

Select Committee on
Aborigines (British Settlements)
1837

Report. & Minutes of Evidence.

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REPORT

FROM

THE SELECT COMMITTEE

ON

Aborigines (British Settlements);

IN THE

MINUTES OF EVIDENCE,

APPENDIX AND INDEX.

[COMMUNICATED BY THE COMMONS TO THE LORDS.]

Ordered to be printed 14th July 1837.

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A P P E N D I X.

Appendix, No. 1.

PARTICULARS RESPECTING THE MASSACRE OF THE CREW AND LOSS
OF THE SHIP. "OLDHAM."

Sir,

Melville, in Trincomalee Harbour, 8 November 1832.

SINCE my letter No. 45, of the 10th ultimo, enclosing a report from Mr. Williams, surgeon, R.N., respecting the massacre of the crew of the "Oldham" merchant ship, by the inhabitants of Wallis' Island, and the part taken by His Majesty's sloop Zebra to ascertain the facts of the case, I have received the particulars from Lieutenant M'Murdo, in command of the Zebra, which I now transmit for the information of the Lords Commissioners of the Admiralty.

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and Loss of the
Ship Oldham.

I have, &c.

(signed) John Gore, Vice-Admiral.

To Capt. the Honourable G. Elliot,
Admiralty.

EXTRACT of a LETTER from Acting Commander, *M'Murdo*, of His Majesty's Sloop *Zebra*, dated Port Jackson, N. S. Wales, 18th July 1832, addressed to Rear-Admiral Sir *Edward Owen*, K.C.B.

ON the 26th I succeeded in opening a communication with Lavaloa the chief, who came on board the next day, bringing with him the only survivor of the ill-fated *Oldham*. I enclose you a copy of a statement by him, which will put you in possession of every particular relative to the causes which led to this unhappy catastrophe; and from inquiries I have since made I am quite satisfied of its correctness. The wreck went down this day at her anchor in seven fathoms water; I immediately demanded all the property which might be on shore belonging to her, and after much trouble and anxiety succeeded in getting various articles which may be worth 300 *l.* or 400 *l.*, and have placed the same in charge of Mr. Cook, the purser of this sloop, to be by him disposed of on the behalf of the underwriters and others concerned, and for which I have claimed salvage.

It may be necessary to observe here, that the feelings of these people have been kept in a high degree of excitement for a length of time, by the lawless conduct of a half-born native of the Sandwich Islands, named George Minini, (his father being an American). This man called himself a European, arrived at Wallis' Island about five years ago, accompanied by a number of adventurers, and obtained possession of an island near the entrance bearing his name; he soon engrossed all the European trade, and made the natives entirely subservient to his views of aggrandizement, and soon began to play the part of a despotic chief; he trampled upon the laws and customs of the people, received all the renegadoes and malecontents under his protection, and set the power of the king at defiance; his last act of violence, (about the month of January last,) was to invade with an armed force the king's immediate territory, and to carry off or destroy all the live and dead stock, and threatened to deprive him (the king) of his life as well as his power; this last iniquitous proceeding roused the people to a just sense of their sufferings, and in the midst of his fancied security they sacrificed his life, as an atonement for his crimes (being cut down with an axe by a native); most of his followers shared the same fate, and his property was distributed throughout the island. It was while smarting from the effects of this man's tyranny, which compromised the European character, that the *Oldham* arrived, and as the captain and crew commenced and pursued the same unjustifiable and lawless line of conduct, it ceased to be a matter of surprise that the natives sought so severe a retaliation. I stated to the king in the strongest terms my sentiments on the subject of the *Oldham*, in which he denied every participation, ascribing the planning as well as the execution of the massacre to the partizans of Minini, at the head of whom was Tuccoroo, one of his chiefs, who was killed by our people; and from all I have been able to learn he appears faultless in that instance. I explained to him that no insult could justify so sanguinary a proceeding, and that a repetition of so heinous an offence would call down upon himself and his country a most severe retaliation from His Majesty's Government; he promised a faithful compliance with the usages of civilized nations, and expressed his gratitude

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for the humanity shown by the officers and crew of this sloop, in the course of this trying and anxious service, for it may be readily supposed that their minds were highly exasperated; he also expressed a hope that a King's ship would frequently visit him. Having placed our relations on the most friendly footing again, and received on board eight British subjects anxious to remove from the island, and completed the sloop's water, I sailed on the morning of the 2d ultimo for Rotumah.

A STATEMENT of the Particulars attending the Loss of the Barque Oldham, of London, made by *Craven Nicholson*, Boy, the only Survivor.

On or about the 26th or 27th of March 1832, the barque Oldham, of London, Shelton, Esq. of London, owner, and Robert Johnstone, of Lewisham-lane, Blackheath, master, anchored in the harbour of Wallis' Island, South Pacific Ocean, and found lying there the British ship Harriet, of London, and the American whalers, Milo of New Bedford, and the Almira of Edgartown.

On or about the 3d or 4th of April, the native girl who was living on board with the captain ran away, and the next day he went on shore with an armed boat, and demanded her; the chiefs ordered her to be brought down to the beach, and told him (the captain) that they would kill her if he wished; at the same time the boat's crew were forcing the women into the boat against their consent.

About this time three men, who had deserted from the British ship Corsair, entered on board the Oldham, leaving their clothes in the bush; on going on shore for them some days afterwards, they discovered that most of them had been stolen; they returned on board and stated this to the captain, who sent two boats to search the native huts for them; they returned bringing some clothes and a quantity of beads, tapa, mats, fish-hooks, &c., which they had plundered; some of the old mats and tapa were returned.

The three vessels before mentioned sailed, leaving us alone in the harbour.

On or about the 11th of April, several of the natives came on board; the captain, being in a state of intoxication, took two of them into the cabin, showed them the muskets and other arms, and told them it was his intention to go on shore the next day and kill the king, desiring a negro man named Reubans, who lived on shore, to tell them so. The moment they understood this, a native went out to the jib-boom end and hailed the natives on shore; two canoes immediately came off; one of our men who was in the main-chains saw them (the natives) handing cutlasses and axes out of the canoe; he informed the captain of it, who immediately ordered them out of the ship; they obeyed, and said they would return the next day with cocoa nuts; they accordingly came at daylight, and gave away their cocoa nuts without asking any payment. At breakfast time the waist boat, with the second mate, four men and a boy, went to the king's village to search for four New Zealanders who had ran away. About nine o'clock, one of our men told the captain that the native women were jumping overboard, and that the men were collecting aft; at this time the captain (who was on the quarter-deck, in liquor, and swearing,) was cut down with an axe and killed, and at the same moment I was struck on the head with an axe by a chief, who afterwards knocked me down the companion ladder with the flat part of it; he followed me down and struck me on the leg, but seeing a New Zealander preparing to fire upon him with a musket he left me, and killed him; during this time I escaped and hid myself behind some casks, therefore I only saw the captain and New Zealander killed. The next day I heard a Portuguese and some Woahoo men talking; I called to the former, who gave me some biscuit and water, and he told me that Capt. Russell, of an American whaler (outside the reef) had been alongside, but on finding what had taken place he returned on board, and was then firing upon us from his ship, and said the natives wanted powder to return it; I told him I did not know where it was, he also told me the ship was underweigh and going higher up, and that all our people had been killed; shortly afterwards he brought a chief's sister to me, and she with a chief (the same who cut me down) prevailed upon the other natives to save my life; they afterwards took me on shore and treated me with kindness and affection. The whole of the boat's crew who went on shore were (with the three Americans belonging to a whaler) also killed. The Woahoo natives assisted the natives in working the ship, but I have every reason to believe that they acted from compulsion. The leading chief in this affair was Tuccorua, who was killed afterwards by the Zebra's people when the Oldham was boarded by them; the ship had between 500 or 600 barrels of oil.

Appendix, No. 2.

Paper (A.) referred to in the Evidence of *T. Hodgkin*, Esq. 22 March 1837.

IN reply to the question addressed to me respecting the course adopted by William Penn in his dealings with the Indians, not being in possession of any original and unpublished documents relating to the subject, I have endeavoured to select from his life and writings, and from collateral testimonies, such particulars as appear to me best calculated to furnish the information desired.

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in the Evidence of
T. Hodgkin, Esq.

There is scarcely a fact in modern history more notorious than that William Penn, in laying the foundation of the province of Pennsylvania, furnished a singular exception to the mode of colonization adopted by civilized and Christian states, inasmuch as he obtained the possession of his territory by treaty and purchase of those who possessed a natural and hereditary right to it, instead of resting satisfied with having obtained his right and title by letters patent from the King of England, a title which though perfectly valid and unquestionable according to the views and practices of the civilized world, must, when closely examined and coolly considered, be regarded as merely an assumed right, repugnant to reason and justice; the case being simply this: *A.* of the first part discovers a valuable territory possessed and occupied by *B.* of the second part; calls it his own, because he has seen it, and gives it to *C.* of the third part, with all the form and circumstance of the most legal transfer. *B.* in the meantime being so far from a party to the transaction, that he remains the whole time perfectly ignorant of what has taken place. That such a title could not satisfy the conscience of a virtuous man is less surprising than that his adopting a different course and obtaining a just as well as a legal title, should have been so singular a transaction as to have commanded the admiration of mankind. Were this the only remarkable feature in William Penn's colonization, it would scarcely have a claim to your attention in the present day.

But there are details connected with his treatment of the aborigines from whom he made his second purchase, the statement of which, if I mistake not, is the object for which I have been called before you.

It appears that prior to the great and memorable treaty in which William Penn purchased his territory from the Indians, he had caused preliminary conferences to be held with them; they were apprized of his object, and came to the treaty in vast numbers, and occupied a very considerable time in deliberation; and there is no reason to doubt, that at the time and subsequently they were satisfied with the terms which they had made. I am induced to dwell a little upon this point, because I have heard it insisted upon by gentlemen of the United States, that William Penn's purchase was merely the semblance of a purchase; that he gave no equivalent for the land, that he must have known that he overreached them, and that such must always be the case when civilized men treat with the uncivilized, to obtain their territory.

In refutation of this statement it should be observed, that it stands on record that one of the principal chiefs concerned declared that their land was then so much reduced, that they could then sell but two miles for what they would have sold 20 before.

William Penn appears to have given about 20,000 *l.* to the Indians, and it should be taken into consideration that at that period the Indians still possessed large territories, whilst European manufactures were more scarce, and consequently of more value to them than they are at present. On the other hand, in the infancy of our colonies the value of the land was scarcely known to the settlers. That it was set at a low price is evident from the fact that large tracts, and even some of the most advantageous sites were almost given away by William Penn. The two most important features in William Penn's conduct towards the aborigines appear to me to be very generally overlooked.

The first is, that notwithstanding he purchased the land from the Indians, he did not desire their removal from it. They were at liberty to settle as his subjects in many parts of the province.

The second point is, that he admitted them to full participation in the benefit and protection of the laws, enacting that in cases in which Whites and Indians were concerned, they should sit in equal numbers on the juries. He also made some special laws in their favour, lest from inferiority in knowledge they should become the victims of injustice. Thus he restricted the trade in skins to duly authorized persons, and still further to insure them against receiving an inadequate value, these transactions were to take place in the public market.

From some of the quotations which I am prepared to lay before you, it is evident that these acts of kindness were not lost upon the Indians; but that for many years they

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cherished his memory with gratitude and admiration. It appears that for about 70 years, during which the government of the province was allowed to remain in the hands of that society of which William Penn was a member, the treaty of peace between the Indians and Pennsylvanians remained unbroken, which is the more remarkable when we remember the irregular character of the savage warfare which was frequently going forward between the other provinces, and the Indians exasperated to the highest pitch by encroachments and atrocities.

It was not only by his respect for the inalienable rights of the Indians, and by attention to their temporal welfare, that William Penn's conduct towards that people is worthy of imitation. He was anxious for their participation in the blessings of Christianity, and on this as well as on other grounds recommended them to the care of his followers; and I would be permitted to take this opportunity of stating, that I believe that the conduct of the Society of Friends with respect to their care on this head has by some been much underrated. It must be well known to most, that the Society of Friends has no theological schools for the preparation of preachers, and that there are none amongst us from whom the delivery of a sermon is required by the body. It is therefore not surprising that none should have been specially appointed to preach to the Indians. But it is evident from the extant memoirs of different ministers in this society, from the time of William Penn downwards, that the gospel of our Saviour was by them preached to the Indians. Thomas Storey, who was William Penn's companion when he treated with the Indians, has left some very sound counsel on this subject, and it is stated in Proud's Pennsylvania, that there was a company of Christian Indians whose practice appears to have adorned their profession.

In most parts of North America the Indians have been peculiarly averse to embrace the doctrines of Christianity. With some encouraging exceptions, they look with scepticism and prejudice at a religion, the professors of which have so generally proved themselves their merciless persecutors, and their instructors in crime. If the conduct of William Penn and his brethren formed such a contrast with that of the generality of the whites, as to make an indelible impression upon the Indians, you will perhaps ask where, are the proofs of the advantage of this system, and what is the prosperity of the Indians in Pennsylvania, to encourage other governments to follow Penn's example?

It must be confessed that there is little encouragement to be exhibited. Much of the good that was contemplated was never realized, and of that which was accomplished, nearly the whole has been abolished; but the causes which have effected this are sufficiently obvious. The strong and rooted attachment of the Indians to a hunting life is a great obstacle to all attempts to fix them to the soil. The increased demand for their furs has had the double effect of requiring a larger portion of time to be devoted to hunting, and has obliged them, like the game which they pursue, to recede further and further before the advances of civilization, and to withdraw themselves from the instruction, counsel and example of those most deeply interested in their welfare; whilst they have been increasingly exposed to the injustice and contamination of the profligate trader and back-woodsmen, whose crimes are unobserved, or if observed, are unpunished. Moreover, the example of William Penn has produced an influence diametrically the reverse of that which he would have desired. The peace which he established with the Indians was a most important element in the success of his colony; that success encouraged emigration, which contracted the hunting-grounds of the Indians. The example of William Penn has been repeatedly followed, as far as the obtaining of land by treaty with the Indians; by means of which the Indians have rapidly lost large and rich tracts of land, which would not so soon have changed their owners under a system of forcible spoliation. Such treaties unaccompanied by the beneficent measures which formed a part of William Penn's plan, have been beneficial to the Whites, but irreparably injurious to the Indians. The former have gained an easy possession of the resources of the latter, whilst famine and in some instances war, has been the portion of the Indians as they have retreated upon the territories of other tribes.

The reserved portions of territory, the possession of which facilitated the concessions made by the Indians, have been successively alienated from them when the whites have desired to possess them.

The frequent removals which these transactions have occasioned, have again and again been complained of by those members of the Society of Friends who, following the example and injunctions of William Penn, have endeavoured to promote the welfare and improvement of the Indians. Similar complaints have also been made by missionaries of other religious societies. It appears from the journal of John Churchman, that before the separation of the United States from this country, the interference of Friends in favour of the Indians was looked upon with jealousy, and that the Indians complained that they did not receive that protection from colonial justice which the treaty of William Penn had been designed to secure for them.

These circumstances will probably be admitted as sufficient to account for the smallness of the amount of good which has really been effected by the justly celebrated and applauded treaty of William Penn with the Indians.

There have, doubtless, been wise and benevolent individuals both amongst the officers of Government and in religious societies of different denominations, who have strenuously and sincerely exerted themselves for the benefit of the Indians, but their efforts have been inadequate to stem the torrent of malign causes which threaten their extermination.

I should not be doing justice to the memory of the late Governor Semple,* if I did not state

* He was governor for the Hudson's Bay Company upwards of 20 years ago, and lost his life in consequence of the strife existing between his own and a rival fur company.

state that I had seen a letter from that officer which was dictated by the kindest feelings and best intentions towards the aborigines of the district placed under the influence of his authority. That letter was addressed to Benjamin Harrison, esq., who had expressly recommended the interests of the Indians to the governor prior to his leaving England; and it ought to be generally known, that to the influence of that benevolent and enlightened gentleman as a director of the Hudson's Bay Company, and to his personal exertions and liberal pecuniary contributions, are to be essentially ascribed the settlement and maintenance of missionaries under the direction of the Church Missionary Society, at the company's colony on the Red River. At the same time, amidst the conflicting statements which proceed from that region, I cannot but see reasons to apprehend that these excellent intentions and most laudable exertions fail, like those of the great legislator, respecting whom your questions have been directed to me, to realize the good which they were designed to effect. Neither the virtues and eminence of those by whom these benevolent designs have been commenced and supported, nor the positive good which has absolutely been effected, should conceal from our observation that there, in common with every quarter in which civilized and uncivilized man are brought into contact with each other, the problem remains to be solved, how the prosperity, and even the existence, of the latter is to be maintained in competition with the superior intelligence, mightier resources, and opposite interests of the former.

Thomas Hodgkin, M.D.

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The third object may be seen in his petition for this grant; for in this he stated, that he had in view the glory of God by the civilization of the poor Indians, and the conversion of the Gentiles, by just and lenient measures, to Christ's kingdom. In short, his motives may be summed up in the general description of them given by Robert Proud, one of his more modern historians, and who had access to hundreds of his letters, and who spared no pains to develop his mind in the most material transactions of his life: "The views of William Penn," says he, "in the colonization of Pennsylvania, were most manifestly the best and most exalted that could occupy the human mind; namely, to render men as free and happy as the nature of their existence could possibly bear in their civil capacity, and in their religious state; to restore them to those lost rights and privileges with which God and nature had originally blessed the human race. This, in part, he effected; and by those means which Providence in the following manner put into his hands, he so far brought to pass, as to excite the admiration of strangers, and to fix in posterity that love and honour for his memory which the length of future time will scarcely ever be able to efface."*

In behalf of the Indians it was stipulated, that as it had been usual with planters to over-reach them in various ways, whatever was sold to them in consideration of their furs should be sold in the public market-place, and there suffer the test, whether good or bad; if good, to pass; if not good, not to be sold for good; that the said native Indians might neither be abused nor provoked.

That no man should by any ways or means, in word or deed, affront or wrong any Indian, but he should incur the same penalty of the law as if he had committed it against his fellow planter; and if any Indian should abuse, in word or deed, any planter of the province, that the said planter should not be his own judge upon the said Indian, but that he should make his complaint to the governor of the province or his deputy, or some inferior magistrate near him, who should to the utmost of his power take care, with the king of the said Indian, that all reasonable satisfaction should be made to the said injured planter. And that all differences between planters and Indians should be ended by 12 men; that is, by six planters and six Indians; that so they might live friendly together, as much as in them lay, preventing all occasions of heart-burnings and mischief. These stipulations in favour of the poor natives will for ever immortalize the name of William Penn; for, soaring above the prejudices and customs of his time, by which navigators and adventurers thought it right to consider the inhabitants of the lands they discovered as their lawful prey, or as mere animals of the brute creation, whom they might treat, use and take advantage of at their pleasure, he regarded them as creatures endued with reason, as men of the like feelings and passions with himself, as brethren both by nature and grace, and as persons, therefore, to whom the great duties of humanity and justice were to be extended, and who, in proportion to their ignorance, were the more entitled to his fatherly protection and care†.

In one of these ships went Colonel William Markham; he was a relation of William Penn, and was to be his secretary when he himself should arrive. He was attended by several commissioners, whose object was to confer with the Indians respecting their lands, and to endeavour to make with them a league of eternal peace. With this view they were enjoined in a solemn manner to treat them with all possible candour, justice and humanity. They were the bearers also of a letter to them, which William Penn wrote with his own hand, and of which the following is a copy:—

"There is a great God, and power, which hath made the world and all things therein, to whom you, and I, and all people owe their being and well being, and to whom you and I must one day give an account for all that we have done in the world.

"This great God has written his law in our hearts, by which we are taught and commanded to love, and to help, and to do good to one another. Now this great God hath been pleased to make me concerned in your part of the world; and the king of the country where
I live

* Clarkson's Life of William Penn, vol. 1, pp. 265, 266.

† Ibid. vol. 1, pp. 284, 285.

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I live hath given me a great province therein ; but I desire to enjoy it with your love and consent, that we may always live together as neighbours and friends ; else what would the great God do to us, who hath made us (not to devour and destroy one another, but) to live soberly and kindly together in the world ? Now, I would have you well observe that I am very sensible of the unkindness and injustice which have been too much exercised toward you by the people of these parts of the world, who have sought themselves to make great advantages by you, rather than to be examples of goodness and patience unto you. This, I hear, hath been a matter of trouble to you, and caused great grudging and animosities, sometimes to the shedding of blood ; which hath made the great God angry. But I am not such a man, as is well known in my own country. I have great love and regard toward you, and desire to win and gain your love and friendship, by a kind, just and peaceable life ; and the people I send are of the same mind, and shall in all things behave themselves accordingly ; and if in anything any shall offend you or your people, you shall have a full and speedy satisfaction for the same, by an equal number of just men on both sides, that by no means you may have just occasion of being offended against them.

" I shall shortly come to see you myself, at which time we may more largely and freely confer and discourse of these matters. In the meantime, I have sent my commissioners to treat with you about land and a firm league of peace. Let me desire you to be kind to them and to the people, and receive the presents and tokens which I have sent you as a testimony of my goodwill to you, and of my resolution to live justly, peaceably and friendly with you.

" I am your loving Friend,

" *William Penn.*" *

The Great Spirit, he said, who made him and them, who ruled the heaven and the earth, and who knew the innermost thoughts of man, knew that he and his friends had a hearty desire to live in peace and friendship with them, and to serve them to the utmost of their power. It was not their custom to use hostile weapons against their fellow creatures, for which reason they had come unarmed. Their object was not to do injury, and thus provoke the Great Spirit, but to do good. They were then met on the broad pathway of good faith and good will, so that no advantage was to be taken on either side, but all was to be openness, brotherhood and love. After these and other words, he unrolled the parchment, and by means of the same interpreter conveyed to them, article by article, the conditions of the purchase, and the words of the compact then made for their eternal union. Among other things, they were not to be molested in their lawful pursuits even in the territory they had alienated, for it was to be common to them and the English.

They were to have the same liberty to do all things therein relating to the improvement of their grounds, and providing sustenance for their families, which the English had. If any disputes should arise between the two, they should be settled by 12 persons, half of whom should be English and half Indians.

He then paid them for the land and made them many presents besides from the merchandise which had been spread before them. Having done this, he laid the roll of parchment on the ground, observing again, that the ground should be common to both people. He then added, that he would not do as the Marylanders did, that is, call them children or brothers only ; for often parents were apt to whip their children too severely, and brothers sometimes would differ ; neither would he compare the friendship between him and them to a chain, for the rain might sometimes rust it, or a tree might fall and break it ; but he should consider them as the same flesh and blood with the Christians, and the same as if one man's body were to be divided into two parts. He then took up the parchment and presented it to the Sachem, who wore the horn in the chaplet, and desired him and the other Sachems to preserve it carefully for three generations, that their children might know what had passed between them, just as if he had remained himself with them to repeat it†.

The Indians also were remarkably kind to them. They hunted for them frequently, doing their utmost to feed them. They considered them all as the children of Onas ; and, looking upon him ever since the great treaty, as their own father also, they treated them as brothers‡.

Notwithstanding it was thought near 3,000 persons came in the first year, we were so providentially provided for, that we could buy a deer for about 2 s., and a large turkey for about 1 s., and Indian corn for about 2 s. 6 d. per bushel.

And as our worthy proprietor treated the Indians with extraordinary humanity, they became very civil and loving to us, and brought us in abundance of venison. As in other countries, the Indians were exasperated by hard treatment, which hath been the foundation of much bloodshed, so the contrary treatment here hath produced their love and affection §.

Do not abuse them, but let them have justice, and you win them. The worst is, that they are the worse for the Christians, who have propagated their vices, and yielded them tradition for ill and not for good things. But as low an ebb as these people are at, and as inglorious as their own condition looks, the Christians have not outlived their sight with all their pretensions to an higher manifestation.

What good then might not a good people graft, where there is so distinct a knowledge left of good and evil ? I beseech God to incline the hearts of all that come into these parts to outlive the knowledge of the natives, by a fixed obedience to their greater knowledge of the

* Clarkson's Life of Penn, vol. 1, pp. 290, 291. 293.

† Ib. vol. 1, pp. 341, 342, 343.

‡ Ib. vol. 1, p. 357.

§ Ib. vol. 1, p. 370.

the will of God; for it were miserable indeed for us to fall under the just censure of the poor Indian conscience, while we make profession of things so far transcending*.

Another object, and this near his heart, was to know, not only all the Indians within his own domains, but those bordering upon them, with a view to their civilization and the perpetuation of love and friendship on both sides. He had held frequent conferences with them for these purposes; in which he had advised them against the use of strong liquors, and endeavoured to inculcate in them a just sense of the benefit of a Christian life and conduct; but now he redoubled his efforts, and this with so much success, that before the time of his departure came, he had made, at Pennsbury and other places, treaties of amity with no less than 19 tribes of a different name. Indeed, nothing could exceed his love for these poor people, or his desire of instructing them, so as to bring them by degrees to the knowledge of the Christian religion; and in this great work he spared no expense, though whatever he bestowed in this way came solely out of his own pocket. Oldmixon says, "that he had laid out several thousand pounds to instruct, support and oblige them." The consequence was, on their part, an attachment to him and his successors which was never broken†.

He was pleased to find that the members of his own society had conducted themselves generally well, and that they had endeavoured to promote one of his favourite objects.

They had been careful to prevent the introduction of strong liquors among the Indians, and they had held several religious meetings with them. The Indians, it appeared, generally heard with patience what was said to them at these times, and seemed affected by it; but the impression was not durable. These efforts, however, were very pleasing to one who knew well that every work must have a beginning, and that the best could not be brought to perfection without perseverance‡.

We may now estimate the sacrifices of William Penn. If his quit-rents amounted to 500 *l.* per annum, he must have sold 1,000,000 of acres of land, for which according to the terms of sale, he must have received 20,000 *l.* To this add the 6,000 *l.* now mentioned, and he must have spent 26,000 *l.* upon the province, in presents to the Indians, in re-purchases of the land from these, in the maintenance of government and governor, and in other public matters; a sum not much short of 100,000 *l.* in these days§.

Having thus introduced his matter, he fell to the bounds of the land they had agreed to dispose of, and the price; which now is little and dear, that which would have bought 20 miles not buying now two||.

It was at this time (1682) when he first entered personally into that lasting friendship with the Indians which ever afterwards continued between them, and for the space of more than 70 years was never interrupted; or so long as the Quakers, to whom, even long after his death, they always continued to show the greatest regard, retained power in the government sufficient to influence a friendly and just conduct towards them, and to prevent or redress such misunderstandings and grievances as occasionally happened between them, and any of the inhabitants of the province, &c. A firm peace was now, therefore, reciprocally concluded between William Penn and the Indians; and both parties mutually promised to live together as brethren, without doing the least injury to each other. This was solemnly ratified by the usual token of a chain of friendship and covenant indelible, never to be broken, so long as the sun and moon endure¶.

15th Article of the laws for the province of Pennsylvania, passed at Chester 1683, against selling or exchanging of rum, brandy or other strong liquors to the Indians**.

In this year (1685) the Quakers, in their yearly meeting at Burlington, in West Jersey, took additional measures to prevent all persons in their society from selling strong liquors to the Indians. About the same time, by particular appointment, they also had a religious meeting with them, as they frequently had before, to inform and instruct them in the principles of Christianity, and the practice of a true Christian life.

The Indians generally heard patiently what was said to them on this subject, and seemed affected with it for a time; but for the most part it appeared to make no very durable impression on their minds, for the proper regulation of their passions and appetites, which at last seemed too generally to prevail over convictions of this nature, and their better knowledge.

Divers preachers of this religious society from abroad often had meetings and serious discourse with them for this purpose, as well as those who had settled in the country, particularly Samuel Jennings, Thomas Olive, William Penn and others, from time to time, laboured to inculcate into them a just sense of the benefit of a Christian life and conduct††.

At a council held with the Seneca and other Indians in Philadelphia, in July 1749, in the administration of James Hamilton, &c., Ogaushtash, in part of his speech, thus expresses himself:

"We recommend it to the governor to tread in the steps of those wise people who have held the reins of government before him, in being good and kind to the Indians. Do, brother, make it your study to consult the interest of our nations; as you have so large an authority you can do us much good or harm; we would, therefore, engage your influence and affections for us, that the same harmony and mutual affections may subsist during your government

No. 2.

Paper referred to
in the Evidence of
T. Hodgkin, Esq.

* Clarkson's Life of Penn, vol. 1, pp. 396, 397.

† Ib. vol. 1, pp. 414, 415.

‡ Ib. vol. 1, pp. 451, 452.

§ Ib. vol. 1, pp. 482, 483.

o.37.

|| Clarkson's Life of Penn, vol. 1, p. 394.

¶ Proud's Pennsylvania, vol. 1, p. 212.

** Ib. vol. 1, p. 207.

†† Ib. vol. 1, pp. 300, 301.

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government which so happily subsisted in former times, nay, from the first settlement of this province by our good friend, the great William Penn," &c.

At a treaty held at Easton, in Pennsylvania, with the Indians, in 1760, in Governor Morris's administration, Teedyuscung, the Delaware chief, spoke as follows:

"Brother Onas, and the people of Pennsylvania.

"We rejoice to hear from you, that you are willing to renew the good old understanding, and that you call to mind the first treaties of friendship, made by Onas, our great friend, deceased, with our forefathers, when himself and his people first came over here.

"We take hold of these treaties with both our hands, and desire you will do the same, that a good understanding and true friendship may be re-established. Let us both take hold of these treaties with all our strength, we beseech you; we, on our side, will certainly do it."

Again, on concluding a peace, in July, the same year, Teedyuscung said:

"I wish the same good spirit that possessed the good old man, William Penn, who was a friend to the Indians, may inspire the people of this province, at this time," &c.*

At this time Chapman's place was the furthest back in the woods of any English settlement; and the Indians, being then numerous, much frequented his house in great companies, and were very kind to him and his family, as well as to those who came after him, often supplying them with corn, and other provisions, which in those early times, more especially in that part of the country, were very scarce and hard to be procured †.

Abraham and Joseph Chapman, the twins before mentioned, when boys, about nine or ten years old, going out one evening to seek their cattle, met an Indian in the woods, who told them to go back or else they would be lost. Soon after this they took his advice and went back; but it was within night when they got home, where they found the Indian, who being careful lest they should lose themselves, had repaired thither in the night to see, &c. And their parents, about that time, going to the yearly meeting at Philadelphia, and leaving a young family at home (they being Quakers) the Indians came every day to see whether anything was amiss among them. Such, in many instances, was the kind treatment and behaviour of the natives or aborigines of this country to the English, in their first and early settlement of it.

And although the youngest colony on the continent (Georgia, &c. was not yet planted), they have by far the finest capital city of all British America, and the second in magnitude. The causes usually assigned for this vast increase of white people, in so short a time, are these; viz. first, their kind treatment of the Indians, their neighbours; hereby rendering that province absolutely safe from their attempts. Some, indeed, have gone so far as to assert, that they are the only British colony that have treated the poor native Indians with humanity; for that no other British colony admits of the evidence of an Indian against a white man; nor are the complaints of Indians against a white man duly regarded in other colonies; whereby these poor people endure the most cruel treatment from the very worst of our own people, without hope of redress. And all the Indian wars, in our colonies, were occasioned by such means ‡.

Here were two nations of them, the Senecas and the Shawnese. We had first a meeting with the Senecas, with which they were much affected; and they called the other nation (viz. the Shawnese), and interpreted to them what he had spoke in their meeting, and the poor Indians (particularly some of the young men and women), were under a solid exercise and concern. We had also a meeting with the other nation, and they were all very kind to us, and desired more such opportunities; the which I hope Divine providence will order them, if they are worthy thereof. The gospel of Jesus Christ was preached freely to them, and faith in Christ, who was put to death at Jerusalem by the unbelieving Jews; and that this same Jesus came to save people from their sins, and by his grace and light in the soul shows to man his sins, and convinceth him thereof, delivering him out of them, and gives inward peace and comfort to the soul for well doing, and sorrow and trouble for evil doing; to all which, as their manner is, they gave public assents; and to that of the light in the soul, they gave a double assent, and seemed much affected with the doctrine of truth; also the benefit of the Holy Scriptures was largely opened to them. After this we returned to our respective habitations, thankful in our hearts to the God and Father of our Lord Jesus Christ. Several of the friends that were with me expressed their satisfaction in this visit, and offered themselves freely to go again on the like service§. It is worthy of notice that at the first settling of Pennsylvania, William Penn took great care to do justice to the Indians, and bought his land of them to their satisfaction, and settled a trade with them; so that whereas the Indians were destructive to other colonies, they were helpful to Pennsylvania; and to this day they love to hear the name of William Penn||.

To Friends of the Monthly Meeting at Opeckon.

Dear friends, who inhabit Shannadore and Opeckon,

Having a concern for your welfare and prosperity, both now and hereafter, and also the prosperity of your children, I had a desire to see you; but being in years, and heavy, and much fatigued with my long journeys in Virginia and Carolina, makes it seem too hard for me to perform a visit in person to you; wherefore I take this way of writing to discharge my mind of what lies weightily thereon. And, first, I desire that you be very careful, being far and back inhabitants, to keep a friendly correspondence with the native Indians,

giving

* Proud's Pennsylvania, vol. 1, pp. 213, 214.

† Ib. vol. 1, pp. 223, 224.

‡ Ib. vol. 2, p. 203.

§ Chalkley, pp. 53, 54.

|| Proud's Pennsylvania, p. 51.

giving them no occasion of offence, they being a cruel and merciless enemy where they think they are wronged or defrauded of their right, as woeful experience hath taught, in Carolina, Virginia and Maryland, and especially in New England, &c. And, secondly, as nature hath given them and their forefathers possession of this continent of America (or this wilderness), they have a natural right thereto in justice and equity; and no people, according to the law of nature and justice, and our own principle, which is according to the glorious Gospel of our dear and holy Lord Jesus Christ, ought to take away or settle, on other men's lands, or rights, without consent or purchasing the same by agreement of the parties concerned, which, I suppose, in your case is not yet done.

Thirdly, Therefore my counsel and Christian advice to you is (my dear friends) that the most respectable among you do, with speed, endeavour to agree with and purchase your lands of the native Indians or inhabitants. Take example of our worthy and honourable late proprietor, William Penn, who, by his wise and religious care, in that relation, hath settled a lasting peace and commerce with the natives, and, through his prudent management therein, hath been instrumental to plant in peace one of the most flourishing provinces in the world.

Fourthly, And who would run the risk of the lives of their wives and children, for the sparing a little cost and pains? I am concerned to lay these things before you, under an uncommon exercise of mind, that your new and flourishing little settlement might not be laid waste, and (if the providence of the Almighty doth not intervene) some of the blood of yourselves, wives or children be shed and spilt on the ground.

Fifthly, Consider you are in the province of Virginia, holding what rights you have under that government; and the Virginians have made an agreement with the natives to go as far as the mountains, but no further; and you are over and beyond the mountains, therefore out of that agreement, by which you lie open to the insults and incursions of the southern Indians, who have destroyed many of the inhabitants of Carolina and Virginia, and even now have destroyed more on the like occasion. (The English going beyond the bounds of their agreement, 11 of them were killed by the Indians while we were traveling in Virginia.)

Sixthly, If you believe yourselves to be within the bounds of William Penn's patent from King Charles II., which will be hard for you to prove, you being far to the southward of his line; yet if done, that is of no consideration with the Indians without a purchase of them; except you will go about to convince them by fire and sword, contrary to our principles; and if that were done, they would ever be implacable enemies, and the land would never be enjoyed in peace.

Seventhly, Please to note, that in Pennsylvania no new settlements are made, without an agreement with the natives; as witness, Lancaster county, lately settled; though that is far within the grant of William Penn's patent from King Charles II.; wherefore you lie open to insurrections of the northern as well as southern Indians.

And lastly, thus having shown my good will to you, and to your new little settlement, that you might sit every one under your own shady trees, where none might make you afraid, and that you might prosper naturally and spiritually, you and your children; and having a little eased my mind of that weight and concern (in some measure) that lay upon me, I at present desist, and subscribe in the love of our holy Lord Jesus Christ*,

Your real Friend,

T. Chalkley.

In the second month, 1701, Connoo-daghtoh, king of the Susquahanna, Minquays or Conestogo Indians; Wapatha (alias Opessah) king of the Shawanese; Weewhinjough, chief of the Ganawese, inhabiting of the head of Potomack; also Ahookassough, brother to the emperor (or great king of the Onondagoes) of the five nations, having arrived at Philadelphia with other Indians of note, &c., in number about 40, after a treaty and several speeches between them and William Penn, in council, the following articles of agreement were solemnly made, concluded, and the instrument for the same duly executed by both parties, viz.:

"Articles of agreement, indented, made, concluded and agreed upon, at Philadelphia, the 23d day of the second month, called April, 1701, between William Penn, proprietary and governor of the province of Pennsylvania, and territories thereunto belonging, on the one part, and Connoo-daghtoh, king of the Indians, inhabiting upon and about the river Susquahanna, in the said province, and Widaagh (alias Orettyagh,) Koqueash and Andaggy, Junckquagh, chiefs of the said nations of Indians; and Wopaththa, king, and Lemoytungah and Pemoyajoaagh, chiefs of the nations of the Shawanna Indians, and Ahookassough, brother to the emperor, for and in behalf of the emperor; and Weewhinjough, Chequitayh, Takyewsan and Wooprashou, chiefs of the nations of the Indians inhabiting in and about the northern part of the river Potomack in the said province, for and in behalf of themselves and successors, and their several nations and people, on the other part as followeth:

* That as hitherto there hath always been a good understanding and neighbourhood between the said William Penn and his lieutenants, since the first arrival in the said province and the several nations of Indians inhabiting in and about the same, so there shall be for ever hereafter a firm and lasting peace continued between William Penn, his heirs and

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* Chalkley, pp. 308, 309, 310, 311.

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and successors, and all the English and other Christian inhabitants of the said province, and the said kings and chiefs and their successors, and all the several people of the nations of Indians aforesaid; and that they shall for ever hereafter be as one head and one heart, and live in true friendship and amity, as one people.

"Item. That the said kings and chiefs (each for himself and his people engaging) shall at no time hurt, injure or defraud, or suffer to be hurt, injured or defrauded, by any of their Indians, any inhabitant or inhabitants of the said province, either their persons or estates. And that the said William Penn, his heirs and successors, shall not suffer to be done or committed, by any of the subjects of England within the said province, any act of hostility or violence, wrong or injury to or against any of the said Indians, but shall on both sides, at all times, readily do justice, and perform all acts and offices of friendship and goodwill, to oblige each other to a lasting peace, as aforesaid.

"Item. That all and every of the said kings and chiefs, and all and every particular of the nations under them, shall at all times behave themselves regularly and soberly, according to the laws of this government, while they live near or among the Christian inhabitants thereof, and that the said Indians shall have the full and free privileges and immunities of all the said laws, as any other inhabitant, they duly owning and acknowledging the authority of the Crown of England and government of this province.

"Item. That none of the said Indians shall, at any time, be aiding, assisting or abetting any other nation, whether Indians or others, that shall not at such time be in amity with the Crown of England and with this government.

"Item. That if, at any time, any of the said Indians, by means of evil-minded persons and sowers of sedition, should hear any unkind or disadvantageous reports of the English, as they had evil designs against any of the said Indians, in such case such Indians shall send notice thereof to the said William Penn, his heirs or successors, or their lieutenants, and shall not give credence to the said reports, till by that means they shall be fully satisfied concerning the truth thereof; and that the said William Penn, his heirs and successors, or their lieutenants, shall at all times in such case do the like by them.

"Item. That the said kings and chiefs and their successors shall not suffer any strange nations of Indians to settle, or plant on the further side of the Susquahanna, or about Potomack River, but such as are there already seated, nor bring any other Indians into any part of this province without the special approbation and permission of the said William Penn, his heirs and successors.

"Item. That for the prevention of abuses that are too frequently put upon the said Indians, in trade, the said William Penn, his heirs and successors, shall not suffer or permit any person to trade or converse with any of the said Indians, but such as shall be first allowed and approved by an instrument under the hand and seal of him, the said William Penn, or his heirs or successors, or their lieutenants; and that the said Indians shall suffer no person whatsoever to buy or sell, or have commerce with any of them, the said Indians, but such as shall first be approved as aforesaid.

"Item. That the said Indians shall not sell or dispose of any of their skins, peltry or furs, or any other effects of their hunting, to any person or persons whatsoever, out of the said province, nor to any other person, but such as shall be authorized to trade with them, as aforesaid. And that, for their encouragement, the said William Penn, his heirs and successors, shall take care to have them, the said Indians, duly furnished with all sorts of necessary goods for their use, at reasonable rates.

"Item. That the Potomack Indians aforesaid, with their colony, shall have free leave of the said William Penn to settle upon any part of Potomack River, within the bounds of this province; they strictly observing and practising all and singular the articles aforesaid, of this them relating.

"Item. The Indians of Conestogo, upon and about the River Susquahanna, and more especially the said Connoo-daghtoh, their king, doth fully agree to, and by these presents, absolutely ratify the bargain and sale of lands, lying near and about the said river, formerly made to the said William Penn, his heirs and successors, by a deed bearing date the 13th day of September last, under their hands and seals duly executed. And the said Connoo-daghtoh doth, for himself and his nation, covenant and agree that he will, at all times, be ready further to confirm and make good the said sale, according to the tenor of the same; and that the said Indians of Susquahanna shall answer the said William Penn, his heirs and successors, for the good behaviour and conduct of the said Potomack Indians, and for their performing the several articles herein expressed.

"Item. The said William Penn doth hereby promise for himself, his heirs and successors, that he and they will, at all times, show themselves true friends and brothers to all and every of the said Indians, by assisting them with the best of their advices, directions and counsels, and will in all things just and reasonable befriend them, they behaving themselves as aforesaid, and submitting to the laws of this province in all things, as the English and other Christians therein do; to which they, the said Indians, hereby agree, and oblige themselves and their posterity for ever.

"In witness whereof, the said parties have, as a confirmation, made mutual presents to each other; the Indians in five parcels of skins, and the said William Penn in several English goods and merchandizes, as a binding pledge of the premises, never to be broken or violated; and as a further testimony thereof, have also to these presents set their hands and seals, the day and year above written."

After this, in the third month, the proprietary having represented to the council the great abuses committed in the Indian trade, with the dangers and disadvantages which might arise from thence to the province, and having proposed that proper measures should be concerted

for

for the regulation thereof, and for redressing certain grievances respecting the same, it was resolved, as absolutely necessary, that some effectual method should be agreed on and used for carrying on the trade by a certain number or company of persons, with a joint stock under certain regulations and restrictions, more particularly in regard to spirituous liquors sold them; which company should use all reasonable means and endeavours to induce the Indians to a true sense of a proper value and esteem of the Christian religion, by setting before them good examples of probity and candour, both in commerce and behaviour; and that care should be taken to have them duly instructed in the fundamentals of Christianity. This appears afterwards to have been in a good degree put in execution, so far as was judged requisite or found practicable*.

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Paper referred to
in the Evidence of
T. Hodgkin, Esq.

Appendix, No. 3.

VAN DIEMEN'S LAND AND SOUTHERN AUSTRALIA.

CORRESPONDENCE between the Secretary of State for the Colonies and the Lieutenant-Governor of *Van Diemen's Land* relative to the ABORIGINES.

No. 3.
Correspondence
relative to Van
Diemen's Land
and Southern Aus-
tralia.

(No. 1.)

COPY of a DESPATCH from Lieut.-Governor *Arthur* to Mr. Secretary *T. Spring Rice*.

Sir,

Van Diemen's Land Government House, 27 January 1835.

I HAVE the honour to acknowledge your circular despatch of the 29th July last, in which, in reference to the humble address presented by the House of Commons to His Majesty, praying that measures may be taken to secure to the natives of the several colonies the due observance of justice, and the protection of their rights, and to promote the spread of civilization among them, and the peaceful and voluntary reception of the Christian religion, you are pleased to assure me that my efforts, in discharge of this important and interesting duty shall be seconded by the utmost support which I can claim from His Majesty. The aborigines of Van Diemen's Land, you are already aware, have retired under the guidance of Mr. Robinson from the main land to Flinders' Island, where a catechist is stationed for their religious instruction, where every kindness is shown, and every effort made to instruct them in some of the more simple and most easily acquired arts of civilized life.

They do not exceed 130 souls, their numbers having been reduced, I lament to say, almost to annihilation, by the animosity which always existed between the different tribes, and by the warfare so long waged, in detail, between them and the white settlers, or rather, I should say, the bushrangers, and convict shepherds. On the first occupation of the colony it was a great oversight that a treaty was not, at that time, made with the natives, and such compensation given to the chiefs as they would have deemed a fair equivalent for what they surrendered; a mere trifle would have satisfied them, and that feeling of injustice which I am persuaded they always have entertained, would have had no existence. The animosity so excited was exasperated into fury by the injuries done them by the convicts, who were then unavoidably permitted to go into the interior to hunt the kangaroo, in order that during the want of a regular supply of food, the settlement might not suffer from absolute famine.

The experience, however, derived from the process of colonizing in Van Diemen's Land may, I think, be turned to the best account in forming the new settlements now projected in New Holland, and also in subjecting to some regulations the settlers who have without authority sent from this colony several flocks of sheep to be depastured on a part of the opposite coast, very near the eastern boundary of the proposed colony of Southern Australia.

Every effort, I submit, ought to be made to come to an understanding with the natives of Southern Australia before operations are commenced by the emigrants, otherwise some cause of offence may unfortunately arise not less detrimental to the interests of the latter than subversive of that future goodwill, without which it will be impossible to prevent a long continued warfare, in which the whites, as well as the aborigines, gradually becoming more and more inflamed as their mutual injuries accumulate, will destroy each other in detail. Such a result, I need

See Papers Printed
by Order of the House
of Commons, 18 March
1835, No. 49.

* Proud's Pennsylvania, vol. 1, pp. 428, 429, 430, 431, 432, 433.

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tralia.

I need hardly observe, should be prevented by every possible means, and I have, therefore, much pleasure in informing you that Mr. Robinson has offered his services to take the aborigines from Flinders' Island to Portland Bay, which is a little to the eastward of the limits of the South Australian Company's district, in the hope that he might, through them, open a friendly communication with the natives there. He thinks such a scheme very likely to be successful, and I have great confidence in the qualifications which he has so successfully exerted in the conciliation which has been effected here; and I may add, that this project would not entail much expense upon Government, as the blacks must be supported at the cost of this colony whether they remain at Flinders' Island, or emigrate to Portland Bay.

It is my duty, however, to say, that there are certainly grounds for apprehension that the blacks, by whom Mr. Robinson would be accompanied, might quarrel with the aborigines of New Scotland, the consequences of which might be very distressing. This, however, is a result which he does not appear to anticipate as by any means likely to take place. It may be, perhaps, very properly regarded rather as possible than probable.

The beneficial consequences of the measure would, if this evil be avoided, be very great, and, I think, might be promoted by despatching an officer with a small party of troops to Portland Bay, which I should endeavour to spare from this command, if my requisitions for an additional military force be complied with.

I submit, however, that such a measure should not be had recourse to without the co-operation, and cordial assent of the governor of New South Wales, to whom, in the expectation of receiving your commands, I shall address myself on the subject.

I have, &c.

(signed) *George Arthur.*

(No. 2.)

COPY of a DESPATCH from Lord *Glenelg* to Lieutenant-Governor *Arthur*.

Sir,

Downing-street, 3 August 1835.

I HAVE to acknowledge the receipt of your despatch of the 27th January last, in answer to a circular despatch which was addressed to you in common with other colonial governors, founded on an address of the House of Commons, praying that measures might be taken to secure to the natives of the several colonies the due observance of justice, and the protection of their rights, and to promote the spread of civilization among them, and the peaceful and voluntary reception of the Christian religion.

I have not failed to communicate to the commissioners for carrying into effect the provisions of the Act of Parliament for colonizing South Australia, the observations and suggestions contained in your despatch, founded on your own experience in dealing with the natives.

I trust that your efforts will still be directed to insure to the small number remaining of the aboriginal inhabitants of Van Diemen's Land, who have retired to Flinders' Island, those advantages contemplated in the address of the House of Commons, but I cannot approve of your project of removing those persons to the vicinity of the new settlement. Such an experiment would on many accounts be extremely hazardous, and I should be very reluctant to disturb the present position of those natives, without some very urgent necessity. If, therefore, you have made any proposal of this nature to the Governor of New South Wales, you will lose no time in communicating to him the sentiments of his Majesty's Government on the subject.

I have, &c.

(signed) *Glenelg.*

(No. 3.)

COPY of a DESPATCH from Lieutenant-Governor *Arthur* to Mr. Secretary *T. S. Rice*.

Sir,

Van Diemen's Land, Government House, 10 March 1835.

WITH reference to the despatch of the 27th January 1835, in which, with respect to the humble address presented to his Majesty, praying that measures might be taken to ameliorate the condition of the natives of the British Colonies, I stated that the aborigines of Van Diemen's land had retired, under the guidance of Mr. Robinson, to Flinders' Island, where arrangements had been made to facilitate their civilization.

I availed myself of the opportunity thus presented to me, to submit for your consideration the advantages which might accrue from sending Mr. Robinson to the territory about to be occupied by the South Australian Company, where accompanied, as he has proposed, by his sable friends, he might possibly open such an intercourse with the natives of that district, as would lead to the adoption of measures of conciliation, the result of which might be conducive in the highest degree to the prosperity of the new colony.

I have

I have now the honour to transmit a correspondence which has taken place regarding this proposal, between Mr. Robinson and the local government, from which you will perceive that he still regards the measure favourably, and entertains the expectation that his exertions would, were he so employed, be productive of advantage to the public service.

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tralia.

The great importance of the subject, and my experience of the calamities which so long flowed from the course adopted in this colony, as respects the aborigines, in the first years of its history, will I hope be my apology for again drawing your attention to the measures the most likely to conciliate the aborigines of the territory about to be appropriated in Southern Australia.

I have, &c.

(signed) *George Arthur.*

Sir,

Colonial Secretary's Office, 7 February 1835.

With reference to the termination of your mission to the aborigines of this colony, I am directed to acquaint you that his Excellency wishes to be informed by you to-day,

First, Whether you think you could be of service to the Government at Norfolk or Portland Bay, in opening a friendly communication with the natives.

Secondly, Whether you are willing to undertake such a mission.

Thirdly, Whether you would be disposed to take the aborigines who are at Flinders' Island with you.

Fourthly, Whether you think the Flinders' Island natives can be depended upon.

Fifthly, Whether you think there is any danger if they go to Portland or Norfolk Bay, that the Flinders' Island aborigines will quarrel with the black natives at that station.

Sixthly, Whether, if the Flinders' Island aborigines cannot be depended upon, those who have usually accompanied you could be more fully confided in.

I am, &c.

Mr. G. A. Robinson.

(signed) *John Montague.*

Sir,

Hobart Town, 7 February 1835.

I have the honour to acknowledge the receipt of your letter, of this day's date; and, in replication to the queries therein contained, I beg to state,

First, That I am decidedly of an opinion that a friendly communication can be effected, and maintained, with the aborigines of New Holland, at Norfolk or Portland Bay.

Secondly, I am perfectly willing to undertake such a mission.

Thirdly, It would be desirable, for the aborigines now at Flinders' Island, to accompany the mission.

Fourthly, I am of an opinion that the majority of the Flinders' Island aborigines are to be depended upon, and that, with judicious management, not the slightest danger need be entertained.

Fifthly, No danger need be apprehended from the Flinders' Island aborigines quarrelling with those at Norfolk or Portland Bay.

Sixthly, The fullest and most implicit confidence might be placed in those aborigines that have usually accompanied me.

I have, &c.

(signed) *G. A. Robinson.*

P.S.—I purpose doing myself the honour to transmit forthwith a second paper, containing general remarks on this interesting subject, for the further information of his Excellency.

(signed) *G. A. R.*

To John Montague Esq., Colonial Secretary.

Sir,

Hobart Town, 11 February 1835.

In my communication of the 7th instant, which I had the honour to transmit for the information of his Excellency, I stated it to be my opinion, that a friendly communication might be effected with the aborigines of New Holland, at Norfolk, or Portland Bay. After mature consideration on this subject, I am convinced as to the practicability of such a measure and feel persuaded it would be attended with very beneficial results, both to the Government, and to the aboriginal natives themselves. No scheme could be better adapted to ameliorate the condition of the aboriginal inhabitants, and of affording protection to the emigrants who are fast crowding to the shores of New Holland than the one under consideration.

If early commenced, the insuperable difficulties to which all former enterprises of this kind have

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tralia.

have been liable, arising from misunderstanding, and from rash and hasty, and I may say, in most instances, unjust representations and wrong conclusions respecting the character of the aborigines will be overcome. For if the mild and benevolent measures pursued by this Government towards the aboriginal inhabitants of this island have proved so successful, how much easier will it be to effect a reconciliation with a people less incensed and not under such particular excitement? The system adopted towards the aborigines of this territory is, I believe, quite unique; history does not furnish an instance where a whole nation has been removed by so mild and humane a policy. To accomplish the before-mentioned purposes, on an extended scale, I would respectfully recommend,

First, That a central station be selected where an establishment or colony for the blacks should be commenced.

Secondly, That the Van Diemen's Land aborigines, now at Flinders' Island be transplanted to the colony at New Holland.

The advantages resulting to the Government and to the aborigines by the adoption of those measures would be manifold; in reference to the first particular, it would afford the Flinders' Island aborigines a more certain and an abundant supply of game of every kind.

Secondly, They would be well supplied with fish, to which they are very partial.

Thirdly, They would be less restrained in their pleasures of the chase, that country being of vast extent, abounding in pasture and grazing land, and possessing large tracts of open forest.

Fourthly, By being far removed from their native land they would be less liable to mental irritation, and would therefore soon become reconciled to their adopted country. It is my opinion that the aborigines of this island suffer much from mental irritation: various circumstances produce this effect, and although the deaths of the aborigines at Flinders' Island may be ascribed to other causes, as catarrh, inflammation, &c., still it will be found that mental irritation accelerates, if not the disease, the suffering of the patient, and in too many instances, I think, has proved fatal. When the Aborigina is first afflicted, either from cold or otherwise, he immediately desponds, refuses natural sustenance, and gives himself up to grief; mental irritation follows, and at length he dies in a state of delirium. And I think I am borne out in my opinion, by the sudden dissolution of the wife after the death of her husband; although at the time she may be in apparent health, or that of the husband after the demise of the wife.

Fifthly, The Van Diemen's Land aborigines would be of essential service in promoting the objects of the mission:

First, By exciting curiosity in the minds of the New Hollanders.

Secondly, In conveying supplies, they being more to be depended upon, than the aborigines of the country.

Thirdly, People of colour and especially the aborigines of Van Diemen's Land, are preferable to white men for this particular duty: they can endure great privations.

Secondly, Their wants are sooner supplied, and

Thirdly, They will seldom repine, when pressed with hunger or overcome by fatigue. On these grounds the aborigines of Van Diemen's Land would be of incalculable advantage in promoting the objects of the mission; especially at its commencement: moreover, being aborigines they would, although at first unacquainted with the language of the New Hollanders, sooner detect any preconcerted act of hostility than Europeans, and when familiar with the language, and which they would soon acquire, they would become efficient auxiliaries in promoting the objects of the mission.

The following are among some of the local advantages:

First, This institution would afford general protection to the aboriginal and European inhabitants.

Secondly, Its chief object would be to ameliorate the condition of the natives.

Thirdly, It would afford an asylum to such of the erratic aborigines of New Holland that might be disposed to settle, more particularly the juvenile branches.

Fourthly, It would become a general rendezvous for the tribes.

Fifthly, The communication kept up with the natives, and the journeys of the missionaries, would tend to develop the resources of the country; this, in a new colony, is most desirable to be ascertained.

In reference to the second particular before mentioned, *i. e.* the transplanting of the Van Diemen's Land aborigines now at Flinders' Island to the coast of New Holland, I would briefly remark, that such a measure would meet with their general concurrence. The aborigines with whom I have conversed on this subject acquiesce in the proposition, are perfectly willing to emigrate, and desire to accompany me.

Secondly, Such a change would be calculated to afford them additional comfort and happiness, and a likely means of prolonging their existence, whereby a remnant of those interesting people would be preserved.

Thirdly, It would be attended with very considerable saving to the Government in reducing the expenditure of the establishment.

In transplanting the aborigines now at Flinders' Island to New Holland, I would recommend that they be removed at separate periods, in two or three divisions, in order to give time for organizing the settlement. No danger need be apprehended from the Van Diemen's Land aborigines coming in collision or quarrelling with the New Hollanders:

First, Because the grounds of these disputes have generally originated in an improper interference with the females of the country; this has been precisely the case in this colony. To the scalars who originally stole the women from the natives, and to the stock-keepers, may be attributed the cause of nine-tenths of the outrage committed in the island. But the Van Diemen's Land aborigines having women of their own, are not exposed to these temptations, consequently, no danger need be entertained on this account. Again, the aborigines of Van Diemen's Land being

being few in number, are not likely to quarrel, even were they disposed, with a superior force, overwhelming in numbers, and superior in prowess.

Secondly, The aborigines of Van Diemen's Land being placed under protection, no danger need be entertained of their being destroyed by the New Hollanders.

To John Montague, Esq.
Colonial Secretary.

I have, &c.
(signed) G. A. Robinson.

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(No. 4.)

COPY of a DESPATCH from Lord Glenelg to Lieutenant-Governor Arthur.

Sir,

Downing-street, 20 Nov. 1835.

I HAVE received your despatch of the 10th of March last, in which you urge upon the consideration of the Government the advantages of transplanting, under the care of Mr. Robinson, the natives of Van Diemen's Land, now settled at Flinders' Island, to the territory which has been apportioned for the proposed settlement in South Australia.

It is satisfactory to me to be placed in possession of the sentiments of a gentleman who has acquired so much experience as Mr. Robinson in his dealings with the natives, and who is so much distinguished by his active and enlightened humanity. It is well worthy of consideration how far it may be desirable to employ his services in any arrangements which may be entered into with the aborigines of Southern Australia. But the proposal in question seems to me, I must confess, open to very serious, if not insurmountable, objections. I am unwilling to express this opinion so briefly, because no suggestion, countenanced by such authority, and originating in such benevolent motives, ought to be dismissed lightly or inconsiderately; nor has it been so dismissed by His Majesty's Government. It has, on the contrary, engaged much thought; but the pressure of other business prevents me from detailing, in this place, the reasons which have led to the conclusion just announced. In communicating that conclusion to Mr. Robinson, you will accompany the communication with this explanation of its brevity; and you will assure him that His Majesty's Government are sensible of the zeal and alacrity with which he has offered to undertake this duty, and duly appreciate the merits of his general conduct, and the value of his exertions in the cause of humanity.

I cannot, however, dismiss this subject without remarking on some of the facts which have particularly struck me in reading the reports of Mr. Robinson, as to the state of the natives located at Flinders' Island.

It does not appear, from any of your despatches, what was the total number of the natives who were induced to accompany Mr. Robinson to that island, although I observe, from your despatch of the 27th January last, that, at that period, their amount was estimated at 130. From the terms used by Mr. Robinson in his communications to you, I gather that their numbers are fast decreasing; and he even speaks of the change to South Australia as necessary to prolong their existence, and to preserve the remnant of them. He would also seem to infer that Flinders' Island does not furnish what to them may be deemed the necessities of life, an adequate supply of game and fish; and that it does not sufficiently furnish them with the amusement of the chase, the natural antidote to that mental irritation which is represented not only to add to their suffering in sickness, but in many cases to have proved fatal to them.

From the report on Flinders' Island, which accompanied your despatch of the 6th of April, 1833, His Majesty's Government were led to anticipate far different results. The climate is there represented as very fine, and warmer than at Hobart Town. The dimensions of the island such as might be supposed to afford ample scope for the exercise of the chase, while game is stated to be found in abundance.

Although it was most satisfactory to me to perceive, from your despatch of the 27th January last, that every effort was made for the moral and religious instruction of those persons, I could have wished to have received some more detailed information as to their physical wants and condition. It is the bounden duty of the Government to watch the welfare of those who have placed themselves implicitly under the guidance of the agents of that Government, and it is a duty which cannot be too scrupulously fulfilled.

I should therefore wish, that you would obtain and transmit to me, a full and detailed report of the state and condition of the natives at Flinders' Island; of the actual decrease of their numbers since their removal to that island; of the apparent causes of such decrease of the means of sustenance which the island affords, and of the amount and nature of the supplies which are conveyed to them from the colony: which supplies ought to be carefully adapted to the natural wants of the people. You will also state what advance has been made towards their civilization, and how far they have shewn any disposition to receive instruction. This report, including also any other particulars of interest, you will have the goodness to transmit periodically.

If indeed those unfortunate people are in the deplorable state in which, from Mr. Robinson's report, it is to be inferred that they are, it is highly necessary that some measures should be immediately adopted to recover them from such a condition; and I must rely upon your known humanity and experience to supply such remedies as may appear best adapted to that end.

I rely on receiving from you an early communication on this subject.

I am, &c.
(signed) Glenelg.

File Papers relative to
Aboriginal Tribes, or
deed to be printed, by
the House of Commons,
14 Aug. 1834, No. 617,
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(No. 5.)

COPY of a DESPATCH from Lord *Glenelg* to Lieutenant-Governor *Arthur*.

Downing-street, 11 February 1836.

Sir,
You are probably aware, that a great advance has been made towards completing the arrangements for the establishment of the new colony of South Australia. Captain Hindmarsh, of the Royal Navy, the first governor, will proceed thither at the commencement of the proper season for the navigation of the seas. He will be preceded by a small detachment of settlers, who propose to establish themselves on Kangaroo Island.

On behalf of his Majesty's government, I have stipulated with the projectors of this undertaking, for the appointment of an officer, who will bear the title of "Protector of the Aborigines," and perform the duties which that title indicates. The Lords Commissioners of the Treasury have authorized the payment for this service, of an annual salary, not exceeding 250 *l.*, a sum moderate indeed when compared with the labour and responsibility of the employment, but adapted to the frugal scale of official incomes to which it is necessary to adhere in the infancy of the proposed settlement.

The report made in your despatch of the 10th March 1835, of the character and pursuits of Messrs. G. A. Robinson and G. A. Robinson, jun., assures me that I could not better consult for the welfare of the aborigines of South Australia, than by requesting you to recommend either the one or the other of those gentlemen to Captain Hindmarsh for the office of protector. That officer will carry out from this country written instructions to be placed on his arrival in the protector's hands. If either of the Messrs. Robinson, whom you may select for this purpose will repair with an introduction from you to the new settlement in Kangaroo Island, directions from Captain Hindmarsh for his further proceedings will await him there. If neither of the Messrs. Robinson be disposed to accept the office of protector, you will then appoint some person, on whom you may have reason to place confidence, provisionally, and report to me without delay. Or if no such person can be found, you will request one of the Messrs. Robinson to undertake the duty till a proper and permanent appointment can be made, it being of great importance that the protector should be on the spot at the very commencement of the settlement.

I have, &c.
(signed) *Glenelg*.

Appendix, No. 4.

WESTERN AUSTRALIA.

(No. 1.)

EXTRACT of a LETTER from Lieut.-Governor Sir *James Stirling* to Mr. Under-Secretary *H. Twiss*, dated Garden Island, Western Australia, 25 August 1829.

THE Natives have kept very much aloof from our parties, and until within a few days such interviews as have taken place have terminated amicably. I regret to say an exception to this has lately occurred. A soldier of the 63d regiment unfortunately quitted his party and lost himself for a week in the woods. In the course of that time he met several parties of natives, and was attacked by one of them. In his own defence he was forced to fire, and, I fear, wounded a man who had thrown a spear at him: they are not, I believe, disposed to be troublesome, nor have they the means to be seriously so, but under any circumstances, I am most anxious to prevent hostilities. I therefore regret this commencement, for I believe they do not omit to resent any injury which they may receive, whether they may have been the aggressors or sufferers in the first instance.

(No. 2.)

EXTRACT of a DESPATCH from Lieutenant-Governor Sir *James Stirling* to His Majesty's Principal Secretary of State for the Colonies, dated Perth, Western Australia, 18 October 1830.

THE natives in general have been harmless. From this, however, two cases must be excepted. At Perth, in May last, they made an attack, a report of which is hereunto annexed. In the second instance, at the entrance of the Murray, they murdered a young man, and have been so repeatedly troublesome to the settlers that I have placed a military force there for the protection of that neighbourhood. The readiness and alacrity which the commandant, Captain Irwin, has always displayed in meeting my wishes on these and similar services, and the general conduct of the officers and the detachment under his command, merit my best thanks.

Sir,

Perth, Western Australia, 18 May 1830.

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DURING the absence of your Excellency to the southward, an affair took place here between the natives and some of the inhabitants, which led to the military being called out. I have now the honour to annex a statement of the transaction, and the measures I thought necessary to adopt.

On the 3d instant, at three P. M., a message was brought to the cantonment, soliciting aid against the natives on the part of inhabitants of the west end of the town. In my absence Ensign Dale proceeded to that quarter with a few of the guard; I followed with more men soon after, on hearing the report. On arrival at the quarter, I learned from Mr. Reveley and other credible testimony, that the natives were decidedly the aggressors; they had been very troublesome in the forenoon; in one place, throwing spears at poultry; at another, stealing pieces of board from workshops; and at last they broke into and plundered the house of a man named Paton, which brought on the rencounter. Three or four neighbours endeavoured to drive the natives from the house which they had collected round; they however threw their spears at them, and drove them back to the next house, following until they recovered their spears. More people coming up, with two or three muskets, they advanced to dislodge the natives from Paton's. Several were drawn up, with spears poised in their throwing sticks; and a tall savage, who appeared the chief, showed unequivocal gestures of defiance and contempt. On the muskets being presented, the people now fired, and this man was seen to fall wounded, falling a second time after rising. The natives now made a rapid retreat, leading him off.

This daring and hostile conduct of the natives induced me to seize the opportunity to make them sensible of our superiority, by showing how severely we could retaliate their aggression, but that we had no wish to injure them. With this view I continued the pursuit, directing that a shot should not be fired but in self-defence.

After proceeding a mile and a half in a N.W. direction we overtook Mr. Dale, near a lagoon, with a few soldiers and settlers. I was concerned to find he had received two wounds from the thrust of a spear by a native, while endeavouring to secure him in the swamp. The savage succeeded in escaping, though severely wounded by a shot in the face, his jaw being seen to hang. He had previously slightly wounded serjeant Smallman, in an ineffectual attempt to secure him, after knocking him down with his fusil.

I now divided the party, taking half with me round the lagoon, and directing Mr. Dale, with the remainder, to go the opposite way, to get the natives between us, should they be in the lagoon. We discovered them by their talking at the upper end, where the breadth was from 40 to 50 yards; but none could be seen, so thick was the cover of tea trees and reeds of seven or eight feet long.

While observing the natives here, several shots were fired towards us from the opposite bank by Mr. Dale's party. On calling out for an explanation, and to order the firing to cease, I learned that a volley of spears had been thrown at them while penetrating the swamp to where the natives were. Three spears had pierced the arm of the acting serjeant major, and the party fired in return. One of the natives now called out from a tree he had ascended, and gave us to understand that their women and children were with them, and seemed earnest in his entreaties that we would leave them. I now told the party to leave the swamp, and for about 20 minutes we held a parley; the natives pressing us to leave them, and we in vain trying to encourage them to come out to us. At this period, hearing a trampling in the lagoon, I proceeded alone down the bank, and distinctly heard the groans of the wounded, whom they were carrying past; but the height of the reeds concealed them, except the tops of their spears. Considering the object I had in view as now fully accomplished, of impressing a salutary dread of our superiority and arms, while we showed them we did not wish to injure them, after getting them and their families completely in our power, we left them, at sunset, apparently on terms as friendly as usual. I was the more anxious to re-establish a good feeling, from a dread that they might think of revenging themselves on settlers in the interior, before they could have intelligence of this affair.

During the night nothing was heard of them, but next morning they were seen to cross the river at the islands, with their families, in considerable numbers.

A patrol I sent out for the purpose, brought in three natives they had surprised. These men had been often in the cantonment, and willingly accompanied the soldiers. They intimated, by signs, that some of their people were dead or wounded in the lagoon, after yesterday's fire. When this was told me, I took them off to the lagoon, but they could show none, and I concluded they meant only to signify that some of their people had fallen there.

On our return we observed a body of about 40, including women and children, moving westerly; some came towards us on being called, and with these and our guides to the swamp we parted on very good terms.

At the cantonment I learned that several natives had come in apparently anxious about the fate of those who had been surprised in the morning. Some days after several natives came into the cantonment, and pointed out their women and children passing along the outskirts, evidently to make a show of their confidence in us, I desired that they should be received in the usual friendly way, but ordered a serjeant and a file of the guard, with their muskets, to watch their motions. At seeing the arms they looked alarmed, and made signs to put them away. The good effect of this precaution was afterwards apparent; for on their moving to the western extremity, the serjeant kept out of their view, till he saw a considerable number collected round Paton's house, (which they had before rifled) trying to push

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open the door and windows. On this he made his appearance, when the natives all ran off to the rear.

Since that time they have not visited the cantonment; and I am happy to learn that they have committed no act of aggression against the settlers in any part of the country.

I have the honour to be, &c. &c.

To His Excellency
Lieut. Governor Stirling,
&c. &c.

(signed) *F. C. Irwin*,
Captain 63d Regiment,
Commandant in Western Australia.

A correct Copy.

(signed) *Peter Brown*,
Secretary to Government.

(No. 3.)

EXTRACT of a DESPATCH from Governor Sir *James Stirling* to Viscount *Goderich*, dated King George's Sound, Western Australia, 30 November 1831.

THE only annoyance which has been experienced has arisen from the hostile conduct of certain native tribes inhabiting the district around Swan River. The pertinacious endeavours of those savages to commit depredations on property having called forth the determined resistance of the settlers, (and in cases where they are repelled by force, it being a rule with them to resort to revenge), they have in three or four instances succeeded in sacrificing the lives of white persons to their fury. In such attempts they display great cunning, patience and determination, and it requires the utmost vigilance to guard against their attacks; while with the small military force at present in the settlement it has been found impossible to afford protection to every point. Previous, however, to my quitting that district about a month since for the purpose of inspecting this station, confidence had been much restored by the organization of a yeomanry force, and by proper arrangements for mutual assistance and co-operation among the settlers.

(No. 4.)

EXTRACT of a DESPATCH from Viscount *Goderich* to Governor Sir *James Stirling*, dated Downing Street, 16 August 1832.

I REGRET to find that the natives have begun to manifest an hostile disposition towards the settlers.

The arrangements which you have made for organizing a yeomanry force will no doubt have tended to restore confidence to the latter, and will also, I hope, have been followed by less aggravating conduct on the part of the natives. The aborigines of Van Diemen's Land have for a long period past been the terror of the settlers of that island, from the frequency of their predatory incursions upon the settled districts, and the barbarous murders with which they have generally been attended; but from a despatch received from Lieut.-Governor Arthur, of which the enclosed is a copy, it appears that he has at length succeeded in conciliating one of the principal and most sanguinary of these tribes, which he confidently expects will be followed by the submission of the rest. And as it appears to be the opinion of that officer, that a little kindness and attention shown towards these people in the first instance would have prevented much of the annoyance which the settlers have subsequently experienced, I trust you will lose no opportunity of cultivating a friendly intercourse with the natives of Western Australia, by adopting the course which Colonel Arthur's experience has pointed out as the most likely to avert the evils to which a different system has exposed the settlers in Van Diemen's Land.

File Lieut. Governor Arthur's
Despatches, 7 Jan 1833, printed
by Order of the House of
Commons, 14 Aug. 1834,
No. 617, page 162.

(No. 5.)

EXTRACT of a DESPATCH from Governor Sir *James Stirling* to Viscount *Goderich*, dated Western Australia, Perth, 2 April 1832.

ANNOYANCE to the settler of a very serious description proceeds from the depredations of the natives on property, and the murders which they commit from time to time. We are safe enough in our houses or when prepared for attack, but we are never so when absent from home or unprepared. Stock are also safe when there are two or three white persons on the spot; but when the cattle or sheep stray, they are but too likely to be attacked. It is true that greater alarm than injury is occasioned by this species of hostility, but it is a great drawback, for it occasions the necessity of military posts at considerable expense; and even

even with every precaution outrages can neither be in all cases prevented nor punished. I have endeavoured to open an amicable communication with the tribes in this district, but hitherto with little success. I would wish to persuade them that it is safer and better to obtain those things they desire by free gift on our part, than to take them by force, but I am still unsuccessful in this endeavour. At King George's Sound, where I found a good understanding established, I have caused it to be preserved and cultivated, and there the natives confide in, and in fact live very much with the Europeans. In the Swan River district they sometimes visit us in amity, and perhaps on the following day they commit a robbery or a murder.

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(No. 6.)

COPY of a REPORT from Dr. Collie, His Majesty's Resident at King George's Sound, to Governor Sir James Stirling.

Sir,

King George's Sound, 24 January, 1832.

In stating, in conformity with the wishes of your Excellency, what I consider, from the intercourse and acquaintance I have had with the aborigines of this neighbourhood, the best plan to be adopted in order to secure a continuation of their amicable conduct to the English, and to ameliorate their own condition, I am happy in being able to give my strongest recommendation to the general principle so successfully pursued by the late and much lamented Captain Barker; a principle never to be lost sight of in the intercourse between the foreigners and natives; this was to observe an uniformly kind and steady demeanour towards the latter, with occasional and well-timed gratuities of provisions and other articles of essential benefit to them.

In extending upon this plan, it may be most proper first to adduce what I consider to be the ruling principles, the chief springs of action in the minds of those for whom it is recommended. These appear to be cunning, revenge, caution, acquisitiveness, love of ease, superstition and vanity.

Their cunning leads to every sort of lying and deception, and therefore, among no tribe of savages is it required to be more constantly on guard against unforeseen and unsuspected pillage, surprise and attack. The constant preparation to prevent trespass, aggression or violence, is of the most essential importance in preserving the friendly intercourse that has been happily established. The wild savage, whose animal passions preponderate far over either his philosophic morality or human benevolence, must be expected to take advantage of the weak, unprotected or unprepared. This ought to be engraven on the heart of every settler in Western Australia; and he should, if possible, be made fully aware, that the blood that might be shed, the human lives lost, the flocks destroyed, the crops and habitations demolished, and himself and brother settlers reduced from prosperity and contentment to poverty and despair, and to drag out a life of poverty, distress and anxiety, far worse than death itself, through his inattention to this precaution, would raise up against himself such an enormous mass of guilt that nothing could remove or extenuate.

Revenge urges the savages headlong to the instant resentment of any conceived affront or personal ill-treatment, unrestrained by cautiousness, which at other times forbids them from exposing their persons to the least danger, and prompts them to approach under cover, and inflict the fatal wound on their unsuspecting victim. Their acquisitiveness, aided by caution and cunning, renders them formidable aggressors on those articles of property which they can appropriate the most readily to use.

Their vanity is perhaps a beneficial quality, even in their intercourse with each other, and certainly so, to a considerable degree with us. They make a boast of the learning obtained from the white people among the more distant tribes; and if I have deduced a correct inference from the details which some of them, Nakuia especially, have given me, this ostentation not only affords them delight at the time, but the bare recollection of the astonishment, wonder and envy it excited, gives them an ecstasy of pleasure. Their vanity, too, prompts them to procure those things which distinguish the learned, admired and envied foreigner from the ignorant and despised savage; and this may be advantageously cultivated until the capricious hunter grows into the steady labourer; if their love of ease, or perhaps more properly slothfulness, be not too powerful to counteract this beneficial conversion. This love of ease will tend to prevent their combining in active and continued hostility, but it must be a great drawback to their ever forming themselves into associations, or attaching themselves to any thing like civilized society. At any moment they can obtain the necessaries of life in the wilds of their own country, with less trouble than at the house of the settler; at that moment they will be ready to desert those who may have been considering themselves as their protectors and benefactors, without the ceremony of applying for permission to depart.

Their superstition, which I have had sufficient opportunity of knowing to be extreme, may, in addition to the powerful influence it always gives civilized nations over savage tribes, be the great means of ensuring the latter's admiration of our actions and contrivances, their respect for our incalculable superiority over them, and fear of incurring our dire displeasure and awful vengeance. And it will finally lead them to revere and adopt the pure doctrines of the Christian faith.

o-37.

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In filling up the details of the preceding plan upon the principles I have mentioned, I would humbly suggest, that in the change of authorities and individuals that is liable to take place, but which is not likely to recur to so great an extent as at the transferring of the settlement from the colony of New South Wales to that of Western Australia, it is highly important that no very marked change should be experienced by the natives, unless indeed some one incontrovertibly advantageous to them, the permanence of which could readily be insured. The reasons for such uniformity of treatment are so obvious, that it is almost superfluous for me to say, that the more savage the being, the more difficult it is for him to reason himself into the propriety of any reverse in his situation; and his alienated feelings would at this time be deprived of the control of a most powerful influence, the individual tie of gratitude, to attach him to the new comer. It is also unnecessary for me to state, that in order to preserve this uniformity of treatment, a public record should be left with the chief authorities of the district by their predecessors, in addition to the more essential personal information to be obtained, whenever it is possible, of the customs and manners, and, as far as may be known, of the individual disposition of such natives as frequent the settlement.

It would be advisable to retain, at the chief seat of authority of each district, one of the natives who has the greatest influence in the tribe, who is the most intelligent, and best disposed towards us. A concentration of these qualities in one person may be difficult to find at first; but, as they may be generated and increased by our treatment, it will always be proper to afford every encouragement to the fittest candidates for the situation.

This person ought to be the medium through whom all inferior punishments should be awarded, and through whom occasional donations should be made or rewards bestowed. He will act as interpreter and guide to expeditions into the interior.

With respect to punishment for the most grave offences, I do not conceive there is any thing so exclusively applicable to those tribes as to demand particular notice, and I hope that the conduct towards them which I have the honour of recommending will long prevent the necessity of having recourse to any action so much to be deplored.

In the general intercourse between the native and new comer, the former will be ready to perform certain services for a slight remuneration in victuals, tools, clothing, &c., and the latter will be too glad to avail himself of any the smallest assistance at so cheap a rate, however irregularly given. But during this service the natives have too many opportunities of committing acts of petty theft, which require to be guarded against and highly disapproved of, if not punished, when detected; thus laying the foundation of frequent quarrels, and endangering a total rupture of the good understanding that has been established. And again, were this mutual interchange of labour and reward not admitted, the native would have very little inducement to visit the foreigner; there would be a bar against any attachment between them, and the distant settler and explorer, instead of meeting a friend in the desert, when far from home and in want of that assistance which the natives could best afford, would encounter perhaps an enemy, or at best an indifferent person, or even a horde of savages to whom he was unaccustomed, and who would have no friendly or interested motive to check their barbarian rudeness, insult and actual offence. There can then be little objection to preferring to countenance this intercourse to its prohibition; and the abuses attending it are to be avoided as much as possible, in not admitting the indiscriminate service of every stranger, but encouraging such as are known to be of good or tolerable character, observing the strictest justice in all dealings with them, the utmost punctuality in performing promises, the greatest equanimity and forbearance in remonstrating on impropriety of conduct, and the greatest caution and temper in imposing slight punishments for minor offences which have been obviously committed; for in any other case, no private person ought ever to think of inflicting punishment at all. The native in this respect ought to be considered as much under the protection and enjoying the privilege of our laws as the colonist himself; and unless the latter be firmly impressed with the importance of observing this regulation, which has been so properly inculcated and proclaimed in the colony a considerable time ago by your Excellency, he will be in constant danger of rupturing the harmony which the enforcement of such a rule of conduct has done much to originate and promote. The colonist, in order to preserve a right understanding with the natives, in order to act to them as a man of civilization, morality and religion, and in order to insure his own and family's tranquillity, success and safety, must constantly bear in mind the facts that it is he who is the primary intruder, that it is he who is usurping the ancient grounds, the undoubted property of the aborigines, who are entitled to every international law, to a full compensation, to entire satisfaction, for what they are so insidiously deprived of. The colonist must also dispel from his mind the illusion that he is, by his migrating, conferring such an obligation on the mother country as to entitle him to look to her for a protection and security, which he is every moment forfeiting by his own actions and conduct. He must dissipate the idea that it is perfectly just and right in him to neglect every conciliatory measure, every beneficent thought for the native, who has a strong claim on our pity and compassion for the lowliness of the scale in human nature in which he is unfortunately placed. Generous and exalted man delights in ennobling human nature, in raising the inferior grades to an equality with himself. The very little trouble, the slight expense of constant kindness, of occasional alms to the houseless and hungry owner of the soil, the great advantages which these observances will soon confer in the security of the lives of the colonists, in the protection of their flocks and herds from depredation, their crops and houses from destruction, must surely be considered as trivial sacrifices to gain such ends. To make these sacrifices still lighter, indeed to do away with them altogether, and substitute in their room an actual acquirement of pleasure, it is only requisite to be ever mindful of the great facts that

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we are all men; that the hue of the skin gives no preference of the white over the black, and that however much we may fancy this effeminate and sickly hot-bed colour to confer, the swarthy savage prides himself, and with a greater semblance of reason, on his healthful and manly darkness, that has been acquired by free exposure and arduous exertion in the open air. Whatever can be done to remove from the minds of the illiterate of our countrymen the mistaken idea that the black is so far an inferior being to them, under all circumstances, as to render him undeserving of the kindness of humanity, of the compassion of Christian benevolence, incapacitated for ever for rising to a state of civilization and intelligence, should be most strenuously enforced, for such mistaken idea is the never-failing source of difference, disturbance and quarrel; and without this cause be removed, these effects must follow in a greater or less degree, as they shall be controlled more or less by the other agents which I have adduced.

On the other hand, Christian kindness and civilized ideas induce many of the colonists to clothe such natives as enter their service with goodwill, and a pretended determination to remain. But disappointment in the service expected makes the employer in a short time dismiss the adopted domestic, sometimes without the clothing that had been given; or if with it, in such a state as to be little fitted to withstand the tearing of the thick shrubs, or to keep out the inclemency of the weather, now more necessary than before the temporary enjoyment of the warmth of the settler's fire and house. The wandering native, little provident of to-morrow, never thinks when he exchanges his kangaroo skin for a dress of cotton or worsted, and the open country for the sheltering habitation, that his newly acquired clothing is only calculated for his newly assumed situation, and that he will at no distant period, in returning to his original haunts, feel the want of his primeval covering: he has given it to some of his friends, less lucky, according to his idea, than himself in being taken to the full board and warm dwelling of the colonist.

Were this change of clothing merely uncomfortable it would be little deserving of notice, but as I have ample evidence of its baneful influence in laying the foundation of organic disease that has often had a fatal termination, I must deem it worthy of every endeavour to rectify. When the colonist, therefore, gives European clothing, he should either keep the native dress that he thus supersedes till his fickle servant may want it again for the bush, or provide him with such substantial covering as shall be adequate protection when exposed anew to the inclemencies of the weather. Every one who presents himself should not be immediately metamorphosed into the European, but taken on trial for some days without change of dress; for many who do not know the restraint of being anything like the servant of another will soon find their new situation so irksome, and the colonist, little accustomed to neglect of his orders or awkwardness in performing them, be so disappointed, that both will readily agree to a separation that can by this means take place, without the one losing his clothes and the other his health.

When, however, the natives' health has suffered, from whatever cause, and they apply for medicine, there is some difficulty to say what is the best plan to be recommended. The patient is like a thoughtless boy; it is only the severity of the pain that makes him wish for relief. Despair in these cases enters not into his thoughts, all is hope that he will speedily be well. His sole idea is that a dose of medicine, one single application, must be successful without the aid of confinement or restraint. He cannot be prevented from exposing himself improperly. The humane settler who has allowed the invalid a place at his fire is chagrined at his imprudence, and perhaps turns him off; and better it is to do so at first than to permit him to remain to have the same exposure repeated, and consequent relapse occur over and over again until all chance of recovery be lost, when the settler and family are constrained to be eye and ear witnesses of the moanings, wailings and ravings for days and nights, and ultimately of the death of the miserable object of their unavailing care. It would be highly laudable for Government, and still more for private persons, to establish an institution for such cases, an asylum for the sick native, where he might, in some measure, be compelled to be cured.

There is one precaution which is generally the foremost to demand attention, and the soonest to be evaded in the communications of civilized with barbarous nations; that against the introduction among the latter of the custom and habit of indulging in ardent spirits, and which, I sincerely hope, will continue to be as successful in succeeding years as it has been since the formation of the settlement. The beverage which the natives have been happily taught to prefer, is the agreeable and innocuous tea, and few of them will drink spirits when offered, and none to excess.

The preceding remarks have reference chiefly to those natives who have common intercourse with the settlers. But it will be also requisite to conciliate and gain the goodwill of the more distant tribes, who only visit King George's Sound at long intervals. They are not unfrequently at enmity with the tribe of the Sound, who do not seem at ease when a number of strangers come in, and they are more importunate and dishonest with us. For these reasons it is desirable that their visits should be confined to certain periods, yearly or half-yearly, at which they might receive decided proofs of our good intentions towards them, and encouragement to cultivate our friendship, in a full feast of tea, biscuit, rice, or such like, and a donation of such articles as could readily be obtained by us, and be most serviceable and most esteemed by them. These would be, at the present time, small tomahawks, knives and blankets; and the most appropriate time for the periodical convention would be about Christmas, or the month of May, as at those seasons the more distant tribes approach the vicinity of King George's Sound.

Particular marks of favour and reward should be bestowed on those who render any essential

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tial service, and also on those who visit the settlement for the first time, or from such a distance as to render it unlikely their visit will be repeated within the year.

Should any of the hostile tribes solicit an alliance offensive and defensive, it should not be granted in the present state of the settlement and colony; for, by showing favour and affording protection to one we should indubitably compromise our good understanding and friendship with the other, an event most sedulously to be avoided, whilst by non-interference we should preserve the goodwill of both. I need scarcely add, that under all circumstances we should endeavour to prevent any hostile acts being committed at our own places of habitation.

It will not be till several years of free and friendly intercourse and acquaintance has subsisted between us and the aborigines that any hope can be entertained that the latter may be raised from their present very primitive and nomad life, to become cultivators of the soil, or induced to remain permanently in fixed places of abode. It is not, however, too much to expect that this amelioration of their condition may succeed to a plan of conduct and treatment on our part, based on the principles I have the honour of submitting for your Excellency's consideration. I am well aware of the obstacles, almost, if not wholly, innate in the savages of Australia to making this first, grand and leading step on the way to their civilization, and of the practical difficulties which have been experienced in similar laudable attempts in other places; but here, although the materials may be nearly the same, the primary preparation is more perfect, and for this reason the final success less problematical. Whilst in our steady and uniform endeavour to obtain this consummation so sincerely to be wished, we shall be most effectually promoting and preserving the amity, goodwill and security on both sides, the paramount importance of which I have humbly endeavoured to demonstrate.

I have, &c.
(signed) A. Collicie, Resident.

(No. 7.)

EXTRACT of a DESPATCH from Acting Governor *Irwin* to Viscount *Goderich*, dated Perth, Western Australia, 26 January 1833.

In the month of August the natives made repeated attacks on the flocks of the settlers at York, evincing a decided resolution to effect their object of spearing and carrying off the sheep, and it was not until after more than one encounter with the few soldiers there, aided by the settlers, that they were forced to give up their purpose, and leave the neighbourhood. I regret to say that on this occasion the natives are said to have had several men killed.

At King George's Sound the best understanding continues to be maintained with the aborigines, two of whom have lately arrived here by sea. Mr. M'Leod, the Government resident at the station, informs me that (on the vessel which brought them touching there) he had acceded to an earnest request from the tribe that these two men might be permitted to pay a visit to Swan River by that opportunity, and to return back by the next that offered. They expressed at the same time a wish that others might be permitted to go on the safe return of these two. They have already had interviews with the tribe in this neighbourhood, who gave them a cordial reception, though, from the dissimilarity of their dialects they appeared to have but imperfectly understood each other. The tribe at King George's Sound having some knowledge of our language and manners, and having exhibited a docile and very friendly disposition, there is good reason to expect that they may render essential service towards forwarding the object the local government hope to effect, viz., the placing on a permanent basis the good understanding now maintained with the tribes in these districts. I have, in consequence, directed these two natives to be clothed and rationed while they remain here, and have had them attached to the superintendent of native tribes. This officer, with an assistant, was appointed by Governor Stirling on the eve of his departure, for the purpose of keeping up a continued intercourse with the tribes. He has been nominated a magistrate that he may afford protection to both European and aboriginal inhabitants, from aggression on either side. I beg to refer your Lordship to the Minutes of Council of July 31, where the objects had in view by the Governor and Council in this nomination are detailed.

The superintendent and assistant superintendent of the native tribes are mounted and attended by two soldiers attached to them. Unexpected difficulties appear to have prevented Governor Stirling from dispatching from the Cape the Hottentots and horses intended for this service.

The settlers in the districts of the Swan, Canning and Avon Rivers, for several months past, have been entirely free from any molestation on the part of the natives, few of whom have ever been visible for that period in these districts.

I regret to state, that at the Murray River, in August last, a private of the 63d Foot was assassinated by these savages, having waylaid him when unarmed in the vicinity of his post. This man, the first soldier they have killed, was doubtless marked as an object of revenge from having some time before made himself conspicuous in chasing the tribe from the station.

The concurrent statements of several respectable settlers, supported by affidavits, having represented a native generally known by the name of Yegan as the actual perpetrator of a murder

murder committed some months since on the body of a labouring man named Gaize, resident on the Canning, and as the chief leader in other aggressions on the persons and properties of the settlers, a proclamation was issued by Governor Stirling offering a reward for the capture of this native, dead or alive. In October this man was secured unhurt, together with two others of his tribe, and considering it a fair opportunity for gaining a knowledge of the language and habits of the aborigines, and for imparting to them a knowledge of ours, and of the benefits of civilization, I had them transported to the Island of Pulo Carmac in Cockburn Sound, guarded by two soldiers, and placed under the superintendence of an intelligent and well informed individual, a Mr. Lyon, who had volunteered his services for the accomplishment of the object contemplated. I intended retaining all the prisoners until they should appear to understand the conciliatory design of the local government towards their tribes, and until some progress should have been made in the objects above enumerated, after which it was intended to release them, with the exception of the above-named individual, whose outrageous conduct rendered it necessary to prolong his confinement to an indefinite period. After a detention of some weeks on the island, where accommodation had been provided for their reception, the prisoners, through the neglect of the person in charge, effected their escape in a boat by night. They have since been frequently met in company with others of their tribe, but I have deemed it advisable to leave them at liberty, as the principal offender, who severely felt his imprisonment, has shown an anxiety to make known his intention of abstaining from future acts of aggression, and I expect his apprehension will secure his future harmlessness.

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At a Meeting of the Executive Council held at the Council Chambers, Perth, on the 30th day of July 1832.

Present:—His Excellency James Stirling, Esq. Governor and Commander-in-Chief, the Honourable F. C. Irwin, Esq. Senior Officer of His Majesty's Land Forces, the Honourable Peter Brown, Esq. Colonial Secretary, the Honourable J. S. Roe, Esq. Surveyor-General, the Honourable W. H. Mackie, Esq. Advocate-General:

The Governor stated, that from the repeated attacks of the natives, he was of opinion that some measures should be adopted for gaining an influence over them, and that on a future meeting he should bring the subject more fully before the Council, with the view of sending some intelligent persons amongst the natives for obtaining that object.

At a Meeting of the Executive Council held at the Council Chambers, Perth, on the 31st day of July 1832.

Present:—His Excellency James Stirling, Esq. Governor and Commander-in-Chief, the Honourable F. C. Irwin, Esq. Senior Officer of His Majesty's Land Forces, the Honourable Peter Brown, Esq. Colonial Secretary, the Honourable J. S. Roe, Esq. Surveyor-General, the Honourable W. H. Mackie, Esq. Advocate-General:

The Governor called the attention of the council to the subject of the natives, as notified on the last day of meeting, and submitted the following plan on the subject:—

"An intelligent, active and zealous person to be employed as superintendent of the native tribes; to be a magistrate, to have an assistant superintendent, and eventually a small body of policemen under his direction; the whole to be mounted and properly armed, and kept not only in constant readiness, but to be almost constantly in motion: to visit and communicate with all out-stations, to observe the natives, acquire a knowledge of their haunts, numbers, dispositions and personal qualifications, and their movements; to become acquainted by degrees with their chiefs and leading men; to secure them from aggression and bring those to punishment who injure them, except in self-defence, but on the other hand to apprehend and bring to punishment any native or native tribe committing outrage; to visit them frequently, showing the power of doing so whenever requisite, and to acquire influence over their minds by celerity of movement, irresistible power and certainty of punishment if they commit outrage.

"To aid in these matters, it is intended to apply to the Government of the Cape for a detachment of the mounted Hottentots, and in the meantime to appoint the superintendent and his assistant that they may acquire a knowledge of the services expected from them, supporting the measures and proceedings of the superintendent by a small party of military for the present, until horses shall be obtained from the Cape, should the Hottentots be found unattainable.

"The duty of the superintendent will be to protect us as well as control the natives; allowing no act of hostility unsanctioned by the law; but in the event of resistance or show of resistance to his authority as a magistrate, he will, of course, be justified in proceeding to extremity. The closest application to the study of their habits, and frequent communication with them, will probably enable him to acquire authority and influence, particularly when these shall rest on their conviction of irresistible powers: and the best proof of his ability in his office will be by his securing effectually the lives and property of the whites in the least injurious way to the natives."

Captain Irwin and Mr. Brown were of opinion, from the consideration they had given the subject, that the plan then detailed by the Governor appeared to be the best that could be adopted.

Mr. Roe considered such a measure decidedly called for, and that the appointment of efficient persons to fill these situations was likely to be attended with great benefit to the colony at large, giving confidence to the settler, at the same time protecting the native.

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Mr. Mackie considered such a measure necessary, and the plan proposed the only method at present that could be adopted.

The Governor represented to the council that the person he considered, from the various qualifications he possessed, to be best fitted to hold this important situation, was Captain T. T. Ellis.

In this opinion the council concurred.

The Governor proposed as assistant superintendent, Mr. Charles Norcott, in which the council concurred.

The Governor proposed that a salary of 100 £ per annum should be allowed the superintendent, and 50 £ to the assistant, until the pleasure of His Majesty's Government should know; as also the following daily ration, viz. one pound and a half of flour, one pound of meat, quarter of an ounce of tea, three ounces of sugar, and one gill of rum, or an equivalent for such ration, when not actually provided.

The Governor also proposed that these gentlemen should be accompanied by two private soldiers from the detachment of the 63d regiment (to be under the direction of the superintendent) who should be allowed the same ration, or an equivalent, and sixpence per day additional pay, with such clothing as should be found necessary.

The Governor further proposed that arrangements should be made for equipping the superintendent and assistant with one horse each.

The council concurred, and the honourable the colonial secretary was directed to prepare the necessary instructions, and to lay the same before council that day week.

(No. 8.)

EXTRACT of a DESPATCH from Acting Governor *Irwin* to Viscount *Goderich*, dated Perth, Western Australia, 10 April 1833.

I PROCEEDED in the "Ellen," in the month of February last, on a tour of inspection to King George's Sound and Augusta. I am happy in being able to inform your Lordship that the persons located at each of these settlements are perseveringly engaged in prosecuting the various and appropriate pursuits of a settler's life, are apparently contented with their prospects in the colony; have continued without intermission to preserve the most amicable intercourse with the neighbouring aborigines, and have found their respective climates remarkably healthy.

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When at King George's Sound I directed the issue of trifling presents of knives and provisions to the natives there, which were promised them by Governor Stirling on a former visit.

In my despatch of January 26th, I reported to your Lordship the arrival of two natives from King George's Sound; after a residence here of several weeks they returned with me in the Ellen, when their arrival was hailed by their tribe with great satisfaction, and increased confidence in our good faith and friendship. On my departure from the settlement the same two natives, with four others, eagerly availed themselves of permission to accompany me here, on the clear understanding that they were not to return before the lapse of 12 months. When at Augusta, which I visited on my return, one of them chose to remain with the tribe there; the remainder since their arrival have been stationed at Perth, where they have had almost daily intercourse with the Swan and Canning River tribes, with the most perceptibly beneficial results; so much so, that I have directed three of them to be clothed and rationed at the public expense, and attached to the superintendent of the native tribes, and I attribute to their intervention no inconsiderable share of the success which I am happy to say has attended his daily intercourse with the tribes of these districts. The two remaining natives, not appearing calculated to be equally useful, I took an opportunity of sending back to their tribe at their own request. The conduct of all of them has been highly satisfactory and encouraging. Though they have a difficulty in conveying their meaning to the tribes here, the dialects differing considerably, yet both parties are becoming more and more intelligible to each other by repeated intercourse, and I feel warranted in saying that we can obtain by means of the King George's Sound natives, earlier and clearer information of the existing feelings and intended movements of the local tribes than from the most friendly and familiar of the latter. In my despatch of January 26th, I had the honour to inform your Lordship of the appointment and duties of the superintendent and assistant superintendent of native tribes; since that period these officers have been posted at Perth, but I intend their station to be on a small eminence in the vicinity of the town which commands the only ford across the Swan in this neighbourhood, and being nearest the mouth of the river is much used by the natives in passing to and from the Canning District.

In order to give the superintendent an influence with the tribes, and to encourage a continued intercourse with them, I sanctioned the occasional issue to them of small quantities of bread, at the discretion of the superintendent, which has been diminished to a trifling amount on the object being attained. To prevent any disappointment from the discontinuance of the issues the superintendent was instructed to encourage the natives to bring in fish, (of which they can obtain a plentiful supply with facility), and by barter to obtain from the inhabitants of the town the bread before issued from the Government store. The plan
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has so far succeeded. While traversing this town in the prosecution of this barter, the Aborigines have received all the protection within the limited means of the local government, through the medium of the superintendent and those under his orders, who are instructed to maintain a strict surveillance to prevent any misunderstanding likely to result from savage cupidity, curiosity or ignorance of our customs. I regret to say, notwithstanding this protection, remonstrances, and the obvious dictates of self-interest, instances occasionally occur among the dissolute of the lower order of Europeans of unnecessary and even wanton harshness and hostility towards these native visitors. Such occurrences usually take place in the outskirts and other parts of the town least exposed to observation, and there is reason to fear do not always meet the public ears. To some such secret or partially divulged acts of cruel cowardice are to be attributed, I fear, several inconsistent acts of vindictive hostility committed within the last few months on various parts of the Swan, at the very time when numbers of the tribe believed to be peculiar to those parts have been apparently on the most cordial terms with us at the seat of government, where the population deters them from attempting revenge.

Upon the whole, however, their reception at Perth has been so far grateful to them as to have induced numbers to spend within the town the greater part of the day for some time past; while a few have extended their confidence so far as to sleep in the town. The consequence has been a rapidly progressive acquirement of the more familiar terms of our language, and in some few instances a conformity with our modes of dress, and our customs in other particulars. One of the most intelligent has attached himself to the superintendent, and from his youth and tractable disposition, promises to become the means in time of gaining over many others to a settled and civilized life. With this view I have directed him to be fed and clothed on the public account. I have alluded above to some late acts of hostility supposed to be committed by the natives. These acts were the destruction by fire of an uninhabited house at Port Walter on Melville Water, and of three stacks of hay at the head of the Swan, and more recently the spearing of a few pigs and sheep. The two acts of arson (if really such) have by no means been satisfactorily traced to the natives as the perpetrators. They have, there is no doubt, destroyed considerable numbers of pigs and sheep, the latter being too frequently left under the charge of boys; and the former of necessity being mostly allowed to seek their food in the woods. But losses of this description must become more and more unfrequent, in proportion as the means of feeding live stock in the usual state of confinement become more abundant, and a reasonable prudence in not exposing sheep without proper attendants effectually armed will secure their safety. Above all, the conciliatory measures now systematically attempted by the local government, and which it is hoped the liberality of His Majesty's Government will soon enable it to prosecute more extensively and vigorously, will afford the most humane and effectual means of putting an end to these depredations. This most desirable object would be greatly accelerated should His Majesty's Government be pleased to sanction the establishment of the superintendent of native tribes on the footing proposed in the Minute of the Executive Council of 31st July, to which I have already referred.

Your Lordship's Despatch of 16th August 1832, attaching much importance to the foregoing subject, and calling the particular attention of Governor Stirling to the method pursued in Van Diemen's Land towards the natives (as stated in an accompanying despatch from Lieutenant Governor Arthur) has occasioned my occupying your Lordship's time with so lengthened a detail.

(No. 9.)

EXTRACT of a LETTER from Captain Sir *R. Spencer* (Resident at King George's Sound) to Mr. Under-Secretary *Hay*, dated King George's Sound, 19 March 1834.

I HAVE the honour to acquaint you that this district is in a very improving state, the number of settlers having increased since my arrival from 17 to 61, besides the military detachment. The natives are on the most kind and friendly terms with us, many acting as servants, and to fetch wood and water for the different families. I have seldom less than eight employed as agricultural labourers, some by the day, having the same provisions as my English servants, others at job-work to cut down so many trees, for a portion of flour and suet to make pancakes, their favourite food.

(No. 10.)

COPY of a DESPATCH from Governor Sir *James Stirling* to Mr. Secretary *Stanley*.

Sir,

Perth, Western Australia, 1 November 1834.

ON my late return to this settlement, I learned that a soldier of the 21st regiment had been recently killed by the natives on the Swan River. In consequence of this the leading man of the tribe, named Weeup, had been outlawed, and his son having been apprehended, was in confinement. There were some circumstances connected with this transaction which led me to consider it advisable to grant Weeup a pardon, and to release his son upon a formal

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explanation with the tribe, that such proceedings on their part should never again be repeated. Up to the present time this arrangement appears to have had a beneficial effect, and I hope may stop the repetition of similar outrages by the same party.

In addition to the case above mentioned, I also learnt that in July, the circumstances detailed in the accompanying deposition had occurred on the Murray.

The duplicity and unprovoked ferocity of the aborigines on that occasion were in accordance with the practices of the same tribe throughout the last five years, in the course of which they have murdered four white men, and dangerously wounded two others, independent of sundry robberies of valuable horses, and of a mill near Perth. The distance of their usual abode had made it almost impossible to bring the members of that tribe to any account for these atrocities, and grown bold by impunity, and by the smallness of the force at that remote station, they threatened, after the murder in July, to burn the barracks and houses on the Murray, and destroy all the whites in their district. There was danger that their success in this species of warfare might tempt other tribes to pursue the same course, and eventually combine together for the extermination of the whites; it therefore became of the most urgent necessity that a check should be put upon the career of that particular tribe. Perceiving this, I availed myself of the first occasion to proceed to the Murray River quarter, accompanied by a party of the new corps of mounted police, and by the surveyor-general, for the purpose of inspecting the country at the same time; and having arrived at Mr. Peel's station on the 25th ultimo, we proceeded thence on the day following, reinforced by a corporal's party of 10 men and Mr. Peel. In the forenoon of the 27th we reached the upper ford at Daulgauup, on the Murray, and had just crossed the river when we heard the natives shouting. Keeping the party out of sight, Captain Ellis, the superintendent of mounted police, was sent with Mr. Norcott and three of his corps to recross the ford, and advance towards the natives, for the purpose of ascertaining whether they were the offending tribe. This he accomplished with great celerity, and on his approach towards them he recognised several of them to be of those who were present at Nisbett's murder, and amounting in all to about 60 or 70. He accordingly made a preconcerted signal to me, and advanced towards them. The natives very resolutely stood their ground, as I am informed, and threw a volley of spears, by which Captain Ellis was wounded in the head, and one of his men in the right arm, and another was unhorsed. Stunned and dismounted by the blow, and having his horse speared, Captain Ellis's party was thus put into great peril; but at this critical moment the men with me got into position and commenced firing, and threw the natives into confusion. They fled to a ford about 100 yards below the other, but being headed by the corporal's party, they were forced back into the bed of the stream. The upper ford being also occupied by Mr. Roe, as well as the two banks, they were thus completely surrounded and overpowered. The number killed amounted probably to 15 men. The women were kept until after our company had been collected round the two wounded men; they were then informed that this punishment had been inflicted, because of the misconduct of the tribe; that the white men never forget to punish murder; that on this occasion the women and children had been spared, but if any other person should be killed by them, not one would be allowed to remain on this side of the mountains. Upon this they were dismissed, and after a long march we succeeded in getting the wounded men back to the station. I trust Captain Ellis's wound will not prove to be of serious import to him, and beg leave to state that I cannot too much commend his conduct on the occasion, as well as that of all the persons engaged in this skirmish.

I have been thus particular in the detail of these circumstances, because doubtless this affair will have considerable effect upon our future communications with the native tribes. My hope is that it may impress them with the conviction of our power to defend ourselves, and to avenge violence, and restrain them from those practices which have repeatedly threatened the existence of the settlement. But if, unfortunately, the effect be otherwise, the most decisive measures must be resorted to for the protection of life and property. In the meanwhile, I have reinforced the post at the Murray, and have given orders for the frequent examination of the country around by patrolling parties, and for the apprehension of those who were concerned in Nisbett's murder, and not present on the 27th ultimo.

I have, &c.

(signed) *James Stirling*, Governor.

Colony of Western Australia.

DEPOSITION of *Edward Barron*, of Perth in the said Colony, yeoman, respecting the circumstances attending the death of — *Nisbett*, a private in his Majesty's 21st Regiment, taken the 23d day of July 1834, before the undersigned Justice of the Peace.

The said *Edward Barron* being sworn, saith:

Early last week I went down to the Murray River to get possession of a mare which I had purchased of Mr. Peel. When I got there, I found the mare had been in the bush for several days; and Mr. Peel advised me to stay, until some of the natives should come to the barracks, when he would get them to guide me to where the mare was. On this day week, being Wednesday the 16th instant, two of the natives came to Mr. Peel's cottage, viz. a man called "Soldierman," and a boy who had been long living at Lieut. Armstrong's quarters. They agreed with Mr. Peel to go and show where the mare was, as soon as they had got their wheat ground in the mill at the barracks. Mr. Armstrong's servant, Nisbett the deceased, told Mr. Peel that if he would lend him (Nisbett) his (Mr. Peel's) brown mare, he (Nisbett) would

would accompany the natives in search of the missing mare, to which Mr. Peel consented; and accordingly Nisbett mounted on Mr. Peel's mare, and myself mounted on a horse of my own, accompanied by the two aforesaid natives, set out into the bush between one and two o'clock in the afternoon of that day (Wednesday the 16th instant). When we had got about a mile from Mr. Peel's cottage, in a northerly direction from the cottage, but inclining inland towards the great lake, the native "Soldierman" began to coo-ee; no answer was given, but several natives soon made their appearance; Nisbett told them we were in search of Mr. Peel's horses. An old native, blind of one eye, immediately said we should find them there, pointing to the large lake. We moved on towards the large lake, and on looking round me I found that another party of natives had come about us: and I counted 19 in all. In particular I remarked Calyute, and when my eye met his, [which was gazing on me, his countenance immediately fell, and his eyes were turned to the ground. I also saw "Jack" the native who was confined in the guardroom at Perth along with Calyute for robbing Mr. Shenton's mill. I remarked too, a remarkably tall man, whom I had frequently before seen at Perth and Fremantle, and to whom Mr. Norcott gave a kangaroo dog, whilst I was stationed at Fremantle. After I had caught Calyute's eye, he went up to the very tall native and said something to him in a low tone of voice, and then they all began to jabber one to another, and appeared for some time in confusion, as if they were all anxious to hear some story which Calyute had been telling the tall man. Before Calyute spoke the tall man was speaking to me in a friendly way, and walked by my horse's side, patting it on the neck, but as soon as Calyute spoke to me, the tall man's countenance immediately changed, and he spoke no more, and drew off from my side; and the natives then divided into two parties, one walking alongside Nisbett, who was about 30 yards in front of me, and the other walking alongside of me. On observing all this I called to Nisbett that I thought there was something wrong, and that the natives meant us no good. He said, "Oh! don't be afraid; they are all friends of mine, and would not harm us if we slept all night in the bush with them." We proceeded on towards the large lake, when the old man blind of one eye cried to us that we should soon see the horses, for that he had come on the track, pointing out to us the mark of a horse's foot. I immediately saw that it was a very old track, and directly said to Nisbett that I thought the track was left six months ago, and that I feared that the natives were only deceiving us into the bush, and that we had better gallop off at once; Nisbett again said; "Oh! don't be afraid; they will never take any advantage of us." We again went on, and I had just got on the border of the lake (Nisbett being still before me) when I heard a noise behind me, as of two sticks clattering together: I looked round, and saw Calyute and the tall man in the act of shipping their spears. I called out instantly "Nisbett, Nisbett, set spurs to your horse or you're a dead man!" At the same instant I spurred my own horse on straight in the same direction in which we had before been going, but before the horse got into speed, I saw the tall man fling a spear, which struck me in the kidneys, and saw Calyute throw another which entered my left side a little below the short ribs, and also saw the old man, with one eye, fling another spear which entered my right arm. I dashed on through some very thick wattle, for about a hundred yards, and then turned round, and heard Nisbett utter a loud cry and say "God have mercy on me!" and at the same time the mare which he had been riding came galloping through the wattles, with a spear in her hip. I pulled the two spears out of my side; but while I was doing this, which did not take me a minute, six natives came through the wattle bush running towards me, and were almost within spear's throw when I saw them. I galloped off again, until I had gained several hundred yards upon them, when I pulled the third spear out of my arm, and bound up my side with my handkerchief. I again saw the six natives running towards me; and taking my direction by observing the sun, I again set off for Mr. Peel's cottage; and I saw the natives continue the pursuit of me until within a mile of Mr. Peel's cottage. The tall man and Calyute were two of the six, and led the pursuit. The tall man continued the pursuit last of all, for several yards after the other five had stopped. The following morning (it being nearly five o'clock in the afternoon when I reached Mr. Peel's) a party went out in the direction pointed out by myself, and found Nisbett's body, and brought it into the barracks. I know every one of the 19 natives who accompanied myself and Nisbett, by sight; and if I saw them again could swear to every one of them without the least hesitation, but I do not know the names of any except Calyute, Jack, and "Soldierman." I should know them again the more easily, because the changes in all their countenances were so great after Calyute had spoken to the tall man, in the manner I have before mentioned, that I was afraid they had heard something they did not like, and watched their countenances more carefully, in order to see if they appeared disposed to do us any mischief. I was not concerned in the capture of Calyute, nor am I aware of ever having done anything to make him an enemy to me in particular. I gave the tall man a loaf of bread while I was stationed with the 63d regiment at Fremantle, and never did anything to my knowledge to offend him. I was once stationed, while I was a serjeant in the 63d regiment, at the post at the Murray, when the natives came close to the barracks and raised a kind of war-cry in a very hostile manner (having before that committed some acts of depredation); on which occasion I took the military out, and chased the natives some way, and broke the arm of one of them with a musket shot. I did not get near enough to them on that occasion to see whether the tall man or Calyute was among them. Nisbett had the greatest confidence in them, although I repeatedly told him that I did not like their looks, after Calyute spoke to them. The large lake where the above occurrence took place is four good miles from Mr. Peel's house.

(signed) *Ethel. Barron.*

Sworn before me at Perth, the 23d day of July 1834.

(signed) *W. H. Mackie, J. P.*

o.37.

T

No. 4.
Correspondence
relative to Western
Australia.

(No. 11.)

EXTRACT of a DESPATCH from Lord *Glenelg* to Governor Sir *James Stirling*, dated
Downing Street, 23 July 1835.

I perceive with deep concern that collisions still exist between the colonists and the natives.

With the information now before me, the only conclusion at which I can arrive is, that the measures which you took through the whole course of these transactions were such as the occasion required and justified.

It is impossible however to regard such conflicts without regret and anxiety, when we recollect how fatal, in too many instances, our colonial settlements have proved to the natives of the places where they have been formed; and this too by a series of conflicts, in every one of which it has been asserted, and apparently with justice, that the immediate aggression has not been on our side. The real causes of these hostilities are to be found in a course of petty encroachments and acts of injustice committed by the new settlers, at first submitted to by the natives, and not sufficiently checked in the outset by the leaders of the colonists. Hence has been generated in the minds of the injured party a deadly spirit of hatred and vengeance, which breaks out at length into deeds of atrocity; which, in their turn, make retaliation a necessary part of self-defence. To this subject I beg to call your special attention, because it is important; and I am naturally led to it in this place, most certainly not with the intention to imply that the admonition is in this instance needed, on the contrary, I must repeat that, as far as I have the means of judging, you could not have remained passive under the circumstances detailed in the despatch under consideration.

It will be your duty to impress upon the settlers that it is the determination of the Government to visit every act of injustice or violence on the natives with the utmost severity, and that in no case will those convicted of them remain unpunished. Nor will it be sufficient simply to punish the guilty, but ample compensation must be made to the injured party for the wrong received. You will make it imperative upon the officers of police never to allow any injustice or insult, in regard to the natives, to pass by unnoticed, as being of too trifling a character; and they should be charged to report to you with punctuality every instance of aggression or misconduct. Every neglect of this point of duty you will mark with the highest displeasure.

I am aware that the colonists, in their dealings with the natives, will sometimes have to encounter conduct, which in civilized society would be looked on as highly offensive, but it will be the duty of the settler to practise forbearance and moderation; and by exactness in the fulfilment of his engagements, to set an example of justice and good faith.

Whenever it may be necessary to bring any native to justice, every form should be observed which would be considered necessary in the case of a white person; and no infliction of punishment, however trivial, should be permitted, except by the award of some competent authority.

It seems clear that the act of violence on the part of the natives, which led to the late conflict at the Murray River, was an act of retaliation, and was suggested by Calyute in revenge for some injury, real or supposed. It would be satisfactory to me to know that there was no previous misconduct on the part of any of the colonists, no act of harshness or injustice, which provoked that revenge.

It is with pain that I notice your holding out to the natives a threat of general destruction, extending even to women and children. That threat of course was never meant to be executed in any case. Mere menace is in itself always to be avoided; but the course threatened falls too much into the practice of native warfare, and was likely to create an impression among your uncivilized adversaries that the English, like themselves, regarded this as a legitimate mode of warfare.

The firmness and decision shown by Captain Ellis and Mr. Norcot during the conflict are much to be commended; and the service rendered by the small party of the mounted police under their orders is a proof of the utility of that corps.

The regulations and instructions which you have drawn up for the guidance of the superintendents of police are generally judicious, and well calculated to preserve the efficiency of the establishment; and I am glad to perceive that you have made it a leading principle in those instructions to cultivate a friendly intercourse with the natives. That principle cannot be too strongly kept in view; and after what I have already said, I need scarcely now add how important a part it is of the duty of the police, not only to observe with the utmost watchfulness the conduct of the settlers in their dealings with the aborigines, but to make it their aim and study to gain the confidence of the natives, and to teach them to look to the representatives of British authority for support and protection, rather than to regard them with feelings of apprehension.

(No. 12.)

COPY of a DESPATCH from Governor Sir James Stirling to the Earl of Aberdeen.

No. 4.

Correspondence
relative to Western
Australia.Western Australia, Perth,
10 July 1836.

My Lord,

IN the present despatch I propose to do myself the honour to lay before your Lordship a report upon the state of our communications with the aboriginal tribes of this country, and with the view of rendering this as full and comprehensive as circumstances at present admit, I shall endeavour to explain the general views which have regulated my conduct towards them, the means employed in promoting those views, the effects already produced, and the further prospects of the colony in regard to that race.

One of the earliest measures adopted in this colony was to issue a proclamation, in which the right of the natives to the protection of the British laws was formally declared. On every possible occasion their equality in this respect with all His Majesty's subjects has been urged upon the notice of magistrates, and repeatedly explained to those classes of the community who might be most prone to act offensively towards them. The intercourse which for a long time subsisted between the colonists and the natives was necessarily imperfect; their ignorance of each other's language, the fears of both parties, and the occasional ruptures which took place, precluded the possibility of explaining the principles of those laws under which the white men lived; but the hope which I entertained of more intimate communication with the natives, and of the gradual effect of time and of a steady and constant course of conduct in all the transactions of the Government, induced me to persevere in this principle of action. It may be supposed and admitted that there is apparent injustice in thus imposing the municipal regulations of an invading people upon the aboriginal inhabitants of a territory, but no minor objection seemed to be of sufficient weight when compared with the benefits resulting to the less civilized party, from the adoption of an uniform mode of treatment, and even of the application to them of certain fixed rules of action, by learning and adhering to which they might gradually come to live in harmony with their more powerful neighbours. In following up this course, the first step to be accomplished was to confide to some intelligent and competent person the general superintendence of the nearest tribes, to place them under his protection, and to cause them to be instructed by acts as well as by words in the general principles of our laws. The late Captain Ellis, superintendent of native tribes, was extremely successful in this service; and Mr. Collic, the present colonial surgeon, while resident at King George's Sound, was no less zealous than his predecessor, Captain Barker, in the advancement of these views. In consequence of these proceedings the natives came to understand that murder was sure to draw down upon them sooner or later the severest penalties, and that robbery could not be effected with impunity. On the other hand they found themselves protected by those whom they have latterly styled "grown-up men" or "gentlemen" from injury, whether committed by the white people or by their countrymen of adjoining tribes; and that although the districts more densely peopled by the Europeans became denuded of game and other articles of support, they could obtain by peaceable demeanor, and by rendering themselves useful to the settlers, a corresponding recompense for their deprivations and services.

In those parts of the colony which we first occupied the effect of these measures was soon felt, although obstructed for a long time by the ferocity and influence of two particular natives in the Swan River tribe, named Yagan and Midgegeroo, and by the long-continued hostility of the tribe inhabiting the banks of the Murray. The death of Yagan and of Midgegeroo, as heretofore reported to your Lordship's predecessor in office, by Captain Irwin, and the subsequent punishment of the Murray natives at Pinjarra last October, as represented in my despatch of the 1st November 1834, removed, or at least lessened the chances of future interruptions from these particular causes; and, although in each of these accidental transactions there may be, at a distance from the scene of action, some difficulty in reconciling the conduct of the Government to the letter of the law of England, there cannot exist, I am convinced, any doubt, on a full examination of all the circumstances, as to the strict accordance with the principle of law and of genuine humanity. By these lessons, although they were severe, the natives learnt practically to respect the power and fear the vengeance of the whites, two points on which, it may seem strange to assert, that they were beforehand incredulous or ignorant. In proportion to the advancement of our intercourse it became necessary to take additional measures for its improvement. On my return last year I accordingly selected a person of the name of Armstrong, who had become an excellent interpreter, and to whom the Perth tribe had attached themselves, as the director of an institution for their further instruction in our language, and in the more simple arts of cultivation, and production of food. The plan which seemed most advisable with this intention will be found detailed in a communication made by me to the Executive Council on the 10th December 1834. I had also decided on the appropriation of funds to the superintendents of mounted police in the districts of York, King George's Sound, and the new station in the interior, but the Legislative Council having refused the funds for this purpose, as detailed in my despatch dated 4th May 1835, my general plan was thereby, at least for a time, defeated. On this point it may be suggested by me, as the result of my observation, that no new position should be occupied by the colonists until a proper person be appointed as the guardian and controller of the natives. Much of the future welfare of both parties depends upon a fortunate commencement in their acquaintance with each other, and this cannot be accomplished except through the manage-

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Australia.

ment of some one person especially appointed, instructed and empowered to follow up a systematic course of treatment.

Having thus glanced at the general measures pursued or contemplated, and at the means made use of for their completion, I shall proceed to remark upon the actual position in which we stand in relation to this people.

I am much afraid that I should not succeed if I were to attempt to lay before your Lordship an intelligible picture of this peculiar race. It is sufficient to observe, that we have found them in this part of Australia very formidable enemies, and if they could avail themselves of the advantages of combination it would be useless to attempt a settlement in this quarter with our present members. But although as individuals they are shrewd, active, vigilant, persevering and fearless, they are incapable of acting together upon any preconcerted plan. It is worthy of remark that this want of concert has been lately commented upon by certain individuals amongst themselves in their conversations with the interpreter. They state that they considered the white people, on their first arrival, as inferior to themselves, that they saw them going about unarmed, and open to attack, and felt sure of success whenever they wished to spear them, but that now they are more apprehensive than they were of giving offence, from perceiving that the cause of every person is taken up by the whole.

Our present condition in reference to this people is preferable to that which existed in previous years. The tribes on the Swan River and at King George's Sound are scarcely ever known to commit outrage, and many of the men have become almost constant residents at the houses of the settlers, and make themselves useful in return for food. They are becoming excellent stock-keepers, and rely with confidence on the good intentions and honest practices of the superior class of colonists.

An illustration of this is furnished by the following statement of facts:—

In the latter part of May an inhabitant of Perth, of the name of M'Kail, after sustaining repeated losses of provisions from his hut, while absent in the prosecution of his trade, returned at a late hour of the night and found he had been again robbed; he immediately sallied out with his gun, and on searching an out-house he found a party of natives asleep; without consideration he proceeded to inflict vengeance, and in a scuffle which ensued he shot a lad through the thigh, and which eventually proved to be a mortal wound. On the following morning the natives, in a body, lodged their complaint against the perpetrator, M'Kail, and attended all the subsequent hearings of the case until the prisoner was regularly committed for trial at the ensuing quarter sessions. The lad who had been killed was the son of the principal man of the tribe, and a great favourite; but, although they grieved beyond measure at his loss, they never threatened retaliation upon the whites in general. They were urgent that M'Kail should be punished, and once or twice before the time of trial they assured themselves by visiting the gaol that the prisoner was safe in custody, but testified no hostile feeling towards any other person. It gradually came out that the theft had been committed by a native who was not present on the occasion of the attack of the sleeping party, all of whom were innocent; and it also appeared that no evidence could be procured on which M'Kail could be convicted of murder, and it became eventually advisable not to bring him to trial because his acquittal and subsequent enlargement without any punishment seemed certain to draw down upon him the infliction of their vengeance, and the consequent breach of their friendly intercourse. Such being the case I granted him a pardon on condition that he should quit the colony on being enlarged, and on condition that the natives should receive from him, in atonement for their loss, a considerable present in blankets and bread. Having being previously sounded on this point, they suggested themselves that the origin of the boy's death was to be attributed to the native who had committed the robbery, and that there might be some excuse for M'Kail in the provocation given, and therefore that punishment short of death would satisfy them. In the end they accepted the present, and have returned to their usual good humour.

Only one other event has occurred within the last six months of a nature likely to lead to hostilities. Two men returning from the district of York were visited on the way by a party of natives. The latter asked for bread, and on being refused they struck their spears into the two whites. This was doubtless an unpremeditated act, for they did not attempt to kill them afterwards, although entirely in their power, but returned to the spot several times in the course of the day, and expressed great commiseration for them. The men were afterwards brought to their homes, but the wound of one occasioned his death in the course of a fortnight. On this occasion I dispatched a party in search of the offending tribe, and aided by the information obtained from an intelligent native, who has long acted as companion and interpreter to the superintendent of police, a young man was apprehended about 70 miles from Perth, charged by many of his compatriots as one of the individuals concerned in the murder of Murphy, the white man above referred to. There is still some doubt as to whether the native in custody was or was not present on that occasion, but he is still in prison, and the members of his tribe seem at present disposed to leave the case to the justice of the white men.

From the preceding circumstances your Lordship will be enabled to judge of our relative position, as well as of the general tenor of the conduct of this government towards them, and I trust you will perceive an anxious wish on my part to carry into effect the instructions urged upon my notice in former communications on this subject from your Lordship's predecessors.

On a general view of the future prospects of the colony, in relation to the subject of this letter, I am of opinion that the evils which have been inflicted upon the earlier settlers are on the

the decline, and will be practically unknown in the course of a few years. The aboriginal race must gradually disappear as the country is occupied, and I fear that neither the humane intentions of His Majesty, nor the most anxious and judicious measures on the part of the local government to carry the Royal wishes into effect, can prevent the ulterior extinction of that race. It is nevertheless indispensably necessary that all practicable means be employed for their civilization and welfare. For this purpose I propose to attempt by degrees their settlement in fixed residences, under competent instructors in cultivation, net fishing, and the supply of fuel to the towns, and I shall take every opportunity of encouraging their employment under the agricultural settlers, in keeping stock, and other simple avocations.

I have, &c.

(signed) *James Stirling*, Governor.

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Correspondence
relative to Western
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At a Meeting of the Executive Council held at Perth on the 10th day of December 1834.

Present:—His Excellency Sir James Stirling, Governor and Commander-in-Chief; the Hon. Richard Daniell, Esq. Senior Officer of the Land Forces; Peter Brown, Esq. Colonial Secretary; J. T. Roe, Esq. Surveyor-General; G. T. Moore, Esq. Advocate-General:

The minutes of the last meeting were read and confirmed.

The Governor stated, that the subject he proposed to bring forward was one that he had no doubt had often been considered by the members individually. It related to the civilization of the aborigines. His Excellency conceived that much good might be done, and benefit derived by the formation of an establishment in which, under a proper superintendent to be appointed for that purpose, the natives might be employed in various useful ways, such as fishing, procuring wood, clearing ground, making paths and roads, and eventually, when in some degree advanced in civilization, in the cultivation of the soil, and stock keeping; and after a few observations on the subject, and submitting a rough draft of such instructions as he would consider it necessary and advisable to establish for the general guidance of the individual on whom the charge might devolve, his Excellency requested the opinion of the council on the propriety of forming such an establishment.

Mr. Moore considered we were called upon to make some attempt towards the civilization of the natives, and conceived that the measure promised to be beneficial to the settlers as well as to the natives, therefore recommended its adoption. Mr. Roe considered that both policy and humanity pointed out the proposed measure to be very desirable; and therefore recommended its adoption in furtherance of the instructions received from the Secretary of State.

Mr. Brown concurred with Mr. Moore and Mr. Roe as to the propriety of making some attempt towards the civilization of the natives, and conceived the settlers generally would be benefited by the formation of such an establishment; as by concentrating the natives, which this measure would to a certain extent effect, their visits would be less frequent at the several farms, and the settler would not therefore be so often required to administer to their wants, which had always been deemed a very grievous burthen. In advising the adoption of the measure, however, Mr. Brown would strongly urge their employment being strictly confined to such operations as were actually necessary for their subsistence, and that they should on no account be permitted to perform such services as would interfere with the daily avocations of the industrious fishermen and labourer.

Captain Daniell concurred in the plan about to be adopted, as he thought it would be of great benefit to the natives, as well as of great advantage to the inhabitants of the district.

The Governor then stated, that as he considered Mr. Francis Armstrong well qualified for the situation of superintendent, from his acquaintance with the natives, and his knowledge of their language, he would propose to give him the appointment, with a salary of 90 £. per annum.

Mr. Moore considered Mr. Armstrong well qualified for the services, both from the knowledge of their language, and the reliance they placed in him.

Mr. Roe, Mr. Brown, and Captain Daniell concurred.

(No. 13.)

COPY of a DESPATCH from Lord Glenelg to Governor Sir James Stirling.

Sir,

•Downing-street, 16 March 1836.

I HAVE received your despatch of the 10th July last, containing a report on the condition of the native tribes in Western Australia, and showing particularly the state of their intercourse with the colonists.

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relative to Western
Australia.

It is most gratifying to me to hear of the adoption of any measures which may tend to create and to maintain a good understanding between the natives and the colonists. I am glad to find that some success has attended your endeavours to lead the natives to appreciate the protection which the law affords to them in common with the settlers. It is of the greatest importance that that confidence which appears happily to have been created amongst them should not be weakened by any act of wrong or oppression; and I especially approve of your suggestion that no new position should be occupied by the settlers, until a proper person has been appointed to act as guardian and protector of aborigines in the occupied district.

I shall be happy to receive from time to time reports of the progress and state of the institution which you have established under Mr. Armstrong, for the purpose of instructing the Perth tribe in the English language, and in the cultivation of the soil, and the production of food.

Having already in my despatch, No. 3, of the 23d July last, conveyed to you my sentiments with regard to the course to be pursued in dealing with the natives, I have now only to urge upon you the necessity of adhering to that course, and of following up those measures which you have so judiciously adopted for improving the condition of the aborigines in Western Australia.

I have, &c.

(signed) *Glenelg.*

Appendix, No. 5.

No. 5.
Expenses incurred
by the Commis-
sariat Department
at the Cape.

Sir,

Treasury Chambers, 5 April 1837.

IN compliance with the request contained in your letter of the 20th ult., I am commanded by the Lords Commissioners of His Majesty's Treasury to transmit herewith, to be laid before the Committee on Aborigines (British Settlements), the enclosed copies of a Report from the Audit Board, and of the accompanying Statement of the Monthly Expenditure incurred by the Commissariat Department at the Cape, from June 1833 to December 1834, and from January 1835 to July 1836.

The Committee will observe that it is not possible to separate the items of the expense incurred for the Caffre war from the general expenditure of the colony, but my Lords apprehend that the account now transmitted contains sufficient information.

I have, &c.

(signed) *F. Baring.*

The Chairman of the
Select Committee on Aborigines (British Settlements.)

My Lords,

Audit Office, 30 March 1837.

WITH reference to Mr. Baring's communication to this Board of the 22d instant, directing us to furnish your Lordships with the best statement that can be prepared, from the Commissariat or other accounts, for the information of the Select Committee of the House of Commons on Aborigines in the British Colonies, of the expenses incurred by the British Government in the late Caffre war, we beg leave to represent to your Lordships that the distinguishing, with any degree of correctness, the expenses incidental to the Caffre war from the general expenses included in the Cape of Good Hope accounts during the period of that war, is in many instances difficult, and that the extracting, in every instance, from the accounts and vouchers in our possession such particulars as may appear to appertain to the expenses of that war, (a selection which cannot but be somewhat conjectural) would be attended with considerable labour, and could not for some time be completed.

It has therefore appeared to us, that an estimate of the expenses in question, derived from a comparative statement of the general expenses of the Commissariat at the Cape during a period of 19 months' peace, preceding the hostilities with the Caffres, and the period of war of 19 months, from January 1835 to August 1836, the latest period to which the accounts have been rendered to this department, might in all probability answer the purpose which the Select Committee of the House of Commons have in view. We accordingly beg leave to enclose a statement of the monthly expenditure incurred by the Commissariat Department at the Cape from June 1833 to December 1834, and from January 1835 to July 1836, by which it appears that the excess of expenditure during the last period of 19 months, after deducting the advances on account of services not connected with local circumstances, and adding thereto the sums advanced by the colonial government in 1835 on account of the expenses of the war, amounts to 241,884*l.* 14*s.* 8*d.*

We beg leave to add, that it appears by a letter from Mr. Petrie, the Commissary-general at the Cape, lately received at this office, that his estimate of the expenses of the Caffre war very nearly agrees with the above statement.

We have &c.

(signed)

H. F. Luttrell.

J. Osborn.

Edward Romilly.

The Right Hon. the Lords Commissioners
of His Majesty's Treasury.

ON ABORIGINES (BRITISH SETTLEMENTS).

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STATEMENT of EXPENDITURE included in the Commissariat Accounts of the Cape of Good Hope for the undermentioned Months, including Payments on account of Ordinaries and of the Ordnance and other Departments, which Statement is referred to in a Report of the Commissioners of Audit to the Lords of the Treasury of the 30. March 1837.

No. 5.
Expenses incurred by the Commissariat Department at the Cape.

PRIOR TO THE CAFFRE IRRUPTION:				SUBSEQUENT TO THE CAFFRE IRRUPTION:			
	£.	s.	d.		£.	s.	d.
1833, June - - -	6,313	16	4	1835, January - -	22,436	19	7 ½
— July - - -	11,330	3	— ½	— February - -	15,504	4	3 ½
— August - - -	6,342	4	4 ½	— March - - -	30,900	18	7 ½
— September - -	6,605	17	7	— April - - -	13,143	10	9
— October - - -	8,319	—	8	— May - - -	13,202	18	—
— November - -	5,211	1	5 ½	— June - - -	22,593	3	3 ½
— December - -	10,558	7	— ½	— July - - -	16,416	5	7 ½
1834, January - -	7,552	10	8 ½	— August - - -	18,151	19	11 ½
— February - -	9,038	4	3 ½	— September - -	31,937	13	6 ½
— March - - -	7,552	15	3 ½	— October - -	23,188	11	4 ½
— April - - -	16,139	12	2 ½	— November - -	17,337	10	— ½
— May - - -	9,893	7	— ½	— December - -	24,886	14	10 ½
— June - - -	11,476	16	5	1836, January - -	21,790	4	6 ½
— July - - -	14,665	11	7 ½	— February - -	15,371	—	5 ½
— August - - -	7,231	18	7 ½	— March - - -	19,583	1	3 ½
— September - -	6,439	18	10 ½	— April - - -	26,825	6	10
— October - -	19,653	15	7 ½	— May - - -	15,600	5	8 ½
— November - -	6,482	—	5	— June - - -	23,763	11	— ½
— December - -	6,064	3	11 ½	— July - - -	21,239	12	8
	176,891	5	6 ½		393,963	12	7
Deduct advances to the Naval Departments, &c. and consignments of specie to other stations -	43,751	—	—	Deduct advances to Naval Departments, &c., Debentures paid off about 10,500 £. and Slave Compensation Commissioners about 4,500 £. - -	36,899	10	—
£. 133,140	5	6 ½			357,064	2	7
					133,140	5	6 ½
					223,923	17	— ½
					17,960	17	8 ½
Add amount of Charges in the Colonial Accounts for the Year 1835, on account of the Caffre war, including 12,150 £. advanced on account of Provisions, &c. to be accounted for hereafter - - -					241,884	14	8 ½
Probable Amount expended in consequence of the Caffre War - -	£.						

Appendix, No. 6.

To His Excellency the Hon. Lieut.-Colonel Wade, Acting Governor, &c. &c. &c.

Sir,

Cape Town, Cape of Good Hope, 10 October 1833.

WHEN I had the honour of introducing Mr. Wright, the missionary, from Griqua Town, to your Excellency, last Thursday, your Excellency requested me to furnish you with my views on the subject which then engaged your attention. The critical situation of the northern frontier of the colony at this moment, and the need that there is for the prompt interference of the Government to prevent the numerous and great evils which threaten it, have induced me to comply with your Excellency's request without loss of time; and I have now sat down to give you my thoughts on the subject, as they may occur to me while the pen is in my hand. If the style and arrangements my statement and thoughts may assume in the course of this letter may require an apology, for the facts that may be contained in these statements, and the opinions I may suggest, I have no apology to offer; as I shall confine my statements to what has come under my own observation, and any opinions I shall advance shall be such as have been formed on an intimate and a long acquaintance with the subjects. As in a communication of this nature more is to be apprehended from too much brevity than from a prolixity that may border on tediousness, I shall preface my remarks on the measures I would recommend to be adopted at present, by a brief review of the origin of the disorders that now afflict and threaten the neighbourhood of the colony on its northern boundary. In 1822 Mr. Melville was appointed government agent at Griqua Town; in consequence of a disaffection created by that appointment, and the line of policy

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pursued by him, 10 men left the station in the following year, and after visiting several Coranna kraals, where they got several of the Corannas to join them, they proceeded in a southerly direction, and fixed their residence amidst a cluster of mountains on the border of the Philippolis district, and about two days' journey from Allman's drift, on the Craddock. They were not long in this situation when they began to carry on a regular system of plunder on the defenceless Bechuannas, and their number was very speedily augmented by the success which attended their predatory excursions, and the abundance of guns and gunpowder and brandy, which they got in exchange for their stolen cattle. The Bechuannas on the Hart River and on the Yellow River, and those living south of them on the Caledon Rivers, were in a short time reduced to the greatest distress by their depredations. Aroused by the distress in which these people were involved, and the cruelties committed on them by this banditti, who were called Berghannas or mountaineers, from the mountainous character of the place where they resided, and from their manner of life; hoping to put a stop to their proceedings, Waterboer attacked them, took from them 4,000 head of cattle, and took the Bechuanna chief and his people, from whom the cattle had been taken, under his protection. Waterboer, as on other occasions, acted very honourably in this instance; he took the whole of the Bechuannas, which he found in a starving condition at the camp of the Berghannas to Griqua Town with him, and distributed among them all the cattle which they claimed, and where they still are protected and cherished by this chief. This affair operated as a check upon the Berghannas for some time; but they never forgave Waterboer this act of justice he executed upon them, nor have they at any time since then abandoned their nefarious practices. In 1825 I visited that country, and tried what persuasion would do with them; they met me on the Alexander River, where I spent some days among them, reasoning and remonstrating with them on the iniquity and impolicy of their conduct, and they made many promises at that time, that they would abandon their evil courses, and settle at a missionary station; but I was not so sanguine as to expect that they were all sincere in their declarations. Some good was, however, done; a few of them were induced to withdraw from their vicious association, and the murderous operations of the others were suspended for some time. It was on this journey that the chief, Adam Kok, solicited leave to settle with his people at the missionary station of Philippolis, and to this I gave my consent for reasons I need not now enumerate. The conditions on which these arrangements were agreed to on my part were, that his residence in that place should be approved by the colonial government, and that he should protect the Boschmen. When this measure was laid before General Bourke he approved of what I had done, and sanctioned the continuance of Adam Kok and his people in that district, on the condition that he would protect the Boschmen. On the same journey I had occasion to come in contact with Kriezer and a number of his people, in consequence of some cruel murders and robberies they had committed on two Boschmen kraals in the neighbourhood of Koma, a place on the Craddock River, about half way between Philippolis and the Yellow River. Kriezer was the chief of a large Coranna kraal then in that neighbourhood, and on the colonial side of the river. After spending a day with them, they gave up the women and children they had captured, and restored to them, and to their husbands and sons, whom they sought out, the cattle and the goats they had taken from them. The children, whose parents had been murdered, were sent to the missionary institutions at Philippolis, where they were provided for; the chief, Adam Kok, never gave any open countenance to the Berghannas, but some of his family were among them, and he never did anything as a chief to check them or their proceedings. When Adam Kok came to settle at Philippolis a considerable number of his people joined him, and they appear for some time to have refrained from committing any great outrages against the Bechuanna tribes. Barend Barends, a Bootchnaap, who had been joined by a party of the same people, who did not place themselves under Adam Kok, formed an expectation to go against Matsilikatsie.

On this occasion Barends was joined by the Coranna tribe of Kreizer, with a few other tribes of the same people, and had about 75 men, including all the Berghannas from Philippolis, returned. Adam Kok declared that they had joined Barends without his sanction, and that they should never again return to live in his district. This resolution, however, the old man did not keep, and the body of his people under him were very much grieved at the weakness he discovered, in the manner that he again received them, and allowed them to gain their former ascendancy over him. In the month of October 1832 I visited this district, on my last journey into the interior.

On my arrival at Philippolis I found the missionary and his family, and all the respectable part of the people, in very great distress. Kreizer had been killed in the affair between Barends Matsilikatsie, but the remains of some other tribes of Corannas had settled about two days' journey on horseback from Philippolis, and from the period of their return from that commando to the period of which I am speaking, they had been employed, as the Berghannas were, in murdering and plundering the Bechuannas to a great extent. Their kraals were the resort of most of the traders who crossed the Great River; and from the manner with which they had been supplied with guns and ammunition and brandy, and the practice they had had in those plundering expeditions, they had become reckless. A few days before my visit to Philippolis, this body of Corannas had entered Adam Kok's district, robbed one of his field-cornets of all his cattle, and they had threatened to return and take all the cattle of the Bechuannas, whom they robbed on a former occasion of the greater part of their property, and who were then under the protection of Adam Kok. They had been followed by Joseph de Bruin, and a few of the respectable part of Kok's people, and part of the property had been recovered, but the Berghannas would not join in the pursuit, and the chief himself took no interest in the affair. The people were not so much

much grieved on this occasion at the amount of their cattle that had been taken from the district, as they were at the conduct of the chiefs and the Berghannas, whom they believed to be parties to the robbery of the Corannas.

They believed, and they had reason for their surmise, that the Berghannas, among themselves, encouraged the Corannas in what they had done, and that it was the commencement only of a system of robbery that was to be carried on until all the good people in the district should be driven away, that the Berghannas and Corannas together might have the whole country in their power, when they would be able to do as they pleased.

At my solicitation the chief, Kok, sent for the principal men of the banditti, and they came to Philippolis to meet me, but my arguments had not the same effect upon them which they had in 1825. I could make no impression upon them; and it was evident to me, from the reception they received from the Berghannas, and the manner in which they associated with them, that the people of Philippolis were correct in the suspicion that they entertained, that they were in league with them. From my conversation with them, they entertained an opinion that I would report their conduct to the colonial government, and that, immediately on my return to the colony, they would be called to account for their past doings; but finding that no steps have been taken they have become more audacious than ever, and they are now threatening that they will not leave one of the people whom they wish to drive away in possession of a single head of cattle. I did everything possible while I was among them to induce them to lay aside any evil designs they might have against the peaceable and respectable part of the community, and the chief, Kok, promised to protect them; but he is entirely under the influence of Hendrick Hendrick, his son-in-law, who is one of the leading men among the Berghannas, and the worst and most dangerous man among that party. Hendrick is clever, and he is plausible, but he is a thorough scoundrel; and such is his power over the old chief, that whatever resolution he may form, and whatever declaration he may make concerning it, in half an hour Hendrick can make him change his mind. The present is the most favourable opportunity that can possibly occur for putting an end to the disorders of that country, and putting the affair of the northern portion of the colony upon a good footing. The great body of the people at Philippolis are sound at bottom, and will be very glad to be included within the limits of the colony, or to have any system the colonial government may think proper to establish among them, that will deliver them from their present chief, and afford them security. They will be very happy to be placed upon the same footing with the Kat River, and to pay their taxes the same as the other colonists pay theirs.

Cornelius Kok, the chief of Campbell, has no people whatever on the station. The whole of the fountains on the station are running to waste, except that which the chief himself uses, and that on the mission premises. He has literally driven all the people away, and the people who formerly used them are wandering about the country in a state of banishment. This is not the only evil that arises from his conduct; he knows he is hated; and hatred, in such a country, is always accompanied with danger to the object against whom it is directed; and it is to be feared that the alarm which he feels leads him to encourage the disorderly people of the country, in the hope that they will assist him, should he be in distress. For the security of the frontier, and to put an end to the disorders that have taken place, and now threatens it more than ever, I would submit to your Excellency, whether it would not be advisable that both those chiefs should be superseded, and that others should be appointed in their places. There can be no injustice in such a proceeding towards the chiefs themselves; they were appointed to their present situations by the colonial government at the recommendation of the missionaries; and having forfeited the confidence placed in them, when they were appointed to their present situations, government could not be blamed for withdrawing that confidence from them, and appointing others in their places, who will do their duty, and look after the interests of the colony, which cannot be separated from the interests of the Griquas themselves, and the interest of the Bechuannas within their territory, and beyond them.

We have said that there would be no injustice in superseding him; and I am certain that it may be now done without any danger, and with great advantage to the colony. More than three-fourths of the people at Philippolis are attached to the government of the colony, and wish to live under its protection, and Waterboer and the whole of his people are of the same mind. By taking those people into the colony, or making proper arrangements with them, the colony would thus have 400 or 500 men who are well acquainted with the country, who are accustomed to live in it, and endure all manner of hardships when they are under arms, who would be always ready at a call to execute any commands the government might require to be executed, and at a trifling expense. Should the Berghannas, on the contrary, succeed in destroying and driving away the respectable people at Philippolis, it would occasion a loss to the colony that could not easily be repaired. Were the people of Philippolis at this moment under Joseph de Bruin, instead of Captain Kok, and united under Waterboer as their commandant, there is no force that Matsilikatsie could bring against the colony that they would not be able to repel; but if, by the union of the Berghannas and the Corannas, we lose the 200 or 300 good men now at Philippolis, it may require as many British troops to supply their place, and English soldiers can never traverse such a country to destroy banditti as these people can do. The good people of Philippolis do not fear being openly attacked by the Berghannas and the Corannas. They know that their enemies will never face them in the field; they would fly at the appearance of any efficient number of them together; but they fear, lest they murder them separately, and before they shall have time to rally. There is nothing now that keeps them from putting them down but their respect for the office of their chief; and their respect for that office

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arises entirely from their respect to the colonial government, by whom he was appointed to fill that office. The whole of the peaceable and industrious people of this district would consider anything done against their chief as done against the colonial government, while he retains the insignia of office conferred upon him by the government; and it is on this principle that they have hitherto borne their condition, and the sufferings they have had to bear from the weakness of their chief, and the influence of the Berghannas over him. It is not for me to dictate to the government as to the plan to be adopted in present circumstances; but, with your Excellency's leave, I shall suggest what I think might be done to remedy the evils deprecated, and to introduce a new and better order of things on that part of the colonial frontier. It has occurred to me, after having given the subject all the attention I have been able to bestow upon it, that either of the following plans might be employed with effect in this case:

1. The people belonging to Griqua Town, Campbell and Philippolis might be received into the colony on the same footing as that on which the Kat River stands in its relations to this colony.

2. If there are any difficulties to prevent the above plan being immediately carried into effect, or anything that would make it necessary to delay it for a time, the object of the colonial government might be gained at this moment, and every evil that all now dread, prevented, without deviating, in the slightest degree, from the principles on which the government has hitherto acted in relation to the Griquas. The right of the government to interfere in their affairs is a principle with which the people are familiar. The government appointed all their chiefs on the recommendation of the missionaries. The captains of Philippolis and Campbell have proved themselves unfit for the situations they hold; the present state of disorder in that country has arisen out of their incapacity, and nothing can be done effectually to remedy the existing and threatening evils till they are superseded, and a more efficient magistracy appointed to succeed them. Should the above plan be thought of any use by the government, I would recommend Joseph de Bruin as the successor of Adam Kok at Philippolis. J. de Bruin is a man of good sense and of courage, and such is the opinion of all the good people in that district of his abilities and virtues, that were they left to their own election in the choice of a leader, they would choose him. Campbell might be annexed to Griqua Town, it is within a short distance of it, and were it annexed to Griqua Town, Waterboer would very soon make an important station of it. If, however, it is thought desirable to have a chief at that place, Abraham Kok, the brother of the two chiefs of that name, might be appointed to succeed his brother Cornelius. Abraham Kok is a respectable man, he is opposed to the views of his brother, and he coincides with Waterboer in his sentiments, and all general subjects relating to the colony and the country at large. Should the government think proper to appoint De Bruin to succeed Kok at Philippolis, and Abraham Kok to succeed his brother at Campbell, it might be well to consider whether it might not be advisable to make Waterboer commandant over the whole district, such a measure would give unity and strength to the operations of the government on that frontier, and by making a man like Waterboer the responsible individual of the district, it would exceedingly simplify the business of government with the district. Waterboer would by this means be brought into immediate contact with the colonial government, and he being an intelligent and active, as well as a benevolent and just man, the fullest reliance might be placed on his superintendence, and on his communications. Should the government resolve to act on the plan recommended, I have to submit to your Excellency's consideration whether it would not be advisable to give to each of the chiefs a small salary, the chief of Philippolis might be allowed 50 *l.* sterling per annum, and should Abraham Kok be appointed chief of Campbell, he might be allowed a similar sum; should Waterboer have the superintendence of the whole district confided to him, he might, in consideration of the expenses that would be incurred by the journeys he would have to undertake, be allowed about 150 *l.* per annum. I need not say what a trifle such a sum would be compared to the advantages that would arise out of such an arrangement. The expenses of the late commando under Mr. Ryneveld, would cover all the expenses of the system recommended for half a century, and there can be no comparison between the old commando system and the plan of defence proposed. The Griquas placed under such circumstances would be a wall of iron on that frontier of the colony, and they would be the most effective police that the government could employ to see that all the orders of the government were executed, and to apprehend evil-doers either within or without the colony. The Griqua country may extend about 300 miles along the banks of the Craddock and the Orange River. About 50 miles beyond Griqua Town the great desert commences, which stretches to the western coast, a distance perhaps of 400 or 500 miles or more from Griqua Town, along the whole extent of the river from that place to the sea; it is well known that the boors are in a very exposed situation from the banditti that shelter themselves on the islands and thickets on those rivers and its banks. It is on this part of the river where Sturman, the murderer of the families of the boors, and his party, conceal themselves, and still continue to threaten the colonists with fresh murders. Should the proposed plan be adopted, Waterboer's assistance in rooting out such nests of murderers might be most efficient. In short, the Griquas are the only people that are fit for such a work. All the parts of the river are known to them, and there is not a party of those marauders that would remain on its banks, did they know that Waterboer was in pursuit of them; thus, by the introduction of a proper state of things at this moment among the Griquas, and a trifling annual expense, the Griquas might be made the defence of the colony, along a line of frontier of about 700 miles in length. Should the sum in question be any objection to the plan, the thing may be done without costing the government 1 *s.*

Let

Let the arrangements proposed be adopted, and let the government give the people a tariff, and taxes may be levied in the district to defray the expense of the whole scheme; in the event of any such scheme as that proposed being realized, the utmost confidence should be placed in the chiefs, and they should have ammunition and some additional arms always at their disposal, and the ammunition might be given them on this ground, that it was never to be used, except when they might be employed in public service.

That no confusion may possibly arise from the introduction of the plan proposed, I would recommend, that before the intentions of government should be made known, that an officer with 25 or 30 of the Cape cavalry should be stationed at Philippolis. No class of troops not mounted would be of any use in that country, and I recommend that they should be of the Cape corps in preference to any other, from reasons I need not stop to specify. The officer commanding the corps might have his instructions with him, but he might be advised to conceal them for a little time, and to introduce them by degrees. On this subject he might be advised by Mr. Kolbie with great advantage to himself, and Mr. Kolbie is decidedly friendly to the measure recommended. The Berghannas have lately been attempting to drive him away from the stations. They have recently deprived him of his cattle, which could not have been done with any other intention than to induce him to leave the station. Had they succeeded in this, they know that the best of the people would have accompanied him, and they flattered themselves that they could have done as they pleased with what remained of them. The Berghannas, their friends the Corannas, would not dare to attack a British officer with 25 or 30 soldiers. On this subject there would be no occasion for any apprehension, as the officer commanding the party would be supported by perhaps 200 good men in the district, who would instantly rally round him. With such a force, under such an officer, there is no opposing power among the Berghannas and Corannas that would make a show of resistance, and an officer with such a party might be continued there till all the proposed arrangements should be completed, and then the government might, as it might judge proper, either continue or withdraw them. Were the government to erect a permanent military fort in the neighbourhood of Philippolis, and to place such a man as Lieutenant Warden in the command of the party, there would be no harm in such a measure. I have no personal acquaintance with Mr. Warden; I never saw him in my life, but I have heard on the Kat River, and in Caffreland, that he is a prudent, humane man, and has the confidence of the natives of the country; features of character of great importance in a military officer among such people as the natives of the country are on the other side of the Orange River. The stationing of a military post in such a situation, even should government afterwards withdraw it, would, in the first instance, establish the authority of the new chiefs, and convince the enemies of order beyond the boundaries of the colony, that they would be supported by the colonial government.

After what has been stated, and from what is known to the government respecting the state of the country beyond the Orange River, it is unnecessary for me to enlarge any farther on the importance of some prompt and decided measures being taken, to introduce a system of order that will be permanent and useful on the northern frontier of the colony; but long as the article is, and much as I have written on the subject, I cannot conclude without noticing a few things bearing upon the subject, that occur to me at this moment. The horrid murders that have been recently committed on the borders of the colony, the well-known fact that the murderers escaped in the presence of Mr. Ryneveld and a very large commando of boors, that they are yet on the Orange River, emboldened by the success of their daring; and ready to repeat the crimes they have committed with impunity on the helpless boors within the colony, and the deteriorating of the native character by the influence of the traders, and their intercourse with the country beyond the Great River, as well as the daring robberies lately committed by the Corannas and Berghannas, unite in showing that something must speedily be done to encourage the good men on that frontier, intimidate bad men, and to protect the insulted boors from a repetition of those scenes of horror that have so recently taken place, and that must soon be greatly multiplied, if effective measures are not adopted. There is another motive for supporting the Griquas at this moment that I cannot at present avoid mentioning. It is well known that Matsilikatsie has nothing more between him and the colony but the Griquas; and should the strength of that people be weakened, we know that he will immediately seat himself in the country upon the very borders of the colony. From what is known of the man, and of his mode of conducting war, I cannot conceive a greater calamity to the colony than such an event would be. From the Griqua country he could send forth his bands over the colony in such numbers that he would make desolate every part of it beyond the Sneewbergh, and the boors would fall before him like sheep under the knife of the butcher.

With the same facility that he could invade the colony, he could retreat before an English army, where no English soldier could follow him, because he could go into deserts where they could have no water or forage for their horses. The Griquas are the only kind of troops that could follow up such a man, and chastise him in his own country. In addition to the considerations which have been urged to recommend to the colonial government a liberal and enlightened policy in relation to the Griquas, I cannot do justice to my own feelings without noticing another regarding the views the colonial government may entertain as to the future state of the northern frontier of the colony, which will have its weight with your Excellency.

The measures recommended at this moment have become more necessary than ever for the future safety of the colony, from the change which is about to take place in the condition of the slaves. From various causes we need not stop to explain, many of the slaves, and those, perhaps, the most talented of them, may be induced to cross the boundaries of

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the colony. There is something in the character of a freebooter in those wild regions that has great attractions to many of the human race, and such men will be welcomed by the disorderly persons already too numerous in those districts. Laws may be made, and penalties annexed to them, to prevent such persons leaving the colony; but such laws and penalties will be of no effect, if there is not upon the frontier a cordon of troops, or a people spread over it, who will make it their business to see them observed. The Griquas have hitherto served the colony in returning runaway slaves; and we have this security, that they will render all the service to the colony in their power in this respect also; because people of this description joining the banditti, that have always annoyed them, might, especially if they collected in any number, endanger their own safety. If it is not the intention of the colonial government to extend the northern frontier line of the colonial boundary any further into the interior, it will be presumed that the preservation of the Griquas will be found necessary to assist the government in confining the boors within their present limits. The manner in which the limits of the colony have been extending in the Craddock district, where the encroaching boors have nothing to check their progress but the wandering Bushmen, the manner in which they have covered and appropriated 42,000 miles of Boschman country, on the northern frontier of the colony, within the last 12 or 13 years, and the impatience which those recent settlers have discovered to cross the Orange River, and divide among their children and nephews in the Griqua country, clearly evinces that no ordinary circumstances can long confine them within any given limits. No class of the natives I have seen in this country are so partial to a nomad life as the boors; accustomed from their infancy to associate every happiness they look for in the possession of a large country, on which they can find game for the consumption of their families, to enable them to spare their flocks and herds, they have no idea of teaching them any trade, or of dividing their own estates among them, so long as they can get fountains of water and farms as large as their own for them beyond them. Had it not been that the Griquas were in possession of the country, in spite of all ordinary barriers, before this time the boors would have spread themselves far beyond their present limits, and have come in contact with Matsilikatsie. On my late journey into the interior, I found some boors in the Philipopolis district who had persuaded the chief, Adam Kok, to allow them to reside among his people. A petition containing 1,800 signatures, praying that the Griqua country might be given to them, was either presented to government, or was to be forwarded to it. For some days during my journey, before I reached the ford of the Craddock, the prospect they entertained of getting possession of the Griqua country was the only subject of conversation in which they appeared to take a lively interest. The circumstance of one boor having been sent over the river filled the greater part of the boors over that district with the most lively indignation; and I saw two families of boors, near that river, waiting there, in hope that government would soon give them, along with the other boors in the district, authority to cross the river, and take possession of the Griqua fountains. One boor, of the name of Pinnar, refused to allow me to unyoke my oxen, that they might drink and feed for a few hours upon his ground; and the only reason he could assign for his incivility and threatening language he used to my servants was, because I was opposed to the boors getting possession of the Griqua country.

The Griquas have been for years very singularly placed; on the one side they have the boors wishing to drive them from their country, that they may get possession of it, and on the other they have all the banditti of the country, who would destroy them if possible, that they might carry their system of murder and robbery to any extent they may think proper; and if the Griquas shall fall between them, the boors and the banditti must of course meet, and it is unnecessary to say what must follow if such a state of things shall be permitted to take place. Among the boors of this district who have manifested this narrow selfish spirit, I met with some exceptions and heard of more. I believe almost all the boors of the district are ready to acknowledge the integrity and talents of Waterboer, and the services he has rendered to the colony. The field-cornet Jaubert, who is near the Philipopolis district, remarked to a gentleman from whom I had my information, "I never go to my bed one night without being thankful to God that we have the Griquas between us and danger." Had the sentiments of such men had much influence on their neighbours around them, things would have been in a more favourable state in that country than they now are; but the generality of the boors do not look forward to consequences, and they stand in need of a wise government to think for them, and to prevent the destruction they would bring on themselves and their families by the precipitancy with which they are always ready to sacrifice the future to a present gratification. I have never seen or heard of any of them near the Great River who have not been willing to admit, that the character and position of the Griquas is of great advantage to the colony; yet there are very few of them, I presume, that would not be glad to hear to-morrow that the government was disposed to give them possession of the Griqua country. The prospect of possessing a new country, and that of an immediate harvest which they might reap from the droves of cattle they might obtain by the sale of guns and gunpowder and brandy among the natives, would effectually blind their eyes to the terrible reaction that such a system would in a short time bring upon themselves and their families. It is but justice, however, to the character of the frontier boors to modify the above strictures made upon them by remarking, that the greatest degree of virulence against the Griquas I met with in the colony, I generally found amongst those that were farthest from them, who know least about them, and who stood in least need of their protection; while those of the boors on the Craddock and the Orange River envied them their situation for the advantages that have been specified; they generally allowed that the Griquas had afforded them no small share of protection, but the

boors

boors at a greater distance from the danger envied and hated and calumniated them, and could see no propriety in allowing them to remain in that country while they were in want of more room for their increasing families. If, on the other hand, it is the intention of the government to extend the northern frontier of this colony, the preservation of the Griquas would be as important to the colony as if no such extension was contemplated, as in either case it would be necessary to supply the service they might render to the colony by that of the regular troops, and a line of military posts. Were the boors put in possession of the Griqua country, it is impossible that they could be of any use as a military defence to the colony. The boors have no wish to the Griqua country, but for the purpose of having large farms; and the whole of the country belonging to Griqua Town, on which are 2,500 Griquas, and 5,000 or 6,000 Bechuannas, would not satisfy 50 boors. The boors should they spread over the country must be protected. The Griquas, by a proper understanding between them and the government, are not only able to protect themselves, but also the whole of the colonial boundary, extending from the Caledon River to the western coast, including a line of demarcation perhaps 700 miles in length. If a body or bodies of armed men are necessary along this extended line of frontier, the Griquas are certainly in more favourable circumstances for forming an efficient body of this kind than the boors. The Griquas have been all their lives accustomed to a kind of military service; they are well acquainted with the country, they can make themselves merry in situations where the boors would become a prey to despair, and they live in villages, and not like the boors, scattered over an immense country, in solitary farm-houses, and they may readily be called out on any occasion of emergency. The Griquas never trouble themselves about a commissariat, and they never, as has been the case with commandos of boors, allow their enemies to escape while they are making elaborate preparations to follow them. If, on the perusal of this article, your Excellency shall wish for further information on any topic that has been introduced, if any principles advanced require further illustration or confirmation, and if any objections to the principle of interference recommended are suggested, I shall deem it a particular privilege to have your Excellency's wishes communicated to me in writing, that I may have the opportunity of meeting them as soon as possible, and of throwing all that light upon the Griqua affairs and their relation to the colony, which my long and intimate acquaintance with the subject may enable me to impart to it. I have heard but one objection to the principle of interference recommended that has in it a shadow of an argument, and as your Excellency may have heard the objection in question, I shall very briefly dispose of it before I conclude.

It has been said by persons who have a great interest in the continuance of the present system of disorder on that frontier of the colony, and some who have received their opinions from them, that the Griqua chiefs have as good a right to their chieftainship as any other independent chiefs have to the territory, and the authority they exercise over their people, that the colonial government has no right to interfere in their concerns. Were this the fact, that those chiefs had all the rights which belong to the Bechuanna chiefs, the principles advanced on this fact is contrary to all the principles of international law among civilized nations, which allows one nation to interfere with the affairs of another, so far as its own safety is concerned; but the assertion that the rights of the Griqua chiefs stand upon the same footing with those of the chiefs of the independent tribes of the interior beyond them, is an assumption that could not have had any place in the minds of persons at all acquainted with the history of this people. It is to be observed that the Griquas did not receive the missionaries into that country, but that the missionaries found the country for them. When the missionaries, Anderson and Kramer, first went among this people, they found them wandering on the borders of the Beaufort and Clanwilliam districts; after accompanying them five years and a half, and their instructions began to have an effect upon them, the people wished to give up their wandering life and become cultivators of the soil; but they wanted springs of water in that country to enable them to live in one society, and it was to effect this object that the missionaries undertook the journey in which the springs of water where Griqua Town now stands were discovered, and they took possession of them, not in the name of any individuals, but in that of the London Missionary Society. On the return of the missionaries to the people, they informed them that they had found a place for a missionary institution, and from the first day of their settlement at this place, it was agreed to by the people that they were to be there as at an institution which should be subject to the regulations of the missionaries. The only chief which the Griquas had among them, previous to this period, was old Kok, and he was so far from being an independent chief, that he had the staff of a Hottentot captain, which he had received from the colonial government, and he did not then accompany them to the new territory, but retired to his friends at the Kamissberg. Some years afterwards he came to Griqua Town, and wished to be recognized as the chief of the place, and his pretensions were rejected by the missionaries and the people. Previous to Kok coming among them, the missionaries had discovered the springs of water at the place called Campbell, and had fixed upon it as a place to relieve the population at Griqua Town, and the old man was at his own request allowed to go and settle with his family at this place, where he lived and died as a private person. When the missionaries saw it proper to separate the civil from the religious affairs of the institution, they recommended it to the people to make choice of a chief as a civil magistrate; and Adam, or Dam Kok, as he is commonly called, was the person chosen on that occasion; but the missionaries, who always inculcated upon the people submission to the colonial government, did not allow his election to be valid till they had solicited and obtained the sanction of the colonial government to it, and, at their request, a captain's staff was sent to him from Graaf Renet. In 1826, Cornelius Kok, of Campbell, was appointed as a chief at

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that place by the government, by Waterboer. In 1825 I found Adam Kok at the Alexander River; he then pressed me very much to allow him to go with his people to settle at our missionary station at Philippolis. After due consideration, I consented to his occupation of the grounds of that institution on the terms which have been stated in the preceding part of this article.—(See page 144). The communication to which reference has been made was sent him from Cape Town in 1826, a few days before I sailed for England, and while he was yet on the Alexander River, waiting for my reply to his application. I never heard whether he ever applied to the government for leave to settle at Philippolis, and I did not hear, till I had been some time in England, that he had removed to this district; but General Bourke, in reply to a letter from Mr. Clarke, who then had the charge of the Bushmen station, approved of the arrangements I had made, and thereby sanctioned Kok's occupation of that country on the conditions I had specified to him. A brief notice of this origin of the Bushmen missions will throw a little additional light on these subjects. When the Toorn Bergs and the Kephzebah missions were put down, and the country in which they were was given to the boors, a number of the old people who had been at those missions, lived in great distress; and out of compassion for them, and as some compensation to us, the government sanctioned the revival of those missions which had been put down, by allowing us to begin the mission at Philippolis.

The power exercised by the government in this case does not involve in it any question of abstract rights. The Boschmen were the original possessors of this country; it was with the approbation of the proprietors of the country that our mission was began in it; and the sanction of the colonial government was received as a recognition of this people's right to this country. With these facts before us, the question at issue is brought within a very narrow compass. Adam Kok's right to this country is not a right of the same nature with the right of those chiefs who live in the country of their ancestors; his right to reside here is merely one of suffrage. He was allowed to occupy this country so long as it should be found that he protected the mission, and was a safe neighbour to the colony and the colonial government which consented to his occupation of that country while he should be found to fulfil the condition of agreement on which he was permitted to come into it, has not only a right, but is, I conceive, under some obligation to the Boschmen, as well as to the colony, to appoint another chief or magistrate in his place when he is found pursuing a line of conduct injurious to the interests of both. In corroboration of the views I have advanced, in relation to the origin and nature of the power of the Griqua chiefs in general, I beg leave to subjoin the following extract from a letter of the Chief Waterboer, which will satisfy your Excellency on this point. This letter is dated Griqua Town, 11th December 1832, and is addressed to the Rev. Mr. Wright, missionary:—

"My dear Sir,

"My views respecting the origin and nature of the power of the Griqua chiefs are in perfect agreement with those of Dr. Philip, as stated in his letter to you, dated We owe everything to the blessing of God upon the labours of the missionaries in the service of the London Missionary Society. We were no people when the missionaries found us, and it was under these circumstances we became a people. We had no country of our own when the missionaries came amongst us; but were wandering about as fugitives, without a settled abode; and it was the missionaries that found a country for us, and persuaded us to settle on it, and cultivate the land. Adam Kok's father was originally a Hottentot captain in the colony, and came to Griqua Town with a pass from the colonial government; his son, Adam Kok, had previously the mission at Griqua Town, not as a captain, but a private individual. It was not his father's captainship in the colony that was the origin of his office, as a captain at Griqua Town, but the choice of the people, and the recommendation of his appointment, by Mr. Anderson, to the colonial government. I consider the captainship among the Griquas as originating with the people of the missionary station, and recommended by the missionaries, as a necessary step to preserve order at the station. I likewise consider the whole of the power of the Griqua captains as a delegated power, to be assumed for the benefit of the people, and the spread of the Gospel in the country, and among the heathen beyond the Griqua country. For the proper exercise of this power, I consider the chiefs of the Griquas responsible to the people and the London Missionary Society in everything that has a relation to the well-being of the missions, and the promotion of religion and morals among the people. It was at the recommendation of the missionaries that the sanction of the colonial government was asked and obtained to our election as the chiefs of the Griqua people; and this sanction could not have been asked on any other principle than that on which our election was recommended, the well-being of the missions and the people in general. I consider the circumstance of the chiefs taking office from the colonial government as an acknowledgment of their dependence upon the government for their office as captains; and I consider the government which sanctioned my appointment as having a right, "reason being shown for such a step," to withdraw that sanction, and to withhold from me any immunities the office of captain may entitle me to, as far as my political relation to the colony is concerned. Agreeable to your request, before I close this letter, I shall give you a brief account of the origin and progress of Campbell station down to the period at which the appointment of Cornelius Kok received the sanction of the colonial government. In the month of November 1804 I accompanied a party of our people who escorted Mr. Kok, a missionary, to the Bechuanna country, and on our return to Griqua Town we journeyed to the eastward, and in the month of March 1805 we came down upon a number of excellent fountains situated in a large valley, running north and south, which we gave the name of Knoval Valley: after our return home it was frequently a subject of conversation

conversation among us to commence agricultural pursuits at this new place, but nothing was commenced till the year 1811, when Mr. Jauze, one of our missionaries, accompanied by Mr. Burchell, Adam Kok, chief of the Griqua Town, and a number of his people, went as far as Knoval Valley, and at their arrival at that place Mr. Jauze took possession of the fountains and valley in the name of the London Missionary Society. On the return of Mr. Jauze to Griqua Town, he and the other missionaries made arrangements with a respectable Griqua, who went by the name of Short Adam Kok, uncle of Adam Kok, the chief, and brother of old Kok, the father of the said chief, who, with a party of his friends, went soon after to occupy the said Knoval Valley as an out-station of Griqua Town; Short Adam Kok with three of his own brothers, viz. William Kok, Gert Kok and Abraham Kok, also two of his brothers-in-law, Dirk Boer and Jager Boer, and likewise a nephew of his, named Adam Bailie, these persons removed to Knoval Valley 'agreeably to the recommendation of the missionaries.' In the year 1813 Mr. Campbell visited the Griqua country, and Knoval Valley was called after his own name, Campbell. In 1815, old Cornelius Kok, who was a Hottentot captain within the colony above referred to, removed to the Griqua country with a pass from the Governor, Lord Caledon; he first took up his residence for a short time at Griqua Town, but at the recommendation of Short Adam Kok he removed to Campbell, and here he took up his fixed residence as a private individual merely, and was allowed to possess an unoccupied fountain, with lands for his own personal use. In the year 1816 Cornelius Kok, the present chief of Campbell, came to the Griqua country in order to reside near his father; on his arrival he was not put in possession of any fountain or lands of his own, but was granted some agricultural privileges or suffrages. Owing to the chief, Adam Kok, abandoning Griqua Town and going to reside at the Black River, I was chosen chief in 1820 by the people, in Adam Kok's stead: this choice was recommended by the missionaries and approved by the directors of the London Missionary Society, and received the sanction of the colonial government in the year 1822. Owing to the difficulties of the country, and the distance of Campbell from Griqua Town, with some other parts of the territory towards the Vaal River, in 1824, I thought it a desirable thing to have a chief at Campbell to preserve order in the country, and to promote the interest of the missionary labours in that district. I thought it advisable, with the concurrence of the missionaries and the people, to recommend Cornelius Kok as chief of Campbell, and on application being made by me to the colonial government to sanction the appointment, the government was induced to accede to the proposal, and since that period he has continued to sustain the designation of Captain of Campbell.

"Andreas Waterboer,
Chief of Griqua Town."

I have, &c.
(signed) John Philip.

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Appendix, No. 7.

VAGRANT ORDINANCE.

REPORTS OF THE CIVIL COMMISSIONERS.

No. 1.—CAPE DISTRICT.

Civil Commissioners' Office, Cape Town,
23 June 1834.

Sir,

1. I HAVE much difficulty in reporting on the memorial addressed by the Rev. Dr. Philip to his Excellency the Governor in Council, and transmitted to me under cover of your letter of the 6th instant, because, after having repeatedly and attentively perused it, I really find few or no facts, or even alleged facts, in it to report upon.

2. Memorialist's object seems to be, to show that the 50th ordinance had the effect of relieving the Hottentots from the oppressive weight of former laws; that since the promulgation of that ordinance their condition has rapidly improved, and that the measure now in contemplation is calculated to operate to their disadvantage, and bring them back to their former state.

3. That the 50th ordinance was intended to improve the condition of the Hottentots, and was highly calculated to have that effect, had it been accompanied by an Act such as is now contemplated, is most certain; but it is equally true, that, as it was, it proved highly injurious to the cause it was intended to benefit, and the universal desire for a vagrant law at the time, as stated by memorialist, shows this to have been the public opinion. The desire for a Vagrant Act was not, however, attributable to the causes to which memorialist ascribes it; it was not expected or wished that such Act should have the effect of preventing Hottentots from leaving the service of the European colonist, nor was it feared that they would assemble "in regular banditti," to attack the lives of their former employers; but a people prone to habits of wandering, of idleness, and of drunkenness, as the Hottentots proverbially are, when suddenly freed from all control, was expected, and with reason too, to pursue those courses which could not but be injurious to property, and destructive of their own comforts, morals, and lives; it was with a view of preventing those evils that a vagrant law was so loudly called for; and to no class of persons in the colony did the non-existence of such law prove so hurtful as to the Hottentots themselves.

4. During the winter immediately following the promulgation of the 50th ordinance, Hottentots

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tentots of both sexes were seen in numbers, at all hours of the day and night, in a state of drunkenness and entire nakedness, in the vicinity of Cape Town and along the Wynbug and Simon's Town roads, exhibiting scenes the most indecent and disgusting; and the lives of many of them were actually sacrificed from exposure, in a state of insensibility from drunkenness, to the inclemency of the weather, whilst any efficient interference of the magistrates or police was prevented by the provisions of the 50th ordinance; nor were similar occurrences less frequent or less pernicious in their effects in other parts of the colony, and a reference to the records of the circuit and magistrates' courts, will show the increase of crime attendant on the promulgation of that ordinance.

5. That the condition of some Hottentots is, however, recently improved, is perfectly true; but this is chiefly to be attributed to the encouragement held out by government to well-conducted Hottentots, in making them grants of land; the settlement at the Kat River is an instance. In the residency of Simon's Town, and some parts of the Cape district, many of them obtained grants at my recommendation; and all, or nearly all of these, have proved themselves highly deserving of such encouragement; but no class of persons complain so much, or have so much cause to complain of the want of a vagrant law, as the Hottentots and other people of colour who are proprietors of land. Crowds of wanderers from all directions flock round them, on the plea of relationship or acquaintanceship, paralyzing all their endeavours at improvement, and rendering every exertion to better their circumstances absolutely abortive.

6. On the circumstances which memorialist states to have come to his knowledge whilst on a visit to the frontier, I cannot of course venture an opinion; but I believe that alleged facts, said by Dr. Philip to have been communicated to him by others, ought not to be allowed to operate in any way, either for or against so important a measure as that in contemplation.

7. I do not see the grounds on which memorialist rests the assertion, "that the proposed law would bring things back to their former state." A Hottentot, or any other person possessing the means to maintain himself and family, or who, wanting the means, voluntarily works, and applies the proceeds of his labour to that purpose, will not in any way be affected by the measure; but such as neither possess the means, nor are willing to work, must indubitably maintain themselves by dishonest practices,—such as, I am sure, the reverend memorialist could not for a moment think of countenancing. The whole of this and the succeeding paragraphs appear to me mere declamation, opposed to reason and common sense. Memorialist wishes in fact to maintain, that so long as the Hottentots are suffered to wander through the colony without any fixed residence, without property, and without work, they will be honest, industrious, and must improve; but that so soon as they are compelled to gain an honest livelihood by their own labour, they must either steal or starve.

8. I deny the justice of the inference which the memorialist draws from the recent proceedings of some of the field-cornets of the Cape and Stellenbosch districts; it does not follow that, because they, as individuals, concurred in such measures as the inhabitants deemed necessary to adopt for the protection, as they conceived, of their private property, they should be expected to act unjustly in executing a law which will not even come into operation until after such private property shall have ceased to exist. It cannot, however, be denied, that the power of the field cornets ought to be limited to apprehending vagrants, and bringing them before the nearest magistrate; and that therefore, under present circumstances, much inconvenience may be found to arise from the great distance at which many of the people reside from the seat of the magistrate; but this may be obviated by appointing justices of the peace from among the most respectable farmers in the distant parts of each district; and I feel assured that a sufficient number of men of high character may be found, willing to undertake these duties gratis, and who are incapable of cruelty and injustice, of which the memorialist gratuitously accuses all of them.

9. The complaint that the farmers do not allow the Hottentots to graze their cattle in their neighbourhood, as they did formerly, is positively absurd. I can see no injustice in the farmers not allowing Hottentots' cattle to trespass on their lands, since the Hottentots will neither work nor pay for their grazing: the complaint, in fact, like the 50th ordinance, militates against the cause which the memorialist endeavours to support; for it admits, that whilst the Hottentots were in the service of the farmers, they had the benefit of grazing their cattle, besides their wages and maintenance, an advantage of which the 50th ordinance has virtually deprived them; and that any farmer or field cornet had ever attempted to prevent the cattle of Hottentots from grazing on Hottentots' own lands, is absolutely untrue.

10. Having thus endeavoured to follow Dr. Philip through his memorial, it remains only for me to express my surprise, that a person professing to entertain principles of impartiality and justice, should have viewed but one side of this most important question, and that side only in as far as, in his idea, the interests of one class of individuals alone are likely to be affected. To the approaching period for emancipating the slaves, and to the changes that that measure will produce, memorialist does not advert; a measure alone, even if a single Hottentot did not exist in the colony, which obviously points at the necessity for a vagrant law.

11. I have ascertained the opinions of the inhabitants on this subject, and those fully support my own; and the people trust that no opposition will induce his Excellency the Governor in Council to abandon a measure which the circumstances of the colony render absolutely indispensable.

The Hon. the Acting Secretary
to Government.

I have, &c.
(signed) W. M. Mackay, Civil Commissioner.

No. 2.—STELLENBOSCH:

Sir,

Civil Commissioners' Office, Stellenbosch, 27 June 1834.

1. I HAVE the honour to acknowledge the receipt of your letter of the 6th instant, transmitting, for my report, copy of a memorial addressed to his Excellency the Governor and Legislative Council, by the Rev. Dr. Philip.

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2. I do not hesitate to say that, as far as I had opportunities of judging, the ordinance No. 50 was followed by evils to many, but more especially to the Hottentots themselves.

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3. Whatever may have been the effect of that ordinance in other districts, I can safely venture to assure his Excellency, that in this it had the effect of encouraging that people to lead a wandering, idle and dissolute life, causing losses to other inhabitants, and indescribable misery and wretchedness to themselves; and the memorialist, I think, cannot be ignorant of the fact, that many lives fell victims to those excesses which, after the publication of that ordinance, the free people of colour were permitted to commit, and which, in the absence of a vagrant law, could not have been prevented. The consequence is, a decrease in the number of Hottentots in this district, at the average of 131 in each year since 1828, as is shown by the enclosed return.

4. Up to that time, I know the Hottentots, as far as regards this district, to have been better off than at present. They had a home for themselves and their families, and were provided for according to the means and circumstances of their employers, and crime among them was of much less frequent occurrence, as the criminal records will show.

5. I believe there is no part of the world where vagrancy is less excusable than in this colony; there are none who may not find employment, and be well paid for it. The average rate of wages in this district, per mensem, for Hottentot men contracted for 12 months, with one, but more commonly two suits of clothing during that period, is 4 s. 3 d.; ditto, ditto, without clothing, 10 s. 6 d.; for Hottentot men, contracted for shorter periods, to proceed on journeys to the interior, 15 s. 7 d.; ditto, women, two suits of clothing per annum, or per mensem, 2 s.; but idleness is innate in the Hottentot, and, generally speaking, he will not work unless compelled, but will rather have recourse to any other mode, however dishonest, of procuring the means of maintenance; and to check this evil alone a vagrant law is necessary.

6. With respect to memorialist's statement as to his visiting every district in the colony, with the exception of Graaf Reinet and Beaufort, and his having ascertained from farmers and magistrates "that crime was on the decrease," &c., I am bound to report, that if he, in mentioning every district, includes this one, neither the present magistrate nor his predecessor ever had any conversation with memorialist on the subject, nor could they possibly have given him the information he states himself to have received.

7. The memorialist assumes that all Hottentots will be compelled to enter the service of the farmers: the proposed ordinance cannot be said to be intended to have this effect, or to interfere with any one who maintains himself by honest means.

8. It is calumnious to assert that injustice to Hottentots was ever countenanced by authority in this colony; during my public service of nearly 30 years, I have never known an instance of the kind. Cases of ill-treatment by individuals have certainly frequently occurred in the colony; but instead of being encouraged by authority, justice was invariably administered with impartiality.

9. The construction put by memorialist on the conduct of some of the field-cornets of this and the Cape district, on a recent occasion, is most illiberal and unjust; very great excitement prevailed at the time, and some field-cornets may have joined others in expressing their feelings in a matter in which their own interests were so deeply involved; but the memorial recently addressed to his Excellency the Governor by the slave proprietors, and among them the field-cornets alluded to, was so moderate as completely to disprove the alleged facts stated by memorialist: at all events it does not appear to me, from the draft of the intended ordinance, that the field-cornets are intended to be invested with any power in deciding in cases of vagrancy.

10. It is not true, (at least as far as regards this district), that the Hottentots have become alarmed on account of the proposed ordinance. Some of them still quietly occupy lands as they have hitherto done, and these, with all others honestly employed, do not dread, and have no cause to dread, the effects of the measure.

11. I feel it my duty to mention, that "the unsettled state of the Hottentots has caused injury to the revenue; during the period fixed for collecting the taxes, they leave each division in succession as the civil commissioner proceeds, and often return as soon as he has passed, thus evading the payment of their taxes, and their poverty precludes the possibility of prosecuting them, the expense to government being found to exceed the amount claimable."

12. I have only now to add, that the inhabitants of the district generally agree with me in opinion that a vagrant law has become necessary, and that it will be more especially indispensable from—and after the time fixed for the emancipation of the slaves; it will give security to property, it will benefit industry, and effectually check idleness and vagrancy, now so generally and justly complained of.

I have, &c.

(signed) D. W. Ryneveld, Civil Commissioner.

APPENDIX TO REPORT FROM SELECT COMMITTEE

No. 7.
 Grant Ordinance.
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RETURN showing the Hottentot Population of the District of Stellenbosch, as taken from the Official Rolls of the Field-cornets, between the Years 1828 and 1834 :

YEARS:	Males.	Females.	TOTALS.	Decreases.
1828	915	731	1,646	—
1829	875	737	1,612	34
1830	785	649	1,434	178
1831	709	576	1,285	149
1832	677	543	1,220	65
1833	583	403	986	233

Decrease in five years, or 131 each year, 658.

No 3.—UITENHAGE.

Civil Commissioners' Office, Uitenhage,
 26 June 1834.

Sir,
 In reply to your letter of the 6th instant, relative to a paragraph of the Rev. Dr. Philip's memorial, I beg to inclose herewith, for his Excellency the Governor's information, copy of my letter to the resident magistrate and the clerk of the peace of George, dated 12th instant; copy of Mr. Wentzel's communication to Mr. Anderson, dated 17th instant; Mr. Anderson's replies thereto in original, both dated 20th instant, and an affidavit from Cathryn Moos; and which documents I humbly trust his Excellency may deem sufficient in the case in question.

I have, &c.
 (signed) J. W. Vander Riet,
 Civil Commissioner.

Civil Commissioners' Office, Uitenhage,
 26 June 1834.

Sir,
 1. With reference to your circular letter of the 6th instant, I beg to state that the sentiments set forth in the memorial of the Rev. Dr. Philip on the proposed ordinance to suppress vagrancy, seem to coincide with the opinion entertained by persons here, who, from their local knowledge, long experience, impartiality, &c. are capable of judging on the subject, and as I concur in the view they have taken of the case and expressed in the accompanying memorandum, I therefore respectfully beg to submit the same for the consideration and to the better judgment of his Excellency the Governor and Legislative Council, as far as my districts are concerned.

2. With the view of insuring a due collection of the annual taxes, also to have a better check on persons of a roaming disposition, and likewise easier to detect deserters, &c., it appears to me to be desirable that every individual, whether of the white or coloured population, free black, &c., coming to reside (for whatever period) in or leaving any of the field-cornetries, should be obliged to give notice thereof to the field-cornet, provincial field-cornet, or to the chief missionary in such ward, and removing to another district, to obtain from the civil commissioner or magistrate the usual certificate of removal.

That no government lands be occupied without special permission.

That no cantenens be allowed beyond the limits of towns or villages where there is a proper police.

That the outspan places be exclusively reserved for the use of travellers, who will, however, not be allowed to remain there longer than 24 hours, unless in extraordinary cases; and

That in the event of theft or other crimes being committed, the field-cornets and inhabitants should use more diligence to detect the perpetrators, in order to be dealt with according to law.

In conclusion, I beg to say, that what I have stated is merely my humble and candid opinion, which I have formed from my local knowledge of the Uitenhage and George districts only, being unacquainted with the local circumstances of the other districts.

I have, &c.
 (signed) J. W. Vander Riet,
 Civil Commissioner

MEMORANDUM.

1. I consider that the effect of the proposed ordinance to suppress vagrancy would be to revert precisely to that state or condition in which the Hottentots were existing prior to ordinance 50, that of compulsory service, which compelled one portion of the community to serve the other at a minimum remuneration of wages. It prevented the Hottentots ever emerging

emerging from a state of degrading servility, and had, at the same time, the most baneful consequences on the character and habits of the privileged class.

2. The release of the Hottentots from this state of thralldom had no doubt generally, at first, the effect of depriving the farmers of the labourers who had become indispensable to them in the management of their farms; but this disadvantage has, in a great degree, been ameliorated by its having become an incentive to more industrious habits on their part, as well as their children; and they now, in most ways, perform themselves those very services which devolved on the Hottentots while they were existing in a state of inactivity.

3. I feel convinced that a better order of things are daily beginning to appear, from the operation of the 50th ordinance. The wholesome relations which should exist between the master and servant are beginning to be established where the services of the Hottentots are wanted; his wants and comforts and feelings are not so utterly disregarded as they were in past days, when they could be arbitrarily obtained; and I should think that any general improvement in the country, which will enable the farmers to give fair wages, will have the natural tendency of inducing the Hottentots to enter their service.

4. Another effect of ordinance 50 has been to raise the price of daily labour of Hottentots in the villages, which has in many instances furnished the profligate with the means of gratifying their addiction to ardent spirits, and in others to clothe themselves better, and partake of many comforts they never before had the means, or even the desire to obtain. This point can be fully established by reference to any shopkeeper in this town, who cannot deny that, seven years ago, a Hottentot was scarcely permitted to cross the threshold of the shop-door, while at present their custom is, in many respects, studiously sought for. I would also request any impartial person to contrast the appearance of Mr. Mcssee's congregation, on Sundays, with what was the condition and feelings of the same class five years ago.

5. Besides, vagrancy is a very vague or indefinable offence in a colony where there is no begging, enjoying a fine climate, and cheap provisions. In England, the curse of vagrancy is, that the industrious are called upon to support idleness. In this country, the ordinance 50 has not caused any tax to be laid on the public to support the poor; and if what may be considered vagrant habits lead to stealing and marauding, let the vigilance of the local authorities, combined with a greater degree of exertion on the part of the inhabitants, be actively used to apprehend the transgressors. But I see no cause why the public at large should be exposed to the encroachment on their liberty, because in all cases robberies are not detected, or that farmers cannot get servants, or that the Hottentots are contented with a mode of existence repugnant to the ideas of the white population.

6. I also consider the ordinance would open a door for oppression, and for the exercise of illiberal or vindictive feeling, not only against the class held in such contempt by the mass of colonists, but towards strangers, say European labourers, &c., men of irregular habits, which, according to the ideas or interpretation of some country functionary, might be deemed vagrant. In a country like this, there should be no check to locomotion. The more Englishmen get accustomed to mix with the farmers, whether as servants, or for whatever purposes, the better.

7. If the Government consider that any measures are necessary on their part, consequent on the working of ordinance 50, I should conceive the most effectual mode would be in maintaining the police, in the country districts, in a more efficient condition than they are at present, in regulating canteens, providing a better system of prison discipline,—in diffusing education and religious instruction for all classes in the field-cornetries. These, combined with the opening of new channels of industry, so as to raise the demand and value of labour, would be the best corrective for existing evils.

8. I also think that sufficient allowance is not made for the gradual improvement of the Hottentots. Among the rising generation, from the effect of schools, and their present improved position, they imbibe ideas which their parents never have had the opportunity of doing. Those who advocate a system of coercion for the improvement of men, in preference to the influence of education and mild and impartial laws, argue against facts which the world at large is now maintaining with more zeal than in any former age.

Civil Commissioners' Office, Uitenhage,

12 June 1834.

Sir,
IN transmitting to you the annexed copy of a Government Letter addressed to me, under date the 6th instant, relative to that part of a memorial from the Rev. Dr. Philip, mentioning the circumstances which had lately brought not less than 200 Hottentots to Pecaltsdorp, you will perceive that I have no other alternative but to request of you the favour to make, as early as you conveniently can, the most minute inquiry as to the truth of that statement, in order that I may furnish his Excellency the Governor with a detailed report thereon.

W. A. Wentzel, Esq.,
Resident Magistrate, George.

I have, &c.
(signed) J. W. Vander Riet.

P.S.—I have requested Mr. Kugs to assist in making said inquiry, should you require his co-operation.

Civil Commissioners' Office, Uitenhage,
12 June 1834.

No. 7. Sir,
Vagrant Ordinance. The resident magistrate of George having, by my letter of this day's date, been requested
Reports of the Civil Commissioners. to institute inquiry into a certain statement made by the Rev. Dr. Philip, I shall therefore
feel obliged if you would assist in making that inquiry, should Mr. Wentzel perhaps stand
in need of your co-operation in this respect.

I have, &c.
(signed) J. W. Vander Riet, C.C.

W. C. Kugs, Esq.,
Clerk of the Peace, George.

Sir,
George Town, 17 June 1834.

It having come to the knowledge of government that an unusual number of Hottentots have recently located themselves at your institution, I have received a communication to ascertain the truth of the said statement; and if so, the number, and what cause can be assigned; the more so, as a report has been made that a field-cornet had said to them, that they were no longer to be allowed to remain without masters; that they must enter into service, or leave their habitations, and that the 50th ordinance was to be taken from them.

I have, &c.
(signed) W. A. Wentzel, Resident Magistrate.

Sir,
Pecaltsdorp, 20 June 1834.

IN reply to your communication of the 17th instant, I beg leave to state the following: The number of individuals belonging to this institution previous to April last was 616, including men, women and children; the number at closing my return to government, was 695, making an increase of 379. With regard to the causes to be assigned for this large increase, it is not in my power to specify, as an order for a return to be made to government was general in all the field cornetries: this appears from a circular from government, a copy of which I received. Many who came for admission here were formerly belonging to the institution, but had been long absent. Many came from George Town and places adjacent, requesting admission. The reasons assigned were various, and it would be impossible for me to offer a specific statement; I can only say, a very unpleasant feeling and sensation seemed to prevail, *i.e.*, that if they did not now enter the institution, they would not be able to do so at a future period; that they would have to enter into contract service with the farmers. This idea seemed to prevail, but to trace the source thereof I cannot. I can only say, I used no influence whatever, nor gave the least encouragement to their seeking admission. I did all I could to allay the impression which seemed to have caught hold of them. In three cases it had the effect that the persons returned, seemingly satisfied. With regard to my act of admitting, I pursued my usual course, not thinking it to be my duty to reject any who (upon inquiry) had no legal hindrance, and requested admission.

In reference to the report of the field-cornet, I did hear of a case related by a woman from Droog Veld, who came here for admission. She said the field-cornet told her, "You must go to the school, or engage somewhere in contract." With regard to any remark upon the 50th ordinance, I have not heard any such remark.

I have, &c.
W. M. Anderson.

To W. A. Wentzel, Esq.,
R. Magistrate, George.

Cathryn Moos, of Pecaltsdorp, maketh oath and saith, that she, deponent, with the consent of Paul Fouché, lived on the place, "Klein Brak Rivier," situate in the ward of Mossel Bay, district of George, now occupied by Michiel Van Breda and said Paul Fouché, about two years without being engaged to any one; that she, deponent, at times cooked and washed for the family of Paul Fouché, for which she received food and clothing for herself and her six children. Previous to the last annual opgaaf, and shortly after last new year, the field-cornet of the said ward, "Jan Meyer," came to said place with property-declaration billets; at that time deponent gave up a list of property to said officer, and on that occasion said Breda signified to said field-cornet that he and his co-occupier of said place were resolved not to allow any person to remain on it without entering into contract, whereupon said field-cornet asked deponent what her intention was; and upon her replying, that she should not contract with any person, the field-cornet mentioned to her, that it would be advisable for her to look out for another habitation. Deponent remained some time at said place before she removed to the missionary institution at Pecaltsdorp, where deponent went of her own free will; neither the said field-cornet or any other person ever said to deponent that she would be obliged to go to a school, or engage somewhere under contract.

Deponent chose Pecaltsdorp for her residence, in order to have the benefit of resorting to church and to have her children educated.

Sworn before me at George Town,
this 21st day of June 1834.

(signed) the mark
+
of Cathryn Moos.

No. 4.—GRAAF REINET.

Sir,

Civil Commissioners' Office, 28 June 1834.

1. In reply to your letter of the 6th ultimo, directing me to report on the memorial of John Philip, D.D., I beg, in the first place, to express my regret that other public business and the great importance of the subject upon which I have to report, have hitherto prevented me from complying, in this respect, with the desire of his Excellency.

2. I have given the most undivided attention to every statement and argument contained in the memorial, and, keeping in view the true state and existence of the lower orders in this district, I do not hesitate to express my conviction that the proposed ordinance for the suppression of vagrancy is not only at present imperatively called for, but that it does not even go far enough for what the present state of the vagrant population would seem to require.

3. I must confess that it is possible that the proposed law might be attended with temporary inconveniences to persons not strictly vagrants; but for a single case of that nature, I think that any similar law would reclaim at least 10 idle and vagrant persons, who would otherwise remain in a state of actual and immediate loss to the community in general.

4. I am not of opinion that the proposed law can, with reason, be compared with those laws that were in force previous to the ordinance No. 50, as those were applicable to a particular class only, while the proposed law extends to the indolent of every class, without distinction, and the pretence that all vagabonds belong to a certain class, seems a very insufficient and unsatisfactory reason for permitting vagrancy; one might with equal reason say, that because all those who steal are vagabonds, the punishment for theft presses with undue severity on one class.

5. I agree with the memorialist, that many irregularities were expected to follow the promulgation of the ordinance, No. 50, but the conclusion I came to differed materially from that which the memorialist himself says was forced upon him; for he says, that after proper inquiry, he had found that the alarm had no other foundation but in the minds of the inhabitants, whereas it is a fact which I can testify, that thefts of horned cattle and sheep were at that time daily committed, and to a great extent; and in the same year of memorialist's journey, no less than 183 persons, falling under the usual term of vagrants, were convicted before the magistrates and circuit courts of "vagrancy and cattle theft."

6. The description given by memorialist of the state of the servants in this district in the year 1825, as compared with 1832, appears to me partial and very much disguised, by such expressions, for instance, as "living on offal;" whereas want of meat for food is the last thing of which a cattle farmer's servant can complain; and I have it from my own observations, that offal is generally considered as a delicacy, and seldom given to the servants. Another figure of speech calculated to mislead is, "standing erect in the presence of their master." I am not aware that such a humiliation as must be inferred from this expression has ever been the state of the servants in their deportment. With respect to the dejection and wretchedness which he says to have observed among the servants under forced labour, it is true that such might be expected, but I am fully convinced that this has never reached that misery to which those were exposed who have since led a vagabondary life.

7. I have not the least doubt but that the state of those who, after the promulgation of the 50th ordinance, were prevailed on to take service, has been in many respects improved; but the low rate of wages which continues to be paid shows that either the services of that class are not considered of more value, or that their continuance is of too uncertain a nature.

8. It is to be hoped that the ordinance will not affect any persons who can honestly support their families in a state of independence, as is presumed by the memorialist, who pretends that the law will be abused in every case; and it is to be wished that, either by proper provisions against abuses, or from the improved feelings of the inhabitants, abuses may be rare; at all events they must be considered as exceptions.

9. I would be able to name many persons, scattered at great distances over this district, who, I am convinced, would conscientiously discharge the duties of magistrate, and would free the law from the greatest difficulty I can presume at present, namely, the distance from the district towns.

10. It is only a small portion of the Hottentots who, as memorialist states, know the value of money, or would work better for higher wages.

11. With respect to such of those people who may be scattered over the colony, and possess both property and a good character, and I know several instances of this nature, I have not the slightest doubt but that if they could be assisted with small grants of land, either in villages or elsewhere, that they would prosper, and that it would contribute to the improvement of others; and, if authorized by Government, I could settle with advantage on Government River in this town several industrious tradesmen who reside here.

12. With respect to the Hottentots flocking to the missionary institutions from fear of being compelled to earn their livelihood by their own industry, I must confess, if this be the truth, it is lamentable; but his Excellency will not fail to remember, that a similar complaint, as was said to have been made at Pecaltsdorp, was made at the Kat River by certain Hottentots of this district, which, upon inquiry, was found totally groundless; but it seems no argument against this law that industrious persons have been misinformed as to its object; and if vagrants have, in consequence of being alarmed thereby, fled to the institutions, I consider this a direct argument in favour of the law, as it would enable those persons upon whom they encroach to compel them to take service if they cannot support themselves otherwise.

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13. My

No. 7.

Vagrant Ordinance

Reports of the Civil
Commissioners.

No. 7.
Vagrant Ordinance.
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Reports of the Civil
Commissioners.

13. My report relative to the commando, as well as similar reports from this district during a series of years, will show that great numbers of bushmen and others are in the habit of assembling together in the vicinity of the frontiers, until they, after having consumed their scanty supply, are driven to the necessity either to disperse and to go and steal, or to join in possessing themselves of all the cattle of any weak-defended place, by murdering all the people they may find there, and then proceed over the boundaries to consume what the cattle they have stolen; this state of things, and the want of any well-understood provision respecting vagrancy, leads to the necessity of commandos, which are often of necessity accompanied with the shedding of blood.

14. I am humbly but firmly of opinion, that all the mischief resulting from arbitrary power will much sooner arise from this state of things than from a simple law against vagrancy, which would have the desired effect of preventing these bands from collecting together in such dangerous numbers.

15. I cannot possibly conceive how this ordinance can be said to establish arbitrary power over servants; arbitrary power corrupts and destroys the mind, but not to that degree as is caused by the present lawless state of affairs on our frontier. I do not know what people could suppress their feelings, if they were exposed to the attacks of bands of vagrants who roam about unrestricted by any law, who murder defenceless families in the most cruel manner, and often destroy with poisoned arrows what they cannot consume.

16. His Excellency will perceive from the before-mentioned report, that I have distributed the people whom I have on that occasion found together, until I shall have received instructions how to act. According to strict law, I could only interfere with those who were suspected as having been accessory to the murder and robbery; but his Excellency will no doubt admit the difficulty in which I was placed. I saw that they had not even enough to subsist upon for a week; I knew, by long experience, that they never exercised any judgment or precaution; if left to themselves, they must have joined in a fresh attack on some place. In the eye of the law of this colony they were free burghers, subject to payment of taxes, and to serve on commandos (neither of which is done in this district by one out of 500 of this people); they are, for the purposes of deceit, held up as beings greatly improving in civilization; in as having attained a higher degree of civilization than even the colonists; but with the facts before me, I was forced to do that which a vagrant law would have effected; namely, to place them where they could honestly support themselves, even with the sacrifice of that share of their liberty which they have misused, and I am fully convinced that this was the best arrangement I could make, under existing circumstances, as the depredations they commit would justify any future commando in extirpating them.

17. A reference to the case which has lately occurred will show, more than any argument I can adduce, the state of affairs in this district, and the necessity of a law against vagrancy.

18. The feelings of the inhabitants, respecting which I am desired to report, can be imagined, when it is considered that they were the principal sufferers from the present state of the laws. It is possible, as the memorialist states, that some persons might have expressed those feelings which he attributes to the inhabitants in general, and it is also possible that persons who never saw any other system than that of compulsory labour, when they experienced the difficulties which accompanied the releasing the Hottentots from all restrictions, might have expressed a desire for the repeal of the ordinance, No. 50, but I can safely say that such narrow ideas have never been cherished by any person of influence of this district, even among the most ignorant of the farmers.

19. The inhabitants were perfectly convinced that an equality of all lawful rights would be extended both to the slaves and Hottentots, and their wish has always been for laws against vagrancy which would sufficiently check the irregularities that have been experienced.

20. I last week had the honour to state that, at the request of several inhabitants, I had sanctioned a public meeting, when the inhabitants might express their sentiments on the subject; this I thought the best mode to get at the true state of their feelings. I have now the honour to transmit copy of a memorial, grounded upon the resolutions taken by the meeting, which memorial is now lying for signature, and will, as I have been informed, be transmitted by the next post to his Excellency and the Honourable the Legislative Council, and from what I previously knew of the general feelings of the inhabitants of this district, as well as from what has transpired at the meeting, which was well attended, and where all the resolutions passed without a single dissentient voice, I hesitate not to state that the memorial may be taken as expressing the true feelings of the inhabitants of this district.

21. It is with great satisfaction that I am able to report that those resolutions which recommended the encouragement to industry among the coloured classes were adopted with loud applause, in a meeting of more than 170 persons, and in a place where the supposed prejudices of the colonists were considered by such writers as the memorialist to be so inveterate as to be utterly inextirpable.

22. I have further the honour to state, that when it was proposed at the meeting that the memorial should be transmitted to the several field-cornets for signature, an amendment (the only one proposed) was adopted unanimously, to the effect that this course ought not to be taken, as it might afterwards be said that the memorial had been got up in an improper manner, and that the signatures were solicited thereto.

23. I also consider it of importance to state, that the memorial must be taken to express not only the feelings of the inhabitants accustomed to slavery, but also the sentiments of many persons who abhor slavery, who were always favourably inclined towards the lower classes, but who consider the checking of vagrancy absolutely necessary for their improvement.

24. With reference to that part of the memorial where the memorialists appeal to their loyalty

loyalty and ready acquiescence in the Slave Abolition Bill, when the same was, in obedience to the Governor's circular, communicated by me to them, I consider it my duty to avail myself of this opportunity to state, for the information of his Excellency, that this good inclination of the inhabitants was greatly promoted by Mr. D. Moodie, the protector of slaves of the Eastern Division.

25. In the discharge of the critical duties of his office it became his duty to decide disputes between different classes of society, namely, between master and slave, the difficulties of which can be better comprehended by those who are acquainted with the relative situations of those people, than here expressed; but through the mildness of his manners and the moderateness of his character, he succeeded in convincing the culpable of his guilt, without at the same time creating any exasperation either on the part of the master or the slave: good faith was thereby established, and I hesitate not to say, that he was thus in a measure the cause of that good understanding which at present so happily exists in this district among the slave owners.

26. In general, I have to report that it is my considerate, positive and conscientious opinion, that the memorial on which I now report contains a dishonest and partial review of the circumstances of the lower classes, and of the feelings of the inhabitants; and that, even with the prejudices with which the memorialist commenced his tour of inquiry, it is quite impossible that he could have come to such conclusions if he had had a proper source of information, or had availed himself thereof. He seems totally blind to anything which appears unfavourable to his previously formed ideas. As an example, I have been authorized by the resident magistrate to state, that while Dr. Philip was in this town in January 1833, at a time when he says the state of the Hottentots exhibited so many signs of improvement, the bushes and ravines in the neighbourhood of this town were infested with persons of that class in a state of the greatest wretchedness, caused by their own indolence; and that some days before memorialist left Graaf Reinet, the magistrate gave directions in open court, that any vagrants that were discovered were to be apprehended and brought before him, as they would have the advantage of so able an advocate; in consequence of which order about 40 persons were apprehended, while memorialist was still in Graaf Reinet, a proceeding which could scarcely have escaped the observation of a person who was practically engaged in inquiring into the state of the Hottentots; but when they were the following morning brought before the magistrate for examination, it was affirmed that memorialist had left this place that same morning, and yet he ventures to assert "that he inquired with all diligence, and made use of all the sources of information to which he had access."

27. After the most mature consideration, therefore, I have to state as my humble opinion, that the memorial upon which I have now reported was dictated by enthusiasm, and is calculated to mislead, and that the same does not contain a single fact or argument of any importance, which, in my humble opinion, should move the council to delay the making of proper provisions against vagrancy in this colony.

The Hon. the Acting Secretary
to Government, Cape Town.

I have, &c.
(signed) *W. C. Van Ryneveld*,
Civil Commissioner.

NO. 5.—ALBANY.

REPORT on the Memorial of the Rev. Dr. *Philip*, on the subject of a proposed Vagrant Law.

Graham's Town, 4 July 1834.

1. From my own observation during a period of 14 years, and from the representations made to me by a great number of persons, I am deeply impressed with the conviction that an ordinance is absolutely indispensable. Paragraph 2.

2. The laws from which the Hottentots were relieved by the 50th ordinance were not "similar to that now in contemplation." Those were partial enactments, applying expressly to the Hottentots; that which is now proposed is general, and applying to all equally.

3. Soon after the promulgation of the 50th ordinance, a public meeting of the inhabitants of Albany was convened for the purpose of considering the expediency of petitioning his Excellency the Governor to relieve them from the depredations to which the supposed removal of all restraint upon vagrancy had exposed them. The petition then addressed to Government was signed by upwards of 600 persons, chiefly English proprietors in this district, and I have no reason to believe that any of those persons have since altered their opinion respecting the necessity of an ordinance for the better suppression of vagrancy in this colony. Paragraph 3.

4. The evils sustained in consequence of the want of a vagrant law were fully as great as had been anticipated.

5. It does not appear from what particular sources the petitioner drew his information; my own observation, the representations so frequently made to me by many of the most respectable inhabitants of the district, and the great number of convictions, (considering the serious inconvenience which attends the prosecution of offences from the remoteness of the seats of magistracy,) all convince me that "vagrancy and crime" were not on the decrease at the period referred to by the petitioner. Paragraphs 4 & 5.

6. These paragraphs refer to a transaction with which I am totally unacquainted.

7. For the reasons stated in my observation on paragraph 4, I regret that I cannot concur in the petitioner's opinion, that "ever since the publication of the 50th ordinance the character and condition of the Hottentots have been rapidly improving." Paragraphs 6 & 7.

8. I do not feel myself called upon to make any observation on the condition of the Hottentots Paragraphs 9 & 10.

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- tentots and the conduct of the farmers in the district of Graaf Reinet; but no such change as the memorialist states to have obtained there is visible in these eastern districts. Notwithstanding the declaration at the commencement of the memorial, regarding the knowledge of the memorialist of the past and present state of the colony, it is evident that he is unacquainted with the present condition of the eastern frontier. He does not appear to know that within a few years back a great influx of Bechuanas, Fingos, Mantatus, and other native tribes have been driven in upon the colony by the devastating wars in the interior, thus affording a valuable supply of servants, who are esteemed as herdsmen and shepherds beyond what the Hottentots ever were, and who have superseded them in these situations in the district of Albany, and very generally in the district of Somerset also; hence the desire to retain the Hottentots in these capacities, either by kindness or severity, does not exist.
- Paragraph 11. 9. See observations on paragraphs 9 and 10.
- Paragraphs 12 & 13. 10. In this district the rate of wages varies, according to the employment of the individual, from 5 to 14 rix-dollars per month; the labourer, his wife and children being invariably lodged and fed at the expense of the employer. The unconquerable laziness of the women, and the resistance which they generally make to the employment of their children, occasion a heavy charge on account of subsistence (notwithstanding the low price of provisions) to those who receive Hottentots into their service.
- Paragraph 14. 11. To the opinions expressed in these paragraphs it need only be replied, that a vagrancy law is desired, because it is supposed that here, as in other countries, it will afford security and encouragement to the industrious, by compelling the idle and the vicious, not to "steal" or "starve," as the petitioner supposes, but to desist from stealing, and to betake themselves to some employment by which they may earn an honest livelihood.
- Paragraph 15. 12. Poor persons here, as in other countries, may find it convenient to apprentice their children; but it does not appear to me that there is anything in the proposed ordinance to warrant the apprehension felt by the petitioner, that it will entail upon any person any of the "evils of slavery." See observations on paragraphs 9 and 10.
13. There are a considerable number of individuals, as I have lately had occasion to witness, at the Kat River, in utter destitution, and who cannot give any satisfactory account of the means by which they obtain a livelihood. There are also, unquestionably, industrious persons to be found there, chiefly among the Bastards, who are the children or descendants of the children of the Dutch farmers, (though included under the general name of Hottentots at the settlement,) and they have generally kept clear of the schools and missionary institutions. Some few of them, however, have been there, and still preserve their industrious habits.
14. There are no individuals in the community more desirous that a vagrant law should be enacted than the industrious and well-doing among the settlers, and few would benefit more by that enactment.
- Paragraph 16. 15. I transmit herewith a return from the resident justice of the peace there, showing the number of examinations and committals since last February; and with respect to the number of crimes brought before the courts in Albany, it should be borne in mind that the far greater portion of them were committed by Hottentots.
17. To this paragraph I must express my most unqualified dissent. So far from there being reason to apprehend "great hardships and suffering" from the circumstances under which the officers whom the petitioner supposes will be charged with the execution of the ordinance are placed, I am apprehensive that unless there be some special provision for its enforcement, that the trouble and loss of time which it will occasion to the public officers in question, will cause it to pass quickly into desuetude, even though it should not prove a dead letter from the moment of its promulgation. But there is a further reason for believing that neither "hardships" nor "suffering" will result from the promulgation of the proposed ordinance, either to persons within the colony or to the natives beyond the border. They employ the latter in preference to the Hottentots, and as they can obtain them in sufficient numbers, it is to be presumed that there would be no other object in enforcing the law against Hottentots than to remove them from their neighbourhood.
- Paragraph 17. 18. Requires no observation from me.
- Paragraphs 18 & 19. 19. I am not aware that any of the "class of people" herein described are to be found in this district; and it certainly has not come to my knowledge that any well-conducted Hottentots have been disturbed in the occupation of unappropriated Government lands in consequence of the 50th ordinance.
- Paragraphs 20 & 21. 20. The Hottentots in this district have very generally declined, since the passing of the 50th ordinance, entering into long contracts of service, engaging only from month to month; but as they will be equally protected from the operation of a law to suppress vagrancy if engaged in a lawful occupation, whether they live at the missionary institutions or in any other part of the colony, I cannot admit that there is the slightest reason to suppose that the passing of the proposed ordinance would throw, as is anticipated by the petitioner, any but the most worthless characters upon the missionary institutions.
21. I have not felt myself called upon to offer any observation upon many of the opinions and arguments introduced into the petition, because they affect only the general question of the expediency of laws against vagrancy. The present state of the labouring classes in this district, and a knowledge of the Hottentot character acquired during a residence in this part of the colony for a number of years, have not permitted me to express myself doubtfully respecting the effects of the existing law; and I feel it equally my duty to state distinctly that, in my humble judgment, the welfare of the whole community, but especially that of the coloured classes, requires that the proposed ordinance should be passed into a law.
22. I transmit

22. I transmit herewith the following documents, as having reference to the subject under review :

1st. An Extract of a Report on the general state of the Frontier, addressed by me to the Secretary to Government, under date 27 January 1832.

2d. A Statement made on oath before me by P. Van der Westhuisen, a farmer residing in the district of Albany, on the 5th May 1834.

3d. Depositions taken before W. Waddel, Esq., resident magistrate, on the 11th June 1834.

4th. Report from Provisional Field-cornet J. Lombaard, dated 22d June 1834.

5th. Deposition taken before A. B. Armstrong, Esq., Justice of the Peace at Kat River, and the Declaration made before him by W. Spogter, on the 20th June 1834.

6th. Report from Field-cornet J. P. Dreyen, dated 1st July 1834.

7th. Statement made this day (4 July 1834) before me by T. H. Eastland.

The Hon. Acting Secretary to Government,
Cape Town.

(signed) D. Campbell,
Civil Commissioner for A. & S.

No. 7.
Vagrant Ordina
Reports of the C
Commissioners.

(No. 1).—Extract of a Report on the State of the Eastern Frontier, addressed to the Secretary to Government by the Civil Commissioner for Albany and Somerset, under date 27 January 1832.

"Fourthly. The insufficiency of the law, or its defective administration, which does not afford a remedy against the numerous depredations by idle and disorderly Hottentots, who wander throughout the border districts without any other means of subsistence than what they obtain by pilfer from the inhabitants."

Note B.—"When the ordinance for improving the condition of the Hottentots (No. 50) was promulgated, the most erroneous interpretations were put on its provisions by that people; the general opinion entertained (and which may be gathered from their subsequent conduct) was, that it raised them from the condition of servants and exempted them from labour, that being the only meaning which they attached to being made free agents by the removal of those restrictive enactments annulled by that ordinance. The consequence was, that instead of re-entering into service when their contracts had expired, they betook themselves to a wandering life, for which they have always appeared to me to have a very strong predilection.

"While in this unsettled state, a rumour reached them that a tract of country near the eastern boundary of the colony was to be appropriated for their occupancy, upon which they poured forth from all parts of the colony to the eastward in quest of the promised land. Many of them had no property nor means of subsistence, consequently no lands could be assigned to them, and the great bulk of those who were thus disappointed have continued either loitering about the Hottentot settlement, to the injury of the more industrious of their own class, or rambling through the frontier districts subsisting by dishonest means.

"This grievance is more complained of by the farmers, as it is more extensive and of more frequent recurrence than any other to which they are liable, and from which they have no hope of being freed but by an alteration in the laws, or in their administration.

"Herewith is transmitted a communication addressed to me by Mr. Retief, corroborative of the depredations to which I have alluded, and of the difficulties of checking them. It is not, however, selected as containing anything peculiar, nor from its being better calculated to elucidate the subject than many others that have been received, but merely because it reached me while writing this note.

(A true Extract.)

"4 July 1834."

(signed) "D. Campbell,
Civil Commissioner for A. & S."

(No. 2).—Prit Van der Westhuisen, residing at Vaal Krantz in the district of Albany, appeared before me this 5th day of May 1834, and made the following declaration on oath :

On Thursday the 1st instant, I missed two horses, my property, and searched for them the whole of that day without finding them. On Friday the 2d instant, my son Christian Van der Westhuisen resumed the search, when I met my neighbour Klaas Muirand, who told me that he had seen the spoor of four horses and some goats. Thinking that these traces might be that of my horses, I followed them, and was joined by a Hottentot in the service of Conrad Schupus, who lives a short distance from me. The Hottentot told me that he was in search of some goats that had been stolen from his master on the 1st of the month. We followed the spoor till we came near the Fish River, when we saw a Hottentot sitting by some goats; as soon as the Hottentot perceived us, he jumped up and fired a gun at us, and immediately ran into a bush; two other Hottentots, whom we had not seen at first, ran into the bush also, but they were not armed. My son Christian fired in the direction the Hottentots had gone, but the Hottentots were not injured. We then proceeded to the place where the goats were, and found 55 belonging to Conrad Schupus, besides two that had been killed and partly eaten by the Hottentots. We also found a horse there that had evidently been recently ridden, which we took possession of and sent him to the field-cornet to be owned.

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No. 7. I then returned home with my son, and Schupus's Hottentot proceeded to his master's place with the goats.

On the 4th of the month I sent my son to Jacob Bestus's place, where he found my horses and brought them home: I believe they had strayed there.

Reports of the Civil Commissioners,

Sworn before

(signed) P. Westhuisen.

(signed) D. Campbell.

C. C. & J. P. for A & S.

(A true Copy.) (signed) D. Campbell,
Civil Commissioner for A. & S.

(No. 3.)—At Graham's Town, upon the 11th day of June 1834, in presence of William Waddel, Esq., resident magistrate for Albany, and also in presence of Willson Platjes, Jan Windoogel, Steenje Afrikandu and Seentje Hithaaidu, charged with sheep stealing,

Appeared,

1. Simon Christoffel Bosch, residing at Groot Fontein in the district of Albany, agriculturist, duly sworn, deposes:

On Monday the 9th of June 1834, I saw the prisoners Willson Platjes and Jan Windoogel drive some goats past my place, which belonged to my son Jan Bosch; I and Jan Bosch followed these persons and retook 12 goats from them.

(signed) S. C. Bosch.
W. Waddel.

2. Johannes Hendrik Bosch, residing on the Fish River, duly sworn, deposes:

On Saturday morning the 7th of June instant, I saw the prisoners Willson Platjes and Jan Windoogel pass the place of Hans Van der Bruck, having neither sheep nor goats with them, except two horses. On the evening when I returned home I found that my kraal had been entered. On Sunday morning, the 8th instant, I counted my flock and discovered that I had lost 33 sheep and goats, but I cannot say how many of each.

Yesterday morning I found 12 goats in the possession of Mistje Hithaaidu and Steenje Afrikandu. When my father was taking the two women to the prison at Graham's Town, the two prisoners Willson Platjes and Jan Windoogel followed him, and he took them also into custody.

(signed) J. H. Bosch.
W. Waddel.

(A true Copy.) P. M'Rosty, Clerk of the Peace.

(No. 4.)—To D. Campbell, Esq., Civil Commissioner.

Sir,—On the 16th June two Hottentots entered my kraal in the night during my absence, and stole therefrom 54 sheep, which were recaptured by the burgher J. Van Dyk, in the poort (or pass) of Heen er Werrom.

I am, &c.

(signed) H. J. Lombaard,
Provisional Field-cornet.

(A true Copy.) (signed) D. Campbell, C. C. for A. & S.,
4 July 1834.

(No. 5.)—Court of Justice of the Peace, Kat River Settlement.

Church-ground, this 26th June 1834.

Appeared before me, Alexander Boswell Armstrong, Esq., justice of the peace for the district of Albany and Somerset,

1st. William du Toit, a bastard, 25 years of age, residing at Fort Beaufort, and born in the colony, being duly sworn, deposes:

On Monday evening last, the 23d instant, there was a large baking of bread prepared for the troops at Fort Beaufort by my master, Mr. James Eva, contractor's storekeeper at that post. At about eight o'clock that night, the window-shutter of the store was broken open. I found it open at that hour, as I then went to the store to give out rations. My master was with me at the time. We missed a quantity of bread; I think about 30 loaves, of 4 lbs. weight each; we also missed a sack which contained about 60 lbs. of wheaten meal, and a meal sieve. I accompanied my master immediately to seek for the persons who had committed the theft. We proceeded about an hour's distance on foot on the road to Mr. Blakeway's farm, and under a bush we found two Hottentot men and a Hottentot woman, the same whom I now see prisoners. We found in possession of these people a ration loaf, from which a small piece had been cut. The bread was still warm, and was of the same batch of bread which we had taken out of the oven same evening; also a meal sack. I can swear that the sack and meal which I now see were the property of my master. The sieve was yesterday found on the same road, towards Blakeway's farm, at a short distance from the post of Fort Beaufort. I also found in possession of these people the remains of a sheep. I cannot swear that the sheep was the property of my master, but the old Hottentot woman, now a prisoner, told me she had got the sheep from my master's herd.

herd. My master and I were induced to go to the place I have mentioned in search of these people, as we knew they were to be found there, and as we suspected them of having committed the theft.

Witness,		(signed)	his William du + Toit,	No. 1 Vagrant Ord Reports of the Commission
(signed)	John Bissit.		mark.	
	his William + Faltyn.	(signed)	A. B. Armstrong, J. P.	
	mark.			

Court of Justice of the Peace, Kat River Settlement.

Church-ground, 26 June 1834.

Appeared before Alexander Boswell Armstrong, Esq., justice of the peace for the district of Albany and Somerset,

The prisoner, William Spogter, a Hottentot, about 40 years of age, who says he has resided for the last year at Andius Botha's location, Kat River Settlement, who, being cautioned that he is not obliged to make any statement which may criminate himself, and that what he shall say may be used in evidence against him, declares,

"I have nothing to say, but that a sheep was given to me by Mr. Eva's shepherd."

Witness,		(signed)	his William x Spogter.
(signed)	John Bissit.		mark
	his	(signed)	A. B. Armstrong, J. P.
	William x Faltyn.		
	mark.		

(True Copies.)

(signed)

D. Campbell, C. C. for A. & S.

(No. 6).—D. Campbell, Esq., Civil Commissioner for Albany and Somerset.

Sir,

Fish River, 1 July 1834.

I beg leave to acquaint you that there are bands of loose Hottentots in different parts of my field-cornetcy, who greatly disturb and annoy the farmers.

Those people have no visible means of living; and as soon as they are driven off one man's land, they set themselves down on the neighbouring ground.

About two months ago I was at the place of David Roux, who lives about half an hour on this side of the Kourap River, and he complained to me that some loose Hottentots had taken up their abode on his farm, and that they would not remove from thence. I caused them to appear before me, and found about 14 persons, old and young. I informed them they must remove from Roux's place; but they continued for eight or ten days afterwards, and then placed themselves on the farm of Frans de Young, which adjoins the farm they had left. Frans de Young came to me to complain on the subject, and I told him to drive them away by force, if he could not otherwise get quit of them. About eight or ten days afterwards he got quit of them, by using threats of taking them to Graham's Town; and they then went to David de Lange, the provisional field-cornet's place. De Lange was absent on duty; and when he returned and found the Hottentots on his place, he told them he would not have loose Hottentots on his place, but that he would keep them if they would enter into service, to which they agreed. They remained there some days longer, and the returned to Frans de Young, where they remain in spite of all his efforts to get quit of them; they will neither leave the place or enter into contract.

There is another party of loose Hottentots at Isak Botgeiters, on the Kourap River, another at Thurms Botha's, on the Fish River, and several other parties in my ward; none of those parties have any visible means of living, nor is it possible for the farmers to get quit of them; for if they are driven by force and threats from one place, they take up their quarters on the next farm, and return to the place from whence they were whenever it suits their convenience.

The farmers are constantly missing sheep, both from out of the fields when they are grazing, and from their kraals at night, and they make many complaints to me, but I cannot assist them, and therefore beg you will give me instructions how to act in these cases.

I have, &c.

(signed) J. Dreyer, Field Cornet.

I certify this to be a true Copy.

(signed)

D. Campbell, C. C. for A. & S.

4 July 1834.

(No. 7).—Thomas Henry Eastland, residing on Carriga River, about half way between Graham's Town and Bathurst, states that, on the morning of Sunday the 29th June, a cow was missing from the kraal of William Marsh, who resides near Eastland. Nothing was heard of her till yesterday, when a person named Stephanus Frunia sent a message to Mr. Marsh

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and to Eastland, that he found the head of a cow in the Kouri Bush, which he suspected was the head of the missing cow. Frunia had missed a fat cow at the same time, and in looking for her he found the head alluded to. Four Hottentots have been seen lurking about the place where the head was found; and suspicion falling on them, they were seized by Frunia, when they confessed they had slaughtered the cow in question, and sold the hide in Graham's Town. Frunia then sent for the field-cornet, Krulder, but he not being at home, Frunia was afraid to detain the Hottentots any longer, and liberated them. They are supposed to be now at Bathurst.

Mr. Marsh, and other persons who reside in his vicinity, have lately lost cattle which they have not been able to trace.

Mr. Eastland came to Graham's Town to-day to report the circumstance of the Hottentots having killed the cow, to the clerk of the peace.

(signed) T. H. Eastland.

No. 6.—SWELLENDAM.

REPORT of the Civil Commissioner for *Swellendam*, on a Memorial from the Rev. Dr. Philip, addressed to the Governor and Legislative Council, relative to the proposed Ordinance for the better Suppression of Vagrancy in this Colony.

THERE are very few points in the memorial of Dr. Philip which appear to have any reference to the district of Swellendam; and the objections stated to the proposed ordinance consist so entirely in its application to Hottentots, that they require consideration only as it may partially affect that particular class, and not as it may bear upon the inhabitants of the colony generally, for whom, and not, as erroneously implied, for Hottentots only the law is intended. If the present habits and condition of the Hottentots shall expose them to a frequent incurrance of the penalties of any general law for suppressing vagrancy or other crimes, no reason is thereby afforded for the inexpediency of such law, or for exempting that class from liability to it.

The low rates of wages paid by the farmers to labourers and herdsmen, were they even so low as quoted in the memorial, are not the causes of Hottentots preferring a life of independence or "freedom," as it is termed, to that of service; but these people are naturally disinclined to bind themselves to any regular or defined work for a fixed period; and as it is admitted they are not averse to the service of the farmers, it cannot be such a state of poverty and ill treatment as represented.

¶ The clerk of the peace of this district states that the wages agreed to be paid by the contracts passed before him are from 3*s.* to 9*s.* per month, with food and lodging, for common labourers; that during harvest from 9*d.* to 1*s.* is usually paid; and that thatchers, masons and carpenters are frequently paid 3*s.* and 4*s.* per day, which differs greatly from the statement of Dr. Philip, that in many parts the wages paid by farmers to Hottentots do not exceed 24*s.* per annum (2*s.* per month), and that the average received by those belonging to Caledon Institution is not more than 4*s.* 6*d.* per month, out of which they have to support themselves and their wives and children. I find, on inquiry at the Caledon Institution, that the usual rate of wages is from 4*s.* 6*d.* to 6*s.* per month; and that when hired on journeys to Cape Town or into the interior, the Hottentots receive from 9*s.* to 15*s.* per month.

I find the Hottentots at Genadendal usually receive 1*s.* 6*d.* and upwards per day, besides victuals; that during the ploughing season they get from 4*s.* 6*d.* to 6*s.* per day; and that in the intermediate months they generally get from 9*s.* to 15*s.* per month, but herdsmen seldom earn more than 4*s.* 6*d.* per month. I believe wages are much higher in the eastern districts; but sober and hard working men in this district, and particularly in the neighbourhood of the village, can obtain any rate of wages they will demand. Women and children can also get employment for wages adequate to their subsistence.

I find that almost immediately on the publication of the draft of the proposed ordinance, considerable numbers (upwards of 150) of Hottentots resorted to the Caledon Institution in this district, requesting to be enrolled as its members or inhabitants, stating they had an impression they should by so doing prevent their names being included in the return which they had heard the field-cornets had been engaged in preparing for several previous weeks, of all persons not having fixed residences, and which persons they had been informed would be liable *de facto* by a new law to imprisonment and hard labour. This circumstance does not however appear to me to furnish any argument either for or against the proposed law; for these people acted under a temporary misapprehension, and the influence of wrong information given to them by ignorant or designing persons. I believe most, if not all these people have since returned to their previous occupations. The same effect was produced, but to a very trifling degree, at the Moravian Institution at Genadendal.

There are, in several parts of this district, considerable numbers of Hottentots who have not any fixed habitation or visible appearance of earning their subsistence by labour, and who cannot give a satisfactory account of their mode of obtaining their livelihood. The numerous instances also of cattle and sheep robberies which occur, are sufficient evidence of the existence of thieves, of which the records of the courts of law do not furnish a criterion of judging, as probably not one case in ten is prosecuted; distance, trouble and loss of time induce the farmer to compromise with the thief, who generally finds the means of replacing what he has stolen, either in kind or value.

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From the knowledge of these facts, I am of opinion that the enactment of a law for the better suppression of vagrancy is expedient and necessary. It is difficult, however, to suggest a law which should be at once effective, and not at times severe; particularly as the execution of it would probably in many instances be unavoidably entrusted to unfit and incapable persons. The selection of unprejudiced and uninterested individuals for carrying the enactments of such a law into effect, and ample provision for indemnifying those who might be unjustly treated under it, would remove the objections stated in the memorial; and it is not because the law might be sometimes abused, that it would be in itself inexpedient or unwholesome.

The inhabitants of this district, as far as I have been able to learn their sentiments, are exceedingly desirous that the proposed law should be enacted.

(signed) *H. Rivers,*
Civil Commissioner.

Swellendam, 17 June 1834.

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No. 7.—SOMERSET.

Civil Commissioners' Office, Worcester,
21 July 1834.

Honourable Sir,

1. I HAVE the honour to state, for the information of his Excellency the Governor, that I have maturely considered the memorial of the Rev. Dr. Philip, transmitted to me by your letter of the 6th June last, with a copy of the minutes of the legislative council, desiring my report on the statement of this memorial, and my opinion and those of the inhabitants of this district in general, as far as I am acquainted with them, on the subject of a vagrant law.

2. In respect of the opinion of the inhabitants of this district in general, I beg leave to state that there appears to prevail but one opinion among them, viz. "that a vagrant law is of the utmost necessity."

3. Referring to the memorial above cited, I beg leave to remark, that the Rev. Doctor appears to have looked at the condition of the aboriginal inhabitants of this colony on the darkest side. Being, by the principles of an early education, obtained in Europe, where I have resided till the age of manhood, a hearty friend to social liberty, the condition of the aborigines, on whose treatment some censure had been passed by travellers who had visited this colony, has much occupied my thoughts, and induced me on my return to this my native country to make inquiries about them, but could seldom obtain any true statement till the year 1819, when as one of the commissioned members of the late court of justice, I attended the circuit, which afforded me an opportunity of making myself personally acquainted with the condition of the aborigines. At that period I observed a great number of them in the service of the European colonists; many of them were treated with kindness and attention; others were not so fortunate as to be with masters of a similar kind disposition, an unhappy circumstance, to which servants of all classes are exposed to. Ill treatment was not so general as the reverend Doctor may have inferred from some solitary cases which might have come to his knowledge. At that period it appeared to me that the contracts the aborigines were compelled by the then existing laws to enter into, not to have been sufficiently limited, and the custom prevailing at that time to allow the master to supply them with articles not stipulated in their contracts, engrossed an account against them, which they were scarcely able to repay by many years' wages, and were thereby reduced to a state of permanent vassalage.

4. In 1823 and 1827 the same opportunities were offered to me by attending, in the same capacity, the circuits of those periods, and I observed the aborigines in much similar circumstances. From time to time the legislature of the colony had reflected on the incompatible relation in which the aborigines were placed with the European colonists till the year 1828, when the 50th ordinance, the palladium of the aborigines and of all other people of colour, was enacted. Every friend of social liberty rejoiced at this happy event, expecting that, as free men, the aborigines would enter into more advantageous arrangements with such of the European colonists as would require their services, and that many would endeavour to join the missionary institutions. These expectations were not realized. A great number preferred roving from one part of the country to another. This rambling life adopted by them, the frequent cases of cattle-stealing and other thefts, joined to the notoriety that another class of coloured people will, within a few months, be released from their state of bondage, has so forcibly acted on the minds of the inhabitants at large, that when His Majesty was pleased to favour this colony with a legislative council, a general outcry for a vagrant law was heard in every part of the colony; in consequence whereof a draft of such an ordinance was proposed by the legislative council, which appears to have induced the reverend Doctor to offer his memorial, on the merits or demerits whereof I shall refrain to enlarge, as, with the exception of some vague arguments and a marked feeling of prepossession against the colonists, it contains nothing which can be construed having a direct allusion to this district, but it indiscriminately glanced on all the districts of the colony. These wandering aborigines form, at present, an anomalous class of subjects, neither known on the rolls of the district nor on the lists of the field-cornets of the wards, forming an exception to the law, which, by a penalty, obliges every other individual to give notice of his intention to remove to another district, and to take out from the local authorities a certificate of removal. This law, of several years' standing, has never been considered by the colonists as oppressive or restricting their liberty, but has constantly been complied with as a rule to good social order.

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5. The reverend Doctor cannot more forcibly dread the idea, that any law should be enacted having a tendency to deprive the aborigines of their liberty, and to revert them to a state of vassalage, than myself. But, as such a state of society is incompatible, wherein a number of its members, enjoying the same liberty and the same protection of the law, wander in idleness from one part of the country to another, without participating in its unavoidable burdens, or contributing by their exertions to its welfare; and as idleness is considered as an offence against public economy, and idle persons and vagrants are regarded, in all civilized countries, as offenders against the welfare and good order of the community, the public expect from the Legislature a law to check it. No law could more powerfully prevent the offences against society than a vagrant law, existing in most civilized countries, though the public expenses will thereby be greatly increased, as it is to be feared that, an asylum being once established at the public expense, the propensity to this vice will increase, particularly in a country in which a class exists prone to an idle and wandering life.

6. Having thus maturely weighed all the circumstances connected with the proposed law, and stated my feelings without restriction, I hope to have met his Excellency the Governor's wish, and the intention of the honourable Legislative Council.

I have, &c.

(signed) P. J. Tenter, Civil Commissioner.

The Hon. the Acting Secretary to Government,
Cape Town.

Appendix, No. 8.

VAGRANT ORDINANCE.

REPORTS OF THE JUDGES.

No. 8.
Vagrant Ordinance.
Reports of the
Judges.

Sir,
Government House, 1 August 1834.
THE legislative council yesterday, in committee for the discussion of a Bill "for the Suppression of Vagrancy," has found it necessary to pause for the information stated in the inclosed note of the attorney-general; and I therefore request that your Honour, and the other judges of the supreme court, may have the goodness to inform me accordingly.

I have adjourned the legislative council until Wednesday next, the 6th inst., by which day I shall hope for the favour of your Honour's reply.

I have, &c.,

(signed) B. D'Urban.

To his Honour the Chief Justice,
&c. &c. &c.

Attorney-general's Office, Cape Town,
1 August 1834.

Sir,
ACCORDING to the desire of your Excellency expressed yesterday at the sitting of the legislative council, I transmit the following questions which appear to me should be proposed to the judges for their opinion thereon, to assist the council in their deliberations in framing a Vagrant Act:

1. Whether by any law or laws now in force in this colony, vagrancy is made or declared to be a crime or offence; and if so, what is or are such law or laws?
2. Whether the offence or act of vagrancy is sufficiently defined by any such law or laws; and if so, in which?
3. Whether the following clauses of the ordinance, for the administration of the country districts be now in full force and effect, or whether the whole or any, and what parts thereof are made void, or modified, or altered, or superseded by any and what law or laws; and how; viz. 63, 231, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 270, 271, 272?
4. Whether, supposing it be deemed expedient to repeal any laws which may affect these clauses, and re-enact these clauses anew, there would be any legal impediment, &c., (taking the words of the 1st question put to the judges before the third reading of an "ordinance," which I have now before me)?
5. Whether any law, framed for the suppression of vagrancy, can operate in respect of Hottentots, and other persons provided for by ordinance No. 50, so long as that ordinance is not repealed?

I have, &c.

(signed) A. Oliphant.

Sir,
Chambers, Supreme Court, 5 August 1834.
IN pursuance of your Excellency's reference on the 1st instant, of certain questions arising upon the discussion of a Bill, in the legislative council, "for the Suppression of Vagrancy," and as particularly stated in the annexed note thereof by the attorney-general, I have now the honour to submit to your Excellency the opinion of the judges of the supreme court thereupon.

I have, &c.,

(signed) John Wylde.

To his Excellency the Governor,
&c. &c. &c.

OPINION upon Questions referred by his Excellency the Governor to the Judges upon the Bill, now before the Legislative Council, for the Suppression of Vagrancy.

No. 8.
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Judges.

1. It appears to us, that vagrancy was made and declared to be a crime or offence in Holland, by the following placarts, viz.:

7 October 1531.	19 March 1614.
21 July 1581.	4 March 1636.
13 October 1536.	12 May 1649.
4 May 1588.	25 June 1649.
16 December 1595.	

That those placarts, being the law of Holland, became the law of this colony, except in so far as any of their provisions may have been of a strictly local application, and consequently inapplicable to any place other than the districts composing the States of Holland. That those placarts, under this limitation, continue to be the law of this colony except in so far as the same may have since been repealed or altered by any law made by the legislature of this colony.

2. That upon examination of the volume containing the proclamations issued between January 1806, and the institution of the council of government, and of the ordinances which have since that time been passed by the governor in council, we have found no law repealing or altering the said placarts, except the 50th ordinance, in so far as the same relates to Hottentots or other free persons of colour lawfully residing within the colony. That we have no means of ascertaining whether any or what laws on the subject of vagrancy were made by the legislature of this colony between 8th April 1652 and January 1806.

That by the 63d, 245th, and 252d clauses of the ordinance for the administration of the country districts, vagrancy is recognised as a crime and offence.

The offences or act of vagrancy against which the provisions of the above-mentioned placarts were directed, appear to us to have been sufficiently defined for the purposes thereof by the said placarts respectively.

3. We are of opinion that the following clauses of the ordinance for the administration of the country districts; viz. 63, 231, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 270, 271, 272, have not been expressly repealed by any subsequent law or ordinance whatsoever; and that the clauses 231, 246, 247, 248, 270, 271 and 272, retain all their original force and effect, and have not, as far as we are aware, in whole or in part, been modified, altered or superseded by any law, except in so far as by the ordinance No. 77 the civil commissioners have been substituted for the district landdrosts respectively.

That the 63d clause has been so far modified by ordinances Nos. 40 and 73, as that the power of detaining and keeping in custody the vagabonds and deserters therein mentioned, thereby vested in the landdrost, is now vested in the resident magistrates, and is not continued in the civil commissioners; and that the provisions of the ordinance No. 40 have had the effect of superseding the following provision contained in the last sentence of this clause, viz. "The landdrosts shall, however, without any delay, report in writing the circumstances of such arrests to the governor and general-in-chief, and to the attorney-general."

4. That the provisions of the 23d section of ordinance No. 40, of the 11th, 12th, 13th and 14th sections of the ordinance No. 73, of the 12th section of the ordinance No. 49, of the 2d section of the ordinance No. 50, and of the 1st section of the ordinance No. 98, have had the effect of, to a certain extent, modifying the provisions of 244th, 245th, 252d, 253d clauses.

5. That the provisions of the 249th, 250th and 251st clauses, did not at any time apply to the people described in the 26th clause, as "the aboriginal race of the colony, the Hottentots"; nor since the promulgation of the proclamation of the 15th May 1829, to any of His Majesty's subjects who may enter this colony and desire to remain therein; and that the said 249th, 250th, 251st and 254th clauses retain all their original force and effect, except in so far as by the ordinance No. 77 the civil commissioners have been substituted for the district landdrosts respectively.

6. It does not appear to us, that the term "attorney-general," under the 250th, 251st and 254th clauses, can apply to the office of the attorney-general, as at present constituted.

7. We are of opinion, that if it should be deemed expedient to repeal any laws which affect the above-mentioned clauses of the ordinance for the administration of the country districts, and to re-enact those clauses, that an ordinance might be framed in the spirit and upon the principles of those clauses, to the execution of which, by the colonial tribunals, there would not be any legal impediment.

8. We are of opinion, that no law, framed for the suppression of vagrancy, can be carried into effectual operation in respect of Hottentots or other free persons of colour, lawfully residing in this colony, so long as the 2d section of the ordinance No. 50 stands unrepealed; in so far as it enacts, that no Hottentot or other free person of colour, lawfully residing in this colony, shall be subject to any hindrance, molestation or imprisonment of any kind whatsoever, under the pretence that such person has been guilty of vagrancy, unless after trial in due course of law.

(signed)

John Wyld.
W. Menzies.
G. Kekewich.

Chambers, 5 August 1834.

No. 8.
Vagrant Ordinance.
—
Reports of the
Judges.

Sir,
HAVING laid before the legislative council, at its sitting of yesterday, the opinion, dated the 5th inst., of your Honour and the other judges of the supreme court, upon the Bill for the suppression of vagrancy now under discussion, the information contained therein has induced the council, upon my proposal, and adverting to the spirit of the Secretary of State's despatch, No. 250 of the 5th August 1825, already referred to upon another occasion, in my letter to your Honour and the judges of the 28th of June last, unanimously to concur in seeking the assistance of your honour and the other judges of the supreme court, in this matter, and have requested me to refer it accordingly. I have, in consequence, the honour to transmit herewith, the draft ordinance for the suppression of vagrancy now before the council; and referring to the opinion of your Honour and the other judges of the supreme court of the 5th instant, and especially to the 4th and 5th clauses of it, to request that your Honour and the judges will have the goodness to frame, in amendment of this draft, and transmit to me, the draft of such an ordinance as may appear to you best adapted to the exigencies of the case and the circumstances of the colony.

The legislative council are desirous that the draft requested of the judges, may, if practicable, be in the shape of an amendment of that now before them, on account of the time which will thus be saved in its enactment, by avoiding the necessity of its previous republication.

I have adjourned the legislative council until Wednesday, the 20th instant, in the hope that your Honour and the judges may be enabled to prepare the amended draft by that day.

I have, &c.
(signed) *B. D'Urban.*

Chambers, Supreme Court,
12 August 1834.

Sir,
I HAVE the honour to acknowledge the receipt of your Excellency's letter (with its inclosures) of this day's date, referring the draft vagrant ordinance, now under consideration in the legislative council, to the judges of the supreme court, before whom your Excellency's reference will forthwith be brought.

I have, &c.,
(signed) *John Wylde, Chief Justice.*

Chambers, Supreme Court,
16 August 1834.

Sir,
IN reply to the communication your Excellency was pleased to make to us in your letter addressed to the chief justice, and dated the 12th instant, we have the honour to state, that in having submitted to your Excellency our opinion, that if it should be deemed expedient to repeal any laws which affect the clauses (as therein mentioned) of the ordinance for the administration of the country districts, and to re-enact those clauses "that an ordinance might be framed in the spirit and upon the principles of those clauses, to the execution of which by the colonial tribunals there would not be any legal impediment," we did so with the view only of categorically answering the 4th question proposed by your Excellency; but by no means with the intention of expressing any opinion, that any repeal or re-enactment of the nature therein referred to would be expedient. On the contrary, we are of opinion, that such a measure would neither be adapted to the exigencies of the case, nor the circumstances of the colony.

We request further to state, that in having submitted to your Excellency our opinion, as in the 5th clause thereof, we did so, with the view only of categorically answering, in like manner, the 5th question proposed by your Excellency; but by no means with the intention of expressing any opinion, that it would be expedient, while the law at present in force as to vagrancy within the colony remains unaltered, to repeal that part of the 2d section of the ordinance No. 50, which enacts, that no Hottentot or other free person of colour, lawfully residing in this colony, shall be subject to any hindrance, molestation or imprisonment of any kind whatsoever, under the pretence that such person has been guilty of vagrancy, unless after trial in due course of law.

Having thus advised your Excellency of these our impressions, we owe it to ourselves to express the readiness with which we shall proceed, if required by your Excellency, to frame an ordinance upon the spirit and principles of the clauses of the district administration ordinance now in force, or upon any other principles or data which your Excellency may have determined upon as the basis of any new legislative measure upon the subject. While your Excellency will observe, that it is the duty of the judges, under the Secretary of State's instructions, only to transmit to your Excellency such draft ordinances as they may think best adapted for the amendment of the civil and criminal code; and that the functions of the judges, with respect to the improvement of the law, extend merely to the office of transmitting privately to your Excellency such suggestions as they may think it right to make as to laws regulating the civil relations of private persons and their mutual rights, or affecting criminal jurisprudence, or for gradually assimilating the law of the colony to the law of England; and not to the task of deciding upon cases of general political expediency, which are not necessarily resolvable upon legal principles, and upon which the judges, as such, have in common no sufficient means of information, and upon which they are not, therefore, competent, as such, to decide.

For

For these reasons, and under these circumstances, we conceive that we cannot consistently take upon ourselves the official responsibility of attempting to frame the draft of an ordinance for the suppression of vagrancy, adapted to the exigencies of the case, and the circumstances of the colony.

We have, &c.
(signed) *John Wyld.*
W. Menzies.
G. Kekewich.

No. 8.
Vagrant Ordinance
—
Reports of the
Judges.

Sir,

Chambers, Supreme Court, 4 Sept. 1834.

UNDERSTANDING that the legislative council will hold a sitting this day, and having, as far as the occupation in court upon the trial of civil cases for several whole days past would allow, had in consideration the amended draft of an ordinance for the better suppression of vagrancy in this colony, I am desirous of possessing your Excellency, however abruptly, as the court awaits my return to the bench, of my change of the opinion formerly delivered in concurrence with my brother judges, in respect of Hottentots and other free persons of colour not being subject, under and by virtue of the enactments in the 2d section of the colonial ordinance No. 50, to any hindrance, molestation or imprisonment, to which other of His Majesty's subjects in this colony are liable; and that, on the contrary, as now advised, I am of opinion, that, under the said enactments, the Hottentots and other free persons of colour residing in this colony remain and are liable to any hindrance, molestation, fine or imprisonment to which other of His Majesty's subjects are liable; and, therefore, that the said enactments extend only to the effect of providing and declaring that "all Hottentots and other free persons of colour lawfully residing within this colony are in the most full and ample manner entitled to all the rights, privileges and benefits of the law, to which any other of His Majesty's subjects lawfully residing within the said colony are or can be entitled."

I am, consequently, further of opinion, that the Hottentots and other free persons of colour residing within the colony are, in like manner, as all other His Majesty's subjects therein, under and subject to all and every the laws now in force for the suppression of vagrancy within this settlement.

I have further to submit the opinion, that if a law were passed in terms of the draft herewith returned to your Excellency, such ordinance would be void and of no effect, and could not be enforced or carried into execution by any of His Majesty's courts, judges, justices, officers and others within this colony, unless and until such ordinance shall have been first and expressly ratified, confirmed and allowed by His Majesty, with the advice of His Privy Council.

I am further impressed that I should not fitly discharge the duties of my office in the colony, if I were not to apprise your Excellency, at this juncture, of the question under the consideration of the legislative council, that, in the consideration of very many of the provisions in the proposed ordinance and of the Secretary of State's instructions with respect to the improvement of our colonial criminal law in the approximation, from time to time as circumstances may permit, to the principles and practice of the laws of England, I shall with as little delay as possible lay before your Excellency various legal and other reasons, which should, I conceive, be forcibly brought under your Excellency's consideration before any such ordinance should be passed into a law of this colony.

I have, &c.
(signed) *John Wyld, Chief Justice.*

Sir,

Chambers, 4 Sept. 1834.

IN reply to your Excellency's letter, dated 1st Sept. 1834, addressed to the chief justice, transmitting the draft of an ordinance "For the better Suppression of Vagrancy in this Colony," and requesting his opinion and that of the other judges of the supreme court thereon in terms of His Majesty's instructions, we have now the honour to state to your Excellency our opinion, that if a law were framed in the terms of the draft now referred, there would not be any legal impediment to its execution by the colonial tribunal; but that in consequence of the provisions of His Majesty's Order in Council, dated 15th January 1829, this ordinance, in so far as it in anywise alters, repeals or amends the ordinance of his honour the lieutenant-governor in council, for improving the condition of the Hottentots and other free persons of colour at the Cape of Good Hope, and for consolidating and amending the laws affecting those persons, and dated the 17th July 1828, will be void and of no effect, and cannot be enforced or carried into execution by any of the colonial tribunals until the same shall have been first and expressly ratified, confirmed and allowed by His Majesty with the advice of His Privy Council.

We have, &c.
(signed) *W. Menzies.*
G. Kekewich.

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Reports of the
Judges.

Sir,

Chambers, Supreme Court, 8 Sept. 1834.

IN accordance with the intimation made to your Excellency on the 4th instant, I would proceed to lay before your Excellency certain considerations and reasons, which ought, as it occurs to me, to be satisfactorily resolved before the proposed "amended" draft of an ordinance for the better suppression of vagrancy, and already read a second time in council, be passed into a law of this colony.

2. Looking, not incautiously, to the nature and tendency of the proposed measure in its actual operation, and mindful of the instructions from His Majesty's Secretary of State, gradually, in the amendment of the civil and criminal code, to assimilate the law of England, I consider it incumbent upon me, under the functions imposed upon the judges by those instructions, thus to transmit to your Excellency such suggestions as appear with respect to the improvement of this particular law right to be made.

3. Considering the general resources and economy of the colony as applicable to the maintenance of a sufficient police, it may remain obviously no easy task certainly to carry into local operation and effect, without great pressure as to public expense, and greater hazard of undue violence to the liberty of the subject, any legal enactments, founded strictly upon the general principles of the penal law, under which vagrancy is punished and repressed in the mother country; inasmuch as that system stands so closely connected with, and so mainly dependent upon, the poor law reliefs, as yet unattainable within the colony.

4. The absolute comparative inapplicability of such a system therefore to the colony may be found is fixed, beyond redemption for a while, in the so thinly scattered state of our population over distances which may never, but remotely at least, become inhabited settlements; in the necessity, consequently, if any vagrant law is to be strictly enforced, of maintaining numerous or considerable police establishments, as also of providing for their efficiency a numerous local magistracy, such a system, otherwise would inevitably expose the officers charged upon its execution to greater personal risk and responsibility, as well as actual or reputed offenders to greater grievances and severity of treatment than commensurate with the offence or its prevention, under any of the provisions or penal exactions denounced upon it by the British Legislature.

5. If this observation should stand approved, the more recent directions of His Majesty's Government, as to no punishments being enforced within the colony, but such, in degree and kind, as are in England legally enforceable in like cases, would give rise to no immaterial objection at once against the proposed draft. In the revision and discussion of its particular provisions it will be my duty at least to moot, that proof will or will not substantiate itself.

6. I have already made known to your Excellency the corrected opinion I have on further consideration come to, and the grounds of which it seems better to submit in a detached separate statement, as to the Hottentots and other free persons of colour being in fact left under the provisions of the 2d section of the ordinance No. 50, subject to all the laws for the suppression of vagrancy which were in force before that ordinance, and affected all British subjects, as well as Hottentots; as also subject to any and all such new laws as shall be put in force, provided such laws do not affect the Hottentots more injuriously than any other classes of British subjects.

7. If this opinion be correct, the particular impediment referred to by the judges in resolving your Excellency's fourth and fifth questions on the matter in question, and in the way of any advisable new enactments, would not remain; but a question might still arise, whether under His Majesty's Order in Council the amended draft of the ordinance in question would not become void and of no effect, before it had been expressly confirmed and allowed; as also, whether the same would be so confirmed and allowed by His Majesty in Council on the ground of the proposed new vagrant ordinance operating not with equal pressure upon His Majesty's subjects of all classes in our community, but, as against the Hottentots, it may perhaps be considered, with peculiar and unjust severity; for it may be contended, that the proposed ordinance would, in fact, render them liable to be taken up and punished for being "Hottentots," that is, for being able to live in a manner in which the more civilized classes of the population could not exist; that thus certain means, by which the Hottentots might honestly subsist themselves, are under the draft ordinance declared to be illegal; and that the measure therefore, in its tendency to force the Hottentots into servitude, and in its mischievous effects upon their personal habits, is not in accordance with, but opposed to the great object of His Majesty's Government, in all its legislative interference,—of promoting the civilization, and improving the condition of the Hottentots.

8. In such a combination of difficulties as, *in limine*, become involved in any remedial enactments against the evils of vagabondism, reported to be so prevalent within the colony, the judges have found themselves unable, as yet, to suggest, in common, under the Secretary of State's instructions, and upon their own motion, any improvement in this branch of the colonial law, while your Excellency to the relief of the judges, as I am impressed, has not, as yet, called upon them, but to make report, what, if any, new enactments, upon and under the existing laws, might advisedly in their opinion, be adapted to the exigencies of the case, and the circumstances of the colony.

9. For

9. For in approaching any such measure for the colony, it will be found, even if the expense and proper means of maintenance for the wives and families of vagrants, while under, and during confinement, be kept out of the question, that any vagrant law will become inadequately supported by, if not at once neutralized in the weakness of the three great powers by which the vagrant law system (in no instance perhaps, as yet, in jurisprudence introduced but in dense populations) has hitherto been put and counterpoised in action; namely, 1st, magistrates exercising summary jurisdiction within fixed reasonable distances from each other; 2d, a sufficient constabulary police, with respect to the extent, over the country, of the resident inhabitancy; and, 3dly, such a number of gaols and houses of correction, under regulation of treadmill and other discipline for moral improvement, as may from time to time be found commensurately requisite for repressing the violence of vagrant delinquency.

10. If such be the just principles that should be applied to the erection of any vagrant law system, no vagrant laws for the colony in its present state, as to prisons, police and magistracy, could be, it would seem, warrantably adopted, as in assimilation with the law of England, or in conformity with the views of His Majesty's Government for the improvement of the colonial laws; or without losing sight, therefore, of those legal principles which it is incumbent upon the judges at least to observe, as to any steps by which the law of England may be most conveniently introduced within the colony.

11. If, in truth, under the existing circumstances, such incapacity of interference by any new legislative measure for further relief against vagrancy should be found to appear, such a conclusion after all would prove matter of less concern, as I conceive, if the law, as it exists in force at this moment, and as far as it remains enforceable against vagrants throughout the colony, were legally put into active and effective operation; a law of much more ready and rigid application, perhaps, as regards the identical parties obnoxious to it, than any that would be tolerated under any modification or form of new enactments upon it.

12. Vagabondism, as your Excellency has been already advised by the judges, is an offence punishable under the laws in force, upon trial and conviction before the competent courts of the colony; and if the public prosecutor should see cause to bring charges of vagrancy before the courts, the judges would have to take the responsibility of expounding and applying those laws, whereby their efficacy would be best tried, and their authority and force at once recognized and felt.

13. From one cause of great perplexity which would attach to the drawing up of any new vagrant law, in defining what should constitute acts of vagrancy, and who should be deemed and taken to be vagrants and offenders under any such proposed law, a perplexity so peculiarly compounded in due relation to the civil condition, natural habits and present immunities of those classes in the colonial inhabitancy, the existing law will be found, as it would seem, to have the advantage of being almost entirely free.

14. For, escaping from all definition under and by virtue of the regulations of the ordinance for the administration of the country districts, the field-cornet is thereby authorized and directed, without waiting for any other authority, to take into custody, and to send either to the drosty of his district or to Cape Town, "all vagabonds and strangers who are found in his district without leave, and without being known to himself or to the other inhabitants."

15. The general outline and remaining parts of the system, forming the existing colonial vagrant law, may be easily extracted from the same ordinance.

16. Every field-cornet, to be considered as a subordinate magistrate (Art. 220), must keep an exact register of all the inhabitants of his district above the age of 16 years, and transmit the lists thereunder, in every October, to the landdrests, that is, now, to the civil commissioners of his district.

All inhabitants of the colony are at liberty, unless particularly forbidden, to change their places of abode as frequently as they like, provided they acquaint therewith the civil commissioner and field-cornet of the district where they take up their residence.

The civil commissioners, magistrates, field-cornets and constables are authorized and empowered to detain and keep in custody all such persons who have no fixed place of residence in the colony, or are not legally authorized to reside therein, and who wander as vagabonds in any country district.

The field-cornet shall send the prisoners under sufficient guard to the field-cornet next on the road, who is bound to receive the prisoners, and, in like manner, to forward them on; and so in succession until they arrive at the place of their destination.

And in case that, on the road by which the prisoners are to be conducted, no other field-cornet resides, the next inhabitant, although not a field-cornet, who shall, as also the other inhabitant next in succession, be obliged to forward them on, until finally delivered over to the proper officers of justice.

When such offenders are thus brought to the spot where any magistrate exercises the necessary jurisdiction, the case would take the common course of preliminary investigation under the criminal ordinance No. 48, and upon the offender's commitment for trial, the courts of the colony would become charged with the execution of the law.

17. During the interval previous to the trial, the offender would be removed at least, and would in fact be under the duration of that punishment which the law generally inflicts upon his offence.

18. In thus recurring to the provisions of the existing law against vagrancy, as no summary and final jurisdiction has been vested in the magistracy, the supreme and circuit courts alone can take cognizance of and punish the same; and although so many considerations combine, it may be judged, to render it fit and proper that such an offence should

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become summarily cognizable by the magistracy, such a measure may be found neither expedient or safe, until the justices of the peace shall have at their command those means, which in legal jurisprudence may have been approved as justly applicable to, and therefore, shall have been provided for, enforcing laws enacted and put in force for the suppression of such offences.

19. I shall proceed in a separate statement to the examination of the proposed ordinance in detail, now under the consideration of the council.

I have, &c.
(signed) John Wylde, Chief Justice.

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Votes and Pro-
ceedings of the
Legislative Council.

Appendix, No. 9.

VOTES and Proceedings of the Legislative Council, *Cape of Good Hope.*

Wednesday, the 7th May 1834.

The council met pursuant to adjournment; and his Excellency the Governor took the chair.

His Excellency the Governor proposed to the council, an "ordinance for the better suppression of vagrancy in this colony."—Motion made and question put, that this ordinance be read at length.—Motion seconded.—Ordinance read a first time.—Motion made and question put, that this ordinance be read a second time.—Carried unanimously, and ordered to be read a second time on the first sitting of council after the 30th May instant.

Tuesday, the 3d June 1834.

A petition from proprietors and inhabitants of places at Tygerberg and Koeberg, relative to the Cape Flats Preservation Ordinance,—a petition from John Philip, D.D., superintendent of the London Missionary Society's Missions in South Africa, and a petition from proprietors of farms in the Koeberg and Tygerberg district, relative to the vagrant ordinance, were laid upon the table.

Vagrant Ordinance; second reading deferred until the next sitting of council.

Wednesday, the 4th June 1834.

Vagrant Ordinance; second reading.—Motion made and question put, that the petitions on the table, relative to this ordinance, be read:—carried unanimously—petitions read accordingly:—Motion made and question put, that these petitions be received—carried unanimously.—Motion made and question put, that the second reading of this ordinance be postponed—and that his Excellency the Governor be requested to cause copies of the petition of John Philip, D.D., relative thereto, to be transmitted to the several civil commissioners, for their report on this petition, for the information of the council—carried unanimously.

Vagrant Ordinance; second reading postponed.

Wednesday, the 11th June 1834.

Vagrant Ordinance; second reading postponed.

Saturday, the 28th June 1834.

His Excellency the Governor laid before the council the following documents:

The report of the civil commissioner of the Cape district on the memorial of John Philip, D.D., relative to the vagrant ordinance, as requested at sitting No. 9.

A petition from the inhabitants and farmers of Somerset, (West,) Hottentots' Holland, relative to the vagrant ordinance; and a petition from the chairman and members of the committee of the Commercial Exchange, relative to the Table Bay health officer's remuneration ordinance, were laid on the table.

Vagrant Ordinance; second reading postponed.

Tuesday, the 1st July 1834.

Vagrant Ordinance; second reading postponed.

Thursday, the 3d July 1834.

His Excellency the Governor laid before the council the report of the civil commissioner of Uitenhage on the memorial of John Philip, D.D., relative to the vagrant ordinance, as requested at sitting No. 9.

Vagrant Ordinance; second reading postponed.

Monday, the 7th July 1834.

His Excellency the Governor laid before the council, the report of the civil commissioner of Stellenbosch on the memorial of John Philip, D.D., relative to the vagrant ordinance, as requested at sitting No. 9.

Vagrant Ordinance; second reading postponed.

Friday, the 11th July 1834.

His Excellency the Governor laid before the council, the following documents: the report of the civil commissioner of Albany and Somerset, and the report of the civil commissioner of Graaff-Reinet, on the memorial of John Philip, D.D., relative to the vagrant ordinance, as requested at sitting No. 9; and a memorial from the inhabitants of Graaff-Reinet, on the subject of the same ordinance.

Vagrant Ordinance; second reading postponed.

Wednesday, the 16th July 1834.

Vagrant Ordinance; second reading postponed.

Tuesday, the 29th July 1834.

Vagrant Ordinance; his Excellency the Governor laid before the council the report of the civil commissioner of Swellendam, and the report of the civil commissioner of Worcester, on the memorial of John Philip, D.D., as requested at sitting No. 9. Memorials, relating to this ordinance, from inhabitants of Graaff-Reinet; from inhabitants of Somerset, (Hottentots' Holland,) District of Stellenbosch; from inhabitants of Wynberg, Diep Rivier, Steenberg, Constantia, Wittenboom, Hout Bay, and Rondebosch; from inhabitants of the Gardens in Table Valley; from agriculturists, tradesmen, and other inhabitants of the district of Beaufort; from inhabitants of the Paarl, Drakenstein, French Hoek, Waggon-makers' Valley, &c., in the District of Stellenbosch, were laid upon the table. The reports of the civil commissioners on the memorial of John Philip, D.D., were read; motion made and question put, that the memorials (on the table), which have not yet been read and received, be now read and received: carried unanimously, and memorials read and received accordingly.

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Vagrant Ordinance; further consideration in committee.

Thursday, the 31st July 1834.

Vagrant Ordinance; a memorial from inhabitants of Tygerberg, and a memorial from certain grand jurors in this colony, were laid upon the table: motion made and question put, that these memorials be read and received; carried unanimously; memorials read and received accordingly.

Motion made and question put, that the further consideration of this ordinance be adjourned until an abstract of the returns, of the description as set forth in the schedule annexed to this ordinance, be submitted to council.

3 for the motion.
4 against the motion.

Majority 1 against the motion.

Motion made and question put, that this ordinance be read a second time; motion carried, and ordinance read a second time accordingly; whereupon, amendment moved and seconded, that, in the third clause, the words "or until some respectable person shall agree to take them into their service," be omitted. The council, accordingly, resolved itself into committee, for the discussion of this ordinance, and of the proposed amendment; and his Excellency the Governor was requested to cause to be procured from the judges of the Supreme Court, information respecting the state of the existing laws relating to vagrancy; agreed to; discussion adjourned until this information was procured.

The council resumed its sitting.

The council adjourned at four o'clock, until Wednesday, the 6th August, at one o'clock.

11th August.

Vagrant Ordinance; referred, for amendment, to the judges of the Supreme Court.

Monday, 11 August 1834.

Vagrant Ordinance:—The council resolved itself into committee thereon. Memorial from inhabitants of the district of Worcester; memorial from inhabitants of the districts of Swellendam and Caledon; memorial from Dr. Philip, founded on reports made to him by the missionaries of the London Missionary Society; memorial from inhabitants of the district of Albany; memorial from the field-cornetcy of Bathurst, in the district of Albany; and two memorials from inhabitants of the district of Uitenhage, were laid upon the table; all relating to this ordinance.

Motion made and question put, that these memorials be read and received; carried unanimously, and memorials read and received accordingly.

His Excellency laid before the council a report on the state of the existing laws relating to vagrancy, signed by the judges of the Supreme Court, as requested at sitting No. 18; also, Extract of a despatch from Lord Goderich to Major-general Bourke, dated 5th August 1827 (No. 25), relating to the mode of procedure to be adopted by the council of government, when in the enactment of laws the judges have given the sanction of their unanimous recommendation on any matter connected therewith; whereupon, motion made and question put, that this ordinance be referred to the judges of the Supreme Court, to be amended in accordance with the suggestions contained in their report. Carried unanimously.

20th August.

Vagrant Ordinance; further consideration in committee.

Wednesday, 20 August, 1834.

Vagrant Ordinance:—The council resolved itself into committee thereon. Memorials relating to this ordinance from inhabitants of Wynberg and Cape Town; from the coloured inhabitants of the Caledon Missionary Institution; from the members of the committee for apprenticing juvenile emigrants; from inhabitants of the district of George; from inhabitants of the district of Caledon; from inhabitants of the district of Worcester; and from inhabitants of the districts of Caledon and Swellendam, were laid upon the table.

Motion made and question put, that these memorials be read and received; carried unanimously, and memorials read, and received accordingly.

His Excellency the Governor having, in accordance with the unanimous resolution of council to that effect at sitting No. 19, submitted this ordinance to the judges of the Supreme Court for amendment, laid before the council a letter addressed to his Excellency by the judges, in answer to the communication which he had thereupon made to them, which was read. Discussion adjourned.

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23d August.

Vagrant Ordinance: further consideration in committee.

Monday, 8th September 1834.

Vagrant Ordinance:—Memorials relating thereto, from Hottentots and other free people of colour, at the Missionary Institution at Pacaltsdorp; from heads of parties at the Kat River settlement; from John Fairbairn, were laid upon the table. Motion made and question put, that the memorials relating to the vagrant ordinance be read and received. Carried unanimously, and memorials read and received accordingly.

Ordinance returned by the judges of the Supreme Court, with the opinion of the judges, "that there would not be any legal impediment to its execution by the colonial tribunals; but that, in consequence of the provisions of His Majesty's Order in Council, dated 15th January 1829, this ordinance, in so far as it in anywise alters, repeals or amends the ordinance, entitled 'Ordinance of his Honor the Lieutenant-governor in Council, for improving the condition of Hottentots and other Free People of colour at the Cape of Good Hope, and for consolidating and amending the Laws affecting those Persons,' and dated the 17th July 1828, will be void and of no effect, and cannot be enforced, or carried into execution, by any of the colonial tribunals, until the same shall have been first and expressly ratified, confirmed and allowed by His Majesty, with the advice of his Privy Council."

His Excellency submitted to the council a communication addressed to his Excellency by the chief justice, relating to the provisions of this ordinance, and to the existing law for the suppression of vagrancy, which was read.

Motion made and question put, that this ordinance be read a third time.

For the motion:

The Honourable C. S. Pillans, Esq.

— M. van Breda, Esq.

— L. Cloete, Esq.

Auditor-general.

Treasurer-general.

Officer next in command.

Against the motion:

The Honourable J. B. Ebdon, Esq.

Attorney-General.

Acting Colonial Secretary.

Majority, three for the motion.

Ordinance read a third time accordingly.

By the President of the council; motion made and question put, that this ordinance do now pass.

Votes same as above; majority three for the motion.

Ordinance ordered to be brought up to his Excellency the Governor, for his Excellency's consideration.

His Excellency the Governor, the honourable the Acting Secretary to Government, the honourable the Attorney-general, and the honourable J. B. Ebdon, esq., expressed their intention of recording the reasons of their dissent from the majority of the legislative council upon the third reading of the "amended Bill for the suppression of Vagrancy."

The officer next in command proposed to the council resolutions to be adopted, and transmitted with this ordinance to His Majesty's Government:

To the effect, "1st. Humbly, but earnestly recommending to His Majesty's benevolent care, in regard to their moral and religious instruction, the Hottentots and other free people of colour, as well as the negro population about to be emancipated.

"2d. That whatever lands still remain available for this purpose, be, with as little delay as possible, granted to the Hottentots and other free people of colour in absolute possession, and that the lands at the several missionary institutions be appropriated as recommended by His Majesty's Commissioners of Inquiry in their Reports on this subject, dated 11th March 1829, and 28th January 1830, submitted to the House of Commons on the 8th June 1830.

"3d. That the districts of Worcester, Graaff-Reinet, and the greater proportion of the field-cometries be sub-divided, the number of justices of the peace augmented, and the several gaols throughout the colony be better adapted for the purposes of punishment.

"4th. Recommending, for the several reasons therein set forth, the repeal of the second section of the 50th ordinance, and of all existing laws for the prevention or punishment of vagrancy, and praying that His Majesty will allow the ordinance providing for the suppression of vagrancy now passed."—Ordered to be printed.

The council adjourned at five o'clock, until Saturday the 13th inst., at one o'clock.

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JUDGES' OPINIONS, 1829.

ANSWERS to the QUERIES proposed by his Excellency the Governor to the Judges of the Supreme Court.

Query 1. Is it the opinion of the judges that the inhabitants of the frontier districts are sufficiently protected by the existing law against the numerous depredations committed of late against their cattle and property?

Query 2. How far does that law sufficiently protect the inhabitants, after such depredations, in the use of fire-arms against those whose escape the inhabitants would prevent, when overtaken either in the act of completing their plunder, or after pursuit?

The above Queries appear to us to involve four distinct subjects of inquiry, which we shall consider in their order.

Question 1.

Question 1. Do the existing laws of the colony provide, on the conviction of offenders, punishments sufficient to deter, in so far as the dread of punishment on conviction can operate, to deter others from committing the like crimes in time to come, in the case of those classes of offences by which the inhabitants of the frontier districts are exposed to suffer?

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Answer 1. The offences by which the inhabitants of the frontier districts are exposed to suffer, appear to us to be,

1. The breaking into and stealing from their dwelling-houses during their frequent and necessary absences from home.

2. The stealing of cattle, sheep and goats.

§ 1. For the first of those offences the law of the colony provides the punishment of death, with power to the judge before whom the offender is tried, when there are circumstances of mitigation, or rather according to the modern practice, where there are no circumstances of aggravation, of mitigating the punishment to banishment, imprisonment with or without whipping, as shall appear sufficient to meet the exigencies of each particular case.

*Vide Voet, lib. 4
I. 8. Van Leuwen
Commentaries,
p. 490.
V. A. Linden's I
stitutes, pp. 343-34
Voet, lib. 47, l. 1
sec. 4.
Van Leuwen's Col
p. 491.
V. D. Linden's I
stitutes, p. 343 at
344.*

§ 2. For the second class of offences, viz. the stealing of cattle, sheep and goats, the law of this colony provides the punishment of death in aggravated cases, with power to the judge before whom the offender is tried, in cases of less heinous degree of guilt, to mitigate the punishment to banishment, imprisonment with or without whipping.

As to these two classes of offence, the law of the colony is the same with the practice, if not with the letter of the law of England, and precisely the same with the law of Scotland.

It is to be observed, that, by the law of the colony, the stealing of even one sheep from its place of pasture, or the killing of one sheep in its place of pasture and carrying off the flesh, might be punished with death, on the grounds that such kind of property could not be otherwise secured, although in practice the punishment was generally mitigated, and such punishment by banishment, imprisonment and whipping inflicted as appeared to the judge sufficient to meet the exigencies of the case. It may be doubted whether, subsequently to the enactment of the Ordinance No. 22, and previously to the enactment of the Ordinance No. 33, and in Cape Town and the Cape district, previously to the enactment of the Ordinance No. 44, the law was not altered by the provisions of the Ordinance No. 22, as to the legal guilt and punishment of the crime of stealing cattle, sheep, or goats under the value of 5 s., and such offences thereby placed lower in the scale of crime and made subject to less severe punishment than was consistent with the protection of that species of property by its nature, and the circumstances of the colony so much exposed to depredation. But considering the object for which the Ordinance No. 22 was enacted, and the terms of its enactment, and of the enactments of the Ordinances Nos. 33 and 34, we are of opinion that it (the 22d Ordinance) has been virtually repealed, and consequently, that the law as to the crime of stealing cattle, sheep or goats, is now in the same situation in which it stood previously to the enactment of Ordinance No. 22.

But lest any doubts should be entertained on this point, we recommend that the Ordinance No. 22 be immediately repealed, as being in some respects injurious and inexpedient, and in the present state of the criminal law of the colony altogether useless.

It is further to be observed, that the law of this colony provides the same punishment for the harbourers of thieves, and the receivers of stolen goods, to which the thieves themselves are liable.

The only particular in which the law of the colony as to the punishment of those offences by which the inhabitants of the frontier districts are exposed to suffer, is defective, is in so far as regards the punishment of female offenders. The punishments of death and banishment are in general wholly out of the question; the punishment of females by whipping appears to be improper, and we believe that simple imprisonment on the prison rations for a moderate period, is considered by the female Hottentots or most numerous classes of offenders as no punishment at all. At the same time, the state of the prisons in the different districts of the colony prevents the use of solitary confinement to the extent necessary, and no species of hard labour at which to employ female prisoners has yet been devised, at least in the country districts of the colony.

Question 2d. Do the existing laws of the colony entitle the individual inhabitants of the frontier districts to do that which is necessary to prevent the completion of the attempt to commit theft by means of housebreaking or to steal cattle, sheep or goats, which they discover in the act of being made?

Answer 2d. The law of this colony appears to us to entitle every individual to do that which is necessary to prevent the theft of any of his cattle, sheep or goats; consequently, in our opinion the inhabitants of this colony (as also their servants and inmates, or even strangers present at the time) are justified in killing any person whom they may discover in the act of attempting to break into their dwelling-houses in the night time, with intent to steal, or even in the day time, with intent to rob or commit any forcible or atrocious crime; and in like manner, that they are justified in killing any person whom they may discover in the act of theftfully carrying away any of their cattle, sheep or goats, and who then defends himself forcibly, or whom they cannot otherwise possibly prevent from completing his crime; according to the authority of Grotius, in the following passage: "Unde sequitur, si ad jus solum respranum posse fuere cum re fugientem, si aliter res reasperari requeat, jaculo prostrari; namque inter rem et vitam est inequalitas, illa favori innocentis, et raptoris odis compensatur," and that the same is true, whether the thief be detected on the spot or overtaken on pursuit.

*Voet, lib. 47, l.
sec. 10.
Van Leuwen's Co
pp. 467, 468.
V. D. Linden's I
stitutes, p. 333.*

*Grotius, lib. 1, c.
No. 11.*

Question 3d. Do the existing laws of the colony entitle the inhabitants of the frontier districts to do that which is necessary to prevent offenders who have stolen their property by means

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of housebreaking, or who have stolen any of their cattle, sheep or goats from escaping, either when detected in the fact, or when overtaken after being pursued and traced?

Answer 3d. From the observations which have already been made on the law of the colony, with regard to theft committed by means of housebreaking and the stealing of any cattle, sheep or goats, it is clear that the law of this colony attaches to those offences that degree of guilt which in the law of England amounts to the crime of felony.

Without entering upon the consideration of the question, whether the principles and rules of the law of this colony, on the subject of arresting and preventing the escape of those who have committed, or are suspected of having committed any crime or offences of that degree of guilt which in England amounts to felony, are the same with the principles and rules of the British law on the same subject; we are of opinion, that if the law of this colony is not the same with that of Great Britain on this subject, it ought to be made the same; and even if it be already the same, that it is expedient to enact an ordinance consolidating and declaring the law on this subject.

We have the honour to transmit the draft of an ordinance which appears to us calculated for this purpose, and in which we thought it expedient to introduce a clause explanatory of section 2 of Ordinance No. 50, in order to prevent any misapprehension which may arise from the tenor of that section, and also a clause repealing the Ordinance No. 22.

Question 4. Do the existing laws of the colony sufficiently protect the property of the inhabitants of the frontier districts, by providing a sufficient preventive police, or a system of checks and restraints on that portion of the population who, from their circumstances, wants, dispositions and habits are likely to commit depredations on the property of their neighbours, sufficient, or calculated to prevent the commission of such depredations?

Answer. As our opinions on the subject of this question are not unanimous, we shall express them in separate answers, which shall be speedily forwarded to your Excellency.

(signed) J. Wylde.
William Menzies.
G. Kekewich.
W. W. Burton.

REPLY of his Honor the Chief Justice, Sir John Wylde, to the 4th Question.

Question. If the present existing law should be found insufficient as to proper protection, would an ordinance, as proposed by the Attorney-general in his letter to the Governor, dated 15th. December 1828, or what other provision, become expedient?

Answer. It seems to me that the existing laws of the colony cannot have been found so wholly insufficient for affording protection against depredations on cattle and property, as that, in consequence of the late alterations and modifications of our public legal jurisdiction and authorities, doubts and uncertainties as to the laws still remaining in force may have arisen with those who continue charged with their enactment.

It must upon the facts also be admitted, that the police establishment has in real efficacy proved unequal to repress even that outrageous boldness of actual plunder, which, originating in whatever cause, is stated to have occasioned such loss of cattle and property throughout the frontier districts. But from whatever cause, such offences have in truth become so increased, it seems difficult, if we recur to the ordinance for regulating the country districts, to account for such a state of insecurity as is alleged to have actually taken place, if the regulations under it had been duly enforced. For it cannot be denied that the tenor of the regulations contained in that ordinance for the apprehension of vagabonds, and of all suspicious and disorderly persons, authorizes the application of such powerful checks as *a priori* could not justly be considered as constituting a weak or insufficient system; and even under the existing circumstances in respect of the increased risk to which cattle and property are said to be exposed, I can hardly persuade myself but that such a state of hazard and insecurity is more justly attributable to want of competent means for enforcing those regulations, than to any palpable deficiency of the system or of the provisions under it.

But again, if any uncertainty as to the laws still actually in force, and consequent apprehension of those who have to enact them, have tended to lessen the activity of the police, its efficacy would be reduced in a still greater degree; and it would create a suspicion that depredations should become frequent in such open districts, if those thus charged with its due execution have become alarmed, and therefore inactive.

I am not aware to how recent a period this increased state of exposure to theft upon cattle and property may be dated back.

If, however, it may be justly presumed that the late emancipation (as it may be called) of the Hottentots has increased the number of offenders in this way, then the very effect of that unexpected emancipation may have led to those licentious and idle habits, on their part, which might be the natural growth of so sudden a liberty, but which after a temporary indulgence might cease to have so mischievous an influence, when the necessity of providing maintenance, in those whose principles may be less or not wholly abased, shall have sobered down their present excitement at this amelioration of civil condition.

The existing evil, it is to be observed, arises not merely from persons liable to suspicion, but in the commission of absolute depredations. It is certain, however, that idleness and vagrancy are sure to lead to the commission of such offences. But again, a disinclination to industry, and subsequent vagrancy, arising from a peculiar and temporary cause, would be restrained of course with less penal force than when attributable wholly to inveterate habits of dishonesty and roguery. In the former case it is not less matter of sound policy, than of humanity, that very severe checks in the way of punishment should not be employed

ployed in the first instance; and if the removal of all uncertainty and apprehension as to the existing law in those who are to execute it, and the active measure of dispersing and expelling those upon whom it is to be executed from particular districts, would counteract the urgent grievance, it would be equally unnecessary and severe to put in force against such offenders the severity of the Dutch penal code, although that law *stricti juris* might be still in force within the colony.

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Certain it is, that by the Dutch law the most severe penal sanctions (even to torture and the gallows) were directed to the repression of vagabondizing. These rigid enactments, as promulgated in various Placaats, have not been fully adopted it is true, or carried in their spirit or letter into full effect within the colony; but vagabondizing has clearly been made and punished from time to time as an offence, though rather in point of modern practice as an aggravation of some other offence with which the offender was at the same time chargeable, than as a separate and distinct crime. Under express proclamations and ordinances jurisdiction was given over this offence to the courts of Landrost and Hemraaden, and upon their abolition, to the resident magistrates and justices of the peace so lately established in the colony. The jurisdiction thus vested must have been increased, if at all, under the Dutch law; and the ordinances for the regulation of the country districts, upon which His Majesty's late charter had no effect, clearly embody in part the spirit and instructions of that law, though not its heavy sanctions and penalties.

See Placaats,
4 May 1588,
15 December 1595
19 March 1614,
9 July 1609,
17 September 1614
25 June 1649.
Procl. 18 July
1817.
Ord. 32, § 2.
33, § 12.

As to the adequacy of the police itself for the due enforcement of the existing laws as a general question, the court has had but a short and limited opportunity for proper observation, and, in its present state, the executive government may perhaps be better possessed of those circumstantial points by which the merits of such a description must be mainly tried. It is one at least, as applicable to the present case, upon which I am unable to come to any well-advised conclusion until I may have obtained more particular information as to the strength and resources of the police in connexion with the inquiry, though I am still not removed from the fixed impression "that the existing laws are sufficiently strong to oppose much more powerful police restraints than can of late have been applied against frequent and continual depredations."

In 1834 the court was unanimous that the 2d sec. 50th Ordinance shielded the Hottentots from the vagrant laws of the colony

In the absence therefore of such necessary information as to the real extent, as well as chief cause and principle of the evil, it would seem to me as too hazardous at present to recommend more than to try the effect of putting recognized and well established regulations into the most active operation; a renewed stimulus on the part of the police may disperse the vagrants, at least break up any existing coalitions, and possibly have the effect of forcing them to labour under immediate police coercion, or under the surveillance to which they might become subject, in less extensive districts.

In this view, for the sake of alarming and dispersing all such idle and suspicious persons as are or may become the real offenders, it might be expedient to promulgate, in the first instance, such an ordinance in principle as the Attorney-general has pointed out, the principle of which is founded on the analogous provision in the English statutes for the apprehension and removal of suspicious and idle persons. At the same time, however, as a mere effective relief it would seem to me highly advisable that public instructions, settled perhaps under the supervision of the Attorney-general, should be issued by the executive government (as in many instances heretofore), to the resident magistrate and justices of the peace, directing them to have immediately carried into full effect the "regulations of the ordinance for the administration of the country districts," as published by the Governor in council, and more especially with respect to those sections of the ordinance which unquestionably would seem still to remain in force within the colony, and which stand immediately connected with the dispersion of vagabonds, over whom the boards of Landrost and Hemraaden were authorized and directed to take cognizance as to the crimes of "vagabondizing, cattle stealing and other thefts, not accompanied by any circumstances of murder, violence, breaking into houses and other enclosures;" and to proceed to judgment and pass sentence according to the laws and usages "here in observance:" all crimes before those courts having been made cognizable by the courts recently erected in their place, and where the offenders may be punished, though not in any higher or more severe manner than therein limited and set forth.

In letters 30th
April 1812,
6th March 1818.
23d Oct. 1805.
Sec. 220. 223. 227.
241. 245. 250, 251.

Under these impressions, and considering the probable effect of the declaratory ordinance, as already proposed with respect to the protection of officers of justice, and others, in the apprehension of offenders, I do not feel myself warranted in recommending the adoption of any more solemn and more severe enactments or regulations until this palliative remedy shall have been tried, and until especially more satisfactory information shall have been obtained as to the cause and real extent of the evils complained of, and thus of what additional power or new modifications, as to the checks and restraints, the police may be capable, and have power to put in force, when specific extraordinary remedies may be made to appear more fully disclosed, and thus become justifiable on strict legal principles and practice.

26 January 1829.

(signed) John Wylde.

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ANSWER of Mr. Justice *Menzies* to the 4th Question.

I am of opinion that no sufficient preventive police is provided by the existing laws of the colony, and I am not aware how any sufficient preventive police can, in the present circumstances of the colony, be established.

I am of opinion that the existing laws of the colony, more particularly since the enactment of the Ordinance No. 50, do not provide any system of checks or restraints on that portion of the population of the colony, who, from their circumstances, wants, dispositions and habits, are inclined or under temptation to commit depredations on the property of the inhabitants of the country districts, sufficient or calculated to prevent the commission of such depredations.

It appears to me to be impossible to legislate for the purpose of remedying this defect in the laws of the colony, either with safety or advantage, until that information be obtained which will be furnished by the returns, the expediency of directing which to be made I had the honour of suggesting to your Excellency in my letter of the 25th of December 1828.

The frequent complaints I heard during the last circuit as to the state of the country districts, induced me to turn my attention most seriously to this subject, and I endeavoured to obtain information relative to it from every intelligent person with whom I had an opportunity of conversing. The information I have received has impressed me with the belief,

1. That the Hottentots, whether of pure or mixed blood, form a very considerable part of the population of the colony.

2. That with the exception of a race (who are rather to be considered as Whites with a tinge of Hottentot blood, than as Hottentots with a tinge of white blood) they possess neither lands nor houses, and that although there may be some rare instances of their possessing a few sheep or goats, they do not possess property sufficient to support themselves without labour.

3. That none of them are sufficiently skilled in any mechanical trade to gain a livelihood by exercising such trade.

4. That the only employment for which they have any decided turn is the herding of cattle, and the taking care of horses.

5. That the Hottentots are by disposition lazy, indolent, petulant, capricious, fond of change, and addicted to drunkenness and to thieving.

6. That the Hottentots are, in respect both of their personal and mental qualities, in most instances inferior, and in no instances superior, to the slaves of the colony.

7. That even when under engagement to a master, they can only be prevented from yielding to the above-mentioned evil propensities and compelled to perform their work by fear of punishment.

8. That imprisonment of short periods in the district prisons on the prison rations is not considered as any punishment either by male or female Hottentots; and in the country districts there are no houses of correction, nor any means of keeping persons imprisoned for short periods at "hard labour." That in the country districts the prisons could not, in addition to the number of prisoners imprisoned for trial, or under sentence, contain the number of Hottentots who, if the 21st and 24th sections of Ordinance No. 50 were strictly enforced, would be sentenced to imprisonment for misdemeanor or ill behaviour to the masters.

9. That the employers of Hottentots are so convinced of the utter inadequacy of the punishments provided, that few or none of them will be at the trouble or expense of travelling even half a day's distance for the purpose of having their Hottentot servants punished for negligence, disobedience, violence, drunkenness, desertion, or petty theft, but prefer the alternative of dismissing the offending servants from their service, and getting quit of them altogether. And for the same reason such employers will rather allow their Hottentot servants to break their engagements and leave their service at pleasure, than by compelling the fulfilment of their engagement expose themselves to the hazard of the trouble and expense of being compelled to appear before the resident magistrate to answer unfounded charges preferred against them, and which they know the fear of the punishment provided in section 24 of Ordinance No. 50, will not deter such Hottentot servants from preferring against them.

10. That in the country districts the only species of hard labour, at which it has hitherto been found practicable to employ prisoners, is labour in irons on the roads; that when any number of prisoners is so employed, a guard is necessary to prevent escape and enforce the labour: that no confidence can be placed in black constables: that the number of white constables is very limited, and insufficient for the duties which they have at present to discharge: that it would be difficult, if not impossible, to increase the number of white constables in any considerable degree: that in several of the country districts these circumstances at present render it impossible to keep the criminals who have been sentenced to hard labour employed at any kind of labour: that even in the country districts the prisons could not, in addition to the number of criminals imprisoned for trial, or under sentence, contain that number of Hottentots who would be sentenced to imprisonment in virtue of any ordinance providing the punishment of imprisonment for the prevention of vagrancy, if such ordinance were enforced to an extent sufficient to compel the Hottentots to relinquish vagrancy, and take themselves to service.

11. That the mildness of the climate enabling the Hottentots to sleep comfortably in the bushes, caves or temporary huts of the simplest and easiest construction, and almost to

to dispense with clothing, plenty of flesh and two or three sheep-skins comprise everything which they consider requisite, either as comforts or necessities.

12. That the situation and circumstances of the country districts afford the readiest facility to the Hottentots to support themselves comfortably by sheep and cattle stealing with impunity.

13. That in the neighbourhood of the towns and villages, where alone brandy is procurable by the Hottentots, they have it in their power to procure so much of it as they want by doing little jobs for the inhabitants, without the necessity of being either industrious or of entering into any permanent engagement of service.

14. That before the passing of Ordinance No. 49, the Hottentot population was fully sufficient to furnish all the labour which Hottentots, whether male or female, are capable of performing, and of which the inhabitants of this colony are in want.

15. That the natives of the tribes beyond the frontier are capable of performing any kind of labour of which the Hottentots are capable, and that such tribes so far excel the Hottentots in the qualities of steadiness, quietness, sobriety and obedience, that no person who can procure them for labourers will employ Hottentots.

16. Consequently, that the employment of natives of the tribes beyond the frontier produces the effect of increasing the number of unemployed Hottentots.

17. That since the passing of the Ordinance No. 50, the number of unemployed Hottentots has greatly increased.

18. That since the passing of the Ordinance No. 50, the number of thefts of sheep and cattle has greatly increased.

It appears to me, therefore, that with respect to the state of the Hottentots the following propositions are true, and that any exceptions to them which may be found to exist are so few and unimportant as to be undeserving of consideration in legislating on the subject.

1. That any Hottentot who is not in service has no lawful means of subsistence, and must support himself by thieving.

2. That Hottentots in general will not enter into service unless compelled.

3. That the wants of the Hottentots are so few and so easily supplied by thieving, that they are not compelled by want to enter into any service.

4. That by the existing law of the colony there is no provision made by which Hottentots can be compelled to enter into service.

5. That the fear of being punished with imprisonment and hard labour for a short period (e. g. several months) would not be sufficient to overcome their propensity and temptations to idleness, nor to compel them to enter into any service.

6. That even if imprisonment with hard labour for short periods were a punishment of such a nature, that the certainty of suffering it if they remained idle would compel Hottentots to enter into service, it is not practicable, in the present state of the country districts, to inflict it to the extent necessary to have any influence on the conduct of the Hottentots.

7. Consequently, that any ordinance passed for the purpose of repressing idleness and vagrancy among the Hottentots, which provided no other or more severe punishment than imprisonment with hard labour, would be inadequate and ineffectual for that purpose.

8. That the punishments provided by the Ordinance No. 50, for Hottentots who misconduct themselves as servants, or prefer unfounded complaints against their employers, are inadequate and ineffectual to prevent such misconduct.

9. That this circumstance has the effect of discouraging the inhabitants from employing Hottentots, and encourages them to break the engagements of service which they have entered into.

10. That the effect of the provisions, No. 49, has been and will be to increase the number of Hottentots out of employment.

11. That the existing laws of the colony regulating the condition of the Hottentots have the effect of increasing instead of preventing the commission of thefts of sheep and cattle by Hottentots in the country districts.

12. That no species of punishment which is not improper to be inflicted on slaves in this colony is improper to be inflicted on Hottentots.

I am further of opinion,

1. That it is necessary to alter the existing law of the colony, and to enact new laws in order to prevent the property of the inhabitants of the country districts from suffering by the depredations of the Hottentots.

2. That such new laws, in order to be effective, should proceed on principles directly opposite to the principles on which several of the provisions of the Ordinance No. 50 were enacted.

3. That it would be impolitic and inexpedient for the government of this colony to repeal or legislate in opposition to an ordinance passed so lately, and which has received the sanction of His Majesty's Government, before the colonial government is in possession of positive information sufficient to establish beyond the possibility of question the impolicy and inexpediency of the Ordinance No. 50.

4. That any partial or temporary ordinance passed on the subject of the Hottentots, while government are not fully informed as to the circumstances of the country districts, would at least operate only as a palliative and not as a remedy of the existing evils; that it might possibly add to them, and that it would certainly have the injurious consequences of preventing the effects of the principles acted on in the Ordinances No. 49 and 50 from being clearly seen, while it is most advisable that accurate knowledge of these effects should be obtained.

It appears to me that although some benefit might be produced by an ordinance of the

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nature proposed by the Attorney-general in his letter dated 15 December 1828, yet that it falls far short of the exigences of the case.

Further, I can in the first place see no occasion why, if such an ordinance be enacted, it should not be made to apply to every district in the colony.

2. It appears to me inexpedient to restrict the use of fire-arms by the persons acting under such ordinance to the single case of fire-arms having been previously used against them.

And lastly, I am of opinion that if such an ordinance were enacted, and the provisions generally carried into effect, it would be impossible to find either place of confinement or hard labour for the inhabitants of the colony who would in consequence be apprehended.

I take the liberty to suggest that when it shall appear to the Attorney-general, on considering the preparatory examination transmitted to him in the case of any person committed for further examination or for trial, on a charge of having committed homicide while attempting to apprehend or prevent the escape of an offender, and the case of such person, although proper to undergo a public investigation by a trial, is not likely on trial to be found to amount to the crime of murder, he, the Attorney-general, be directed to apply to the Supreme Court to admit such person to bail, and if need be to cause such bail to be procured, and to take care that such person has every means necessary for his defence provided at the day of trial.

And further, that when any person called out by any local authority receives any serious bodily injury while engaged in a lawful attempt to apprehend prisoners, some reasonable compensation for the same should be made to him by the colonial government.

With reference to this subject I take the liberty of recommending to the favourable consideration of your Excellency the case of Marthinus Appel.

Whenever his Excellency the Governor has determined upon the principles upon which it appears expedient to legislate relative to the Hottentot or Free Black population of the colony, I shall be most happy in concurrence with the other judges to give my assistance in preparing the draft of any ordinance which may be deemed necessary on this subject.

29 January 1829.

(signed) W. Menzies.

ANSWER by Mr. Justice *Burton* to the Fourth Question.

I AM of opinion that the existing laws of the colony, if properly enforced, do provide a sufficient check and restraint upon the people in question, and are calculated to prevent the commission of depredations by them; but whether the system of police in this colony be sufficient to carry the laws into effect is a question which requires more knowledge of the strength of the different police establishments than I at present possess, but I am inclined to think that they are sufficiently powerful to act more in the way of restraint, than they appear from the complaints which have reached your Excellency to have hitherto done, and that they may be rendered effectual, as far as respects the apprehension of offenders or persons who from their habits of idleness may be suspected of becoming such, by adopting in this colony (if it shall be thought not to be already the law, or by declaring it anew, if being the law it has come to be disregarded) that principle of the law of England recommended by the Attorney-general, of calling on the people of the districts themselves to assist in such apprehension, rather than add so largely to the public establishment as under the circumstances of the colony would otherwise perhaps be found necessary for the purpose. This principle indeed, however, lately lost sight of, appears to me to have been the law of Holland, and also to have been the subject of enactment here in the system for regulating the country districts.

The law of Holland (as enacted in the Placaats of the 4th of May 1588; 15th December 1595; 19th of March 1614; 19th July 1607; 17th September 1614; 24th June 1649, and several others to be found in the great Placaat book) appears to me similar to the law of England in defining vagrancy, to have been anciently more severe in the examination of persons suspected of vagrancy (extending even to the torture), and more severe in the punishment of vagrancy, than your Excellency would probably be advised to re-enact, being whipping for the first offence, whipping and banishment from the district for the second, and whipping, branding and banishment out of the country for the third offence.

It may be questionable whether the vagrant laws of the mother country, being a matter of local regulation only, and providing for the emergency of particular occasions, become on the acquisition of a colony the law of the colony. But the Dutch law on the subject of the apprehension of vagrants has been adopted in this colony by the ordinance for the country districts of the 22d of October 1805. And the punishment of vagrancy must have followed either the Dutch law as enacted, or that principle of law that the punishment of an offence to which no certain punishment is affixed is at the discretion of the judges, for vagrancy has not gone unpunished in the colony, either separately or in conjunction with other offences. Vagrancy and vagabondizing have always been punished as an offence against the laws.

Looking to the very full provisions of the ordinance for the country districts, and referring your Excellency specially to the clauses 214. 213. 223. 227. 231. 238. 242. 244. 245. 246, 247. 250. 251. 252. 253. 270, I feel it impossible not to say, if they had been effectually followed up, a complete prevention would have been attained for the evils complained of, so far as law can provide a remedy. I am at a loss to account for this ordinance being considered of no effect, for it must be so considered, if it be said that no sufficient law exists for the apprehension of vagrants.

By

By Ordinance No. 33, passed in pursuance of His Majesty's charter, the courts of Land-rost and Hemraaden, which had jurisdiction of the offence of vagrancy or vagabondizing, was abolished; but by the same Ordinance, section 12, "all such crimes and offences as were cognizable by the late court, became cognizable in the courts of the resident magistrates;" and by Ordinance No. 32, justices of the peace are appointed with power to apprehend and commit to prison amongst others all "vagabonds," in order that such offenders may be brought to trial.

By Ordinance No. 50, Hottentots and other free persons of colour were relieved from certain restraints and compulsory service to which others of His Majesty's subjects in this colony are not liable. But neither His Majesty's charter, nor that ordinance, nor any other that I am aware of, passed since the promulgation of His Majesty's charter, has in any other respect altered the ordinance for the country districts, or prevented the apprehension of vagrants, or made it a duty less imperative upon all officers to apprehend them, or rendered any person less amenable to punishment for vagrancy than before the commencement of the last year.

As, however, so great doubts have arisen upon the subject of the powers and duties of the civil commissioners, field cornets and other officers in the apprehension of vagrants, and as the ordinance for the country districts has become in some of its provisions inapplicable to the existing circumstances of the colony, I recommend to your Excellency the re-enactment of so much of that ordinance as remains applicable, declaring anew the duties of the civil commissioners and other magistrates and officers in the colony; and by a separate ordinance defining the offence of vagrancy, and providing for it such punishment as your Excellency with the advice of your council shall see fit.

Upon the subject of punishment I am unable, for want of sufficient data concerning the state of the public prisons and the public resources of the colony, to suggest any particular mode of punishment with confidence.

It is obvious that it must be such as will be effective in repressing vagrancy, whilst it is such as the resources at your Excellency's command will ensure its being effectually executed, and at the same time such as is only commensurate with the offence as compared with other offences against the law. But upon this point I do not doubt that from the information your Excellency will have from others, more capable of venturing an opinion than from my limited acquaintance with the colony I dare profess myself to be, some mode of punishment both for males and females may be adopted sufficient to deter them from idle and dissolute habits, provided the remedy be promptly and immediately applied whilst vagrancy has not yet become inveterate, and before, for want of proper coercion, new measures shall become necessary, which neither your Excellency nor humanity can approve of.

I subjoin the heads of an enactment which I propose as the basis of an ordinance on these subjects; much more will be requisite in detail, which may occur to your Excellency, and I shall be ready and happy to render my assistance in modelling, framing and completing the ordinances as soon as your Excellency shall have determined on the general plan. In the meantime I think it will be proper to call the attention of the civil commissioners and field cornets to the above provisions of the ordinance for the country districts; and also, if the draft ordinance enacting and declaring the law of arrest lately proposed by the judges should receive the adoption of your Excellency and council, their attention should be called to the clause there introduced, explaining the second section of ordinance No. 50.

(signed) W. W. Burton.

26 January 1829.

Mr. Burton's proposed Ordinance, for the Pursuit and Apprehension of Offenders.

It shall and may be lawful for the civil commissioners and other justices of the peace, field commandants and field cornets, as often as they shall see occasion, either of their own knowledge or upon credible information from others, that any crime hath been committed in their respective districts, and that the offender or offenders hath fled, or that companies of suspicious persons or vagrants are wandering about their districts, or concealed therein, to call together so many men of their districts as they shall deem necessary, and armed in such a manner as they shall see fit, and to pursue and apprehend all such persons for the purpose of their being dealt with according to law.

That every person being called upon by the civil commissioner, and having no legal excuse and refusing to join in such pursuit, shall, upon conviction, be punishable by fine and imprisonment.

That such pursuit shall always be accompanied by a peace officer, who shall take care that no unnecessary violence shall be resorted to.

That in case where any person, being remote from a field cornet or justice of the peace, has knowledge of any crime being committed within his neighbourhood, it shall be lawful for such person to pursue and apprehend the offender, and deliver him over to the nearest field cornet or justice of the peace.

Provided also, that immediately after any such pursuit, &c. he give notice to the nearest field cornet or justice of the peace of the circumstance.

26 January 1829.

(signed) W. W. Burton.

No. 10.
Judges' Opinions,
1829.

For Defining and Punishing Vagrants.

All apprentices or servants deserting from their masters before the expiration of the term of their service under any contract, all runaway slaves, all persons wandering about the country, and having no visible lawful means of subsistence, and not giving a satisfactory account of how they obtain the same, or going about armed with guns or other offensive weapons without lawful cause, shall be deemed to be vagrants; and it shall and may be lawful for the sheriff, the superintendent of police and their respective deputies, all justices of the peace, field cornets, constables and peace officers, to apprehend all such persons and take them before any resident magistrate of the district or place where they shall be apprehended, who shall summarily inquire into the case; and any person being adjudged by the said resident magistrate or judge of police to be a vagrant, shall, if a free person, be imprisoned and kept to hard labour, or upon bread and water, or upon rice and water, for any time not exceeding for the first offence calendar month, and for the second offence calendar months, and being a slave shall be punished with so many stripes not exceeding 75 lashes, and be further condemned to serve his master in irons for any time not exceeding, for the first offence, calendar month, and for the second offence calendar months, at the discretion of the said resident magistrate.

It shall and may be lawful for the sheriff, the superintendent of police, and their respective deputies, all justices of the peace, field cornets, constables and other peace officers, to apprehend all riotous drunkards, all loose and disorderly persons, who disturb or go about to disturb the public peace or committing any public indecency, and to take them before any resident magistrate of the district or place where such persons shall be apprehended, who shall summarily inquire into the charge, and finding the same to be true shall condemn the offender, if a free person, to such correction by fine, or being a slave by imprisonment or whipping, as he shall think fit; provided that no fine so imposed shall exceed the sum of 5 £, or imprisonment, the period of one month, or whipping, 75 lashes.

(Insert 46th clause of Ordinance No. 48, commuting the fine, in cases of inability to pay, to imprisonment.)

There shall be published weekly in the government gazette of the colony, free of expense, an account of all deserted apprentices, servants and slaves, and of all offenders against the laws, or persons suspected of any crimes, who shall have absconded, whose names and descriptions shall be lodged at the Colonial-office at any time on or before Wednesday in every week, by any master of such apprentice, servant or slave, or by the superintendent of police, field-cornet or other peace officer, together with any reward which shall be affixed for the apprehension of such persons; and copies of the said gazette, or such parts thereof as aforesaid, shall be forwarded free of expense to all civil commissioners, resident magistrates, justices of the peace, field-cornets and peace officers for their information and guidance in the apprehension of such persons.

All destitute orphans or children abandoned by their parents, and being females under the age of 16 years, or males under the age of 18 years, found by any justice of the peace, field-cornet or other peace officer in any district of this colony, or delivered to him by any inhabitant, shall be immediately taken by him to the superintendent of police in Cape Town, or the clerk of the peace in any of the other districts of the colony, to be apprenticed to some trade to which such child shall be found competent.

26 January 1829.

(signed) *W. W. Burton.*

ANSWER to the Fourth Question by Mr. Justice *Kekewich.*

Sir,

IN answer to the above question I have the honour to state, that if my information on the subject be correct, I am inclined to think that the existing laws of the colony do not sufficiently protect the property of the inhabitants of the frontier districts by providing a sufficient preventive police, and as at present established that it is not calculated effectually to prevent the depredations of that portion of the inhabitants who, from their circumstances, wants, disposition and habits, are likely to commit depredations on the property of their neighbours.

I think that a police stationed in each of the district towns, and situated at a distance of 200 or 300 miles from each other, appears ill adapted for the protection of a widely scattered and wandering property like the cattle in this colony, on which depredations are committed with peculiar facility from the nature of the country; and I entertain strong doubts if any checks or restraints can be imposed through means of a police, under the present circumstances of the colony, by which the frontier tribes and the idle and vagrant portion of the natives of the colony, who are numerous, and from their habits and dispositions are addicted to cattle-stealing, can effectually be prevented from the commission of continual depredations on property of this description.

Depredations on the cattle of inhabitants are said to have increased of late, and to have become a serious evil in the country districts. This species of theft may have increased from the supineness of those who are directed to enforce the instructions contained in the still existing ordinance for the country districts, or from more recent causes with which I am unacquainted, and which I am not able to trace or ascertain with any degree of certainty. Probably the strict enforcement of such parts of the "Instructions for the country districts," as are applicable to the present state of the colony, would be attended with salutary effects in checking the extension of the evil complained of; at least, I am inclined to recommend

mer the adoption of such a measure; and if this proposed measure be found an insufficient check, I would then recommend that an ordinance be passed for the suppression and punishment of vagrancy; but I beg leave to pause and to take the question into further consideration, previously to giving a deliberate opinion on the principle on which such an ordinance, if necessary, should be founded.

26 January 1829.

(signed) *G. Kekewich.*

No. 10.
Judges' Opinions
1829.

NOTE by Mr. Justice *Burton* upon the 13th Section.

IN concurring with my brother judges in the foregoing answers to the questions proposed by his Excellency, and in the provisions of the ordinance above recommended, excepting as to so much of the 13th clause as justifies the killing a person attempted to be arrested, who flies and cannot otherwise be apprehended or prevented from escaping, in cases where the crime committed or suspected to be committed is stealing without force;

I beg to submit to his Excellency my reasons for not concurring in the full extent of that clause, which are,

1. Because in this colony, the persons most likely to commit, or be suspected of committing the offence of stealing cattle, sheep or goats (the most numerous class of thefts in the colony), are wandering Bushmen and Hottentots inhabiting the frontier districts, who, whether they have actually committed any offence or not, always fly on the approach of the colonists.

2. Because the colonists are upon occasions of pursuit always mounted and armed with guns.

3. Because the use of their guns almost always proves fatal.

4. Because in my opinion, they require rather to be restrained than encouraged in the use of them.

5. Because the punishment of death will frequently be inflicted without trial upon persons who after legal trial would not be so punished.

6. Because persons will frequently be deprived of their lives, who although suspected are entirely innocent of the offence for which they are attempted to be arrested.

(signed) *W. W. Burton.*

NOTE by the other Judges upon the 13th Section.

WE have not been able to discover any sufficient reason why any difference should be made between the law of Great Britain and of this colony as to the rule which justifies the killing of persons charged with the commission of heinous crimes who attempt to escape from legal arrest by flying, and whose escape cannot otherwise be prevented. The propriety and expediency of the rule has never been questioned in Great Britain, although there, from the density of the well-disposed population and the numbers, vigilance and activity of the police, any escape from an attempt to arrest can in all possibility be only temporary and productive of no bad consequences. In this colony the thinness of the population, the total want of police (in the country districts), and the nature of the country, are such that if an offender escape from an attempt to arrest him, there is no certainty that months or years do not elapse before he can again be apprehended; in the meantime the person so escaping must necessarily, for his own support, betake himself to the commission of depredations, and being desperate, is likely to commit them with circumstances of greater atrocity than before.

Whatever may be said of the bloodthirstiness of the boors while on commandoes, the evidence given on the trials at the late circuit courts prove the fact to be, that all the individuals who have recently been shot while attempting to escape apprehension were either persons known to be themselves notorious and desperate offenders, or at least belonging to gangs of notorious and desperate offenders; while the first intimation which the neighbourhood receives of the escape of persons either from prison or from custody on the road to prison, or from an attempt to arrest them, has been the commission of some new and atrocious crime.

Persons who are innocent do not fly from an attempt made to arrest them by legal authority.

It is therefore the guilty only that run any risk. The law only justifies the killing where the crime of which the person attempted to be arrested is accused, is of the degree of felony. In such circumstances the law justly consider that it is more expedient for the public welfare, that such offenders manifesting their guilt by their flight, should be put to death on the spot than that by their escape an opportunity should be afforded to them, and by the hope of impunity an encouragement held out to others, to commit similar offences in time to come.

On these grounds we are compelled to dissent from the suggestions which it has appeared to Mr. Justice Burton proper to make, and we consider it our duty to recommend that in this particular the law of the colony be the same with the law of Great Britain.

(signed) *John Wylde.
W. Menzies.
G. Kekewich.*

We take these facts from the report of Mr. Justice Menzies.
(signed) *J. Wylde and
G. Kekewich.*

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Caffre Chiefs. They regularly attend divine worship; some of their children learn to read and write, *Rep. 71*—Those in hostility at the commencement of the late war gave special charge to their warriors concerning all missionaries, *Rep. 73, Kay 458*—Should be invited to visit the governors, and to hold conference with the colonial councils on particular

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particular occasions, *Bamnister, Ev. p. 18*—Have been much more heedless of colonial interests than they otherwise would have been from the improper manner in which they have been treated by the Government, *Kay 320*—Each chief to be recognized, and no one to be treated with as regards the property of his neighbour, *Kay 448*—Caffre frontier to be divided into districts; each chief to be responsible in all matters affecting the colony, *Kay 448*—Should be allowed a small annual stipend, according to the principle adopted on the northern frontier, *Kay 448*.

Caffreland. See Consular Agents. Crime.

Caffre War. Estimated cost of this war to the British nation, *Rep. 44*—The late Caffre war was but a retaliative act, or an attempt to regain rights which had been infringed by English settlers, *Kay 314*.

Caffres. This appellation is generally used in the Cape colony to denote the three contiguous tribes of Amakosa, Amatembee and Amaponda, *Rep. 25*—Are a tribe distinct from Hottentots, Bushmen and Griquas; superior to the two former in valour and intelligence, *Rep. 30*—In 1811 the Caffres were driven completely out of Zuurveldt; they had possession of the whole of Albany up to that period, *Rep. 31*—Effect of missionary influence over the Caffres, *Rep. 70, 71, Kay 458*—Their views of female character are confessedly elevated to what they were previous to the appearance of the missionaries amongst them, *Rep. 72, Kay 458*—They can be managed without patrols being sent against them, *Rep. 71*—In all former wars the Caffres massacred men, women and children indiscriminately; many instances during the late war of European females and children being protected by them, and finally restored to their friends, *Rep. 73, Kay 458*.

Difference between the credulity of the Caffres and Hottentots, *Rep. 71*—They have often expressed a wish to have missionaries among them for the purpose of giving instruction to their children, *Rep. 73*—Some on every missionary station have laid aside their native costume, others are partially clothed in European apparel, *Rep. 72, Kay 458*—Were previous to the late war acquiring an increasing desire for British manufactures, *Rep. 73*—Their character has been greatly misrepresented, *Kay 313*—Character given them by several witnesses before the Committee of last Session is not true, *Kay 314, 589-591*—Great change in the Caffre character resulting from the labours of the missionaries is perceptible, *Kay 458, 592-596*—Conduct of the English towards the Caffres has been systematically bad, *Kay 316*—From time immemorial the Caffres have been the objects of lawless attack from the old Dutch colonists, *Kay 317*.

No doubt that between 1798 and 1823 vast numbers of Caffres were shot by patrols, because found within the boundary line, *Kay 317, Ev. p. 62*—Have been seriously injured by Europeans by taking away from them in 1819 the ceded or neutral territory, *Kay 318*—Quantity of land taken away from them; its quality; no compensation afforded them for it, *Kay 318*—The law of non-intercourse more or less rigidly kept up from 1798 to 1823, was a prolific source of evil and constant provocation to the Caffres, *Kay 317*—They are wholly pastoral; their numbers from the cessation of war are rapidly increasing, *Kay 318*—There are strong national prejudices existing in the minds of the Caffre against the Hottentot, *Kay 318, Ev. p. 63*—All those who had embraced Christianity refused to take any part whatever against the colony during the late war; great numbers joined the colonial forces with the view of securing its defence, *Kay 458*.

See also Agriculture. Boors. Boundaries. British Manufactures. Cape of Good Hope. Cattle. Cutlery. Education. Hottentots. Houses. Schools. Treaties. Tzatzoe, John. Wars. Zihambi, Chief.

Canada. Expense of the Indian department of Canada to America, *Bamnister, Ev. p. 7*—Large sums of money have also been expended in the Canadas by voluntary religious societies for the improvement of the Indians there, *Bamnister, Ev. p. 8*—Quantity of land held by the Chippeway tribes in Upper Canada, has greatly diminished within the last 30 years, *Wundais 146*.

See also Colbourne, Sir J. Courts of Justice. North American Indians.

Cape of Good Hope. Extent of Cape Town now and 20 years ago, *Rep. 25*—Suggestions for securing the peace of the frontier and prosperity of the colony, *Rep. 29, 30*—Instructions of Lord Glenelg to the Lieut.-governor and civil commissioner of the colony for the guidance of their conduct in relation to any treaty with the Caffres, *Rep. 81, 82*—Large bodies of the colonists have emigrated across the borders for the purpose of establishing themselves on the lands of the natives, *Rep. 82*—Report of civil commissioners of the Cape district, dated 23 June 1834, on the subject of the vagrant ordinance, *App. 151, 152*.

See also Commissariat Department. Crime. Dutch Settlers.

Captains of English Vessels. See Corrosive Sublimate.

Caribs. Little more remains than the tradition that they once existed, *Rep. 10*.

Catechists.

Catechists. Number of catechists employed by the Church Missionary Society in Sierra Leone; nature of their duties, *Macauley* 208.

Cattle. Quantity of cattle taken from the Caffres in 1813 by the colonists under the command of Colonel Brereton, *Rep.* 31—Are often reported as lost when they have only strayed, *Rep.* 32—Proclamation of Sir Lowry Cole empowering the military to recover lost cattle, *Rep.* 32—No colonist to drive his cattle, &c. on the lands of the natives or destroy game, &c. without being liable to an action for trespass, *Kay* 448-451.—See also *Commando System*.

Chaka, Chief. Attack made on him by Major Dundas has been strongly censured by the newspaper press in the colony, *Kay, Ev.* p. 51, 52.

Chiefs. See *African Chiefs*. *Caffre Chiefs*. *Gaika, Chief*. *Hintza, Chief*. *Kok, Adam*. *Macomo, Chief*. *Makanna, or Lynx, Chief*. *Matuwana, Chief*. *Pato, Kama and Cobus, Chiefs*. *Zlhambi, Chief*.

Children. Many of the Caffre children can read the Scriptures in their own languages, *Rep.* 71, 72—Indian children are capable of reading the Bible in the English language, *Wundais* 166—Those of the liberated Africans acquire reading and writing with just as much facility as English children, *Macauley* 238—The most promising boys should be offered facilities for visiting England to be placed in colleges, &c., and English boys should be introduced into the aboriginal college, *Bannister, Ev.* p. 17—Number of Indian children receiving instruction at the different schools under the control of the American government, *Bannister, Ev.* p. 10—At the schools at the Red River settlement, *Pelly* 375—Caffre children were formerly regarded as a source of gain to parents and guardians, and their daughters were invariably sold in marriage, *Kay* 458—Several female children of liberated Africans have been sent from Sierra Leone to England for the purpose of being educated, *Macauley* 241-243.

See also *Bushmen*. *Caffres*. *Education*.

Chippeway Indians. Effect of Christian instruction on the Chippeway Indians, *Rep.* 47—In the treaty made by them with Sir George Johnstone, 52 years ago, they did not give up their right to the islands and the points of the river, *Wundais* 141—Tenures on which they hold their lands; they are very dissatisfied with it; wish for an exact definition of them in writing, *Wundais* 141-143.

See also *Agriculture*. *Canadas*. *Clothing*. *Lands*.

Choctaw Academy, in Kentucky. Number of Indian scholars at; expense of education defrayed from funds appropriated by the Indians themselves, *Bannister, Ev.* p. 10, 11—Prosperous condition of this academy as appears from the report of the inspectors, *Bannister, Ev.* p. 11.

Christianity. Evidence of Mr. Ellis as to the influence of the introduction of Christianity on civilization, *Rep.* 45.

Chumie Basin. See *Boundaries*.

Church Missionary Society. Extract from instructions forwarded by the Church Missionary Society as to the plan to be adopted to civilize the native tribes, *Rep.* 46—The colonial establishment of this society at Sierra Leone is reduced to two German and one English minister, *Macauley* 208, 225, 226.

See also *Catechists*. *Schools*. *Sierra Leone*.

Churches. Great willingness on the part of the liberated Africans of Sierra Leone to subscribe towards the erection of churches, *Rep.* 58—Sum subscribed by the Hottentots at the Kat River towards the building a new church, *Rep.* 63.

Circuits of Judges. They should be arranged with the different chiefs, *Bannister, Ev.* p. 19.

Civilization. Check given to the progress of civilization and trade with the interior of the Cape for a period of 12 years, in consequence of the war of 1811, *Rep.* 31—Failure of plans for civilization of various tribes of Indians, *Rep.* 46, *Bannister, Ev.* p. 8, 9—Opinion among intelligent Americans that the only way in which civilization can be successfully introduced among Indians, is to remove them from the neighbourhood of the white population, *Rep.* 46—Would be encouraged if the settlements now held by the Indians were secured to them by legal documents, *Wundais* 150—Causes to which the failure of the various efforts made to civilize the North Americans may be attributed; inadequacy of the scale on which made, *Bannister, Ev.* p. 6—Want of co-operation in the different plans proposed, *Bannister, Ev.* p. 7.

Extent to which civilization has been carried among the liberated Africans at Sierra Leone, *Rep.* 60, *Macauley* 188-208—Is most effectually accomplished by affording religious instruction, *Macauley* 227-233—The adoption of a system of mercy and justice would promote the spread of civilization and the blessings of Christianity among the native inhabitants of South Africa, *Kay* 327—Everything that has been done in the way of civilization has been principally effected through the instrumentality of the missionaries, *Kay* 458—Steps taken by the Hudson's Bay Company for the purpose

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of introducing civilization and Christianity among the natives of the Red River, *Pelly* 333-335. 348-352. 373-376.

See also *America*. Berkeley, Dr. Caffres. Eliot, Mr. Hudson's Bay Company. Vanderkemp, Mr.

Clear, St. School established by the Wesleyan missionaries among the Chippeway Indians at St. Clear, *Wundais* 169.

Clothing. Great improvement in the dress of the Chippeway Indians, *Rep.* 48—Sum expended by Hottentots of Bethelsdorf in articles of clothing, *Rep.* 61—Articles of clothing are frequently given to the natives by the Hudson's Bay Company by way of presents, *Pelly* 369.—See also *Caffres*.

Cobus, Chief. See *Pato, Kama* and *Cobus, Chiefs*.

Cockburn, Sir John. Considered by witness as the best benefactor of the Chippeway Indian next to the Wesleyan missionaries, *Wundais* 178.

Colborne, Sir J. Steps taken by him to promote the civilization of the native Indians of Canada, *Rep.* 48—His opinion on the means most likely to improve the condition of the native Indians of Canada, *Rep.* 47.

Coldwater. School established by the Wesleyan missionaries among the Chippeway Indians at Coldwater, *Wundais* 169.

Cole, Sir Lowry. Proclamation issued by him as to the seizure of stolen cattle, *Rep.* 32—The motives that induced him to settle parties of Hottentots on lands occupied by Macomo were very laudable, *Kay* 318, *Ev. p.* 63—Opinion of Sir L. Cole on the necessity of passing a vagrant act, is to be found in the minutes of the council at the Cape, *Ev. p.* 97, 98.—See also *Tyalie, Chief*.

Colebrooke, Lieut.-Colonel. (Analysis of his Evidence.)—Governor of Antigua and the Leeward Islands, 105—Opportunities afforded witness of observing the state of society among various aboriginal tribes, 106-114.

[Second Examination.]—Evidence as to the best mode of treatment of aborigines was to conduce to their advancement in civilization and humanity, 281-287.

Collie, Dr. Copy of a report from Dr. Collie, His Majesty's resident at King George's Sound, to Governor Sir James Stirling, dated 24 June 1832, on the best means of promoting the security of the European settlers from the attacks of the natives, *App. p.* 129-132.

Collins, Colonel. Extract from his tour to the northern boundary of the Cape in 1809, as to the character of the bushmen there, *Rep.* 28.

Colonial Chaplain. Is the only clergyman employed by Government in Sierra Leone; his attention is almost exclusively devoted to Freetown, *Macauley* 208.

See also *American Ordination*.

Colonial Courts. Previous to August 1836 offences committed against the natives in their own country could not be noticed in the colonial courts, *Rep.* 30—The jurisdiction of the colonial courts to be extended so as to take cognizance of all cases of delinquency committed by colonists beyond the frontiers, *Kay* 451—Recommendation for the appointment of a qualified person to act as counsel in the colonial courts to the Caffre and other natives residing beyond the frontiers, *Kay* 456.

Colonial Government. Recognized a chief elected by the Griquas from among themselves, *Rep.* 67—Instructions to be given to the colonial government to facilitate the extension of Christianity amongst the Caffres and other tribes; annual grants to the missionary societies; agricultural and other implements to be furnished to missionaries, and means of employing mechanics or artisans as circumstances may require, *Kay* 456.

See also *Griquas*.

Colonial Laws. Copies of all laws for the guidance of the different colonies should be communicated to Parliament without delay, *Rep.* 77.—See also *Crime*.

Colonial Policy. Has been very fickle; in some instances it must have assumed an appearance of caprice and a confusion perfectly unintelligible, *Rep.* 39, 40—System pursued in our intercourse with the natives of South Africa has been productive of most injurious effects, both to the colonists and the Caffres, *Rep.* 43—Opinion of Sir B. D'Urban that a complete and effectual reformation of the system of proceeding with the native tribes has become absolutely necessary, *Rep.* 44.

Colonist, Newspaper. Extract from letters inserted in, dated the 1st and 26 August 1828, on the subject of the attack made by Major Dundas on Chaka's army, *Kay, Ev. p.* 51, 52.

Columbia District. Amount of its population, *Pelly* 351.

Commissariat

Report, 1837—continued.

Commissariat Department. Report from the Audit Board, enclosing statement of the monthly expenditure incurred by the commissariat department at the Cape of Good Hope from June 1833 to December 1834, and from January 1835 to July 1836, *App. p.* 142, 143.

Commando System. Was recognized by the Colonial Government; inhabitants of the frontier have always been accustomed to them, *Rep.* 31.—Opinion of Capt. Stockenström as to the demoralizing effects of the commando system, *Rep.* 32.—This mode of recovering cattle is very uncertain, *Rep.* 32.—Extract from the evidence of several witnesses as to the mode of conducting the commandos, *Rep.* 32–35.—Extract from despatch of Mr. Stanley disallowing the ordinance No. 99, and Lord Macartney's proclamation as to the seizure of stolen cattle, *Rep.* 34.—See also *Ficani*. *Fraser*, Colonel.

Compensation. Should be granted to the frontier tribes for the loss of the neutral or ceded territory, *Kay* 438–448.

Complaints. There are very few complaints made to the Hudson's Bay Company; facility afforded for transmitting complaints, *Pelly* 394–397.

Constables. Liberated Africans serve as constables and attendants on courts of justice, *Rep.* 59, *Macauley* 193.

Consular Agents. Should be appointed in each of the principal islands in the South Seas; powers to be entrusted to them should be similar to those of British consuls in the Barbary States, *Rep.* 85.—A consular agent or agents should be appointed to reside in Caffreland; powers to be entrusted to them, *Kay* 451–456.—See also *Agents*.

Contracts for Service. See *Labour*.

Convicts. Runaway convicts are the pests of savage as well as of civilized society, *Rep.* 14.—The wives and families of political convicts should be sent out at the public expense; of all other convicts according as their conduct merit, *Bannister*, *Ev.* p. 20.
See also *Marriage*.

Copper Indians. The population of the copper Indians has decreased within the last five years to one-half the number of what they were, *Rep.* 8.

Corn. Instances in which the North American Indians have furnished the English settlements with corn during a famine, *Rep.* 7.—Cannot be grown at the Red River settlement, *Pelly* 402.

Coroners. See *Native Tribes*.

Corporal Punishment. No sentence of corporal punishment to be passed on the natives, but penitentiaries and prisons established in its place, *Bannister*, *Ev.* p. 19.—Is sometimes inflicted on Caffres by the British soldiery without any provocation, *Kay* 318, *Ev.* p. 64.

Corrosive Sublimate. Has been given by English captains to the native chiefs of New Zealand for the purpose of destroying their enemies, *Rep.* 15.

Council. No Caffre chief ventures to hold his council in a mission village on the Lord's-day, *Kay* 483.

Counsel. See *Colonial Courts*.

Courantin. The Moravian mission on the Courantin was given up in 1817; no other Protestant society has attended to these Indians, *Rep.* 9.

Courts of Justice. Very few, either civil or criminal, cases have occurred in which Hottentots belonging to the Moravian missionary stations have been implicated, *Rep.* 60.—Suggestions for the better administration of the laws in courts of justice in the colonies, *Bannister*, *Ev.* p. 19.—Facilities should be afforded for the admission of all the native people as spectators into the courts of justice, *Bannister*, *Ev.* p. 19.—Canadian courts of law have jurisdiction over the whole territory of the Hudson's Bay Company, who are bound by their charter to produce the parties in court, in case any complaint is laid at Canada, *Pelly* 398.—See also *Colonial Courts*.

Credit River. School established at, by the Wesleyan missionaries, *Wundais* 169.

Cree Indians. Supposed decrease in their numbers during the last thirty or forty years, *Rep.* 8.—See also *Friends*, Society of. *Penn*, Mr. W.

Creeks. See *Native Teachers*.

Crews of Vessels. See *Daniel*, Ship.

Crime. Provision made for the punishment of crimes in the different colonies is defective and unsatisfactory; suggestions for alterations therein, *Rep.* 79, 80.—The 6 & 7 Will. 4, c. 57, provides for the punishment of offences committed by British subjects within the Caffre territory; unless some well-organized force for the apprehension of offenders shall be established in Caffraria, this law will be to a great extent inoperative, *Rep.* 82.—Crimes committed by Englishmen in New Zealand may be tried at Sydney; the criminal cannot be compelled to go to Sydney for that purpose, *Rep.* 85.—Crimes committed beyond the precincts of the colony of Sierra Leone are not punishable by the colonial law, *Macauley* 258–261.—Extract from the indictment book of the attorney-general at the

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the Cape, showing the number of cases and prisoners tried in the supreme and circuit courts from 1828 to 1833, *Wade* 652.—See also *Colonial Courts. Judges' Opinions.*

Crown Officers. Should be allowed to hold briefs ex-officio from the protectors and political agents in the cases of natives, and criminal prosecutions of white people, *Bannister, Ev. p. 19.*

Cultivation. Is greatly discouraged among the Chippeway tribe from the insecure state of the reserves and settlements held by them, *Wundais* 144.

Cutlery. Great quantity of English manufactured cutlery is in use among the Caffres, *Kay* 483.

D.

D'Urban, Sir Benjamin. Opinion expressed by him that the Caffres, during the late war, were aiming at an acquisition of territory, *Kay* 318; *Ev. p. 63*—No private communication ever passed between witness and the Governor of the Cape of Good Hope, *Philip* 621-625—The suppressed passage of Dr. Philip's letter contains serious and groundless imputations upon the governors of the colony, *Wade* 626-628.
See also *Hintza, Chief.*

Daniel, Ship. The crew of this vessel attacked the house of an American missionary, in consequence of his interfering to prevent their licentiousness, *Rep. 18.*

Darling, General. Statement made by him in 1828 with respect to the treatment of the Indians of the Canadas by Europeans, *Rep. 7.*

Death, Punishment of. No judgment of death should be passed on natives, but penitentiaries and prisons should be established, *Bannister, Ev. p. 19*—All Caffres found on the right bank of the Great Fish River previous to 1823 were liable to the punishment of death, *Kay* 317, *Ev. p. 61.*

Deer. In some districts of the Red River they are so numerous, the natives will kill an immense number and leave their carcases to rot, *Felly* 344.

Diseases. The introduction of European diseases has caused a decrease in the number of the North American Indians, *Rep. 7*—Among the natives of New Holland, *Rep. 11.*

Documents, Public. All public documents should be printed in the language of the natives, *Bannister, Ev. p. 17.*

Dundas, Major. His opinion that the passing of the 50th ordinance was the emancipation of the Hottentots, *Rep. 26*—As to the good dispositions of the Caffres, *Rep. 31*—That the Caffres are a greatly increasing nation, *Kay* 318, *p. 63*—Observations on the attacks made by him on witness in his Evidence before the Committee of last Session, *Kay* 306-311—Assistance given by him in repelling the attacks of the Mon guanas upon the Tambookie was injudicious, *Kay*, 566, 567. 573-582.

See also *Colonist, Newspaper.*

Dushani. Son of Zihambi, visited Graham's Town, and delivered into the hands of the commandant some stolen horses which he had taken within his territory, *Kay* 320, *Ev. p. 66.*

Dutch Settlers. Period when the Dutch formed their first settlement at the Cape; jealousy with which they beheld the increase of the cattle among the Hottentots, *Rep. 25.*

E.

Education. A strong desire for education among the Caffres since missionary stations established, *Rep. 73, Kay* 458—The revenue of each colony should be subject to a charge for providing for the education of the survivors of the tribes to which the colony originally belonged, *Rep. 79*—Statement showing the amount and disposal of the funds provided by treaties between the Americans and Indians for the purposes of education, *Bannister, Ev. p. 10*—Tuition is imparted at the Tuscarora station in New York on the plan adopted for infant schools, *Bannister, Ev. p. 11*—The white and coloured population must be educated together, *Bannister, Ev. p. 17.*

See also *America. Children. Griquas. Indian Schools. Infant Schools. Schools.*

Eliot, Mr. The religious efforts made by him and his friends, in 1646-1660, to civilize the North American Indians, produced no lasting benefit, *Bannister, Ev. p. 6.*

Ellis, Rev. Mr. Extract from his evidence relative to the introduction of ardent spirits in the different colonies, and injurious effects therefrom, *Rep. 14, 15*—As to the causes of the depopulation of the South Sea Islands, *Rep. 24, 25.*

Emigration.

Emigration. To the Red River is not encouraged by the Hudson Bay Company; it is not necessary from the great increase of the native population and half breeds, *Pelly* 400-402.—See also *Agriculture. Cape of Good Hope.*

English Settlers. By the late war the English settlers at the Cape have been great losers, *Rep.* 73, *Kay* 314.—English settlers have been of great advantage to the native tribes, religiously as well as commercially, *Rep.* 73, *Kay, Ev. p.* 54.—No doubt they were always the first to break through every treaty respecting boundary; no instance of their being sacrificed by the Caffres, *Kay* 317, *Ev. p.* 62.—No instance in which any of the English settlers of Albany formed part of a commando against the Caffres, *Kay* 602-611. See also *Caffres. Ficani.*

Eole, Shipwrecked Crew of. See *Hintza, Chief.*

Erasmus, Field-Cornet. Greater part of the evidence given by Captain Stockenström respecting his case was disproved in the inquiry relative thereto at Graham's Town, *Greig* 41, 42.

Essequibo River. See *Lands.*

European Intercourse. Extract from the evidence of Messrs. Beacham, Coates and Ellis, before the Committee of last Session, as to the evils which have resulted from the intercourse between civilized and barbarous nations, *Rep.* 74, 75.

See also *Native Tribes.*

Europeans. British subjects are amenable to their own courts for offences committed in the South Sea Islands, *Rep.* 85.—Number of Europeans settled at Sierra Leone, *Macauley*, 186.

Evans, Rev. J. Extract from a letter from him as to the improvement in the manners and habits of the St. Clair Chippeways, *Rep.* 48.

Everett, Mr. His opinion that the United States have obtained 230 millions of acres of land by purchase from the Indians, *Bannister, Ev. p.* 7.

Evidence, Law of. See *Law of Evidence.*

F.

Fairs. The establishment of a fair at Beaufort in 1819, was a mutual benefit to the natives and colonists; the Griquas were the principal dealers, *Rep.* 67.—Extract from the instructions of Lord Glenelg on this subject, *Rep.* 81.—Very questionable whether good or evil arising therefrom preponderated, *Kay* 471.

Fernando Po. Is not occupied in any manner by the Spaniards, though it belongs to them nominally; present state thereof, *Macauley* 268-278.—The British Government still have the management of the island, though the government belongs to Spain, *Macauley* 270, 271.

Field-Cornets. Unfitness of some them for the trust reposed in them, *Rep.* 32.—They are often connected with the Boors, *Rep.* 32.

Ficani. The extermination of the Ficani was contemplated in the attack on Chaka's army by Major Dundas in 1828, *Kay, Ev. p.* 56.—Some of the settlers formed part of the commando against the Ficani in 1828, *Kay* 604-606.

Fines. See *Agents. Hudson's Bay Company.*

Fishing Nets and Rods. Are frequently given by way of presents to the natives inhabiting the territories of the Hudson's Bay Company, *Pelly* 340, 369.

Foreign Missions. Annual donation by the American government to the American Board of Foreign Missions, *Bannister, Ev. p.* 10.

Fox, Mr. Opinion expressed by him as to the mode in which slaveholders dispose of their slaves in Sierra Leone is utterly erroneous, *Macauley* 260.

Franklin, M. Efforts made by him, in 1764, to civilize the natives of North America were made in vain, *Bannister, Ev. p.* 6.

Frazer, Colonel. The commando into Caffreland under Colonel Frazer put a stop to the labours of the missionaries, *Rep.* 73.

Freetown Church. Religious services were altogether suspended for a year and a half on one occasion, from the absence of the colonial chaplain, *Macauley* 208, *Ev. p.* 35, 217-224.—It is the only Government place of worship at Sierra Leone, *Macauley* 217, 218. See also *Clergy. Colonial Chaplain.*

Friends, Society of. Steps taken by the American Society of Friends for the civilization of the Cree Indians, *Rep.* 46.

Fur Trade. The introduction of the fur trade among the North American Indians has rendered them so completely a wandering people, that they have lost all disposition to settle, *Rep.* 7.—See also *Agriculture.*

G.

Gaika, Chief. He never professed to have the entire disposal of the lands he surrendered to the Government in 1819, *Rep.* 35—His right was disputed by the chiefs of his own nation, *Rep.* 35—He had no right whatever to relinquish the land which he held in trust for the Caffres, *Kay* 318, *Ev.* p. 62—Attempt made by a British officer to kidnap him, *Kay* 320, *Ev.* p. 67.

Game. The decrease in the quantity of game has tended to decrease the number of the North American Indians, *Rep.* 7.

Gamtobs River. Was considered for a considerable period (under the Dutch government) as the limit of the colony, *Rep.* 30.

Gazette. The publication of a weekly gazette in London, for official reports of all public proceedings concerning the aborigines, recommended, *Bamnister, Ev.* p. 17, 18.

Gisborne, Mr. W. Extract from the evidence given by him on the quantity of territory taken from Macomo, and circumstances which caused his expulsion, *Rep.* 36, 37.

Glenelg, Lord. Instructions issued by him to the lieutenant-governor of the Eastern provinces of the Cape of Good Hope, *Rep.* 81—Extract of a despatch from him to Governor Sir James Stirling, dated 23 July 1835, *App.* p. 138—Another despatch, dated 16 March 1836, from the same to same, *App.* p. 142.

Goderich, Viscount. The practice of sending rum as a present to the Indians in South America severely commented on by him, *Rep.* 9—Extract of a letter from him, dated in 1831, on the subject of no effort having been made to convert the Indians of British Guiana to Christianity, *Rep.* 9—Extract of a despatch from Viscount Goderich to Governor Sir James Stirling, dated 16 August 1832, on the subject of the hostility of the natives of Van Diemen's Land towards the settlers of Western Australia, *App.* p. 128.

Gospel. Black preachers of Freetown, Sierra Leone, are not very desirable teachers of the Gospel, *Macauley* 230.—See also *American Ordination*.

Government Offices. Opening all situations of Government to the attainment of coloured people would be one great means of imparting civilization to aboriginal inhabitants of different colonies, *Macauley* 246.

Governors of Colonies. The governors of the Canadas recommend the sending of missionaries, as the most likely means of improving the condition of the native tribes, *Rep.* 46, 47—Should be invested with authority for the decision of all questions affecting the interests of the native tribes, *Rep.* 77—Recommendation that governors of colonies should not be allowed to take possession of any new territories without the sanction of the Home Government, *Rep.* 78, 79—A careful review of the instructions given to governors should be made; they should be formed into a digest, and printed, *Bamnister, Ev.* p. 18—Instructions which enjoin the killing the natives without form of law ought to be recalled; they have been productive of great evil in New South Wales, *Bamnister, Ev.* p. 18—They should cause collections of the native laws to be made, *Bamnister, Ev.* p. 18.—See also *Agents*.

Graaf Reinets. Report of civil commissioners for the district of Graaf Reinets, dated 28 June 1834, on the subject of the proposed vagrant ordinance, *App.* p. 157-159.

Graham, Colonel. Force sent from Cape Town under his command for the purpose of clearing Albany of the Caffres, *Rep.* 31.

Granville, Lord. Opposed the civilization of the Indians, lest they should become dangerous to the plantations, *Bamnister, Ev.* p. 6.

Grants of Money. Should be made to missionary and other bodies, and for scientific expeditions; manner in which they should be proportioned, *Bamnister, Ev.* p. 19, *Kay* 456.

Grape Island. The Wesleyan Missionary Society have established schools among the Chippeways at Grape Island, *Wundais* 169.

Great Lake. See *Newfoundland*

Greig, George. (Analysis of his Evidence.)—Opinion that the evidence given before the Committee of last Session contains charges of far too general a character, 1-13. 31—Period of time witness resided at the Cape of Good Hope, and nature of his occupation, 14-20. 23-28. 30.

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Pacific Ocean. Injurious effects of European intercourse with the natives of the different islands in the Pacific, *Rep.* 14–25.

Paramatta. The natives of, are in a state more deplorable than those resident in the interior of the colony, *Rep.* 11.

Parliamentary Inquiry. Observations on the proceedings of the Committee of last Session, and also on the evidence of Dr. Philip, and the Caffre-chief, John Tzatzoe, *Wade* 118–125.—Explanations in answer to the comments made by Mr. Kay on the evidence given by witness before the Committee of last Session, *Wade* 614–616.

Passes. The law relative to passes rivetted the chains of the Hottentots, *Rep.* 26.

Pato, Chief. No patrols have been sent against the Caffres under this chief for the last 10 or 12 years, *Rep.* 71.

Pato, Kama and Cobus, Chiefs. They afforded (during the late war) refuge to all the British traders who fled to them; patrolled their boundary to stop marauders, and reinforced a post under the command of a British officer, *Rep.* 72.

Patrols. Have been appointed of late years for the protection of the farmers against incursions of the Caffres, *Rep.* 82, 33.

Peace. General tranquillity has been kept up on the frontiers much longer since Christian missions were established among the Caffre tribes than at any preceding period of the colonial history, *Rep.* 70, *Kay* 458.

Report, 1837—continued.

Pelly, John Henry. (Analysis of his Evidence.)—Chairman of the Hudson's Bay Company; extent of country owned by them, 328-332—Steps taken by the company for the purpose of introducing civilization and Christianity among the natives, and results thereof, 333-335. 348-352—Measures adopted to prevent the introduction of spirits among them, 337-339—Means of subsistence of the natives have not diminished since their intercourse with Europeans, 340-347—Means possessed by settlers of inflicting punishments for offences, 353-357—Consumption of spirits very great during the rivalry of the two companies, 358-364—Improvement in the character and conduct of the natives, 365-385—Presents made to them, 366-369—Class of persons selected as agents, 371, 372—Further evidence as to the steps taken to introduce civilization and Christianity, 373-376—Always sufficient provisions laid in at the posts for the establishment, 379-380. 386-390—Complaints are addressed to the company; they are not numerous, 391-398—Company do not encourage emigration to their territory, 399-403. 406, 407.

Penal Settlements. The formation of the penal colonies has been attended with very considerable injury to the native inhabitants, *Rep.* 10-14, *Bannister, Ev.* p. 20.

Penn, Mr. William. His conduct towards the native Indians; pains taken by him to promote their religious instruction, &c. *Rep.* 46—Plans adopted by him for the civilization of the North American Indians produced great changes in their manners; mode of thwarting his intentions, *Bannister, Ev.* p. 6—Paper referred to in the evidence of T. Hodgkin, esq. on 22 March 1837, respecting the course adopted by Mr. Penn in his dealings with the Indians, *App.* p. 113-121.

Philip, Rev. John, D.D. (Analysis of his Evidence.)—Explanation of witness respecting the statement of Colonel Wade, and observations thereon, 288-302.

[Second Examination.]—No private communication between Sir B. D'Urban and witness, 621-625.

[Third Examination.]—Suggestion for withdrawing from certain papers delivered in by witness, the expression used by him as connected with the name of Henry Kenrick, 654-657.

Philip, Rev. John. Difficulty experienced by him in obtaining leave from the colonial government for the continuance of the missionaries among the Griquas, *Rep.* 67—Queries proposed to have been submitted to him, which the arrival of the governor rendered unnecessary, *Wade* 631, *Ev.* p. 94, 95—Charge made by Colonel Wade against Dr. Philip of having delivered in a letter to the Committee of last Session, in which some important information had been withheld, *Wade* 120, 121. 626-628—Refutation of the charge by Dr. Philip, and evidence thereon, *Philip* 288, *Ev.* p. 46, 47, *Q.* 295-302—Witness did not approve of the adoption of the whole of the suggestions made by Dr. Philip for the government of the native tribes, *Wade* 631—Letter from him to Lieut. Colonel Wade, dated 10 October 1833, containing observations on the state of the northern frontier of the Cape, *App.* p. 143-151.

See also *D'Urban, Sir Benjamin. Kat River Settlement.*

Point Bartica. Grant of land made in 1831 at Point Bartica to the South American Indians; small establishment founded there by the Church Missionary Society, *Rep.* 9.

Political Agents. See *Agents.*

Polygamy. Has been abolished among the Caffres at the missionary stations, *Kay* 458.

Population. Of the Red River and Colombia Districts has not diminished very considerably within the last half century, *Pelly* 335.

See also *Hottentots. Red River Settlement.*

Port Natal. Very important that the government at the Cape of Good Hope should maintain a vigilant superintendence over the growing settlement at Port Natal, *Rep.* 82—A body of British subjects have settled themselves at Port Natal, for the purpose of diffusing religious knowledge and principles amongst the natives, *Rep.* 82.

See also *Steam Navigation.*

Postholders. The principal part of their business is to keep the negroes from resorting to the Indians in South American colonies, and to attend to the distribution of presents given by the British Government, *Rep.* 9—Part of the instructions given them have a direct tendency to sanction and encourage immorality among the natives, *Rep.* 9.

Potatoes. At many of the posts at the Red River settlement the potatoes are cut off by summer frosts, *Pelly* 402.

Presents. Are frequently made to the natives at the Red River settlement; nature of the presents made, *Pelly* 365-370.

See also *Clothing. Fishing Lines. Guns. Hudson's Bay Company.*

Preserves. The keeping them in order benefits the natives as well as the Hudson's Bay Company, *Pelly* 341, 342—Those established for the beavers are more for the benefit of the company than the natives, *Pelly* 345.

Proclamations.

Report, 1837—continued.

Proclamations. See *Boundaries.* *Cattle.* *Cole, Sir L.* *Commando System.* *Macartney, Earl.*

Propagation of the Gospel in Foreign Parts. Society for. Efforts of this society to civilize the North American Indian were not productive of any lasting benefit, *Bannister, Ev. p. 6.*

Protectors of Indians. Have been appointed in the colony of Demerara and Essequibo; their duties, *Rep. 9.*

Protector of Natives. Duties of protector of natives to cultivate a knowledge of the natives by personal intercourse and acquiring the native language, *Rep. 83*—They should render every assistance in their power to forward the education of the children of the natives, *Rep. 83*—Should claim for the maintenance of the aborigines such lands as may be necessary for their support, *Rep. 83*—Should be furnished with some means of making to the tribes occasional presents of articles, either of use or ornament, always abstaining from the gift of liquors, *Rep. 83*—Should make periodical reports to the local government of all their proceedings in the execution of the duties of their office *Rep. 84*—They should be invested with the character of a magistrate, and required to promote the prosecution of all crimes committed against the native tribes, *Rep. 84*—Should be appointed on the principle of those appointed in the South Australian charter; nature of their duties, *Bannister, Ev. p. 15.*

Protestant Episcopal Church. Number of teachers and scholars in the school established by members of the Protestant Episcopal Church among the Menomonies at Michigan, and amount allowed towards its support by the American Congress, *Bannister, Ev. p. 10.*

Provincial Legislatures. Have no power to make enactments for the guidance of that portion of the aborigines who inhabit the country beyond the colonial frontiers, *Rep. 77.*

Provisions. The means of subsistence of the natives of the Red River settlement have not diminished in consequence of their contact with Europeans, *Pelly 340.*

Punishments. Capital and corporal punishments should be abolished in Van Diemen's Land and New South Wales, and replaced by penitentiaries and mild discipline, *Bannister, Ev. p. 21.*—See also *Hudson's Bay Company.* *Judges' Opinions.*

Q.

Quarrels. Are less frequent since the introduction of missionaries among the Chippeway Indians, *Wundais 176, Kay 458.*

Quebec, Bishop of. Extract of a letter from him, as to the success of the Methodist Society in converting a great portion of the Mississagua tribe, *Rep. 47.*

R.

Rainmakers. A class of impostors and the ringleaders in all kinds of cruelty practised among the native tribes of the Cape, have been abolished through the instrumentality of the missionaries, *Rep. 72, Kay 458.*

Read, Rev. J. Extract from his evidence respecting the improvement of the character &c. of the Hottentots, *Rep. 61*—Of those located at the Kat River, *Rep. 63.*

Red Indians. Many of the evils caused by the rivalry of the Hudson's Bay and North-West Companies have been removed by their junction, *Rep. 8, Pelly 346, 347*—Encouragement given to their improvident habits from the present system of carrying on trade with them, *Rep. 8.*

Red River Settlement. Means provided by the Hudson's Bay Company for affording religious instruction and introducing civilization at the Red River settlement *Rep. 8, Pelly, 333-335*—Great many of the settlers at this place are Canadians, and profess the Roman-catholic religion, *Pelly 334*—Very great disposition on the part of the natives to receive moral and religious instruction, *Pelly 335*—Amount of its population, *Pelly 351*—The population has increased tenfold since the settlement was established and the union of the companies, *Pelly 356*—The country around it is not adapted for any other purpose but hunting, *Pelly 403.*

See also *Agriculture.* *Beavers.* *Children.* *Corn.* *Deer.* *Hudson's Bay Company.* *Measles.* *Population.* *Schools.* *Spirits.*

Religious Instruction. The revenue of each colony should be considered as subject to a charge for providing religious instruction to the survivors of the tribes to which the land originally belonged, *Rep. 79*—The population of Sierra Leone requires more than ordinary attention to its moral and religious instruction, owing to the introduction of crowds of pagan savages from the slave vessels, *Macauley 208, Ev. p. 35*—Measures taken to impart religious instruction to the liberated Africans of Sierra Leone, *Macauley 208-220*—The religious instruction generally supplied to the people in Freetown is not of the best description, *Macauley 230.*

See also *Church Missionary Society.* *Education.* *Red River Settlement.* *Sierra Leone.* *Wesleyan Missionary Society.*

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Rewards.

Report, 1837—continued.

Rewards. Rewards in land should be granted convicts for good conduct, *Bannister, Ev. p. 21.*

Rice Lake. School established by the Wesleyan missionaries among the Chippeway Indians at Rice Lake, *Wundais 169.*

Richards, Mr. His house was attacked by English sailors, and he would have been murdered by them, but for the promptness with which the natives came to his defence, *Rep. 18.*

Roman-catholic Church. Annual donation by the American government to the Roman-catholic church, *Bannister, Ev. p. 10.*

Roving People. Periodical accounts should be taken of roving people; manner in which crime and disorder is checked by this method in America, *Bannister, Ev. p. 20.*

Rum. See *Goderich, Viscount. Micmas. Nova Scotia.*

S.

Sabbath. The observance of the Sabbath has been recognized by proclamation by several Caffre chiefs, *Rep. 71, Kay 483.*

Sah-gung. School established by the Wesleyan missionaries at Sah-gung, *Wundais 169.*
See also *Kahkewaguonaby, or Peter Jones.*

Sailors. Conduct of runaway sailors has an injurious effect on the native inhabitants of the islands in the Pacific Ocean, *Rep. 14*—Have been known to threaten the lives of the missionaries for venturing to interfere with their proceedings, *Rep. 17*—Captains of merchant vessels connive at the absconding of some of their worthless sailors, *Rep. 22*—They do incalculable mischief by circulating reports injurious to the interests of trade, *Rep. 22*—Great annoyance experienced by the missionaries from the undisciplined crews of merchantmen, *Rep. 22.*

Salaries. Good salaries must be paid to the white and coloured people who apply themselves the most successfully to the study of the native languages, *Bannister, Ev. p. 17*—The high salaries held out to scholars induce them to enter into the employ of the merchants and shopkeepers of Sierra Leone, *Macauley 208, Ev. p. 35, Q. 239, 240.*

Sale of Children. See *Children.*

Schoolmaster. Encouragement that would be afforded to an English schoolmaster at Sierra Leone, *Macauley 235-243.*

Schools. Those established in the villages of New Zealand are under the direction of native youths, superintended by the missionaries, *Rep. 57*—Number of children receiving education in the schools at the Kat River, *Rep. 63*—Government does not take so active a part in their formation as they might do; those in Sierra Leone are principally in the hands of the Church Missionary Society, *Macauley 235, 236*—Number of schools established by the Wesleyan Missionary Society among the Chippeway tribes, *Wundais 168-170*—They are generally in a flourishing state; nature of the instruction afforded, *Macauley 238*—Number of children in those at the Red River settlement, *Pelly 334*—Have been established by the Hudson's Bay Company for the instruction of the settlers and the servants of the company, *Pelly 334*—Object of those established at the Red River is to instruct the native population, that they may instruct their own class, *Pelly 376.*

See also *Agricultural Schools. Baptist General Convention. Children. Education. Indian Schools. Infant Schools. Languages. Methodist Episcopal Church. Mohegan School. Normal Schools. Protestant Episcopal Church. Rice Lake.*

Scientific Expeditions. Grants of money to be made for defraying the expense of scientific expeditions, *Bannister, Ev. p. 19.*

Scriptures, The. See *Children. Gospel.*

Seizure of Cattle. See *Commando System.*

Seko. Nearly the whole of the evidence before the Committee of last Session, respecting the circumstances connected with his death, was contradicted by the evidence taken at Graham's Town, *Greig 41-47.*

Senecas Tribe. The Baptist General Convention Society have established and supported three district schools among this tribe of Indians, *Bannister, Ev. p. 10.*

Sepulture. The right of sepulture has been observed by the Caffres since the formation of mission stations among them, *Kay 483.*

Settlers. See *English Settlers, Nova Scotia Settlers.*

Shaq,

Shaw, Rev. Mr. The tribes which he first visited were notorious for their predatory habits; the reception he met with from them was kind and cordial; steps taken by him for civilizing and Christianizing them, *Rep.* 71, 72—Exertions made by him to Christianize and civilize the Caffres have been attended with singular success, *Rep.* 71—Influence possessed by him over the tribes of Pato, Kama and Congo, and which has been continued by his colleagues, *Rep.* 71.

Shuumees, Tribe of. Improvement in the civilization of this tribe by no means satisfactory, *Rep.* 46.

Ships of War. Officers of ships of war touching at the South Sea Islands should, when required by the consular agent, act as assessors or jurors for the trial of any criminals subject to his jurisdiction, *Rep.* 85.—See also *South Sea Islands*.

Sierra Leone. Objects in view in the establishment of this colony, *Rep.* 58—Necessity for more moral and religious instruction as the most effectual mode of promoting civilization, *Rep.* 59, *Macauley* 208—Very little has been done by the Government to impart Christian instruction to the population of Sierra Leone, *Macauley* 208—There are no aborigines in Sierra Leone; a large portion of the population are brought to the colony in slave ships, *Macauley* 181–185—Amount of its population; different tribes of which it is composed, *Macauley* 186—Not the same advancement perceptible in the civilization of settlers introduced into the colony in 1793 as in those introduced in later years, *Macauley* 191—Greater part of the population of, are the liberated Africans, *Macauley* 191—The colonists have no difficulty in preserving relations of amity with the surrounding natives, *Macauley* 255–262—Very desirable to extend the British territory at Sierra Leone, in consequence of the increased population, *Macauley* 253—Repression of the slave trade, and location of a number of Africans who had no other place to go to, were the causes which led to the formation of this colony, *Macauley* 253—The whole of the western or sea district (including the towns of York and Kent and the Banana Islands) is without any minister or catechist, *Macauley* 208.
See also *Africans. Catechists. Church Missionary Society. Churches. Colonial Chaplain. Europeans. Jones, Rev. E. Liberated Africans. Schoolmaster. Schools.*

Simcoe Lake. Chippeway Indians residing on this lake have given up all their lands to the British governor, *Wundais* 158.

Slambi, Chief. Was arrested in 1817 under the orders and instructions of Lord Charles Somerset, *Kay* 320, *Ec.* p. 67.

Slavery. There is no inducement for a person taken from his country and sold as a slave to return to it, *Macauley* 249, 250.

Slave Ships. See *Liberated Africans*.

Slave Trade. Persons engaged therein resident within the colony are subject to the punishment of death, *Macauley* 264—It has been suppressed at Sierra Leone and its immediate neighbourhood, *Macauley*, 264.

Smallpox. Great many of the natives at the Red River settlement were carried off by the smallpox a few years ago, *Pelly* 336.—See also *Diseases*.

Somerset. Report of the civil commissioner for Somerset on a memorial from the Rev. Dr. Philip relative to the proposed ordinance for the better suppression of vagrancy in the colony, *App.* p. 165, 166.

South America. See *America*.

South Australia. See *Australian Colonies*.

South Sea Islands. A naval governor to be stationed in the South Seas; powers with which he should be intrusted, *Barnister, Ev.* 19, 20—Great improvement in the character and manners of the native inhabitants of the South Sea Islands, *Rep.* 55, 56—They are becoming every year of more importance to British commerce, *Rep.* 57—Beneficial results that have occurred in these islands from the exertion of missionaries, *Rep.* 58—Islands in the South Seas should be periodically visited by some of Her Majesty's ships of war, *Rep.* 85—The natives of the South Sea Islands being without police, armed force or judicial tribunals, have no means of preventing or punishing crime, *Rep.* 85—British merchants' seamen and runaway convicts from the Australian colonies are enabled to commit crimes with impunity in the South Sea Islands, *Rep.* 85—The inhabitants of the fertile and populous islands of the Pacific Ocean have undergone the most disastrous calamities from their intercourse with the natives of Europe, *Rep.* 85.
See also *Consular Agents. Crime. Europeans. Ships of War*.

Spain. By the treaty entered into with Spain on the subject of the slave trade, that power is bound to secure to the emancipated negroes located in its territory a knowledge of the Christian religion, &c., *Rep.* 60, *Macauley* 208, *Ev.* p. 35.

Spencer, Captain Sir R. Extract of a letter from him to Mr. Under Secretary Kay, dated 19 March 1834, on the improved state of the settlers at King George's Sound, *App. p. 135.*

Spirits. Sum expended in Tahiti by the natives for ardent spirits, *Rep. 15*—The sale of ardent spirits among the native tribes should be prevented, *Rep. 78*—Natives of the Red River are addicted to the use of ardent spirits whenever they can get them, *Pelly 337*—Quantity of spirits sent out by the Hudson's Bay Company does not exceed 20 puncheons yearly, *Pelly 338*—They are only to be obtained on the borders of the Red River, where the Hudson's Bay Company are in competition with the Americans, *Pelly 338*—The consumption of spirits among the natives within the Hudson's Bay Company's territories has decreased very considerably since the union of the companies, *Pelly 358-364.*—See also *Red River Settlement.*

Starvation. The number of deaths of natives from starvation has been considerably reduced of late years at the Red River settlement, *Pelly 346*—There are no cases of starvation at any of the posts of the Hudson's Bay Company, *Pelly 379, 386-389*—Natives in a state of starvation come down and live at the posts; they are maintained at the expense of the company, *Pelly 389, 390.*

Statistics. The collection of accurate statistical information should be one of the principal features of the reports of the protectors of natives, *Rep. 64.*

Steam Navigation. Should be established by Government from the Cape of Good Hope to Natal and Madagascar, *Bannister, Ev. p. 21*—Would be a great benefit to the Cape traders, and greatly promote the civilization of the South-eastern tribes, and their federal union with England, *Bannister, Ev. p. 21.*

Stellenbosch. Report of civil commissioner for the district of Stellenbosch, dated 27 June 1834, on the subject of the vagrant ordinance, and its effect on the Hottentots, *App. p. 153, 154.*

Stewart, Captain. Particulars of the outrage committed by him and his crew on a party of New Zealanders, *Rep. 15-17*—Was held to bail for the outrage on the New Zealanders; other parties implicated with him, and witnesses against him were suffered to leave the country, *Rep. 17.*

Stirling, Sir James. Policy pursued by him towards the neighbouring tribes of New Holland has been of a conciliatory nature, *Rep. 13*—Extract of a letter from Lieutenant-governor Sir James Stirling to Mr. Under-secretary H. Twiss, dated Garden Island, Western Australia, 25 August 1829, on the state of the natives of Western Australia, *App. p. 126*—Also extract of a despatch from him to His Majesty's principal Secretary of State for the Colonies, dated 18 October 1830, on the same subject, *App. p. 126-128*—Also of a despatch from the same to Viscount Goderich, dated 30 Nov. 1831, *App. p. 128*—Also of a despatch from same to the same, dated 2 April 1832, *App. p. 128-129*—Copy of a despatch from him to Mr. Secretary Stanley, dated 1 Nov. 1834, relative to the outrage committed on a soldier of the 21st regiment, and steps taken to punish the delinquent, *App. p. 135, 136*—Also deposition of Edward Barron relative to the circumstances attending the death of — Nisbett, a private in His Majesty's 21st regiment, *App. p. 136, 137*—Copy of a despatch from Governor Sir James Stirling to the Earl of Aberdeen, dated 10 July 1835, on the state of the communications with the aboriginal tribes of Western Australia, *App. p. 139-141.*

See also *Murray River.*

Stockenstrom, Captain. His opinion of the working of the commando system, *Rep. 33, 34.*

Stock-keepers. Convicts in the employ of farmers in the outskirts of the colony; many murders and acts of violence have been committed by them, *Rep. 10.*

Subdivision of Lands. Promoting the subdivision of lands renders them less liable to encroachments, and facilitates their improvement, *Colebrooke 281, Ev. p. 43.*

See also *Lands.*

Sunday, John. See *Wundais, Shah.*

Superstitious Ceremonies. On every mission station the various superstitious ceremonies to which the Caffres have been accustomed are almost wholly laid aside, *Rep. 72, Kay 458.*

Swellendam. Report of the civil commissioner for Swellendam, on a memorial from the Rev. Dr. Philip relative to the proposed ordinance for the better suppression of vagrancy in the colony, *App. p. 164, 165.*

Sydney. Moral condition of the natives around Sydney is one of extreme degradation and ignorance, *Rep. 11.*

See also *Crime. Zealanders, New.*

Report, 1837—continued.

T.

Tahiti. See *Spirits*.

Tambookies. The name given to the Anatembee tribe by the English, *Rep.* 25.

Tapuing. The abolition of the custom of tapuing among the New Zealanders has been effected through the instrumentality of the missionaries, *Rep.* 53.

Temperance Society. Number of natives who have joined the temperance society established at Tuscarora Station in New York, *Bannister Ev.* p. 11.

Territories. No new territories to be acquired without the sanction of the Home Government, *Rep.* 78, 79.

Theft. See *Hintza*, Chief.

Thomas, Rev. J. Extract from a report made by him to the Wesleyan Missionary Society respecting the ill conduct of masters of vessels and their crews at the Friendly Islands, *Rep.* 23, 24.

Thompson, Rev. W. Was appointed Dutch minister at the Kat River Settlement, *Rep.* 63, *Kay* 458.

Trade. Injurious effects on trade from the lawless conduct of the crews of vessels, *Rep.* 15—In 1756 the importance of fair trading with the natives of North America was strongly urged by Washington, *Bannister, Ev.* p. 7—There is no trade carried on with the natives of the Red River by the use of spirits, *Pelly*, 364.

Traders. Protection afforded by the Chiefs Pato, Kama and Cobus to the British traders during the late war, *Rep.* 72—No trader was allowed to travel in Caffreland till after the missionary stations were established, *Kay* 471—Have been permitted to go amongst the Caffres without molestation, notwithstanding the outrageous acts of individuals towards them, *Kay* 314.

Trades. See *Mechanical Trades*.

Transportation. No sentence of transportation to be passed on natives, *Bannister, Ev.* p. 19—The evils of convict transportation exceed the amount of its advantages to any class of persons; evils upon the native families are incomparably greater than any others, *Bannister, Ev.* p. 20.

Treason. Instance of two men being acquitted of a charge of treason in consequence of the act of which they were accused having been committed a few miles beyond the boundary line of Sierra Leone, *Macauley* 261, 262.

Treaties. Nature of that entered into with Gaika, *Rep.* 34, 35—That made with Gaika was merely verbal, *Rep.* 35—Copy of a despatch from Lord Aberdeen to Sir Benjamin D'Urban, dated 11 April 1835, approving of the treaty made with Chief Waterboer, *Rep.* 70—It is inexpedient, as a general rule, that treaties should be entered into between the local governments and the tribes in their vicinity, *Rep.* 80—Treaties and transactions with aborigines should always be reduced into writing, and, where possible, printed in English and the native languages, *Bannister, Ev.* p. 18—All treaties with natives should be published and made fully known on both sides of the boundary, *Kay* 448—A special treaty should be made with the Caffre chiefs collectively, binding them to protect British subjects under certain restrictions, and *vice versa*, *Kay* 448.

See also *Agents*. *Cape of Good Hope*. *Chippeway Indians*.

Trial by Jury. The introduction thereof among the aboriginal tribes has been productive of substantial justice; it has also the advantage of gaining the support of the people to the laws, *Colebrooke* 281, *Ev.* p. 43—It is adopted in civil as well as criminal cases in Sierra Leone; the governor of the colony acts as chancellor, *Macauley* 234—No objection made by liberated Africans to this mode of trial; on the contrary, it is esteemed a great blessing, *Macauley* 199.

Tuscarora Station, New York. Plan adopted of communicating instruction to the native Indians at this station, and success thereof, *Bannister, Ev.* p. 11.

Tyalie, Chief. Orders given by Sir Lowry Cole for his removal from the Muncassanna were not properly attended to, *Rep.* 37, 38.

Tzatzoe, John. Examination respecting the evidence given by the Caffre chief, John Tzatzoe, in regard to the affidavits made by witness as to the authorship of several letters which appeared in the South African Advertiser under the signature of that chief, *Atherstone* 57-104—Extract from pamphlet published by Captain Fawcett, contradicting the statement of Tzatzoe that he was not invited by Dr. Philip to come to England, *Wade* 124—Explanation of the part taken by Dr. Philip in procuring the attendance of the Caffre chief, Tzatzoe, in England, *Philip* 288, *Ev.* p. 47—Circumstances under which he was brought over to England; it was at the request of an influential body of the London Missionary Society, *Philip* 289-294.

Report, 1837—continued.

U.

Uitenhage. Report of civil commissioner for the district of Uitenhage, dated 26 June 1834, on the subject of the vagrant ordinance proposed by Dr. Philip, *App.* p. 154-156.

Umtata. The valleys of the Umtata, and the plains at the foot of the mountains, constitute a rich tract of the Tambookie country, *Kay* 538-541.

Union of Natives and Colonists. A system of federal union of the tribes with the respective colonies should be arranged, *Bannister, Ev.* p. 18.—The Griquas would be the most useful federal connexions of the Cape, especially in repressing the violences of the emigrating boors, *Bannister, Ev.* p. 18.

Unsettled Lands. See *New South Wales*.

V.

Vagrancy. The effect of passing the 50th Ordinance, produced vagrancy to a considerable extent among the Hottentots at the Cape, *Rep.* 26, 27.—Circumstances connected with the passing of the Vagrant Act, *Wade* 632.—Letter from William Menzies, Esq. to Sir Benjamin D'Urban, dated 19 August 1834, on the subject of the Vagrant Act, stating, that he had no objection to prepare one, but that it was not the business of the judges to do so, *Wade* 642, *Ev.* p. 100, 101.—The last Vagrant Act was prepared by one of the judges of the colony, *Wade* 643.—Recommendation of witness to Sir Benjamin D'Urban to pass a vagrant law shortly after his arrival at the Cape, *Wade* 640-651.—Mr. Burton's proposed ordinance for the pursuit and apprehension of offenders; also for defining and punishing vagrants, *Ev.* p. 96, 97, *App.* p. 180, 182.—Extracts from the votes and proceedings of the council of the Cape, 8 September 1834, containing reasons for the governor's dissent from the majority of the council on the third reading of the amended Bill for the suppression of vagrancy, *Ev.* p. 102.—Also further extracts on the same subject, *Ev.* 102-107.

Reports of civil commissioners on the effect of the 50th Ordinance, as regards the vagrancy of the Hottentots, *App.* p. 151-166.—Letter from the Governor of the Cape to the Lord Chief Justice, containing certain queries for the opinion and consideration of the judges on the proposed Bill for the suppression of vagrancy in the colony, *App.* p. 166.—Opinion upon questions referred to the judges upon the Bill now before the legislative council for the suppression of vagrancy, *App.* p. 168.—Letter from the Governor to the Lord Chief Justice, referring the draft ordinance for the perusal and alteration of the judges of the Supreme Court, and correspondence relative thereto, *App.* p. 168-172.—Votes and proceedings of the legislative council of the Cape of Good Hope, on the ordinance proposed by the Governor for the better suppression of vagrancy in the colony, *App.* p. 172-174.—See also *Judges' Opinions*.

Vanderkemp, Dr. Was engaged in protecting the Hottentots under the patronage of the London Missionary Society, *Rep.* 61, *Kay* 479.

Van Diemen's Land. Causes which led to the removal of the native inhabitants of Van Diemen's Land, *Rep.* 13, 14.—The removal of the natives was carried on under the direction of Mr. Robinson; they were with their own consent settled on Flinder's Island, *Rep.* 14.—Correspondence between the Secretary of State for the colonies and the Lieutenant-governor of Van Diemen's Land relative to the aborigines, *App.* p. 121-126.—Despatch from Lieutenant-governor Arthur to Mr. Secretary T. Spring Rice, dated 27 January 1835, *App.* p. 121, 122.—Copy of a despatch from Lord Glenelg to Lieutenant-governor Arthur, dated 3 August 1835, *App.* p. 122.—Copy of a despatch from Lieutenant-governor Arthur to Mr. Secretary T. Spring Rice, dated 10 March 1835, *App.* p. 122-125.—Copies of despatches from Lord Glenelg to Lieutenant governor Arthur, dated respectively 20 November 1835 and 11 February 1836, *App.* p. 125, 126.

Vegetables. The Chippeway Indians have begun to cultivate their own vegetables in their gardens, *Wundais* 175.

Village System. Is a form of municipal organization more or less perfect; is very prevalent amongst the Arabian and Malayan tribes, *Colebrooke* 112.—There are traces of this municipal system wherever the Arabs have extended their conquests in Africa, *Colebrooke* 112.

W.

Waboo Island. Is not a very large island, about 600 acres; Europeans have settled upon it to the great injury of the Chippeway Indians to whom it belonged, *Wundais* 147, 148.

Wade, Col. Thomas Francis. (Analysis of his Evidence.)—Affidavit of Majeico, corroborative of the one produced by witness before the Committee of last Session, with respect to the conversations between Mr. Atherstone and the Caffre chief, John Tzatzne, 115-118.—Observations on the proceedings of the former Committee, and also on the evidence of Dr. Philip and the Caffre chief, 118-125.

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Wade, Col. Thomas Francis. (Analysis of his Evidence)—continued.

[Second Examination.]—Explanations in answer to the comments made by Mr. Kay on the evidence given by witness before the Committee of last Session, 614–616.

[Third Examination.]—The suppressed passage of Dr. Philip's letter contains serious and groundless imputations upon the governors of the colony, 626–628—Did not approve of the adoption of the whole of the suggestions made by Dr. Philip for the government of the native tribes, 631—Queries proposed to have been submitted to Dr. Philip which the arrival of the governor rendered unnecessary, 631, p. 94, 95—Circumstances connected with the passing the Vagrant Act, 632—Mr. Burton's proposed ordinance for the pursuit and apprehension of offenders; for defining and punishing vagrants, 96, 97—Opinion of Sir L. Cole on the necessity of passing a vagrant act, is to be found in the minutes of the council at the Cape, p. 97, 98—Recommendation of witness to Sir Benjamin D'Urban to pass a vagrant law shortly after his arrival, 640–651—Extracts from the votes and proceedings of the legislative council, Cape of Good Hope, 8 Sept. 1834, containing reasons of the governor's dissent from the majority of the council on the third reading of the amended Bill for the suppression of vagrancy, p. 102—Also further extracts on the same subjects, p. 102–107—State of crime at the Cape, from 1828 to 1833, 652.

Wade, Col. T. F. His opinion upon the justice of passing the 50th ordinance relative to the freedom, &c. of the Hottentots, *Rep.* 26—His opinion as to the good dispositions of the Caffres, *Rep.* 32—Opinion expressed by him as to the abandonment of the commando system of reprisal, *Rep.* 34—Had no opportunity of ascertaining the character of the Caffre chiefs, except from military correspondence, *Kay* 320, *Ev.* p. 64—Observations on the attacks made by him on witness, in his evidence before the Committee of last Session, *Kay* 306–311—Explanation of witness respecting certain statements of Col. Wade, *Philip* 288–302.

Waggons. Are becoming in general use among the Caffres, *Kay* 483.

Wars. Estimated expense to the British nation of the late war, *Rep.* 44—The systematic forgetfulness of the principles of justice in our treatment of the native possessors of the soil the principal cause of the late war, *Rep.* 43—Evils arising from the war of 1811; commissioners of inquiry notice the expense attendant thereon as a great evil, *Rep.* 31—During the late Caffre war the Hottentots at the Kat River behaved steadily and bravely, *Rep.* 64—In all former wars the Caffres massacred men women and children indiscriminately; instances during the late war of European females and children falling into their hands being protected and delivered to their relatives in safety, *Rep.* 73, *Kay* 458—Clanish broils are by no means so frequent among the bordering tribes as formerly owing to the presence and influence of missionaries, *Kay* 458—Have been less frequent between native tribes since the union of the two companies, *Pelly* 381–385.

See also *Caffre War. Quarrels.*

Waterboer, Chief. His appointment as a Griqua chief was approved by the colonial government; did not receive the support of the colony that he thought he had a right to expect, *Rep.* 67—Copy of a despatch from Lord Aberdeen to Sir B. D'Urban, dated 11 April 1835, approving of the treaty made with him, *Rep.* 70—Principle on which he governs his people; he is to be allowed a small salary to defray a part of his expenses in the service of the colony, *Rep.* p. 70.—See also *Koh, Adam.*

Watson, Rev. Richard. The manuscript of witness's "Researches in Caffraria" was submitted to him for perusal; his opinion thereon, *Kay Ev.* p. 59.

Weeks, Rev. J. Opinion as to the abilities possessed by the liberated Africans of Sierra Leone, *Rep.* 58, 59.

Western Australia. See *Australian Colonies.*

West India Regiments. Great part of the men composing the regiments serving in the West Indies are supplied from the liberated Africans at Sierra Leone, *Macaulay* 200.

Wesleyan Methodist Magazine. Witness's "Researches in Caffraria" was strongly recommended to public attention in the Wesleyan Methodist Magazine, which constitutes the official organ of that body, *Kay, Ev.* p. 51.

Wesleyan Missionary Society. Have generally two ministers employed at Sierra Leone; they have always resided at Freetown, *Macaulay* 208.

See also *Kahkwaquonaby, or Peter Jones.*

Whalers. Crews of whaling vessels too frequently act in the most reckless and immoral manner when at a distance from the restraints of justice, *Rep.* 14—Captains of whalers send the refuse of their crews on shore for the purpose of annoying the missionaries, *Rep.* 23.

Williams, Rev. J. Account given by him of the seizure of a vessel by a gang of convicts from New South Wales, *Rep.* 22, 23—Was sent out to Caffraria under the direction of the London Missionary Society, *Kay* 479.

Williams, Mr. Extract from evidence given by him, as to the code of laws in existence among the New Zealanders, *Rep.* 54, 55.

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Wundais, Shah. (Analysis of his Evidence.)—Chief of the Grape Island part of the Chippeway Indians, acting as a native missionary in conjunction with the Wesleyan Missionary Society, 128-136—Chippeways are not satisfied with the tenure on which they hold their lands, and arrangement they are willing to accede to, 137-150. 157-164—Number of converted Chippeways in witness's tribe, 151-156—Witness's tribe consider themselves under great obligations to the Wesleyan missionaries, 165-178.

Y.

Yate, Mr. Has known property given to Zew Zealand chiefs by English captains for the purpose of getting them to kill their slaves, in order that they might have their heads to take to New South Wales, *Rep.* 15.

York. See *Irwin, Mr.*

Young, Rev. S. Statement by him that no patrol has been sent against the tribe of Pato for the last 10 or 12 years, *Rep.* 71.

Z.

Zealand, New. Number of runaway sailors and convicts that have been landed on the island at one time, *Rep.* 14—General results of the labours of the missionaries in New Zealand, *Rep.* 53—The natives of New Zealand are very desirous of having Europeans to reside among them, *Rep.* 57.

Zealanders, New. Till very lately the tattooed heads of New Zealanders were sold at Sydney as objects of curiosity, *Rep.* 15.—See also *Tapuing.* *Yate, Mr.*

Zlhambi. Has always been considered the most hostile to the colony of all the frontier chiefs, *Kay* 320, *Ev.* p. 64—Laws issued by him for protection of the property of the colonists, *Kay* 320, p. 65—Was rewarded by the frontier colonists in 1785 for the services rendered by him against the Amagonaquabi, *Kay* 320, *Ev.* p. 65.