of Mr. Edward Lord, and requesting me to prepare the necessary Deeds as required by Col. Arthur, and transmit the same to you at my earliest convenience; With reference also to your letter of the 31st Ulto. conveying Lord Bathurst's opinion that it would be advisable to prepare the Instrument in such form as Counsel
might deem most convenient and effectual, I beg leave to enclose the Engrossment of a Conveyance of the said Parcel of Land from Mr. Lord to His Majesty, together with an Engrossment of an Assignment of a Bond given to Mr. Lord to indemnify him against a Claim of Dower upon the said Property, which Assignment has been made to me as Solicitor of the Treasury In Trust for His Majesty.

It is necessary that I should observe that prior to the execution of these Instruments, the blanks must be filled up and that both should bear date on the same day, and further that the Bargain and Sale must afterwards be acknowledged before a Master in Chancery by Mr. Lord.

The Draft of the Bargain and Sale is returned among the accompanying Documents and I have no Copy of it.

I have, &c.,

GEO. MAULE.

[Enclosure No. 4.]

UNDER SECRETARY HAY TO MR. G. MAULE.

Sir, Downing Street, 15th June, 1826.

With reference to your letter of the 9 Inst., in which you Deeds to be enclose the Engrossment of a conveyance of a parcel of Land |xeLordd by from Mr. Lord to His Majesty, together with the Engrossment of an Assignment of a Bond to be given to Mr. Lord to indem­nify him against a claim of Dower, and also with reference to your observation that, prior to the execution of these Documents, the Blanks must be filled up; I am directed by Lord Bathurst to state that his Lordship is desirous that you would at your earliest convenience take the necessary measures to obtain the execution of these Instruments by Mr. Lord.

I do not observe that there is any Blank to be filled up either in the Conveyance of the Land, or in the Assignment of the Bond, except that in the introductory sentences, where Blanks appear to be left for inserting the place of residence of Mr. Lord. It is understood that he is at present residing at No. 209 Oxford Street.

I have, &c.,

R. W. HAY.
1826.
22 Dec.

General approval of archdeacon's report.

Archdeacon of New South Wales had made his first visitation to Van Diemen's Land, and transmitting two Reports which he had addressed to you on the Church and School Establishments of that Colony.

I concur with the Archdeacon in the general propriety of the measures which he proposes with a view to the improvement of the religious and moral condition of the Population; but his plans for that purpose appear too extensive and to comprise too many different objects to render it possible for me to convey to you specific Instructions, until I shall have received fuller information, than I at present possess, in regard to the real value of the Church Lands. For, until the Survey of the Country has been made, and the value of the Lands fixed, it will be impossible to ascertain what means may be found for carrying into effect the arrangements contemplated by the Archdeacon. It is the more essential that the fullest information upon these points should be obtained before any great expense is undertaken in the erection of Schools or in executing others of the numerous objects submitted for His Majesty's Approval, as I am unable to hold out to you any expectation that the Mother Country can advance funds towards Undertakings of this nature, the expense of which should be defrayed out of the Revenue arising from the Lands which have been given up to the Church for those especial purposes.

Under these circumstances, I must defer taking his Majesty's pleasure on the measures proper to be adopted for carrying into effect the plans of the Archdeacon, until I shall be better enabled to give an opinion on the practicability of them with reference to the means, which may be at the disposal of the Colonial Government. With that view, you will direct your attention to, and report to me upon the following points. First, the description and number of Schools, which in your opinion it would be of importance to establish: the Situations in which the Buildings for this purpose should be erected, with every other necessary detail connected with them; and you will at the same time, point out, after having communicated with the Archdeacon, what Establishments of this description are most urgently required, and those which may be deferred with comparatively little inconvenience. Secondly, the best and most practicable mode of disposing of a portion of the Property which has been given up to the Church, in order to raise, by degrees, the necessary funds for defraying such expenses, as well as for maintaining the additional number of Clergymen whom the Archdeacon recommends to be appointed.
I have not for the above reasons deemed it advisable to augment the Clerical Establishment for Van Diemen's Land in the ratio which he has proposed; but, as it appears extremely essential that the two Penal Settlements alluded to in your dispatch should not be left without resident Ministers at each, I have taken measures for sending out two additional Clergymen for that service; and, concurring with you in opinion that two Wesleyan Missionaries would be better calculated than any other description of persons to officiate at those Settlements, I have made application to the Directors of the Society in London, who, I have no doubt, from the zeal with which they enter into every proposal by which Religion is to be promoted, will upon this occasion readily afford their assistance in the selection of two proper persons for that particular duty.

The Archdeacon suggests the propriety of the appointment of a Rural Dean to preside over the Clergy at Van Diemen's Land; but, from the nearness of that Island to New South Wales, the regular communication which can be kept up between the two Colonies, and the Visitation of Archdeacon Scott every two years, renders it unnecessary that any appointment of the nature contemplated should take place; still less should I be disposed to sanction the erection of a separate Archdeaconry in Van Diemen's Land.

The observations, which you have offered in regard to the Salaries of Clergymen and the Public Officers employed at Van Diemen's Land, meet my approbation; and you will accordingly augment their Emoluments in those cases in which they shall appear to you to be inadequate, and to be lower than corresponding Salaries in New South Wales; you will take care however to apprize me of the instances in which you have deemed it necessary to avail yourself of this permission, and to state to me very fully the grounds on which you have so acted.

The compensation, which you have authorized to be made to the Revd. Mr. Bedford for his extra services in the Jail, Factory, etc., appears to be perfectly just and reasonable. And I am happy to find you have anticipated my Instructions by directing your attention to the Establishment of the Orphan Schools, which are no less essential as an Object of Charity than for the general interest of the Community by bringing up to Industrious habits a Class of unfortunate Beings, who would otherwise be left without other means of support than what they might obtain by Acts of Violence and dishonesty.

I have, &c.,

BATHURST.
ASSIGNMENTS OF CONVICTS.

DURING the year 1827, letters, which enclosed the assignments of convicts per ships named, were written by under secretary Hay to lieut.-governor Arthur, with dates as under:

<table>
<thead>
<tr>
<th>Date of Letter</th>
<th>Ship's Name</th>
<th>No. of Convicts</th>
</tr>
</thead>
<tbody>
<tr>
<td>28th March</td>
<td>Governor Ready</td>
<td>191 male.</td>
</tr>
<tr>
<td>12th April</td>
<td>Persian</td>
<td>60 female.</td>
</tr>
<tr>
<td>14th June</td>
<td>Layton</td>
<td>160 male.</td>
</tr>
<tr>
<td>12th July</td>
<td>Sovereign</td>
<td>81 female.</td>
</tr>
<tr>
<td>25th July</td>
<td>Asia</td>
<td>158 male.</td>
</tr>
<tr>
<td>14th August</td>
<td>Asia</td>
<td>200 &quot;</td>
</tr>
<tr>
<td>3rd November</td>
<td>Marmion</td>
<td>130 &quot;</td>
</tr>
</tbody>
</table>

LIEUT.-GOVERNOR ARTHUR TO EARL BATHURST.

(Despatch No. 1; acknowledged by Viscount Goderich, 12th July, 1827.)

Van Diemen's Land, Government House,

My Lord, 2nd January, 1827.

In my Despatch No. 34, I had the Honor of communicating to your Lordship the Arrangements, adopted by Lieutenant General Darling for separating the Commissariat Department of this Colony, from that of New South Wales; and I have now the honor to inform Your Lordship that, in furtherance of this arrangement, Deputy Assistant Commissary General Boyes has been directed to proceed and take charge of the account branch of the Commissariat Department in this Island.

The Duties of auditor of the Colonial Accounts having been attached to the Corresponding Office in Sydney with great benefit to the Public, I have taken upon myself to appoint Mr. Boyes to the Office of Auditor of Civil accounts for this Colony, subject to Your Lordship's approbation and confirmation.

Perceiving the necessity for establishing every possible Check upon the disbursements from the Colonial Revenue, and the consumption of Stores by the various Public departments, Mr. Boyes has been directed to examine them, most attentively and minutely, before any Warrant is submitted or any account passed, and I feel a confidence that a very considerable Public Saving may be anticipated. The fraud and robbery in every way is beyond description.

Mr. Boyes commenced his Civil Duties on the Twenty fifth of November last, and, independent of his current business, has undertaken to check, and audit, the whole of the Colonial Accounts for the last year.

The Duties thus confided to Mr. Boyes are of a most laborious nature, and, in recommending him to Your Lordship for renumeration, I respectfully suggest the propriety of granting a liberal compensation; but I have not taken upon myself to name...