# HISTORY

OF

# AUSTRALIA

BY

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# AUSTRALIA.

## CHAPTER XV.

### GENERAL CONDITION OF AUSTRALIA.

It was finely remarked by Carlyle that the history of the world is the biography of its great men. So the early history of the Australian colonies has been most clearly told by narrating the deeds or quoting the words of the Governors who were on the spot, irresponsible; or of those few men who, like John Macarthur in resisting Bligh, or Wentworth in denouncing tyranny whether of one man or of many, made themselves the observed of all observers.

The time approaches when individuals will cease to rule. No mountain height will dominate the landscape. Primitive upheavals are not rivalled in later epochs. Successions of undulations displace the more picturesque features of the past. One becomes very like another, and from the monotony of repetition the annalist must take refuge in summing up the general effects, gradually produced not so much by the energy of any one man, as by the resultant of forces many of them mean and some uninteresting except as errors to be avoided, and as proofs that even in the days of unlicensed printing the experience of one country cannot save mankind from re-enacting follies which have become elsewhere the scorn of the wise. Wentworth forms a partial exception; and, as one of the first-born of Anglo-Saxon race on Australian soil, deserves special notice. But his power waned as the electoral suffrage was lowered. In the halls of counsel he might be unanswerable. At the polling-booth he might be ostracised.

A ·w of the principal events in the various colonies may be ·d at. It is desirable to record their progress as shown in catalogues, which to the English Manchester school represent ıppiness more sublime than the Greek sage's theory of an rgy working ever towards a perfect virtue. It will be lful also to show how in each colony its institutions were ılded after Lord Derby's Ministry in 1852 yielded to ntworth's Remonstrance, and to the conviction that, come ıt might, it was just and necessary to give to each colony ·er to deal with the unexampled difficulties created by the ·overy of gold.

First among the events in New South Wales may be recorded fact that in October 1852, the University of Sydney was blicly opened by Sir Charles Fitz Roy. Wentworth was sent as one of the Fellows of the institution of which he l been the chief founder. In the absence of the Provost, . Edward Hamilton, Sir Charles Nicholson the Speaker as ·e-Provost officially addressed the assemblage of notables. ıongst the Fellows present were Deas Thomson, James carthur of Camden, Plunkett the Attorney-General, and er public men. Ministers of each religious denomination ·e gathered amongst the audience. The Speaker recounted passing (in 1850) of the Act of Incorporation, the liberal lowment provided, the sagacity with which, while compre- ısive secular instruction was made the duty of the University, liated Colleges were contemplated in which Christian train- would complete the good work under the guidance of gious teachers. The selection of Professors had been en- sted to Sir John Herschell; Professor Airey, the Astronomer yal; Professor Malden, of University College, London; and Henry Denison, brother of Sir W. Denison.

The Rev. John Woolley, D.C.L., was chosen Professor of ssics: Messrs. Pell and Smith were severally Professors of thematics, and of Chemistry, and Physics. When the ning address was concluded, the first Australian students ·e presented for matriculation, and the Principal, Dr. Woolley, ivered one of the many orations whose eloquence charmed dwellers in the South. Himself sprung from Oxford, nded (he said), by Alfred, nearly a thousand years ago, he

ıvoked the spirit of that glorious king, as he contemplated the ›undation of "the first Colonial University in the British ;mpire." In words enshrined among the archives of the Jniversity, and fitted to inspire high thoughts in time to come, e scanned the functions of the new creation which the "noble Ventworth" had called into life in the remotest corner of the arth, to unfold in the South the beauty and the glory which lfred's foundation had caused to expand in the North. In stirring ccents he appealed to the first-adopted children of the young lma mater to become worthy associates in a noble undertaking.

"We cannot shelter our own worthlessness by the shadow of our athers' worth: whatever we desire of praise or glory we must attain by our own exertions. Onward then, in the spirit and the power which once nerved the hand and kindled in the eye of the young aspirant for knightly renown. Onward, with your untarnished but yet undecorated shield, in the proud and high resolve that whatever has already been achieved by your predecessors in the field of glory, that, by God's blessing, Sydney University shall achieve."

In process of time affiliated Colleges (incorporated by law) sprung up in connection with the Church of England, the Roman Catholics, and the Presbyterians. They received small grants in aid from the Government.

The common schools of the colony remained until 1866 as they were in 1849—under the separate management of two Boards, the national and the denominational. Previous attempts to bring about changes by Mr. Cowper in 1859, 1862, and 1863, and by Mr. W. Forster in 1859 and 1863, had failed, and it was reserved for the Ministry of Mr. (afterwards Sir) James Martin, in which Mr. Parkes was Colonial Secretary, to supplant the old systems by the Public Schools Act of 1866.

Some aid was given to a Sydney Grammar School, incorporated and endowed in 1854, but it was mainly supported by private sources. In it were trained many of those who were to legislate for their native land. The Sydney College, founded in 1830, had, under Mr. W. T. Cape, from 1835 to 1842, performed similar service, and the same highly esteemed teacher continued his labours in a private establishment until 1856, when he retired from the desk and mingled usefully with public men

in various positions as well as in Parliament. A large school (King's School), founded by Archdeacon Broughton in the days of Governor Darling, and still existing, after chequered fortunes, trained many who became useful in leading positions.

The condition of Dr. Lang's Australian College has partly been described in what it was necessary to say of his career. His efforts to resist the appropriation to the Scotch Church of moneys granted to it, and to retain in his own hand land on which some of those moneys had been expended in College buildings, had not been terminated at the period under review. They had caused ruptures in the governing body, and the establishment had been closed more than once.

His admirable energy had opened it for the third time on the 1st April, 1850. The Rev. W. Ridley then took charge of the Classical chair. He also left the polemical manager, undertook pastoral charge in the country, and devoted himself to missionary labours on behalf of the despised Australian blacks, concerning whom he left a valuable treatise.[1] The vigorous Lang endeavoured to attract some public money to his College, during the passing of the University Bill. He earnestly recommended "that a grant of £700 a year should be guaranteed for three years certain to any College having an establishment of four Professors of suitable qualifications, and affording a certain fixed curriculum."[2] The Legislature, warned by Lang's previous raids upon the Treasury, did not fall in with his views, and he railed at the foundation of the University as vicious, and to be remodelled when the Colonial Legislature could "be relieved of some of its present useless lumber."[3]

It may be mentioned that early in 1853 the Legislature passed an Act to incorporate a museum in Sydney. It showed a fluctuating opinion with regard to railways. A company had been

[1] 'Kamilaroi and other Australian languages.' New South Wales: 1875. It was printed at the Government press. The amiable author died in 1878. In 1877 he acquired a knowledge of the Chinese language at the request of the Presbyterian Synod, in order that he might serve a Chinese Mission in Sydney.

[2] These are Lang's own words.—'History of New South Wales,' vol. ii. p. 547. 1852.

[3] *Ib.*

formed for the purpose of making a railway to Goulburn from Sydney. Projected in 1846, at a later date capital was subscribed, and in 1850 the first turf was turned. Financial difficulties, and the convulsions of the labour market, arrested the progress of the undertaking. Another company was formed in 1853 to make a railway from Newcastle to Maitland. A line from Sydney to Paramatta was opened in 1855. Both these lines ran parallel to existing water communication, and therefore, except as portions of lines to be extended inland, were likely to be unprofitable. The private lines, to Goulburn and to Maitland, passed into the hands of the Government in 1855.

In 1852 an Act to regulate the gauge of railways in the colony fixed the width at 5 ft. 3 in. A year later (August 1853) the wavering Council fixed the gauge, by another Act, at 4 ft. 8½ in. It is to be regretted that, although there was much correspondence with the Imperial Government about the width of gauge, there was not sufficient prescience in New South Wales and in Victoria to bring about a common agreement. After New South Wales had formally fixed upon 5 ft. 3 in. as the proper gauge, works undertaken in Victoria were constructed with a gauge of 5 ft. 3 in. as provided in the 33rd section of the Melbourne and Hobson's Bay Act of 20th January, 1853. There was incongruity where there should have been concert. The Sydney Legislature must bear the blame. It had fixed 5 ft. 3 in. as the legal width in July 1852. Victoria adopted that width in January 1853 in her legislation. New South Wales, in August 1853, recanted her own opinion, and thus threw obstacles in the way of future traffic between the colonies.

Sir William Denison strove to make his engineering knowledge useful in devising an economical scheme for "throwing the interior open to settlers" by the construction of cheap railways. But the days in which a Governor could control plans and expenditure had passed away, and his efforts were vain. He made his influence felt in a manner which he must have regretted when an untoward result ensued. Sir Thomas Mitchell, the Surveyor-General, was a man of imperious temperament, and had enemies who disparaged his fitness for his post. Sir W. Denison, who, as an engineer officer, might be deemed qualified

to understand professional questions, appointed a Board to examine and report upon Mitchell's department. The members were drawn from neighbouring colonies, and Captain Clarke (Sir W. Denison's former private secretary) was furnished by Victoria. The indignity of trial by his juniors was galling to a man decorated with a Peninsular medal and clasps won under the Duke of Wellington. Mitchell, older, and he might think abler, than his triers, could not sustain the blow. The iron entered into his soul, and in a few months he died at the age of sixty-three years.

A great fiscal and convenient reform was carried out by Deas Thomson in 1852. The tariff of New South Wales had been resorted to whenever the Treasury showed symptoms of depletion. From the time when Governor King, of his own authority, imposed a Customs' duty in the beginning of the century, import duties had been a sponge to be squeezed when moisture was required. Little care was taken to insure that the fountain should not be dried up whence the sponge was supplied. The easy calculation that revenue would increase in arithmetical proportion to the added duty, sufficed for financiers heedless of the probable effect upon buyers, and a possible decrease of consumption. The gold discovery had hardly made its mark upon the colony, when Deas Thomson with a bold hand cut down the catalogue of dutiable articles to a trifling number (spirits, wine, beer, tobacco, tea, sugar, coffee).[1] The Council concurred in thinking that, in a material sense, if there were any community which would derive especial benefit from untrammelled exchange, it was that which produced the gold with which all commodities could be procured.

The Act passed in Sydney, in August 1852, was speedily followed by a similar Act (with slight variations) in Victoria, in the same month. Mr. Cassells, the Collector of Customs, abetted the change departmentally, and Mr. Westgarth, in the Chamber of Commerce as well as in the Legislature, was influential in its support. South Australia retained a longer list of dutiable articles, but the rates, which varied from five to ten per cent.,

[1] Subdivisions under the heads of spirits, wine, tobacco, and saccharine articles made the list appear longer than in the text; but practically the subjects of import duties were those above enumerated.

were imposed to increase revenue, and not to diminish importations. Tasmania also had a larger list in her tariff than remained in New South Wales or in Victoria.[1] As regarded the two gold-producing colonies, artificial restrictions could no longer arrest the natural circulation. What the busy hive of men desired to do it could do freely. It was not only in the direction of pastoral enterprise that the colonists of New South Wales displayed activity. John Macarthur had imported vine-cuttings, and had, with his sons, James and William, studied the method of making wine in the European continent during his enforced absence from his home after the deposition of Governor Bligh. One of those sons (afterwards Sir William) wrote a valuable treatise in order to stimulate his fellow-colonists to the manufacture of wine. The Camden vineyard was formed in 1815. William Macarthur was not singular in his zeal. Mr. James King of Irrawang made wine in the Hunter river district in 1836. Samples of his wine, as well as of that made at Camden and elsewhere, obtained honourable distinction at the French International Exhibition of 1855, as they had previously earned it in London in 1851. Mr. Busby, early after his arrival, distributed vine-cuttings in the colony, and published a treatise on wine-making. Like many inventors, the pioneers of this industry paved the way on which others might walk profitably, though they themselves were rewarded only by the consciousness of benefiting the public.

The smaller industries of the colony need not be dwelt upon. The gold-mines have been described. The resources of coal were abundant, and as the population of the neighbouring colonies increased, the facility of exportation from the rich coal seam which is entered from the very shore of the harbour of Newcastle at the mouth of the river Hunter, yielded as much as was required. Tin and copper had not been discovered in remunerative quantities in 1856. Iron also, though known to abound, had not (owing to the cost of labour and other circumstances) been produced largely. Private enterprise had done much. Mr. T. S. Mort had, in 1856, constructed a dry dock at Waterview Bay in Sydney. A public dock at Cockatoo Island

[1] The chief variation in amount was on spirits :—In Tasmania, 12*s.*; in Victoria, 7*s.*; in New South Wales and in South Australia, 6*s.* a gallon.

(or Biloela) was completed in the following year. With regard to municipal institutions the parent colony was not honourably distinguished. The opposition to District Councils in the time of Governor Gipps seems to have hardened into an unworthy reluctance to undertake municipal duties.

Adelaide had its corporation in 1840.[1] Sydney and Melbourne were incorporated in 1842, not without complaint on the part of Sir G. Gipps, that a sop in the shape of grants of money was required to enable the Bills to pass. But after a few years a Select Committee of the Legislative Council reported that the corporation of Sydney was so inefficient that it had lost the confidence of the citizens, and was an obstacle to improvement. An Act was passed to supersede it, and vest its powers in three Commissioners. They wielded them for three years (1854-6).

The liberality of the colonists was notably shown during the Crimean war. Sixty-four thousand pounds were voluntarily subscribed towards a patriotic fund to relieve widows and orphans of soldiers and sailors. Mr. (afterwards Sir) Daniel Cooper subscribed £1000, and gave also £500 a year while the war lasted. A benevolent society, founded under Governor Macquarie, was still maintained, partly by Government aid and partly by subscriptions. An infirmary was similarly supported. Orphan schools were maintained by the Government. A destitute children's asylum was founded in 1852, when the abandonment of their offspring by gold-seeking parents left scattered waifs with no guardian but the Government. It was partly supported by voluntary contribution. There were many other charitable institutions which spoke volumes for the kindliness of the colonists.

A volunteer corps was formed after the declaration of war with Russia in 1854, and though for a time it did not thrive, it was subsequently revived with success.

It will not be necessary to dwell further upon the career of Sir Charles Fitz Roy. His conduct with regard to the discovery of gold and his relations with the Legislative Council have been adverted to. Without Deas Thomson he might have failed to

[1] In 1843 the Adelaide Corporation was extinguished, but was revived in 1852. Melbourne retained its civic dignities without intermission.

secure the general goodwill, which undoubtedly attended him on his departure. With that capable and worthy adviser he established such concert between Executive and Legislative functions that the transition to responsible government was made easy. He remained in Sydney until his successor, Sir W. Denison, arrived there in January 1855. The enemies of Wentworth's Constitution Act hoped still to destroy it, as the Imperial Parliament had not confirmed it. It was known that Sir W. Denison had advocated an elective Upper House in Tasmania, and petitions were presented to him praying for a dissolution of the Legislative Council so that the question might be re-opened in the colony, in the absence of Wentworth and Deas Thomson, and on the departure of Sir Charles Fitz Roy, so much hated by Dr. Lang (who had returned to the colony). He was, on private and public grounds, opposed to Wentworth's Bill, which excluded ministers of religion from the House. A public meeting was called at a theatre. The scanty attendance showed that thoughtful colonists were content to allow Wentworth's Constitution to receive a fair trial. Dr. Lang moved the first resolution, condemning the Legislative Council as utterly unworthy of confidence. He knew how to quote Scripture for his purpose, and he virulently assailed the private character of Sir Charles Fitz Roy. He daubed the new Governor with praise as a man of high moral worth, and was confident that he would grant the request for the dissolution of the Council. Mr. Darvall, who, like Gallio, cared not whether the imputations of immorality against Sir C. Fitz Roy were true or not, could hardly echo Lang's speech, and, as he had joined in a complimentary address to Fitz Roy, had difficulty in obtaining a hearing to explain his conduct. But he ranted on the stage thrasonically about Wentworth's Bill, regretting, like other actors, "to see so few present." He also augured hopefully of the new Governor's career. The newspaper reporter declared that the audience saw that Darvall's was only a simulated fervour. Mr. Parkes affirmed that Wentworth's Bill would "generate bad laws to all eternity, so to speak . . . on the rejection of the Bill depended the interests, the hopes, and the aspirations of the colony."

The Chairman, Darvall, and Parkes, were deputed to present

an address to Sir W. Denison. They procured 799 signatures,[1] and expected sympathy from one who had, like themselves, advocated an Elective Council. They had deceived themselves. Sir W. Denison looked upon unwarrantable change as an evil; and they had under-estimated his firmness. He informed them that he regretted that they had "within so short a period of his assumption of the government pressed upon him the adoption of a measure of so extreme a character; a measure not only uncalled for, but injurious, as tending to excite unnecessarily the bitter feelings of political and party strife." The petitioners professed a desire to avoid contention with the Imperial Parliament or Her Majesty's advisers; but if, as was possible, the Constitution Act should already have been assented to, the opinion of a new Council, if adverse to the Act, would render almost inevitable the contention they expressed so earnest a desire to avoid. He was not called upon to pronounce any opinion on the Act, but it contained "within itself ample provision for alteration and amendment." For these reasons he declined to accede to their request. The 'Sydney Morning Herald' reported (14th February) that the deputation was "petrified with astonishment," but that the Governor's decision would nevertheless give satisfaction to the public, who would not regret that the "moral and intellectual" ruler, to whom Lang and Darvall had so flatteringly appealed, was plainly a resolute man.

The crushing of the last local conspiracy against Wentworth's Bill was rendered more notable by the fact that a few days afterwards the citizens appeared in thousands to support an appeal to their loyalty and patriotism. The Crimean war drew them forth. The Governor was in the chair. Leading citizens spoke. The Speaker, Sir Charles Nicholson; Therry, one of the Judges; and Mr. Donaldson roused fervour in the cause. Mr. Parkes lent his aid; but Dr. Lang, *suo more*, took no part, and was chagrined to see the enthusiasm of the metropolis spread to the rural districts. He reserved his sympathies for those who gloated over England's griefs. Early in 1856, when Mr. Charles G. Duffy immigrated to Victoria, Lang published a

[1] Parliamentary Papers, vol. xliii. 1856. The promoters thought fit to say that there were more than 1300 signatures. *Vide* newspapers of the time.

manifesto of welcome. Professing respect for Queen Victoria personally, he regarded separation of the colonies as "the first wish" of his heart, and it would ever be his first object "to hasten on a consummation so devoutly to be wished." There must be "a great federation of sovereign and independent republics." He claimed Mr. Gladstone as a convert to his opinions as to separation. As to local affairs, he asked whether under universal suffrage the people of Victoria would have elected either Mr. Latrobe or Sir Charles Hotham as Governor. He bid Duffy go where glory waited him. "Strike the keynote of Australian freedom and independence, and every Australian colony will reverberate the sound." He had been identified with the separation of Victoria, and the efforts to separate Queensland (then in progress); but the great act of the Australian drama, "the separation of all these colonies from the British Empire," inspired his highest hopes, though clouds and darkness rested on it.

Duffy's "warm and kindly feelings spontaneously manifested towards" Lang personally, induced the latter to address him so freely.[1] Popular as Lang was in Sydney, he nevertheless felt that his influence was not powerful enough to warp all classes. Amongst the intelligent and industrious he knew himself distrusted. He had seen enough of Victoria to make him deem her people more unstable than the men of New South Wales. With the spark of sedition supplied by Duffy the explosion against English rule might soon occur. He wrote (April 1856) in Melbourne,[2] that though grieved because Duffy had not determined to reside in Sydney, he rejoiced that he would be in Melbourne.

[1] The reader will note how strong must be the bond of common disloyalty when he learns that Lang (who thus addressed Duffy in 1856, knowing that Duffy was a Roman Catholic) had written thus in 1852: "There is no security for civil liberty in any country in which Romanism predominates." ('Freedom and Independence, &c.,' Introduction, p. 11. J. D. Lang, 1852.) Lang had vehemently denounced the application of public funds in importing Roman Catholic immigrants. Duffy demanded for Irishmen a share of public offices proportioned to their numbers, irrespective of the fitness of candidates available on occurrence of vacancies.

[2] He ostentatiously published his letter in the 'Empire' newspaper in Sydney.

"It is in this colony that the first step in the march of Australian freedom and independence will assuredly be taken; it is here that the battle will be fought and the victory won. . . . Strike the keynote on the noble vantage-ground which you will shortly occupy, surrounded as you now are with an intelligent and energetic population prepared beforehand to approve and to second your efforts . . ."

With conspirators like Duffy and Lang plotting her downfall, it must be admitted that Victoria was in danger. But there is some essence of stability in all institutions, and the man who had most power amongst Duffy's countrymen in Victoria, John O'Shanassy, was untainted with disloyalty to the Crown. Duffy himself was as much a personal intriguer as a public plotter, and in the race which was set before him the temptations of a pension and a title whetted his appetite and vanity. Instead of dethroning a Saxon Queen he battened on her bounty.

As the Imperial Land Act of 1842 applied a portion of all Australian land funds to immigration, and as the voluntary immigration of gold-seekers distracted rather than aided ordinary industrial pursuits, the colonies persevered generally in encouraging immigration of families and of others likely to promote the settled interests of the community. In Sydney, Wentworth and others urged it forward. The Legislature in the height of the gold-hunting excitement pressed it upon the attention of the Home Government. In Victoria, Mr. Foster and his colleagues by laying hands upon funds set apart by law for immigration, impeded the operation of that law; but something was done. The disproportion between the numbers of male and female unassisted immigrants was to some extent corrected by the assisted immigration. In 1852-3-4 the unassisted immigration was 224,000, and 180,000 were males. In the same years 46,373 assisted immigrants arrived, and of them there were no less than 27,919 females. Moreover, the correction occurred entirely in 1853 and 1854, and afforded evident remedy for many evils. In some cases where, at an outport, the local authorities remonstrated against a few score of young women being sent thither, they reported soon afterwards that all had rapidly been engaged as servants, and that many of them had been married. The proportion of Irish immigration largely exceeded that from England and Scotland. England supplied

less than a third of the arrivals, though her population, considered numerically, should have supplied two-thirds. Scotland furnished more than a fourth, her arithmetical proportion being about a tenth. Ireland sent two-fifths, her numerical proportion being less than a fourth. There was one aspect of the case which was serious. The colony was open to all who were prompted by a spirit of adventure, but it could fairly object to pay large sums for the importation of the ignorant. The Irish immigrants were worse educated than the English or Scotch. In 1855, the Acting Immigration Agent in Victoria pointed out, in the Annual Report furnished to the Governor, that England had furnished in 1854 less than half her due proportion of immigrants; Scotland more than twice as many as she should, and Ireland two-thirds more than she should, and added:

"In speaking of education I shall now designate as ignorant those who cannot read and write. Practically those who cannot write can read to little purpose, and my assumption is in the main a just one. The difference in education of immigrants from England and Scotland being only ·016 per cent. in favour of England I shall dismiss it (&c.); but the condition of the Irish immigrants cannot be so considered. Ireland has furnished two-thirds more immigrants than she should, and of those she has furnished, two-thirds cannot read and write. . . If ignorant persons come voluntarily to the colony, I presume no word would be raised against their coming; but it is preposterous to suppose that it can be beneficial to pay £141,926 for the importation of 6951 souls from Ireland, two-thirds of whom have not the intelligence guaranteed by the ability to read and write. . . I by no means wish to assert that Ireland cannot supply an immigration as intelligent as that which comes from England and Scotland. If she can do so, the colony has reason to complain that improper selection has been made. If she cannot, there are evident grounds for insisting that her due proportion on the whole be not exceeded. Moreover, it is unfair to Ireland herself that she should be judged by a class of immigrants unfairly derived from her."[1]

[1] Victoria, Legislative Council Papers, 1855. Sir Richard MacDonell, the Governor of South Australia, took occasion in one of his despatches to concur as an Irishman with the reasoning of the Report, which was printed in November, 1855. In process of time the Land and Emigration Commissioners ceased to exercise control over emigration to the principal colonies, which employed agents of their own in the mother country.

The fact that within two years of the publication of the report manhood suffrage was conferred, by the first Parliament convened under the new Constitution, gives significance to the danger foreshadowed in 1855. South Australia persevered in devoting her funds to promote immigration. Indeed, after Sir R. Macdonnell's assumption of office a temporary glut of labour in Adelaide compelled the Government to adopt energetic measures in providing food, shelter, and rural depots in order to assist the community to absorb the new-comers. Tasmania did what she could. Western Australia received such a dole as was accorded to her in compliance with Earl Grey's intimation that free immigrants should be sent at Imperial cost to colonies which consented to receive convicts. Some of the assisted immigrants were dissatisfied with the aspect of Western Australia. Hoping to be carried away, they averred that they had believed their destination to be one of the Eastern colonies. It was true that in their anxiety to reach the neighbourhood of the gold-fields, they accepted passages in ships bound to Western Australia, although they had no conception of the sandy waste which divided the East from the West. Three ships, with a complement of about 200 souls in each, were, in the opinion of the Colonial Land and Emigration Commissioners, enough to absorb the Parliamentary grant, and more than enough to supply the legitimate wants of the colony. Consequently in October 1854, the Secretary of State arrested the immigration for a time.

The lavish expenditure in Victoria has been alluded to. When the capable financier whose services were available was driven from Mr. Latrobe's side, the evils which Mr. Ebden strove to resist reigned paramount. The disbursement of millions sterling by men who had never dealt with thousands intoxicated them. Wild schemes and profuse appointments were patronized. Corruption was not imputed even by their enemies to Mr. Stawell and Mr. Foster, and by heroic toil for the public Mr. Stawell was believed to be sacrificing opportunities for ample enrichment by practice at the bar. But the gigantic rise in prices made all living dear. If men were to be employed at all it was necessary to pay them highly. The out-bursting wants of a community tripling its numbers in short space of time, and multiplying its needs in geometrical progression,

would have taxed the energies of sound financiers. After Mr. Ebden's retirement, Mr. Latrobe had none such to confer with. With sagacious advisers it might have been difficult to avert confusion so long as the unprofitable license system dissipated far more than the receipts under it. With that system embarrassment was ensured by some of Mr. Latrobe's counsellors. As they reeled under their work they grasped at every occasion to overcome difficulty by making more appointments. Mr. Foster and Mr. Stawell were Irish. The temperament of their countrymen was not abstinent in seeking patronage, and they constituted an invasion of the public offices to such an extent that at a later date, when Mr. O'Shanassy and others of his countrymen (Mr. Ireland and Mr. C. G. Duffy) were in power, it was said, after they had been a few months in office, that as no more Irishmen could be found unemployed the Ministry had begun to appoint the women, and there might at last come a time when Scotchmen or Englishmen would be chosen of necessity. There was one of the appointees (under Mr. Latrobe) whose selection was eminently calculated to promote the welfare of the colony. Mr. Charles James Griffith was made Chairman[1] of a Board of Commissioners of sewers and water supply. Able and conscientious, he enjoyed the esteem of all who knew him. When the project of supplying Melbourne with water from a reservoir at Yan Yean, 19 miles distant, was elaborately assailed, he justified it in unpretending but conclusive language which was to be corroborated by experience. The Act incorporating the Commissioners authorized an advance of £200,000 to them from the Treasury, and it was well that the Chairman should be, like Mr. Griffith, worthy of unbounded confidence. Further sums were advanced. But they were well expended, and the works rapidly paid off both interest and principal. Mr. Latrobe laid Melbourne under deep obligations by his furtherance of the Yan Yean scheme, and by the many large reserves for public recreation which he planned. From

[1] He had colleagues, but they did little. One of them was Mr. R. H. Horne (author of 'Orion'). Mr. Horne was the only person in the colony who thought his services useful. At a *déjeûner* given when the works were in a forward condition, the audience forbore to listen to his prepared speech. He strove to immortalize it in an inaccurate work, unhappily styled 'Australian Facts and Prospects.' Smith, Elder, and Co. London: 1859.

the date of his arrival in 1839 he laboured to secure for the future inhabitants space, for free breath; for pleasure-grounds and parks conducive to the public health; for enjoyment by the labouring poor of the advantages which enormous wealth is expended to obtain for the rich. He spent hours in riding through the suburban forest to devise his benevolent schemes. He had cultivated tastes, and rejoiced in the thought that he was providing for the happiness of the posterity of those who reviled him. His subordinate position under the Governor of New South Wales qualified his powers, but he encountered no serious opposition; and when he became Governor in 1851 he revelled in what he described as the "rare privilege of providing for the ease, comfort, and pleasure of the community among which" he was thrown.[1] Whether future generations will be wise enough to preserve their heritage may be doubted Already sacrilegious hands have been laid by governments upon portions of the metropolitan parks. Mr. Latrobe strove also to make the grants of land for sites of churches, schools, and parsonages conducive to the public health. Under the Land Act (5 and 6 Vict. cap. 36) Governors had ample power to grant sites for such purposes; and confident that they would be sacredly retained for them in all time, and would, with the planted spaces round them, improve the air of towns, he advocated a lavish use of the power. Such spaces he scattered broadcast throughout the land. Before he left the colony in 1854 he was doomed to see a perversion of his benevolence. Some occupiers coveted, some seized the occasion of converting into money, the boon which was granted for other purposes. Their trusts forbade sales, but by long leases they could evade the spirit of their trusts. Buildings alien to the intention of the grants might stand by the side of the house of God, and the clink of the rent paid would drive away reflection upon dishonour. Mr. Latrobe instinctively shrunk from the wrong. He brought before his Executive Council the "application notoriously made or con-

[1] Letter to the author. 1st December, 1869. An address delivered in 1869 in Melbourne, recalling the fact that Mr. Latrobe designed the parks, was well received. He wrote: "I am not insensible to the compliment paid me, and the recognition of one good service at least which I had it in my power to render to the public inhabiting the city of Melbourne, and their children after them."

templated of lands granted for Church purposes, in Melbourne, for other than such purposes." He directed that a Bill should be brought in to prevent any such misapplication. Obedience was promised, but there was no performance. Various excuses were put forward from time to time, and Mr. Latrobe regretfully saw the evil increase from day to day. He was far too kindly to quarrel, though it grieved him sorely to see a site, granted for a church in Melbourne, used for a dancing-saloon.

The roads of the colony were made the subject of a special enactment in February 1853. The sloughs of despond through which the carriers toiled with goods to the gold-fields in the winter of 1852, seemed to gasp for remedy, and it needed not the curses of travellers to attract the humane Governor to lighten the labours which he pitied. A Central Road Board was formed with powers adopted from the Lands Clauses Consolidation Act (1845) of the United Kingdom. District Road Boards were provided for. They were to be elected by landowners and householders. The Central Board was appointed by the Governor, who had also power to appoint an Inspector-General of Roads, and all the engineers, surveyors, and others who might be required. Tolls might be levied at places approved by the Governor. After the experience of a year a short amending Act was passed to meet discovered defects in a machinery which had to apply large sums of money over a wide extent of territory. (After a few more years a comprehensive Act (1863) provided for local government in country and town, by shires and boroughs.) Sums were voted for the improvement of Melbourne and Geelong. The Melbourne Corporation was empowered by an Act, in 1854, to borrow [1] half a million sterling, and the payment of £25,000 yearly for 21 years was guaranteed from the Treasury. One officer ought not to be omitted in alluding to the public works of the colony. Captain Charles Pasley, R.E., arrived in 1853 with the appointment of Colonial Engineer. There had been much confusion in the department which he went to control. Instances of bribery

[1] Antony Gabrielli, the financial agent who negotiated the "Gabrielli Loan," startled the colonial communities by his promptitude in advancing the money on the security of the Government guarantee and of a first charge on the city revenues.

in the awarding of contracts had been discovered. Others were suspected. It was amongst the tenderers and the officers employed temporarily to superintend special works that offences were rife. There was no capable trustworthy head to repress them. Captain Pasley, honourable, able, and modest, met the pressing need. Unpretending and never desirous to assume credit for the desert of others, he served the country faithfully, and the extent of its obligations to him was comparatively unknown to the general public. Before his genuine uprightness all misdoers shrunk abashed.

It was under his care that a work was completed which was at the time deemed of an importance difficult for posterity to comprehend. When ships were so thickly and confusedly scattered in the Bay, that their masts prevented a gazer from Sandridge from seeing the small township at Williams Town, the lighters which bore cargo to the Yarra, had to unload upon a quagmire on the river-bank at Melbourne. Two private wharves existed, but they were inadequate to the traffic. The petty public wharf was equally so. Large requirements had afforded opportunities for large misdemeanours amongst officers and contractors before Captain Pasley arrived; and waste had exhausted the general revenue, and improperly withdrawn nearly a million sterling from the territorial revenue, before Sir C. Hotham appeared on the scene.

Nevertheless while cutting down other expenditure he strove to meet the exigencies of the case, and the Australian wharf took the place of the "chaos" which he found on the banks of the Yarra. The unostentatious Pasley executed the approved work which enabled the inhabitants to land their goods in comfort, and spared them incalculable expense.

Sir Charles Hotham submitted to the Legislative Council a scheme for the formation of public railways. By private enterprise railways from Melbourne to Hobson's Bay, and from Geelong to Melbourne, had been commenced in 1853, and a company had also been incorporated to construct a railway from Melbourne to Mount Alexander and the Murray river. The Melbourne and Hobson's Bay Railway was opened in September 1854, and was so prosperous that the Government many years afterwards purchased it (1878) for more than a million and a

quarter sterling. The Geelong line was unprosperous, and was taken over by the Government in 1860. The Mount Alexander and Murray River Railway was so feebly supported that the Government at an early date stepped in and appointed directors to assist in the management, and an Act was passed to enable the Company to transfer the property to the Government. There were two methods by which railways could be made in a country not abounding in capital, but possessing the bulk of the land through which they were to run. Capitalists and contractors could be invited from Europe by offers of the use of lands contiguous to the lines for long terms of years; or the State, by borrowing European capital on the security of the land, might itself construct the railways. The first mode found favour with few persons.

On the 20th February, 1855, Sir C. Hotham propounded a general scheme for the adoption of the second, under three conditions:

1. That no scheme should be entertained which does not provide for the eventual liquidation of the loan.

2. That no greater extent of lines should be undertaken than will hold out a prospect of being remunerative, and defraying an interest guaranteed by the State.

3. That lines should be determined upon, with reference as much to the probable future wants of the colony as to its immediate requirements.

He proposed to reserve lands on each side of the railways to be made in the first instance, and to mark off for future lines lands to be similarly reserved, with a view in each case to derive from such lands funds with which the borrowed capital might be paid off in twenty-one years. He recommended "that upon the completion of each section or line, tenders for its lease for a term of years should be invited." The capital he proposed to obtain in London by public tender. He was not destined to see his project carried out. When, in after years, large loans were obtained, his precaution was not respected. Intrigues in the lobbies, against which American Legislatures had furnished warnings, decided upon some Victorian railways. Loans after loans were contracted, and tax after tax was imposed to swell the annual income. The public domain which, duly

administered, might have constructed the railways without incurring debt, was submitted to selectors without regard to its value in the market. The lines were not leased as recommended by Sir C. Hotham.

It is creditable to the Victoria Legislative Council that it was amongst the earliest of the Colonial Legislatures which passed an Act for the establishment of municipal institutions. The District Councils of former years had not succeeded in Victoria better than in New South Wales, but they had not formed so rankling a subject of discussion as in Sydney. Sir William Denison had striven to induce the Tasmanians to adopt municipal institutions, but there, as in New South Wales, there was a reluctance to incur the responsibility of providing by local taxation for wants which the Government had previously though insufficiently met with public funds. Possessing some influence over Captain Clarke (the Surveyor-General of Victoria), Sir William had no difficulty in inducing him to broach the subject. Captain Clarke has received and deserves credit for introducing the necessary measures, but the idea was that of his old master. Not only did the Tasmanian Governor give frequent advice. He revised the drafts of resolutions after they were in type.

After months of labour the Bill was produced. It was found to be tainted with the vicious element which had mainly caused distrust in the District Councils of the time of Gipps. The Government could step in and assume control. Engineer officers appeared to bestow more care on the completion and symmetry of public works than on creating that spirit of self-reliance which fashions greater things than walls of brick or stone. A clause in the Bill proposed that if any Municipal Council, having obtained public funds by loan or otherwise, should fail to complete the work projected, the Municipal Council should be dissolved—"and all its functions should vest in a Board of Commissioners, who should exercise all the powers and discharge all the functions of the said Council, *mutatis mutandis*, as fully and effectually as if the said Board had been specially named in the place of a Municipal Council in the Act."

There was a Committee in one of the suburbs of Melbourne, appointed to watch the Bill. A delegate was sent to remon-

strate against the clause, which Captain Clarke warmly defended, but eventually (apprehending unpopularity) allowed the delegate to alter in a manner which the Legislature afterwards approved. Commissioners were to supersede defaulting Councils, but were to enter on no fresh undertaking, and their powers were to "cease and determine as soon as any loan, and all interest thereon," should be paid.[1]

The rock which had wrecked the District Councils was avoided. The first establishment of a Council was not compulsory. Inhabitants were empowered to petition that a locality might be declared a municipal district, and in the absence of a contrary petition the Governor might grant the petition; but the "resident householders and landowners" within the district had then to decide important leading principles, as to the number of their future Councillors, and whether they should be paid.[2]

The Act was not only permissive in its character, but inviting in its administration. The Government offered pecuniary grants to constituted boroughs. One of the first districts to avail itself of the provisions of the Act was a suburb of Melbourne, Emerald Hill. The money grants which were the inducement by which districts were formed, were so large that they became an incubus upon the Treasury, grievous and difficult to dislodge.

By the end of 1858, more than a score of corporate bodies were in existence. In process of time the proportionate amount contributed by the Government was reduced. It could hardly be said that the scheme, as it was originally worked, substituted local for general responsibility, when it was found that a borough formed in 1855, had after three years collected rather more than £7000 in rates, and had received from the Treasury

[1] There was a Municipal Conference in Melbourne in 1860, at which these facts were made public by the then Chairman of the Municipal Council of Brighton, who had been the suburban delegate from Prahran in 1854. The Report of the Conference of 1860 on necessary amendments in the existing law was printed, and is before me.

[2] In this manner a wide consensus of public opinion was obtained, hostile to the principle of payment of members. In no case throughout the colony did a meeting sanction payment. Neglectful of this fact, Members of Parliament in process of time demanded payment. Opposed as people in general were to the principle, their desire to prevent it was not so great as to induce them to reject candidates who on other grounds were popular, or might seem useful in obtaining grants of money or other favours.

more than £22,000. But it is difficult to slake the thirst of mendicants for money, when the fountain of supply is the abstract idea of the State, and not the local rates. Even when the local rates had risen (1878) to £401,208 in 59 cities, towns, and boroughs, and 114 shires, and (to pacify their claims) tolls and license fees (the latter amounting to more than £100,000) had been ceded to them, the Government, though loaded with debt, still (subject to a maximum limit of £2000 in each case) was bound to contribute a quota of about £2 in each shire for £1 collected by rates, and an amount, in cities, towns, and boroughs, equal to the amount of the rate.

No Government had been found capable of resisting the pressure of representative bodies concentrating their gaze from all parts of the colony upon the public chest. In the Legislative Assembly it was not concealed that questions of general policy could not outweigh the local claims of boroughs. Facilities of locomotion enabled bands of delegates to crowd round the public offices and fasten upon a Minister, who was distracted if he was an honest public servant, and if dishonest could purchase gratitude by pillage of the Treasury. It must be said, however, that although tainted by these defects, the municipal system rapidly constructed many useful works. The apparent prosperity of one district induced others to enrol themselves. In 1878, there was but a thirty-fourth part of the population living in sterile or inaccessible tracts outside the boundaries of municipal districts; and the total rateable value within those districts was £84,433,481.

The Imprest system of Victoria, the handiwork of Mr. Childers, deserves notice. One of the causes of Mr. Ebden's retirement was Mr. Latrobe's inability or unwillingness to check the extravagances and irregularities caused by the impetuosity and financial ignorance of others. Mr. Stawell's energy and endurance, and the high respect entertained for him, blinded others as well as Mr. Latrobe to the evil consequences of yielding to misdirected vigour. Mr. Childers succeeded Mr. Ebden as Auditor-General. Mr. Latrobe had misgivings, but yielded to the appointment. Childers had attached himself as obsequiously at that time to Mr. Stawell as he afterwards attached himself to Mr. Gladstone in England. He passed rapidly from the

Inspectorship of Denominational Schools to the Immigration Office, and thence to the Audit Office. Eager to distinguish himself by changes indicative of capacity, he had done something on a small scale in wasting money at the Immigration Office. His opportunities at the Audit Office were to be almost unlimited, and were to be fully used.

Mr. Ebden's firm hand in exacting accounts of expenditure had galled some who had to render accounts. When there was difficulty in complying with regulations, inexact friends were accustomed to appeal to the Governor's good-nature, and obtain his authority to sanction accounts. No auditor could question the power of the Governor's approval with regard to the territorial revenue, or his interim authority with regard to sums to be placed on a Supplementary Estimate; but while Mr. Ebden was at his post, Mr. Latrobe used his power with consideration. The Supplementary Estimates became exorbitant when Mr. Ebden retired;—and placing his hand on some of them, the Secretary of State warned Sir Charles Hotham of the perils they involved. The Imprest system, confidently put into operation by Mr. Childers, seemed for a few months to give relief; but was in truth an abandonment of all control, except when special cases were chosen for exercise of authority.

Exceptional circumstances had justified the use of an Imprest system in minor cases of emergency. Heads of departments received advances for unforeseen necessities, and had to account exactly for the expenditure before they could receive further advances of like nature. Ordinary expenditure was disbursed month by month from the Treasury. Presuming on Mr. Latrobe's kindness, heads of departments who were in favour with his advisers, resorted freely to him to extricate them from embarrassment, and by obtaining his approval of payments, received a fresh advance before they had accounted for a former one. An officer who for a few weeks acted for Mr. Childers during the absence of the latter, vehemently represented to Mr. Latrobe the danger of such a practice.

Mr. Childers' plan to satisfy the impetuous claims for money was to make all payments through an Imprest system. The consequence was immediate confusion. Items, which could easily have been accounted for and dismissed, were inextricably

involved with those which were irregular or required explanation. The votes of the Legislative Council were exorbitantly exceeded in several departments. Bad as the system was in principle, it was made worse by practice when, before one large sum had been accounted for, others were advanced. It would be tedious to trace the details. It is sufficient to state that when Sir Charles Hotham in 1854 caused inquiry to be made, it was found that about £1,700,000 had not been accounted for, and that much could never be accounted for. Mr. Latrobe saw and shuddered at the rate and manner in which money was drawn from the Treasury, but he had not resolution to check it.

On the 4th May, 1854, informing the Secretary of State that an expenditure of £898,959 "in excess of income" had been voted by the Legislative Council, he remarked: "these increases were for the most part adopted by the Government, who did not feel justified in opposing expenditure for purposes which they felt, if not absolutely necessary, to be still most desirable." Thus the State bark went on her way to insolvency or the sharp remedy of sudden arrest. The total estimated expenditure for 1854 was little short of four millions. The supplementary charge for 1853 had exceeded £900,000. With Mr. Childers' Imprest system in free operation, the example of 1853 would probably be bettered in 1854. The author of the confusion had in the mean time escaped into another sphere. On the death of Mr. Cassell, Mr. Childers was made Collector of Customs, though Mr. Latrobe, in consenting to appoint him, dreaded lest some reconstruction in the new department should disorganize it as the Audit Office had been disorganized.

But the evils of the Imprest system lived after his translation from the Audit Office. When Sir Charles Hotham landed, in the end of June 1854, Mr. Foster, the administrator of the Government, had paved the way for inducting the new Governor into the current methods of expenditure. Mr. Latrobe, with sensitiveness which did him honour, but was neither beneficial to the colony nor to his successor, had shrunk from taking steps to provide a Government House at Melbourne. He lived in his own house built on an allotment purchased at a public auction of Crown lands. Always kind-hearted, unless goaded by malicious counsel, the Melbourne public left their Superintend-

ent unopposed when the auctioneer was selling the land; and on an apparent attempt by one person to raise the price, such a chorus of dissent uprose, that the upset price was left unchallenged. Mr. Latrobe was averse to make pecuniary profit out of the land while he remained in the colony, although he could easily have done so. It was not sold until he had bidden farewell to Australia.[1]

It devolved upon Mr. Foster and his friends to provide a residence for Sir Charles Hotham. They purchased a lease of a private house (Toorak) four miles from Melbourne; they gave £10,000 as a bonus in order to enter into possession; and between January 1854 and September 1855, they and Sir Charles Hotham sanctioned payments of £29,183 2*s.* 3*d.* for additions and improvements, and £4550 8*s.* 4*d.* for furniture. Much of the expenditure was incurred before Sir Charles Hotham landed in June 1854, but the dates of the payments and of the authorities for them were never communicated to the public. The expense was sarcastically alluded to during Sir Charles Hotham's life. A return was moved for in 1855, but was not produced until after his death. When it was produced, the fact that the bonus of £10,000, and a large proportion of the £29,183 had been expended and contracted for before his arrival was not allowed to mitigate his responsibility.

In March 1856, Mr. J. M. Grant moved a resolution condemning the lavish expenditure and the complicity of members of the Executive in such illegal and unconstitutional appropriations. A Government supporter succeeded in striking out the allusion to the Governor's counsellors, and there was an attempt to evade a decision by means of the "previous question." It failed by 16 votes against 24, and the condemnation of the expenditure as profligate and illegal was affirmed.

There can be no doubt that though the amount involved was relatively small in the Victorian vortex of expenditure, Sir Charles Hotham committed a grave error in sanctioning any part of it. It is true that on his arrival the house was unfit for the purpose designed, that new offices were required, and that

[1] It was sold for much less than he could have obtained during his stay. But he never regretted his sensitiveness in not trafficking with it while he was Governor.

he could say that he supplemented rather than authorized much of the cost. Yet even if he had not been wrong in authorizing any part of it, he would have been unwise. His tastes were not luxurious, and he could have contented himself in some modest lodging until, without any aid from him, the Government House could have been made ready for his reception.[1] He suffered speedily for his fault. No sooner did he appoint a Finance Commission than Mr. Childers and others began to scatter reports in the air, and to sow them in the press. If he was determined to probe their past misdoings, they were equally determined to magnify his in the present. A guerilla warfare carried on with weapons tipped with departmental treachery glittered through the newspapers and envenomed conversation. Some of his detractors were not unknown to the Governor. Of some he would not have credited a statement that they were disloyal.[2]

[1] His private secretary gave formal evidence before a Select Committee thus, long after Sir C. Hotham's death: "There were no rooms for the servants to sleep in. . . . I am not quite sure that the Government did not laugh in their sleeves and think, 'Now, my boy, we will let you into a trap, and you will catch it. . . . I remember being startled at the figures. . . . My idea is that one-fourth of the money charged as expended on Toorak never was expended on the place at all. . . . I should have recommended him, if I had had more experience, to appoint a Board of Survey to report whether it was fit for him to go into as Governor:—he had brought his furniture with him because he never could ascertain in England whether Government House was furnished or not, and he had not been more than six days in the house when bills were delivered for payment by tradesmen in Melbourne, amounting to about £600, supplied to Toorak, which I paid. . . . He had to sell his own furniture by auction, and he lost a large sum of money by it. The place was stocked at his expense even to the cellars." The matter is hardly serious enough for history; but was the main ground of impeachment of Sir Charles Hotham. Mr. C. G. Duffy after the death of the Governor denounced the "Toorak job as the most indecent plunder of public money that has ever fallen under my knowledge."

[2] Mr. Childers' assiduous obsequiousness to the Press was well known. It furnished amusement in the days of Mr. Latrobe. Childers was very intimate with the editor of the 'Argus.' The pair were walking in a narrow street when Mr. Latrobe and his private secretary, on horseback, overtook them. Childers, scared at being found cheek by jowl with the editor who was daily calumniating Mr. Latrobe, turned pale and stopped. He wore goloshes, and seemed, by delay in adjusting them, to wish to make it appear that he was not in company with the editor. Mr. Latrobe good-humouredly said to his secretary: "Bell, did you see the flying Childers cast his shoe when

Warned by the Duke of Newcastle in London, that unless the wild waste of money in Victoria could be arrested, the colony would be ruined, Sir Charles Hotham demanded, on his arrival, from the Auditor-General (Edward Grimes), an honourable and capable though indolent officer, a statement of the public accounts. He found that under Mr. Childers' Imprest system there were £1,682,328 unadjusted; that the general revenue did not cover the expenditure, and that even when supplemented by the unappropriated moiety of the territorial revenue, it had been supported by loans and by unauthorized abstractions from the moiety appropriated by law. He looked round for impartial and skilled advice. On 26th July, 1854, he asked the sagacious Mr. William Hamilton Hart,[1] a leading merchant, and Mr. D. C. Macarthur, principal officer in the Bank of Australasia, to join in a Committee of Finance presided over by the Auditor-General. His aim was to "narrow the present outgoing," and devise measures for the future good. The Imprest system he specially commended to their study. It seemed to him indecorous to hand over enormous sums of which the "very magnitude should prevent security for its safe custody and appropriation being taken." The formation of a Pay Office, and the reformation of the Civil Commissariat and other departments required investigation.

The appointment of the Finance Committee alarmed Mr. Childers and others. They could not doubt that the failure of the Imprest system would be exposed. They resented interference with patronage, and dreaded an injurious parsimony. The Committee were able in September to advise that the Imprest system should be abolished. Even the regulations for it had been futile. Of the £1,682,328 unadjusted, no less than £1,310,238 should have been completely adjusted, and there was a sum of £283,745 "wholly unaccounted for." The Committee made recommendations for future control of the public

we came up?" The detection—the would-be escape—and the joke, made the occasion far more notorious than it would have been if there had been no attempt to fly.

[1] Mr. Hart had, besides gaining commercial experience in many lands, been a principal officer in a bank. His high character and ability were admitted by all. By his advice in 1854 he laid the colony under obligations which have never been acknowledged.

accounts, and with regard to contracts for supplies. While the Committee inquired, Mr. Foster and his friends were preparing their estimates for 1855. There were at the time public debts of £400,000 to Banks, and of £200,000 to the Melbourne Corporation. Yet the estimates contemplated a total expenditure of £4,887,866, while the probable income was reckoned as £2,661,250, of which amount £670,000 were anticipated from the available moiety of the land fund. As presented for Sir Charles Hotham's approval the estimates exhibited a deficit (in the year) of £2,226,616; which, if there were to be restitution of £865,829 illegally taken from the appropriated moiety of the land fund, would be swollen to £2,872,012. The Finance Committee recommended (15th November, 1854), that the expenditure on public works in excess of the funds available should be dependent on the raising of money by debentures; that the deficiency in the ordinary revenue should be met by an increase of Customs' duties, and that debentures should be sold in Europe to meet the debt to the Corporation and to the Banks.

The Governor received their report at a time when his hands were full of Ballarat business.[1] He may have hoped that a knowledge of the appalling confusion in the public accounts, and of the excess of expenditure, would induce the Legislative Council and the public to give precedence to the question of retrieving the public credit. Whether he therefore hastened to divulge the truth or not, he lost no time in doing so, on the 23rd November.

The effect on the mutineers at Ballarat was such as might be expected from those whose aspirations were, not for the public good, but for the pillage which might fall to their own share on the suffocation of order and the rushing in of evil spirits to "deracinate the unity and married calm of States, quite from

[1] Bentley's house was burnt in October. Bentley was convicted, and Dewes was dismissed in November. The Ballarat Reform League on the 11th November claimed a function of superseding the Royal Prerogative and the Queen at will. Sir Charles Hotham on the 16th November propounded his views to his newly-appointed Commission on the gold-fields; on the 27th he received delegates from Ballarat; on the 29th a riotous meeting at Ballarat openly defied the law and burned licenses; on the 3rd December Captain Thomas vindicated the law at the expense of much life.

their fixture." With the Legislative Council the Governor partially succeeded. They, as has been seen, rallied round him, when they found him strong to quell the disturbed elements. But they would not support the proposed increase of taxation. Mr. Strachan eventually carried a resolution (by a bare majority) affirming (June, 1855) that it was "inexpedient and impolitic" to introduce "any new mode of taxation during the present session." The check was acknowledged by the Governor in his closing speech, with the remark that it compelled him to "stop such of the public works as are not under contract, and to make further reductions in those establishments which the Council have resolved to be necessary for the performance of the public service."

During the session he had performed a service for which he received no credit in public, but on account of which he was secretly assailed. How to prune the enormous estimates prepared by the Foster-Childers coterie was a serious problem. If the Governor should, *mero motu*, after a few weeks' residence, cut down the proposed expenditure to the level of the receipts, he could hardly hope for support; and to attempt and fail would cause confusion worse confounded. There would then be no sea-mark to be trusted in the storm. Not because he feared the personal consequences of failure, but conscious that the public weal required that the attempt should not fail, he determined to let the reform of the expenditure commence in the Legislative Council.

Mr. O'Shanassy was the foremost representative member. After numerous consultations it was arranged that he should move a resolution affirming that the expenditure should be restrained within certain limits. Sir Charles Hotham, when the difficulty of carrying the resolution into effect was suggested, answered: "I neither shrink from the work nor from its unpopularity. I will accept them, but I cannot hope to succeed in benefiting the community unless I have the support of its representatives."

Accordingly, on the 13th December, 1854, a few days after the suppression of the Ballarat insurrection, and the resignation of Mr. Foster, Mr. O'Shanassy moved resolutions affirming that the ordinary expenditure ought not to exceed the estimated

revenue: That with increased Customs Duties yielding £320,700, and £400,000 expected from the unappropriated moiety of the land fund, the estimated revenue would be £2,400,000, and should be thus allotted:

| | |
|---|---|
| Education .. .. .. .. | £155,000 |
| Statutory Appropriations .. .. .. | 132,000 |
| Public Works .. .. .. .. | 800,000 |
| Salaries, Establishments, Scientific and Charitable Institutions, &c. .. | 1,313,000 |
| | £2,400,000 |

He also moved that the moiety of the land fund devoted to immigration should be applied according to law, and that the Council could not sanction, either as a loan or an appropriation, the diversion (already made by Mr. Foster and his friends) of £866,000, "solemnly guaranteed by Act of Parliament for the purposes of Emigration." The resolutions were carried.

The Governor, having at his side his new Colonial Secretary Mr. Haines, Mr. Sladen the Acting Treasurer, and the wise Mr. Hart of the Finance Committee, took back the estimates of Mr. Foster. On the 15th December a Martial Law Indemnity Bill was passed in one day, and the Council adjourned until the 30th January. On the 7th February, 1855, amended estimates framed to meet the resolution of the House were laid on the table. Amongst the items of receipt about a quarter of a million sterling was set down under the head of License Fees for digging gold. The Council discussed the estimates at great length. In one or two instances they increased, but not materially, the expenditure. But they refused to sanction additional taxation. The labour of carrying out the reform fell, however, not upon them, but on the Governor and his immediate helpmates. On this he had reckoned when he agreed that if the Council would pass the necessary resolution, he would carry it into effect. The amazement, if not the chagrin, of Mr. Foster and his friends at finding a reduction of more than two millions sterling made in the expenditure of one year, rather embittered them than otherwise against the Governor, who did the work, and was known by them to have conferred with Mr. O'Shanassy as to the terms of the resolution of De-

cember 1854.[1] It would be wearisome to trace the details of the economy by which the finances of the colony were so retrieved, that when Sir Charles Hotham died on the 31st December, 1855, he had almost wiped out the traces of disorder at the cost of his own life. The deficiency of millions exhibited in 1854 was reduced in the end of 1855 to £53,668, after paying back all loans (though not restoring the £866,000 improperly abstracted from the appropriated moiety of the Land Fund). It would be ungracious not to dwell upon the fact that the Governor found coadjutors in his labours. The advice of Mr. Hart was priceless.

The disappearance of Mr. Foster from office after the Ballarat insurrection, and the appointment of Mr. Haines in his place, repressed intrigues for a time. Mr. Haines had a reputation for honesty, and finding the Governor firm and perspicuous, he seemed for some time to aid him gallantly. Referring to past difficulties, the Governor wrote in a despatch (December 1855), which he did not live to sign, "Single-handed I never could have coped with the difficulties, with which I found this colony surrounded; but I have had an able assistant and, above all, a gentleman (Mr. Haines) by my side, who has the invaluable habit of looking at his object and marching straight to it."[2]

The success bought by the sacrifice of the Governor's overwrought frame did not end with his life. The regulations which he sanctioned continued in force, and at the end of 1857 there was a substantial cash-balance in the treasury of £609,638,[3] after payment of all liabilities. The preparation of those regulations engrossed serious attention throughout 1855. Soon after the assumption of office by Mr. Haines, Sir Charles Hotham offered the post of Acting Treasurer (Captain Lonsdale

[1] However ungracious Mr. O'Shanassy might be in claiming the sole credit of the sharp remedy applied to the financial confusion of the colony Sir C. Hotham in no way strove to deprive him of it. On the contrary, writing 2nd April, 1855, he said, "By the aid of the representative members this colony has been rescued from bankruptcy." Parliamentary Papers, vol. xliii. 1856. Mr. Childers in a long unpublished correspondence concerning the Governor's desire to have a less slippery counsellor at his side, bitterly complained that Sir C. Hotham had allowed the opposition to dictate the principal points of the estimates.

[2] Parliamentary Papers, vol. xliii. 1856.

[3] *Vide* Victorian Parliamentary Papers, A. No. 1. (18th October, 1859.)

being absent) to Mr. Charles Sladen, a friend of Mr. Haines, and universally respected. In April 1855 Messrs. Haines and Sladen were added to the Finance Committee. The Committee reported on the 14th November, 1855, on the "keeping and rendering of public accounts." They furnished elaborate regulations, forms, and draft instructions for the guidance of the Auditor-General and the Treasurer. On the 16th the industrious Governor announced his entire approval of the scheme.[1] It was formally promulgated on the 1st January, 1856, on which day the 'Gazette' notified also the death of the Governor. It formed the basis on which, at a subsequent date (when the sound financier, Mr. Ebden, was Treasurer under lawful responsible government), an Act was passed (2nd October, 1857) "for the collection and payment of the public monies, the audit of the public accounts, and the protection and recovery of the public property."[2] Some idea may be formed of the magnitude of the savings effected by the labours of Sir Charles Hotham by observing that he abolished the Civil Commissariat Department, which had spent, or wasted, £623,038 in furnishing supplies to other departments in 1854; and that by remitting the duty to the Colonial Storekeeper (Mr. Alfred J. Agg, the Secretary of the Finance Committee) he saved in one year, on that branch of the service alone, no less than £404,380.[3]

[1] How unexpected was the manœuvre by which a new order of things was soon afterwards demanded, may be inferred from the fact that Messrs. Haines and Sladen joined in the statement (Finance Committee Report) that some modifications in the regulations they recommended might be required to adapt them to the changes which might take place under the New Constitution. Those changes were then generally expected after the election of the new Chambers.

[2] The evanescence of impressions on the public mind makes it probable that few men now remember the debt due to Sir Charles Hotham, to Messrs. Hart and Macarthur, to the efficient secretary of the Finance Committee of 1854, or to the sagacity of Mr. Ebden in 1857. When the latter left office in 1858 he said to a friend—in his customary precise manner—"I have at least done one thing. So long as the Audit Act may stand I have rendered it impossible for any successor in my office to filch the public monies from the Treasury."

[3] Captain Kay, R.N., private secretary to Sir Charles Hotham, told a select committee (1867) that the Governor took "all the papers connected with the Government and read them for himself." And did read them? a member asked. "And did read for himself, and killed himself."

It was not only by his notorious imprest system that Mr. Childers distinguished himself while in office in Victoria under Mr. Latrobe. The applicability of his mind to any side of any question was shown on the subject of education. In 1851 he commenced his official career as a supporter of denominational schools. In 1852 he secured a seat as a member of the National Board. (In like manner he contended against the ballot in Victoria in 1855. In England he glorified the ballot as a "splendid achievement of the Liberal party."[1])

Certain occurrences respecting educational systems in the colony are so curiously instructive as to the character of Mr. Latrobe and his counsellors that they may be told with advantage. At the outset there seems to have been a desire to crush the national schools; but trusts are not destructible at will, and the first Victorian Legislature passed an Act (31st December, 1851) to incorporate a Board of National Education to take over the property and the functions of the original board in Sydney. The names of the members—the Speaker (Dr. Palmer), Mr. Ebden, Mr. T. H. Power, and Mr. Westgarth—entitled it to respect, although the inclusion of Mr. Childers gave an air of insincerity to the body. The Legislative Council, in July 1852, appointed a Committee to recommend, if necessary, a better plan than the maintenance of rival systems at the general expense. Mr. Childers, in his evidence, recommended the abolition of both boards, and the establishment of free schools supported by local rates and governed by locally elected boards. Failing in this, he would confine the Government aid to the national schools (conducted on Lord Stanley's Irish system).[2] The Committee recommended that all assisted schools should be called public schools; that a board of four lay commissioners should control the public expenditure; that not less than four consecutive hours should be devoted to secular

[1] 'Times,' 30th March, 1880.

[2] Another witness warned the Committee that as a "national if not a secular system would ultimately become the law of the land," it would be prudent at once to adopt some such system as the existing national one, which afforded ample facilities for religious instruction. "It is possible that a just judgment may be eluded now, and consequently much danger may accrue to the State, and much money may be thrown away." Unfortunately the warning was thrown away.

instruction; but that, subject to the provision that no child should be compelled to attend religious instruction objected to by the parent, the promoters of schools should have power to regulate religious teaching within them. No legislation followed immediately, but in December 1853 Mr. Latrobe's advisers induced him to sanction the introduction of a Bill, framed with some care, so as to destroy the national schools which had existed for several years. All lands and property vested in the National Board were to become vested in a new Board of Public Education. The Bill, though propounded by the Government, was hammered out by conferences with exponents of the will of champions of various sects.

With the Roman Catholic portion of the community there had been no arrangement. Mr. Henry Miller had acquired prominence in the House, and was relied upon to support the Bill as an independent member. He was privately waited upon and requested to stipulate for the insertion of a clause guaranteeing the continuance of existing national schools on the trusts upon which they had been founded. The clause was put before him. After hesitation he declined to move such a clause himself, but promised to support it if it should be moved by another. There happened to be a national school built mainly by means of private contributions on private land, and subsequently transferred to the National Board. Mr. Latrobe himself was amongst the original subscribers. It seemed hard to mangle a trust so created. He was waited upon by the person who waited also upon Mr. Henry Miller, and was asked to insist that in the Bill as introduced by the Government it should be made compulsory that all trusts in the national schools should be rigidly maintained. He admitted that it would be right to do so, but pleaded that he could not over-rule certain advisers in the details of a measure. Reminded that an important principle was involved, and that many members of the Legislative Council would gladly know that he was favourable to justice in the matter, he sighed that he wished they would do what was required, and gave his petitioner free scope in endeavouring to deprive the Bill of the confiscating element it contained. That petitioner proceeded to Mr. Foster, the Colonial Secretary, an avowed supporter of the national system in former years. He

declined to do anything to maintain it. When pressed to be consistent he replied, "—— (a colleague) says it is a very good Bill." Warned that to insist on the whole of it might prevent its passing, he said, "Do your worst."

Armed with the Governor's good wishes, the baffled petitioner appealed to representative members. He found in William Nicholson a man who regarded principles. Other Bills engrossed attention for some time. The Constitution Bill was only completed on the 24th March. The Education Bill was reported on the 30th March. Members were weary of repeated long sittings, but some of them watched the Education Bill. To defeat their vigilance, the Colonial Secretary, the Attorney-General, Mr. Childers the Collector of Customs, and the Surveyor-General postponed the order of the day for the adoption of the report on the Bill. Set down for the 4th April, it was on that day again postponed, but was low on the business paper for the 5th, and still lower when re-postponed till the 6th. These tactics could not be misunderstood. It was desired to steal a decision when members might, by returning to their homes, have left a convenient official quorum. On the 6th April the Bill was the eleventh order of the day. It was arranged that it should take precedence on the 7th. On that day it was re-committed, and the Speaker (the Chairman of the National Board) made an effort to secure the fulfilment of existing trusts. The Bill affected to guard them by providing that the new governing body should carry them out "as nearly as may be." The Speaker moved the insertion of the words which Mr. Henry Miller had declined to move, but had pledged himself to support:—"The same shall be carried on by the Local Board thereof, constituted in accordance with the principles of the said Board of National Education and the usages thereof." The Speaker was defeated by 20 votes against 11. In the majority was Mr. Henry Miller, whom Mr. Foster and Mr. Childers assisted. The rejection of a mere claim for fulfilment of trusts, upon faith of which men had been induced to contribute towards school buildings, proved the animus of the promoters of the Bill, and roused in the minority a keen sense of the attempted injustice. Their suspicions were sharpened by postponement on the 10th of the order of the day for the adoption of the

report of the Committee on the Bill. It was transferred to the end of the business paper. The session was to close on the 12th. An unofficial nominee member stayed in town all night in order to vote against the Bill, but the subject was not dealt with. On the 11th the order remained at the end of the paper.

The member who had stayed in town all night on the 10th informed Mr. Latrobe's suppliant that he could wait no longer. His family in the country would be alarmed at his absence. He consented to wait until the suppliant could confer with Mr. William Nicholson. The result was that the latter demanded that so important a matter should be considered in the full House; and those who had planned to take it in an empty one did not refuse openly a demand so publicly made.

The Attorney-General moved the adoption of the report. Mr. O'Shanassy, moved that the House pass on to the other orders of the day. There were 14 votes against 14. To permit further deliberation the Speaker voted with the Government. On the adoption of the report, the Government had added one to their former number. The opposition was staunch, and the teller was the nominee who had stayed in town to defeat the contrivances of the Government. The teller on the other side was the Attorney-General.

On the third reading an additional vote was gained by putting pressure on Mr. Grimes, the Auditor-General, who had previously abstained from voting. By 16 to 14 the Bill was read a third time; but among the majority were seven official members besides unofficial nominees. The majority was almost wholly representative. Mr. Nicholson resolutely asked whether, in defiance of these facts, the Government would force such a Bill upon the country. The victors wavered. Further proceedings were postponed. Mr. Latrobe's suppliant sped to the Governor's house to apprize him at that late hour of the divisions, and to ask whether under the circumstances—a Constitution Bill, providing two elective Houses, being already on the way to England—he would consent that in the dying hours of the existing composite House, it should under his authority impose a new system upon the country in spite of the opposition of the elected members.

The conscientious Latrobe in the morning announced to the

Colonial Secretary that he would not allow the Bill to become law. The Colonial Secretary himself moved (12th April) that the Council pass to other business instead of passing the Bill. The Governor in his prorogation speech on the same day explained his reasons.

"With regard to the General Education Bill, which has been for some time under your consideration, I must briefly state that I have not felt warranted in pressing a measure which I regret to learn, whatever may be its merits, is evidently considered objectionable by so large a number of the members. The subject is, however, of far too general and vital interest to rest here."

The Governor was right. It could not and did not rest there. The bulk of the parents were content with a system which, like the national, secured to them good secular education, for which they paid appropriate fees, and which afforded ample facilities for religious instruction. It remained for fervid denominationalists to obstruct that system, and by their protervity to intensify the popular demand until it grew into a readiness to accept a harsh secular system rather than submit to the imperious claims of the denominationalists. Mr. O'Shanassy as leader of the Roman Catholics, and political champions of other sects, were the real authors of the secular system which was accepted by the community in later days. But it might have been better in every way for the country if Mr. Latrobe had had the courage of his convictions, and enforced in the first instance such a regard for justice as, after so singular an episode in legislation under a responsible Governor, was brought about by the defeat of a Bill which he disapproved of, but allowed to be brought forward in his name.

The representatives of Victoria have ever been ready to vote money. They were unsparing in their grants for education, and at the instigation of Mr. Latrobe, they hastened to follow the example of New South Wales in establishing a University. An Act was passed in January 1853 to incorporate and endow the University of Melbourne. Like that already formed in Sydney, it was to be open to all classes and denominations of the Queen's subjects. No religious tests were to exist in it. But, as in Sydney, it was contemplated that affiliated colleges would be called into existence, and that the State, which devoted

funds annually to each sect of Christians, would afford grants separately for the colleges.

Each of these bodies was to hold about 10 acres; and a common recreation ground for the University and the colleges was to comprise about 16 acres girdled round by the collegiate institutions.

The Governor was to appoint a Council of twenty persons to govern the University. At least sixteen of them were to be laymen. As soon as the enrolled graduates might number one hundred they were to fill up vacancies in the Council, and the Governor's power to appoint was to lapse. Mr. Latrobe created the Council by proclamation. The members met on the 3rd May, 1853, for the first time.[1] Among their

[1] Mr. Latrobe suffered a frequent fate of the modest. A general acknowledgment of Judge Barry's zeal led many persons to ascribe to him the foundation of the University, the early conduct of which was reposed in the hands of Judge Barry by Mr. Latrobe as far as was practicable. This ascription was a kindly but unwitting error, and we find Judge Barry styled ('Blair's Cyclopædia of Australasia') "the father of the Melbourne University." On his death in 1880 the governing body of the University recorded a cognate opinion. After his death, however, a more questionable attempt was made to wrest credit from Mr. Latrobe. Friends of Mr. Childers, supplied by him with specious documents, claimed for him the foundation of the University. He was the official member to whom the conduct of the University Bill was entrusted by Mr. Latrobe, but the conduct of a Bill carried with it no credit for initiation in days when governors were responsible; and the terms of Bills were settled by the hard-working Attorney-General, Mr. Stawell, for Mr. Latrobe. Moreover, in one sense Wentworth caused the foundation of the University, because his Bill, previously passed in Sydney, stirred the Legislature in Melbourne to follow his course. This was openly stated in 1852, when Mr. Latrobe by formal message urged the Melbourne House to found the University. Mr. Childers said (November 1852) "Sydney has a University, and I trust that before long Melbourne will also." A Committee of the House recommended "a plan similar to that which had been adopted in Sydney." The Bill was passed accordingly. When Judge Barry was dead Mr. Childers supplied a friend in England with a document, which was sent (1882) in a "casket" to Victoria as "the original draft, in the handwriting of Mr. Childers, of the Bill." Unfortunately such a document had not, in the case of Mr. Childers, the significance which might attach to it with regard to others. He was once a member of a Board of Inquiry in Victoria on a delicate subject, and made recommendations which were rejected, while a Report drawn up by another member was adopted. Mr. Childers took the Report to his house and carefully copied it, in order that when sent to the Governor it might seem to be Mr. Childers' composition. This, however characteristic, was but a trifling

early cares was the procurement of a site, and in November 1853 Mr. Latrobe gratified them by sanctioning an immediate

matter compared to an attempt to rob the dead of their honours. The author of this work was brought into close relations with Mr. Latrobe in 1852; frequently conversed with him about the University; and knew that Judge Barry was much trusted in the matter. The author was appointed by Mr. Latrobe as one of the first members of the Council, or governing body; assisted in framing the first Statutes (Judge Barry taking the lead, provisionally, in all proceedings, before he was elected Chancellor under the Statutes), and is therefore thoroughly acquainted with the facts. They are a part of Victorian history, and it is the function of the historian to take care that in his zoological museum no bird shall be permitted to strut in borrowed plumes. The active collector of funds in honour of Mr. Childers' presumed performances was connected with the 'Argus' newspaper when it slandered Mr. Latrobe, during his life, and it is not unnatural that it should furnish a detractor after Mr. Latrobe's death. But it is not easy to build a firm structure on flimsy foundations. In begging for subscriptions he wrote: "It was Mr. Childers too who obtained a Royal Charter for the University of Melbourne." This also was an error. The Charter was granted without difficulty, on petition of the University, because the Sydney University had previously overcome all primary obstacles by becoming the first University outside of the United Kingdom on which the Crown conferred the power of granting degrees equivalent to those conferred in England. The Childers' bust-collector hoped (1882) that he had set the question "at rest for ever" when he forwarded his casket of deceit, and it may be well to record here the dates of the respective Acts and Charters in order that the truth may be seen at a glance. The Sydney Act of Incorporation was dated 1st October, 1850. The Melbourne Act was dated 22nd January, 1853. On the 9th February, 1857, the Sydney University petitioned, under seal, for the Royal Charter. Sir Charles Nicholson (mentioned in these pages as Speaker of the Legislative Council) devoted much time in promoting the petition and surmounting obstacles to its novelty. He was successful, and the Charter bore date 27th February, 1858. Moved by the success of her neighbour, the Melbourne University petitioned in like manner on the 13th August, 1858; and the Charter, obtained without demur, was dated 14th March, 1859. Sir Charles Nicholson, as Provost of the Sydney University in 1859, said at the commemoration in Sydney—"With every disposition on the part of Her Majesty's advisers to meet the claim proposed to them, much correspondence and many tedious formalities had to be encountered before the precise terms could be settled in which the Royal Charter was to be framed.... The University of Melbourne has recently obtained a similar Charter.... We congratulate the sister institution on the privileges accorded to her, to the acquisition of which we were in some degree instrumental, by our prior negotiations and efforts in a similar cause." It is inconvenient that misrepresentations have made these details necessary, but unless facts are clearly stated, that which is contrary to fact may procure belief.

grant of 25 acres, and reserving 75 adjoining acres for ultimate educational uses "in subordination to the University." He soon afterwards enlarged the University site to 40 acres. The Legislature had voted funds for buildings, and the Council corresponded with a committee of five persons as to the selection of professors. Sir John W. F. Herschell, and the Chief Justice of Victoria, Sir William A' Beckett, were on the committee. With the details of their labours these pages need not be concerned. The gentlemen they selected were fitted to shine in any sphere. For years William Parkinson Wilson, the Professor of Mathematics, a Senior Wrangler from Cambridge, devoted to his duties a zeal and ability beyond all praise; and by all who knew him the loss sustained by the colony was felt to be irreparable, when he died in 1874. Professors McCoy and Hearn, in other chairs, were to win golden opinions, and labour long in cultivating the youthful talent of the colony. The first Professor of Classics died soon after landing in Victoria, and was succeeded by Professor Martin H. Irving, the talented son of the celebrated preacher, Edward Irving.

Mr. Latrobe had left the colony before the professors arrived to do the good work he had provided for them; neither was he a witness of the laying of the foundation stone of the University buildings. Sir Charles Hotham laid it in 1854 (3rd July). For some time the professors officiated in inappropriate premises, but the nobility of their work made amends for its poor surroundings. The Legislature provided also, under Mr. Latrobe's guidance, for the establishment of Grammar Schools to lead the way to the University. Twenty thousand pounds were voted in 1853, and were allocated to the four principal denominations of Christians, the Church of England, the Presbyterian, the Wesleyan, and the Roman Catholic, whose colleges it was proposed to affiliate to the University in the future.

The Grammar Schools were placed elsewhere on grounds granted for the purpose. The selection of sites and the raising of funds occupied time. It was not until July 1856 that the foundation stone of the Church of England Grammar School was laid near the road between Melbourne and St. Kilda. The excellent Charles J. Griffith, more than nce omentioned in

these pages, did stalwart service in promoting the work and supervising it. In 1858 the first head-master arrived. The mode in which the Grammar School was to be connected with the college to be affiliated to the University was for some time discussed without leading to a solution. The Bishop (Dr. Perry) laboured for years without effect. In 1864 nothing had been done. In 1870 the effort to link the school with the college was abandoned. The Government of the day was said to meditate the resumption of the unused land reserved by Mr. Latrobe for affiliated colleges, and Bishop Perry, by means of a grant from the English Society for Promoting Christian Knowledge, and an advance from his private means, warded off the danger by laying the foundation of Trinity College, in February 1870. In the building then erected students were received in 1872, and Mr. Latrobe's reservations were secured, not only for the denomination which had thus acted, but for the other grantees.

The various schools erected by other denominations have commanded the confidence not only of their immediate beneficiaries, but of the public in the cases of the Scotch College and the Wesley College. As was natural, the advantages of the Roman Catholic seminary, St. Patrick's College, were more confined to its peculiar people. In 1879 the Presbyterians, moved by a munificent donation from Mr. Francis Ormond, followed the example of the Church of England, in building a College on the ground set apart for them near the University, and named it after their benefactor.

The kindly Latrobe founded also the Free Public Library of Melbourne, and entrusted its management to honorary controllers, of whom he sagaciously made Mr. (afterwards Sir) Redmond Barry the President. Thus the foresight of the first Governor in anticipating the higher needs of the people bore fruit after his death, and may in time redeem the community from the consequences of untoward events of the time.

In spite of his want of firmness, and the unjust imputations showered upon him, Mr. Latrobe was beloved by all who knew him, and it may be well to record in this place, in juxtaposition to his claims to remembrance for that which he had so much at heart—the moral and religious culture of the people—the fact that on his departure he received numerous addresses from

various bodies, religious, municipal, and social. With great truth they testified to the beneficial influence of his high personal character, his unwearied zeal for the welfare of the community, his arduous labours, his devoted self-sacrifice.

There were two addresses—one from the Executive Council, the other from the heads of departments—which were framed more in honour of the members of the Executive Council than of him, and were in fact drawn up by some who were lauded. The Executive Council reminded the Governor of the confidence "invariably reposed" in themselves, and boasted of the "imperishable monument" which the prosperity of the community afforded, of the success of the Government. The members of the Executive Council, who submitted a draft address to a meeting of heads of departments, condescended to ask them to state that his Excellency's difficult task had "been considerably lightened by the unlimited confidence[1] which your Excellency has invariably placed in those officers who have been selected to fill appointments of high trust and confidence under your government."

Mr. Latrobe's endeavours to counteract Earl Grey's Orders in Council with regard to Crown lands, and the manner in which the Duke of Newcastle, not grasping the nettle boldly, cast it back to be dealt with, and to sting the colony, have been explained. The Gold Commission, appointed by Sir Charles Hotham, and its recommendations on the subject of Crown lands, have been mentioned. If hundreds of thousands of acres were insufficient to break down the land monopoly, they must be brought forward by millions. The Commission averred that it "would not ignore the claims of any class," but it suggested no method of dealing with claims of pastoral occupants. "The piecemeal wrenching of the lands" adopted by the Government

[1] The address was laid before those who were asked to sign it in Mr. Foster's office. To one who remarked that it was unfair to ask officers, under cover of a compliment to the Governor, to record their admiration of executive councillors, a councillor retorted, "Let us see who will refuse to sign? I, for one, replied the officer. However, he wrote a separate letter, and had no reason to believe that Mr. Latrobe was hurt on missing his name among the signatures to the address dictated in Mr. Foster's office. Extorted flattery weighs little against the language of the heart, and the modest Latrobe preferred the latter to tempora infecta et adulatione sordida.

had "only involved all parties in angry contention." Such was the verdict of Messrs. Westgarth, Fawkner, Hodgson, O'Shanassy, Strachan, and Wright in March 1855. Three of them, O'Shanassy, Fawkner, and Strachan, were at the time members of a Commission investigating the Crown Lands question. But it was well known that the Duke of Newcastle's advice to Mr. Latrobe, viz., to make separate terms with occupiers, and to make all reasonable concessions to those who would make such terms, had borne no fruit. Had the Duke boldly met the difficulty by a just and firm declaration that those who insisted on the letter of their bond should receive its equitable benefits, but no more, there would have been no need for individual negotiations. By law or by Orders in Council[1] having the force of law, it might have been enacted that for any disturbance of a lessee he should receive compensation, based not upon the newly-added money-value of the land, but upon the fair pastoral value of the lease at the date at which it was guaranteed. That value was deducible from the current price of pastoral holdings at that date. It might be said that such enactments would have savoured of harshness. But the original theory of licensed occupation of Crown lands contemplated their temporary pastoral tenure until they were required for permanent settlement, and those who insisted on extreme rights could not complain of a strict construction of the equitable value at the time of their creation; nor of the resumption of the lands for the public good, accompanied by a compensation based upon an equally strict construction in the interests of the community. But the prominent representatives of the pastoral lessees were not inclined to accept the equivocal overtures of the Duke. The Council had resolved in 1852 that the leases should be issued, bearing date from April 1848; and legally, as well as constitutionally, the lessees had claims which could not be disregarded. Sir Charles Hotham wrote (November 1854):[2] "My predecessor has no doubt

[1] An Order in Council was actually made 18th October, 1854, at Windsor, empowering the Governor to substitute an assessment of stock for rent. Not having been duly laid before Parliament it lapsed, but a similar Order, made 28th February 1855, was duly made and sent to the colony. It enabled the Governor to determine the amount of the rent, and "how such rent shall be calculated or assessed."

[2] Parliamentary Papers, vol. xliii. 1856. Mr. Latrobe explained in

personally informed you that all hope of effecting a satisfactory arrangement by the course suggested in his Grace the Duke of Newcastle's despatch had fallen to the ground."

On the 2nd November, 1854, Sir C. Hotham appointed a commission to report on the whole subject. He made it representative of the Legislative Council. Mr. Stawell, the Speaker (Dr. Palmer), the Surveyor-General, Mr. C. J. Griffith (the able president of the Commissioners of Sewerage and Water Supply), Mr. O'Shanassy, Mr. J. F. Strachan, Mr. J. P. Fawkner, Mr. W. Nicholson, Mr. W. C. Haines, Mr. C. Bradshaw, and Mr. W. Forlonge, a squatter, formed the heterogeneous commission. If they could arrive at a common solution of difficulties, it might be hoped that the Council would accept it. But seven out of the eleven affixed protests to their signatures to the Report. One refused to sign the Report at all. The Governor sent it to England in August 1855. He had laid it before the Legislative Council, but he said the subject was indirectly set aside by the defeat of a proposition for increased taxation, of which an addition to the assessment on stock paid by the pastoral tenants formed a part. The three members who signed the Report without protest were Mr. Stawell, Captain Clarke, and Mr. Strachan. They presented an historical analysis of the pastoral system. They condemned Earl Grey's division of the colony into unsettled, intermediate, and settled districts as unsound in conception, inappropriate, and improvident in application. As to the right of pre-emption, they put aside Roundell Palmer's opinion in its favour. Mr. Latrobe's early efforts to avert the evils of the Orders in Council had failed as already explained; and Captain Clarke had, in the language of the Gold-fields Commission, "involved all parties in angry contention" by "piecemeal wrenching of the lands." The foolish Order in Council was clear. Rights to leases accrued on the performance by the occupants of certain conditions. They had been in almost all cases duly performed.

Section 6 of chapter 2 enacted—"During the continuance

England that when he received the Duke's despatch a protracted session was drawing to a close, and the subject was felt to be of too important and grave a nature to be then entered upon. He commended the appointment of the commission by Sir Charles Hotham.

of any lease of lands occupied as a run, the same shall not be open to purchase by any other person or persons except the lessee thereof, but it shall be lawful for the Governor to sell to such lessee any of the lands comprised in the lease granted to such lessee." Another section (11) declared all occupants (for one year previous) "entitled to demand leases of their respective runs under the present regulations within six months from the date of the publication of this Order in Council." The Commission dealt sharply with this section. A majority resolved that it was not imperative on the Governor to comply with a demand lawfully made upon him. They seemed ashamed to put forward their resolution in the Report, but Mr. Griffith in his protest exposed and condemned it.

Captain Clarke hoped by adroitly putting up lands to auction,[1] in blocks convenient for influential squatters, to disarm opposition. He seemed to care less for the ruin of small occupants than he dreaded the resistance of their more powerful neighbours. The Attorney-General seemed to think silence golden on the subject. Compensation for destruction of legal rights was not alluded to. The recommendations of the report were evasive. Lands ought to be sold continuously in such quantities as would prevent the Treasury from receiving much more than the upset price. (Thus land-speculators would derive that which should have been enrichment of the Revenue.) Existing distinctions of districts ought to be abolished. Yearly licenses should be issued for pastoral occupation, and the rent should be calculated at the rate of 6*d.* for each sheep, 4*s.* a head for cattle, and 10*s.* a head for horses. A legal tribunal should be constituted as a Court of Appeal with regard to the estimated grazing capability of a run.

These decisions are easily accounted for when it is seen that out of the eleven commissioners six were so far agreed, that Messrs. O'Shanassy, Fawkner, and Nicholson adhered to Messrs. Stawell, Clarke, and Strachan in all points but one. Their joint protest advocated a division of the pastoral runs into classes; that a rent per acre bearing a certain relation to the upset selling price (£1) should be exacted; and that the average throughout the colony should not be less than 3*d.* per acre.

[1] The arts of land-agents, who defrauded the revenue by undertaking to bid at these auctions and avert competition, are mentioned elsewhere.

Such a proposal involved an immediate exodus of occupants of inferior runs to the more inviting and profitable pastures of South Australia and New South Wales. But Mr. O'Shanassy and Mr. Nicholson, though able, knew little at that time of pastoral pursuits. Mr. Fawkner, though he had once devoted himself to them, was soured by his short and unprofitable experience. All three were looked upon as tribunes of the people. With the Attorney-General, the Surveyor-General, and Mr. Strachan, who saw nothing throughout the report worthy of protest, they formed an absolute majority in the Commission.

The Speaker and Mr. Bradshaw signed a joint protest, drawn up with more ability than was shown in the report. They agreed that the rights of lessees must yield to the paramount claims of permanent settlement; they thought every tenant of the Crown would willingly waive his rights, which might "interfere with the free sale of land," but they could not concur in a report recommending the extinction of those rights without mention of compensation, and "on grounds sustained by special pleading." They advised that leases should be issued "reserving an unrestricted right of sale without notice and without compensation."

Mr. Griffith in his protest suggested a method of compensation for land severed from a lease. Estimating the land as grazing land, he would allow the despoiled lessee "land remission orders" (available at Crown land sales) calculated on that estimate. It was unfortunate that the other members of the Commission were neither so well versed in the subject nor so capable of exercising judicial functions as to arrive at any decision based upon the views of Dr. Palmer, Mr. Bradshaw, or Mr. Griffith.

Mr. Haines (who, after his appointment to the Commission, became, as has been seen, Colonial Secretary) made a separate protest. He advocated a new system of occupation of Crown lands. Leases of sections of 640 acres were to be submitted to auction. Nobody agreed with his views. He had not, like most of the enterprising colonists who devoted themselves to country pursuits, become a squatter. He had bought a freehold not far from Geelong and become a farmer. The results were so unsatisfactory as to prejudice him against a system which

enabled wool-growers, with access to an unlimited wool market in England, to obtain profits which a farmer could not rival in Geelong.

Mr. Forlonge was one of those who had done most mischief to the squatters as a class. His foolish demands, made in their name, made them odious. He refused to sign the Report, but subscribed a violent protest, probably concocted for him. It assailed the Report as vicious, subtle, disgraceful, and "damnatory of the national credit and honour." If it should be acted upon it would be resisted by all legal and constitutional means. If it had been desired to place on the Commission a man to damage his friends, the selection of Mr. Forlonge was wise. As the subject was not dealt with by the Legislative Council in 1855, and the New Constitution was to come into force in 1856, legislation on the Crown lands was postponed until two elected Houses could consider it.

There was one point on which Sir Charles Hotham pressed for a decision without delay. The Duke of Newcastle had promised (1853) to send Orders in Council to enable the Governor to substitute an assessment for rent, and to empower him to alter "the limits of the districts." The latter Order was not sent. The law-officers (Cockburn and Bethell) advised that the promised Order would be illegal. In March and in May 1855 Sir Charles Hotham urged that any necessary Act of Parliament should at once be obtained. Unless the Governor were armed with the desired powers, any settlement of the grave question of Crown lands would be almost impossible.

Sir William Molesworth replied in August that the Imperial Statute (1855), repealing former Acts in force respecting the disposal of the waste lands, enabled the local legislature to deal with the subject. One-third of the local legislators had dealt with it in the contradictory Report and protests which have been quoted. It was to become in the new Legislature a bone of bitter contention for years.

The influx of Chinese immigrants (attracted by gold) aroused serious apprehensions in many minds during the latter part of Mr. Latrobe's government, and during Sir Charles Hotham's. Masters crowded their vessels in a manner dangerous to the health of the immigrants, and of the community amongst which

they were discharged. Exaggerated statements of the numbers arriving were believed.[1]

An Act was passed to arrest the Chinese immigration (18 Vict. No. 39, 1855). The passengers to arrive were limited to "one person for every ten tons of the tonnage" of a ship. The penalty was a fine of £10 for each passenger in excess. For each lawful passenger £10 were to be paid on arrival. The master incurred a penalty of £20 for each immigrant landed otherwise than in compliance with the Act; and the penalty was additional to the £10 required by the law. The Governor was authorized to appoint officers to carry out the provisions of the Act, and to levy a sum not exceeding £1 in each year from every Chinese person in order to enforce the Act. It was deemed expedient to appoint Chinese protectors in districts where the immigrants were numerously congregated, and with the help of interpreters and the Chinese head-men (or representatives), the Act was for some time enforced, although it was manifestly in derogation of existing treaties with China, of the prerogatives of the Crown, and of constitutional and international rights. The Act, nevertheless, was not disallowed in England. Sympathy with the peculiar position of the much disturbed colony overwhelmed doubts about propriety. The Secretary of State merely pointed out that the Act was "highly objectionable in principle."

In 1864 a consolidating Act re-enacted the leading provisions, and added others; but in the following year an Act (27 Vict. No. 279) repealed them, and substituted clauses of which the

[1] At the special request of Sir Charles Hotham an officer undertook for a time (without emolument) the management of the Immigration Department in 1855. Unaware that the Governor was misled as to the number of Chinese already in the colony, the acting immigration agent in the course of his report for the year analyzed the authentic facts. Sir Charles, who read all official reports, stumbled upon the statement, which seemed to controvert the conclusions on which he had based despatches and was initiating legislation. He called on the officer to withdraw the paragraphs. He declined to do so on any private hint, but offered to excise all allusions to the Chinese on receipt of an official intimation that the Governor desired that the Report should not deal with the subject. By such a course the facts as reported would remain recorded in the Immigration Department with the official reason for their absence from the Report as presented finally. The Governor, whom his opponents represented as overbearing, accepted the alternative, and did not exhibit afterwards any ill-will because he had not been implicitly obeyed.

object was rather kindly supervision than punishment of the immigrants. More close attention was paid to the subject in other countries at a later date. In 1876 a repressive Bill was passed in Queensland, but was disallowed, and a measure less repugnant to international comity was passed in 1877. In 1878, in British Columbia, an Act entitled, "to provide for the better collection of provincial taxes from Chinese," aimed at the exclusion of the race. Though the Governor assented to it, the Supreme Court pronounced it beyond the powers of the Local Legislature, unconstitutional, and therefore void.

In California the Supreme Court similarly condemned legislation of the same kind; and in 1879 the President of the United States vetoed a Bill passed by Congress to limit to fifteen the number of Chinese who might be passengers in one ship. It would virtually annul portions of the treaty with China, which could only be constitutionally modified by the Executive government. The wise provision of the founders of the Constitution, that majorities of two-thirds should be requisite to over-ride the veto of the President, enabled Mr. Hayes to maintain his position; but the fears of the conscientious, who yearn for the prevalence of Christianity among their countrymen, and the jealousy of the labourers, who shrink from competition with the countless hosts of industrious Chinese, could not fail to revive the question in many lands. Accordingly, in 1881 the Australian colonies and New Zealand revived prohibitory legislation on the subject.

The merely local details of progress in the colonies need not be enumerated, but the opening of the Murray river to steamboat traffic constituted an important epoch. The proposer was Francis Cadell. He had served in the fleet of the East India Company; had seen war in China; had when very young commanded a trading vessel. He had broached the subject of navigating the Murray before the discovery of the Victorian gold-fields. He was deemed visionary. But he was to find a coadjutor in Sir H. E. Fox Young, the Governor of South Australia, who recognized the advantages and practicability of Cadell's scheme. Sir H. Young, in face of much public opposition in Adelaide, obtained permission to devote £20,000 from that part of the Land Fund which was subject to the control of

the Imperial Treasury. Jealousy of any derogation from the importance of the shipping trade of the metropolis was said to be the motive of the Adelaide objectors. They disliked the proposed connection by tramway of Goolwa (on the Murray) with Port Elliott. They opposed the vote by the Legislative Council (June 1850) of £4000 as rewards for successful navigation of the Murray "from the Goolwa to (at least) the junction of the Darling." When their petition to the Governor was futile they sent an equally vain memorial to the Queen. But the Governor was firm, and though no efforts to obtain the offered reward were made in England, Francis Cadell inspired sufficient confidence to enable him to obtain help from capitalists in the colony. The Governor himself examined the river in 1850, and reported favourably. In May 1851 Mr. R. Gerstacker launched a canoe at Albury, on the Murray, and traced the downward course of the river, following the example which Sturt had set in 1830 on the Murrumbidgee. The Governor sent to England a journal of the voyage.

Cadell in 1852 persuaded others to join in providing means to build a steamer wherewith to obtain the offered reward, and he obtained personal knowledge of the river by launching a canvas boat, ribbed with barrel-hoops, in which he descended the river from Swan Hill to Lake Victoria. In 1853 he completed the building of his steamer, the 'Lady Augusta,'[1] and the Governor accompanied the adventurer in his first voyage. Three members of the Legislative Council were there also. The bar at Encounter Bay was safely crossed, and at Swan Hill, on the 17th September, the Governor wrote a gratulatory despatch to the Secretary of State. His triumph was great, and the eulogium he gave to Cadell's ability and zeal was hearty and unmeasured. Fourteen hundred and fifty miles were traversed on the Murray itself, and to show the aptitude of his vessel to meet the requirements of the inland trade, Cadell ascended the Wakool (an ana-branch of the Murray) sixty miles. At the junction of the Murray with the Darling, some settlers of New South Wales and Victoria presented a laudatory address to the Governor.

On the 14th October the Lady 'Augusta,' with her wool-laden

[1] Forty-horse power and 105 feet long. The barge (the 'Eureka') which accompanied the steamer in the river was of similar length.

barge, reached the Goolwa jetty with 440 bales of wool, the first-fruits of the new enterprise. Thence, on that day, Sir H. Young sent a message announcing the triumph to the Legislative Council. That body rendered to him fervid thanks, and begged that three gold medals might be struck to commemorate the event—one for the Governor,[1] one for Francis Cadell, and a third to be "deposited with the records of the Legislature of South Australia." A new "Hundred of the Murray" was created under the South Australian Orders in Council. It included a border of two miles on Lake Alexandrina, and a like width on each bank of the Murray within the colony. All lands within it were exempted from leases for pastoral purposes, and purchasers of freehold were invited to apply to the Surveyor-General in order that blocks might be surveyed. The prompt Governor sent to Sydney and to Melbourne propositions for levying duties on goods water-borne from South Australia to her neighbours, and holding the amount to the credit of the colony into which the goods might be imported. It may be added that the Hundred of the Murray was not occupied as the Governor hoped, and that the enterprising Cadell was not enriched although he occupied himself for years upon the inland waters. He was presented with a gold candelabrum, but, like many inventors, he gained nothing by his labours, and the Murray River Navigation Company was profitless. Cadell himself, cruising a quarter of a century afterwards in the Pacific, and pearl-fishing on the coasts of Australia, was no richer than when he opened the traffic on the Murray, and he came to an untimely end in a mutiny or quarrel amongst his motley crew, in the islands.

Sir Henry Young's adventurous assent to the Bullion Act in 1852 has been told. The Act, though made ephemeral by its complete success in crushing the inconvenience it remedied, was long remembered by his contemporaries. The association of his name with the navigation of the Murray may last while early

[1] The Duke of Newcastle authorized him to accept it,—"regarding it not in the light of a present to yourself, which you are aware that the rules of the service would forbid, but as a public memorial of an event of the highest importance to the colony, of which it will be a permanent satisfaction to yourself to have witnessed the accomplishment."

records of the struggles of their predecessors are interesting to dwellers in South Australia. His dealings with the constitution of the colony and those of his successor must be considered hereafter.

Sir Henry Young was transferred to Tasmania soon after he had reported upon the navigation of the Murray. When he arrived at his island home he saw the respect in which Sir W. Denison was held in spite of the marked unpopularity of his opinions with regard to transportation. A subscription of £2000 for the purchase of a present of plate furnished matter for long correspondence with the Colonial Office. It is contrary to regulation for a Governor to receive a present, but Secretaries of State occasionally sanctioned a breach of the regulation, as in the case of Sir H. Young's medal commemorating the voyage of the first steam vessel which clove the waters of the Murray. When objection was raised to the acceptance of a present by Sir W. Denison he was able to cite precedents, and to urge that the object of the regulation being to prevent official sycophancy, it could not apply to himself, inasmuch as for eight years he had steadily opposed the "particular hobby of the colonists." The Secretary of State unwisely permitted the creation of another precedent, which, harmless as between Sir W. Denison and the Tasmanians, was to be fraught with serious consequences elsewhere, as supplying fuel for disorder. If the wholesome rule had never been infringed elsewhere, it may perhaps be deemed that the Assembly of Victoria would not have been persuaded to propose a grant of £20,000 to a retiring Governor who was recalled for writing in terms which made him appear a partisan instead of an impartial holder of the scales.

Among the subjects to which Sir W. Denison had applied his practical and scientific ability was the survey of the Crown Lands. Until 1826 the Survey Department was a mere branch of the department in Sydney, but Sir George Arthur appointed a Surveyor-General (Frankland) in 1826, who held office until his death in 1839. Before his death he protested against a change forced upon him in 1838, by which (during Sir John Franklin's government) work was done by contract surveyors instead of by officers of the department.

Sir W. Denison appointed a board of inquiry. It was proposed

to revert to a trustworthy departmental system. The Governor concurred, and the Secretary of State sanctioned the change, good faith being kept with the existing officers, the Surveyor-General, his deputy, and the chief clerk, who might be displaced.

The Governor critically examined plans for Public Works also, and though assailed at first for interference, was applauded when improvement in roads and streets followed his labours. He corresponded with the eminent Sir John Burgoyne with regard to them. He furnished the outlines for a plan for a market-place in Hobart Town, and in 1854 he opened it amidst public rejoicings.

The Irish prisoners, Smith O'Brien and his followers, were a source of annoyance, because they were not to be treated as ordinary convicts, if such a course could be avoided, and several of them proved that even their word could not be trusted. Smith O'Brien himself was an honourable exception. He refused to give his parole while he hoped to escape. Failing in an attempt to run away, he gave his parole and kept it until a pardon freed him. O'Meagher and Mitchell gave their parole and broke it, and though Sir W. Denison may have been mortified at a failure of justice, he must have been glad of relief from the office of gaoler of men whom he could not bind with material fetters, and whose minds were so perverse that they saw no shame in violating the bonds of honour. In 1854 those who had not absconded were pardoned.

Sir W. Denison interested himself warmly in the subject of education. In the colony, and by correspondence abroad, he devoted himself so earnestly that he might have been thought by strangers to have had no other care. He promoted by example and precept a reverence for religion. He saw in Tasmania an outburst of patriotic sympathy with the wives and children of the soldiers in the Crimean war.[1] He was to take part in a similar movement in New South Wales. He suspected that local jealousies would disincline the various colonies to federate themselves for general purposes, and was himself care-

[1] In one church £154 were collected. In the plate was a folded paper containing £17 4*s*., and the inscription—"An offering from the non-commissioned officers and privates of the 99th Regiment for the wives and children of those engaged in the war with Russia."

less, if not averse, because (he wrote to the Secretary of State, November 1854) "there is little or nothing for a general assembly or congress to do." Yet it ought to have been plain that the relegation of weighty matters to a general assembly would have eliminated them from those in which incongruous local laws might do mischief or create confusion.

Sir Henry Young had not much to do as responsible Governor, and the period of his government before the two elected Houses met in November 1856 was, except as regarded the episode of Dr. Hampton's contumacy (already narrated), unfruitful of events deserving comment. The unsavoury subject of transportation must have been repulsive, even in its dregs, as it evaporated from the Tasmanian air, and its miasma brooded over the sands of Western Australia.

The unclean spirits were removed in 1855 from Norfolk Island, which was reported in June as ready for the reception of the Pitcairn Islanders, the descendants of the mutineers of H.M.S. 'Bounty.' The criminals whom the Imperial Government had sent to the Southern hemisphere were gathered at Western Australia (still a convict colony) and at Tasmania, where there were only remnants of an abandoned system. As those remnants were nevertheless human creatures whose brethren could not destroy them before the face of the world, there was still a necessity to provide sustenance and control; and, by joint contribution of the proportions of expense which were deemed just, the Imperial and local exchequers bore the charge. One pleasing trait deserves to be recorded. The popular Richard Dry, the Speaker, was compelled by ill-health to retire in 1855. There was no class by which he was not esteemed and beloved. There was no good work to which he had not lent a helping hand. Though he was one of "the patriotic six" who had opposed Sir Eardley Wilmot in 1845, and placed his lance in rest against Lord Stanley, refusing to let his native land succumb to a load of debt incurred on account of Imperial convict schemes;—such was the winning demeanour of the man that he was without an enemy. Profuse in liberality, he had endowed churches in his own district, almost at his own expense. Genial in all his ways, he was the idol of crowds who cared not for his labours to provide religious and intellectual boons for

them. Sternly hostile as he was to Sir W. Denison's adherence to the transportation system, the Governor nevertheless shared the general feeling towards the man. The Legislative Council asked for their retiring Speaker's portrait. In complying with their request he wrote:

"That the representatives of the colony in which I was born, and of the people amongst whom I have lived, should deem me worthy of a unanimous expression of sympathy and affection so warm as that contained in the address, and should refer in such flattering terms to the high and respectable office of Speaker to which I was called by them, may well excite a feeling of profound gratitude. Of all the expressions of confidence and kindness which have reached me, none will be more highly valued than those of the Legislative Council; and so long as it shall please a merciful God to spare my life, the proof of good will which their address conveys will be highly prized by one who trusts that he is neither ungrateful nor forgetful." [1]

The following figures show concisely the condition of the Australian colonies in two epochs—namely, in 1850, the year before the discovery of gold, and in 1856, when they undertook the control of Crown lands and entered upon the conduct of their own affairs. It is convenient to present the figures in combination so that one eye-glance may compare them. It will be observed that in the balanced numbers of her male and female population, and in the large quantity of land cultivated in proportion to that population, South Australia at both epochs stood prominently forward as a worthy example of colonization. It was comparatively safe for her to entrust her people with power because they were more attached to the soil than were the gold-hunters in the East. It will also be noticed that, except with regard to small debts in South Australia and in Victoria, the revenues and wide lands of the South were handed over unencumbered to the colonists. There was an expectation that they would employ their power in such a manner that the millions of square miles committed to them would remain

[1] His health was partially restored. He was knighted in 1858, and though always in jeopardy from his ailment (disease of the heart, supposed to have been the result of injury in the hunting-field, where he was ever forward), he will be found in 1866 as the head of a ministry, and continuing to serve his country in that capacity almost until his death in 1869.

| | Year. | Population. | | | Acres of Land sold during year. | Land in Cultivation. | Imports. | Exports. | General Revenue. | General Expenditure. | Public Debt. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Male. | Female. | Total. | | | | | | | |
| New South Wales [1] | 1850 | 154,575 | 110,928 | 265,503 | 52,483 | 198,056 | 2,078,338 | 2,399,580 | 575,794 | 567,165 | |
| V. D. Land | ,, | 42,578 | 26,919 | 69,497 | 2,278 | 168,820 | 658,540 | 613,850 | 135,429 | 139,414 | |
| South Australia | ,, | 35,963 | 27,737 | 63,700 | 64,949 | 64,728 | 845,572 | 570,817 | 238,983 | 239,081 | |
| New Zealand | ,, | | | 22,108 | | | In 1849 133,662 | In 1849 254,679 | 59,298 | 232,128 [2] | |
| Western Australia | ,, | 3,576 | 2,310 | 5,886 | 2,504 | 7,419 | 52,351 | 22,134 | 19,137 | 37,353 [3] | |
| New South Wales | 1856 | 164,882 | 121,991 | 286,873 | 167,753 | 186,033 | 5,460,971 | 3,430,880 | 1,130,014 | 1,146,468 | |
| Victoria | ,, | 255,827 | 141,733 | 397,560 | 437,562 | 179,983 | 14,962,269 | 15,489,760 | 2,972,496 | 2,668,834 | 648,100 |
| South Australia | ,, | 53,086 | 51,622 | 104,708 | 187,451 | 203,423 | 1,366,529 | 1,665,740 | 479,978 | 579,927 | 294,900 |
| Tasmania | ,, | 45,916 | 34,886 | 80,802 | 14,572 | | 1,442,106 | 1,207,802 | 398,218 | 440,688 | |
| New Zealand | ,, | 25,356 | 20,184 | 45,540 | 51,972 | 63,070 | 710,868 | 318,433 | 183,978 | | |
| Western Australia | ,, | 8,946 | 4,445 | 13,391 | 2,456 | 18,063 | 122,938 | 43,907 | 51,170 | 46,990 [3] | |

[1] In 1850 Victoria had not been created a separate colony, and the figures for the year include Port Phillip. The contents of the above table have been extracted from various works.

[2] From the Military Chest £131,100 were expended in 1850. A Parliamentary Vote contributed £41,730. (Thomson's 'Story of New Zealand.' London: 1859.) In 1851 it was estimated that 29,140 acres were under cultivation by Europeans, but 15,589 of them were grasslands. (*Ib.*)

[3] There was also an Imperial Expenditure of £22,153. In 1856 it was £93,477.

available for homes of emigrants from the mother country; that some discretion would be exercised in administering the lands which were still called Crown lands; that they would, if sold, probably yield aid to immigration; and that no government would surrender to indiscriminate plunder the magnificent estate entrusted to its care, and which, husbanded duly, might meet unlimited demands for railways and other public works. Somewhat was indeed done; but in the two gold-producing colonies much was left undone. Notably in Victoria there was to be such a squandering of the public estate that only a fraction of the value of alienated lands found its way into the public coffers. The live stock in Australia, sedulously imported and cared for, had increased with the acquisition of fresh pastures in a manner which would have appalled the prophet of evil, who warned the House of Commons that England would be under perpetual compulsion to send animal food to sustain the colony which he condemned Pitt for founding. Even the horses, which had increased to an extent surpassing local requirements, had found an ample market in India, where breeding studs could not produce animals to vie with those of Australia and Arabia. At one time the Indian Government employed their own officers to select horses in the colonies, but in process of time there was spontaneous trade.

The following table furnishes a concise view of the live stock in the years 1850 and 1856, as nearly as published records permit.

| | | Horses. | Cattle. | Sheep. | Pigs. |
|---|---|---|---|---|---|
| New South Wales | 1850 | 132,437 | 1,738,965 | 13,059,324 | 61,631 |
| Van Diemen's Land | 1850 | 18,391 | 82,761 | 1,822,320 | |
| South Australia | 1850 | 6,488 | 16,034 | 984,199 | |
| Western Australia | 1850 | 2,635 | 13,074 | 128,111 | |
| New Zealand | 1851 | 2,890 | 34,787 | 233,043 | 16,214 |
| New South Wales | 1856 | 168,299 | 2,023,418 | 7,736,323 | 105,998 |
| Victoria | 1856 | 47,832 | 646,613 | 4,641,548 | 52,227 |
| South Australia | 1856 | 22,260 | 272,746 | 1,962,460 | |
| Tasmania (late V. D. L.) | 1856 | 18,019 | 88,608 | 1,674,987 | 30,074 |
| Western Australia | 1856 | 5,408 | 23,207 | 295,815 | |
| New Zealand | 1858 | 14,912 | 137,204 | 1,523,324 | 40,734 |

In the whole southern group there were, therefore (before

the discovery of gold), in 1851, nearly 200,000 horses, 2,000,000 cattle, and more than 16,000,000 sheep.

When the control of Crown lands was handed over to the colonies simultaneously with the abolition by Lord John Russell of Wentworth's safeguard against rash legislation, there were nearly 300,000 horses, more than 3,000,000 cattle, and nearly 18,000,000 sheep. For the first time the increase of sheep in a quinquennial period had been insignificant. The price of carcases at the gold-fields had raised it elsewhere; and many graziers had neglected the growth of wool under the temptation to sell mutton.[1] There were others who still persevered in improving the quality of their flocks and herds. But whatever price might be asked from the gold-seekers, there was no difficulty in supplying their wants, and the day was not far distant when speculators were to be busy in devising schemes for exporting to Europe the redundant stores of corn and meat in Australia.

For convenience of reference it may be well to quote here the tables, compiled by the Government statist of Victoria, which show the increase of live stock in later periods. There were in

| | | Horses. | Cattle. | Sheep. | Pigs. |
|---|---|---|---|---|---|
| New South Wales | 1873 | 328,014 | 2,710,374 | 19,928,590 | 238,342 |
| | 1874 | 346,691 | 2,856,699 | 22,872,882 | 219,958 |
| | 1875 | 357,696 | 3,134,086 | 24,382,536 | 199,950 |
| | 1876 | 366,703 | 3,131,013 | 24,503,388 | 173,604 |
| | 1877 | 328,150 | 2,746,385 | 20,962,244 | 191,677 |
| | 1878 | 336,468 | 2,771,583 | 23,967,053 | 220,320 |
| | 1879 | 360,038 | 2,914,210 | 29,043,392 | 256,026 |
| | 1880 | 395,984 | 2,580,040 | 32,399,547 | 308,205 |
| In Victoria | 1873 | 180,342 | 883,763 | 11,323,080 | 160,336 |
| | 1874 | 180,254 | 958,658 | 11,221,036 | 137,941 |
| | 1875 | 196,184 | 1,054,598 | 11,749,532 | 140,765 |
| | 1876 | 194,768 | 1,128,265 | 11,278,893 | 175,578 |
| | 1877 | 203,150 | 1,169,576 | 10,117,867 | 183,391 |
| | 1878 | 210,105 | 1,184,843 | 9,379,276 | 177,373 |
| | 1879 | 216,710 | 1,129,358 | 8,651,775 | 144,733 |
| | 1880 | 275,516 | 1,286,267 | 10,360,285 | 241,936 |

[1] Wentworth at an entertainment given to him in Melbourne expressed doubts whether statistical figures, however swollen, indicated true prosperity or gave hope for the future. "A great part of your sheep, I am told, have perished under the teeth of your diggers."

| | | Horses. | Cattle. | Sheep. | Pigs. |
|---|---|---|---|---|---|
| In Queensland | 1873 | 99,243 | 1,343,093 | 7,268,946 | 42,884 |
| | 1874 | 107,507 | 1,610,105 | 7,180,792 | 44,517 |
| | 1875 | 121,497 | 1,812,576 | 7,227,774 | 46,447 |
| | 1876 | 133,625 | 2,079,979 | 7,315,074 | 53,455 |
| | 1877 | 140,174 | 2,299,582 | 6,272,766 | 52,371 |
| | 1878 | 148,226 | 2,469,555 | 5,631,634 | 50,301 |
| | 1879 | 163,342 | 2,805,984 | 6,083,034 | 64,686 |
| | 1880 | 179,152 | 3,162,752 | 6,935,967 | 66,248 |

It must be borne in mind that Victoria and Queensland were portions of New South Wales in 1850, and that the latter was not detached until 1859. Queensland continued to attract capital and live stock from the parent colony long after separation, as is shown by the diminution of cattle in New South Wales between 1875 and 1880, and the concomitant increase of the Queensland herds during the same period. There were in

| | | Horses. | Cattle. | Sheep. | Pigs. |
|---|---|---|---|---|---|
| South Australia | 1873 | 87,455 | 174,381 | 5,617,419 | 87,336 |
| | 1874 | 93,122 | 185,342 | 6,120,211 | 78,019 |
| | 1875 | 107,164 | 219,240 | 6,179,395 | 100,562 |
| | 1876 | 106,903 | 219,441 | 6,133,291 | 102,295 |
| | 1877 | 110,684 | 230,679 | 6,098,359 | 104,527 |
| | 1878 | 121,553 | 251,802 | 6,377,812 | 103,422 |
| | 1879 | 130,052 | 266,217 | 6,140,396 | 90,548 |
| | 1880 | 157,915 | 307,177 | 6,463,897 | 131,011 |
| In Western Australia | 1873 | 26,290 | 47,640 | 748,536 | 20,948 |
| | 1874 | 26,636 | 46,748 | 777,861 | 13,290 |
| | 1875 | 29,379 | 50,416 | 881,861 | 14,420 |
| | 1876 | 33,502 | 54,058 | 899,494 | 18,108 |
| | 1877 | 30,691 | 52,057 | 797,156 | 18,942 |
| | 1878 | 32,801 | 56,158 | 869,325 | 16,762 |
| | 1879 | 32,411 | 60,617 | 1,109,860 | 20,397 |
| | 1880 | 34,568 | 63,719 | 1,231,717 | 24,232 |

The progress of Tasmania was steady during the period.

| | | Horses. | Cattle. | Sheep. | Pigs. |
|---|---|---|---|---|---|
| She had in | 1873 | 22,612 | 106,308 | 1,490,746 | 59,628 |
| | 1874 | 23,208 | 110,450 | 1,724,953 | 51,468 |
| | 1875 | 23,473 | 118,694 | 1,731,723 | 47,664 |
| | 1876 | 23,622 | 124,459 | 1,768,785 | 60,681 |
| | 1877 | 22,195 | 126,882 | 1,818,125 | 55,652 |
| | 1878 | 24,107 | 126,276 | 1,838,831 | 39,595 |
| | 1879 | 24,593 | 129,317 | 1,835,970 | 38,610 |
| | 1880 | 25,267 | 127,187 | 1,783,611 | 48,029 |

The latest figures given in the same tables with regard to New Zealand ascribe to that colony in

| | Horses. | Cattle. | Sheep. | Pigs. |
|---|---|---|---|---|
| 1879 | 137,768 | 578,430 | 13,069,338 | 207,337 |

In the whole southern group therefore there were, in 1880, more than a million of horses, than eight millions of cattle, than seventy-two millions of sheep, and than a million of pigs.

The census of the population taken in 1881 showed that there were then

| | Males. | Females. | Total. |
|---|---|---|---|
| In New South Wales | 411,149 | 340,319 | 751,468 |
| In Victoria | 452,083 | 410,263 | 862,346 |
| In Queensland | 134,216 | 91,861 | 226,077 |
| In South Australia | 149,530 | 130,335 | 279,865 |
| In Western Australia | 17,062 | 12,646 | 29,708 |
| In Tasmania | 61,162 | 54,544 | 115,705 |
| In New Zealand | 293,822 | 239,979 | 533,801 |

The gradual recovery of the population lost by Tasmania in 1852 is especially deserving of notice. In 1851 she had 42,578 males. In 1853 nearly half of them had found their way to the gold-fields of Victoria. When many had returned she had, in 1856, only 45,916, although her female population had in five years risen from 26,919 to 34,886. In 1881 she had resumed the normal relations of colonies, where, differing from long-settled communities, social needs attract a larger proportion of males than of females.

## CHAPTER XVI.

### ALTERATIONS OF CONSTITUTIONS.

It must ever be an interesting study to analyze the transformations of the Constitutions of the Australian colonies after they were submitted to local arbitrament. New Zealand formed an exception. In the other colonies changes, whether wise or foolish, were made after discussions, and in terms of local or Imperial enactment. In New Zealand it may truly be said that the adoption of responsible government was the unlawful result of insidious claims made by members elected under her Constitution Act (15 and 16 Vict., cap. 72), which had not provided, and was not intended to provide in any manner, for local responsible government. The Act contained no word about it; and though speeches of law-makers must not be called in to construe their handiwork, it is fair to say that the absence of any allusion to responsible government in speeches in the Houses proves that the subject was not considered or decided upon. The title of the Act designated it as one to "grant a Representative Constitution." Such institutions had existed for many years in Australia without responsible government. Moreover, there was ample proof, internal in the law, and in the Royal Instructions which accompanied it to the colony, that the perversion of the Constitution was unwarrantable. It is indeed seen to be nefarious when the light of the Waitangi Treaty[1] is thrown upon it, and reveals that the faith

[1] A nominal reservation of Imperial responsibility to maintain the honour of England and of the Queen was afterwards made while the Maoris were powerful. But the very Governor who alleged its necessity in vigorous language in 1858 was found submissive to the voice of the tempter in 1860, and casting his former professions to the winds. By a strange fatality it was again the Duke of Newcastle who then sanctioned injustice, and again, when the honour of England was tarnished, his colleagues were Lord

of the Queen of England was pledged to the uttermost to prevent such injustice as flowed, and was sure to flow, from the claims which Sir George Grey, on the 8th December, 1854, jejunely sanctioned when he was Colonial Secretary under Lord Aberdeen, having as colleagues Mr. Gladstone, the Duke of Argyll, Lord Palmerston, the Duke of Newcastle, Earl Granville, Sir William Molesworth, Lord Cranworth, and others, who cannot escape censure, although they may not actively have promoted that to which as accomplices they lent their names, and who were on other grounds denounced at the time by Mr. John Bright as "an incapable and guilty administration."

The details of the New Zealand episode are foreign to this work. Nevertheless, as Sir George Grey's miserable conduct established so-called ministerial responsibility unlawfully in New Zealand at an earlier date than its lawful creation in the other colonies, it seems necessary to allude to the leading facts. The Military Officer administering the Government had tided over his difficulty by arrangements in the colony and by a reference to England. The Attorney-General, Mr. Swainson, had well advised; and by dint of keen perceptions and unshakeable loyalty, had foiled the subtlety of Gibbon Wakefield and the crude and clumsy ambition of men intoxicated with their own importance. What he could do "without trenching on the Constitution Act or exceeding the limits of (his) instructions," General Wynyard had done. But he had told the House of Representatives that he believed himself "absolutely precluded by the Royal Instructions from establishing ministerial responsibility in a complete form."

The eager aspirants for power in the colony did not themselves expect so sheer a downfall of existing laws and Royal Instructions as to ask for ministerial responsibility without legislative sanction. They prayed (2nd September, 1854) the Queen to grant it and to instruct the Governor to "assent to a Bill to be passed by the General Assembly for establishing the Executive Government on the basis of ministerial responsibility." The Military Acting Governor, though he supported the prayer, saw plainly

Palmerston, Earl Granville, the Duke of Argyll, and Lord John Russell, the latter of whom seldom meddled with New Zealand affairs except to mar them.

that compliance with it must involve (if duty were worthy of respect) new laws or instructions. But amongst the supporters of Lord Aberdeen's Ministry were men tainted with the disordered morality which the Lord Stanley of 1843 had rebuked in the name of the Queen. To them Sir George Grey had to approve himself gracious. The mutterings of discontent at blunders in the Crimea were a source of alarm. Lord John Russell was seeking a loophole for escape from what seemed a sinking ship. No votes could be spared in the House. Sir George promptly told General Wynyard, — "Her Majesty's Government have no objection whatever to offer to the establishment of the system known as Responsible Government in New Zealand." They had no "desire to propose terms or to lay down restrictions on your assent to the measures which may be necessary for that object, except that of which the necessity appears to be fully recognized by the General Assembly, namely, the making provision for certain officers who have accepted their offices on the equitable understanding of their permanence, and who may now be liable to removal." There would be no occasion for "further reference to the Home Government before the change is carried into effect." Proper no doubt it was to keep faith with officers appointed by the Queen. The tithe of mint, anise, and cummin was rightly respected. But the weightier matters of the law, judgment, mercy, and faith, were omitted as regarded the Maoris, to whom the Queen's faith had been pledged. Sir George Grey wrote not one word about them: and the friends of the rapacious New Zealand Company—once abashed in the presence of Lord Stanley—laughed in their sleeves at the facility with which the Secretary of State had been befooled, and great strides had been made towards violating the treaty of Waitangi, and making the word of the Queen a thing of nought in New Zealand.

It was quite true that when Lord Derby's Ministry passed the New Zealand Government Act in 1852, they made provision to guard the rights of the Maoris and maintain the honour of England. No laws were to be made "affecting lands of the Crown or lands to which the title of the aboriginal natives has never been extinguished" (sec. 19). The Act expressly stipulated that no law should be made "inflicting any disabilities or restric-

tions on persons of the native race to which persons of European birth or descent would not also be subjected" (*Ibid.*). Express power was retained (sec. 62) for Her Majesty by Letters Patent to legalize Maori usages not repugnant to humanity, and to give them force notwithstanding their repugnance to English or New Zealand law. By section 63 the provisions of the Waitangi Treaty were secured as regarded the Queen's pre-emptive right to purchase land, and the prohibition of traffic by land-speculators without the Queen's permission. But the plotters in New Zealand rightly judged that if they could prevail on the Secretary of State to recognize their claim to pervert the Constitution in one instance, all other claims could be enforced in course of time. The facts that the Constitution distinctly laid down the process by which the Governor was to conduct legislation and transmit Bills to either House (sec. 62), and that there was no provision for vacation of his seat by a member accepting office, might have deterred contrivers less bold than Gibbon Wakefield and his temporary followers, and might have shown the Secretary of State that his concessions were unlawful and unconstitutional as well as unjust. But the Ministry was weak. He could not afford to offend the fragments of the New Zealand Company, which retained a voice in Westminster, and without consulting Parliament he violated the law. Responsible government had been promised to New South Wales by Sir John Pakington. The Duke of Newcastle had confirmed the promise. Wentworth's and other Bills were in England. The Secretary of State thought he could better afford to commit crimes against Maoris than lose votes at St. Stephen's.

Thus much it has been necessary to say with regard to the initiation of responsible government in Australasia. The gradual enforcement of the claims of colonists by means of Wentworth's Remonstrances probably hastened the action of the Secretary of State with regard to New Zealand; but the colony which had been in the van in Australia had much to suffer in acquiring self-government, and the boon was to be qualified by Imperial interference with the arrangements approved by the colonial legislature.

Though Victoria, in consequence of the gold discoveries, rapidly became more populous than the parent colony, the

latter is entitled to precedence not only in point of time as to the elaboration of a new constitution, but also because in Wentworth she possessed the one man who stood head and shoulders above his fellows. Whether in impetuous youth flinging himself against the ramparts of autocratic government, —whether contending for a laurel crown on the banks of the Cam,—whether pouring forth unreported orations with an eloquence which his auditors remembered to their dying days as surpassing that of other men,—whether, on less public occasions, in coarse vituperation sometimes using language which only his enemies could wish to cite,—whether defying a governor or trampling on a renegade or slanderer,—at all times he was the observed of all observers, and seemed able to rise on the greatest emergencies with greater ease to the height of his argument. His Remonstrance in May 1851, and its supercilious treatment by Earl Grey—the protest of a new legislature against that treatment—the renewal of the Remonstrance in 1852—its reception by Sir John Pakington, and the celebrated despatch acceding to the terms of the Remonstrance, have been told already.[1]

[1] How rapidly men forget, or with what confidence they presume upon the ignorance of others, was shown in Mr. Gladstone's written address to the electors of Midlothian (11th March, 1880), which declared, as to the colonies, that liberal administrations "gave them popular and responsible governments." Lord Hartington's address to the electors (10th March), with equal eccentricity as regards Australia, declared that if the colonies were more attached to the Empire it was "due to the fact that under the guidance of Liberal statesmen they have received institutions of complete self-government." To one familiar with the remonstrances of New South Wales against Earl Grey's Despatch of 23rd January, 1852, against his "disregard of the most earnest and solemn appeals of the Legislature," the addresses of Mr. Gladstone and Lord Hartington are absurd. They become something worse when confronted with the resolution of the Legislative Council in Sydney (14th June, 1853) recording "its deep sense of the conciliatory spirit" evinced in Sir John Pakington's despatch, and its hope that "a new and auspicious era in the government of Her Majesty's Australian colonies" had commenced. It is true that Lord Aberdeen's ministry (1852-5) and Lord Palmerston's (1855-8) did not undo what Lord Derby's brief ministry (1852) had done. Such a course could hardly have been contemplated even by Earl Grey if unfortunately he had resumed office. The maxim that evil communications corrupt good manners was never more exemplified than in the case of Mr. Gladstone. While he reverenced, and acted with, Sir Robert Peel, he wrote to the Governor of

But Wentworth had not been willing to remain dependent upon the graciousness of the Secretary of State. He strove but failed to induce the Council to postpone the estimates for 1853 until a reply to the Remonstrance might be received. He succeeded in obtaining, by a majority of one, a resolution to refuse supplies for 1854, unless a favourable reply should be received. He, whom Dr. Lang had denounced as a conspirator with Deas Thomson against the liberties of his country, thus, in contention with Deas Thomson, drew from the armoury of English Constitutional History the weapons with which to extort a control of taxation for those who paid it.

It may be remembered that the Constitution Act (13 and 14 Vict. cap. 59) of 1850 gave a power (sec. 32) to each Australian colony, after the establishment of their several Legislative Councils under its authority, to alter the constitution of its legislature, subject to a requirement that every Bill for such a purpose should "be reserved for the signification of Her Majesty's pleasure thereon."

In June 1852 a Select Committee was appointed (by ballot on Deas Thomson's requirement) to prepare a new Constitution. In September Wentworth, the chairman, brought up the Report. Doubts had existed as to the power of the House to deal so comprehensively with the subject as was desired, and the Committee prepared three Draft Bills—one a Draft of an Imperial enactment to enable Her Majesty to assent to the others, and two separate Bills—"to grant a Civil List," and "to confer a Constitution."

The last proposed that there should be two Houses. The

New Zealand with regard to changes in the Constitution: "I conceive it to be an undoubted maxim that the Crown should stand in all matters between the colonists and the natives . . . the most natural and obvious mode of providing for our relations with the native tribes would be to reserve to the Crown a very large share of authority, real as well as nominal, active and not merely dormant, in that department of the functions of the Colonial Government" ('Parliamentary Papers,' vol. xxix. 1846). In December, 1854, having been received into Lord John Russell's arms, Mr. Gladstone consented to Sir George Grey's unworthy conduct, or at any rate remained his colleague. The fatal consequences involved Mr. Gladstone in complicity with the Taranaki War in 1860. He was then the colleague of the Duke of Newcastle, who sanctioned that iniquity while conscious that he was doing wrong.

power of each was to be equal, with the single exception that Bills of Appropriation, or "for imposing any new rate, tax, or impost," were to originate in the Assembly. All Bills "affecting any Imperial subject" might be reserved for Her Majesty's pleasure."[1] The Committee had contained Deas Thomson, Plunkett, James Macarthur, Charles Cowper, Stuart A. Donaldson, T. A. Murray, James Martin, and others. Their opinions were divided as to the constitution of the Upper House. All agreed that such a House was needful as "an effectual check on the democratic element in the Assembly, and at the same time competent to discharge with efficiency the revising, deliberative, and conservative functions which will devolve upon it." Some proposed a body nominated by the local Executive, with a proviso that not more than a third should consist of placemen. Some, a body wholly elective. Others, as a middle course between complete nomination and complete election, wished the Governor to nominate for life two-thirds of the Council, one "out of persons who have been elective members of the past or present Council," and the other third during pleasure. The third proposition was embodied in the Bill. The Council was to consist of not less than 21 members. On the remainder of the Bill no difference existed in the Committee. The Assembly was to contain 72 members, and to endure for five years. Freehold of the clear value of £100, and household of £10 annual value, were to confer the suffrage for a member of the Assembly. A license to depasture Crown Lands in any district, or a lease in such district, qualified for a vote. No defaulter in payment of rates due was to be entitled to vote. The system of representation might be altered, as regarded the number of representatives, by Bills with which the Council might on the second and third readings concur with an absolute majority, and the Assembly by majorities of two-thirds. All taxation was to be under advice and consent of the Council and Assembly. All Bills for appropriation or imposing taxation were to originate in the

[1] Some were specified—touching allegiance, naturalization, treaties, political intercourse with officer of "foreign power or dependency," command of forces, municipal militia and marine, high treason. If a question were to arise as to the right of the Governor to reserve a Bill it was to be decided by the Judicial Committee of the Privy Council.

Assembly, but there was no restriction of the power of the Council in dealing with them. No differential duties were to be imposed. The Assembly could originate no Bill of appropriation or taxation except on recommendation by message from the Governor. Judges were to hold office during good behaviour. The high officials who were to be eligible as members of the Assembly were enumerated. Acceptance of office was *ipso facto* an avoidance of a seat in the House.[1] Ministers of religion were disqualified by a special clause. Other disqualifications of contractors, &c., were separately treated. A loyal oath of allegiance was to be taken by every member of the Legislature before he could sit or vote therein. During the session of 1852 the Bills were not proceeded with, and the answer to the Remonstrance of the Legislative Council arrived in the colony before Sir Charles Fitz Roy met that body on the 10th May, 1853, and received from them a hearty recognition of the generous spirit with which their remonstrances had been received in England. On the 20th May Wentworth obtained a Select Committee to prepare a constitution. Despatches on the subject were referred to it. On the 28th July Wentworth brought up the report. It advocated—

"a form of Government based on the analogies of the British Constitution." The Committee had "no desire to sow the seeds of a future democracy, and until they are satisfied that the nominated or future elective Council which they recommend will not effect the

[1] One consequence of the surreptitious way in which the Secretary of State permitted the government of New Zealand to be revolutionized was that the wholesome provision of vacation of seat by acceptance of office was not enjoined there. It was not likely that men would wantonly risk the loss of a position unlawfully seized, and ministers in New Zealand, while they grasped the power attached to office, never recognized the constitutional responsibility without which no member of the House of Commons, unless under special enactment, can take office in England. By a Disqualification Act (1858), which barred other place-men from the House, they exempted five ministerial offices from the operation of the Act, and thus shielded from the consequence of responsibility those whom they called responsible. What kind of responsibility existed between the passing of the Constitution Act in 1852 and the Disqualification Act of 1858 the Secretary of State did not inquire about.

object they have in view of placing a safe, revising, deliberative, and conservative element between the Lower House aud Her Majesty's representative in this colony, they do not feel inclined to hazard the experiment of an Upper House based on a general elective franchise. They are the less disposed to make the experiment, as such a franchise, if once created, will be difficult to be recalled. Actuated by these views, your Committee have introduced . . . two clauses, which to a certain extent are framed in accordance with analogous clauses to be found in the Imperial Act 31 Geo. III. cap. 31, for making more effectual provision for the government of the province of Quebec. That Act authorizes the Crown whenever it thinks proper to confer hereditary titles of honour, rank, or dignity, and to annex thereto a hereditary right of being summoned to the Legislative Council. Your Committee are not prepared to recommend the introduction into this colony of a right by descent to a seat in the Upper House; but are of opinion that by the creation of hereditary titles, leaving it to the option of the Crown to annex to the title of the first patentee a seat for life in such House, and conferring, on the original patentees and their descendants inheritors of their titles, a power to elect a certain number of their order to form, in conjunction with the original patentees then living, the Upper House of Parliament, would be a great improvement upon any form of Legislative Council hitherto tried or recommended in any British colony. They conceive that an Upper House framed on this principle, while it would be free from the objections which have been urged against the House of Lords on the ground of the hereditary right of legislation which they exercise, would lay the foundation of an aristocracy which from their fortune, birth, leisure, and the superior education these advantages would superinduce, would soon supply elements for the formation of an Upper House, modelled, as far as circumstances will admit, upon the analogies of the British Constitution. Such a House would be a close imitation of the elective portion of the House of Lords, which is supplied from the Irish and Scotch peerage; nor is it the least of the advantages which would arise from the creation of a titled order, that it would necessarily form one of the strongest inducements not only to respectable families to remain in this colony, but to the upper classes of the United Kingdom and other countries who are desirous to emigrate to choose it for their future abode."

The first clause made all laws assented to by the Queen, or by the Governor in her name, valid and binding within the colony.

Bills on Imperial subjects were, however, to be reserved at the discretion of the Governor for Her Majesty's pleasure. The second clause defined those Bills as touching allegiance; naturalization of aliens; treaties; political intercourse or communications with foreign powers or dependencies; Her Majesty's forces by sea and land; defences; the command of municipal militia and marine; and high treason. The third clause committed to the Judicial Committee of the Privy Council the determination of questions, as to the right of the Governor with regard to reserving any Bills, or of the right of disallowance by the Crown. A subsequent clause (43rd), guarding the power of the Crown to issue instructions to Governors with regard to Bills, provided that "such instructions do not in any way fetter the Governor's discretion in giving or refusing Her Majesty's assent to Bills of mere local or municipal concernment." Later clauses enacted that the existing and all future Judges of the Supreme Court should hold office during good behaviour, but that they might be removable by the Crown upon addresses from both Houses. The Civil List provided in the Bill secured salaries and pensions for the Judges, as well as salaries for the Governor and his Private Secretary, and for a few chief officers of departments. A sum for pensions for existing functionaries who might be extruded from office at the commencement of responsible government, and an annual grant of £28,000 for Public Worship, completed the Civil List, which, irrespective of possible pensions, amounted to £48,550. The pension provision, of all descriptions, was £13,950.[1] The fourth clause made it lawful for the Governor when authorized by Her Majesty to summon not less than twenty persons as members of the Council, and in like manner to summon other persons from time to time. The fifth made it lawful for the Crown—whenever it might be thought fit to confer "any hereditary title of honour, rank, or dignity of such colony descendible according to any course of descent limited in such patent—to annex thereto by the said letters (if Her Majesty should think fit) a right to each original patentee to be summoned to the Legislative Council . . ." The sixth pro-

[1] The total Civil List in New South Wales was £62,500. In Victoria it was £112,750. It will be seen that this subject was much discussed in the House of Commons.

vided that "whenever the number of persons to whom such hereditary titles shall have descended shall, together with the original patentees then under summons, . . . amount to fifty or upwards, the Legislative Council so denominated as aforesaid (under clause 4) shall cease and determine." The original patentees and the inheritors of titles were then to be convened, and they were to elect twenty of the holders of descendible titles, who, "with the original patentees then summoned, or thereafter to be summoned," to the Council, were to form the Upper House. All seats in the Council were for life, but could be resigned. The modes of filling vacancies and forfeiting a seat by continuous absence, or by tarnishing of allegiance to the Crown, were duly provided for.

It was laid down in plain language that the Government should have no power to influence the votes of place-men. Five officials were designated who might, as responsible officers, hold seats, and five additional officers might be designated. All other members were made incapable of sitting or of election after accepting any office of profit. An extension of the suffrage for the Assembly was proposed for all persons having a salary of £100 a year, and for all lodgers paying £40 a year for board and lodging, or £10 for lodging only. The tenure of freehold of value of £100 and household suffrage of £10 a year were maintained as under the existing law (13 and 14 Vict. cap. 59). The Upper House was to consist of not less than twenty[1] members; the Lower of fifty-four. The duration of an Assembly was limited to five years. Full power to alter the constitution was conferred "whenever there shall be a majority of two-thirds of both Houses in favour of any such alteration, reserving to Her Majesty the right of assenting to or dissenting from any Bill for this purpose that may be presented for the signification of Her Majesty's pleasure thereon."

The Civil List provided a fund for pensioning judges. Responsible government was to take effect when the new "Legislative Assembly, consisting entirely of members elected by popular constituencies," might assume its functions. The existing officers of State would receive pensions when "actually displaced" by the new "order of things likely to arise when

[1] This number was altered in the House to 21.

England from crumbling like the oaks of the Conquest. The power of renovation of the ancient institution proves that it satisfies the cravings of the human mind. The passion displayed in the feather worn by the savage glitters in the coronet of an earl. It was the dulness of men in England, and not the barrenness of colonists, which withheld from England's enterprising sons what Earl Grey so superciliously denied them. And yet, in harmony with the words of Pitt, one of the seers of the century had uttered words of warning which ought to have pierced the thickest hide. De Tocqueville had said,—"Aristocracy made a chain of all the members of the community from the peasant to the king. Democracy breaks that chain and severs every link of it."

Wise in their own generation, men tainted with disloyalty to the Crown in New South Wales were ever forward in sneering at any attempt to create an hereditary order. The venom of Lang was ever squirted into the ears of his admirers, who were growing more powerful with each extension of the suffrage. The principal newspaper in Sydney, with strange ineptitude, fell into the blunder of saying that the colony was "not ripe for an hereditary order as yet;" blind to the fact that the difficulty of creating such an order increased day by day, and that the Crown was not then advised even to sow the acorns for the future forest, but was daily moved to fill the land with undergrowth, which would cover the soil with less noble products. One attempt was made by a scholar-like lawyer, Mr. Justice Dickinson, to divert the public mind to healthy channels. He advocated[1] the creation of a baronetcy attached to the soil; that when seventy-five existed, twenty-five more should be created, and that thereafter there should be selected from the whole body thirty members to form an Upper House in a manner which he described in detail. His argument was assailed by those who thought the project premature as well as by those who hated its essence; but his high personal character screened him from scurrility.

[1] A 'letter to the Speaker of the Legislative Council on the formation of a Second Chamber in the Legislature of New South Wales.' By J. N. Dickinson, one of the Judges of the Supreme Court. Sydney: 1852.

Dr. Lang,[1] whose antipathies would have put him in the front of opposition to Wentworth's proposals, was absent in England; but others were ready to do his work, and sciolism in politics banded many against the Draft Bill. Amongst those who seized the occasion to vault into popularity was Mr. John B. Darvall, once appointed a nominee member by Sir George Gipps, but subsequently elected. Troubled by no attachment to the land, and (his enemies said) as little burdened by principles, he was a convenient champion for men of less mark, who saw in guarantees for social order the destruction of their own hopes. Mr. Thurlow, the Mayor, an admirer of Dr. Lang, convened a meeting in 1852 in Sydney, at which a Democratic League was formed in compliance with propositions made by a delegate from gold-miners who had been warmed by the fervid appeals of Dr. Lang at the western gold-fields.

The Draft Constitution Bill of 1852 roused the wrath of the League. They published a manifesto declaring that the question was—"Shall New South Wales become a land of serfs, and be governed by an aristocratic oligarchy, or shall it become a nation of freemen, . . on the broad basis of a constitutional monarchy?" They would carry their complaints to England, where with "Gladstone (whom they styled 'an eminent Conservative'), Lowe, and Roebuck to advocate the cause of colonial democracy" they did not "tremble for the result." They denounced the Bill of 1852 as tyrannical, illegal, and unconstitutional. Their diatribes did not deter Wentworth in his labours. When the Draft Bill was published in 1853, the League and their patrons assembled. Mr. Henry Parkes was notable amongst the speakers. His talents were undoubted. He had raised himself from humble position to that of editor

[1] In a 'Sketch of his own Life and Times' (Sydney: 1870), Lang said that in 1853 the Legislature "all but saddled us with that old man of the sea, the precious incubus of a colonial nobility. It was a narrow escape the colony had in that crisis. . . . Mr. Wentworth would fain have been a live Australian lord." Lang was mistaken. Wentworth, who was without vanity, was too proud to accept that for himself which he had sought for his country. The ephemeral personal distinctions with which the Colonial Office gratified unrepentant rebels, and the party-leaders of the hour, in colonies, had no charms for a man whose object had been to lay the foundations of enduring welfare for the country; and when personal distinction was proffered to him, he declined it.

of the 'Empire' newspaper, established under his auspices in 1850. As a speaker and writer he had won reputation. As a politician he had, in support of Mr. Robert Lowe in 1848, and of Lang afterwards, and in advocating physical force to resist transportation, proved his thoroughness. A public meeting was convened on 15th August "to resist the flagrant attack upon the public liberty" contained in the Constitution Bill, about to be debated on the following day in the Legislative Council. Mr. Parkes admitted Wentworth's "great abilities and perfect knowledge of the momentous business in hand," but assailed the Bill as a "hasty, iniquitous, and fraudulent attack upon the liberties of the people."[1]

The meeting carried its resolutions with acclamation, but did not disturb the resolution of Wentworth, who goaded Parkes to fury by speaking of him as an "arch-anarchist." Parkes retorted in the 'Empire' with scurrilous imputations upon Wentworth, Deas Thomson, and others. Mr. Cowper, ever anxious to link himself with a majority, closely associated himself with the malcontents, although he had been a member of the Committee which prepared the Bill, and was present when the Report was adopted.

On the 16th August Wentworth moved the second reading of his Bill, Mr. Darvall having on that day presented a petition praying for delay for one month, and for two elective Houses. Agitation was at the same time fomented throughout the colony, and petitions were procured by the opponents of the Bill. Scorning the aspersions upon himself and his friends, Wentworth reminded the House that when they were elected it was well known that on them would devolve the duty of framing a Constitution; that by the Bill of 1852, published but not enacted, they had acquainted the public with their views,

[1] It is fair to Mr. Parkes to state that in his place in the Legislative Assembly in 1872 he said,—"Of Mr. Wentworth's labours in the Constitution perhaps I may be permitted to say that I have lived long enough to see the error of some of my feeble opposition to those labours. I have lived long enough to know that in that constitution he was careful with the painstaking care of a man having a fatherly regard for his country, to make broad the foundations of it." Mr. Parkes had learned wisdom at the expense of the country; but could not undo the mischiefs which with the help of Lang and others he had inflicted upon it.

and that with those views the public had silently acquiesced. Adverting to the public meeting of the 15th, he regretted that members of the House by the part they had taken had "destroyed the freedom of the representatives of the country, and degraded the position which the legislature ought to occupy; and I lament much to see some honourable members, my friends, and who have on most occasions acted with me, consent to sink from the rank of representatives to that of mere miserable delegates." Referring to the requirement of a majority of two-thirds to effect organic changes, so that the Constitution might not be altered and shattered to pieces by every blast of popular opinion, he showed, to the confusion of Mr. Darvall, that a similar safeguard was embodied in the Constitution of the United States of America. Glancing at the Ordinances recently imposed by the Colonial Office upon colonists at the Cape of Good Hope, he asked how English statesmen could learn the requirements of the colony. If anxious

"to obtain information, where (in the absence of any work of high authority) could they seek for it except from the most erroneous and polluted sources? (Hear, and oh!) I emphatically repeat my question, Where except from the most polluted sources? (Loud and prolonged cheers.) Look to certain books and brochures lately given to the British public under a name[1] not necessary to mention in this Council, and I will ask honourable members whether information could be sought from a more depraved and polluted source. (Hear, hear, hear.) I will ask this Council whether the statements contained in those books are true or false, and whether any Minister of the Crown or any other individual seeking information as to the real state of this colony could rely upon any assertion contained in them? The anarchist whose name is affixed to them . . . describes (a great federation scheme) as peremptorily demanded by the colonists, the penalty of refusal being their 'cutting the painter.' Now supposing

[1] Dr. Lang in 1852 published a third edition of his so-called 'History,' and his 'Freedom and Independence for the Golden Lands of Australia.' In the latter he said, "There is no other form of government either practicable or possible in a British colony obtaining its freedom and independence than that of a republic"... Monarchy had been *permitted*, "but republicanism existed from the first by *Divine appointment*;" and colonists "must take their portion out of the hand of the Amorite with their sword and with their bow."

that any Minister of the day could be so weak as to place reliance upon such abominable trash as this, what must be the inevitable result?"

Defending the creation of a hereditary order which was advocated by Pitt, by Burke, and Wilberforce, he contended that the adoption of his proposal would lead to the formation of a powerful body of "men of wealth, property, and education—men not raised from any particular section of the community, but from every class that has the energy to aspire to rank and honour." The want of such an incentive to a laudable ambition was a confessed blemish in the American Constitution.

"It was well known that the great Washington had anxiously contemplated the introduction of a titled order into the Constitution of the States; but it was an incident in the career of that illustrious man that he lived to become an object of suspicion to the ungrateful country he had served so faithfully and so long. True, posterity has done justice to his memory and fully recognized his exalted patriotism, his noble virtues, his eminent services, the purity of his intentions; but in his lifetime he was doomed to find how shallow and transient is popular favour."

Without such a career before them, who that could escape would be content to see their children occupied in the money-making schemes of a filthy-lucre-loving community?

"Who would stay here if he could avoid it? Who with ample means would ever return if once he left these shores, or even identify himself with the soil so long as selfishness, ignorance, and democracy hold sway? And yet—what a glorious country would this be to live in if higher and nobler principles prevailed; blessed with the most bounteous gifts of Providence, it affords in its illimitable tracts happy homes for millions yet unborn. With regard to the clauses in question, I know not the opinions of honourable members, but I can only say that if they be not adopted the colony will be virtually disfranchised. (Loud applause from all sides.) Why, I ask, if titles are open to all at home should they be denied to the colonists? Why should such an institution as the House of Lords (which is an integral part of the British Constitution) be shut out from us?"

He showed that the hereditary and elective principle could

not come into force till after the lapse of thirty or forty years. The proposed order had been ridiculed.

"I seldom care to allude to personal attacks upon myself, and if I allude to some which have been recently made it is but to express my utter contempt for the vagabonds who made them. I am not the man to be deterred from pursuing the course which I conscientiously believe to be the right one. I may be mistaken in my opinions, but I am assured that in no wise have I forfeited the confidence and respect of those who well know the public principles which have ever guided me in my public career. (Loud applause from all sides.) The paltry efforts of my dirty revilers therefore do not affect me. If it be true that there is any blot on my escutcheon (if I have one) which has not been my handiwork, what blame on that account can attach to me? I deem it sufficient to answer for myself alone. I submit my whole public life to the severest scrutiny, and if it will bear that test I do not see on what principle I can be blamed, or in any way held responsible, for acts which it has not been in my power to prevent, nor in my choice to rectify. I speak for myself alone, and in the language of Pope will say—

> "'Honour and shame from no condition rise;
> Act well your part, there all the honour lies.'

This is my reply to the revilings of the dirty ruffians who have cast them.

"I have been taunted with entertaining a desire to be one of the hereditary legislators of the colony. Whether I do or do not entertain that desire is a matter of very little moment; but, admitting that I do, is it an improper object of ambition? or am I to be denounced for cherishing the hope that some son of mine will succeed me in the councils of the country? If such an ambition were felt by some fifty or sixty other gentlemen of this colony from whom ultimately might spring an honourable, wealthy, and educated aristocracy,—I would ask, are those mischiefs to be avoided, or ends to be desired and consummations devoutly to be wished for?"

The remainder of his speech it is needless to refer to in detail. He analyzed the Constitutions of the United States, their vices confessed by De Tocqueville, the ostracism of the wisest, the prevalent corruption, demoralization, and grasping at spoils. For their reputed munificence there were two reasons,—"because the expenditure is directly or indirectly beneficial to themselves,

and because for the most part the taxation of the country which applies to it is derived from the rich." The Government was the reverse of economical; and, by De Tocqueville's admission, tyrannical over the administration of justice and in coercion of public opinion. He apologized for lengthy citations from De Tocqueville and Calhoun in proof of the different framework of the British Constitution which he advocated, and the American model which some would copy but he heartily despised. The period of its dissolution it might be difficult to predict; but when the demoralization by presidential elections might be complete, when one party might be strong enough to grasp at permanent domination, the election would be made for life, and a despotism would be established which would monopolize the revenues and lavish them in rewarding those who had contributed to the elevation of the despot. The germs of such despotism had been sown, and the consummation could not be remote.[1]

Did Australians wish for the American or for the English Constitution? If they wished for the former they must have an elective President as well as an elective Upper House. As for the petition praying for delay of a month, although the public had had several years in which to express their opinions, and had acquiesced in the proceedings of the Legislature, he was very unwilling to disregard it. Although to defer the Bill might be in effect to abandon it; although the object of those who had set Darvall in motion might be to defeat the measure altogether, when Wentworth and Deas Thomson were absent, nevertheless, to take away all pretence of fair opposition, he was willing to allow three months' interval, instead of one, for consideration of the Bill after its second reading, and would take that reading on the understanding that the principle of having two Houses was affirmed, and that it was an open question whether the Upper House should be elected or nominated. A special report of the debate stated that Wentworth sat down amidst loud and prolonged cheering.

James Macarthur of Camden Park formally supported the

[1] Wentworth lived to see the appeal to arms which followed the rejection of Breckinridge and the election of Abraham Lincoln in November 1860.

second reading of the Bill, and Darvall moved the adjournment of the debate. Of his speech it will be sufficient to say that it was nearly as long as Wentworth's, that it was not without cleverness, and that it was thought that it was by accident rather than on principle that he opposed the Bill, in favour of which, but for accident, he would have been just as willing to speak. He moved that the Bill be read a second time in six months.

Mr. James Martin on a subsequent day, in a speech whose eloquence won universal applause, supported the formation of an elective Upper House, based on a different franchise from that of the Lower House, and holding seats of longer duration. Though he differed from Wentworth, he castigated Darvall for transferring to a mob the allegiance he owed to the Legislature and to the whole colony. He hoped (but alas! in vain) that the English Parliament would have "sufficient discrimination to distinguish between the calm and deliberate acts of this House and the absurd conclusions of such a casual incapable and unreflecting mob as that." Mr. Martin's arguments proved how much more capable he was of dealing with political problems than the expert forensic pleader whom he chastised. Without wearying his audience, he called to his aid the examples of ancient states and the words of statesmen. Burke and Story vivified and instructed the House at his command. From Sir James Mackintosh he drew a condemnation of universal suffrage as the seed-plot of frenzy and oppression. His own proposal was that the Upper House should be elected by the large freeholders—men possessing so great an interest in it that it would be "next to impossible for demagogues to impose upon them." His aim was to build upon such foundations that all men might know that England was the guide and example.

"I desire to blend, if possible, the opposite elements of liberty and restraint in one consistent whole—to secure at once and permanently for the people of this country that *imperium et libertatem*[1] which constituted the memorable feature of perhaps the greatest reign on record."

[1] When Lord Beaconsfield afterwards collocated these words in 1879 there were numerous letters in newspapers English and Continental. A German scholar traced the words to the fourth oration in Catilinam.

. . . "Heirs of the British Constitution ourselves, it should be our pride as well as our duty to hand down our noble inheritance . . . in all its full and unclouded splendour to our posterity. But, while preserving its spirit, let us not be too tenacious of its forms. Let us not, while aiming at conservatism, fall into the wildest democracy. Let our checks and balances be real and powerful, but elastic. So shall we lay the foundation of a nation not only speaking the language and imbued with the literature, but in every way worthy of that great people who first taught the lesson of freedom to mankind."

When the cheers which saluted the future Chief Justice had subsided, the upright Attorney-General, Plunkett, whose sincerity no man doubted, gained by that virtue an applause which had not greeted the efforts of Darvall. The shifty Charles Cowper followed in the debate, and declared his intention to identify himself with the aspirations of those who had been denounced in the House as "paltry ruffians." He also quoted authorities, but they were the speeches of modern officials. His own words show his fitness: "I have no predilection in favour of any particular kind of constitution. All I desire is to have something that will work well; . . . if I could be satisfied that the scheme before the House would work well, nothing could give me greater pleasure than to withdraw my opposition." (He had indeed no idols of the den, but he had gods in the market-place.) It was argued that "population was not the only element" to be considered in distributing seats, "but I believe that in this colony property and population go very nearly together." Mr. James Macarthur followed, and reminded Cowper that he had recently supported the principle of a nominated Upper House when it was advocated by Mr. Lowe. Macarthur pleaded for the Bill, and cited numerous constitutional authorities. Wentworth,

"in framing a constitution for our common country, has at heart the promotion and security of its best interests. To attain this he has devoted to the task, with that zeal and ardour which characterize him, his talents, his best energies, every generous impulse of his nature, united and controlled by a deeply-seated and fervid love of country. It was the force of this feeling which led him to beat down opposition by the lightning of his eloquence, or to seek to crush it in the grasp of his strong sense." (In future days) "when no longer the dupes of speculative theorists or unscrupulous demagogues, the people of

this city will wonder at their temporary blindness, and with one voice award to their distinguished representative his true desert." . . . "I entertain a firm reliance that it is reserved to Australia, under the auspicious shelter of that constitutional form of government with which will be connected a name not unknown to history, to rear a power on this shore of the Pacific: . . . thus will this Australian province be looked upon with admiration by the nations of the earth, and history will point to her prosperous career as combining the blessings of good order with true, moderate, and rational liberty."

In the struggle between British principles and democratic notions, he hoped their children's children would win triumph for reason and England, in his native land. Another native of the colony, son of that Campbell who was a friend of Bligh in 1808, followed John Macarthur's son in the debate of 1853. The distribution of seats vexed his soul.

"The Hamlets will have an additional member, and Sydney—my native city—only four members altogether. . . . The democratic principle must prevail wherever the British Constitution is carried out . . . I stand here contending for universal suffrage, (but) I feel that the people should allow the Upper House to be nominated by the aristocracy. . . . This Upper House should, I think, be elected independently of the Crown and the people. If the members are mere nominees it is impossible that they can be independent; but all difficulty may be got over by introducing the elective principle, and allowing the members of the aristocracy to elect their representatives. This too may get over the difficulties and disputes between the advocates of the elective and nominee principles."

Mr. Campbell made no attempt to define the aristocracy to which he as a democrat would entrust the formation of an Upper House. His words are only quoted here to show the nature of the opposition to Wentworth. Another member, Mr. George Macleay[1] (a son of Alexander Macleay, the Colonial Secretary, who reduced the Government departments to order under Governor Darling), who had served on the Select Committee, defended the Bill with understanding, and exposed the fallacies of its opponents with severity. When and how had Mr.

[1] Now Sir G. Macleay, K.C.M.G. He accompanied Captain Sturt in the exploration of the Murrumbidgee river and the discovery of the mouth of the Murray.

Cowper contracted such allegiance to Earl Grey's opinions? Mr. Macleay, calling "to mind the infamous works lately published in England about the colony," was not surprised that its character was misunderstood. "As Englishmen, and loving England, as Australians, and loving Australia," it was the solemn duty of members of the House to adhere to English principles, and not hastily adopt American innovations.

Deas Thomson, in a statesmanlike manner, supported the Bill, and showed how large were the powers with which its terms invested the colonists. He declared that every nominee in the House was free to speak and vote on the question "according to his own unbiassed judgment." On such a measure Government influence would be improperly employed. Mr. Thurlow (the mayor) thought the English Parliament would

"never venture to confirm a law which has been passed by thirty gentlemen in the face of thousands." . . . "I entreat the House to pause before it admits this principle of nomineeism into the Bill. After having contended so long and so earnestly to get rid of this system altogether, it is better that hell should gape and swallow us than that we should thus by our own act give up a measure of freedom within our grasp."

Mr. Thurlow had once been a follower of Wentworth, but had become a pupil of Lang. Mr. G. R. Nichols, popular and notable as an advocate of popular rights, was stung to prompt speech for the Bill. "When future generations shall enjoy the inestimable blessings of true public liberty—when the party animosities and personal antipathies of the present day have faded away—when our posterity comes to weigh impartially the great actions of distinguished men, I believe they will place at the head of the list of the worthies of Australia the name of William Charles Wentworth." Loud cheers welcomed the prophecy. As for being guided by Mr. Lowe's opinions, "Mr. Lowe is well known to have changed his opinions as often as a chameleon changes his skin." Mr. Nichols concluded with an earnest declaration, that in supporting the maintenance of the great principles of the British Constitution he was labouring for his country's good. "I know no other country but this. It is my own." Other speakers followed.

On the 2nd September Wentworth rose to reply. Recognizing the completeness with which Mr. Martin had demolished the arguments of Darvall and his friends as to an inherent and inalienable right to representation, and the fact that after Martin spoke the miserable faction seemed to have arrived at the conclusion that their "schemes for the revolution of this country cannot, at all events, be realized now," he declared:—

"I labour, notwithstanding, under a weight of oppression which I never yet before experienced. Commendations, unmeasured commendations, have been heaped upon me within these walls. But, sir, it would seem that I am a despised and calumniated object beyond them. It is some consolation that I retain the friendship of my early associates, of those who have been the partners of my toils, my feelings, and my fame. After a life spent in the service of my country, it is not gratifying to find that I am a man so little understood by the great body of my countrymen—that all the efforts, all the labours of my life to achieve the liberties of my country—those liberties which we have won in frequent contest, piece by piece, until we now have this glorious opportunity of accomplishing their consummation—I say it is painful to see that, notwithstanding the long period I have devoted to this object—I may say almost exclusively devoted to it—the people of this country can style me—their earliest champion, their best friend,—a traitor—aye, sir, a traitor to those liberties which certainly I have been mainly instrumental in achieving. Sir, I admit that there has been a weak point of mine in this debate—that I have taken notice of the calumnies and slanders heaped upon me. But, sir, I would not have it believed, for it is not true, that the epithets I retorted upon my revilers were epithets addressed to the colony or the people at large. No; they were limited, at all events in my intention, if not in my words, as I believe they were, to the vile slanderers themselves. I never meant to apply those terms which have been considered so objectionable, and which I admit were objectionable, to any beyond the few paltry assailants of my motives and my character. And, sir, I hope the public at large will receive from me this sincere declaration of what was the real object and intention of the words which I then uttered. (Loud cheers.) No doubt it is expected of me, and perhaps with reason, considering that now sixty winters and more are on my head, that I should possess some moderation. No doubt it is expected that when I am smitten on one cheek I should turn my other cheek to the smiter. Unhappily it is not in my temperament or in my

nature to be thus forbearing. There is within me a flood of lava which ever and anon boils over, and which I cannot keep down. This is the infirmity of my nature rather than the fault of my intention."

He exposed the inconsistencies of Darvall and the blunders of the "arch-anarchist" Parkes, as proving

"how difficult it is to frame a constitution, how impossible it is to avoid some folly or other when we depart from the great landmarks of the British constitution, when we cease to regard the maxim—*state super antiquas vias.* That, sir, is the maxim we ought to adhere to. It is the maxim which has guided me in framing this measure, and the maxim which I confidently anticipate will be adopted by this House. Sir, I do believe from my conscience that all the opposition we are now encountering has arisen from a few obscure demagogues, who, if they could get the upper hand in this country, would tread with an iron heel on its neck. I do not deny that many honourable and respectable men have been induced to join in this movement."

But the three months during which he proposed to delay progress with the Bill, so that public opinion might be maturely formed, would, he hoped, dissipate the organization or conspiracy against the measure. He confuted the reproach that the proposed Upper House could be impenetrably obstructive by showing that though it was to contain not less than twenty members, the Governor could at any time, under Royal sanction, add more.

He foreboded that two elective Houses might coerce the Governor, and the ultimate consequence would be "a dissolution of the connection with Great Britain. Yes, sir (on the plan of Darvall, Parkes, and Cowper), in the place of the Crown must be substituted an elective President, and this country must very soon, or at all events in the long run, become a republic and nothing else." He believed that much of the outcry against the Bill was due to absurd rumours that he and others aimed at titles of Duke and Earl; but no supporter of the Bill contemplated that any higher title than that of baronet would be conferred. For his part, he thought the colonists had been "too long excluded from titles." As to the insinuation that he desired one, he denied it. He still thought that an hereditary order, not necessarily born to the privilege of legislation, but capable of electing legislators after the manner of Scotch and

Irish peers was good for the country; but his views would probably "be opposed by a majority of the House as they were by a majority out of doors," and he was not inclined to persist in them in defiance of a majority. Without the clauses on that subject the Bill was complete, and supplied by the fourth clause a nominated House which would exercise and have "a right to exercise a veto on the legislation of the Lower House." He confuted statements that in former days he had denounced the principle of nomination. What he had denounced was the idea that an unofficial nominee should vote, not independently, according to the intention of the Constitution, but against his conscience in order to please the Government.

Further, he was accused of tergiversation, of deserting his love of democracy. He denied that he ever loved it; and, amidst a storm of applause which spread from floor to gallery, read the concluding patriotic lines from his Cambridge prize poem—"a production which attracted more attention than it deserved, but which at all events shows that from my boyhood upwards the establishment here of the British Constitution has been my sole end and aim." That effusion would prove that he commenced his career as an ardent admirer of the British Constitution,

"and that only under a policy which was to flow from a similar constitution did I ultimately expect an empire to rise in these seas and upon these shores which might rival in greatness and in splendour the glorious mother-land when her glories have departed. This was my early dream—it is the hope of life; a hope which I will not part with but with the last pulse of my existence. Sir, I feel that we have arrived at a great crisis in the history of this country. I feel that we are in the throes and agonies of a constitution which must influence for good or for evil, for weal or for woe, our future generations—influence them, I repeat, in exact proportion as we assimilate the Constitution to the glorious model of our fatherland. Sir, I am aware that there are those by whom the authority of the ancient pilot is unheeded. I know that we are surrounded by a crew of rash and daring, and as I conscientiously believe, of disloyal innovators, who would wrest the helm from my hands, and steer the vessel right on the rocks which lie ahead of her. Sir, those rocks are anarchy and confusion. These are the Scylla and Charybdis we have to avoid, and

which we must avoid, before this glorious vessel of the state can be anchored in security. Sir, I call upon the officers and the crew of this vessel—that is, the loyal part of the crew—to put down this mutiny—to put it down, I repeat, at all hazards. I call upon them to be firm, to be resolute, to do their duty. Sir, if we are firm we shall succeed; if we falter, we shall be beaten. Sir, we shall not retire from this disgraceful and ignominious contest—this fatal Pavia—even with our honour. No, we shall leave even that behind; we shall not be able to exclaim with Francis I.—*Tout est perdu, sauf l'honneur.* Sir, we have in this matter a solemn duty to perform—that duty which we owe to ourselves, our children, our posterity, our country, and our God. I call upon you fearlessly, faithfully to perform it. We cannot recede without disloyalty and disgrace. Our only chance of success lies before us; lies in an onward course to the goal we have in view—the consummation of this glorious Constitution. Sir, I will trouble the House with but a few more observations. This is probably the last occasion—at all events the last important occasion—upon which this voice may be heard within these walls; and the time cannot be far distant when this tongue will be mute in death. In the short interval which must elapse between me and eternity, on the brink of which I now stand, I would ask what low motives, what ignoble ambition can possibly actuate me? The whole struggle and efforts of my life have been directed to the achievement of the liberties of my country; and it is with this Constitution which I now present for its acceptance that this achievement will be consummated. Sir, it has not only been my misfortune, but it has been the misfortune of all my countrymen that we have not lived in troublous times, when it became necessary by force to repress domestic faction or treason, to repel invasion from without, or perhaps to pour out our chivalry to seek glory and distinction in foreign climes. This is a privilege which has been denied to us. It is a privilege which can only belong to our posterity. We cannot, if we would, sacrifice our lives upon the altar of public good. No such opportunity has occurred, nor probably will occur to any of us. Yet, sir, there is one heroic achievement open to us, and that is to confer upon this country that large measure of freedom, under the protecting shade and influence of which an ennobling and exalting patriotism may at last arise which will enable the youth of this colony—the youth of future ages—to emulate the ardour, the zeal, and the patriotism of the glorious youth of Sparta and of Rome, and teach and make them feel that ennobling sentiment which is conveyed in the lines of the Roman lyric, *Dulce et decorum*

*est pro patria mori.* Sir, this is not our destiny, but I trust it will be the destiny of another generation who shall arise with larger feelings, and it may be purer aims. Sir, this great charter of liberty, which I believe will be pregnant with these results in after ages, I leave now as my latest legacy to my country. It is the most endearing proof of my love to that country which I can leave behind me. It is also the embodiment of the deep conviction which I feel that the model, the type, from which this great charter has been drawn is, in the language of the eloquent Canning—the envy of surrounding nations and the admiration of the world. Sir, in the uncertainty which hangs over the destiny of the country—in this awful crisis of our fate—I can only hope that the deliberations of the country may be guided to a safe conclusion upon this vital question, and that by a large, a very large majority of this House and of the community beyond it, the Constitution will be gratefully and thankfully received."

The Speaker vainly strove to quell the tumult of applause which saluted Wentworth as he sat down. An eye-witness,[1] describing the scene at the time, wrote that, throughout, the speech "not only drew heavy rounds of applause from the spectators, in defiance of all rule and the Speaker's repeated calls to order, but it so deeply affected the members, that at those parts which referred to the honourable gentleman's own career, and to the probabilities of its speedy termination by the hand of death, half of them were in tears."

It was the terrible earnestness of Wentworth which nerved him on all great occasions, and imparted itself to his auditors. He sought not by any action or pretence to win others to believe what he did not in his own heart of hearts believe to be true. Even his enemies knew this while they plotted against him. The quotations from his speeches have been long, but they were necessary. They will be almost the last in this work. They make Wentworth known as he was; and it is in order that the men of the time may be known as they lived and were seen, that I have so often cited their words and writings.

The second reading of the Bill was carried by 33 votes against 8. It was understood that the clauses relating to hereditary honours were to be abandoned. The community would not accept them on the assurance of its wisest man. But the

[1] The correspondent of the 'Melbourne Argus.' ('Argus,' 9th September, 1853.)

opponents of the Bill were not content with such a triumph. They prepared to undermine the measure in England in the event of its passing in the colony.

Wentworth had been disrespectful to the Whigs. In denying that he had been a democrat he had declared that he was a Whig until he was ashamed of Whig-ism. "I was a Whig until that great Whig leader and despot, that man who played so many pranks with the colonies, and with this colony in particular,—Earl Grey,—and his faction, converted me from Whig-ism." On that text persuasions might be founded, and Lord John Russell, the friend of Earl Grey, might be moved to destroy Wentworth's handiwork. Moreover, Mr. Robert Lowe was in Parliament, and though a man whose pliant tongue had, in a few revolving moons, been at the service of Governor Gipps, of the opposition to Gipps, and of the opposition to that opposition, could hardly be depended upon in support of any principle, yet hatred of Wentworth might envenom his exertions to prevent the success of any scheme which Wentworth had at heart.

In this instance Charles Cowper, Parkes, and their friends did not miscalculate. But they strove also to defeat the Bill in the colony. Within three days of its second reading a public meeting was held in the open air. Darvall, Cowper, Robert Campbell, assisted Parkes. They condescended to ask for cheers for the Queen, and they obtained the same guerdon for the eight members who had voted against Wentworth. Mr. Parkes thought fit to disclaim republican desires. He for one, "after the contumely heaped upon" himself and his friends—"after the unconstitutional doctrines which had been propounded by the Legislative Council, would never send another petition to that body on this question." Petitions were nevertheless presented from various parts of the colony. Some were in favour of the Bill,—some against it. The latter were more numerously signed than the former.

True to his promise, Wentworth on the 9th September induced the House to postpone farther progress with the Bill until the 6th December, for which day a call of the House was ordered. Both sides used the interval. It was easy to obtain shouts of applause from the ignorant, but the opposition did not find the intelligence of the country with them. They had on

their side political schemers, enthusiastic sciolists, and the proletariat of a community recently exempted from infusion of convicts. The weapon was foul, but not too unclean for Cowper, Darvall, and Parkes to handle. Nor was it repulsive to Robert Lowe in the House of Commons.

From the 11th October to 6th December the Sydney Council was adjourned. On being assembled it received petitions of which a few were in favour of the Bill. Those adverse to it were not weighty enough to imply that the bulk of the electors distrusted the judgment of the House. Mr. Darvall strove to shelve the Bill for six months. He was defeated by 35 votes against 9. In Committee the minority endeavoured to excise the provision, making the assent of two-thirds of members essential before changes in the Constitution could be made. Darvall, Cowper, and Robert Campbell were again in a minority formed by eight members. The House was more evenly divided on the question of excluding ministers of religion from the new Assembly; but 25 votes against 17 affirmed the principle of exclusion, which was applied to both Houses. Mr. James Martin obtained eight supporters of the elective principle for the Upper House. Thirty voted against him. Mr. Murray found only one coadjutor when he proposed that the Governor should nominate a third, that the Assembly should nominate a third, and that the persons so nominated should meet together and elect another third to form an Upper House of thirty-six members.

Wentworth, unable to induce a majority to support the clauses relating to hereditary distinctions, and conscious that even if carried in the House they might damage the prospects of his measure by stirring envy out of doors, abandoned them; and it was resolved on his motion (8th December), that in the first instance the members of the Upper House should be appointed by the Governor with advice of the Executive Council for five years, and that if during that term no amendment should have been lawfully made in the Constitution, the Governor should with like advice nominate all future members for the term of their natural lives.

Cowper and his friends made no attempt to lower the franchise proposed for the Assembly. They endeavoured to strike out

the provision for pensions, although they might have known that every Secretary of State of whatever party had instructed Governors that faith must be maintained in all cases with "holders of present interests."[1] They voted against the clause empowering the new legislature to deal with the waste lands. Darvall persuaded them to oppose a proviso that vested rights of occupiers of Crown Lands should be respected. He, Cowper, Campbell, and five others voted against a majority of 25. The 17th clause required that Bills altering the number or apportionment of representatives in the Assembly should be passed in the second and third readings by a majority of the members of the Council, and with the concurrence of two-thirds of the members of the Assembly. The 42nd clause empowered the two Houses, with the concurrence of two-thirds of the members, on the second and third readings of a Bill to alter any provision in the Constitution. But such a Bill was to be reserved for Her Majesty's pleasure. The two clauses were agreed to.

On the 21st December the third reading of the Bill was affirmed by 27 votes against 6. After completion of its last stage Wentworth carried a series of descriptive resolutions. The Bill was an embodiment of all the rights for which the Council and its predecessors had contended, and when passed into law would redress all the grievances set forth in the Remonstrance of the Council of December 1851. It conferred plenary power of legislation in all matters of local and municipal concernment. It limited to enumerated cases, bearing on the Prerogative of the Crown and Imperial interests, the double power of veto found vexatious in the past. It enlarged the basis of popular representation. It established in the colony

[1] When Wentworth's Constitution Act was (with amendments interpolated in England) legalized, Lord John Russell still impressed upon the Governor the principle in the text. The Government "entertain the opinion in which they do not doubt the concurrence of yourself and the Legislature that the maintenance of those interests is incumbent on the Crown to keep faith with individuals, and incumbent on the Legislature in due execution of its compact with the Crown." The Governor was therefore to reserve for Royal consideration any Bill dealing with interests of "present incumbents either in salaries or pensions" unless he should think it right to negative such a Bill. Parliamentary Papers, vol. xliii. 1856. Lord John Russell to Sir W. Denison (20th July, 1855). Despatch with Constitution Act, 18 and 19 Vict. cap. 54.

for the first time an independent judiciary. It abolished the schedules to the existing Imperial Act, and involved "a necessary implication that the Imperial Parliament has no right to tax the inhabitants of this colony or appropriate any portion of its revenues." It surrendered to the legislature the control of the Waste Lands, subject to the maintenance of rights recognized by law. It gave the legislature control of all the revenue "from whatever source arising, except that portion thereof which is voluntarily granted to Her Majesty by way of Civil List." As a necessary consequence, it established responsible government, and placed in the hands of responsible Ministers the appointment to all offices of trust and emolument within the colony.

"In framing this Bill it has been the anxious desire of this House that the Legislative Council and House of Assembly should form as close an approximation as possible to the Constitution of both Houses of the Imperial Parliament; and the whole scope of this measure is to give stability to those British institutions which we have—to introduce those which we have not—to cement that union which now happily exists between this colony and the parent country, and to perpetuate if possible that identity of laws, habits, and interests which it is so desirable to render enduring."

The Governor was requested to represent to the Secretary of State "the large majorities both of the nominated and elected members" by which the Bill had "been supported in all its stages and ultimately passed."

Wentworth was about to visit England. Deas Thomson, after his long labours, required rest. James Macarthur moved that they be empowered to advocate the Bill in England; and, if need be, to combat any objections "to it or to the passing of the Act of the Imperial Parliament required to give it validity." By 23 votes against 2 the motion was carried. On the following day (22nd December, 1853) Sir Charles Fitz Roy congratulated the Council on having copied as far as possible the institutions of the mother country, which had "achieved for Her Majesty's subjects the most complete system of liberty, consistent with order and good government, which is enjoyed in any part of the world." The House was prorogued, and when Wentworth

resigned his seat it was contested by Mr. Parkes and by one of the proprietors of the leading newspaper, the 'Sydney Morning Herald.' Parkes, the representative of the 'Empire' newspaper, was victorious, with 1427 votes against 779, having received warm patronage from Mr. Darvall.

Neither his own success, nor his public averment that in 1848 he and others secured Mr. Lowe's election entirely by means of the votes of working men, restrained Parkes from lowering the suffrage. The fund upon which a demagogue draws is unlimited so long as there is a rag of popularity to be run after by demanding power for any of his auditory in the street. In the colonies such declaimers have often confessed in private that their public demands were mischievous, but they could not afford to support what they thought right. Such loose ideas exist in England without doubt, but their holders (or temporary occupiers) are usually less loose of tongue. Triumphant at his election, and with his old intrigues with Robert Lowe to aid him, Mr. Parkes might not unreasonably hope to counteract in England the moral force which Wentworth had wielded so potently in Sydney. A series of convulsions in Europe prevented attention to colonial requirements. War with Russia was declared in March, when the Duke of Newcastle presided at the Colonial and War Departments, which had been conjoined in 1795 under the strong hand of Pitt's friend, Dundas, and had not since been severed.

The war entered upon in March in the manner described by Kinglake in his 'Invasion of the Crimea' required firmer guidance than that of the Duke of Newcastle. In June the Colonial Department was severed from that of War. Sir George Grey became Colonial Minister. With the War Department, whose misfortunes shattered the Aberdeen administration, these pages are not concerned. Sir George Grey chose to assume that no legal enactments were requisite to produce great constitutional changes, and in December 1854 (as has been seen), having before him drafts of constitutions for several colonies, the principles of which had been debated for years by his predecessors, informed Colonel Wynyard, the acting Governor of New Zealand, that he had no objection to offer to the establishment of responsible government there, that no

Imperial legislation was required to introduce it, and that unless there were "local laws in existence which would be repugnant to the new system, legislation seems uncalled for, except for the very simple purpose of securing their pensions to retiring officers." Thus at the Colonial Office, where Earl Grey had laboured to deprive the Maoris of their rights, natural as well as guaranteed by the Queen, did another Grey, in defiance of law, and of treaty, act as a cutpurse to the Constitution in one colony while Parliament was about to debate about the Constitutions of others.

Mr. Parkes and his friends, by private representations and public petitions, endeavoured to deter Parliament from sanctioning the proposed Constitution for New South Wales. Mr. Lowe presented petitions to the House of Commons from various localities in the colony. They averred that the Legislative Council was incompetent to express the voice of the people, they denounced the requirement of a majority of two-thirds in effecting constitutional changes, they objected to a nominated Upper House, to the amount of the Civil List, and they assailed the electoral districts proposed. Some of them asked the House of Commons to assume "the function of framing a constitution" such as they desired. For one petition 3792 signatures had been procured in the customary manner. No other petition bore 1000 names. One was subscribed by thirteen persons only. As expressions of opinion of a population of more than a quarter of a million of persons they were feeble, and it was pointed out in the House of Commons that the "two which had the largest number of names were in a great part signed by the same persons, and in many instances the head of the family had himself subscribed the names of all his children."

Before the Bill was submitted to Parliament there had been mutations at the Colonial Office. Mr. Roebuck's resolution about the war crushed Lord Aberdeen's Administration in January 1855. Lord John Russell, to escape censure, when Roebuck gave notice of his motion, had previously resigned, without acquiring honour. Changing horses in crossing a turbulent river was a difficult task. Lord John was sent for by the Queen, but could not form a ministry. Lord Derby, conscious that his friends were in a minority in the House of Commons, was

willing to strive to carry on the Queen's Government at so critical a time if Lord Palmerston and others, who had entered upon the war, would aid him. They declined. Lord Palmerston eventually reconstructed the ministry, becoming himself the Premier over the late colleagues of the Earl of Aberdeen, who, with the Duke of Newcastle, retired.

Mr. Sydney Herbert went to the Colonial Office, while Lord John Russell was sent as a Commissioner to Vienna, where he laboured abroad, and did nothing to the purpose, while the colonial constitutions were not considered in Parliament. The Draft Bills sent from New South Wales and from Victoria had been deemed to interfere with certain Imperial enactments, in relation to disallowance of Bills by the Crown. They had been relegated to the session of 1855, and thus, although the New South Wales Bill had been passed in the colony in 1853, it had not been legalized in May 1855, at which date Lord John Russell signified the Queen's approval of a Constitution Bill, which the Legislature in Tasmania passed in November 1854. A South Australian Bill was, in May 1855, referred back for reconsideration in the colony if the local Legislature should think it proper to omit certain clauses deemed irregular.

But there were reasons against so dilatory a procedure with regard to the two gold-bearing colonies. The political power wielded in New South Wales could not be set at nought. Her public men were capable. They had overcome the protervity of Earl Grey, and would not shrink from encountering Lord John Russell. It was felt, moreover, that the Home Government was bound to give facilities for remodelling the institutions which had been framed before the flood of gold-seekers had burst like a tidal wave upon the land. The latter reason was imperative as regarded Victoria. Her population had increased five-fold in four years. They had, by the events which have been described, become already a bye-word. The abasement of law, permitted in 1853, had indeed been atoned for by the firm bearing of Sir Charles Hotham in 1854. But no worthy subject of the Queen could fail to lament the fatal encounter at Ballarat. There is no political or social blot which an Englishman ought not to be able to wipe out otherwise than in blood. No one could deny

that wise change was needed. A Draft Bill had been passed in the colony in response to Sir John Pakington's invitation. Sir Charles Hotham, in October 1854, had urged that "no time should be lost in bringing it into operation." The insurrection at Ballarat did not diminish, but increased his importunity. To govern, as he was asked to govern, with Executive Councillors, whom the Secretary of State would not allow him to change, even when they intrigued against him, was a refinement of torture, and involved subjection to blame for misdeeds of others. He warned the Secretary of State that if the new Constitution should not have arrived in October 1856, there would be an excitement bordering on revolution, or the colony would be left without a government. The term of the existing Council would expire at that date. He had been thanked in warm terms, by direct command of the Queen, for the promptness, energy, and prudence with which he had quelled the alarming outbreak at Ballarat. He wrote (April 1855), that though the masses confined their view to the obnoxious license fee, "designing orators and anarchists" had played upon their feelings, had worked them to the desired pitch, and would have been satisfied with "nothing short of the overthrow of the Government. . . . A march on Melbourne would have been the result of a victory." Clearly, if the new constitution, desired by all, would establish order, it was the duty of the Secretary of State to procure its enactment.

Two years had elapsed since the invitation of Sir John Pakington. In March 1854 the local Legislature passed their Bill. It was received in England in May, and Lord John Russell, in explaining to Sir W. Denison, the long postponement of the New South Wales Bill, pleaded the advanced period of the session at the date of the arrival of the Victorian Bill. Thus one year had been lost.

While Lord John Russell was blundering at Vienna, early in 1855, a colonist went thither to urge upon him the danger of leaving the Victorian Constitution in abeyance. The suspension of the Conference enabled the noble lord to return to Parliament. It was seen that to remit the Victorian Bill back was impracticable. It was determined to amend it by excision of some of its contents, and to legalize the remainder by an

Imperial Act. If such a course could be adopted with regard to Victoria, it was plain that it was practicable with regard to the New South Wales Bill, which Deas Thomson and Wentworth were in London to promote. By the necessities of Victoria Mr. Lowe was driven from the standpoint from which he had hoped to thwart Wentworth's Bill. It was not to be sent back to the colony for reconsideration. On the 10th May Lord John Russell introduced "a Bill to enable Her Majesty to assent to a Bill as amended of the Legislature of Victoria to establish a Constitution in and for the colony of Victoria." The Colonial Act, as amended, was appended as a schedule to the Bill. Mr. Lowe, not then a member of the Government,[1] denounced the Colonial Bill as *ultra vires*, and one which it would be discreditable for Parliament to accept. His paramount spleen against Wentworth's Bill was shown by his statement that "he was the more inclined to oppose the Bill because he saw from a notice that had been given what was intended to be adopted" with regard to New South Wales.

The amended Colonial Bill was not the Bill to which the Colonial Legislature had agreed. If the Government could amend, so could Parliament amend. Thus they were involving themselves in "a mass of inextricable confusion, difficulty, and anomaly." "But as the case was one of emergency" to prevent delay (and at the same time effectually clog Wentworth's Bill), he suggested that a Bill might be passed to empower the Governor-General of the Australian colonies to assent to the amended Bill in Her Majesty's name; or that Parliament should itself "legislate directly on the subject." His remedies were at least as absurd as the inconveniences to which he objected. To invite the colonies to act through their legislatures, and then to

[1] He became Vice-President of the Board of Trade in August 1855:—Lord John Russell having in the meantime, to avoid censure (on a motion of Sir E. Bulwer Lytton), announced his resignation in June, though he retained office until July. The notice alleged that Lord John's conduct at Vienna, "and his continuance in office as a responsible adviser of the Crown, have shaken the confidence which the country should place in those to whom the administration of public affairs is entrusted." Sir W. Molesworth, at the time First Commissioner of Public Works Office, assumed the seals of the Colonial Office in July, but died in October, and was succeeded by Mr. Labouchere.

set aside their work and impose upon them an Act of the Imperial Parliament, was preposterous. To refuse the Queen's assent, and then to delegate to a Governor the power to assent, was idle unless delay were the object in view; and Mr. Lowe confessed that the case was one of emergency. Lord John Russell defended the course of the Government on the ground that it was not proposed to insert in the amended Bill any "provisions which the Legislature of Victoria had not sanctioned." It would contain only that to which they had assented. He eliminated only limitations of the power of the Crown. Mr. G. Butt and Mr. Adderley spoke against the Bill, but neither they nor Mr. Lowe opposed its introduction, and it was read a first time.

On the 17th May Lord John Russell introduced a similar Bill with regard to New South Wales. Mr. Lowe vehemently assailed it. It was "a nullity, and in its present shape could not stand." The only way to give it vitality would be for Parliament "to act upon its own convictions instead of degrading itself into a mere machine for registering the Acts of Colonial Legislatures." He opposed what he had called a nullity, on the ground that it contained *indicia* of a corrupt bargain, "involved principles fatal to all good government in the colonies, and because it gave a civil list of unexampled extravagance, which appeared to be the consideration by which not a few of the votes in favour of it had been obtained." The "nominated chamber was nothing but an iniquitous device of a small oligarchical clique." The clause requiring a majority of two-thirds of each House to effect constitutional changes was a base device to perpetuate an odious system of tyranny. Let the New South Wales Bill and the Victorian Bill be referred to (that region of delay) a Select Committee. He spoke "as a witness," he knew the men of the colony, and protested against allowing the House to become the "tool and instrument by which an oligarchical faction in a colony should rivet a galling yoke upon the necks of their fellow-subjects." It was indeed because he knew the men of the colony that he spoke so strongly. He had often winced under the lash of Wentworth, and he thought the hour of retaliation had come. The passionate sympathy which Wentworth had met in Sydney when he

presented the new Constitution as his latest legacy to his country had been converted into gall in the breast of his detractor, whose name was branded amongst Australians with the epithets scornfully applied to him by Wentworth on the hustings in 1848. Lord John Russell hinted that Lowe, who sneered at others as ill-informed, might be "himself too well-informed, having taken too warm a part in debates in Australia," and be anxious to use the House of Commons to give effect to views he had contended for in the colony. As to the legal difficulties, the Bill had been maturely considered in the Colonial Office, and had been submitted to the experienced lawyer who drafted measures for the Government. Then arose a man who had done much mischief to his native country, had goaded others to acts for which they suffered, had been denounced as a traitor by one of the sufferers,[1] and was about to transfer his capacity for intrigue to the ill-fated colony of Victoria. Mr. Charles G. Duffy supported Lowe. He saw in "the two-thirds clause" an odious element of stability. The centre of gravity which Wentworth had designed in laying down the lines of the Constitution was adapted to resist the gusts of passion, or the under-currents of sedition. For that reason it was obnoxious to Mr. Duffy. The great men of America in 1787, tried in a fiery ordeal, had seen that guarantees were needed against hasty exercise of power under influences of anger or discontent. Smaller men were content to be guided. The fifth article of the Constitution embodied the wisdom of Washington, Hamilton, and others. The contemporary "Federalist" commended it on the ground that it "guarded equally against that extreme facility which would render the Constitution too mutable, and that extreme difficulty which might perpetuate its discovered faults." The learned Judge Story in 1851 pointed with pride to the provision as "a bar against light or frequent innovations;" and far from deeming it reprehensible because it rendered changes impossible at the dictation of a mere majority, he looked at a contrary possibility, and contended that there was "no reason to fear that it will produce any instability in the Government,"—by the facility it afforded for amendments. Casting his eyes upon institutions in other lands, Wentworth had adopted the provision

[1] John Mitchell.

which had worked so well, and had been so highly lauded for more than sixty years in America. With such a provision he launched the ship of the state.

When the ill-fated turret-ship, the 'Captain,' was in course of construction some of the more skilful and prudent advisers of the Admiralty warned men in authority that her stability was questionable. Admiral Sir Spencer Robinson, and Mr. E. J. Reed, the Chief Constructor,[1] were unheeded. In August 1866 the latter expressed doubts about the probable stability of the vessel, and the former submitted the fact for consideration by the Admiralty. The builders (Laird Brothers) affirmed that they had carefully considered the position of the centre of gravity and the centre of weights, and the work went on. Mr. Reed, in March 1870, unable to anticipate a satisfactory result of trials at sea, recommended the Admiralty to withhold further payments for the vessel. Mr. Childers, who was then First Lord of the Admiralty, had a passion for re-constructing departments. When first installed in office (1868) he issued a memorandum for reorganizing the Admiralty; and maugre the forebodings of skilled persons, his arrangements were sanctioned early in 1869. He quarrelled with Sir Spencer Robinson, and in July 1870 he got rid of the Chief Constructor. In September 1870 the English public and their kindred throughout the world were horror-struck at a catastrophe which proved the danger of launching into the storms of life a mechanism devoid of needful stability. The 'Captain' foundered off Cape Finisterre; and, of her complement of 500 souls, less than twenty escaped in a boat. Although one of her builders informed the court-martial that "even if he had known that the stability of the ship vanished entirely at an inclination of 54°, he would not have felt at all uneasy," the Court regretted the employment of a ship in which a grave departure from her original design had been committed, whereby her draught of water had been

[1] Mr. Reed, in April, 1868, read an elaborate paper on the general subject before the Institution of Naval Architects, showing that a certain class of monitors would be "dangerously deficient of statical stability," and that the danger of their being blown over when carrying sail under certain conditions of oscillation and wave-roll "would be very great."

increased, her free-board correspondingly diminished, and "her stability proved to be dangerously small."[1]

The stability which Wentworth had designed for his country found as little sympathy in Lord John Russell as the warnings of Mr. Reed evoked from Mr. Childers. When Duffy objected to the clause which stipulated for majorities of two-thirds in alterations of the constitution, Lord J. Russell jauntily said "he had omitted to state that he proposed to give power to the Legislature to make alterations in itself by the usual majority:" and with an insolence which could only be accounted for by an ignorance which he had not the modesty to plead, Mr. Duffy proceeded to sneer at the colonial statesmen as intriguers whose success might prevent the immigration of worthier men than themselves. Whatever Mr. Lowe might do, he would resist the Bill. The Bill was nevertheless introduced, and its second reading was moved on the 14th June, immediately after the Victorian Bill had passed through the same stage. Mr. Lowe, in a vituperative speech, moved that it be read a second time that day six months. Lord John had commented on the ability of the debates in the Sydney Council, and Mr. Lowe retorted that the members had better have thought less of Burke, Cicero, Plato, and Montesquien, and more of the colony. He charged with corruption men who were known to be pure. To pass the Bill would, he said, create discord which might "overthrow the Constitution they were asked to pass, together with probably the connection between the colony and England." He had been so little loyal to that connection when he was in Sydney that his forebodings were estimated at little worth. Mr. Baxter seconded the amendment, and denounced a nominated Upper House. Mr. Ball, member for the Dublin University, trusted that, whatever complaints might be made of Downing Street, "the time would never come when the colonies would have just cause to complain of the tyranny of the House of Commons." He remarked that Mr. Lowe had himself advocated in Sydney a nominated House with as much ability as he displayed in the House of Commons in condemning it. One Mr. Maguire

[1] The fate of an unbalanced vessel, marine or political, was thus described by the gunner of the 'Captain.' "When I last saw the ship, she was as nearly bottom up as possible." (Evidence before court-martial, 27th September, 1870.)

supported Lowe, and by 142 votes against 33 the second reading was affirmed.

Wentworth (whose colleague, Deas Thomson, was at the time absent in ill-health) lost no time in publishing a categorical refutation of Mr. Lowe's arguments. To the plea that the outer population had not sanctioned his Bill he retorted—

"Considering that the discovery of gold has induced, for the last few years, a vast amount of voluntary immigration from all nations, and of all principles, and that among them is a very thick sprinkling of democrats, chartists, socialists, red republicans, *et hoc genus omne*, forming altogether a transitory and most undesirable addition to the population of the colony; considering, moreover, that those who were foreigners could not possess the elective franchise, and were not, therefore, entitled by law to a voice in the framing of the Constitution, it must be evident that, to allow petitions signed by large numbers of such persons to prevail against the votes of the Legislative Council, would be, in fact, to transfer the government of the colony into the hands of the very sum of the colonial population."

He denied the truth of the assertion that the Council did not represent the intelligent and industrious colonists. He denied that any oligarchical clique existed, and defied Mr. Lowe to name the persons composing it. If there was a monopoly of the Crown lands, it was still open to all who chose to share in it, for millions upon millions of acres could still be had by any one upon application. But if there were monopolists, the so-called monopolisers owed their chief thanks to Mr. Lowe himself, for though he was not the chairman of the Committee whose report led to the existing tenures of Crown lands, it was matter of notoriety that he took a prominent part in drafting the report, and influentially supported it in the Legislature. The imputation of Mr. Lowe that the Civil List sprang from a corrupt bargain was "false and calumnious." As the originator of the Bill, Wentworth repelled the insinuation with scorn. The future salaries paid out of the Civil List would be received not by those functionaries who assisted in framing the measure, but by their successors; and the official members had uniformly withdrawn from the Committee when the pensions in which they had an interest were considered, and had followed the same course when the subject was dealt with in the House.

The imputation was worthy of the man, and "could only have proceeded from a mind strongly tinctured with malice or suspicion." How was it that the lynx-eyed objector found no fault with the much larger Civil List annexed to the Victorian Bill? Mr. Lowe had "not lived in Victoria, had no old scores there to pay off, no mortifications and insults to forget, no vengeances to wreak," and therefore the Legislature of that colony might dispose of the money of the people "without reprobation or even comment." After refuting in detail Mr. Lowe's strictures upon the electoral divisions of the colony, Wentworth set forth the resolutions adopted by the Legislature, in which the principles embodied in the Bill were summed up after its completion. As to the nominee chamber, Mr. Lowe had, a few years ago, strongly advocated it.

"Let him explain if he can how it is that one of his mature age and intellect is subject to these perpetual oscillations. The fact is, Lord John Russell hit the right nail on the head the other night. The colony at last became too hot for him, and he could remain no longer. Many of those who were his former associates felt obliged, for reasons to which I need not now advert, to drop his acquaintance. Mr. Lowe has sunk into a mere partisan—the partisan of that democratic faction who, after he had been pretty generally avoided by his equals, did their utmost to conciliate his favour, and gain him over to their views by bringing him in as one of the members for Sydney. He can do no less in return than endeavour to place those who lent him a helping hand in his extremity in possession of the high places and power of the colony. That is the true object of the faction—who have been at the bottom of all these petitions, the last of which was got up mainly by the Rev. Dr. Lang, of whose objects and those of his party it is only necessary to say that, at a public meeting held not very long since in the city of Sydney, he expressed a hope that he should live to see the day when the Queen's colours should be dragged through the mire of the streets. It is very easy for Mr. Lowe to call the gentlemen of the colony an aristocratic clique. He has no other way of venting his impotent spleen against them. My principal regret is that he has succeeded in inducing Lord John Russell to consent to an alteration in the 42nd clause of the Bill, by which it is provided that any changes in the Constitution of the Legislative Council or Assembly shall only be made with the consent of a majority of two-thirds of both Houses."

It was true that Parliament had empowered the Canadian Legislature to convert a nominated Chamber into an elective one, but there was no analogy between the circumstances and the pursuits of the inhabitants there and in Australia.

"The people of Canada are so poor that the members of the Assembly receive wages and travelling money for their services, and the members of the Upper House need, and will receive, the same allowance as soon as it assumes an elective form. The members of the Legislature in Australia would spurn any such payments."

Urging sundry reasons, he added—

"I am not without hope that, on more mature consideration, the 42nd clause of the Bill may be upheld in its integrity; feeling no doubt whatever, if it became the general opinion of the colonists of New South Wales that any change in the constitution of the nominated chamber was necessary for purposes of good government, that the required majority would be easily obtained by the pressure of public opinion. But one word more. As one of the delegates of the Legislature of the oldest and only colony of Australia in which the representatives of the people have shown an unequivocal desire *stare super antiquas vias*, and to prefer the ancient landmarks of the British Constitution to those American models which the Americans, when they renounced their allegiance to the Crown of England, and declared for a republic, had no alternative but to adopt—I trust I may be permitted, without giving any offence, to express my surprise and regret that the loyalty and attachment of the inhabitants of New South Wales to the institutions of their forefathers should be met by what appears to be a general desire to force upon them, not the American constitution in its purity—for that is incompatible with the authority of the sovereign, and impossible where there is not a federation of States,—but new and untried forms of democracy, of the working of which no sufficient experience has yet been had, but of whose ultimate result—a severance from England—none of the advocates of these changes in the colonies, I believe, and certainly few, if any, sober-minded men there, have any doubt. For my own part, I sincerely hope that these experimental democracies may not prove re-actionary on our British institutions, and that the unsettled masses which are always longing for change may not come to the conclusion, sooner or later, that forms of government, which are thought good enough for Englishmen abroad, might be introduced with advantage at home."

Whether Lord John Russell had given way to Lowe or not in the matter of the 42nd clause of the Colonial Bill, he practically strangled it. The reasons he adduced in his despatch to the Governor are disingenuous enough to suggest a surmise that he acted treacherously throughout. He had in May announced his intention to give power to the Legislature to defeat the intention of the framers of the Bill. Subsequently Wentworth out of doors, and members in the House, pleaded for the retention of the 42nd clause. For any information required it was easy to appeal to Wentworth or to Deas Thomson. Yet Lord John Russell had the insolence to write (although the 42nd clause expressly provided a method for making amendments)[1] that "the framers of the Constitution appear to have omitted altogether any special provision reserving to the future Legislature power to alter" the provisions of the Bill except as regarded the constitution of the Council. As the Colonial Bill would become, in "a legal point of view," portion of an Act of Parliament, it might be doubtful whether, in the absence of special provision, the new Legislature could meddle with the Constitution. Therefore the noble lord hit upon an expedient to defeat Wentworth's safeguard, by empowering the Sydney Legislature to repeal it by a "simple majority." The fourth clause of the Imperial Act (18 and 19 Vict. cap. 54) made it

"lawful for the Legislature of New South Wales to make laws, altering or repealing all or any of the provisions of the said reserved (Wentworth's) Bill in the same manner as any other laws . . . subject to the conditions imposed by the said reserved Bill on the alteration of the provision thereof in certain particulars until and unless the said condition shall be repealed or altered by the authority of the said Legislature."

Thus the safeguards of the 17th and 42nd clauses were annihilated, and an ordinary majority could repeal any portion of the Constitution. By this provision, Lord J. Russell wrote, "Her Majesty's Government conceive that the purpose of the Council will be most effectually answered, because, if the Bill had been passed under their ordinary powers, it is clear that, although they might have imposed these

[1] *Vide* supra, p. 93.

conditions, any subsequent Legislature might have repealed the clauses imposing them by simple majorities." The Governor was, however, to reserve for Her Majesty's pleasure any Bill repealing the conditions. In this way the despatch-writer conceived that the very important purpose would be fulfilled of "allowing full and free re-consideration" in the colony as to the constitution of the Upper House. But it had been the solemn and avowed "purpose of the Council," which he averred that he wished to serve, to prevent amendments of the Constitution except under the safeguard which had so long existed in America. Whoever wrote it, the despatch was written with a false pen, and the signer must bear the burden.

In Committee on the Bill (June) Mr. Lowe made an effort to strike out Lord J. Russell's clause, and intimated that he would erase, in like manner, Wentworth's 42nd clause. Sir John Pakington, on whose invitation the colonists had prepared their Constitution, pleaded the example of the United States in favour of the provisions in the Colonial Bill. Mr. Ball suggested that the wishes of the colonists embodied in that Bill should be respected. Mr. Lowe's amendment was lost, but its purpose was served by Lord John's insidious procedure. When the appointment of a nominated Council was discussed Lord John was more considerate. Savage at the castigation inflicted in Wentworth's letter, Lowe declared that wealthy people would not remain in the colonies, and that therefore a large portion of the nominee House would be "passing through the Insolvent Court in a few years." Mr. Adderley, though he preferred an elective House, would not oppose the proposition made in the colony under the power entrusted to it. The clause was ratified on a division by 173 votes against 36.

To the discredit of the House of Lords it must be told that not a voice was raised there to protest against violation of faith by a Government which, after inviting a Legislature to frame a Constitution, arbitrarily tampered with its provisions. There was one point on which even Lord John was sensitive. He informed the Governor that the maintenance of interests of existing holders of salaries or pensions was "incumbent on the Crown in order to keep faith with individuals, and incumbent on the Legislature in due execution of its compact with the Crown."

Bills dealing with those interests would therefore be reserved unless negatived in the colony. He complimented the colonists on their "avowed desire to assimilate their institutions to those of the parent country," and "their deliberate attachment to the ancient laws of the community from which their own has sprung," and he had the fullest confidence that they would combine "their present independent career of progress and prosperity" with the "sedulous maintenance of ties thus cemented alike by feeling and principle."

The 4th clause of the Imperial Act has been described. The measure was short. Its nine clauses repealed some former statutes, kept alive the existing provisions respecting Royal assent or refusal to assent to Bills, provided for the future severance of the northern part of New South Wales, and its creation into a separate colony, and prescribed the mode of promulgating the Constitution. Another brief statute (18 and 19 Vict., cap. 56) dealt with the Crown Lands. Wentworth's Bill had vested their control in the local Legislature, preserving at the same time all existing rights. That provision was not excised by Parliament. In effect the Imperial Statute re-affirmed the same principle. It dealt, however, with all the colonies in Australia and with Tasmania. The Crown retained direct control in Western Australia. Elsewhere the different Legislatures were to acquire control on the promulgation of their new Constitutions; but existing contracts, promises, and engagements were preserved. It is proper to trace here the effect of the clause by which Lord J. Russell "conceived that the purpose (of Wentworth's Bill) would be most effectually answered." Elsewhere the efforts of Dr. Lang, Darvall, and Parkes, to destroy not only the clauses which retarded rash Legislation, but the whole Constitution, are dealt with. Sir William Denison crushed those efforts in December 1855; but in May 1856 he assisted Darvall, who became Solicitor-General, when a responsible ministry was formally created on the 6th June, 1856 having previously, with Donaldson (Premier) and Manning (Attorney-General), officiated as adviser in the Executive Council, and as inchoate minister from 29th April.

The Governor's opening speech in May reflected Darvall's malign influence, with which Donaldson agreed, or to which he

had succumbed. It was proposed to repeal Wentworth's clauses "requiring a majority of two-thirds of the Legislature to effect changes in the system of representation or the principles of the Constitution." The ministry died without passing the necessary Bill,[1] although they introduced it on the 7th August; Mr. Charles Cowper, after sharp struggles for office, having become Premier 26th August, 1856. He fell in a few weeks also, and Mr. H. W. Parker became Premier on the 3rd October, 1856. Donaldson, Manning, Darvall, and Mr. John Hay became his colleagues, and Mr. Deas Thomson consented to represent the Government in the Upper House. It might have been predicted that Darvall would not rest until he had assassinated Wentworth's creation. Yet it might have been hoped that Deas Thomson, a foster-father of the Constitution, would strive to protect it. It might also have been expected that amongst the representative members there would have been sufficient lingering respect for Wentworth's authority to spare his handiwork until at least it had been tried during one Parliament.

But there was in the Assembly more excitement about the importance of members than the interests of the country. A member was assaulted somewhere, and privilege was appealed to. There was also a stir about the projected severance of a new colony from the northern districts, and members were more intent on securing their boundaries than on guarding the welfare of the people within them. Lord J. Russell's clause operated on many minds. Men hastened to pay court to the *civium ardor*

[1] A Bill "to repeal so much of the Constitution Act as requires the concurrence of unusual majorities of members of the Legislative Council and Legislative Assembly respectively in the passing of Bills to alter the Constitution conferred by the said Act, or the number and apportionment of members in the Legislative Assembly." When Donaldson introduced it he called it "eminently progressive" (as indeed it was, on a certain road). Cowper accepted it as an instalment: "Of course" he did not oppose it, but reserved his right to propose further amendments "that may suggest themselves." As might have been expected, it was the fact that Dr. Lang (excluded from candidature because a minister of a religious denomination) was active out of doors in opposing Donaldson. He upbraided him for desiring to "maintain to the uttermost the faith of the Queen and of Parliament." He thought him unsound on the subject of "equal electoral districts" which Lang averred, truly or untruly, that he had discussed with "Mr. John Bright, M.P., in his own house in London." (Letter from Lang in 'Empire' newspaper 21st May, 1856.)

*prava jubentium* which they owned as their master. As in Rome, when the baleful star of Tiberius rose, the great historian tells us—*At, Romæ, ruere in servitium consules, patres, eques*—so in Sydney there was such proneness that it may be doubted whether, even if Lord J. Russell had not turned traitor, there would have been difficulty in obtaining the majorities of two-thirds demanded by the Constitution Act for the attainment of organic change.

The resignation of the Donaldson ministry, and the short interregnum of Cowper's, threw upon Mr. Parker the duty of dealing with the Bill; at a time when Mr. Cowper was assailing the ministry because the Treasurer was not sitting in the Assembly.[1] On the 30th October he moved its second reading, and pointed out that under Lord J. Russell's clause it "could be carried by an ordinary simple majority." One voice was raised to remind members of their rash haste. Mr. Piddington regretted the absence of Wentworth. Had he been present the country "would have had something like consistency from him." Cowper was one of those who, like the creature which dishonours a dead lion, preferred to assail Wentworth's handiwork in Wentworth's absence. He rejoiced that the "interference of the Home Government enabled the House to repeal" the clauses. Manning, Attorney-General, supported the Bill. Mr. (afterwards Sir) John Robertson, who appeared in the Parliament of 1856 for the first time (though he had previously been notable at public meetings), warmly supported the measure. People out of

[1] On acceptance of office Mr. Donaldson had vacated his seat for the Sydney Hamlets. Cowper, vexed at loss of office, caballed with Dr. Lang and others to defeat Donaldson. The party of Cowper and his allies was called "the Bunch." The Campbells of the Wharf (as they were called) were natives: sons of the merchant of 1808. They were morally, socially, and in every neighbourly sense deserving of the popularity of their family. By its means "the Bunch" defeated Donaldson. John Campbell received 870 votes; Donaldson, 691. The nature of Cowper's warfare can be comprehended when it is seen that he seized the occasion to complain that Donaldson's absence from the House was improper. The difficulty was, as Cowper well knew, in process of removal. Many hundred electors of the South Riding of Cumberland requested a sitting member to retire in favour of Donaldson. He did so, and warmly supported his substitute, who was returned without opposition on the 4th November;—"the Bunch" finding it useless to put forward a candidate.

doors were well aware that they were entirely indebted to the British Parliament for the precipitance with which the House was enabled to strike out Wentworth's clauses. Mr. Robertson was, it must be admitted, consistent with his previous utterances. Manhood suffrage, vote by ballot, equal electoral districts, abolition of state aid to religion, and free selection, without survey, over the public lands, were portions of his political creed. Mr. Plunkett did not oppose the Bill, but pointed out that, under the instructions received from Lord John Russell, the Governor would have to reserve it for the Queen's pleasure. Mr. Richard Jones, then a philosophical radical; Mr. William Forster, highly respected for literary ability; Mr. Darvall, and Mr. Parkes, joined in denouncing Wentworth's clauses. Parkes, unwitting that in a few short years he would confess the errors of his opposition to Wentworth, railed at the necessity to reserve the Bill. He would rather have it passed and assented to in the colony, in spite of Lord J. Russell's despatch. His fears were groundless, if he suspected that that nobleman would shrink from the work of destruction commenced under his guidance. One member who supported the Bill declared that he did not desire "to repeal too much of the Constitution."

Mr. James Macarthur, with lamentable defection, agreed with the measure, and pleaded that the 17th and 42nd clauses had not attracted much attention during the debates in 1853. He was perhaps right as concerned himself, but though his speech in that year did not allude to the clauses, others had dwelt upon them. Wentworth, in moving the second reading, had vigorously defended them. Mr. Forster strove to prevent the remission of the Bill to England for the Royal assent, but 28 votes against 12 rejected his advice. When it reached the Upper House the members of that body were fervently discussing the proposed "dismemberment of the colony" in the north. Mr. Lutwyche, who had been Solicitor-General in Cowper's brief ministry, obtained an order for a call of the House for the 19th November, on which day the Bill was set down for the second reading. The final overthrow of Wentworth's safeguard was to be accomplished at the hands of no less a personage than Deas Thomson, who had been deputed conjointly with Wentworth to combat any objections to the Constitution Bill in England. It must have given him

such pain to deal so deadly a blow, that the hand of the historian must falter though it dare not refuse to condemn.

No more melancholy instance of the exigencies of party-government has been afforded in the colonies. He stood so high, and so deservedly high, in all men's estimation, that for him to fall seemed to imply that it was no longer necessary for others to be upright. In moving the second reading, he gently pleaded that he had not altered "his opinion, that when the Constitution was once settled it was expedient that some impediment should be thrown in the way of constant changes. Still he did not feel justified in opposing his individual opinion to the general wish." Though he approved of Wentworth's clauses, yet, as they had now two Houses, and "no Bill could pass into law without the concurrence of the Council," he did not hesitate "to move the second reading of the Bill as a concession to the popular voice." [1]

It is instructive to remark the contradictory arguments by which Wentworth's proposals were rejected or destroyed. When he advocated an Upper House elected from an hereditary order, he was told that it was incongruous with the march of democracy, of which the American republic was the great exemplar. When he adopted, and the Council enacted, one of the most important provisions in the Constitution of the United States, he was told that it was un-English. He was neither allowed to build upon the English model nor upon any rational one.[2] Mr. Thomson's

[1] He seems to have repented, for in 1872, speaking on the occasion of Wentworth's death, he said, "The Constitution would have been doubly successful if those alterations had not been made." In 1861 he deplored the "entire deviation" from the British Constitution in adopting manhood suffrage, "which he believed to have been attended with most disastrous consequences to the community."

[2] If it should be thought by any one that harsh censure has been pronounced upon Mr. Robert Lowe's share in degrading the institutions of New South Wales, let the following words, spoken by himself in the House of Commons in April 1866, confirm that censure on his own authority. "In the colonies they have got democratic Assemblies. And what is the result? Why, they become a curse instead of a blessing. . . . What does this tend to? It tends to anarchy, and from that anarchy these colonies must be relieved. They can, however, only be relieved by depriving them of that boon which, in an unfortunate hour, they received—that of responsible government, coupled with universal suffrage—and by placing their government in some permanent hands, so that the Executive shall not be in a

feeble lamentation only increased the triumph of those who had tempted him to his fall. The Nestor of the Council, Alexander Berry, who had sat in the Legislature in the time of Governor Darling, and remembered the days of the French Revolution in 1791, opposed the Bill. To make any change so soon after the adoption of the Constitution was premature. The care of the founders of the American Constitution in enacting the provision adopted by Wentworth was worthy of all admiration. He moved that the Bill be read a second time after six months. Another member supported the Bill. Judge Dickinson, who had endeavoured to direct public attention to the best method of constructing an Upper House, supported the amendment. Other members, including the President, Sir Alfred Stephen, supported the Bill. One rejoiced that it had been advocated by Deas Thomson, and thus winged an envenomed shaft into Thomson's bosom. Judge Therry supported the Bill.

Deas Thomson lamely replied; and Berry, finding that the "general sense of the House was against him," withdrew his motion. Brief amendments[1] were made in Committee. They were substantially accepted by the Assembly, and on the 20th January the Bill was reserved for the already promised approval of Her Majesty. Sir William Denison, the Governor who reserved it, narrated in a published work his vice-regal experiences, and commented upon local affairs and legislation in various colonies; but was singularly silent upon this surrender of the citadel of the Constitution of the great province of which he was Governor.

In August 1856 he observed that "the whole time of the Legislature" was "taken up by debates and divisions on little extraneous, almost personal, matters." In September he was so unconscious of the import of Lord John Russell's handiwork that his wife wrote—"not a single business measure of any

perpetual state of change." When he spoke thus Mr. Lowe must have presumed that other men's memories were as brief as had been his own adherence to principles. Before he spoke thus he and Lord John Russell had lived to denounce one another in strong terms.

[1] One of them was to insert the words "as amended" after "Her Majesty." In the Bill sent from the Assembly the Constitution Bill was alluded to as "assented to by *Her Majesty* under the authority of Parliament." There were some supporters of the Bill anxious not to amend only, but to abolish, Her Majesty altogether.

importance had been brought forward." In September he had discovered (during Cowper's administration) that

> "men, under the plea of being responsible advisers, advocate measures, the results of which they are too short-sighted to foresee, but for which, however ruinous, they cannot be punished. Responsibility is, in fact, a name, a clap-trap, a watchword, devised by the unscrupulous as a means of deluding the unwary; meaning nothing but the right of the majority to make fools of themselves without let or hindrance."

It may be thought strange that he himself was blind to the effect of the revolution which Lord John Russell's clause accomplished under his own eyes. There was, however, one man in England who knew its meaning, and he never ceased to mourn over the tergiversation of his former comrades. It was true that Lord J. Russell had with an assassin's blow enabled a casual majority to do what, under Wentworth's Bill, could only be done by majorities of two-thirds. But those who ought to have contended for the Constitution had deserted it. When Wentworth in 1853 called upon the Council "fearlessly, faithfully to perform their duty"—telling them that if they were firm they would succeed, but if they faltered they would be beaten, they had rallied round him. The same men now joined in destroying the special provision, which they had accepted from him, to prevent the Constitution from being "set aside, altered, and shattered to pieces by every blast of public opinion." He had put pearls before them, hoping that they were reasonable men. They had joined the Gadarene herd of unreason, and might at any time be plunged into an abyss of confusion.

He had reason to mourn, as he did mourn till the day of his death, the fate which intriguing enemies, crude counsels, and unworthy weakness inflicted upon one of the most sagacious provisions which his foresight had embodied in the Constitution, and which Lord John Russell enabled others to destroy with so much ease. Had he sought personal aggrandisement he might have been consoled, if not by the proffer of a title which he declined, by the affection and veneration accorded to him, not only by old friends, but by former foes, on his return to his native country. But he saw the signs of decay in the

muniments which had been unworthily defaced, and refused to be comforted; though he did not withhold his assistance when solicited to become president of the Legislative Council, reconstituted in 1861 on a basis of tenure of life-seats, after the effluxion of five years had caused the tenure of the first members to expire; and then, as will be seen, it was his hand that crushed the devices of Cowper, who, having already degraded one branch of the Legislature, sought to annihilate the other.

It may be remembered that Wentworth excluded from his Constitution Bill any provisions respecting a General Assembly entrusted with care of intercolonial questions. His report suggested that the creation of such a body was indispensable, and ought not to be delayed, and that the Secretary of State should introduce the requisite measure in Parliament. It is proper to allude to Wentworth's efforts in England to effect his object. A "General Association for the Australian Colonies" was formed in London. Finding that the Government had done nothing to sanction a Federal Assembly, the Association—Wentworth being in the chair—presented a memorial to the Secretary of State in March 1857. They cited Wentworth's Report of 1853; they adverted to proofs of the need of a Federal Assembly to deal with lighthouses, tariff, postal, and other questions. Such an Assembly could only be created directly by an Imperial Statute or indirectly by a permissive measure enabling any two or more colonies to enter into confederation. The latter course seemed preferable, and Wentworth, who drafted Bills with the ease with which most persons write letters, sent to the Secretary of State a Draft to meet the case. There were only five clauses, but Mr. Labouchere shrunk from them. After some delay he announced that, "notwithstanding its purely permissive character," he could not introduce the Bill, although he was sensible of the existing difficulties, and apprehended that they would increase. He inanely hoped that if joint action could not be attained much might be done by negotiation and the embodiment of results "passed uniformly and in concert by the several Legislatures" of the colonies. He would refer the correspondence to the Australian Governors. Wentworth expressed the regret of the Association at the delay involved, and urged immediate reference.

Attempts were made in the colonies to obtain federation. Mr. Charles G. Duffy on arrival there was hailed by Dr. Lang as a fellow-workman in breaking the bonds which attached the colonies to the empire. Duffy himself ostentatiously declared that he remained an Irish "rebel to the backbone and spinal marrow." It was not surprising that he stirred in the matter of federation, though with an ulterior purpose different from that of Wentworth. But the Select Committee he obtained on the subject contained members who did not desire a severance from the Empire; and the outcome of their labours was a recommendation that there should be an Intercolonial Conference on the subject. They had four meetings in eight months. Between 26th February and the 8th September on no occasions was there a quorum. They had no alacrity in the cause dear to Dr. Lang. Their resolutions were adopted by the Assembly and Council. They were transmitted to New South Wales by Governor Barkly before the Council adopted them, but not before the Council in Sydney, under the guidance of Deas Thomson, had addressed itself to the question.[1] Their Report recommended a conference of delegates from all the colonies, and urged that the matter could "not be longer postponed without the danger of creating serious grounds of antagonism and jealousy which would tend greatly to embarrass if not entirely to prevent its future settlement upon a satisfactory basis." The Council adopted the necessary resolutions, but the Assembly was dilatory. Knowing the relations between Duffy and Lang, some members were suspicious of the loyalty of the movement in Victoria. Some of Wentworth's old antagonists were jealous of a project sanctioned by him. The subject was serious, and seemed to require a conference between the two Houses. After conference a proposed joint address in favour of Federation was set down for consideration in the Assembly, when a sudden prorogation, resorted to by the Cowper Ministry in December 1857 (after the defeat of Land and Assessment

[1] The excellent Sir William Burton, who, after a distinguished career as Judge of the Supreme Court in Sydney, had served in a similar position at Madras, had returned to the colony and devoted his useful talents to the public, was a member of the Federation Committee. It would be difficult to imagine any opposites more marked than his loyalty and the schemes of Lang and Duffy.

Bills), cut short the deliberations of the Legislature on a subject too wide to commend itself to Cowper's mind.

It is needless to trace the formation of the Constitutions of the other colonies so closely as in New South Wales, but a brief description is necessary. Mr. Latrobe, in August 1853, invited the Legislative Council of Victoria to accept Sir John Pakington's invitation, and having the advantage of the labours of Wentworth's Committees of 1852 and 1853, the members of the Council addressed themselves to their task in September. On the motion of Mr. Foster, the Colonial Secretary, the subject was referred to a Select Committee. If his speech was jejune he might plead as an excuse that, although he had been long preparing it, he was racked by anxiety. He spoke on the 1st September. It was on the 29th August that the Government had been confounded by threatened resistance to the law at Sandhurst; and on the 30th that Mr. Latrobe, in opening the session, had invited the Council to abolish that gold license fee which, on the 1st of the month, he had importuned Sir Charles Fitz Roy to maintain in New South Wales because its abandonment would, in the opinion of his advisers, be injurious to Victoria. Mr. Foster had consulted many persons, and had formed his own predilections, but he wished to obtain the authority of the House for their promulgation.

The Select Committee contained himself, Mr. Stawell, Mr. Childers, the Speaker, Dr. Palmer, Mr. Haines, Mr. O'Shanassy, Mr. Greeves, Mr. Miller, Mr. Goodman, Mr. William Nicholson, Mr. Smith, and Dr. Thomson (of Geelong), the henchman of Dr. Lang. They resolved that there should be two Houses, both wholly elective. In the main their recommendations were adopted in the following form: The Upper House members, in order that they might be removed from any sudden "impulse of popular feeling," were elected for ten years, but were to go out in rotation of periods of two years. Thus the lowest in the poll in the first instance would only be seated for two years. The provision that the Upper House "never should be dissolved" would secure experience, while the rotation would afford opportunity to the electors to "infuse new men and principles into the House, thereby preserving it in harmony with any abiding change in the circumstances of the country." The duration of

an Assembly, as in Sydney, was limited to five years. The freehold qualification of an elector for the Council was to be valued at £1000, or to produce an income of £100 a year. Graduates of universities in the British dominions, barristers, solicitors, medical practitioners, officiating ministers of religion, retired officers of the army and navy, were to have the franchise. The Select Committee in Victoria thought themselves wiser than their contemporaries in Sydney. It had already been proposed in South Australia, with regard to the Lower House, to reduce the household suffrage to £5. The Victorians would not be outdone in declension. Wentworth's provision was £10 household, as already in force. This, at any cost, was to be abolished. Rents were higher in Victoria than in New South Wales, and adherence to the same scale would therefore have included many more persons, proportionately, in Melbourne than in Sydney. There was more of the refuse of the colonies gathered at that time in Victoria than elsewhere. Nevertheless, without hesitation, the Committee recommended, and the House adopted, a reduction to £5. They also gave a vote to holders of miners' rights. In Sydney miners were not invested with such power, unless possessed of the legal qualification in common with other persons. There were more freed Tasmanian convicts at the Victorian gold-fields than elsewhere; but it was resolved to give them control over the lives and fortunes of the unconvicted. Provisions respecting Royal Assent to Bills were formerly moved in the Victorian Committee by Mr. Childers and others, as though they were original propositions. Though they would not be guided by Wentworth's wisdom they profited by his labours. A deviation in one particular deserves remark. In Sydney the Upper House was merely barred from originating appropriation or tax-bills. There was no limitation of the power to amend them. In Victoria it was provided that all such Bills "shall originate in the Assembly, and may be rejected but not altered by the Council." It will be seen that not even such plain language prevented the Assembly from afterwards asserting that the Council was not intended to have power of rejection. So little regard do men, grasping at power, pay to a law which they dislike.

The constitution of the Consolidated Fund, the charges thereon, the review and audit of expenditure, were transcribed from Wentworth's Bill. The assumption, for "the Legislature," of control over the waste lands of the Crown, including all royalties, mines, and minerals, and the guarantee for fulfilment of existing contracts by or on behalf of Her Majesty, were copied from the Sydney measure; but a proviso distinctly guaranteeing vested or other rights which might have accrued under the Orders in Council, "within or without the settled districts," found no counterpart in Victoria. Many of the outer world were determined not to respect these rights, whatever they might be. Captain Clarke, the Surveyor-General, was busily violating them by sales of land. The true remedy which Mr. Latrobe had recommended—the promulgation of Orders adapted to the colony—found no favour. The Duke of Newcastle's shuffling despatch enabled the Survey Department to shuffle, and it shuffled. Land was put up for sale, licensed occupants procured it at the upset price for themselves, or employed a low class of brokers to bid for them at auctions. The brokers levied black mail by threatening to oppose the pastoral tenant if he should decline their services. They arranged with one another so that they might defraud the revenue by stifling competition. The Survey Office and the public were aware of the process, but it went rapidly on, and land was sold in blocks at £1 an acre, which, judiciously placed in the market, would have sold at from £1 to £6. Under such circumstances the adoption of Wentworth's proviso would have been inconvenient. Darkness rather than light was needed for both public and private proceedings.

A very significant deviation was made from the lines laid down by Wentworth with regard to placemen. He barred from the Assembly all but the few officials required to administer responsible government. There were members in the Victorian House, and in the Government, keenly alive to the probable loss of influence which such a course might entail. They provided that any member accepting office of profit should be eligible for re-election.

By a want of foresight, the clause defining the responsible officers who might sit in Parliament was so framed that it

did not in plain terms enforce the intention of the House. To facilitate, or rather to make practicable, responsible government with two elected Houses, it was enacted that of "the persons for the time being holding such offices four at least shall be members of the Council or Assembly." But it was not stated in the letter that at least one or two should be in each House. The consequence was that the spirit of the law was violated at an early date; and trivial as the omission might seem at the time, it was fraught with innumerable evils.

On frequent occasions in forming a Ministry the country was left without any knowledge of the opinion of the constituencies of the Council, and a member, by accepting an irresponsible seat in the cabinet, evaded the spirit of the constitution, which demanded that some one at least should show, by an appeal to an electorate of the Council, that he retained its confidence. Half the miseries of Victoria for twenty years were caused by this blunder in drafting the Act, and by the culpable shortcomings of successive cabinets in administering it. The Victorian statesmen had not in this matter the advantage of any clause in Wentworth's Bill. As the Upper House in Sydney was nominated, no difficulty existed there; and no beacon being erected by the Sydney engineers, the Victorian pilots steered upon a rock which common sense might have avoided.

The requirement of a majority of two-thirds of both Houses to make amendments in the Constitution was adopted by the Select Committee, but was exchanged afterwards in the House for a clause requiring an absolute majority of the members of each House. Bills amending the Constitution were to be reserved for the Royal Assent. The House laboured long, and it was not until the 25th March, 1854, that Mr. Latrobe was able to reserve the Bill and send it to England. At the same time, to guard against delay in enfranchising the rioters at Sandhurst and elsewhere, Mr. Latrobe sent home a separate Bill to extend the franchise to licensed gold-diggers. His advocacy of the measure was to some extent misleading, though not untrue. "As persons of this class now form so large a proportion of our population, and contribute so much to our revenue, the propriety and necessity of their being fairly represented in the Legislature has been fully recognized." A few months pre-

viously he had seriously declared that the direct expenditure caused by the gold-fields from January to July 1853 exceeded £600,000, while the revenue from gold and from escorts was £474,000. The indirect expenditure so caused in the same period was, he said, enormous. If profit to the revenue was to give the only ground for enfranchisement, it was clear that no claim could be put forward by the costly miner. The folly was in not encouraging settled habits at the gold-fields, and not conferring votes on dwellings or improvements of certain value. A measure to effect such a purpose would have been two-edged. It would have enfranchised the industrious without giving to the idle or dissipated a power over the destinies of the colony. But in this instance Wentworth's sagacity was not imitated by the Legislature of Victoria, which aimed at present popularity.

The late date at which the Bill was received in England rendered it, in Lord John Russell's opinion, impossible that it should be dealt with by Parliament in 1854. Sir George Grey pointed out in August 1854 that the Constitutions received from New South Wales, Victoria, and South Australia contained provisions which it required an Imperial enactment to sanction. The fact was well-known in Sydney, and therefore a draft of the requisite Imperial enactment accompanied the Draft Constitution.

The Secretary of State preferred to deal in another manner with the Bills. But the delay involved, howsoever caused, was serious. Sir Charles Hotham earnestly implored that there might be no delay in applying the new machinery of Government. Rabid writers suggested that he should set aside considerations of the Queen and of the Empire, and proclaim the new Constitution unlawfully. If not, the people ought to do so. One person who urged the Governor to act independently of the Crown was no less a person than Mr. H. S. Chapman,[1] whose association with Papineau in Canada perhaps inclined him to prefer revolution to law. He had migrated to Victoria when

[1] He published a pamphlet in 1854 to explain to the Australian colonies the meaning of responsible Government. He proved the value of his own ideas by gravely urging Sir Charles Hotham to be guilty of a wilful violation of law and of the Queen's Instructions.

the determined Sir W. Denison permitted him to take leave of absence in order to escape dismissal from office in Tasmania, and he practised as a barrister. There was a general anxiety lest the new Constitution should not be ratified before the termination in 1856 of the existing House, two-thirds of which were elected for five years. In this anxiety many noble-minded people shared. In some there was a belief that revolution would ensue unless existing arrangements could be modified at once. It was true that Sir Charles Hotham[1] had put down

[1] Sir Charles Hotham well knew the thorns he stood upon. Speaking of the risk of long delay in inaugurating the Constitution, he said: "I at any rate should not survive. My present work is more than I can continue, and to prolong it, as it would be increased, would put an end to my share of duty very quickly." A paper was presented to him, showing that there was a legal alternative preferable to Mr. Chapman's demand. English history furnished an example of order restored by a general election at a time when there was "much ferment" amongst the people, according to Lord Somers, who advised the dissolution which William III. agreed to. Even before the gold discovery Mr. Latrobe was unpopular with some persons, because he had stated that the colony was unfit for representative institutions. The censure of the Governor "was adopted by new-comers almost without exception. They were debarred from direct political influence, as their pursuits did not generally lead to the acquisition of real property. They readily believed what they were told, and joined in disparaging the Government and endeavouring to bring it into contempt. To this they were hounded on by writers in the press. Some of them doubtless hoped to bring about by this means a state of things which would bring themselves with other scum to the surface, but the ill-feeling was not confined to the worthless." (There had been no election subsequent to the gold discovery, and the population was increased about 300 per cent., a large proportion of the new-comers being adults. It was well to invite them to their legitimate influence through the polling booths.) "If the Legislature does not now sympathize with the people, neither will they sympathize with its acts: they will be tempted *now to resist it*, and *hereafter to repudiate its pledges*, whence will flow present political disturbances, and hereafter will come commercial panics and crises. . . . A notion has been broached that the Governor might proclaim the new Constitution, and this is urged even by those who confess the illegality thus recommended. . . . . Those who demand that the Governor should take an illegal step have neither his reputation nor the welfare of the colony in regard. . . ." Mr. Chapman was not over-nice in his methods. In January 1855, being then in view as counsel for prisoners arrested at Ballarat, he alleged, under the signature C (freely claimed by him), that the proclamation of martial law at Ballarat was plainly illegal, because an Act of Parliament was requisite in Ireland in 1798 to enable the authorities there to proclaim

rebellion at Ballarat; but it was equally true that—when rebels had been tried—jurymen, metropolitan and suburban, had acquitted them in compliance with, if not in obedience to, shouts in the streets and dictation by the press. The Legislative Council took up the matter. Their session was long. They sat from the 21st December, 1854, to the 12th June, 1855. The Ballarat outbreak and the Land Question were amongst the subjects which filled three large volumes with records of the session.

A Committee was appointed on the 13th October, 1854, to prepare an address, praying that Her Majesty would cause the New Constitution Bill to be laid before Parliament "with the least possible delay." On the 14th November, while affairs were seething at Ballarat,[1] and a portion of the Melbourne newspaper press was with no uncertain sound trumpeting sedition, the address was adopted by the Council. It prayed that, whatever might be done with regard to other proposed Australian Constitutions, the Bill for establishing the Constitution of Victoria might, without delay, be passed into law. Before the prorogation Mr. Chapman gave notice of his intention to move, at the next session, an address calling on the Governor "to give his assent to the Constitution Act in the name of Her Most Gracious Majesty." Mr. O'Shanassy, though not trained as a lawyer, saw the folly of asking the Governor to do what was expressly forbidden by law. He proposed a departmental remedy, and gave notice that he would move an address, calling upon the Governor, "on behalf of the inhabitants," to establish

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it. Unfortunately for him a letter was at once written to show that in the very Act which he had cited were these words: "Provided always, and be it declared and enacted, that nothing in this act contained shall be construed to take away, abridge, or diminish the acknowledged prerogative of His Majesty, for the public safety, to resort to the exercise of martial law, against open enemies and traitors." Mr. Chapman was equally untrustworthy as the sworn adviser of Sir W. Denison, or the volunteer dictator to Sir Charles Hotham.

[1] The Eureka Hotel had been burnt in October by a mob at Ballarat. On the 11th November the "Reform League" at that place announced that it did not desire "immediate separation from the parent country" . . . but if Queen Victoria should continue to take bad advice . . . "the League will endeavour to supersede such Royal Prerogative by asserting that of the people, which is the most royal of all prerogatives."

"an enlightened system of responsible government," and pledging the Council to make equitable provision for any officers who might be displaced by the new system. Sir C. Hotham did not heed Mr. Chapman's proposition. He required no instructions whether he ought to conform to law. His hesitancy was whether he ought to accept in all cases the doctrines imposed upon him as law by others. He wrote (27th June, 1855) that his law-officers advised that "no legal objections exist to the adoption of the change recommended" in Mr. O'Shanassy's motion.

The baneful example sanctioned by the Colonial Secretary in New Zealand had been contagious. There were, however, special difficulties in Victoria which made manifest the absurdity of the motion. Victoria had, in response to an invitation, passed a Bill to provide for responsible government under certain stipulations. The proposition of Mr. O'Shanassy was to scatter to the winds all the stipulations to which the colony was committed. His particular provision for "the officers of Government" compelled to retire was perhaps pleasant in their eyes; but though just in itself, it contained no guarantee for the public, who had no interest in giving larger powers to a single House of which a third of the members was nominated by the Crown. Sir Charles Hotham urged that it was highly important to grant constitutional government to the Australian colonies. "Popular anger would then be directed—not against the connection with the old country, or against the Governor — but against their own chosen government." He asked the Colonial Office when the Constitution might be expected, and whether in the event of delay the Home Government would sanction the object of Mr. O'Shanassy's resolutions. No answer was needed. The Constitution Act had been sanctioned in England before the Governor's despatch arrived there.

It is unnecessary to recapitulate the passing of the Victorian Bill in the Imperial Parliament. The encounter between the military and the dupes of the disaffected at Ballarat disarmed the opposition, and though some provisions were distorted pictures of the features of the New South Wales Bill, Mr. Lowe and others did not seriously obstruct the measures,

although they must have known that its passing would render it almost impossible to hope for success in stopping Wentworth's Bill. The Secretary of State had previously (February, 1855) intimated that the Queen had assented to the Bill for extending the elective franchise which had been passed in Victoria, *ex abundanti cautela*, in case of delay with regard to the Constitution. In March 1855 he informed the Governor that he hoped, at "a very early period," to submit the Constitution Bill to Parliament, and that Her Majesty had "very graciously received the Address of the Council." On the 20th July Lord John Russell transmitted the Constitution Statute (18 and 19 Vict. cap. 55), with the Victorian Bill (as amended) forming a schedule to the statute. He explained the reasons for the changes made by Parliament in the latter.[1]

Wherever they could do so, the ministry had preserved the form as well as the substance of the Colonial Bill. The provisions purporting to control the reservation and allowance of future measures were struck out because "they would have fettered the Supreme Executive authority in a manner wholly inconsistent with the preservation of the general interests of the empire." With regard to holders of salary or pension, they were protected by the condition "that enactments touching the civil list should be reserved for Her Majesty's pleasure." Should that general condition be at any time repealed, the Governor would "continue to reserve for Her Majesty's pleasure any Bill which may affect those interests to maintain which the faith of the Crown is pledged by the transactions which have resulted in the present measure." The 4th clause of the Imperial Act enabled the "new Legislature" in Sydney to deal with the proviso as to majorities requisite to effect constitutional changes. Lord John explained his meaning as confusedly as he had made it known to the Governor of New South Wales. He thought "the wishes of the Colonial Legislature would be most fairly met by the introduction of the clause." There

[1] The documents laid before Parliament (1856: vol. xliii.) show confusion of dates. Lord John Russell writes (20th July), the Bill "has now received the Royal Assent." His intention to resign had been announced on 16th July. Sir W. Molesworth, 21st July, "referring to my predecessor's Despatch of 20th instant," transmits the order in Council assenting to the Bill, which declares that the assent was given on the 21st July.

was happily no Darvall in Victoria, and the clause was not resorted to.

The Legislative Council of South Australia in 1853 consisted of eight nominated and sixteen elected members. Governor Young, in opening a session, announced that he had caused Bills to be prepared with a view to the introduction of responsible government in compliance with Sir John Pakington's invitation. A nominee Upper House was to have life-tenure of seats. An Assembly, elected for three years by a low suffrage, was to have the same control over revenue and expenditure as that possessed by the House of Commons. On the 29th September a Bill was passed. Sir Henry Young was advised that it provided the 'identical form of constitution" which Sir John Pakington and his successor had commended to the colony. The adviser, the Advocate-General, Mr. R. D. Hanson, was the gentleman who had in former years presumed that he could legally acquire the Chatham Islands for the New Zealand Company without the Queen's sanction. Wentworth's Draft Bill of 1852 was closely and verbally followed in many particulars; but provisions were made in South Australia which were not in his Draft. The only special privilege conferred on the elected House was, as with Wentworth, the origination of appropriation and tax-bills. The South Australian measure restrained the Governor from assenting to any Bill lowering the price of land below £1 an acre, or diverting one moiety of the Land Fund from immigration, the benefit of the aborigines, and the construction of roads, bridges, and public works. The Upper House was to be nominated for life, and to consist of not fewer than twelve members. The proposed suffrage for the Assembly was a reduction from the existing qualification (under 13 and 14 Vict. cap. 59) of freehold estate from £100 to £20, and of household qualification from £10 to £5. The duration of the Assembly was to be three years. A new principle of enlarging the Assembly, proportionately with the increase of population, was adopted. Commencing with 36 members, the House might attain a full number of 72. Like Wentworth's, but unlike the Victorian, Bill, the South Australian barred the House against place-men. Unlike the other Bills, the South Australian measure included the provisions necessary to an Electoral Act and the conduct of

elections. It gave six members to Adelaide (North, East, and West) and two to Port Adelaide, out of a total of 36; and other adjacent districts (Yatala, Onkaparinga, Noarlunga, &c.) tended to strengthen the command of the metropolis over the whole province.

The South Australian Legislature devised a new scheme for making changes in their Constitution. The Assembly might (clause 40), after lapse of nine years (*i. e.* after three Parliaments), by a majority of not less than two-thirds repeating their prayer in two sessions—the Assembly having been dissolved in the interval between the two addresses—pass a Bill to make the Upper House elective. The Bill was then to be reserved, and if it should receive Her Majesty's assent, was to be as valid as if it had passed both Houses in South Australia. Another clause (41) empowered the Imperial Parliament to legislate from time to time with regard to the Constitution of the South Australian Parliament, and to make the Upper House nominable or elective. As in New South Wales and in Victoria, the independence of the Judges of the Supreme Court was secured during good behaviour. In similar conformity it was enacted that no differential duties might be imposed on like articles imported from different countries. A Civil List was granted by a separate Act. It provided for the salaries of the Governor, the Judges, and some chief officers, and awarded compensation to the extent of four years' salary to the Colonial Secretary, the Advocate-General, the Colonial Treasurer, the Collector of Customs, and the Commissioner of Crown Lands, on their removal from office by the operation of the Constitution. Irrespective of this compensation, the annual charge was £18,000. There was no provision for public worship. Colonel Robe's disagreement with a majority of the colonists on the subject of religious endowments had never been forgotten.

The last clause of the Bill suspended its operation until, by the repeal of the Imperial Land Sales Act (5 and 6 Vict. cap. 36), the control of the lands should be vested in the Colonial Legislature; but there was a proviso that all contracts or engagements made by or on behalf of Her Majesty under that Act should be fulfilled. It will be remembered that the heart-burnings engendered elsewhere by Earl Grey's Orders in

Council had no place in South Australia. Sir Henry Young, in November 1853, hazarded a prophecy that, under responsible government, "changes in the Colonial Ministry will be very unfrequent for years to come."[1] But in January 1854 he was constrained to report much public opposition to the reserved Bills. A petition from five thousand persons remonstrated against a nominated Upper House, and against the compensation awarded by the Civil List Bill.

In September 1854 the Legislative Council assailed the accuracy of the Governor's despatches descriptive of the passing of the Constitution Bills. He had reported that "the proposition to establish an elective Upper Chamber was shelved by a majority of eight elected members." For three days the matter was hotly discussed. There were many divisions. In some the numbers were nearly equal. It was resolved that the despatch was "not in accordance with the records of the Council," that a nominated Upper Chamber was disliked by a majority of the elected members as well as of the colonists, and that any legislation on the fundamental principles of constitutional government would be inexpedient prior to a general election. The Governor frankly admitted that there was a defect of precision in his despatch. "The difference between fifteen and seven was then described to be a majority of eight elected members; whereas a more precise description would have stated it to be a majority which included eight elected members." But the souls of Messrs. Kingston, Angas, Bagot, Dutton, and others, were vexed. The Council adopted addresses denouncing the written "compromise" in terms of which some elected members had agreed to support a nominee Chamber, and declaring that, on the question of compensation provided in the Civil List, the Colonial Secretary, the Advocate-General, and the Collector of Customs, had voted in a majority of eleven to eight, in contravention of Parliamentary practice which forbids members to vote on questions involving their private interests. On this point two of the official members declared that on the only division which occurred on the subject there would have been a majority of one if none of them had voted.

[1] The first Ministry was formed in October 1856. In October 1877 the thirtieth Ministry had been formed.

The minor matters of personal interest seemed to engross as much attention as constitutional principles. Sir Henry Young, whom the Council had unfairly sought to drag into the strife, was not doomed to continue in it. He had been Governor for the full term usually allotted; and when Sir Charles Fitz Roy, after a still more prolonged government in Sydney, was succeeded by Sir W. Denison, Sir Henry Young was transferred to Tasmania, where Sir W. Denison's term had also been prolonged. It devolved upon Lord John Russell to instruct the new Governor, Sir Richard Graves MacDonnell. A scholar, a barrister, a chief justice at the Gambia, and subsequently Governor there and at St. Lucia, and at St. Vincent, Sir R. MacDonnell might be deemed well armed for his labours. He was informed[1] (4th May, 1855), that the Secretary of State was convinced that Sir H. Young and his advisers were anxious to do their duty. Lord John would not further advert to the "questions raised as to the motives under the influence of which certain provisions of the Bill" had been brought forward. He accepted the result that the local Legislature desired to re-consider the subject. No Bill would, therefore, be submitted to Parliament to give validity to the semi-animate product of past labours. It would be for the Governor to consider whether fresh consideration should be preceded by a dissolution.

Meanwhile it was intended to repeal the Waste Lands Acts, and their repeal would take effect in South Australia from the date of the proclamation there of a new Constitution approved by the Queen. To ensure the acceptance of such a Constitution the clauses limiting the "Crown's power of disallowance" of Bills should be omitted. In that case the Bill would be assented to without recourse to Parliament, as already a Bill from Van Diemen's Land, passed in November 1854, had been made law. Sir R. MacDonnell's Council was convened for the 7th August, 1855, when tidings were received in the colony to the effect that the Royal Assent would not be given to the Constitution Bill then in England. He at once deferred the meeting of the House by further proroguing it in order that he might peruse his instructions presumed to be in transitu. He had invited

[1] Parliamentary Papers, vol. xliii. 1856.

members of the Council and principal officers of the colony to a banquet on the intended opening day (7th), and he announced his views to his assembled guests. Inconvenient as it confessedly was to leave undone the ordinary business of a session at that season, he intended to dissolve. "He alone was solely and entirely responsible for that course." His speech, though like Banquo's ghost it rose to push honourable members from their stools, was profoundly digested. Mr. G. F. Angas earnestly appealed in writing against the Governor's decision. On the 11th August the Governor received Lord John's May despatch. On the 14th he courteously replied to Mr. Angas, defended his own views, and added: "You will not be surprised to learn that (holding such views) I am about to give orders for issuing a proclamation dissolving the present Council." He dissolved it on the 15th. The body which had been thrice convened for despatch of business, was thus itself despatched before it could consider its position.

Sir R. MacDonnell was a contriver. Before he left England he had proposed that the South Australian Bill should be amended in Parliament by excision of its clauses, which infringed the Royal Prerogative, and by providing that the power of the Assembly to convert the Council into an elective House should be made immediately available instead of being postponed for nine years. After arriving in the colony he thought that such a compromise would have been accepted there with complete satisfaction. He underrated the restlessness of the time, and the effects wrought upon men newly invested with authority. The remission of the question to the colony took him "by surprise."[1] But he devised new measures. He imagined that the country was "inclined to advocate a single Chamber in preference to two, if it could be constituted free from nomineeism." He saw obstacles to the introduction of responsible government in the community. No leader could obtain "requisite weight for his position;" the country was not (he believed) prepared to see the Queen's representative stripped of "all influence in a community too small to permit his maintaining that dignified neutrality which Lord Elgin justly described as

[1] Parliamentary Papers, vol. xliii. 1856. Sir R. G. MacDonnell to Lord J. Russell, 22nd August, 1855.

his proper position between the great contending parties in Canada."

There was one "incomprehensible mystery" to him; the "illiberal spirit" shown by many towards the principal officers for whom compensation had been provided in the abandoned Bill. He promptly addressed himself, with his Executive Council, to the task of framing a new Bill. On the 17th August he promulgated his scheme for public information in brief terms; viz. a single Chamber consisting of 40 members, 36 elected and four heads of principal Departments, the Colonial Secretary, the Advocate-General, and two others to be afterwards determined. It was intended, but not published at first, that one-third of the 36 elected members should be chosen by "a highly qualified constituency."[1] The duration of the Assembly to remain five years, as in the existing law. No special qualification of members of Assembly. "Tenure of office by Government officers having seats in the Assembly to be the same as at present. No Civil List except to secure the salaries of the Judges and the four Government officers holding seats in the Assembly. Ample power to be reserved to future Legislature to alter the details of such Bill, or to effect any other change in the proposed Constitution, and resolve the single Chamber into two."

The last clause in this draft, strange in itself, and stranger as to the time of its production, notified that, although a single Chamber, constituted as proposed, would "require an Imperial Act to enable the Royal Assent to be given to it," the Governor hoped the new House might meet on the 9th October, and create a fitting Constitution in six weeks. The Bill could then be ratified in England in the ensuing session of Parliament. How Sir R. MacDonnell and Messrs. Finniss and Hanson could imagine that South Australia would be content with so hybrid a Constitution at such a time, must be "an incomprehensible mystery" to all who knew the character of colonists.

For New Zealand and Tasmania already two Houses had been provided. Bills were before Parliament to give vitality

[1] Parliamentary Papers, vol. xliii. 1856. Sir R. G. MacDonnell to Lord J. Russell, 22nd August, 1855.

to the Constitutions locally prepared for New South Wales and Victoria. Responsible government would exist in all the colonies except South Australia and Western Australia. South Australians had never been backward in claiming privilege. The "Government notice" of the 17th kindled indignation. The Governor published an explanatory memorandum, dated 18th August. After defending his proposals, and deprecating intrigues for office, he said: "If, however, as is probable, no alteration of the Constitution will satisfy the country, save one entailing a change of heads of departments as implied by the ordinary meaning of responsible government, the Governor has no mission to withhold such change. . . ."

The leading newspaper unpresciently "doubted" whether responsible government would "lead to a scramble for office." It hinted that colonists knew better what was good for them than could be known by a Governor who had been "a few weeks in the colony." Sir R. MacDonnell candidly transmitted the hostile article to Downing Street, but remarked that the writer had erroneously treated the four officials as the "only conservative element in the proposed Assembly—passing over the twelve members elected by a highly qualified constituency." As he and his advisers had not included that element in their published notice they could not complain if public criticism failed to value it. While apprising the Secretary of State of what had transpired (up to the 22nd August), he observed that if, contrary to anticipation, the colony should not strongly support his scheme, it was the intention of himself and his advisers to propose, *mutatis mutandis*, a Constitution similar to the one already granted to Tasmania. Their weapons were numerous, and of many kinds. When he opened the newly elected House in November, the Governor was constrained to admit that he had no reason to imagine that a single Chamber, "though till recently supposed to be almost universally popular, would now count many supporters." A new Bill was forthwith submitted by the Government, with the declared intention[1] "to embody in the measure such principles as appeared to have been most distinctly avowed by the electoral constituencies."

[1] Sir R. G. MacDonnell. Despatch, 4th January, 1856.

Two elected Chambers were therefore recommended. The Government proposed that they should be elected by one constituency of a composite character as representing various interests, or possessing educational qualification. Residence for two years was to precede electoral enrolment.

The Government also proposed to qualify the influence of mere numbers in apportioning representatives in the Upper House. For the Lower, they were content, having secured a trustworthy constituency, to allow numbers so much preponderance that the county of Adelaide (which contained two-thirds of the population of the province) would have returned nearly two-thirds of the members. It was to return nearly a third of the members of the Council. The House rudely snapped the threads woven by the Government. Mr. G. S. Kingston, a hero of opposition in 1853, resumed his armour in 1855. On the motion of the second reading of the Bill (20th November) he proposed an amendment categorically demanding responsible government; manhood suffrage for the Lower House qualified only by necessity for enrolment for six months in a district; an Upper House elected by "all the electors in the colony voting as one district," the members to be elected for terms not exceeding nine years, and a portion to retire by rotation every three years; a term of five years as the duration of the Assembly; and vote by ballot in all elections. Though his amendment was withdrawn, most of his demands were enforced upon the Government in Committee on their Bill. An amendment providing that Appropriation and Tax Bills should originate only in the Lower House was carried by a bare majority (11 against 10)—Mr. Kingston, Mr. Angas, Mr. Bagot, being in the majority, while the official members and Mr. Dutton were in the minority. The suffrage for the Upper House was conferred on freeholders of the value of £50, leaseholders of the annual value of £20, and householders of £25 annual value. The number of the Council was by a large majority fixed at 18. The duration of the Assembly was lowered from five years to three. An attempt to increase its numbers from 30 to 54 failed; but by 16 votes against 4 the numbers were raised to 36. The only qualification required for an elector was previous registration on an electoral roll of a district. The South Australians like the

Victorians did not provide by the letter of their law that a Ministry should, *ex necessitate*, have at least one responsible Minister in each House. But though the blunder caused inconvenience the disastrous consequences suffered in Victoria were not entailed by it.

More attached to the soil than the Victorians, the men of Adelaide were more ready to abide by the spirit of their law. But they made a provision which was to be prolific of ministerial changes. They made it unnecessary for holders of specified ministerial offices to recur to their constituents on acceptance of place. The natural consequence ensued. Ministers by escaping an appeal to the country did not gain the ratification and strength which a successful appeal would have conferred. What was intended as a security became a weakness; and ministerial changes were multiplied.[1]

The Civil List was, in 1855, made part of the Constitution Bill. It provided certain annual pensions for the four officers liable to loss of office by the introduction of responsible government. The independence of the Judges and their salaries were secured as in the other colonies. The Constitution Bill was reserved on the 4th January, 1856, for Her Majesty's pleasure. The electoral provisions necessary were not (as in 1853) embodied in the Constitution of 1855. Sir R. MacDonnell assented on the spot to a separate Bill. He viewed with some misgiving the fact that the county of Adelaide would return about two-thirds of the members of the Assembly; and wondered at the "extraordinary provision" (sec. 52) that no candidate for either House should personally solicit votes, or "attend any meeting of electors," under the penalties attached to bribery and corruption. The active Mr. Kingston was chairman of a Select Committee which recommended the apportionment of members in the Assembly. For the Upper House no electoral divisions were needed, as the colony formed one district. The Colonial Office did not interfere in any manner. When Sir R. MacDonnell

[1] Todd ('Parliamentary Government in the British Colonies, 1880') has not failed to observe this result. "The experiment has not succeeded. By removing an obvious impediment to frequent ministerial changes, it has fostered the element of instability, which is one of the most serious evils incident to parliamentary government" (p. 47).

reported his plan for escaping the inconveniences of responsible government in so small a community, Mr. Labouchere (20th December, 1855) recorded officially the fact that the Government in England were "no parties to such a deviation from what was originally intended." On the 19th July, 1856, he transmitted to the colony Her Majesty's Order in Council (20th June) assenting to the Constitution and Electoral Bills.

The censures already passed upon Lord John Russell's mode of defeating Wentworth's proviso as to the majorities needful in both Houses to effect organic changes in the Constitution, are justified by the fate of the South Australian Bill. The celebrated Sir Alexander J. E. Cockburn[1] was Attorney-General, and the critical Sir R. Bethel was Solicitor-General,[2] when the New South Wales, the Victorian, and the South Australian Bills were considered in England. The latter made it unlawful to present for the Royal Assent any Bill altering the constitution of the Council or Assembly, "unless the second and third reading of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members" of each House. The clause was no bar to the Royal Assent. There was no Robert Lowe deputed to thwart in England the wish of the South Australian Legislature. The Government was not in 1856 quivering as Lord John had quivered in 1855. Peace was established. But the facility with which, under advice of the same law officers, that was enacted for South Australia which Lord J. Russell had destroyed by Imperial legislation for New South Wales, justifies reprobation of the faithless despatch on the subject to Sir W. Denison.

In finally dismissing this subject it may be proper to observe that Lord John has hitherto escaped notoriety for his act. In Sir Erskine May's 'Constitutional History of England,' the fact is noted that by the Imperial Statute of 1850 (13 and 14 Vict. cap. 59) "powers were conceded to the Governor and Legislative Council of each colony, with the assent of the Queen in Council, to alter every part of the Constitution so granted."[3]

[1] Afterwards Lord Chief Justice of the Queen's Bench.

[2] Afterwards Lord Chancellor and Lord Westbury.

[3] Vol. ii. p. 576. It is not necessary to encumber the text with proof that (section 32) it was not "every part of the Constitution" which might

The learned historian does not dwell upon the subsequent mutilation of Wentworth's Bill; but adds:

"There could be little doubt that the tendency of such societies would be favourable to democracy; and in a few years the limited franchise was changed, in nearly all of these colonies, for universal suffrage and vote by ballot. It was open to the Queen in Council to disallow these laws, or for Parliament itself to interpose and suspend them, but in deference to the principle of self-government, these critical changes were allowed to come into operation."

If Lord John Russell's violent interference with the principle of self-government (when he mutilated Wentworth's Bill) eluded the notice of an able historian who was clerk to the House of Commons, when that interference was sanctioned by the House, it might charitably be hoped that the members were ignorant of what they were doing when they lent themselves to destroy the element of stability provided by the New South Wales clauses, were it not that the members owed a duty to their fellow-subjects. Colonists had been invited to pass a measure. They passed it. The House of Commons under Lord J. Russell's guidance mutilated it. The sufferers are gravely told that they themselves were guilty of the Act by which they suffered. It is hard for him for whom a wholesome medicine is prepared by his proper adviser, to see another person change the medicine which the helpless patient is compelled to take. It is harder still for the subject of so vile an experiment to be taunted for the poisonous nature of the potion forced upon him. Such nevertheless was the fate of New South Wales.

In Tasmania the Legislative Council constituted in 1851, under the Imperial Act (13 and 14 Vict. cap. 59), had little

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be altered in the colony. The local legislature, subject to the Queen's assent, might regulate "the election of the elective members of such Councils, the qualification of electors and elective members," or establish, instead of one composite Chamber, "a Council and a House of Representatives" . . . "to be appointed or elected respectively by such persons and in such manner as by such Act or Acts shall be determined." There was no other power conferred by the local statute as to changes in the Constitution. The crime of Lord John was that when New South Wales exercised the power conferred during Lord Derby's Administration he induced Parliament to destroy the work of the Sydney Legislature.

difficulty, under the capable Francis Smith the Attorney-General, in framing a new Constitution, when after the discontinuance of transportation by Sir John Pakington the offer of responsible government was on the 30th January, 1854, extended to the island by the Duke of Newcastle, on condition that it would follow the example of New South Wales in granting a Civil List, and making suitable and liberal provision for "military as well as civil expenditure." But the Legislative Council had in 1853 discussed the subject, and by 11 votes against 9 had, on the motion of Mr. T. D. Chapman, adopted a scheme under which they anticipated the proposition by which in South Australia the whole colony formed one electorate for the Upper House. Their resolutions were in favour of an Upper House returned by the whole colony as one electorate, on a freehold suffrage of £25 annual value. They contained provisions purporting to define the powers reserved to Her Majesty. Sir W. Denison was active and thoughtful, wrote elaborately to the Secretary of State, and communicated frequently with leading men in the colony on the subject of the Constitution.

The Secretary of State (Sir G. Grey) on the 3rd August, 1854, in reply to the Governor's advocacy of an elective Upper Chamber, stated that the Government did not desire to urge upon any colony the adoption of a nominated House, as had been inferred from former despatches.

"Provided the Legislative Council is so constituted as to possess the respect and confidence of the community, and at the same time to be less directly liable than the assembly to popular impulse, and to be capable of acting as a salutary check against hasty legislation, the particular mode of constituting it is not a matter of primary importance, and they do not therefore feel it necessary to insist on its being nominated by the Crown."

He pointed out that, to ensure the Royal Assent, all matter requiring aid from an Imperial Statute should be avoided. Long before the despatch was received the local legislature was engaged in framing a Constitution. Sir W. Denison recommended[1] that the electoral suffrage for the

[1] Parliamentary Papers, vol. xxxviii. 1855. Letter to the Speaker (Richard Dry), 27th April, 1854.

Council should be higher than that for the Assembly (which he assumed would be maintained "at £10 household occupation, which is in fact universal suffrage"), that each elector should have but one vote, and that the colony should form one electorate.

The Select Committee had reported a Bill on the 29th September, 1854. It contained matter which involved legislation in England. On receipt of Sir G. Grey's despatch, warning the Governor of the necessity to avoid such matter, the Bill, already read a second time, and well advanced in Committee of the Council, was re-committed, and the questionable clauses were expunged. Consequently the Tasmanian Bill received the Royal Assent before it was given to any other Constitutional Bill passed in Australia. It established two Houses. It enabled the Governor and the existing single Chamber to constitute by a separate Act the electoral districts for the new Houses, and to enact all requisite ancillary provisions. The proposed suffrage for the Council was composite as in Victoria. Freehold of £50 annual value, a University degree, professional qualification as a lawyer or a medical practitioner, or the fact of being an officiating minister of religion, or a retired officer of the army or navy, conferred a vote. The £10 household suffrage was retained for the Assembly. Freehold of the clear value of £100, a depasturing license of the amount of £10 on a lease having three years to run, a salary of £100 a year, and all the professional qualifications which conferred a vote for the Council, gave also a vote for the Assembly. A strict oath of allegiance was to be exacted from all members. A Civil List was granted. It provided for the salaries of the Governor, the Judges, and a few officials. It allotted £15,000 towards public worship. It gave compensation to the Colonial Secretary, the Attorney-General, and the Colonial Treasurer, on "loss of office on political grounds," to the amount of five years' salary in each case. Appropriation and Tax Bills were to originate in the Assembly, but there was no limitation on the powers of the Council in dealing with them. The two Houses were to "have, and exercise all the powers" of the former single Chamber.[1]

[1] This equal power in finance has led to more mutual forbearance than has existed in Victoria, where the Council was specially debarred by the

There was no stipulation for the independence of the Judges; but an Act to provide pensions for them had been passed earlier in the year.[1] Nor was there any provision, as in other colonies, that all appointments in the public service[2] should be made by the authorities in the colony. The Bill was also silent as to maintenance of public faith with the pastoral tenants of Crown lands. It interposed no check upon future alterations of the Constitution. Sir W. Denison (1st November) reserved the Bill for Her Majesty's pleasure. In December he promptly sent troops to Sir Charles Hotham after the Ballarat insurrection. In January he gave place to his successor, Sir Henry Young, on whom it devolved to induct the colony in the path it had prepared for itself.

Lord John Russell transmitted Her Majesty's allowance of the new Constitution (1st May, 1855). In July he forwarded the Imperial Statute (18 and 19 Vict. cap. 56) abolishing the previous statutes affecting Crown lands, but maintaining all contracts, promises, or engagements, lawfully made under them. The formal Order in Council (21st July, 1855), commanding that Van Diemen's Land should thenceforward "be called and known by the name of Tasmania," was soon afterwards transmitted by a new Colonial Secretary, Sir W. Molesworth. The Electoral Bill required to give vitality to the new Constitution was passed in February 1856. All voting was to be by ballot. The colony

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Constitution Act from amending Money Bills. In Tasmania there have been brief inter-cameral disputes, when the Lower House, spurred to demand the license claimed in Victoria, denied the constitutional rights of the Upper House; but the latter Chamber has never abandoned its position, and mutual forbearance has ensured amicable compromise. When neither House can exercise tyranny it must at last yield to common sense.

[1] Sir W. Denison's and Sir John Pedder's reflections upon the first clause must have been peculiar. It was enacted that Judges, generally, should after fifteen years' service receive a pension amounting to two-thirds of their rate of salary, but that because of Sir John's "extraordinary length of service in the faithful discharge" of his duties his pension should be equal to the full salary of his office. Yet he was the man whom Sir W. Denison had charged with faithlessness.

[2] The Council repented this abstinence. In September 1855 they prayed Her Majesty to direct that all appointments from England to "this colony shall for ever cease." Mr. Labouchere thought their prayer too comprehensive, and that responsible government in such matters would be sufficient.

was divided into twelve electoral districts for the purpose of returning the fifteen members to the Upper House. Hobart returned three members, Tamar two, and the other districts had each one member. The Assembly was to contain thirty members. Hobart Town had five, Launceston three members. Each other district had one member. Elaborate machinery was provided for the preparation of electoral rolls, their revision, the conduct of elections, the prevention of bribery and corruption, and the trial of controverted elections. The writs for the first elections were ordered to be issued on or before the 1st October, 1856. Sir Henry Young gave the Royal Assent to the Bill on the 7th February, 1856, and dismissed his Council to seek the suffrages of the new constituencies.

Of Western Australia there is little to be said. In the opinion of most of the settlers the colony had been rescued from utter ruin by the introduction of convicts. In June 1853 Governor Fitzgerald declared that "ninety-nine out of the hundred" of the inhabitants advocated transportation, and clung to the hope that "no colony once made a penal one" would cease to be such until "a majority of the inhabitants" should ask for a change. It would have required more than the protervity of Earl Grey to propose representative government for such a community. Its numbers rose from less than six thousand in 1850 to more than nine thousand in 1856, by the addition of criminals and their custodians. In response to the Governor's appeal the Duke of Newcastle announced that no idea was entertained of "ceasing to send convicts to Western Australia," and by common consent the province remained a Crown colony until the discontinuance of transportation in 1868 prepared the way for other aspirations.

Before discussing the mode in which responsible Government was constitutionally brought into operation in the Australian colonies, it is necessary to explain the manner in which, in Victoria, the spirit of the Constitution was violated, and a pseudo-responsible Ministry acquired power before the creation of the most essential ingredient of responsibility—the condition precedent that at least a portion of the Ministry should hold seats in the elected Houses. The violence done to the New Zealand Constitution was not lost upon certain functionaries in

Victoria, who were exasperated against Sir Charles Hotham, because his financial investigations had exposed the extravagance of the past. They conceived a scheme of shaking off the Governor's control, and by postponing the meeting of the elected Houses as long as possible, to secure a position in which they would be responsible to no one. But they developed their plan with caution. Its framers cannot be named; but it may fairly be surmised that those who had previously intrigued against the Governor were the prime movers. There were some amongst his advisers to whom no one could impute disaffection or unworthy motives.

Sir Charles Hotham invited the opinion of his law officers. The Imperial Act made it necessary to proclaim the Constitution within a month of its receipt. The schedule to it (the amended Colonial Act) said it was to be proclaimed within three months. Each Act declared that it should take effect on the day of proclamation. The law officers expended five paragraphs in proving that proclamation within one month would satisfy the law. The Governor asked when the officers of Government, mentioned in the 18th clause of the Constitution Act, of whom "four at least" were to sit in the new Houses, would assume responsibility, and whether they were responsible to the existing Council (in which they were Crown nominees). It did not suit a junto amongst his advisers to disclose their intentions in time to enable the Governor to consult others upon the subject. He was told that

"the words 'responsible officers' occur not in the text, but merely in the marginal notes to the Bill, and that the word 'responsible,' applied to such officers, has no definite legal meaning. To a certain extent the functionaries named in the (18th) clause (the Colonial Secretary, Attorney-General, Colonial Treasurer, Commissioner of Public Works, Collector of Customs, Surveyor-General, Solicitor-General) have always been responsible to the existing Council; nor indeed, with the exception of the necessity of a certain number being elected, do the new Acts make any legal change in their responsibility, though practically they may henceforth be more liable to be removed and called to account according to the feelings of the Legislative bodies than heretofore. Their responsibility to the existing Council legally remains unaltered."

The Governor saw no solution of difficulty in such an answer, and foresaw not how contradictory a statement would be presented to him after a few days. He was ever scrupulous to conform to advice upon all points of law, and it was correctly deemed that if the chief law adviser should assert that the law required the Governor to follow a given course he would follow it, even if it should not commend itself to his judgment. It has been seen that Mr. Foster, the discarded Colonial Secretary, admitted[1] that on law points Sir C. Hotham always asked the advice of the Attorney-General. If, therefore, the Governor could be induced to receive a legal opinion as to his duty, it was confidently assumed that the project in hand could be completed. But its contrivers would willingly have evaded a declaration that it was required by the law. Lord John Russell's despatch (of July 1855), transmitting the Constitution, was received in October. The Act was formally proclaimed on the 23rd November, on which day the Legislative Council was convened. Before it was proclaimed pressure was brought to bear upon the Governor. The Executive Councillors were summoned to consider the estimates on the 6th November. They determined to apprise the Governor that their responsibility would commence on the 23rd, and that they had not considered "whether any estimates whatever should be laid before the Legislature," or "in what manner they should be dealt with." They were "not informed whether they are requested to consider these estimates as responsible officers under the Constitutional Act, or as officers responsible to his Excellency for carrying out the policy which he may indicate." He was verbally informed that their responsibility would accrue on the 23rd November. Sir Charles Hotham thought that the asserted responsibility to the people, of men who proposed to use it in a House of which one-third of the members were nominated by the Crown, was a contradiction in terms and in substance, but his punctilious habit of deferring to the Attorney-General, in all questions declared by that officer to be legal, silenced his scruples.

[1] Victoria Legislative Assembly Papers. 1867. D. No. 18, Question 8.

It is fair to let the last despatch [1] which he wrote (from a sick-bed) explain his conduct.

"A singular, and, I apprehend, an unexpected state of things ensued. Conformably to the proclaimed Act, a responsible Government came into force under a form of Constitution for which it was not intended: the Ministers hold their seats as nominee members by Commission from me; and they address a Legislative Council elected under a different franchise, and which does not represent the constituencies contemplated in the Constitutional Act. It required no great degree of discernment to discover that such an anomalous state of things would, sooner or later, produce difficulties, but the interpretation of an Act of Parliament surely belonged peculiarly to the province of the law officers; and although I entertained and expressed an adverse opinion, I did not consider myself justified in acting upon it, more especially as the matter was one in which the colonists alone were interested. It proved, however, that the opinions of by far the greater portion of the representative side of the Legislative Council accorded with my own. A motion was made directly impugning the conduct of the Government; a warm debate ensued, and the Ministers were only saved from defeat by an insignificant majority."

As to the estimates the Governor informed his executive officers that if they chose to present his estimates as those for which he was responsible, or to postpone the framing of estimates until they might become so, he was willing to acquiesce in either case.

The contrivers of the scheme for avoiding responsibility to the Governor or to the constituencies, concealed their intentions so long that at the last moment they were compelled to execute them hastily. The Legislative Council was to meet on Friday, 23rd November. The Governor on that day handed to Mr. Haines a minute as to the conduct of business under the new system which was about to transfer so much responsibility to others. He would strictly be guided by the law in all cases, but took occasion to remark that as the Constitution required all appointments to be made by the Governor in Council he would insist that all appointments should be so made, and that

[1] Parliamentary Papers, vol. xliii. p. 35. 1856. Sir Charles Hotham did not live to sign the despatch, but Major-General Edward Macarthur, who administered the Government, transmitted the unsigned document.

the advocacy of certain political principles should not be the sole recommendation for offices in which fitness should be the first consideration. Neither Mr. Haines nor his friends objected to the terms of the minute.

Before the Governor proceeded to open the House with a speech prepared by himself, Mr. Haines, the Colonial Secretary, in a stammering manner suggested difficulties and embarrassments which he seemed incapable of explaining. Some act on the Governor's part was required to give vitality to the embryo plot with which Mr. Haines and his coadjutors were in labour; but, whether from inability or compunction, Mr. Haines could not describe what the act ought to be. The Governor, failing to discover what was required, requested (on the 24th November) the hesitating Haines to inform the Ministers that he felt bound in future to maintain a neutral position, and "in his official dealings to treat with the officer and totally disregard and lose sight of the man,"—a proposition which the Ministry did not understand, or of which they did not see the fitness. Mr. Haines, being unable to explain at a second interview (on the 24th) what was required, resorted to the Attorney-General. To him he could unbosom himself. From him he might draw inspiration. It was then arranged that Mr. Stawell should declare in writing that new Commissions were necessary for the responsible officers, so that they might be held to be appointed under the new Constitution, because "politically irresponsible under the old Act, they continue to hold offices, the occupants of which are responsible not merely legally but politically, and thus their position is most anomalous. They may be removed by the Governor . . . but it is more than questionable how far they are politically responsible to anybody." By the issue of new commissions their position would be "determined and their responsibility unquestionable" (24th November). There was a much greater anomaly with which Mr. Stawell did not deal. By the new Constitution it was demanded that responsible officers should not be nominees, but should sit in Houses, both of which were to be elected by the country. Neither was there any attempt to reconcile the opinion given about responsible officers in October with the new doctrines of November. In the October opinion the acting Solicitor-General had concurred.

The November opinion was not seen by him. On Sunday, the 25th, Mr. Haines forwarded the letter to the Governor, hoped it would be satisfactory, and added, "I regret very much that I did not succeed in placing the state of the case before you as plainly as I ought to have done." Another interview took place, and it appeared that there was still something to be revealed, which Mr. Haines wanted resolution to communicate.

The Constitution Act provided that pensions should be secured (not at the proclamation, but) "at the time of the coming into operation of the Act" for certain officers "who, on political grounds, may retire or be released" from office. If the Governor could be induced to use a pleasing force the pensions might at once accrue. The junto who were to benefit by the release were Mr. Haines, Mr. Stawell, Mr. Childers, and Captain Clarke. Captain Lonsdale the absent Treasurer, and Mr. Croke the absent Solicitor-General, were, however, to be included in the scheme, and released without being consulted. Mr. Sladen the Acting Treasurer, Mr. Molesworth the Acting Solicitor-General, and Captain Pasley the Colonial Engineer (whose office was not designated in the Constitution Act), had no interest in these proceedings. To the Attorney-General no one imputed any mercenary motive. As Mr. Haines could not explain the money question satisfactorily, but averred that the Attorney-General thought that the Governor ought to protect the released officers, Mr. Stawell was sent for. The Governor resided at Toorak, four miles from Melbourne. He was wasted by severe labours, but it was not apprehended that death was at hand. His manner was firm. The remains of his bodily frame he still bore erectly. Mr. Stawell waited on him on the 26th November, and was asked what the mystery was which Mr. Haines could not unravel. Mr. Stawell explained that, as the Queen's representative, the Governor was called upon by the Constitution Act to exert the authority necessary to expel certain functionaries from office. The Governor looked fixedly at his adviser. "Do you, as Her Majesty's Attorney-General in this colony, declare to me that I am called upon by the law to take this step?" Answered affirmatively, he said: "Then write the letter, and I will sign it." The play was

played out accordingly. In words written by the Attorney-General the junto were informed by the Governor that the proclamation of the new Constitution having made it "necessary" to form a Ministry, it was the Governor's "duty to inform" them that they were to consider themselves "released on political grounds."

Mr. Haines was on the same day called upon to submit a list of persons to form a Ministry. He submitted to his Excellency's pleasure in releasing him, and asked the Governor to "authorize the payments" (as pension) sanctioned "by the Constitution." Mr. Stawell respectfully requested that "the necessary instructions" might be given "respecting the retiring allowance" to which he was "entitled." Mr. Childers had "much pleasure" in holding office till his successor was appointed, and made "formal application for authority to draw from the Colonial Treasury the retiring allowance of £866 13*s.* 4*d.*" Captain Clarke, affecting that his release would make it his "duty to rejoin the headquarters of his regiment in Europe," asked the Governor "to assign" his pension also. Silence was observed as to the Governor's minute upon the manner in which his duties under the new Constitution would be performed.

When the Council assembled on the 27th, the Colonial Engineer announced that Messrs. Haines, Stawell, Childers, and Clarke, had resigned their offices, and moved the adjournment of the astonished House. On Mr. Fawkner's motion the members declined to adjourn until they had carried an address asking "the fullest information with regard to the dismissal or resignation of certain members of the Executive Government as stated to this House." Two objects—the achievement of pensions, and of irresponsible power—might be in jeopardy if the information supplied should show that the release of the officers, instead of being a high-handed act of the Governor, was insisted on by themselves. Promptly they smothered all personal differences[1] and doubts. On the morning of the 28th the Attorney-General had commissions ready, and the retiring pensioners were all re-appointed to their old offices with little variation of style. The post of Treasurer was assumed by Mr.

[1] The terms in which it was known that a colleague had animadverted upon Mr. Childers were such that their voluntary coalition excited remark.

Sladen in room of Lonsdale released. Mr. Molesworth similarly filled up the place of the released Solicitor-General. The Colonial Engineer, Captain Pasley, R.E., accepted a new post as Commissioner of Public Works, and claimed, under the 18th clause of the Constitution Act, the responsible position which Mr. Stawell had assured the Governor in October had "no definite legal meaning." Captain Pasley was at all times recognized as ready to serve the Queen with equal zeal in any part of her dominions at a moment's notice. It was admitted in the House that Mr. Molesworth was not even informed as to some of the steps taken until after their completion.

It remained to be seen in what way the Legislative Council would act. The officers, thus thrust upon it by the Governor's prompted act as reputedly responsible, had an official phalanx of great strength. One-third of the House was nominated by the Crown, and the nomination had been exercised mainly in appointing friends of the pseudo-Ministers, who themselves were equivalent in proportion to more than seventy members on a division in the House of Commons. If Sir Charles Hotham had been alive to these facts he might have hesitated to put his nominees in such a position, but on the 28th November they held it. The Electoral Bill which had been sent to England (to ensure an enlargement of the House, and to entitle holders of miners' rights to vote, whatever might befall the Constitution Bill) had been assented to, and elections had taken place under it. The restlessness of portions of the community was shown by the choice of the new constituencies. Peter Lalor of the Ballarat stockade, Humffray the Ballarat agitator, were among the new members. Mr. Grant, the solicitor who had been foremost in promoting the meeting to denounce military coercion in Melbourne (after the Ballarat insurrection) had become member for Sandhurst. The Governor furnished the Council on the 28th with the documents they had asked for on the 27th. They were read by the Clerk amidst symptoms of astonishment at the acceptance of office under the conditions imposed, and at the precise claims put forward for pensions.

On the 4th December, Dr. Greeves, one of the city members, moved resolutions condemning the arrangements made

"at the instance of persons directly interested, whereby his Excellency has been induced to release from office on alleged political grounds certain high officers of Government under the supposition that the mere proclamation of the new Constitution Act brought into operation the powers which can only be exercised after the return of the writs for the first election, or, at farthest, of the meeting of the Council and Assembly."

He traversed the course taken in appointing nominees to hold offices tenable only by representative members; and condemned as humiliating the terms of the Governor's minute of the 23rd November, under which the officers had consented to serve.

The resolutions were warmly debated. Mr. Haines blundered. Mr. Chapman denounced those who had grasped at office, and had not objected to the Governor's minute until the members of the House had been shocked at its terms. Mr. Griffith, Mr. Forlonge, Mr. Horne, and the new Treasurer argued in favour of the Ministry. Mr. Miller reminded them that the law officers had in October declared that the proclamation of the new Constitution would leave the responsibility of the officers "to the existing Council legally unaltered." He had a high regard for the opinion of Mr. Molesworth. Who had asked the officers to become responsible in a manner contrary to that opinion? The House drew its own conclusion as to the reason why Mr. Molesworth had been left in ignorance of the subsequent action of his colleague. The debate was adjourned. On the 5th it had been resolved to make the Governor a scapegoat. A Government officer, who was a representative member, moved an amendment striking out all condemnation of the Ministers except such as was implied in a regret that they had accepted office under the Governor's "unconstitutional" minute of the 23rd, against which the Council was asked to protest as "hostile to the liberties of the people." Mr. Strachan seconded the amendment. He, with others who did not approve what had been done, shrunk from a decision which might place Dr. Greeves at the head of affairs. Throughout the debate the Governor's imperiousness, in the obnoxious minute and in the curt release of the officers, was frequently upbraided. No man on the ministerial bench stated that the letter was not the Governor's handiwork. On the contrary, though the Attorney-

General spoke for an hour, he left undisturbed the belief, though he never alleged that the letter emanated from Sir Charles Hotham. As far as the Ministers were concerned they had acted solely for the good of the country. As to the obnoxious minute he pleaded that it had been ignored, and that the Governor had recalled it. Mr. O'Shanassy denounced the Ministers. Mr. Fellows admitted that the assumption of office was perhaps premature, but would not call it illegal. Mr. Francis Murphy, who had had private interviews with Mr. Haines as to his vote, declared, that he could not support the first resolution (respecting the release of officers) because it "involved a legal question which he did not understand." He would vote for some of the others (although in principle they involved the same question). It is difficult to decide whether if it had been known that the letter releasing the officers was forced upon the Governor as a legal necessity, the division which followed would have been of a different kind. It may be thought that concealment of the truth betokened fear lest a knowledge of it should injure the position of the released officers. That position seemed more secure in proportion to the amount of obloquy which could be fastened upon the Governor.[1] But it was not by argument that their position could be maintained. Neither Mr. Haines or Stawell could ply the secret arts necessary to secure votes, but others were born to the manner of them. The chance was desperate. If the

[1] I must in this instance depart from the usual practice of not putting forward as historical truth an assertion dependent on personal knowledge. Shortly after the debate I saw Sir Charles Hotham, then very ill, at his house. He had heard of the bitter remarks (many of them unreported in the press) denouncing him for releasing arbitrarily the officers. He asked if I had heard the debate. I told him that his minute and his letter were alluded to as arbitrary. He narrated the manner in which the letter was obtained from him. I thought he was entitled to record the facts either in a despatch or in other manner. He shook his head. "No, the officers have their own difficulties before them. It is not for me to make them worse. However, I must bear with this as I must bear with many other untruths; but when I am gone you are perfectly at liberty to tell the truth, about me and my acts, in this respect as well as in others." A part of the authority committed to me I used, when in 1867 I gave evidence before a Select Committee on Mr. Fitzgerald's (formerly Mr. Foster's) claims which had been put forward in a manner unfair to Sir Charles Hotham. The remainder I am called upon to exercise now.

resolutions should be carried offers made might perish in the promise, and the proposed recipient might lose character and prospect. An elected member, perhaps patriotically inclined, signified to Captain Clarke that he could support the Government if a certain appointment (not under Clarke's control) could be his. Others conversed with Mr. Childers. On a division (5th December) (as to the retention of Mr. Greeves' words as part of the question) the numbers were equal. But the 28 in favour of Greeves were all elected. Eight official nominees, seven unofficial, including Mr. James McCulloch, a future Premier, four officials who had been elected, and nine other elected members, formed the mixed supporters of the Government. Amongst them the object of Captain Clarke's solicitude was found, and was virulently denounced as a traitor. The Speaker gave his voice with the elected 28. Further solicitations were applied. Members were entreated to reflect on the disasters they might cause, and on a final division 29 votes against 28 rejected Mr. Greeves' proposition. Another elected member had joined, but one of the original 28 had abandoned him. The 'Argus' newspaper, meanwhile, though it had for years made common cause with the representative members, bestowed its blandishments upon Mr. Childers and his friends. Papers were then laid upon the table showing that, after the terms of the Governor's minute had been publicly criticized, the Ministers had protested against it, urging that it had not, when they accepted it, received the consideration to which it was entitled, because they had been "anxious not to allow the country to be without a Government one moment longer than was absolutely necessary." On the 30th they had respectfully requested the Governor to withdraw the minute. On the 3rd December he replied that he had transmitted it as "an exposition of his own views, and not as a dictation of terms," and that he hoped it would be "borne in mind that the satisfactory working of the new Constitution must depend upon the forbearance of all parties concerned." As far as the Governor was concerned he was considered by his hybrid advisers effectually barred from exercising any influence on behalf of the Crown; for the attitude of the House was unmistakable. The amendment on which it had been evenly divided; and the resolutions

rejected by a majority of one, were equally hostile to the Governor's minute. His antagonists promised themselves peculiar pleasure in reversing wholesome changes which, by toiling night and day, the overworked Governor had made. He, on the contrary, speculated upon no future in the colony. He had written on the 23rd November to solicit his release from office. He summed up his labours in the restoration of order at the gold-fields; the abolition of the imprest system; the recuperation of the revenue; the fact that, in all departments, economy had been successfully practised: that the police estimate for 1855 (framed before his arrival at £900,000 and cut down by a vote of the Legislature to £416,000) had been respected in its diminished proportions, while for 1856 he had been able to reduce the estimate to £312,000.[1] Whereas in 1854 he had found a revenue deficient nearly two millions sterling, in 1855 he had so filed down the expenditure that the supplementary estimate was only £9800. Regulations had been framed for the control and disbursement of the public funds (of which when he arrived there were £1,682,328 unaccounted for, being unadjusted imprests under Mr. Childers' Imprest disorders).

"I hope, Sir, you will consider this statement satisfactory. I have used every power which the Almighty has given me to advance and promote the interests and welfare of the inhabitants of this noble colony, but in so doing I have tasked my energies beyond their natural limit. My health has materially suffered, and the time has arrived when I must request you to lay my resignation at the feet of the Queen, and pray Her Most Gracious Majesty to appoint my successor."

He had been led by the first Lord of the Admiralty to hope that if he would consent to become Governor of Victoria in 1854 he might return to the navy in a higher command,[2] though he was not permitted at once to relinquish the Governorship and serve in the war against Russia. He had never been a candidate for the position of Governor, and the Prime Minister had joined in pressing him to serve in Victoria. Sir James Graham had urged that the Government was "most desirous" that he

[1] The substitution of an export duty as a means of levying Royalty instead of the expensive license fee personally collected, had of course largely diminished the staff required at the gold-fields.

[2] He sent a copy of Sir James Graham's letter.

should proceed to Victoria where his place could "not be supplied," and he had submitted. But the work he had undertaken was done. He longed for release. The thoughts of such a man were far from those in which his detractors indulged, and it was not fated that he should suffer indignities at their hands.

But he and they were to see, in the brief remainder of his life, distinct proof of the wrong done by the unconstitutional advice forced upon him in the name of law. An Electoral Bill was set down for its second reading. Mr. William Nicholson gave notice of a motion, "That in the opinion of this House any new Electoral Act should provide for electors recording their votes by secret ballot." Mr. Nicholson had won esteem as a respectable townsman; had been Mayor of Melbourne, and had distinguished himself as resolute and capable in legislating against the landing of "expiree convicts" in Victoria. He was patriotic, but not ambitious. His frame was burly, but his mental constitution sensitive. He could speak cogently, but was nervously disinclined to address an audience.

On the 19th December, his resolution was carried by 33 votes against 25—Mr. Childers[1] and his official friends finding themselves in the minority with Mr. O'Shanassy, Mr. Fawkner, and Dr. Greeves. Several unofficial nominees swelled the majority. On the 20th, Mr. Haines announced that the Ministry had tendered their resignations. They calculated that retention of their nominated seats would enable them to defeat any organization dependent solely on the votes of the elected members. Nicholson, though highly esteemed, had no departmental experience. Moreover, though firmly believing in the usefulness of the secret ballot, he had no political purpose of his own in view when he moved his resolution. He had made arrangements at the time for visiting England. It was a part of the scheme of the junto to throw upon the House a responsibility which (in default of a control over the nominated seats) it could not exercise, and then (on the failure of the representatives) to return to office stronger than before, by reason of having shaken off the constitutional authority of the Governor

[1] In 1880 Mr. Childers, with a memory too short, or confiding in the forgetfulness of others, afterwards boasted that the ballot was one of the "splendid achievements" of the Liberal party in England.

under the old system, and having defied the representatives of the people under the hollow pretext that the latter had proved themselves incapable of using the new.

The Council, on the 21st December, adjourned until the 8th January. Mr. Nicholson was sent for by the Governor on the 21st, and did not, perhaps, see the plain path to secure for his experiment a fair trial. It was true that the new Constitution could not be brought into operation until two Houses had been elected. But he might have proved to the colony the vileness of the experiment to which it had been subjected. He might, *in limine*, have protested that responsibility could not accrue until the new Legislature rendered it constitutional. He would have been answered: "The law officers have affirmed, the Governor has consented, the Legislative Council by a majority of one have resolved, that ministerial responsibility exists." His answer should have been: "In the division in the House the votes of official nominees were recorded. I undertake the trust on the condition that your Excellency will place the nomination of the holders of the official seats at my disposal, subject to your Excellency's approval of the arrangements I may make." If the Governor had agreed, the seven ministerial seats would have been vacated, and the filling of them would have insured an ample majority for Mr. Nicholson, irrespective of other official (non-ministerial) seats which would also have been at his disposal. The non-official nominees he could well have afforded to leave undisturbed. They had been appointed at various times by the upright Latrobe, and had often indicated independent zeal for the good of the country. If the Governor had not consented to place the official seats at Mr. Nicholson's disposal the character of the scheme which retained them as ingredients in a so-called responsible system would have been manifest. Mr. Nicholson, unprepared for the crisis, did not see the conditions of the problem, and attempted to form a Ministry out of his friends in the House. He afterwards admitted that his course should have been clear.

The icy hand of death was already upon the Governor when Mr. Nicholson saw him.

On the 17th he had been present at a formal opening of the works of the first Gas Company in Melbourne. A storm of

wind and rain struck his wasted system, and the effect was never shaken off. Mr. Nicholson undertook the task of forming a Ministry, still adhering to his intention to leave the colony. He found intrigues busy amongst his friends. The junto sowed innumerable suspicions. Nicholson was told that he could not make a Ministry and depart immediately to England. He waived his private arrangements and consented to become Chief Secretary. On the 27th he was requested by the sick Governor to furnish him on the 29th with an answer as to his success, which was then accepted by the public as assured. But on Friday the 28th the Governor's medical attendant called to say that the Governor was dangerously ill. He had not strength to resist the disease which, marking him first on the African shore, claimed him in Australia, emaciated as he was by labours which had been aggravated by some who should have been his loyal supporters. On Saturday he was in worse condition, and the same emissary was employed to ascertain the state of Nicholson's negotiations. The latter was unable to report finally. Some friends were unable to join him; some he had not been able to see. The dying Governor by message asked Nicholson to see him on Monday. He also directed that a letter should be written to Mr. Haines on the subject of framing an administration. The value of its terms was modified by the fact that the private secretary did not see the Governor, but interpreted a verbal message conveyed by the medical adviser. Nicholson was informed of the letter to Haines. While giving his latest instructions the Governor manifested no apprehension, nor even consciousness that death was near. But on Sunday morning epilepsy (never known in him before) closed the struggle. After recurring fits his overworked frame gave way, without allowing consciousness to regain control, and on Monday morning Lady Hotham was a widow.[1]

[1] Thus she wrote on the 15th January: "That he was indeed most sorely tried in the faithful discharge of his duties, you in your official position must have often witnessed, and I have had the pain of seeing him return from the Government offices worn and weary; but he would never allow himself to rest until the work of the day was done, however tired he might be. It is most true that he knew his labours were wearing away his health;

Major-General Macarthur became the administrator of the Government, and on the 1st January sent for Mr. Nicholson and asked if he might consider himself at liberty to send for Mr. Haines. Nicholson left the matter entirely in the Acting Governor's hands, and Haines was requested to form a Government: the issue being well-known beforehand. Each member of the Haines Ministry resumed his place. A public funeral was accorded to the remains of Sir C. Hotham, on the 4th January. On the 5th the 'Argus' concluded its treatment of the late Governor by an article which admitted that his desire had ever been for "the public welfare"—

"... but while we agree that he was hurried prematurely to the grave by undue strain upon his faculties, by the unfavourable expression of public opinion, by misunderstandings with his advisers, and by the incessant attacks made upon him, we are not inclined to agree that his death is a cruel and useless sacrifice, and that those principally responsible for it, so far as their course has been a conscientious one, have a deep sin to answer. On the contrary, we look upon such an idea as erroneous."

A stranger to the truth might have supposed that attacks upon the Governor hastened his death. One who knew the facts could only have written the foregoing triumphant criticism if he had been a conspirator by whose aid the labours of the Governor had been swollen. The public feeling was nobler than that of the critic. In the vast concourse which attended the funeral there was visible a solemn conviction that an honourable man had passed away, and genuine sympathy resided in almost every breast. It was felt that he had succeeded to a difficult task, that he had in eighteen months restored the supremacy of law, redeemed the public credit, and had died at his post, not borne down by attacks of others, but worn out by mental and physical exhaustion. That he died in the arms of victory has been shown in the description of his work.

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but were the struggle to come over again he would do the same, for duty with him was stronger than the love of life, and many times I have heard him say, 'I stand with my back to the wall and fight single-handed. I may fall, but if I go down it shall be with my colours flying.'"

After the Council re-assembled, Mr. Fawkner moved that Major-General Macarthur be requested to cause £1500 to be devoted to defray the expenses of the funeral of the late Governor, and to erect a monument to his memory. Mr. Grant, Mr. Humffray, and Dr. Owens (Mr. Grant's old associate, who had become a nominee member appointed by Sir C. Hotham) opposed the motion; but an amendment moved by Grant was thrown out by 42 votes against 8.

In briefly narrating his failure to form a Ministry, Nicholson, on the 8th January, bluntly said that if the new Constitution had been in operation he would have succeeded, but he did not like to go outside of the House. He asked Mr. Haines to leave the ballot an open question. He had prepared the clauses required to carry out the recorded decision of the House.

Mr. Haines declined to state his intentions. His colleagues hoped to strangle that decision by reason of Nicholson's failure, but feared the effect on some of their own supporters if they should prematurely announce an intention to disregard the resolution of the House. Mr. Goodman forced them to an explanation by giving notice that he would, on the 16th of January, move that the House having adopted the ballot, the Ministry ought to declare what course they would pursue. It was rumoured that Mr. Goodman could form a Ministry. Thus compelled to break silence, Mr. Haines announced that the former resolution of the House would, under the circumstance of Nicholson's failure, be treated as non-existent; but uneasy with regard to Mr. Goodman's prospects, he added that in future the ballot should be considered a non-ministerial question.

The House, though it could not make Crown nominees responsible in a parliamentary sense, could insist by majorities as to the making of laws, and Nicholson carried all his clauses in committee.

A wholesome check upon tampering with voting papers or with the ballot-box was inserted, contrary to Mr. Nicholson's wish, though he lived to approve of the principle. By marking the elector's number on handing him his voting paper, and guarding (by presence of scrutineers, &c.) against any possibility of the numbers being looked at on counting the votes, and having them sealed up until required (within a specified time)

before any tribunal, frauds which have occurred elsewhere were rendered impossible: inasmuch as on petition the whole number of recorded votes could be duly ascertained, and any elector desirous to know whether his vote was rendered according to his intention could discover the truth before the Committee.

Mr. Childers could not reconcile himself to the ballot as right or practicable. On the 23rd January he assured the House with a formality which did not convince it, that he had satisfactorily established the proposition, that under the ballot a separate "polling place would be required for every 120 or 160 voters."

In the course of the debates Captain Clarke ventured to deny that there had been a want of harmony between the late Governor and his Executive Councillors, such as had been hinted at by Mr. Henry Miller.

Abnormal proceedings in the House tended to excite demands for new things out of doors. Messrs. Grant, Humffray, Owens, and others, sought a popular verdict in favour of local election of a Governor. On a requisition, which included Mr. Westgarth's name, the Mayor convened a meeting, but declared to those who assembled that, as he would not link himself with disloyalty, he would not preside. Mr. Westgarth took the chair. There were nearly 3000 persons present, but it was impossible to pronounce whether the first resolution was carried. The chairman could not decide, but had "an impression." When an amendment demanding a ballot for the Governor's election took the conduct of the meeting out of the hands of its contrivers, the movement ended in confusion, though without disorder.

Our main business, however, is with the mode of introducing a pseudo-responsible government in Victoria. Its contrivers well knew its inherent vices, and thought it desirable that another Governor should sanction similar proceedings. An adverse judgment might be given by the Secretary of State, upon an isolated case, which he might modify if several colonies should furnish instances of like nature.[1] There was one

[1] In effect the Colonial Office (so far as is shown by papers laid before Parliament) evaded the question. Mr. Labouchere in acknowledging the despatches about it, merely wrote: "It is only necessary for me to remark that the points to which it relates will probably long have ceased to possess any practical importance." Parliamentary Papers, vol. xliii. 1856. (2135.)

Governor whom Captain Clarke might hope to influence. He had been private secretary to Sir W. Denison in Tasmania, and that active-minded officer was in intimate correspondence with his former secretary. If the Governor-General could be induced to follow the example in Victoria, no special censure would attach to it. But Sir W. Denison was warier than Sir C. Hotham as to political recommendations from law advisers, and he was called upon by the public esteem in which Deas Thomson was held, to pay attention to that officer's views. As a sagacious statesman, as the chief civil officer of the Government, it was clear that he must be consulted even by a foolish Governor;—and Sir W. Denison was by no means foolish.

When Deas Thomson went to England in 1854, his admirers had subscribed for a testimonial to him, and he had, after selecting a piece of plate, won golden opinions by devoting £1000 from the contributions to the establishment of a scholarship in the Sydney University. Except amongst the followers of Lang, Deas Thomson was regarded with affectionate respect. He returned to Sydney in January 1855, the Governor having been sworn in under his new commission (under the new Constitution) in December.

Captain Clarke had already written to describe what he called the "ministerial crisis" in which he and his colleagues were "released on political grounds," and re-appointed; but Sir W. Denison "decided to wait the arrival of Mr. Deas Thomson before (he) made any attempt to modify the existing form of government."[1] The junto began to fear that their plot would fail. If Deas Thomson could, like Captain Lonsdale, have been released in his absence, all might have been well. His presence on the scene might be fatal to their designs. The Governor endeavoured to comply, in some degree, with their views. He verbally pressed upon Deas Thomson the importance attached to his acceptance of office, "were it merely for the purpose of affording the assistance . . . which his thorough acquaintance with . . . the colony and the details of administration so fully qualified him to give." He urged him by private letters, and

[1] Despatches to Secretary of State, 21st December, 1855, and 19th February, 1856. Parliamentary Papers, vol. xliii. 1856 (and Denison's 'Varieties of Vice-regal Life').

by official despatches. He had not nominated any Executive Councillors after being sworn in, because he had hoped to induce Deas Thomson to gratify the universal desire that Thomson should form the first government.

Difficulties would soon arise from the want of an Executive Council. Deas Thomson relieved the urgent Governor as to those difficulties by pointing out that persons unconnected with party politics might become members of the Executive Council, and Colonel Blomfield (the officer in command of the troops, and a member of the defunct Executive Council); Sir Charles Nicholson the Speaker; with Messrs. W. Sharpe Macleay,[1] and James Macarthur of Camden, were appointed. They were not men who would lend themselves to any fraud upon the Constitution. When the question of pensions for the retiring officers was mooted, Deas Thomson and some of the new Councillors (not only the thoughtful Macarthur) represented that no such voluntary act as was asked at the hands of the officers would entitle them to be considered as retiring, or being released, in the terms of the Constitution Act. Though the fact that Sir C. Hotham's letter (of release) was imposed upon him was unknown, it was held, nevertheless, that the proposed retirement would be irregular.

Sir William Denison himself thought that no political grounds could "be said to exist at present," and that therefore "no application to retire could be entertained."[2] Yet when Deas Thomson finally and officially declined to undertake the task (24th January), Sir W. Denison applied to Mr. Donaldson to form a Ministry; and, but for a legal difficulty, he might have persevered. The Governor was seriously requested by his Councillors to ask the Judges of the land whether the proposed voluntary release of the officers would satisfy the spirit or terms of those words in the Constitution Act which Wentworth had originated, and which had been copied in the Victorian Act. He consented to do so. The Judges (8th February) furnished

[1] A son of the former Colonial Secretary; *temp.* Governor Darling.

[2] Despatch, 19th February, 1856. His opinion would therefore have been adverse to the procedure in Victoria. But as it was not publicly known that Sir Charles Hotham's letter was extorted from him, the real case of Victoria was unknown in Sydney. It might well have been supposed there that so important an element would have been stated in writing or mentioned in debate.

an elaborate and unanimous opinion that the changes made in the Governor's Commission did "not constitute valid political grounds within the meaning of the enactment for the retirement of any of those officers" named: the Chief Justice, Mr. Justice Therry, Mr. Justice Milford, and the learned Justice J. N. Dickinson, were all of one mind on that point. The last-named went further, and declared that none of the officers could by resignation claim the pensions so long as they were allowed to retain office, whether they might or not be permitted to be members of the Executive Council. On one point the Judges explained their own position. They desired to avoid the imputation of prejudging a question which by possibility might be tried afterwards in the Supreme Court upon argument. For any arguments they were bound to "keep their minds open." But in deference to the Governor's position, and consideration of the public interests, they felt that the case was one of the rare order in which the Judges of the land could "with propriety assist Her Majesty's representative in the construction of an Act of the Legislature." Examining the question legally, and not excluding political considerations, they proved that "the right to the pension will not arise unless the retirement be in fact and *bonâ fide* on political grounds a matter of moral pressure or compulsion."

Their opinion implied that law coincided with common sense. The resignation of a Ministry in the mother country was, they said, caused by "a moral necessity, a result forced on its members in some way or other by political circumstances." In any event the Ministry (if such the officers were to be considered) "would be compellable to continue in office for a time. In Great Britain Ministers never, in fact, throw up their offices or refuse to do acts devolving upon them as Ministers; they continue invariably to hold office until successors are found to them." The Judges' opinions were so clear that the Governor entertained no doubt as to his duty. He was not prepared to take the initiative before the elections to the new Assembly should furnish the tribunal through which, with the Upper House, Ministries were to become responsible to the Legislature. He hastily withdrew his application to Mr. Donaldson, and appointed Deas Thomson and the Colonial Treasurer as mem-

bers of the Executive Council. The Government was to be carried on, as the law required, under the responsibility of the Governor until the birth of legitimate responsibility through the bicameral Parliament. It was perhaps through consideration of the difficulties which might be created in Victoria by the publication of a judicial condemnation of the proceedings of Mr. Haines and his colleagues, that some secrecy was preserved in New South Wales as to Sir W. Denison's appeal to the Judges. But the general facts became known, and in a short time the opinion of the Judges was included amongst papers laid before the House of Commons.

The Government in New South Wales was carried on with an impartial hand by the Governor and his nominated Executive Council, until the elections in 1856 furnished the means of forming an administration. Mr. Deas Thomson took no part in it, and, though invited to stand for Sydney, declined to do so. The "moral necessity" spoken of by the Judges occurred, and the retiring officers received their pensions according to law. A singular and unforeseen result arose from the manner in which pensions were grasped at in Victoria, and in which some of the graspers sought to obtain an endorsement of their practices in New South Wales. There is extant a weighty sentence, that one of the pensions paid for many years in Victoria had no legal or constitutional warrant. Mr. Childers having acquired, as he thought, a title to a pension by voluntary action in 1855, never acquired a better subsequent title as his colleagues did. The strong man of the Ministry, the Attorney-General, had by herculean labours deserved the gratitude of his comrades, and they had throughout their troubles agreed that he should become Chief Justice in room of Sir W. A'Beckett, who on account of ill-health sought to retire upon the pension provided by the new Constitution. But without Mr. Stawell the Government would have been too weak to stand before the representative members in the old Council or in the new Parliament. When, therefore, a Judge was required in 1856, and Mr. Molesworth was appointed, a presumptive claim of the Attorney-General to the vacant seat was recognized. Mr. Stawell's colleagues could not spare him, and he gallantly remained by their side to contest the elections and meet the first Parliament. The Chief Justice, anxious to

retire on grounds of health, vainly urged that retirement regulations, which by the Constitution Act were to be "framed by the Governor in Council," should be made. He was put off from month to month, and long correspondence ensued. Speed had been necessary for their own pensions, but not for his. They met the Parliament. When they began to totter as a Ministry (within three months) speed again seemed necessary, and they urged Sir W. A'Beckett to the act which they had so long postponed.[1] Mr. Childers would not trust himself in the field without his Achilles; and perhaps unconscious of the implied condemnation by the Sydney Judges of his claim to a pension, retired voluntarily from office (with a view to appointment in England to superintend emigration to the colony) when Mr. Stawell went to the Bench on the 25th February, 1857. The Ministry, bereft of its leader, fell on the 11th March. Mr. Haines was disingenuous enough to state in debate that the Ministers could not anticipate[2] when the Chief Justice would retire. The adverse division which drove Mr. Haines' remaining comrades from office, gave them a good title, but could not enure to the benefit of Mr. Stawell, who voluntarily became Chief Justice, and was therefore not extruded from office by political pressure, nor to that of Mr. Childers, and though for many years the latter drew what was called a pension, he was dependent upon the bounty and not upon the law of the colony. Those who knew of the defect in his claim did not care to question it, and after payments extending over nearly a quarter of a century (omitting periods during which he held offices of profit in England), probably no one would desire to deprive him of that which he might, by retaining office for a fortnight longer, have become entitled to by law.

It is perhaps necessary to describe briefly the use which the

[1] Apprehending a hostile vote, they pressed him in season and out of season. To a friend whom he had consulted often on the matter, he said, "Is it not too bad? For months they have retarded me by needless delays, and now they will not let me be at peace." He was half inclined to withhold his resignation, but yielded to the argument that whether he had or had not been well-treated, the question for his judgment should be whether he could fill his office efficiently without injury to himself.

[2] When Sir W. A'Beckett read this statement, he (to the friend alluded to in the previous note) made ejaculations uncomplimentary to Mr. Haines.

spurious Ministry of Victoria made of their position. An amusing contrast between two of them was shown with regard to the vote which blandishments secured when Dr. Greeves assaulted the "political release" of November 1855. The office expected by the voter was under the Department of Captain Pasley the Commissioner of Public Works. No man would have dared to propose that Captain Pasley should take part in a transaction which even an enemy could call corrupt. His colleague essayed to sap the fortress which he could not openly approach. He suggested that the applicant was a fit person.[1] Captain Pasley doubted it, but was determined to get the best man available, after due inquiry. It was insinuated that the office had been "as good as promised." "Impossible (quoth Pasley); it is in my Department, and I have not decided upon the matter in any way." To expound the occasion of the quasi-promise would have been vain. The courteous and incorruptible Commissioner of Public Works did not bestow the coveted office upon any Member of Parliament, but sought for a more competent, if less convenient, man.[2] Unfortunately there would have been no difficulty in securing the assent of the Acting Governor, General Macarthur, to any recommendation unless in plain terms it had necessitated disloyalty on his part to the Queen. In that case he would have been staunch enough to run any personal risk rather than compromise his honour. He drew no distinction between his position and that which would be the position of a Governor after the elections under the new Constitution. He assumed that his advisers would always mean well, and signed everything put before him without remark, and often without taking the trouble to understand. This he did without consciousness that his position prior to the elections

[1] It must be borne in mind that the clause disqualifying placemen which Wentworth inserted in the Constitution of New South Wales was not adopted in Victoria. Like many of Wentworth's clauses, it was before the Select Committee which prepared the Victorian Bill, and was even adopted temporarily there, but was subsequently dropped as an unnecessary check upon ministerial operations.

[2] In amusing contrast with the facts, the inspired 'Argus' said (22nd July, 1856), that when the negotiated "traitorous vote" was given it was "known both to the voter and to the Government at the time he gave it that it was necessarily fatal to his claims."

peculiarly demanded discriminating impartiality, and without the fault of indolence in endeavouring to equip himself for his functions.[1] Under this easy negligence, a claim which the Travelling Expense Board had refused to sanction, and which, being contrary to regulations Sir Charles Hotham had not recognized, was speedily put before the Acting Governor without explanation, and was approved as a charge upon the territorial revenue. Though the Major-General had at Ballarat been the means of enabling Sir Robert Nickle to offer rewards for rebels, Captain Clarke saw no impropriety in obtaining Macarthur's sanction to the appointment of Mr. Peter Lalor as Inspector of Railways. Subsequently[2] a law was passed to put a stop to the unlimited creation of placemen which a failure to copy Wentworth's Bill had rendered possible in Victoria.

It was natural that the pseudo-Ministry should strive, by securing elective seats, to maintain their position before the Parliament when the new Constitution really came into operation. Some amusement was created when Mr. Childers, who wooed the electors at Portland, replied (to a questioner) that "the cash was on the way" for a local work, and when Captain Clarke, to propitiate the electors of Emerald Hill, promised them a cemetery. But in spite of these and other objections, all the Ministers secured their seats. The upright Molesworth had become a Judge, and Mr. T. H. Fellows, enjoying a reputation at common law second to none in the Southern hemisphere, had become Solicitor-General. But the Ministry wanted confidence in itself. It feared to adhere to the Constitution which it had assisted to frame in 1854. The reduction from £10 annual value of freehold to £5, and the maintenance of leasehold qualification at £10 had been deemed right in 1854; but in

[1] He had had a singular experience in his youth. In 1808 he saw the life of his father, John Macarthur, in jeopardy under the tyranny of Bligh. He saw Bligh's forcible deposition and imprisonment.

[2] Mr. Childers, in 1857, did not deny that he had interviews with more than one member of the opposition whom he desired to send into pleasing banishment as paid Emigration Agents in England. In 1858 an Officials in Parliament Bill was introduced in the Assembly to limit the number of placemen to certain ministerial persons. The Council inserted an amendment to prevent any Member of the Parliament from accepting office within six months of tenure of his seat. After some hesitation the Assembly accepted the amendment.

1856 demands for change made the Ministers doubt whether their positions could be held without concessions. There was probably no society in the world which could less afford to undergo rapidly repeated degradations of the franchise. There was, probably, no society in which the rulers were so ready to adopt or to suggest rash experiments. It may well be doubted whether, taken man for man, there was any community possessed of more intelligence than that of Victoria. But there was a lack of combination of the general intelligence for the general good. The restlessness of gold-seekers; the lawlessness of thousands who had formally expiated crime by imprisonment, but were not purged of it in their hearts; the evils which had culminated in the insurrection, which it had been found necessary to put down by arms;—the election of former agitators by the gold-fields constituencies:—all these were clouds of danger, which should have led not only the Government but all candidates to weigh their words scrupulously when the choice of the members of both Houses devolved upon the people. To lead men's minds to sober thoughts at such a time was a solemn duty. But the addresses of candidates showed no recognition of it. The wisdom which was lacking amongst them could hardly be looked for amongst those whose votes they sought. Poured so suddenly into the land, prompted by eager ideas, drawn originally from a restless class in Europe, it was natural that the population of Victoria (converted from 76,000 in 1850 to 397,000 in 1856) should embrace crude notions. Some boasted that they would show an example to the world; and they succeeded, though not in the sense intended. The world itself is caught betimes by delusions. The assassins of the French Revolution mouthed the maxims of ancient heroes, amidst the applause of dupes, who lent themselves to tyranny and murder under the names of equality and fraternity. When the atmosphere is murky the levin flash may dart from clouds which seem not to portend danger. When men's minds are disturbed they are kindled to enthusiasm, which will wreak in the name of virtue acts which in their sober senses they would have called crimes. Thus the cry of Reform had become in England associated with wholesale lowering of the franchise, which became the first demand of the Chartists. In populous Birmingham, Chartist agitators were elected at the

first municipal elections held under the new charter of incorporation in 1859. From populous Birmingham, through the crucible of transportation and the fury of gold-seeking, thousands of reformers had congregated in Victoria. Glasgow, rapidly assuming the importance of numbers, had her Chartist Convention in the same year (1842) in which the London Chartists endeavoured to overawe the House of Commons, but failed egregiously;—Macaulay, Roebuck, and Peel being found arrayed against them. Scotland (ever democratic in her political proclivities, perhaps in consequence of the bent of mind due to her ecclesiastical organism) furnished her full quota of the active and capable colonists who had flocked to Port Phillip, and amongst whom the seditious Lang had admirers. Ireland had sent her thousands, and in 1856 they poured their treasure into the pocket of their countryman Duffy, who boasted that as regarded Ireland he was a rebel to the core. John Mitchell, who had denounced Duffy, had friends in Victoria, and had, while Duffy's friend, in set terms declared his mission to be, "to bear a hand in the final destruction of the bloody old British Empire."[1] Many of the foiled Chartists of the 10th April, 1848, had transferred their energies from Kennington to Ballarat, Sandhurst, and Melbourne. The general amnesty granted early in 1856 to Chartists, and to Irish convicts who had not broken their parole, gave timely permission for them to seek election in Victoria.

The reasonable demand for an extension of the suffrage in England was never based on those wild claims which Pitt argumentatively demolished in the House of Commons in 1793.[2]

[1] Letter to the Lord Lieutenant of Ireland; April 1848.

[2] "If this principle of individual suffrage be granted, and be carried to its utmost extent, it goes to subvert the peerage, to depose the king, and in fine to extinguish every hereditary distinction, and every privileged order, and to establish that system of equalizing anarchy announced in the code of French legislation, and attested in the blood of the massacres of Paris. . . . If it were possible for an Englishman to forget his attachment to the Constitution, and his loyalty to the sovereign . . . he would find the principle of individual will powerful for the destruction of every individual and of every community; but to every good purpose null and void. . . . Under a pretence of centering all authority in the will of the many it establishes the worst form of despotism. . . . In what is called the Government of the multitude they are not the many who govern the few, but the few who govern the many. It is a species of tyranny which adds insult to the

The corner-stone of the structure of the financial power of that House was its ability to check waste or misrule, because, without the voice of the representatives of the tax-payers, no tax could be imposed, no army maintained. But the life of the wholesome principle thus embodied in the Constitution was poisoned when it was contended that the suffrage should be so lowered that the imposition of taxes should be controlled not by those who paid them, but by the majority of those who did not. Common sense required that at least the centre of power should reside in those who were to pay. The grander principles that every Englishman was entitled to justice and trial by his peers had been declared in the Great Charter and secured in succeeding generations. It is sufficient here to deal with the inferior though important subject of the taxing power. Safeguards for the liberty of the subject being writ large in the Constitution of England, and constituting its very life, have, both in the mother-country, in the United States, and in other colonies sprung from her, endowed her children with a prouder boast than the Roman *Civis Romanus sum*. But it is the height of unreason to argue that the birthright of freedom involves a right for him who pays no taxes to order the manner in which the taxes paid by the industrious shall be raised and spent. The central power was for some time in England unduly placed, and it was in harmony with the Constitution to shift the balance so as to adjust the machine of taxation. Such an operation required nice and judicial care, and was perhaps in danger of abuse in the hands of the empirical Lord John Russell and his tutor Lord Durham in 1832. Nevertheless in those days the theory of taxation was respected. It was not contended that all "flesh and blood" however idle had a natural right to impose taxation upon the property of a neighbour, however industrious. Such a contention, if urged too boldly, might have bred suspicion that the

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wretchedness of its subjects by styling its own arbitrary decrees the voice of the people, and sanctioning its acts of oppression and cruelty under pretence of the national will. . . . The Government which adopts such principles ceases to be a Government: it unties the bands which knit together society; it forfeits the reverence and obedience of its subjects; it gives up those whom it ought to protect to the daggers of the Marseillese and the assassins of Paris." ('Parliamentary History.')

claimed right of taxation was but a covert claim to rob. No more eager reformer than Macaulay supported the Bill of 1832; no man more cogently than he foretold the ruinous result of universal suffrage. Again, the reformers in England when urging the claims of educated persons who might not have acquired a property qualification, had, in theory, a justification by no means dependent on the "flesh and blood" claim afterwards put forward by Mr. Gladstone. They sought the suffrage for the intelligence of the community, and argued that possession of property was too rough a test of intelligence to be relied upon. Those educated up to a certain standard ought to be enfranchised. In this claim also there was reason, though it was matter for discussion whether the probable good surpassed the probable evils arising from a departure from the ancient principles on which Edward I. established the House of Commons in the 13th century. There was no claim, reasonable or unreasonable, lawful or seditious, which was without advocates among the heterogeneous population which was congregated in Victoria in 1856.

Such being the known conditions of the problem, it might at least have been hoped that the men who had taken a part in framing the new Constitution, whether in the colony or in England, would give it a fair trial, and would not stir the seething elements in the community to disaffection. Such hopes were doomed to disappointment. Prominent amongst the local politicians was Mr. O'Shanassy. Capable, not only in debate, but as an administrator, he had taken, and was expected to take, a foremost position in public affairs. Having been a member of the Committee which drafted, and of the Council which passed, the Constitution Bill, he could not complain that his voice had not been heard, or his vote rejected, in framing the new order of things. Yet he was amongst the first to betray it. In seeking the suffrages of the electors in 1856, he advocated the "extension of the suffrage to every man." Mr. Michie and Mr. David Moore, wooing the Melbourne electorate; Mr. H. S. Chapman, Mr. Harker, and Mr. J. D. Wood in courting suburban constituencies, pronounced in favour of "universal suffrage." Mr. Henry Miller, addressing the electors for the Upper House, declared himself "in favour of manhood suffrage for the Legislative

Assembly." Mr. Donald Kennedy similarly explained himself to a rural electorate for the Council. The leading men of the late representative phalanx seemed to band together to mar the Constitution in its very cradle;—to strangle their offspring before it could speak. William Nicholson, styled "the father of the ballot," was not exposed to temptation. He had gone to England, and the 'Argus'[1] regretted the absence of "one of the most sensible, useful, and sincere members of the late Legislature."

Amongst other propounders of theories Mr. McCulloch (who because he was supposed to have commercial knowledge, affected that his voice deserved the reverence due to a Themistocles) announced that he would shorten the duration of both Houses of Parliament. Neither of them should be elected for more than three years. He also joined in a demand for the abolition of the provision for State aid to religious denominations. It must in justice be said that the Government made some efforts, however faint, to plead for delay. Mr. Stawell thought the people might wait a little, and that there ought to be "some restriction" of the suffrage. Mr. Childers followed his leader, and would oppose radical alterations until the Constitution had been fairly tested. Captain Pasley more plainly declared that he would by no means support vital changes. Let the Constitution be tried as it existed by law. His prudence was, however, not imitated by his colleagues, and they made the Acting Governor, in the first vice-regal speech to the two Houses, ask them "to extend the basis of the suffrage."

There had appeared upon the scene an intriguer, whose name was rife in common report, whom many distrusted, but who found in Victoria those who welcomed him as a regenerator of society. His principal claim to distinction was having been convicted of sedition with O'Connell and others in 1844, and having been released when, on a writ of error, the House of Lords quashed the conviction on the technical ground that the Irish Court had improperly confounded bad and good counts. Thus ransomed, not by his own merits, but by blunders in Ireland, and the clemency of English law, he continued his career of sedition; and in 1848 enthusiastic conspirators broke

[1] 23rd May, 1856.

out into excesses which he had incited, but from the penal consequences of which he escaped before Irish juries [1] unable to agree upon a verdict while there was one among them who swore he would die before he would find the prisoner guilty.[2]

As the subject is unsavoury it may be well in order to avoid recurrence to the theme to condense at this place such facts as may enable the reader to judge the character of the man who was enthusiastically welcomed in Victoria in 1856. An Irish constituency elected him in 1852, and he took an oath of loyalty to the Queen at the table of the House of Commons. There he was chiefly noted for being compelled to attend in his place for

[1] In 1883 Duffy published a volume justifying the seditious movements of himself and his friends. In 1848 the French revolution aroused his hopes. "Ireland's opportunity—thank God and France—has come at last." He and others sent a deputation to Paris, but (he sadly recorded in 1883 that) "Lamartine's answer was a great disappointment." Time appears hurtless against sedition in some minds.

[2] There are some vigorous sentences of Sir Robert Peel which were not inserted in a collection of his speeches published in London in 1853, but are to be found in Hansard, and deserve to be quoted. When Smith O'Brien was arrested there was found in his trunk a letter from C. G. Duffy —containing these words: "There is no half-way house for you. You will be the head of the movement. . . . You have at present Lafayette's place, and I believe have fallen into Lafayette's error, that of not using it to all its extent and in all its resources. I am perfectly well aware that you don't desire to lead or influence others; but I believe with Lamartine that that feeling which is a high personal and civic virtue is a vice in revolutions. . . . If I were Smith O'Brien I would strike out in my own mind, or with such counsel as I valued, a definite course for the revolution, and labour incessantly to develope it in that way. . . . Forgive me for urging this so anxiously upon you, but I verily believe the hopes of the country depend upon the manner in which the next two months . . . it is only by applying all our force to it that we will succeed." With prescient sagacity Sir Robert Peel had previously (18th April), when the Crown and Government Security Bill was before the House of Commons, pourtrayed thus the character of the tempter to sedition. He mentioned no names. The picture needed no label. "I cannot conceive a more detestable character than that of him who, for the purpose of gratifying his personal vanity, or in the hope of having his name combined with splendid names that are included in the category of traitors, urges on his miserable and degraded followers by his speeches or writings, but is not willing to share with them a common fate. I shall rejoice to see such men reduced as they ought to be to the condition of felons. Let those frogs which are croaking sedition remain in their marsh, and let them not puff themselves into the dignity of those nobler animals which bellow treason."

using language deemed unparliamentary, and to express regret if he had violated any rule of the House. He also (as has been seen) lent sinister aid to Mr. Lowe in thwarting the provisions which Wentworth's sagacity had inserted in the New South Wales Constitution Bill, and which had been partially copied in the Victorian. But he began to lose ground amongst his former comrades. No language could be more bitter than that in which John Mitchell denounced him as a traitor. His quiver being exhausted at home, he thought he might trade abroad on the reputation of past intrigues, and Victoria seemed to invite him.

A community recently convulsed, had suddenly acquired new powers, and might be expected to afford scope for his talents.[1] He landed in January 1856, and received from Mr. O'Shanassy and others complimentary addresses. Mr. Henry Parkes, with others, forwarded an address from Sydney. Duffy recognized the probable usefulness to himself of O'Shanassy's reputation, and rejoiced "to stand face to face with the best and most gifted Irishman in the new world—John O'Shanassy." When O'Shanassy escorted him to the Legislative Council Chamber, Mr. Childers sought introduction to him. He was entertained at a banquet, and lauded by O'Shanassy. He disclaimed ambitious views. Those who dreaded him might allay their fears. He was no conspirator. "The most destructive weapon he carried was 'Chitty's Practice of the Law.'"[2] He desired to live at peace. "But let him not be misunderstood: he was not there to repudiate or apologize for any part of his past life. He was an Irish rebel to the back-bone and spinal marrow." This bold announcement, maugre his oath in the House of Commons, somewhat grated upon the ears of a portion of the company, more especially as it could not be

[1] Mr. J. P. Fawkner, ever alert, disentombed from an Irish paper a letter from Victoria urging Mr. Lucas, editor of the 'Tablet,' to reap the harvest of money and political power ready for his sickle in Victoria, where "no position political or otherwise would be out of his reach." Lucas died, and Fawkner suggested that, as the editor of the 'Tablet' could not be obtained, Mr. Duffy of the 'Nation' had been sent to become "chief ruler." It has been seen that immediate intimacy sprung up between Duffy and Dr. Lang, who thirsted for the severance of Australia from the Empire.

[2] He was correct in thinking it harmless in his hands. He did little at the Bar, and speedily reverted to his former pursuits.

ascribed to unpremeditated warmth, inasmuch as he was known to concoct speeches with care, and hand his manuscript to reporters. But enthusiasm is not to be repelled by a blunder; and some spirits in Victoria were as seditious as his own. His admirers determined to present him with the real property qualification required by law for a seat in the new Parliament. New South Wales furnished contributors. Far away in villages, a thousand miles from Melbourne, a Roman Catholic priest, or an Irish publican might be seen canvassing for subscriptions. Sixty-six committees co-operated in New South Wales. Reformers of all classes in Victoria poured in funds, and several thousand pounds more than were needed to qualify him for a seat in the Assembly were presented to him. He assumed importance, and declined to join in a movement which could bring him into contact with Mr. Fawkner who had animadverted upon him.

He wooed the electors of Villiers and Heytesbury in 1856. He struck the chord which Dr. Lang harped upon, by saying that the Royal power of disallowing Bills must be destroyed, and means devised to rouse a "national Australian spirit to force us all into one." He was in a critical position with regard to one question. O'Shanassy, without whom he could not stand in those days, was an ardent supporter of denominational education. Some of the subscribers to the Duffy fund were equally eager for united common education: and Duffy himself had in Ireland advocated views widely different from O'Shanassy's. An elector questioned him on the subject, and on that of State aid to religion. He replied: "As to granting State aid to religion, although all his life a voluntary, he thought in this new country many districts would become semi-barbarous if aid to religion were withdrawn, and he therefore did not think it would be wise, or just, or statesmanlike to do so. . . . He was in favour of continuing both the national and denominational systems in order that all classes might be satisfied and educated."[1] The motive of his professions might be deduced

[1] When an 'Argus' (May 1856) reached the room of an editor in New South Wales a curious scene occurred. He and a friend had been discussing Duffy's character. The editor thought he would prove honest, but agreed to judge by the opinions he might express on those subjects on which if he should

from his effusive declaration soon afterwards that "he had never known a better or truer man than John O'Shanassy."

The courtesies expended by Mr. Childers and his friends upon Mr. Duffy did not propitiate him. He denounced the Government, and affirmed the necessity of hurling them from office. But Mr. Childers bore no malice against any one who might be useful to him; and in 1873 assisted in recommending that Duffy should be decorated by the Queen. Rumour ran that it was hoped that the good graces of the disaffected in Ireland might be won by a boon conferred upon Duffy. Vain hope! In the following year the rebel, with a ribbon not of Irish repute, was refused a hearing at a banquet in Dublin in commemoration of Daniel O'Connell. Instinct taught O'Connell's admirers that there was a wide gulf between him and the vain but subtle conspirator, who, after quarrelling with O'Connell's resolution to shed no blood in agitation, had worn the livery of the Queen and pocketed a pension.[1] But by cunning paragraphs sprinkled appropriately in Europe or in Australia, Duffy generally avoided such a failure as befel him in Dublin. At each pole he boasted that at the other numerous constituencies were imploring his patronage. He trafficked at one end of the world on distinctions acquired at the other. All who had scrutinized his career knew that when he advocated union of the Australian colonies, it was as a halfway stage to independence of a Saxon Queen that federation found in him a friend. Opportunity and vanity turned his thoughts to a pension and a title. Incapable as an administrator himself, under the shelter of his abler countryman O'Shanassy, he held office long enough to claim a dole from the Sovereign against whom he had conspired.[2]

adhere to past professions he would forfeit O'Shanassy's favour. The friend averred that Duffy would prove craven as of old, and cling to O'Shanassy, as necessary to present purposes. The sentences in the text were read. "What say you now?" said the friend. "I give him up," quoth the editor.

[1] "Just for a handful of silver he left us,
Just for a ribbon to stick in his coat."
'The Lost Leader.'—R. B. BROWNING.

[2] Because he had been a rebel in Ireland impetuous colonists presented him with thousands of pounds in Victoria. Because he made an *ad misericordiam* appeal the Crown awarded him a pension for his colonial doings, and afterwards made him a knight. Challenged with these incongruities,

Steadfast only to betray, he quarrelled with the patron who had warmed him into affluence. One cause of difference was a protest made by Duffy against the inclusion of a patriotic phrase in the Governor's speech. O'Shanassy refused to perpetuate in Australia the rancour of Irish quarrels, and Duffy never forgave him. Having thus glanced at his character the reader may dismiss him from consideration, except on the occasions when he appears in connection with public events. In 1856 he was the avowed dependent upon O'Shanassy, and as O'Shanassy advocated universal suffrage, it was manifest that the Constitution was in serious danger of receiving short shrift.

When men like Henry Miller, in seeking the support of an Upper House electorate, advocated universal suffrage for the Assembly, and leading colonists joined intriguers suckled in sedition in making the same demand while wooing the electors for the Lower House, there was little prospect that the electors themselves would display a moderation not affected by candidates. Nevertheless, although the gold-fields constituencies seemed as a rule to elect the worst candidates, the metropolitan and rural electorates created by the new Constitution generally elected the best. The five members chosen for Melbourne indicated a balanced public opinion, which, if wisely availed of in the Parliament, might have averted some troubles. Mr. David Moore, merchant, a native of New South Wales, but previously unknown in Victorian politics, was conspicuously at the head of the poll. Mr. Michie, who had relinquished a nominated seat in disgust, who had defended the Ballarat rioters with unfee'd ardour, was second. Mr. Stawell, the Attorney-General who prosecuted those rioters, was third. Mr. J. T. Smith, who had been four times mayor of the city, was fourth.[1] Mr. O'Shanassy

an admirer of Mr. Gladstone (Prime Minister when Duffy was decorated) replied: "Oh! I don't know anything about the affair. I fancied Duffy had been transported, and was knighted for some service in the colony."

[1] He had been a candidate for a seat in the Upper House, and on defeat by a majority of one entered the lists for the City at the eleventh hour. Mr. Fellows, similarly defeated at the same contest for the Central Province, appealed afterwards in like manner to an Assembly electorate and was successful. Mr. H. S. Chapman fell before him to the general satisfaction, in the district of St. Kilda, in which Mr. Fellows, kind and generous in all relations, was a popular resident.

was fifth. Among the defeated was Mr. Ebden, who had returned from England, and whose financial abilities the new voters had not the wisdom to secure. Messrs. McCulloch, Langlands, and Greeves were also beaten, but Ebden was last on the poll. Men marvelled at the incongruity of the elected no less than at the unexpected position of the rejected. One obstacle to Ebden's success was his distrust of that lowering of the suffrage to which so many pledged themselves.

The process of transfer of power from the mass of former electorates to the new elements introduced by an extension of the franchise, is never so rapid as arithmetic alone would render probable. Unless the new voters outnumber the whole of the old (in which case the alterations are rather revolution than reform), some time elapses before the full effect of the change can be felt, and the prominent local guides of opinion can give place to a new order. On the whole the country members of the past were returned to one or other of the new Chambers. It was a noticeable fact that the men who had been eager to claim responsibility under the new Constitution so little comprehended its parliamentary essence that they did not entrust a responsible office to a member of the Upper House. The defeat of Mr. Fellows at the elections for the Upper House deprived them of his services there in the first instance, but one of the thirty members might have joined the Ministry if any of the colleagues of Mr. Haines would have been patriotic enough to give place to him. It was one of those blunders worse than crimes, and exercised baneful influence. Ministries frequently violated the spirit of the Constitution,[1] and placed no responsible colleague in the Council.

Thus the demand of the Constitution that on the formation of the Ministry the implied sanction of constituencies of both Houses should be obtained was set at nought. Ministries successively defrauded the country of the check intended to be imposed upon intrigue, and the country lost the opportunity of pronouncing, in the manner contemplated by the Constitution, through constituencies of both Houses, upon the fitness of a

[1] The 18th section provided that of the responsible officers "four at least shall be members of the Council or Assembly," making no distinction between the two Houses as to the presence of Ministers.

Ministry. The provision for concert between the two Houses, and for at least a minimum of constitutional representation of a responsible Ministry in the Council was evaded, and the inevitable result ensued. Shorn of its constitutional rights the Council for a time lost the repute to which the Constitution entitled it, and when by spasmodic efforts it strove to assert its proper claims, past irregularities were cited to prove that it was unnecessary to regard the frame of the Constitution. Impropriety followed impropriety, and overbearing Ministers claimed that even the Legislative functions of the Upper House should be stifled on the demand of a majority in the Lower. When these claims were resisted Ministries successively resorted to the pernicious system of tacking foreign matter to Appropriation Bills which the Constitution distinctly enabled the Council to reject, but not to alter. When they were rejected in the last resort (to defend the very existence of the Council), with a kind of wolf-logic, offending Ministries assailed the Council as the cause of the "deadlock" created by the Ministers themselves.

The peculiar circumstances under which power was unconstitutionally seized in Victoria, and an attempt to imitate the example set in that colony was made and abandoned in New South Wales, have necessitated so forward a glance that it may be well to scan in this place the manner in which the various Governors in Australia confronted the new duties imposed upon them by the introduction of responsible Government. Contracted their sphere was, without doubt; but the importance of the duties remaining, and of the new functions accruing, could hardly be over-estimated.

In former times each Act of the Executive Government sprung directly from the will and sanction of the Governor. Responsibility for his actions was theoretically complete, but the diameter of the globe intervened between him and the Crown. His Government was a despotism tempered by consciousness that, after lapse of time, he might be called to account by his Sovereign. He might be rebuked or removed, but his conduct could not be controlled by advice when decision was needed; and the Crown could do no more than select capable prætors and furnish them with general instructions. In time the growth of the community, and the multiplication and

expansion of its pursuits and resources, called for modification of the system which reposed personal power in one man, and made him responsible for every executive, legislative, and administrative function in his territory.

Bligh's deposition by the settlers, in combination with the military stationed in Sydney, caused no alteration in principle. The men were changed. Macquarie, a soldier, superseded the sailor Governor. The New South Wales Corps (deemed mutinous) was withdrawn to England, and Macquarie, with prætorian bands composed of his own and another regiment, assumed a control as arbitrary as that of his predecessors. His perverse vanity plunged him into excesses and eccentricities which constrained the English Government to appoint a Special Commissioner to report on the condition of the colony. Mr. Bigge's Reports, laid before Parliament in 1822 and 1823, caused speedy legislation. By the Statute 4 Geo. IV. cap. 96 (1823) provision was made for the more effectual government of the two southern colonies then existing, and a Charter of Justice established a Supreme Court.

The Constitution of 1823 imposed on the Governor a check, rather moral than coercive, in the making of laws. His Legislative Council (not less than seven nor more than five) was nominated by the Crown, and even if the members dissented from or protested against a "law or ordinance" the Governor could pass it, and it had "full force and effect," subject to the King's pleasure. The Governor only could initiate legislation. The subsequent Statute, 9 Geo. IV. cap. 83 (1828), did not materially restrict the Governor's powers, though, by enlarging the Council (still entirely nominated by the Crown) it increased their moral pressure upon him. The augmentation of departmental business necessarily compelled him to leave many details to his trusted officers, but he remained responsible for all acts of the Government.

Governor Darling, when his Council was enlarged, retained John Macarthur and Robert Campbell amongst the unofficial nominees, and Mr. Alexander Berry, Mr. Richard Jones, Mr. John Blaxland, Captain Phillip P. King, and the upright Ed. C. Close of Morpeth were chosen, not as advocates of particular views, but as men deservedly respected in the community, and

commanding public confidence. The Governor was gradually relieved of labour upon petty details, as the growth of general business supplied wider fields for consideration; but his responsibility was undiminished. Representative institutions, liberty of the press, and trial by jury were meanwhile demanded by Wentworth, and were step by step attained.

"The constitutional right of choosing their own representatives" was still solicited or demanded, and was in part conferred by the Statute 5 and 6 Vict. cap. 76 (1842). The Governor then withdrew from legislative debates. Former Governors had kept discussions secret in the nominated Councils, but Sir George Gipps opened the door to the public. Though in the new House the Governor could no longer sway others by eloquence, he had a potential voice in the creation of his champions, for one-third of the members were nominees of the Crown. He held, moreover, the power to veto bills. Except when a Secretary of State sent from England a person appointed to office in the colony, the Governor was the dispenser of patronage. Thus he became the butt for all complaints against public officers; the supposed obstacle to all useful legislation which the elected members desired to enact. No election of members could disturb the solid phalanx—one-third of the House—which the Governor was said to hold in the hollow of his hand. He, meanwhile, assailed as an autocrat, received imperative instructions from England, and few Governors had the strength of character displayed by Sir G. Gipps when he declined to promulgate Lord John Russell's Orders in Council subdividing New South Wales, and abolishing sales of land by auction.

The transmutation of his condition of local independence into the compound state of reliance upon legislation in a House of which two-thirds were elected by the people, and subjection to the Crown, demanded peculiar talents on the part of a Governor. Under any circumstances his new state must have been transitional. The abilities of Wentworth hastened its end; but the rush of population to the gold-fields in 1852 would have precipitated such measures as he induced his countrymen to pass in 1853, even if he had not anticipated fate by the Remonstrances which he caused the Council con-

vened in 1848, as well as that elected in 1851, to address to the Throne. We have seen how Sir Charles Fitz Roy, with the aid of Deas Thomson, encountered and overcame the difficulties caused by the open contention of Wentworth, and the personal malevolence or disloyalty of others. We have seen how the greater difficulties and the weaker support which fell to Mr. Latrobe's lot subjected him to the melancholy conviction that he had not saved the Queen's authority from being trampled in the mire, and called down upon him the condemnation of the London 'Times.'

The compound Legislative Council did not save Mr. Latrobe from any consequences of failure. Elected members sometimes embittered the antipathies which the 'Argus' excited against him. The shuffling instructions of the Duke of Newcastle afforded no help to him in dealing with the difficulties with which Earl Grey's Orders in Council had swathed the Crown lands. Yet on Mr. Latrobe's head were poured the phials of the general wrath.

We have seen how the martial mind of Sir C. Hotham confronted and put down the evils which had arisen under Mr. Latrobe. But the struggle wore out the striver, and Sir C. Hotham's career was like that of a meteor flashing through the air on its appointed errand, but whose place knows it no more. No public affairs could be permanently managed by such means, nor at such a sacrifice. The various Governors on whom it devolved to introduce the new order of things under responsible government had little to guide them. Ten years' trial of it in Canada had furnished hints for their guidance, but they were scattered in unnumbered Blue-books. All men could not hope to vie in natural sagacity with Sir Charles Metcalfe. The didactic Earl Grey had informed a Nova Scotian Governor that "the power and influence of the Crown are by no means to be ineffective or unimportant" under responsible government; that the Governor would "refuse to assent to any measures" which might appear "to involve an improper exercise of the authority of the Crown," but that he must use his power to check extreme measures with "the greatest possible discretion," as it was neither possible nor desirable to govern the province "in opposition to the opinion of the inhabitants."

Other Secretaries of State have depicted with more or less clearness the functions of Governors. It may be questioned whether any of them so happily touched upon them as Mr. Cardwell did when he told Sir Charles Darling that Her Majesty's Government did not "wish to interfere in any questions of purely colonial policy, and only desire that the colony shall be governed in conformity with the principles of responsible and constitutional government, subject always to the paramount authority of the law." The flippant view that with responsible government a Governor of a British colony becomes a ministerial puppet, is accepted only by the unwise. Those who, not being ignorant, would maintain that view, have often ulterior designs incompatible with loyalty. When law is respected, when Ministries are honourable, when a colony is unshaken by alarm or distress, the Governor may appear to have little to do beyond fulfilling those functions in virtue of which he is the crowning of the social edifice in the colony. But "the providence that's in a watchful state" requires upon occasion the exercise of highest wisdom or tact by a Governor; and when he is found wanting, innumerable evils may crowd upon a colony.

If a rash or designing Ministry find him false to the law, they will soon demand from him disloyalty to the throne. Having abandoned the principle that he will do no wrong he can never regain firm foothold, and must become the creature of accident. His relations to the Crown are a source of strength or of weakness in proportion to his own perspicacity and firmness. He has to guard not only against wrong-doing, which may lead to early mischief, but against carelessness, which may heap up troubles for his successors. Loyal to the Crown; firm to obey the law; impartial to public men; frank towards his constitutional advisers, but never consenting to be their creature or partisan; solicitous for the welfare of the colony, and wary in the exercise of the Royal Prerogative, especially in summoning or dissolving Parliaments; a Governor can find worthy employment for the highest faculties. If he have tact, and be blest with the presence and temperament which innately command respect or affection, he may succeed where men apparently abler than himself have failed. He is fortunate if during a colonial career he is not confronted by difficulties which call upon him to

exercise faculties of a very high order, in an office in which he represents Royalty, receives within fitting bounds Royal instructions, and acts beyond those bounds as a constitutional ruler, subject only to the supreme control of the law.

Sir William Denison had one problem to solve with which none of his contemporaries in Australia or in Tasmania were called upon to deal. He had to nominate the Upper House. He consulted his temporary Executive Council, and waited until the completion of the elections for the Lower House enabled him to find advisers amongst the representatives. With their general policy we need not deal. It is the demission of responsibility by the Governors as to certain functions that it is needful now to touch upon. In forming the Upper House it was agreed to tender the office of President to Deas Thomson, but he respectfully declined it.[1] The elections were not in New South Wales put off to the latest moment as they were in Victoria, and the two Houses met in Sydney in May 1856. The Governor was practically responsible at that date as of old. Mr. Donaldson, the new Minister, became a member of the Executive Council in April, with Sir William Manning and the accommodating Darvall. Manning, who had been Solicitor-General under the old order of things, was elected for South Cumberland, and agreed to become Attorney-General under Donaldson. He was the only officer of Government who sought to retain a political position in the metamorphosis of the time. There was no incongruity in his conduct. The Constitution as it stood was the work of Wentworth, and had been supported by himself and most of his colleagues. Darvall, who became Solicitor-General, was in a very different position. He, with Cowper and Parkes, had intrigued against the Constitution, and against the men who were to be his colleagues in the first Administration. When he thus grasped at office he knew that the disappointed Cowper would become his opponent.

George Robert Nichols, who had so feelingly appealed for

[1] The Governor deserves credit for appointments to the House. So also do James Macarthur of Camden; Donaldson; Sir W. Manning; G. R. Nichols; who with Darvall advised him as to the appointments within his formal Council in May 1856; while the sagacious Deas Thomson was deferred to, by Governor and Councillors, without.

consideration in advocating Wentworth's Bill, though not robust in health,[1] accepted office with Donaldson, by whose side he had frequently voted. There was some doubt as to the manner in which the fifty-four members of the Assembly would look upon the new arrangements. There was no doubt that Cowper, Parkes, and others would be discontented. The appointment of their old comrade Darvall gave no gratification to them. In his opening speech Sir W. Denison briefly alluded to the abolition of the conditions under which

"the Governor only was responsible for the policy of the Government, and for the measures submitted to the Legislature . . . As in my former relation to you, I was always most anxious to press upon your notice whatever could in my opinion be conducive to the interests of the colony, so now I shall be ever ready to carry into effect as head of the Executive such measures as the Legislature may consider best calculated to enhance the general prosperity."

He had thought it right to avail himself of the advice of members returned to the Assembly in choosing the members of the new Council, but he had not formally placed his new advisers in charge of Departments, because he would thereby have caused their seats to be vacant in the Assembly; and, until after the meeting of Parliament, there was no power to issue new writs.

(The opinion of the Judges had therefore operated successfully in debarring from administrative functions any person not responsible to the Legislature in the full sense implied in the Constitution.)

In the speech which reflected the advice of the new Ministry, the ill-omened repeal of Wentworth's clauses requiring "a majority of two-thirds of the Legislature to effect changes in the system of representation or the principles of the Constitution" found a prominent place. The Governor did not fail to follow the time-honoured practice in the mother-country of invoking the Divine blessing upon the labours of the Legislature. In nominating the Council it was plain that circumspection had been used. Sir Alfred Stephen,[2] the Chief Justice, was President. Mr. Justice Dickinson and Justice Therry, with the

[1] He died in the following year.

[2] He stipulated that he would accept no emoluments or salary in the office.

brilliant barrister Edward Broadhurst, and one or two leading solicitors, guaranteed a knowledge of law in the new Chamber. Deas Thomson's sagacity had been secured, and respected residents in town and country were there to guard the permanent interests of the colony. Thirty-one members were appointed to the Council on the 13th May, 1856. Cowper immediately strove to oust the Ministry from their inchoate position, and it was not until Donaldson had been backed by a substantial majority that, after taking part in the debates, the Ministry on the 6th June accepted offices of profit, and appealed to their constituents during an adjournment of the Houses for two months. Then also the Governor with their counsel applied successfully to Deas Thomson for aid in reconstructing the Departments and distributing the public business.[1] The constituencies ratified the conduct of the Ministers, and though they did not long retain their position (they never ceased to possess a majority) their career need not be further considered at this place. Sir W. Denison wrote confidentially to the Secretary of State, that though there had been much talking about the Constitution in June 1856, "the only question before the mind of every speaker has been a purely personal one, 'Why was not I asked to become a member of the government'?"

It is painful to reflect that while keen to detect the motives of Cowper and his friends, the Governor betrayed no consciousness that the tampering with the Constitution, as recommended in his first speech to the Houses, was fraught with momentous consequences.

It has been seen that in Victoria Major-General Macarthur, who became Acting Governor on the death of Sir Charles Hotham, was unconscious of the duty which his position demanded in the interval between the proclamation of the New Constitution, and its coming into operation through the election of the two Houses, and the formation of a responsible Ministry in accordance with the law. He became neither a guardian of his relations to the Crown, nor to the people. He submitted to be the creature of the junto who had seized the keys of the citadel, and had extruded their real, though temporary, guardian. It was natural that they should desire to postpone the era of

[1] Mr. Thomson's recommendations were printed by order of the House.

constitutional responsibility, and the two Houses were not convened until 21st November, six months after Sir William Denison had summoned the Sydney Houses. Having assumed none of the responsibilities of his office, Macarthur had none to lay down. As the mouthpiece of others, he asked the Representative Chambers "to extend the basis of the suffrage," to deal with the laws relating to the sale and occupation of Crown lands, and with other important affairs. The only paragraph which made him personally responsible was the last in his speech.

"For myself, as one of the early colonists who landed with my late parents in Australia,[1] and as bound to them by a grateful and filial remembrance, I cannot but express the sense which I entertain of the honour conferred upon me of representing Her Most Gracious Majesty in the Parliament of that country with which I have been so long connected by ties of property and kindred."

The speech congratulated the Houses on the "financial and commercial prosperity." But no word of gratitude for the labours of Sir Charles Hotham was employed. That he had found the colony plunged into what appeared cureless ruin in June 1854, and had left it redeemed from disaster in December 1855, might have called for recognition from the Queen's Representative in 1856. But to have praised Sir Charles Hotham might have implied censure of others. The speech was dumb on another subject which is usually regarded. Whether Sir W. Macarthur and his advisers were more self-reliant than sovereigns and statesmen who have guided the counsels of England, or whether they modestly doubted their own deserts, they did not find the occasion a fit one for imploring the blessing of Divine Providence.

In South Australia, owing to the protraction of the session which commenced in November 1855, and did not terminate until June 1856, Sir Richard MacDonnell was unable to address the two Houses until April 1857. He had, in inviting the old Council to frame a Constitution, solemnly warned them that their measures would be fraught with consequences which would affect the future destinies of the province. He congratu-

[1] In 1790.

lated his new Parliament upon the enlarged powers conferred upon it, and anticipated "a no less prudent than energetic exercise" of them.

"Yet, whilst relieved by the existing Constitution of much responsibility, which till lately had attached to my office, I feel that a new and equally grave responsibility will arise whenever, with none between the Representative of the Sovereign and the people, it may become the duty of the former to give the fullest Constitutional development to the wishes of the country. That responsibility I do not shrink from, satisfied that a fearless and honest desire to act up to the liberal spirit of the Constitution will always ensure the support of a South Australian Parliament."

It will be remembered that Colonel Robe had, in by-gone days, grievously offended the public in Adelaide by passing a measure to provide for a State grant to religion. Whether the embers of strife remained warm after a score of years, whether Sir Richard MacDonnell was inadvertent, or whether he shrunk from rousing suspicions among men who prided themselves with a fervour amounting to bigotry upon absolute exclusion of the very name of religion from public affairs, it would be hard to say; as a matter of fact, he abstained from expressing any hope that the counsels of the colony would deserve sanction from Heaven. He had formed his Ministry out of official materials before the Houses met. In South Australia the Constitution Act did not require that a responsible Minister should appeal to the country for approval on acceptance of an office of profit. A member of the elected Upper House was included in the Ministry, which contained the former officials, Messrs. Finniss, Hanson, and Bonney. The latter became the responsible Commissioner of Crown Lands. Another official of former days, who became a responsible Minister, was destined to achieve a rare distinction in the intricate domain of the law of real property.

Mr. R. R. Torrens, whose connection with one of the founders of the colony had led to his appointment (in 1841) as Collector of Customs,[1] became the Treasurer, and Sir R. MacDonnell

[1] Mr. Torrens was struck by the contrast between the facility of transfer of shares in ships and the difficulty and expense attendant upon transfer of real property. Becoming member for Adelaide in 1857 his position secured

might reasonably hope that, if departmental capacity would ensure stability, his first Ministry would be strong.

In Tasmania Sir Henry E. F. Young informed the New Parliament (3rd December, 1856), that as soon as the returns to the writs

"of election for both Houses had supplied the constitutional elements, out of which to select the first Administration, that task was at once entered upon and accomplished, and the Ministry thus selected being dependent for its tenure of office on obtaining your support, will be, so long as they possess that support, the virtual representatives of Parliament, and the actual responsible government of Tasmania."

He hoped that confidence would be reposed, by the community, in those initiating the new system, and thus "the Ministry and the Parliament would be incited to use their powers with such moderation, prudence, and patriotism, as will be calculated to acquire a good repute for the first session under the new Constitution, and to establish a significant and happy augury for the future." He assured them of his "earnest wish to co-operate with the Parliament" in maintaining good government, and trusted that the Divine blessing might crown their labours. He was supported by much sympathy out of doors in desiring a fair trial for his new Ministry. The talented and independent Attorney-General of the past, Francis Smith, sought and obtained the suffrages of the electors of Hobart Town. Mr. T. D. Chapman, who was prominent in denouncing Hampton's contumacy, allied himself with the new Ministry as Treasurer, having been returned at the head of the poll for the metropolis; while Colonel Champ, the late Colonial Secretary, resumed that office as Premier. Both of them secured a renewal of the confidence of their constituents, and it was not anticipated that within five months three Ministries would have perished before the ability of Francis Smith enabled him as Attorney-General and Premier to form a Ministry, whose life would be measured not by months, but by years.

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him a hearing. But it was not until he quitted office as responsible Minister and devoted himself to the reform of the law that in January 1858 the Torrens' Act—as the Real Property Act of South Australia was called—was passed

Thus, with some dignity, in New South Wales, South Australia, and in Tasmania, did the several Governors lay down a portion of their responsibilities.

Western Australia meanwhile, under Mr. (afterwards Sir) Arthur Kennedy, struggled with her natural and artificial difficulties. The colonists remonstrated against any charges, "direct or indirect," resulting from the presence of the convicts they had asked for, and insisted that the introduction of free immigrants should be promoted. If those immigrants should "fail to find immediate employment," a portion of the Parliamentary grant "might be kept in reserve" to maintain them. It devolved upon Mr. Labouchere to reply, in 1856, to these remonstrances, and to aver that "the outlay of British funds for local expenditure alone, up to the present time, has been at the rate of nearly £90 for every convict transported." With loyalty, but doubtless with distaste, Governor Kennedy, from 1855 till 1862, addressed himself to his uninviting task of managing, and corresponding about, the details of his prison-colony. Voluminous Blue-books attest his attention to discipline, to medical treatment, to diet, and general control, which he thought should be "such as to unmistakably deter men from re-entering" prison life. The nauseous details of convict management may have been, as the colonists contended, less offensive in Western Australia than elsewhere, but they were nauseous still, and the condition of the colony need not be enlarged upon at the period of the introduction of responsible government in other portions of Australia.

## CHAPTER XVII.

### EXPLORATION.

THE history of the Australian Colonies may after the year 1856 be much condensed. Results rather than details of events will suffice. The pilgrim fathers only can command the interest which justifies a large mingling of biography with the general narrative. A few familiar names will still recur, some few incidents (such as that in which an imprudent Governor strove to do violence to the Constitution of New South Wales in 1861) will deserve dramatic treatment; but, in the main, personal details will be unnecessary.

The course of exploration of the continent may first be dealt with. The successful journey of Leichhardt, in 1844, to Port Essington, through wide tracts previously unseen by Europeans; his fatal expedition in 1848; the hardships encountered by Sturt in 1844-5-6 in the interior; the several journeys of Mr. Roe the Surveyor-General and of Mr. A. C. Gregory in Western Australia up to the year 1848; the expedition in which Sir Thomas Mitchell, in 1846, named as the Victoria river what is now known as the Barcoo or Cooper's Creek; the disastrous death of Kennedy near Cape York in 1848, may be remembered. Discovery for a time received a check throughout the continent. Commercial calamities, the distraction of labour to California, the all-absorbing pursuit of gold, in turn diverted public attention.

In 1854, Mr. Austin, an assistant-surveyor, led an expedition which only added proof of the sterility of Western Australia and of the endurance of her explorers. If the barren honour of naming East Mount Magnet on his elliptic route from Perth to the waters of the Murchison be a title to fame, he acquired it.

He saw near it in "Carved Cave Spring" numerous representations by the natives of human hands and of the feet of animals, carved on the hard rock. Farmer, a lad in the party, shot himself by accident, and was taken onwards till he died. We are told that the aboriginal members of the company, though themselves reduced to the utmost extremity by thirst, resigned to the lad their share of the water carried during two days.[1] *Horret cognomine terra.* Austin buried the boy amidst a weird depression of his companions, and called a neighbouring hill "Mount Farmer." The dreaded poison plant was fatal to several of the horses, and Austin's expedition added little information except that barrenness reigned in regions not known before.

The next expedition was of larger scope, and, though prompted by private liberality, was undertaken by the Imperial Government. Mr. W. S. Lindsay, M.P. a ship-owner, offered funds. Mr. Uzzielli in England proffered no less than £10,000. The finding of relics of Leichhardt's expedition furnished one hope, but discovery of useful territory was in view. Mr. Augustus C. Gregory, of Western Australian fame, was secured as leader. Mr. H. C. Gregory was assistant. Dr. Ferdinand Mueller, whom Mr. Latrobe had brought into notice by appointing him Government botanist in Victoria, accompanied the expedition as botanist.

In July 1855 Gregory left Sydney with a barque 'Monarch,' and a schooner 'Tom Tough,' sailing through Torres Straits. On the 24th September he discharged the 'Monarch,' ordered that the schooner should meet him at the Albert river in the Gulf of Carpentaria, and committed himself to his land risks at Point Pearce in Cambridge Gulf in September. He examined the sources of the river Victoria discovered by Wickham and Stokes in 1839, and explored eastward the watershed of the Roper. The 'Tom Tough,' after undergoing repairs in consequence of grounding at the Victoria river, had sailed. When Gregory reached the place appointed for meeting the schooner, in September 1856, she was not found, nor was there any record that she had been there. He resolved to pursue his land journey at once, his provisions being insufficient to warrant

[1] Howitt's 'Australia, Tasmania, and New Zealand,' vol. ii. p. 126.

delay. Leaving information (buried, and designated by marks on trees) for the use of the schooner's crew and the guidance of Mr. Baines, the artist who was with them, he travelled eastward, and reaching the Burdekin river trod almost on the tracks of Leichhardt. But country discovered by Leichhardt was occupied by squatters in 1856. On the Dawson river, and thenceforward on his way to Brisbane, Gregory found hospitable welcome. On the 16th December, 1856, after a voyage of 2000 miles by sea, and a land journey of 5000 miles, the explorer was received at Brisbane as a man who had proved the facility of travelling from Moreton Bay to any portion of Northern Australia. Mr. Baines had an adventure sufficiently startling. At Sourabaya the 'Tom Tough' was found unseaworthy. Another schooner was chartered there. On reaching land near Port Essington Mr. Baines took to the long-boat, hoping to precede the schooner. He was a week later in arriving there. His comrade in the schooner had found Gregory's instructions however (in November), and the 'Messenger,' sailing not by Torres Straits, which in that season was thought dangerous, but by Coupang and the west coast of Australia, and putting into King George's Sound for water, reached Sydney on the 1st April, months after Gregory's land journey was completed.[1] Though Gregory's expedition was successful it threw little light on the character of the interior. Sturt inferred from Gregory's description of the land between the Victoria and Albert rivers, that the Stony Desert extended from the neighbourhood of Cooper's Creek to the far north, and was probably at least 1000 miles in length from north to south, and wider from east to west.

Until facts are discovered mankind convert surmise into assurance, and many speculators were positive about the interior of Australia who had neither the sagacity nor modesty of Sturt. It was one of his companions of 1845 who was to signalize himself in successive expeditions, in which no privation deterred and no labour quelled him, until he had planted the British flag at Central Mount Stuart in the heart of the continent, and conducted a band of South Australians to the shores of Van Diemen Gulf. John McDouall Stuart had been fired with the hope of

[1] Parliamentary Papers, vol. xli. 1857-8.

distinguishing himself since the days of his labours with Sturt; but, as dissipated when idle as heroic while at work, was not thought to be the man who would inspire the colony with gratitude for a great deed.

In 1856 the South Australians were still striving to find gold. Mr. Babbage searched for it in vain, but found springs and reservoirs, previously unseen, near Lake Blanchewater, which in those days was supposed to be a part of Lake Torrens curving round in horseshoe form from what is now known as Lake Eyre. Another private explorer, Campbell, examined the land eastward of Lake Torrens. Mr. Goyder, the Deputy Surveyor-General, was despatched in 1857 to survey the country seen by Babbage. He returned with glowing accounts which seemed incredible, but excited hope. Where others had seen sandy wastes and saltest lakes he had found pleasant pastures and fresh streams. The imagined Lake Torrens was agreeable in his eyes. He saw, or in mirage he thought he saw, islands with rocky cliffs in deep fresh water. In his own hallucination he concluded that Eyre and others had been deceived.

The eager public longed to crowd upon the region which was transmuted from a desert to a pastoral elysium. The Government sent the Surveyor-General, Colonel Freeling, to spy out the land discreetly, and before the close of the year he reported that Mr. Goyder's discoveries had "all been the result of mirage."[1] The fresh water Goyder had seen was but temporary storm-water. In the brief interval between his and Freeling's visits the shallow lake had receded half a mile. The land was as desolate as it had formerly been deemed. Other explorers were busy in 1857. Mr. Hack and Major Warburton (H. E. I. C.), Commissioner of Police in the colony, traversed the Gawler Ranges in search of available lands. The latter did not prize so highly as the former the land he saw, and probably the recency of rain deceived Mr. Hack as it had deceived Goyder.

In 1858 the Government authorized further exploration. Mr. Babbage was to examine the country between Lakes Torrens

[1] Mr. Goyder afterwards expressed deep regret at having been "led by the novelty of the discovery of an apparent sea of fresh water" to suppose that the waters he had seen north of Blanchewater were "other than flood waters, or permanent."

and Gairdner, and thence northwards, and make accurate charts. Some confusion in management resulted in the return of the second in command towards Adelaide while the leader was busy with maps. On pursuing his subordinate, Babbage found that the Government had sent Mr. C. Gregory to succeed his assistant, and that while he had been spending months in a petty district, A. C. Gregory having no vehicles of any kind, but carrying his supplies on horseback, had startled the colony by arriving overland from Moreton Bay with his brother and a small band of servants.

Leaving the confines of the occupied districts of Moreton Bay in April 1858, Gregory had arrived in Adelaide in July. In four months he had traced Leichhardt's steps to the 146th degree of E. longitude, and then concluding that Leichhardt had perished from thirst when travelling westward (from the Victoria river of Mitchell), Gregory, with masterful ease, after examining the Thomson vainly for further traces of the lost Prussian, followed the Victoria downwards until he established the fact that the Cooper's Creek of Sturt was the Victoria of Mitchell, which has now become by general assent the Barcoo. Much of the country was desolate, and for days the horses had no food but withered grass found in the deserted huts of the natives, who used it to improve their shelter from the sun. A horse discovered the casual resource. Gregory happened to camp near a native hut, and saw the famished animals wrenching the dry grass from the heterogeneous roofing. The wary leader thenceforth strove to select camps where the former labours of the natives afforded such scanty and strange forage. He speedily discovered that the Strzelecki Creek of Sturt was but one of the forceless channels through which the Barcoo languidly spreads its waters after heavy rains, and, on rare occasions, reaches Lake Eyre. His appearance astonished the Adelaide public, already dissatisfied with the progress of Mr. Babbage and his men. Gregory had not found Leichhardt's remains, but he had shown how the continent could be traversed.

The disappointed South Australians despatched Major Warburton to supersede Babbage; and the latter, apprised of the fact before his successor's arrival, hastened to explore the country to the west of Lake Gairdner. Thither Warburton went and

found him. Babbage procured a parliamentary inquiry, and the Commissioner of Crown Lands was driven from office for caprice when it was found that Babbage was superseded while strictly obeying orders. In these and other private expeditions it was discovered that dry land existed between Lake Torrens and Lake Eyre. Babbage claimed credit for anticipating it in theory, but Warburton was the first to prove the fact.[1] Amongst the explorers was J. McDouall Stuart, searching for pastoral lands for his employers, Messrs. Chambers and Finke. Far to the west of Lake Eyre he went to the Arundel Plains; saw a level waste which reminded him of Sturt's Stony Desert; curving back round Stuart Range he saw Lake Younghusband; and piercing westward to Mount Finke he reached the coast at Denial Bay. The open way between Lakes Torrens and Eyre enabled explorers to start without encountering the dreaded parched land eastward of those lakes; and in 1859 Stuart again proved his fitness by discovering creeks and springs previously unknown to the colonists. But he had longings for something more than the discovery of pasture lands. The popular enthusiasm which entrusted Eyre in 1840 with a flag to be planted in the centre of Australia, and which sent forth Sturt in 1844, was not exhausted, and when the Government refused to accord to Stuart a lease of a block of the land (he had discovered) on condition of his furnishing them with his maps, the idea of crossing the continent was embraced, and £10,000[2] were offered as a reward for the first colonist who would perform the task.

Friends provided means, for Stuart was not rich. In March 1860, with two companions, Kekwick and Head, and thirteen horses, he sallied from Chambers' Creek, a tributary to Lake Eyre. His course to the north-west intersected other tributaries. The red sand-hills and the repulsive spinifex could not stay him. He named a pillar of red sandstone after his patron Chambers. The MacDonnell Range was called after the Governor. The

[1] It is remarked by the Rev. J. E. T. Woods ('Australian Exploration,' vol. ii. p. 271), that the Colonial Legislature behaved with shameful ingratitude to Warburton.

[2] The money was not paid when Stuart performed the task. It was said that the conditions did not permit him to receive it. Burke had crossed the continent before Stuart. So had McKinlay; and so had Landsborough. But Stuart and his companions received money grants.

coveted honour was at hand. On the 22nd April, 1860, Stuart and his two comrades, finding themselves in the centre of the continent, with as much energy as their sufferings permitted, gave three cheers as they planted a flag on a neighbouring hill two thousand feet high, which he called Central Mount Stuart. They buried a bottle with a record of the fact, not knowing whether their enfeebled bodies could retrace their steps and enable them to tell what they had done. The horses were weary and thin. Scurvy was wasting the men. But they pushed on, and at Short's Range were only 150 miles from the track of Gregory in 1856. But impervious scrub defied their march to the sources of the Victoria, which would have conducted them to the Timor Sea. They fell back. Natives visited them peaceably on two occasions. An old man made a masonic sign to Stuart, who gazed in wonder; but when the young men repeated it Stuart returned it, and the old man patted him in a friendly manner. A few days afterwards other natives attacked them, and Stuart was compelled to fire at them. With heavy hearts the three explorers turned back, and regained the settled districts on the 2nd September. They had shown that water was procurable, and that hills existed in what had been deemed a stony level waste.

On their return they found that Warburton had been exploring towards the great Australian Bight, only to find confirmation of the dismal report of Eyre in 1840. But they found also that from the neighbouring colony of Victoria an expedition had started (August 1860) under Robert O'Hara Burke, with camels and profuse appliances, derived from private and public funds, to enable him to march to the Gulf of Carpentaria from the Cooper's Creek of Sturt.

Stuart's fellow-colonists were excited. The Government willingly contributed funds. On 1st January, 1861, Stuart, with Kekwick and ten assistants, started from Chambers' Creek with fifty horses and such supplies as they could carry. In April he was at his former point of discomfiture, Attack Creek; too well armed to dread interference from savages with wooden weapons. But the land repelled him still. Repeated efforts to cross to Gregory's camps of 1856 were foiled. Though he crossed the 18th south parallel and found Newcastle Water, dense

waterless mulga (acacia) scrub separated him from one of Gregory's camps about ninety miles away.

Gallant as Stuart was, and chafing against failure, he was forced to retreat. He entered Adelaide in September 1861, ready to make another effort. The tidings that the Victorian expedition had succeeded in its aim, at the cost of the lives of its leader and others, deterred neither Stuart nor his compatriots. On the 23rd May, 1862, he had passed his former bounds and named the Daly Waters (after the new Governor Sir Dominic Daly); in June he had penetrated to the Roper of Leichhardt, which he reached by following a water-channel he called the Strangways, after a public man (who had already been Attorney-General in one Ministry and Commissioner of Crown Lands in two, within two years); and from the Roper he reached the Adelaide river of Stokes on the 10th July. On the 25th July he bathed his hands and face in the sea at a bay called Chambers' Bay. He had promised Sir Richard MacDonnell that he would perform such an ablution if his enterprise should be successful. The Union Jack was hoisted with cheers, and a buried inscription told that the South Australian Great Northern Exploring Expedition which left Adelaide in October 1861, had crossed the continent, and on 25th July, 1862, had reared the flag to commemorate its achievement. Stuart was attacked by scurvy on the return journey. All were in great straits from thirst. Creek after creek was found a dry channel. Borne on a litter at last, Stuart was in Adelaide, weak but triumphant, in December. He suggested at an early date the formation of a telegraphic line along his track, and the energetic colonists will be found prompt to form it. Their conspicuous enterprise in this respect, as well as Stuart's repeated journeys, have entitled him to first mention in the narrative of discovery.

It is now necessary to follow the fortunes of Robert O'Hara Burke. A donor unknown at the time proffered £1000 in aid of an expedition from Victoria to the north coast of Australia. Private subscriptions, and a public grant of £6000, swelled the Exploration Fund. A Committee was appointed to control the expenditure and appoint the explorers. The Chief Justice, Members of Parliament, the Surveyor-General (Mr. Ligar, who had migrated from New Zealand to Victoria), scientific men,

including Dr. Mueller, who had been botanist in Gregory's expedition in 1856, seemed to give guarantees for efficient management. Gregory, spoken of as leader, declined, and recommended the appointment of Major Warburton, but his proposition was not countenanced. One Mr. Landells had been sent to India for camels, and his services were deemed indispensable in the expedition in which the camels were to be employed. He was made second in command. Robert O'Hara Burke (who had been a cadet at Woolwich, had served in the Austrian army, and in the Irish Constabulary force) was an officer of police in Victoria when the Crimean war began. He returned to England in hope of military employment, but when peace quenched that hope he resumed his occupation in Victoria. Bold and honourable, he had neither the practical experience, nor perhaps the temperament, fitted for the task of exploring in untrodden wastes. But he was utterly unmercenary, and not without a noble craving for fame, and he was made leader. The third officer, W. J. Wills, was surveyor and astronomical observer. One German was appointed medical officer and botanist, and another became artist, naturalist, and geologist. Ten Europeans and three Sepoys accompanied the expedition. Waggons and camels swelled the caravan which left Melbourne in August 1860. The dashing Burke was relieved by the thought that he would escape in the bush from the trammels of the Committee. Before he reached Menindie on the Darling, Landells became insubordinate. At Menindie he resigned, and the doctor followed his example. Burke selected Wills to succeed Landells, and a man named Wright to succeed Wills. The first choice was as good as the second was bad. Burke pushed forward towards Cooper's Creek, and sent Wright back from Torowoto to Menindie, with orders that, on approval of his appointment by the Committee, he was to follow Burke with some remaining camels and supplies. Wright was ignorant and stupid, but ungrateful and cunning. The Committee confirmed his appointment, furnished him with orders to procure supplies, and ordered him to proceed to Cooper's Creek without delay. But he delayed till the 26th January, 1861. Burke had meanwhile reached Cooper's Creek on the 11th November with Wills and five assistants (amongst whom was an educated person

named Brahe), a Sepoy, and fifteen horses and sixteen camels. He formed a dépôt near good grass and abundance of water, promoted Brahe to the rank of officer, and made several expeditions, as did Wills, to probe the interior. On one occasion, while Wills was making observations of the heavens, his companion (McDonough) neglected the terrestrial duty of watching the camels. The latter strayed away (two were afterwards found in the settled districts of South Australia), and the drowsy watchman and the astronomer had to walk back ninety miles to the dépôt. At last, weary of waiting for Wright and too confiding in his efficiency, Burke, on the 16th December, with Wills, King, and Gray, determined to make a resolute effort to do or die in the attempt to cross the continent in anticipation of McDouall Stuart, whose aptitude for exploration and endurance were well known, and who was reported to have reared a flag in the centre of the land. Brahe was ordered to surrender his care of the dépôt to Wright on arrival of the latter. In any case the dépôt was to be maintained until Burke's return, or as long as food remained. With rare felicity Burke and his three companions, with one horse and six camels, eluded the stony desert which repelled Sturt in 1845. There had been rain enough to produce herbage, and to leave pools in the northerly direction taken. There were intervening sand-hills presenting spinifex and scrub; but rolling undulations of what looked at a distance like a plain, and had upon it grass of more or less sufficiency, afforded food. Not far to the east of Sturt's point of failure they found a way on which in 1860 the traveller suffered little if at all from drought. Gallantly they pushed on; early in January they were descending a tributary of the Flinders (which they mistook for the Albert, for which they were steering); in February, Burke and Wills, worn down by famine, but triumphant, stood on the moist mangrove-covered margin of the Flinders.

It is to be lamented that an expedition fitted out at so much expense was unaccompanied by an Australian native whose skill as a hunter would have spared the carried food for emergencies. Leichhardt and others had thus prospered. Flocks of pigeons and other kinds of game were seen by Burke. His ardour and impetuosity unfitted him for the kindly patriarchal control which

wins the affection of the native race, but the gentle and heroic Wills was of a different mould. The return journey was commenced on the 21st February. Sufferings from famine and exposure were felt. An overworked camel was abandoned on the 6th March. On the 20th March, 60 lbs of baggage were cast away. On the 25th it was discovered that the man Gray had been stealing food, and previous losses of stores were thus accounted for. Burke by way of discipline gave him "a good thrashing."[1] On the 30th March a camel was killed for food, as more than one had been killed before. Gray was supposed to be feigning when he declared himself too weak to walk. The solitary horse was killed for food on 10th April. They looked in vain for the relief party which Burke expected that Wright would have sent forward after taking charge of the dépôt at Cooper's Creek. But for the rainy season thirst would have speedily ended their sufferings. Their scanty store of food prevented any halt to recruit the poor surviving camels. They staggered on with insufficient but equally divided food—Burke sustained by heroism, Wills by honour and friendship, King by vigorous youth and obedience, Gray by nothing. On the 16th Gray died. The gentle Wills (when the lassitude which oppressed Gray afterwards crept upon him) wrote: "Poor Gray must have suffered very much many times when we thought him shamming." The emaciated survivors halted a day to bury Gray, but with difficulty scooped his shallow grave. They were offering their own lives in their painful obsequies. That day's delay deprived all but the patient King of the pleasure of seeing a fellow-countryman again on earth. Natives were seen, and the weary wanderers strove to avoid them. Nothing has transpired to show that Burke or his companions ill-used them at any time. With two camels, a little meat, and fire-arms, Burke and his companions struggled on to the dépôt at Cooper's Creek. Burke was on one camel, Wills and King on the other, when on the 21st April, worn almost to the last gasp, but with hearts bounding in hectic tumult, their great wish seemed to be about to be realized, and they neared the camp where they hoped to find friends, food, and the first-fruits of their achieved honours. Few

[1] Diary of Wills. King, who saw the punishment, said that Burke "gave Gray several slaps on the head." Wills noted down what Burke told him.

words will suffice to tell why they found no friend, and were cast from highest hope to deep despair. The wretched creature Wright never relieved Brahe. He moved from the Darling, but he blundered in managing the party. Scurvy attacked them. Dr. Becker, the artist and naturalist, and others, died. Natives appeared, and Wright fired upon and killed many of them at his camp on the Bulloo.

On the 29th April, while Wright had thus shown his incapacity by spending months on the road to and at the Bulloo after receiving orders to hasten to Cooper's Creek, Brahe appeared with a cavalcade of horses and camels. Tired of waiting for Wright, and confident that Burke must have died or changed his plans, or could dispense with obedience to orders, and somewhat doubtful about his ability to deal with the natives who seemed to be hovering about, Brahe had deserted the dépôt. On the 21st April he buried 50 lb. flour, 20 lb. rice, 60 lb. oatmeal, 60 lb. sugar, and 15 lb. dried meat; and, instructing Burke to dig (by a notice on a tree), wrote that he was departing *vid* Bulloo to the Darling; that he and two of his companions were "quite well;"[1] that another had been hurt by falling from "one of the horses;" that "no one has been up here from the Darling;" and that he was taking away "six camels and twelve horses in good working condition." On that day, as he rode away on his strong beast to the south-east, the gaunt forms of his abandoned leader, and Wills, and King, were approaching from the north. Shouting with eager joy, the impetuous but worn-out Burke, nerved with mingled hope and triumph, would have sped to the camp on wings if the flesh had not been weak as the spirit was strong. When the site of the camp was reached the dismal truth overwhelmed him, and he flung himself on the ground in despair. The less sanguine and

[1] When it became known that a stay of one day more would have enabled Brahe to welcome and save Burke it was contended, and not unnaturally, by some of Brahe's friends, that there was sickness at the dépôt. The grieving Brahe himself strove to justify himself to himself by writing that he felt sure that he "and McDonough would not much longer escape scurvy." He took abundance of food with him. He carried away 150 lbs. flour and a bag of rice, with other articles. As he took so much and left so little, it seems that when he deserted his post he was confident that Burke would be seen no more.

more patient Wills comprehended the situation at a glance, and quietly prepared to meet it. Food was cooked and eaten. Wills wrote that day in his diary: "Arrived at the dépôt this evening just in time to find it deserted. A note left in the plant by Brahe communicates the pleasing information that they have started this day for the Darling; their camels and horses all well and in good condition. We and our camels being just done up, and scarcely able to reach the dépôt, have very little chance of overtaking them." Adverting to their exhausted state, and finding in it a reason for pitying the deceased Gray, Wills calmly noted the fact that the unaccustomed oatmeal and sugar seemed wonderfully to recruit the physical powers of the wanderers. What was next to be done? Burke believed that stations in South Australia were nearer than any others, and chose the route to Mount Hopeless which Gregory had followed in 1858. Wills and King would have preferred to pursue with fainting steps the flying Brahe: but Burke's decision was accepted. On the 22nd Burke deposited in the *cache* where Brahe had left the provisions a letter, stating that on the morrow they would "endeavour to follow Gregory's track: but we are very weak. . . . We have all suffered very much from hunger. The provisions left here will, I think, restore our strength. We have discovered a practicable route to Carpentaria, the chief position of which lies in 140 of East Longitude. . . . Greatly disappointed at finding the party here gone." "P.S. The camels cannot travel, and we cannot walk, or we should follow the other party. We shall move very slowly down the creek" (Strzelecki's). Natives, wandering by, gave them some fish on the 24th. On the 28th a camel sank in mud near a water-hole. He was cut up for food. On the 7th May, the last camel sank from exhaustion, and the travellers, unable to follow the Creek, strove to make their way towards Mount Hopeless, but the earthy plains and sand-ridges repelled them. "I suppose (Wills wrote 6th May) this will end in our having to live like the blacks for a few months." The natives when seen were kind; gave them fish, "until we were positively able to eat no more" (7th May), and even cheered them with the exhilarating Pidgery.[1] They showed them how to make bread

[1] On the upper sources of the northern waters which find their way to

from "nardoo" (*Marsilea quadrifida*) after toilsome gathering and pounding of the seed. While Burke and his faint comrades were thus fading away on Strzelecki Creek, a startling scene occurred within a few miles of them at the abandoned dépôt.

The runaway Brahe had encountered Wright on the 29th April, at Bulloo, two days after the latter had shot a number of the natives. Wright at first moved towards the Darling, but at Koorliatto bethought him that it might be well to return with Brahe to the dépôt. On the 9th May they visited it. They did not dig to ascertain whether the provisions left by Brahe had been touched, or whether Burke had returned. They left no record of their visit. Wright said they "found no sign of Mr. Burke's having visited the Creek." If they had searched they would have found Burke's letter. They rode away, reached the Darling on the 18th June, and Wright sent to Melbourne the information given by Brahe to Wright. He also reported that the natives were bloodthirsty. They meanwhile were acting as good Samaritans to those whom Wright had passed by. The baffled explorers, unable to move towards Adelaide, were learning to make nardoo bread. On the 28th May an old man, Poko Tinnamira, shared his hut with Wills, to whom the kind-hearted tribe gave fish, and for whom they insisted on carrying his bundle "in such a friendly manner that I could not refuse." On the 30th May Wills revisited the dépôt, and left a record in these words:

"We have been unable to leave the Creek. Both camels are dead, and our provisions are exhausted. Mr. Burke and King are down the lower part of the Creek. I am about to return to them, when we shall probably come up this way. We are trying to live the best way we can, like the blacks, but find it hard work. Our clothes are going to pieces fast. Send provisions and clothes as soon as possible. The dépôt party having left contrary to instructions has put us in this fix. I have deposited some of my journals here for fear of accident."

If Wright and Brahe had left a record of their visit to the dépôt three weeks previously Wills would have found it, but it

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Cooper's Creek, the natives triturate the leaves and twigs of some shrub undescribed by botanists. They pack it tightly in closely-woven bags, and it forms a precious element of barter. A small quantity chewed in the mouth is said to stimulate.

is hard to say whether a knowledge of that visit would have sharpened or blunted the poignant feeling of the deserted sufferers. In spite of all his difficulties Wills kept a diary. It was a week before he could rejoin his comrades, though he was fed by the natives till "unable to eat any more." Burke and King had also been supplied with fish by the same humane friends. But the tribe was nomadic, and after rejoining his friends Wills vainly sought the natives, who had moved their camp. Prostration laid a numbing gripe upon the explorers, but with King the food seemed to agree "pretty well." The coldness of the nights pinched their wasted forms, and their limbs refused to obey their wishes. Gathering nardoo seed, pounding and cleaning it, was the work of Burke and King when the feeble Wills was "scarcely able to go to the water-hole for water" (13th June). On the 21st June, only able to crawl from his lair into the sunshine, Wills wrote:

"Unless relief comes in some form or other I cannot possibly last more than a fortnight. It is a great consolation, at least, in this position of ours, that we have done all we could, and that our deaths will rather be the result of mismanagement of others than of any rash acts of our own. Had we come to grief elsewhere, we could only have blamed ourselves; but here we are returned to Cooper's Creek, where we had every reason to look for provisions and clothing, and yet we have to die of starvation in spite of the explicit instructions given by Mr. Burke that the dépôt party should await our return, and the strong recommendation to the Committee that we should be followed up by a party from Menindie" (on the Darling).

On the 29th June, as a last resort, Burke and King consented, at Wills' request, to go in search of the natives. They collected nardoo, wood, and water, and left him. He entrusted to Burke a watch for the father of Wills, and begged King to guard it if the latter should survive. He knew that death was near them all. That day he wrote:

"Starvation on nardoo is by no means unpleasant, but for the weakness one feels and the utter inability to move one's self, for as far as appetite is concerned it gives the greatest satisfaction. Certainly fat and sugar would be more to one's taste; in fact these seem to me to be the greatest stand-by in this extraordinary continent: not that I mean to depreciate the farinaceous food; but the want of sugar and

fat in all substances here is so great that they become almost valueless to us as articles of food without the addition of something else."

These were his last written words. Burke's prostration was almost as complete as that of Wills. On the second day, in spite of King's efforts to cheer him, he could rally no more. He asked King to remain with him till the struggle was over. "It is a comfort to know that some one is by; but when I am dying I wish you to place the pistol in my right hand and leave me unburied as I lie." Burke succeeded in writing a few brief memoranda: "I hope we shall be done justice to. We have fulfilled our task but we have been aband We have not been followed up as we expected, and the dépôt party abandoned their post. . . . King has behaved nobly. He has stayed with me to the last, and placed the pistol in my hand, leaving me lying on the surface as I wished." Burke's wish being obeyed there was no further need for King's tried fidelity. "I felt very lonely," the poor fellow said. He sought the natives. He was fortunate enough to find at a deserted camp enough nardoo to maintain him for a fortnight. He had his gun, and shot a few crows before he strayed back to the place where he had left Wills. Three crows were intended as a delicacy, but he found no one on whom to bestow them. He covered the body of Wills with sand, and, after a few days, went in search of the natives, without whose aid he knew he could not live. "They appeared to feel great compassion for me when they understood I was alone on the Creek, and gave me plenty to eat." After a few days he thought they were tired of him; but when by signs he endeavoured to explain that he would keep with them—"they seemed to look upon me as one of themselves, and supplied me with fish and nardoo regularly." They desired to know where Burke's body was. King showed them. "The whole party wept bitterly, and covered the remains with bushes. After this they were much kinder than before." Thus was the helpless King fed and housed by the good Samaritans until September. Meanwhile the report made by Wright induced a belief that it was the black man and not the white who had played the savage when Wright shot the natives at the Bulloo in April: and a search party was increased in numbers in order to cope with or punish the bloodthirsty and inhospitable tribes.

The absence of tidings had excited apprehensions in Melbourne before Wright returned to the Darling in June. The father of Wills besought the Exploration Committee to do something. He was anxious to conduct a search-party; but the Committee fortunately selected a competent leader in the person of Mr. Alfred Howitt,[1] capable physically and mentally of any service demanded from him. He knew something of the arid interior, for he had led a private expedition through the northern districts of South Australia near Lake Eyre in 1859. He was exploring in the cordillera in the Gipps Land Mountains, when the Exploration Committee were entreated to send some one to look for Burke. They entrusted the task to Howitt, and he started to the Murray river where he proposed to organize his small party. He met Brahe with Wright's despatches, which reported that nothing had been heard of Burke since 16th December, 1860, that Brahe had left the Cooper's Creek dépôt, and that the natives had "proved hostile." Wright after reaching the Darling had gone to Adelaide on private business. Howitt, with Brahe, visited Melbourne, and on the 4th July, with enlarged powers, Howitt started for Cooper's Creek, with a party consisting of twelve persons, amongst whom were two natives. The Government sent the steam-sloop 'Victoria' to the Gulf of Carpentaria to search for traces of Burke. Mr. Orkney, a merchant of Melbourne, despatched his private yacht on the same errand. From Queensland an expedition went by land under an educated but dissipated leader, F. Walker, who had been employed by the Queensland Government as commandant of mounted natives. The Victoria Government was allowed to commission him. Intelligent, active, and accompanied by several natives, he was not likely to fail. In little more than three months, striking a north-west course from the Barcoo, he descended the Norman, crossed to the Flinders, was shown by his Australian companions the tracks of Burke's camels descending northwards and returning southwards; and shook hands with Captain Norman of the sloop 'Victoria.' In five months he returned to Rockhampton, but not without losing horses and suffering privations. With such a party well

[1] Son of the popular author, William Howitt.

armed and able to procure game in abundance Walker could easily have made the journey performed by Burke.

It is lamentable to think that on one occasion twelve natives were killed and many wounded by Walker's party. Many occasions were unreported. The Queensland Government despatched a separate expedition, under Mr. Landsborough, who took four natives with him, and went by sea to the Gulf of Carpentaria. He ascended to the sources of the Albert river, hoping to intersect Burke's tracks on the way to Central Mount Stuart; but returned without success, and learned from Captain Norman that Walker's land expedition had found Burke's tracks on the Flinders. Then, eager to scan for purposes of occupation the country which had thus been proved traversable, in one direction by Burke, and in another by Walker, he started ostensibly to follow Burke's route; but, diverging from it, descended the Thomson, crossed the Barcoo, and struck the Warrego at about the tropic of Capricorn. Finding a cattle-station on that river he crossed to the Darling; and in June 1862 was in Melbourne, having obtained much knowledge useful to himself, but only interesting to the public in a sense unconnected with the fate of Burke and Wills.

Having briefly alluded to the easy manner in which, with the aid of natives, Walker and Landsborough traversed the continent, it may be well, before following Howitt, to mention an expedition from South Australia led by Mr. McKinlay. The hearts of all colonists were stirred to efforts to relieve Burke or ascertain his fate, and the South Australians were never lacking in energy or promptitude. A "Burke Relief Expedition" left Adelaide in August 1861. Camels, horses, oxen, and a hundred sheep were taken. Some natives also accompanied McKinlay. The ease with which an explorer sometimes moved through territory which had defied his predecessors is notably shown in the journey of McKinlay. When Eyre in 1840, and Sturt in 1844-5, strove to penetrate the sandy northern wastes, they had nothing to guide them to springs of fresh water near their paths. The process of pastoral occupation had in 1861 sprinkled even those wastes with advanced posts where ample supplies of food could be obtained. Thus McKinlay travelled from Adelaide to a station (of Mr. Baker's) at Blanchewater, as easily as a farmer

drives a cart to market. Yet Eyre, when the country was unexplored, and in season of drought, suffered severe privations in the region traversed with such facility by McKinlay. Each station occupied, each watering-place discovered, became like stepping-stones, planted so firmly that even a child can step from one to the other. But the fixing of each resting-place for the foot was the result of toil. The season, whose showers facilitated Burke's progress, had left water on the course pursued by McKinlay, although in their enfeebled state Burke and Wills had failed to find it. That something was to be said for Burke's resolution to seek aid in South Australia rather than at the Darling is shown by the fact, that in bidding farewell to a squatter at his station, McKinlay was less than 120 miles from the spot where Wills died.

McKinlay did not profit as he ought to have profited by having natives with him. He saw many of their countrymen, but hostility was avoided until—McKinlay's natives having previously been informed that a white man was buried at a lake (Khadibaerri)—the grave of Gray was pointed out on the 20th October. McKinlay rashly concluded that the natives had murdered Burke's party. The feeble efforts of Burke, Wills, and King to bury Gray seemed to McKinlay proofs that natives had carelessly performed the work, and had not taken the pains they would have bestowed in burying one of their tribe. McKinlay, like many questioners of the aborigines, persuaded himself, after talking to one of his companions, that he could only find bones of one man, because the remains of the others had been "eaten." He found hair of two colours, and was certain that murder had been committed. Accordingly he called the lake Lake Massacre, and on the following morning he pursued some natives, caught one (whom McKinlay's natives wished at once to kill), and extorted from his terror admissions that the saddlery had been burned, the iron work kept, and most of the human portion of Burke's expedition eaten. The prisoner left his wife and four children while he went for a pistol left by Burke's party. One thing was clear. The man had encountered white foes, for McKinlay saw on his body marks of bullet and shot wounds. Some shot were still remaining in his breast, though the wounds were healed. Perhaps McKinlay pitied;—at any

rate he did not kill the poor creature who so distinctly bore the marks of Australian civilization. In the morning, however, about forty natives, under the apparent guidance of the released prisoner, seemed to McKinlay hostile. Apprehending slaughter of his own people, McKinlay gave the word, "Fire." Several rounds were fired. McKinlay thought them effective, but regretted that "the greatest vagabond of the lot (his prisoner) escaped scathless." Having thus evinced his intelligence and strength, he formally deposited a document in which he wrote: ". . . Beware of the natives, upon whom we have had to fire. . . . From information, all Burke's party were killed and eaten."

Travelling was so easy in that season that McKinlay sent back his assistant Hodgkinson from Lake Massacre with despatches,—declaring that there was "abundance of water and feed at easy stages." He meanwhile, at his leisure, sought an available track towards the Cooper's Creek dépôt; which he intended to visit on Hodgkinson's return. On the 29th November, Hodgkinson arrived at Lake Massacre, with information that Howitt had found King alive at Cooper's Creek, and that the natives had treated the travellers with unstinted kindness. "So that I have been deceived as to appearances at Lake Khadibaerri. . . . Still I am under the impression that when Burke's diary is published, it will show some affray with the natives about that place, or they would not have acted towards us as they did."

The rest of McKinlay's journey needs little mention. The problem of crossing the continent, which had seemed so insoluble in time of drought, was easily solved again by McKinlay when the way had been shown. He visited Cooper's Creek; went northwards, wondering that Sturt had seen in 1845 so few natives, where there were so many in 1862, recorded gifts of necklaces, &c., to the blacks, and diverging to the east of Burke's track, curved back, and crossing it on the upper waters of the Flinders, made his way to the Gulf of Carpentaria (21st May) by descending the valley of the Leichhardt river. He suffered some privation, and was compelled to kill for food some beasts of burden, but succeeded in reaching a cattle-station on a tributary of the Burdekin, on the 2nd August, 1862, as

Gregory in 1856, and Walker in February 1862, had reached it before, though not exactly by the route of either of them. It was proved by all these journeys that in a rainy season there was no obstacle to exploration in any part of Australia, eastward of the 140th degree of East Longitude, if the leader of the party were skilful, vigorous, and prudent; and that if a few natives were employed by one acquainted with their habits, and capable of managing men, they would lighten the sufferings and increase the security of any expeditionary band.

Mr. Alfred Howitt, to whose steps it is now necessary to turn, happily combined the qualifications required. The tale of Wright about the hostility of the natives induced the Exploration Committee to strengthen Howitt's party; but, though offensive weapons were carried, an efficient leader could dispense with slaughter. On the 13th September, 1861, Howitt was at the Cooper's Creek dépôt. On the road he saw the truth of a statement of Herodotus, which was derided by Gibbon. The horses had so great an antipathy to the camels, that there was much trouble in keeping the former at the camps. Brahe was with Howitt, and assured him that the *cache* at the dépôt had not been disturbed, and no search was made. No hint was obtained as to the return of Burke's party to Cooper's Creek, when on the 15th September Howitt, with a native tracker (Sandy), went ahead of others to search for tracks. Footprints of camels, which Brahe could not account for, excited surprise. Howitt diverged from the Creek, leaving Sandy to examine it, and on curving back to it, met his black companions with the tidings that they had found King alive, and charitably cared for in his distress by those whose brethren Wright had slaughtered.

"Wasted as a shadow," but sheltered in the "wurley" (or hut) constructed for him by his hosts, no man could recognize in King the active young man, once a soldier, who had accompanied Burke. He was too weak and prostrate to speak clearly at first; while, gathered around in manifest delight, the tribe watched the meeting of Howitt and their guest. On the 18th, somewhat recruited, King showed the spot where lay the remains of Wills, protected as well as the feeble King could protect them, with sand and rushes. Howitt had no Prayer Book

with him, but with a feeling of solemnity shared by his comrades, read on that lonely waste the chapter in which St. Paul, with words which shall never die while human speech remains upon the earth, declares—"this corruptible must put on incorruption, and this mortal must put on immortality." Over a grave duly made, branches were laid to signify to the natives by their own tokens that the spot was not to be disturbed. The ceremony was painful to Howitt, and overcame King so much that a search for Burke's body was postponed, and Howitt on the 21st September was fain to seek it without King's aid. The pistol placed in Burke's hand by King was found loaded and capped. The remains were interred, wrapped in the Union Jack; and as in the case of Wills, an inscription on a near tree defined the spot with precision.

While these rites were paid the natives disappeared. They did not know that Howitt was unlike Wright, who shot scores of the tribe at Bulloo,—unlike McKinlay, who justified the name, Massacre, which he gave to the lake where Gray's body was found,—or the explorer, who had previously marked with bullet and shot the body of the man whom McKinlay captured. They had reason to dread that Howitt would show his strength in destruction. He, meanwhile, shrunk from leaving the district without proving his gratitude to them. He traced the Creek, and found that native fishermen left their nets and eluded him. He found their camp, and there was much commotion, though they "seemed very friendly." He showed the presents he intended to give, and invited the tribe to his camp. On the following day, nearly forty in number, they went thither. Tomahawks, knives, red ribbons for the children, made all eyes glitter. "I think (Howitt wrote) no people were ever so happy before, and it was very interesting to see how they pointed out one or another who they thought might be overlooked." The tribe seemed to understand that they received gifts because they had been kind to King.

Howitt, possessed of means, and fitted to explore, would have pursued his journey gladly, but felt bound to return with the recovered King, and with the disinterred journals and notes of Burke and Wills. Among other proofs of his aptitude one incident may be mentioned. When he revisited Cooper's

Creek he obtained in a few hours fish enough to have supported Burke and his companions for weeks. Yet Brahe had dreaded to remain at the dépôt, and Burke and Wills were dependent on the charity of the natives. Howitt returned without loss of even a beast of burden, and his tidings were in the hands of the Government in Melbourne in November 1861.[1] He was immediately deputed to bring back to Melbourne the remains which he had interred at Cooper's Creek. Those who suggested that the lonely spot where they fell was an appropriate grave were derided. The Victorians were roused to bestow upon their lost explorers a funeral which would reflect honour upon the colony.

On the 9th December, 1861, Howitt was again on his way to Cooper's Creek. During his absence McKinlay had been there, and had marked trees with his name.

It may be remembered that McKinlay from South Australia, and Walker and Landsborough from Queensland, were seeking for traces of Burke when Howitt found them. With commendable prudence Howitt was instructed to store food at Cooper's Creek for the use of any explorers who might resort thither. In various expeditions he reached Mount Hopeless, which in a drier season Burke failed to find, and also established a route between the dépôt and Lake Hope. The accuracy of communication between native tribes was proved by the fact that they told Howitt that McKinlay was hemmed in by floods in March 1862, far to the north and on the borders of the Stony Desert of Sturt. McKinlay's journal confirmed their tale. They announced also that a freshet was descending (the Barcoo or) Cooper's Creek, and it came, moving through the level land at a rate of about two miles a week.

Howitt found the natives "friendly but frightened." He

[1] A Royal Commission was appointed to distribute the blame due in the abandonment of the dépôt at Cooper's Creek, and the consequent deaths of Burke and Wills. It ascribed faults to the Exploration Committee, to Wright, and to the impetuosity of Burke; and, though it could not exonerate Brahe it refrained from condemning him, being "confident that the painful reflection that twenty-four hours' further perseverance would have made him the rescuer of the explorers, and gained for himself the praise and approbation of all, must be of itself an agonizing thought without the addition of censure he might feel himself undeserving of."

explored northwards to the Stony Desert. His people saw at Cooper's Creek a bull, a cow and calf, and caught a horse, believed to have been left by Sturt in 1845. How the cattle found their way to the Creek could not be surmised. But the instinct of animals within its appointed range is more accurate than the reasonings of ordinary men; and though beasts may die if water be unattainable, they will, if taken far from their homes by a circuitous route, strike back through a region where they have never previously set foot, and generally find the easiest path in their course. In his journeys Howitt procured native guides to ensure the finding of water. Sometimes he impressed them by force and guarded against their escape. He followed McKinlay's tracks beyond the 26th degree of south latitude. He did not abandon his dépôt until he had heard of the safe return of Walker, Landsborough, and McKinlay. Troopers with despatches from Adelaide traversed easily the land which had repelled early explorers, and squatters' stations afforded shelter and food throughout the greater part of the way. Howitt deposited at Cooper's Creek flour and other supplies for needy explorers; and carrying the remains of Burke and Wills reached Adelaide in December 1862, where the citizens were entertaining McKinlay at a banquet when Howitt arrived, and was warmly welcomed at the table. In the same month McDouall Stuart rejoiced the South Australians by returning triumphant from the north coast.

Great ceremony was displayed in Melbourne when the remains of Burke and Wills arrived. A public funeral was held 21st January, 1863. Public functionaries vied with private mourners in the trappings and the suits of woe. Sums of money were afterwards voted to provide annuities for the rescued King, for the foster-nurse of Burke, and for the mother of Wills, whose sisters also received gratuities. Howitt received public thanks. The special narrator of Australian explorations (Rev. J. E. T. Woods) summed up thus: "Probably no explorer executed his task with more prudence than Mr. Howitt, and while accomplishing his instructions exactly, under circumstances of considerable difficulty, did so with less fuss and inconvenience to his followers than ever was seen in explorations

before. He deserves the name of being a perfect type of an Australian bushman."

The numerous cycles traced by the various explorers in searching for Burke did not destroy the hopes of those who clung to the thought that Leichhardt might yet be alive; although after Gregory's failure (1858) to find traces beyond the Victoria of Mitchell (the upper Barcoo) experienced persons had no expectation of success. In 1865, on a report from Mr. McIntyre, a finder of pastoral runs, that the letter L (Leichhardt's usual sign on trees) had been found on the Flinders, the Government botanist in Melbourne, Dr. F. Mueller, stirred up enthusiasm for a search for his lost countryman. A Ladies' Exploration Committee was formed; funds were contributed, and McIntyre was appointed leader of an expedition. It was not certainly known whether the trees marked L, either on the the Barcoo or at the Flinders, had been marked by Leichhardt. It was known that if possible he intended to cross the continent from east to west, to discover, perhaps, the nature and extent of Sturt's Desert; but not to hazard life by a route so southerly as to deprive him of the use of the Flinders or other Carpentaria waters in case of emergency.

McIntyre's expedition ended disastrously. He left his party in a waterless place while he pushed forward. His assistant, a medical man, with others, craving for drink during McIntyre's absence, took out the spirits and indulged in wild orgies. The miserable horses strayed hither and thither and died of thirst. McIntyre returned with water only to see the wreck. He himself found his way afterwards to the Gulf of Carpentaria; but the expedition was destroyed by his own improvidence and the misconduct of his people at the Paroo country.[1] It was a sad duty to discover, if possible, Leichhardt's remains; but on the eastern half of Australia there was no further field for discovery.

[1] Subsequently a convict, Hume, reported that one of Leichhardt's party (Classen) was alive, and with a tribe of natives in 1873. There were said to be half-caste children also. Search was vainly made, and most persons concluded that Hume was an impostor. In 1880 the story was revived, but the scene was shifted to another place—the Herbert river. Tales gathered by ignorant persons from the natives were put forward as truth, with strange forgetfulness that McKinlay convinced himself by such inquiries that Burke and Wills had been murdered and eaten by his informants.

Tracts there were in which wanderers many miles from water might die of thirst; but every main feature of the land was known, and flocks and herds were so quickly spread over it that a few years after the death of Burke, cattle were driven from stations near the Gulf of Carpentaria to the markets of Melbourne and Adelaide.

An expedition was fitted out in Queensland in 1864 to form a settlement at Port Albany, Cape York. Mr. Jardine, Police Magistrate at Rockhampton, proceeded thither by sea, and two of his sons with a surveyor and three other white men, and Eulah and three other aborigines of the Rockhampton and Wide Bay districts, went overland with cattle and horses. After leaving (October) the then northernmost homestead at Carpentaria Downs, they trended towards the east shore of the Gulf of Carpentaria, and eventually made their way to the settlement in the beginning of March 1865.. The leaders of the party were young, and they were accompanied by others eager to distinguish themselves by shooting the natives in the savage manner already described as actuating the Australian aborigines when brought into contact with tribes not known as friends. The natives followed the travellers, as was their wont, whether friendly or inimical. In October, "getting tired of this noisy pursuit," the travellers recorded that they stopped it. On the 20th November natives were fired at and dispersed. On the 22nd one is mentioned as having been shot. On the 23rd shortness of ammunition "alone prevented the brothers from turning out and giving their troublesome enemies a good drilling, which they richly deserved, for they had in every case been the aggressors, and hung about the party treacherously, waiting for an opportunity to take them by surprise." On the 27th several were shot. On the 16th December we are told that, though the explorers "as a rule avoided making use of their superior arms," the "brothers determined to let the natives have it," and many were shot. On the 18th December it is recorded that at first the natives "stood up courageously," but having expended their wooden missiles, "got huddled in a heap in, or at the margin of, the water, when ten carbines poured volley after volley into them from all directions, killing and wounding with every shot." . . About thirty being killed "the

leader thought it prudent to hold his hand and let the rest escape. Many more must have been wounded and probably drowned."

On the 28th there was more shooting, and on the 14th January the leader "owns to a feeling of savage delight at having a shine with these wretched savages who, without provocation, hung upon our footsteps. The two foremost men fell," the others fled, but "the advantage was not followed up." On the 1st March more natives were seen, and "the travellers immediately unslung their carbines;" most of the poor creatures fled, but three of them frantically called out in tones which Eulah recognized as English. Mr. Jardine, at Port Albany, had taught the names of his sons; and his pupils had marched twenty miles to conduct them. But for Eulah the guides might have been shot. There was much regret at the loss of about 50 cattle out of the 250 (from a poison-weed); but no one seemed to deplore the deaths of the natives, which were recorded with some pride in a journal printed at Brisbane in 1867.

There was little risk of want of water on the east, but it was otherwise in the western half of the continent. Before describing the endurance displayed by explorers in that region it will be well to mention the construction of a telegraph line along the path of Stuart. The stations existing on the line afforded hospitality in the centre of the continent, and a safe frontier for departure or arrival, where in Stuart's days there had been only unknown dangers and hardships to encounter. Telegraphic communication with Europe was the dream of a few long before it became the possession of the many in Australia. It was supposed that over her pastoral lands, extending to the Gulf of Carpentaria, Queensland would assume priority in the work. To Java, and thence to Singapore, the submarine line could be easily laid by one of the numerous companies which form the ducts to receive wealth, which English enterprise or folly is ever ready to pour into them. Companies were, in fact, formed in England, when the spirit of Mr. Todd, the Superintendent of Telegraphs in South Australia, infused itself into others; the Government threw itself warmly into the cause; a Bill was introduced into the local Parliament; a change of Ministry

exercised no repelling influence; the work was begun under Mr. Todd's direction in 1870, and every heart in the colony beat high with the proud confidence that in a brief space the thoughts of South Australians could flash along a line two thousand miles in length, constructed by a population in which all the men and boys were less than 90,000. Port Darwin was to be the northern terminus, and thither a British Australian Company would bring a submarine cable.

The energetic Todd set his people to work at the north as well as at the south. There was no timber for posts in parts of the line, and iron supports were procured by sea. We are told that the abandonment of a contract in the north was "a heavy blow and sore discouragement"[1] to the colony. Well-sinking in one place, floods arresting work at another, agitated the colonial bosom. The colonists grieved at defective sympathy from their neighbours, but they did not flinch from their task. Mr. Todd rushed to the rescue. Beasts of draught had died in dragging loads from Port Darwin; and, to shorten the journey, cargoes were landed at the Roper river in the Gulf of Carpentaria. But even Mr. Todd's toil could not avert the catastrophe of failure to open the line on the promised day—1st January, 1872. A message by sea told England in August 1871 that the land line was not nearly completed, and South Australia was sad.

While labouring in the north Mr. Todd was threatened with a new grief. The Cable Company spoke of enforcing penalties against the colony for its unreadiness. At their wits' end for a reply the colonists saw the knot of their new difficulty cut for them by the breaking of the sea-cable. Over a space between the Daly Waters and Tennant's Creek, Todd established a pony-express; and link by link the gap was reduced until, standing appropriately at Central Mount Stuart, he saw his work completed (22nd August, 1872), and the current which is ever throbbing through the veins of the world as light is poured from the sun, was for the first time lent to man in spanning the broad continent of Australia. Mr. Todd was the hero of the hour. The Governor, Sir J. Fergusson, presided at a banquet of

[1] 'South Australia: Its History, Resources, and Productions.' 1876. W. Harcus. Published by authority.

congratulation; the Chief Secretary of the time; Todd; and others, were decorated with honours.

A similar banquet was held in London in November 1872. The Secretary for the Colonies, Earl Kimberley, presided. Telegrams, fresh from the ends of the world, were read. Chairmen of Telegraph Companies joined in jubilee. Earl Kimberley, who could do so with better grace than his colleagues (Earl Granville, or Gladstone, or Lowe), proposed "the Integrity of the British Empire" as a toast. Mr. J. B. Darvall, who had done so much to damage the institutions of New South Wales, but who could play any part, assumed a patriotic tone, and warned the Ministry that the loyalty of the colonies had ever been warm, that the coolness of members of the Cabinet had aroused grave suspicions, but that after Earl Kimberley's manly declarations the colonists would trust that the mother-country would "not be led astray from those greater and nobler aspirations which should guide a nation, but remember that to keep faith and honour is better as a national possession and a greater security for the future than the sort of peace-at-any-price which will make a nation the contempt of her neighbours and the scorn of mankind."

Mr. Knatchbull-Hugessen (Under-Secretary for the Colonies), who consistently advocated Imperial unity throughout the colonies, struck so sympathetic a chord that Mr. Strangways declared that in future he believed that "no man either in or out of Parliament" would dare to "advocate the disintegration of the Empire." The new use of the old currents of the material globe seemed to have thrilled the hearts of the short-lived creatures who walk about and scratch the surface of its crust. Having glanced at their happiness we may recur to the western explorers, who (aided by the broad base-line of the telegraph line) scanned anxiously the glaring sands, heated like a furnace by the Australian sun.

The first passage was made from West to East near the Australian Bight by the brothers Forrest in 1870. Mr. John Forrest had in 1869 led an expedition from Western Australia to search for traces of Leichhardt. With his younger brother Alexander, he was sent by the Government to find a route inland of the track of Eyre along the southern coast, and to

the surprise of the denizens of South Australia, the task was accomplished by the hardy brothers who in a few months reached Eucla. They found in places better pastoral country than Eyre had seen, but want of water imperilled the lives of their whole party, and debarred all hope that profitable territory existed near their track.

In 1871 the indomitable brothers discovered some pastoral lands to the east of Perth. In 1872 a rival explorer, Ernest Giles, appeared on the South Australian side of the dreaded desert. His point of departure was Chambers' Pillar on the telegraph line; and travelling to the north-west to the Tropic of Capricorn, he crossed and recrossed the barren sand-hills, seeing little vegetable growths but spinifex,[1] mulga,[2] and mallee-scrub.[3] Turning southwards he met an enormous marsh or evaporated lake (Amadeus) of treacherous blue mud encrusted with salt.

The expense of the expedition was borne by subscriptions raised in Victoria. Only horses were used by Giles and his two companions. Again he tried to probe the desert with three companions and twenty-four horses. He kept to the south of the horrible mud expanse of Lake Amadeus. Rain fell, but did not abide upon the surface of the thirsty sand-hills. Some pleasing land was seen near the western extremity of Lake Amadeus, and explorations to and fro were made until one of the party, Gibson, was lost. After vain search and delay Giles effected a retreat to the telegraph line, which he reached at Charlotte Waters in July 1874.

Another exploring expedition commanded by Mr. W. C. Gosse, an experienced surveyor, strove with equal perseverance but without success, to cross the repulsive tract near the mud-lake. He had a cart and camels—the water-carrying ships of the desert where two or three hundred miles were to be traversed without finding water. Yet another expedition, fitted out by the public spirit of Mr. T. Elder, and Captain Hughes of Adelaide, sought and found a path over the barren waste. Colonel Warburton, whose previous labours near Lake Eyre

[1] *Festuca (Triodia) irritans.* The porcupine grass of the colonists; as hostile as uneatable.

[2] *Acacia aneura.*

[3] *Eucalyptus dumosa.*

have been mentioned, was about sixty years old when he was fired with the hope of solving the problem as to the nature of the interior which separated South Australia[1] from the Western Sea. Leaving Adelaide in the end of 1872, he was unable to depart on his perilous journey until April 1873. He had, in his party, his own son, and a native named Charley. He had camels. As the spinifex wastes afforded neither food nor water, the camels pined, and their sinewy remains were eaten by the starving travellers. An extract from a speech made by Colonel Warburton may tell the tale.

"He was an old man, and although he could do well when he had plenty to eat and drink, he did not find himself so comfortable without either, and so was the first to give in . . . his son and himself had to travel 160 miles after the blacks to ascertain where they, of whose hunting they had heard, managed to procure water, for they concluded that hunting could not be kept up under such a sun if they had no water. In that way they discovered water—he could not say by accident—because it was due to the sharp sight and quick intelligence of his friend who was at hand—to Charley. Charley, as he was riding along on a camel, perceiving a few diamond sparrows rising from a spot near their track, dropped from the camel, saying, 'I think there is water here.' (There was.) When he could not hold up his head, so weak was he, Charley had often given to him the fruits of his skill in the shape of a lizard or a rat or something of that kind. To Charley he might say, under Divine Providence, their lives were due . . there was no doubt that if it had not been for Charley they must have perished. He had not, as was stated in the newspapers, 'stumbled upon water.' He had left their camp in the morning, and in the evening they had wondered where he was, as he had not turned up. He felt on the one hand that it would be a most cruel thing to leave him behind to perish, and on the other hand he had the lives of five men in the party depending on his pushing on. The camp was to have been broken up at six in the evening; so, in the difficulty, he took the middle course and waited till nine before moving off. When they had travelled about two hours, or two hours and a half, with the camel-bells sounding, they heard a cooey and answered it, and striking out in the direction of the sound found Charley . . He had gone a distance of fourteen miles, following native tracks. He

[1] The boundary between the colonies of South and Western Australia is the 129th degree of East Longitude.

had come on a tribe of blacks and found water, and was kindly treated by them, and when met was on his way back. He wished it to be understood that Charley did not come on the water by accident, but hunted it up honestly and fairly. They made a fresh start from this place, and looked death close in the face, but by God's Providence they had at last got through. If they had not met Charley he did not think they could possibly have been saved. When he came to the Oakover he was so ill that he would have been glad had his companions left him alone to die; but they would not hear of it—with better sense than he had in the matter—and he was strapped upon a camel and carried in that way to the Creek that led them to the Oakover."

The gallant explorer paid a graceful tribute to the kind succour afforded by residents on the De Grey river, who, on learning the facts from two men sent forward by the almost dead Warburton, sent food and horses to bring in the sufferers. As a proof of endurance, courage, and fidelity, the expedition was famous; but it only confirmed the evil reputation of the land. Driven back in more than one trial to penetrate westward, Warburton trended to the north-west, touching at one point the country seen by A. C. Gregory (in 1856) at the 20th degree of South Latitude. Thence, by efforts surpassing his own natural strength, and by destruction of his patient camels, the courage of himself and his faithful companions found a way to the neighbourhood in which hospitable settlers, Messrs Grant, Harper, and Anderson of the De Grey river, were prompt to relieve him. The Government of Western Australia sent a vessel to bring the wayworn party to Perth, welcomed them as heroes, and sent them to Adelaide, where, one year after they had dived into the desert, they were entertained at a banquet at which the Governor (Sir A. Musgrave) proposed Colonel Warburton's health, in response to which the explorer spoke the words quoted above—pointing, amid cheers, to Charley, who stood near.[1]

The desert had no terrors for the men of the West, among whom Mr. John Forrest was notable. In 1872 he had proposed to lead an expedition from the sources of the Murchison to the South Australian telegraph line (then incomplete). Mr. Weld,

[1] 'South Australian Register.' April, 1874.

the Governor, approved; the Legislative Council voted £400; and the expedition was delayed only by a desire to profit by the results of the explorations of Giles, Gosse, and Warburton from South Australia. Forrest, who was Deputy Surveyor-General in the colony, started in March 1874 with his brother Alexander as assistant, James Sweeney (farrier), a policeman named James Kennedy, and two natives, Tommy Windich and Tommy Pierre. He had asked for no more men. He took twenty horses. He was to seek good pasturage. The Surveyor-General hinted also in instructions to Forrest, that the "head of the Murchison lies in a district which may prove another land of Ophir."

Every colony was crazy with desire for that gold which had demoralized those who had found it. It may be said for the Western colony, that if their extensive deserts would have isolated the gold-seekers so much that they could not have exerted direct influence on legislation, some of the evils festering elsewhere might have been avoided, even if Mr. Fraser's hope for a new Ophir had been gratified.

Forrest started from Champion Bay in April 1874. He saw good pasture on tributaries to the Murchison, but he was amidst the spinifex in May. On 29th May he wrote: "Spinifex in every direction, and the country very miserable and unpromising." Yet with T. Windich he found a spring there. The horses became jaded in June, and unfortunately, while Alexander Forrest and Windich were absent, the main party were required to fire upon the natives in self-defence. Forrest feared that one of them had received "a severe wound, as we could follow the blood-drops for a long way over the stones." Whether caused by misunderstanding or otherwise the collision was lamentable. Forrest, attributing it to malice, truly said: "They will have cause to remember the time they made their murderous attack upon us." In July, we read (when Forrest and Windich were separate from the main party):

"Spinifex everywhere; it is a most fearful country . . . We can only crawl along, having to walk and lead the horses, or at least drag them. . . To go forward looks very unpromising, and to retreat we have quite seventy miles with scarcely any water and no feed at all. . . . It is very discouraging to have to retreat, as Mr. Gosse's

furthest point west is only 200 miles from us. We finished all our rations this morning, and have been hunting for game ever since twelve o'clock, and managed to get a wurrung and an opossum, the only living creatures seen, and which Windich was fortunate to capture.

On the 7th July, Alexander Forrest and Windich found water "sufficient to last two or three weeks." On the 12th A. Forrest and Pierre found other springs, and saw many natives. On the 13th Windich shot an emu. On the 18th, when within 100 miles of Gosse's westerly point, Forrest and Windich "found a fine pool in a sandy bed, enough to last a month." Thus meandering over the sand-hills, the expedition toiled until, approaching the region which had driven back Giles and Gosse, Forrest reduced the allowance of food so as to make it last longer. On the 8th Windich showed horse-tracks "coming from the westward." Whether they were left by the expedition of Giles or of Gosse, Forrest was out of danger, for Windich and Pierre could follow the traces. On the 13th, after waiting four hours at a rock-hole full of water, Windich shot one of two emus going thither to drink. On the 16th "Windich found a gum-tree marked 'E. Giles, Oct. 7, 73.'" On the same day the track of Gosse's cart-wheels was seen. On the 17th Windich shot three kangaroos, and if the horses had not been emaciated the troubles of the party might have been deemed at an end. But in that arid region it seemed that no rain had fallen since the visit of Gosse a year before. This was shown by the wheel-tracks. Only rare springs afforded water.

On the 4th September, when pushing on to reach a spring, shown in Gosse's map of the Musgrave Ranges, Windich went forward on "the only horse strong enough, to scour some valleys." In default of water the restless horses would not eat on the night of the 3rd. A strict watch was kept lest they should stray, and an early start was made. Thirty-one miles away Windich found an abundant spring. "We are now in perfect safety, and I will give the horses two days' rest,"—wrote the thankful leader. The privations of the little band were ended. What remained would have been severe to less hardy persons, but to them was trivial. Following the course of the Marryatt, and striking

the Alberga river, whose sandy bed supplied water to those who dug for it, on the 27th September Forrest reached the telegraph line, and loud and ringing cheers broke from the mouths of his companions. On the 30th he was at the Peake station, and exchanged joyful messages with the Governor of South Australia and others. There he learned that his brother explorer Giles had returned, and that another expedition under Mr. Ross, fitted out by the munificent Mr. Elder of Adelaide with camels, to seek for Colonel Warburton or force a way to Western Australia, had been baffled, and returned from those spinifex wastes in which it had been Forrest's fortune to find in scanty pools the means of prolonging life and struggling to success. With Giles, Forrest came to the conclusion that on camels alone could dependence be placed. The horse requires water regularly in dry weather. The camel "has in Australia been known to go 12 and 14 days without water, carrying 300 and sometimes 400 lb weight."[1] Thus, across the Western Australian wastes, Eyre in 1840 on the coast, Forrest in 1870 nearly along it, Warburton in 1873 not far from the 20th parallel of south latitude, and Forrest in 1874 near the 26th parallel, had forced their way; and the land was found barren. Grassy patches had been seen, but they were so distant and isolated that any general occupation of the country seemed impossible.

But the spirit of enterprise was unsated. Mr. Elder equipped a party, headed by Giles, and provided with camels, in 1875. In May Giles started from the settled districts, intending to make Youldeh, lat. S. 30° 24′, long. 131° 46′, E., the point of departure. On the 27th July Youldeh was left. Messrs. Tietkens and Young, two of Giles' assistants, explored from Ouldabinna northwards beyond the 28th parallel of south latitude, and westward along the 29th parallel nearly to the 130th degree of E. longitude. Ouldabinna itself was in lat. 29° 7′ 4″, long. 131° 15′ 4″. Giles went westward while Tietkens and Young were at the north. Giles found a dam made by the natives 156 miles to the west of Ouldabinna, near the boundary-line between the two colonies. After these preliminary excursions the whole party left Ouldabinna on the 24th August, carrying water in every vessel, and steering through the repulsive tract which separated

[1] 'Journal of the Royal Geographical Society,' vol. xlv. 1875.

them from the dam found, and called the Boundary Dam, by Giles. Spinifex sand-hills and wastes, salt lakes and marshes, mulga, mallee, and occasional casuarina, sandal wood, and quandong trees were on the track, but no fresh water. Rain fell, and Giles hoped that the dam might be found replenished. It was so. There were vetches for the camels, which browsed with avidity also on the luxuriant desert pea,[1] when the Boundary Dam was reached on the 3rd September (lat. 29° 19′ 4″, long. 128° 38′ 16″). A week was spent in refreshment for man and beast before Giles, hardly anticipating that water would be found on the way, decided to dash forward to Perth—"haphazard at any risk, and trust to Providence or chance for an occasional supply of water here and there in the intermediate distance." He had seen nothing of the owners of the dam, and "never before saw any part of Australia so devoid of animal life." Through scrubs, past salt lagoons, the water-carrying party moved for days. Then grassy plains succeeded the spinifex horrors. On the eleventh day the spinifex re-appeared. The Boundary Dam was 200 miles behind. No man knew what was before. No sign of man or of ground game was seen. At 242 miles from the dam Giles decided to give his "lion-hearted camels" one day's rest, and to apportion among them the "water that some of them had carried for the purpose." Some of his companions grudged the patient beasts their share, and wished to slay the weakest, and save the water. But Giles, "declining all counsel, declared it should be a case of all sink or all swim." Four gallons were stowed within instead of without each camel. There were eighteen grown beasts and one foal. This was on the thirteenth day of the march from the dam. More scrubs were traversed, and on the sixteenth day traces of natives were seen. Giles' black boy, Tommy, had also found some eggs of the lowan[2] which were welcome. The camels had sometimes no food. They could gulp down the native poplar, which Giles thought "the most disgusting vegetable" he ever put into his mouth: but spinifex they could not away with.

On the night of the 25th September, 323 miles had been

[1] *Clianthus Dampieri.* Sometimes called Sturt's Desert Pea.

[2] *Leipoa ocellata.*

traversed. Mr. Tietkens in the morning judged from the depressed landscape in front that water was near. Giles was incredulous. Tietkens put Tommy, the black boy, on his own camel, the best in the troop, and sent him to spy for tracks of natives, or other hopeful signs, to the left of the day's course. The caravan moved on. Tommy, meanwhile following the track of an emu, saw from a sand-hill an open tract of grass with a cluster of pine-trees in its hollow. Thither he sped and found the emu tracks tending towards it. In the hollow was a little lake of pure water. He watered his camel and hastened after the caravan, yelling the word "Water." Men heard him and told Giles, who, distrusting them, "kept the party still going on." But Tommy pursued, and "between a scream and a howl yelled out, now quite loud enough for me to hear, 'Water, water, water!'"[1] The caravan wheeled round. The camels "drank as only thirsty camels can." The travellers washed for the first time for seventeen days. Twelve days they rested to recruit at the pool, 150 yards in circumference, only two or three feet deep, but fed by percolation from surrounding sand-hills. The thankful Giles reflected that the discovery was perhaps the "salvation of the whole party," and dedicated the lake by calling it "Queen Victoria Spring."

If Tietkens had not sent Tommy to spy, if Tommy had not spied, the treasure would have been ignorantly passed by, screened by a sand-hill, though distant only half a mile from the caravan. Mr. Young planted seeds of vegetables and trees at the camp, in lat. 30° 25′ 30″, long. 123° 21′ 13″. From the Boundary Dam Giles had travelled 325 miles without water. He was now only 300 miles from Mount Churchman which was known to Giles, and near the settled districts to the north-east of Perth. His course thither was near the 30th parallel S. lat. Between Queen Victoria Spring and Mount Churchman the land was scrubby, but water was found occasionally, natives were seen, and the eggs of the lowan were obtained. In one day forty-five enriched the wanderer's larder.

On the 6th November Giles was at Inderu, the hospitable homestead of Mr. Clarke, and thence was invited by Mr. Lefroy

[1] 'Journal of Royal Geographical Society,' vol. xlvi. 1876. Narrative of Giles.

to recruit his party at a neighbouring station. At New Norcia the Benedictine Missionaries were equally kind, and there an electric telegraph carried messages of congratulation to Giles. His achievement was remarkable, but he was constrained to admit that though he had "travelled 2500 miles, unfortunately no areas of country available for settlement were found." He was not yet satisfied, and determined to return overland by a new path. Forrest had crossed from the sources of the Murchison to the South Australian telegraph line by keeping near the 26th parallel of S. latitude. Giles kept near the 24th. The latter had camels. Forrest had none. Although 220 miles were traversed in ten days without seeing fresh water, the camels carried the expedition safely to the point attained by Giles with horses in 1874, when travelling from the east. From thence, for Giles aided by camels, the journey was easy, and on the 23rd August, 1876, he was at the Peake telegraph station. Thus (irrespectively of the courses of Eyre and Forrest curving round the shores of the Australian Bight) in four separate tracks, Warburton, Forrest, and Giles had proved the barrenness of the land between the 20th and 30th degrees of south latitude. The grim defiance of the desert could only be overcome by toil. It may not be unworthy of notice that Eyre in 1843, Strzelecki in 1846, Sturt and Leichhardt in 1847, Augustus Gregory in 1857, Stuart in 1861, Burke's representatives in 1862, Frank Gregory in 1863, Warburton in 1874, John Forrest in 1876, were awarded Royal premiums, of medals, by the Royal Geographical Society, and that in annual addresses the Presidents of the Society did them honour. Giles received honour from the *Societa Geografica Italiana*.[1] To complete the record of exploration in Western Australia it may be mentioned that Alexander Forrest found in the space between the 15th and 20th degrees of south latitude room to display the endurance of a brother (Matthew), and other comrades, amongst whom were two natives.

From Beagle Bay he travelled eastward, and saw at the Fitz

[1] Its distinguished President, Cristoforo Negri, in his address in 1870 hoped for the time when "nel numero dei soci raggiungerebbe l' Inglesi. Cosi potessimo sperare di raggiungerne anche la fama!" Landsborough, McKinlay, and Walker received (1863) gold watches from the English Society.

Roy river a territory adapted for pastoral purposes. Striving to reach the Glenelg river he was rebuffed by the rough ranges described by Lieutenant (afterwards Sir) George Grey in 1838, though he saw far off the Stephen Range named by Grey. Returning to the Fitz Roy, after losing ten horses, Forrest resolved to explore the unknown land to the east. He saw grassy country on his way to the boundary of the colony, and on the Victoria river, but was reduced to kill and eat some of his horses. Sickness attacked some of his people, and with the two best horses he rode with one companion to the friendly South Australian telegraph line for help. Obtaining food and fresh horses he relieved his distressed friends, returned with them to the telegraph line at Katherine Station, and thence led them to Port Darwin, whence he sailed to Sydney. It was estimated that he had seen 5,000,000 acres of pastoral lands on the Fitz Roy river watershed and 20,000,000 elsewhere. He reported "large numbers of natives were seen, but in no single case had we any trouble with them." When rebuffed by the rugged rocks which arrested his progress northwards near Collier Bay, he wrote that he had "worked hard—more so than I have ever done in my life—to bring this expedition to a success, but owing to the rough hills over which I could possibly have no control, as my horses would not at last face them, and as will be seen ten of them were lost, we tried hard to get north without success."[1] Thus the "barren sandstone rocks and hills" which Grey and Lushington described as "utterly inaccessible" to their ponies in 1838, were found equally impassable by Forrest in 1879. He was more fortunate, or more sagacious, in one respect than his predecessor. He had no fatal encounter with the natives. Both Grey and Forrest reported that the natives were a fine-looking race, and it was in their domain that the remarkable carvings and paintings on the rocks were seen by the former. Pierre, one of the natives who accompanied Forrest, was very useful at first, but became ill, and was "strapped on to his horse to keep him from falling off." He only lived long enough to reach King George's Sound, and to be buried in his own country.

The chapter of Australian discovery being virtually closed, a

[1] Report to Sir H. Ord, Governor of Western Australia.

few words are due to the condition of the native tribes. The position they held in the mother-colony may be estimated by the fact that, in 1876, there was promulgated from the Government printing office in Sydney,[1] with a view to magnify the colony at the New York Centennial Exhibition, an essay in which not one word was to be found concerning the dispossessed heirs of the soil. There was no record of duty, recognized or respected, towards the disinherited. Climate, mineral treasures, and resources, were extolled as though they had been invented and not conferred. Political, moral, social, and intellectual advancement were claimed with gratulation as marvellous results within the short period which had elapsed after "the axe of the pioneer" was imported to "clear the way for the flowers of the mind."[2] It may have been thought prudent to be silent on a subject on which praise was impossible; or silence may have been caused by sympathy with the general neglect.

The mother-colony had been hard and unjust in her dealings; and though Victoria might well have done more for the good of the aborigines, her conduct was, for many years, bright when contrasted with that of New South Wales. The Government in Sydney long abandoned any attempt to do its duty. A few blankets contemptuously distributed once a year were flimsy tokens of disregard. No functionaries were appointed to watch over the withering remnants of tribes. Private benefactors strove to make amends for public neglect. The Rev. William Ridley's labours amongst the Kamilaroi have been mentioned.

Mr. Daniel Matthews established a shelter-station at Maloga near the Murray river, to which, in 1879, the Government doled out £200;[3] and a Congregational minister, the Rev. J. B. Gribble, with earnest devotion, and shamed at the condition of the blacks, resigned his ministerial charge to form a mission station on the Murrumbidgee, for which he made appeals

[1] 'New South Wales, the Mother-colony of the Australias.' By G. H. Reid. Sydney: 1876.

[2] *Ib.* p. 101.

[3] The 'Statistical Register of New South Wales, 1879,' shows that from voluntary contributions &c., in that year Mr. Matthews obtained a larger sum than the Treasury gave him: £360 shamed the Government grant of £200.

by lectures in Sydney and its suburbs. And this was all that was done at that time for the supplanted tribes by a community whose revenue in 1878 was £4,983,864.

The tone of the public mind on the subject may be illustrated by an occurrence which proves in a melancholy manner that it was not only to the convict element that atrocities of previous years were due. The criminal was Victorian, but the jury who tried him were men of New South Wales. On 22nd June, 1876, there was a race-meeting at Wilcannia, on the Darling river in New South Wales. In the evening a man named Giles, known as a "book-maker on the turf," walked down to a camp of a few natives, and there assaulted grossly a native woman. Her husband, without absolutely striking him, pushed him away, and protected his wife. Giles returned to a public-house, and swore that he would shoot the black fellow. The publican, alarmed, reported the threat to a constable. The constable advised Giles to retire to his hotel. Giles seemed excited, but sober. "He promised to go to his hotel." The constable searched for a pistol, but found none on Giles' person, and allowed him to retire to his hotel, a different one from that at which he had used his threats. In half-an-hour the constable heard three reports of shots in the "direction of the blacks' camp." He ran thither, met Giles on the way, asked what was the matter, and was answered,—"I have just shot the black fellow." After a struggle the constable wrested a revolver from the hand of Giles. Releasing the culprit, the constable went to the camp, and was shown the wounded man. Then obtaining assistance, he arrested Giles for shooting with intent to kill. On the 23rd, a Wilcannia magistrate remanded the prisoner for eight days, but admitted him to bail. On the 1st July the murderer was committed for "shooting with intent to kill," although the magistrate who had previously granted the remand knew that the victim had died, and the same magistrate was again presiding on the Bench. Again bail was taken,—£300 surety from Giles himself, and £200 each from two other persons. He was to appear at the Assizes at Deniliquin in October. But although he was committed, not for murder, but for a minor offence, he had qualms lest a Judge of the Supreme Court might think his act a serious matter. Giles absconded. He was

found and arrested at Adelaide, and was tried before Sir W. Manning on 21st October, 1876, at Deniliquin.[1] The recognizances for his stipulated surrender were not estreated. A scoundrel named Sims had accompanied Giles when the murder was committed, and he appeared as a witness, but not for the truth. The publican who acquainted the policeman with the murderous threat of Giles had been schooled in the mean time, and remembered only that "some one" at his house said he would "shoot a black fellow." He could "not say whether he told the constable that the prisoner said it." The constable, however, could and did say the truth. Neither the wife of the murdered man nor the other natives who saw the murder could, under the colonial law, be accepted as witnesses. Sims, in a confused but bold manner, swore that he endeavoured to dissuade Giles from going to the camp with the pistol, that he followed him, he knew not why,—and that the black man assaulted Giles, who was on the ground when the shots were fired. After retiring for half-an-hour, the jury brought in a verdict of manslaughter. In reply to a question from the Judge, the foreman said they "thought it safer to believe" Sims, and to believe also that the murderer had the revolver on his person when the constable vainly searched for it, which point the prisoner's counsel had earnestly but vainly striven to prove in his favour. The Judge inflicted a sentence of three years' hard labour. Witnesses were called as to character. One swore that Giles was always very steady; another that he had frequently seen him drunk, and that in that state he was "a madman." Witnesses were ready to provide evidence of every kind, however incongruous, lest any should be omitted which might screen the culprit. In this manner did a New South Wales jury discharge itself of its oath to try well and truly the matter brought before it, not in an outlying district where terror might dismay, but in a long-settled territory, within which the usual causes had almost exterminated the native race. In this manner it could hardly be supposed that the widow of the murdered man could be made to believe that the law was framed to administer justice. She saw her husband murdered. She was asked no questions by the wise men of the colony. She saw his comrade (if not his

[1] I have had the advantage of perusing the Judge's notes of the trial.

accomplice in the deed) insolently giving false witness and obtaining credit.

Why do I narrate these things? I would arouse, if possible, a public sense that, though past wrongs cannot be blotted out, there is even now a future in which some good may be done; that while one solitary Australian remains alive, there is a sacred duty resting on the community to visit the poor creature in his affliction, and atone in some degree for the cruelties which have been heaped upon his race. The community was indeed kind-hearted and generous in contributing at all times to relieve wants made known to it. But the miseries of the natives were unknown to most persons. Far in the interior, the victims of outrage and degradation fell by hundreds beyond the ken of society. It is a notable incentive to good deeds that the isolated efforts of Mr. Matthews at Maloga, and Mr. Gribble at Warangesda,[1] awakened the public conscience. Those two men, with humble means and scanty subscriptions from the benevolent, have turned the tide. A New South Wales Aborigines' Protection Association was formed to aid their good work. The Governor, Lord Augustus Loftus, became its Patron; Sir John Robertson its President. The Church of England Bishop, Dr. Barker, and Mr. W. J. Foster, a Member of Parliament, were Vice-Presidents. Other members of the two Houses assisted, and Mr. E. G. W. Palmer became Honorary Secretary. The Association made a report in June 1881. Contributions from school-children, and widows' mites from various places eked out the subscription lists. A native, T. B., sent ten shillings from far-distant Armidale to assist his unknown brethren at the Murrumbidgee. In 1882 there were 120 pensioners at Maloga. The Government had appointed a member of the Legislative Council (G. Thornton) Protector of Aborigines, had authorized a reserve of 1000 acres of land for the pensioners at Warangesda, had granted aid for schools, and proffered £2 for £1 raised by the Association to aid the existing institutions or others which might be formed.

Mr. Thornton (the Protector) has recently reported that there

[1] It is a pity that by an irregular combination of two words a name has been compounded for this station which includes the letter "s," which does not exist in the native language.

were still 4494 black adults and 1108 half-castes. There were 2817 children, of whom 1271 were half-castes. The ardent liquors supplied by unscrupulous persons in defiance of the law were, in his opinion, the precipitating cause of the rapid disappearance of the race. He recommended reservations of land for their benefit, so that they might live of the fruit of some portion of their native land, by their own exertions encouraged by the Government. If the kindliness of the community can be attracted to the question, there can be no doubt that amends will be made, though tardily, for the wrongs and neglect of the past. Mr. Thornton did not shrink from maintaining that throughout the whole territory the aborigines "were entitled to be equally considered and provided for:"—but the manner in which the duty is to be performed is still undecided by the Legislature.

If there be any pre-eminence in evil, Queensland must bear the stigma of deserving it; and some of her people were not ashamed to abet the foul deeds perpetrated within her borders.[1] The formation of a body of native police in the district, which was (under the name of Queensland) to be severed from New South Wales and created a separate colony, has been mentioned. The habits of the natives, the nature of the service, and the character of some of the officers, contributed to make the corps a mere machine for murder. It fell under the control of the new government of Queensland in the end of 1859. A sailor, named James Morrill, shipwrecked near Port

[1] Two indignant partners in a station published (with their names) in a Brisbane newspaper a remonstrance addressed to "the officer in command of the party of native police who shot and wounded some blacks on the station of Manumbar on Sunday the 10th February, 1860." Four or five old men had been shot and left "unburied within a mile or two of our head station. ... You have wounded two of our station blacks who have been in our employment during lambing, washing and shearing, and all other busy times for the last eight or nine years, and we have never known either of them to be charged with a crime of any kind. ... Being in our employment they very naturally look to us for protection from such outrages, and we are of opinion that when you shoot and wound blacks in such an indiscriminate manner, you exceed your commission, and we publish this that those who employ and pay you may have some knowledge of the way in which you perform your services."—Manumbar, 22nd February, 1860. T. and A. Mortimer.

Denison, in 1846, remained with the natives on the coast until 1863. His testimony was, that "from 1850 to 1860, before the whites commenced destroying the blacks indiscriminately, the northern tribes were very well disposed towards the whites."

When this, with other concurrent evidence, was cited in a lecture[1] in Melbourne, in 1865, indignant denials were made in Queensland. One gentleman who doubtless, as a legislator on the subject in 1856-7, had no cruel motive in enlarging the force, warmly denied that the corps was "intended to be an aggressive force." He thought the lecturer was not a man who would utter so foul a slander as that the whites were always the aggressors, and desired to exterminate the blacks. The converse of the charge "would be more nearly the truth." The ink of his indignation was not dry when Queensland newspapers contained these phrases:

"Are the blacks to be dealt with as human beings, ignorant, brutal, and degraded, but human still? Or are they to be treated as wild beasts?" ('Maryborough Chronicle,' August 1865.) "If some commit an outrage the whole are considered guilty, under the principle, that though they all did not actually participate in the crime, yet they were as fully capable of it as the actual offenders. The difficulty of detecting the real criminals is obviated by a punishment of the whole . . . they are regarded as worthy of nothing but slaughter." ('Brisbane Courier,' August 7th.) "There is already too much indiscriminate shooting of the blacks, and while the practice is continued outrages may be expected in retaliation." ('Rockhampton Bulletin,' 8th August.)

In the same month, at a public meeting in Rockhampton, a resolution was carried, declaring that it ought to be made legal for any owner or manager of a station, with consent of one magistrate, to organize a force to disperse natives who might threaten or commit outrage, "and that no one engaged in such dispersion shall be liable to any legal penalty." Circumstances made the brutal resolution almost needless. When in New South Wales the murderer of one of the remnant of a shattered and peaceful tribe could be acquitted in 1876, though legal evidence was available to prove the crime, what chance was there that, when no victim's voice could be heard, and no living

[1] The 'Aborigines of Australia.' By Gideon S. Lang. Melbourne: 1865

witnesses remained but the murderers themselves, the arm of the law would be raised to do justice? Culprits might, and did, boast among their friends of the numbers of the blacks shot in a raid. But even if those friends recoiled in horror, it was impossible to punish a crime of which only such hearsay and retractile evidence existed. Known of all, but judged of none, murders continued. Some persons, more humane than others, scarcely dared to think of what was done. Others openly said that the sooner the strife was over the better. Let the tribes be swept from the earth! Yet there is a point beyond which even the careless think it wrong that brutality should go. There was a sub-inspector of police, of whom it was rumoured that he had coarsely vowed that no black fellow should escape whom he could kill. In 1876, bold with impunity, he was committed for wilful murder of an aboriginal boy named Jemmy. Handcuffed, fettered, dragged and kicked by the sub-inspector, with his hands secured to a rafter high over his head in the verandah of the Police Barracks at Belyando, the naked Jemmy was flogged till the whip broke, and then with a leather saddle-girth, on the 11th March. A kindly person, who called himself "a general station hand," Frank Hamilton, found the boy on the 12th, lying near a lagoon and covered with a blanket. His body was covered with wounds, which "ran into each other." Hamilton tried to persuade the poor creature that he would recover, but was answered in broken English: "No. I shall die. Here" (pointing to his stomach), "I am altogether broken." So he was; by the heavy boot of the sub-inspector. He died four days after his ill-treatment in spite of the humanity of Hamilton, who, when other black boys had at night carried the sufferer to the verandah of a hut, tried to relieve him. When the boy died Hamilton informed his employer. Then an inquisition *post mortem* was held, and the sub-inspector was committed for trial for wilful murder. It might have been supposed that a crime openly committed at a public office would be brought before a court of justice. But there are dark ways of shielding those who have offended in the light. The prisoner was committed at Clermont on the 10th April for trial at assizes to be held at Rockhampton in October. Bail was afterwards allowed by an order of Mr. Justice Lutwyche. The amount of security nominally

taken by the Supreme Court Judge was £800 from Wheeler, and £400 from each of two sureties. But with a long interval between the commitment and the date for trial, the consequence of taking bail could be easily foreseen, though it may be hoped that it was not contemplated. When the case was called, in October, the criminal "did not answer to his bail, which was forfeited." Such was the record in a newspaper of the day; and it is confirmed by official records, which add that Wheeler "has not since appeared."[1] The abuse of the native police did not begin under the Queensland Government. It was rife before that settlement was separated from New South Wales in 1859. When tidings of the discovery of gold at Port Curtis drew crowds from Victoria, an intelligent observer went with them, as special correspondent of a Melbourne newspaper in 1858. He reported that he was

"unfortunately safe in saying that the ordinary relation between the black and white races is that of war to the knife. The atrocities on both sides are perfectly horrible, and I do not believe the Government makes any effort to stop the slaughter of the aborigines. A native police force is indeed actively engaged, but exclusively against the blacks, who are shot down by their bloodthirsty brethren at every opportunity. I believe the blacks retaliate whenever they can, and never lose a chance of murdering white man, woman, or child. . . . The number of blacks killed it is impossible to estimate. They are

[1] In the London Times (May 1883) Sir C. Lilley, Chief Justice of Queensland, stated that "ample provision exists for the administration of justice to all races in Queensland by independent Judges," who judicially (under a Statute enacted "five or six years ago) received testimony of heathen and native witnesses, and submitted it to juries in cases even where prisoners were charged with capital offences." The Act alluded to may be presumed to be 40 Vict. No. 10, which, because great difficulties had been found to arise by "reason of many persons being incompetent to be sworn, or being ignorant of the nature of an oath," enabled the presiding Judge or magistrate to accept a declaration "if satisfied that the taking of an oath would have no binding effect." . . . Such a clause might be useful with regard to Polynesian labourers in Q ieensland, but is obviously inapplicable in cases of shooting and dispersion of Australians. If Sir C. Lilley could have adduced one case in which a slaughterer and disperser has been brought to justice, the fact would have been of importance. In the case cited in the text it was the intervention of a Judge of the Supreme Court that enabled the prisoner to flee from trial, and I have official proof of the fact.

being killed officially by police, and unofficially by settlers and diggers every day, nor are women and children by any means spared when murders are being revenged by the whites.[1] . . . I believe the border warfare about the Fitz Roy, the Dawson, and the adjacent districts to be as savage to this day as any war with the aborigines that in any part of Australia ever darkened with disgraceful incidents the history of our progress."

Though only two Governors, Phillip and Gipps, had dared to be just, in the long line of responsible Governors, many of them had been kind and well-meaning. Supported by the humane counsels of Secretaries of State, and by the provision for the welfare of the aborigines secured by Lord Stanley under his Land Act of 1842, Governors had tempered, if they could not quell, the cruel blasts of persecution which raged over the land. But on the disappearance of the Governor's active control, there arose a confidence that the Executive Government, dependent on the people's voice, would not dare, if even it should desire, to mete out equal justice to the two races. Dwellers in the outlying districts denounced as impertinent any questionings as to the number, or the manner, of the violent deaths of natives on their cattle-stations. The four responsible Ministries of Donaldson, Cowper, Parker, and Cowper, which existed between 1856 and 1860, did nothing to ameliorate the condition of affairs in the northern districts.

In February 1860, two pastoral tenants publicly denounced an officer, who with his men harried the friendly natives on a run, and left the bodies of several old men to fester on the ground near the homestead. To compile a catalogue of the atrocities perpetrated would require volumes. The melancholy fact that those who are ignorant, or wilfully blind, contradict the truth, or deprecate discussion of it in the hope that it, like the blacks, may die out of the land, renders it necessary to state a few particulars. The gallant conduct of the 'Queenslander,' a well-managed newspaper in Brisbane, enables me to use the words of witnesses or neighbours.

"We are determined (the editor wrote, 29th May, 1880) that the

[1] 'An Account of the Rush to Port Curtis.' By Frederick Sinnett. Geelong: 1859.

public shall understand what they are doing; and that, if no attempt is made at reform, the refusal shall come from people who thoroughly comprehend their responsibility. As far as we are able we shall tear away the veil with which those who know what our system is, have hitherto kept it covered, and remove the ignorance in which a considerable portion of the public have been content to remain."

"This, in plain language (1st May, 1880), is how we deal with the aborigines. On occupying new territory they are treated in exactly the same way as the wild beasts or birds the settlers may find there. . . . Their goods are taken, their children forcibly stolen, their women carried away entirely at the caprice of the white men. The least show of resistance is answered by a rifle bullet; in fact, the first introduction between blacks and whites is often marked by the unprovoked murder of some of the former—in order to make a commencement of the work of civilizing them. Little difference is made between the treatment of blacks at first disposed to be friendly and those who from the very outset assume a hostile attitude.[1] As a rule the blacks have been friendly at first, and the longer they have endured provocation without retaliation the worse they have fared, for the more ferocious savages have inspired some fear, and have therefore been comparatively unmolested. In regard to these cowardly outrages, the majority of settlers have been apparently influenced by the same sort of feeling as that which guides men in their treatment of the brute creation. Many, perhaps the majority, have stood aside in silent disgust . . . and a few have always protested in the name of humanity against such treatment of human beings, however degraded. But the protests of the minority have been disregarded by the people of the settled districts; the majority of the outsiders have been either apathetic or inclined to shield their companions, and the white brutes who fancied the amusement have murdered, ravished, and robbed the blacks without let or hindrance. Not only have they been unchecked, but the Government of the colony has been always at hand to save them from the consequences of their crime. . . . It is enough to say that the native police, organized and paid by us, is sent to do work which its officers are forbidden to report in detail, and that a true record of its proceedings would shame us before our countrymen in every part of the British Empire. . . . When the blacks, stung to retaliation by outrages committed on their tribe, . . . have shed white blood, or speared white men's stock, the native police have been sent to 'disperse'

[1] One tribe quickly hears from another the progress of "civilization;" and is aware, before actual contact, of its nature.

them. What 'disperse' means is well enough known. The word has been adopted into bush slang as a convenient euphuism for wholesale massacre."

To shame the colony into better conduct the editor, in subsequent columns entitled 'Civilizing the Blacks,' gave "a plain, unexaggerated statement" of actual occurrences.[1] One boy, Toby, was a "tame" black, employed on a station where one manager after a time gave place to a superintendent who scorned humane notions. Toby was believed to have played some pranks on a South Sea Island shepherd. The Kanaka (as such an islander was generically called in Queensland) complained. Toby absented himself in fear of a flogging. On his return to the blacks' camp, after some days, the superintendent saw him and told him, with apparent good-nature, not to offend again. Pleased at so light a rebuke Toby cheerfully obeyed an order to drive some horses up to the stable. The superintendent, the storekeeper, and Toby rode off on horseback, the latter

"chatting merrily. When out some distance Mr. —— quietly remarked, 'I am going to shoot you, Toby.' The black turned round smiling, thinking this was some joke, and saw Mr. —— coolly pulling out his revolver. The wretched boy in an agony of sudden fear crouched on his saddle, putting out his hand and shrieking, 'Don't shoot! Don't shoot!' when his master sent a bullet crashing through his brain. The two whites then returned, leading the riderless horse. This fact was much discussed in the neighbourhood of —— Downs, as it was well known. Some people approved the action as being the best way of 'putting the fear of God in the blacks,' and preventing them at any future time doing mischief; but the majority, though quite admitting the right of Mr. —— to deal as he liked with a nigger, were of opinion that it was rather a dirty transaction. The Kanaka, who was the aggrieved party, was genuinely horror-struck when he heard of the affair—but then he was only a South Sea Island savage.[2] . . . .

At another place there was a friendly tribe, "tamed" in former years, while at a distance, towards the desert country, there were

[1] The articles and correspondence arising from them were collected in a pamphlet,—"The Way we Civilize; Black and White, the Native Police." Brisbane: 1880.

[2] 'Queenslander,' 15th May, 1880.

natives still hostile. Fired at whenever seen, they retaliated by plundering white men's huts, and would without doubt have killed their hunters if they could. But white men having fire-arms were not easily attacked with wooden weapons. The friendly tribe were in dread of their wild brethren, and warned the whites of their approach occasionally. The "tame" blacks frequented the station freely. The superintendent sent for a band of native police, who with their sub-inspector arrived to hunt the wild blacks. "A young gentleman, who was on the station acquiring colonial experience," accompanied the hunting party in what seemed "to him a legitimate act of war." After some following of tracks a small party of natives was found. They belonged to the "tame" tribe known to the young gentleman. When the game was run down among some rocks, he recognized them, and the horsemen having dismounted,

"he cried out to the sub-inspector of police, 'Why, Mr. ——, these are our blacks.' The answer he got was an angry—'Stoop down, damn you,'—for he was in the range of the sub-inspector, who was taking deliberate aim at a wretched creature, who was making frantic efforts to escape by clambering up the naked rock. . . . He was soon writhing in his death-agony."

The troopers shot two others. On another occasion two partners in a station procured a neighbour's help, and found and shot, in flight or perched upon trees, no less than twenty-two blacks. They camped at a neighbouring water-hole, and in the morning

"one of the number remarked, 'We ought to see that we have made an end of those ——.' Accordingly, he went carefully over the scene. Most of the blacks were stone dead; some were groaning in their last agonies; a few who had not been mortally wounded seemed to be reviving. Mr. —— carefully finished each one of the groaning wretches, who looked as if he might revive. Those that were evidently dying he left alone. And, as revolver-cartridges cost money, he economically battered in their temples with one of the blacks' clubs."

A story almost too horrible to write ought not perhaps to be put before the reader, except to show the depravity which such unpunished crime may induce. A correspondent of the 'Queens-

lander,' (calling himself "Never, Never,") undertook to justify the loathsome conduct just narrated.

"Really it might be from moral obtuseness, but . . . I cannot see why it was more sinful to knock them on the head than shoot them . . . if pistol cartridges were scarce, as often they are in outside country, it was a very sensible thing to do. I should feel just as much[1] horror if I read that they were shot. . . . In publishing these hypothetical narratives, the 'Queenslander' violates good taste and almost common decency. I maintain that half these yarns are fabrications, and that the rest are exaggerated."

In another letter this censor of the press, scouting a suggestion that a European officer should report all proceedings of the native police, and not permit indiscriminate killing of captives, asked:

"Having captured the offender, what are our white police to do with him? Follow the example of the South Australian Government, and have him taken, at great expense to the country, to the metropolis, confined in comfortable quarters in a gaol, and at the expiration of his twelve months, present him with a new suit of clothes and a tomahawk, and send him on his way rejoicing, ready for more crime? or tie him up and flog him? or give him a short and easy shrift with a pistol bullet? . . . Another outcome of adopting the system advocated by the 'Queenslander' is so plain and palpable, that it is strange it should have escaped the notice of the writer. The 'Queenslander' says the officers in command should be compelled to report their operations, &c.: now what would be the result of this? For some fancied or real grievance a man would report his officer for undue severity, or some *humane* (sic) station-holder would do it if a favourite black boy got punished . . . cattle slaughtering and shepherd killing would go on with impunity, because the officer in charge of the district would have the fear of the gallows before him if he used decisive measures to stop it. As for the cowardice displayed in shooting blacks as a punishment, it would be as just to call the Judge, who passes sentence of death, a coward, or the members of a firing party at a military execution cowards. . . . I maintain that the blacks require shooting, and it is better to get the work done by blacks than by whites . . . any one who has had experience knows that in many places whites are useless at black-hunting; if the writer of the article had ever tried following

[1] And of course as little;—a meaning well understood by the friends of the letter-writer.

blacks through mangroves, he would know so too. That a better plan could be worked out than that at present in vogue, I admit, but I do not think any of us see a way as yet; the question is too knotty, and by the time it is solved the black fellow will be a thing of the past—and a good job too. . . . Unless the 'Queenslander' is able to evoke some better idea than the mere substitution of white for black troopers, it had better leave the matter to be settled in the natural way, and—the survival of the fittest."

In consideration for any reputable relations of "Never, Never," it is better that he should be unnamed, but his allegations deserve exposure. On the 8th May, 1880, he thought it safe to write in a community of Englishmen:

"My experience pretty well comprises the boundaries of Queensland... Furthermore, I am what would be called 'a white murderer,' for I have had to 'disperse' and assist to disperse blacks on several occasions. . . If, as the 'Queenslander' says, the native police are an exterminating force, it is a pity that the work is not more thoroughly and effectually done. Is there room for both of us here? No. Then the sooner the weaker is wiped out the better, as we may save some valuable lives by the process. . . We are all savages; look beneath the thin veneer of our civilization, and we are very identical with the blacks; but we have this one thing not in common—we the invading race have a principle hard to define, and harder to name; it is innate in us, and it is the restlessness of culture,[1] if I dare call it so. We work for posterity, we have a history . . . the native of Australia has a short history . . . he never seeks to improve land for those who will come after him. This justifies our presence here . . . and having once admitted it we must go the whole length, and say that the sooner we clear away the weak useless race the better. And being a useless race, what does it matter what they suffer, any more than the distinguished philanthropist who writes in his behalf cares for the wounded, half-dead pigeon he

[1] In some dark domain of his culture Never Never disapproved of certain acts whose atrocity can only be surmised. In the letter above quoted, he wrote: "I am not defending the acts of individuals. I, in common with other bushmen, am regretfully compelled to admit that deeds of blood-curdling atrocity have been committed by white men, but parallel acts are to be found in the history of the subjugation of any barbarous nation, and my object in writing is to condemn the wholesale slander of the whole white race in the colony for the acts of the few." But he had never taken steps to prevent or to expose the "blood-curdling" atrocities at which he professed regret.

tortures at his pigeon-matches . . . the recital of all the atrocities going, of all the shooting and slaying by the native police, never alters the fact that once we are here, we are committed as accessaries, and that to prove the fidelity of our opinions we should leave the country."

Who shall say that Swift's description of his countrymen, as a pernicious race of odious vermin suffered to crawl upon the surface of the earth, would have been hyperbolic if they were as worthy of it as the 'Queenslander's' correspondent? In a foreign land his letter might even seem a veiled satire upon the system professedly extolled. But in Queensland the sincerity of the writer was known, and he was not without admirers. To such base uses may the product of modern civilization be reduced when exempt from the chastening influences of religion and of a well-ordered society. But all the colonists were not so brutal. In the newspaper[1] which contained the foregoing sentences, another writer declared that

"any wholesale massacre of the blacks, such as is daily perpetrated, is as unjust as it is horrible in the sight of God and man. . . I too have lived among blacks in a newly-settled district. . . If it is advisable that as a colony we should indulge in wholesale murder of the race we are dispossessing, let us have the courage of our opinions and murder openly and deliberately, calling it *murder* and not dispersal. . . How many among us understand the euphemistic word *dispersal*? Can they know that it means this? A white man, an officer and a gentleman, at the head of some half-dozen black murderers, watches a camp of blacks all night . . . The unsuspecting blacks wake to prepare their morning meal. Suddenly a shrill whistle, then the sharp rattle of Sniders, shriek on shriek, . . . carnage . . . hewing down men, women, and children before them. How long shall these things be?—for that they exist no dweller in outside country can deny. . . Do those of us

[1] 'Queenslander,' 15th May, 1880. One massacre in the Barcoo country shocked the squatter on whose run it was perpetrated. An officer with native police rode up to the station. In conversation he carelessly asked how the blacks were going on. "Oh! very well; they are quite friendly. They are at camp down the creek now." A few hours afterwards the officer returned, having killed all—men, women, and children—whom he could find—more than twenty. "God bless me, said the host, I told you they were friendly." "Oh! it's all the same (was the reply)—they can do no mischief now." The squatter complained mildly to a friend, but not to the Government. This case was not mentioned in the 'Queenslander.'

who have lived in outside districts know of no outrages committed by whites? No black boys (servants who get no wages) brutally flogged and ill-used? No young women forcibly abducted from the tribe for purposes I dare not mention here? When I think of the nameless deeds of horror that I have heard discussed openly by many a camp fire, I can scarcely control my indignation and write calmly. . . I hope I have said enough to attract attention to the loathsome and horrible system of dealing with our blacks that we, as a colony, have hitherto sanctioned."

There were homesteads, he said, within which some of the native police officers who were most notorious were not admitted. Another correspondent, writing from the district in which the sub-inspector bruised the boy to death in 1876, mentioned startling facts. Until 1868 the native police used to visit his station constantly, and "the result was shepherds killed, sheep, cattle, and other property destroyed. . . . At my request in that year "the native police promised to visit me as little as possible, and not interfere with my blacks. . . I was able to explain to the niggers that if they kept away from the cattle-camps and did not molest the shepherds they might hunt and camp all over the run."

"(Damage to the property decreased immediately.) The blacks since they have become friendly tell me that in the old days of 'reprisals' carried out in the usual manner, *i. e.* shooting the men and destroying their nets, water-bags, and implements—we used to starve numbers of the old men, women, and children to death; for, being hunted into the desert country, they had neither the means of carrying water nor of catching game, and of course the weaker members of the tribe felt it most. I have employed and do employ numbers of the aboriginals. For eight years they have done all my sheep-washing, and I always have a few working on the place."

The writer confirmed the narration of past atrocities published by the 'Queenslander.' "I having heard them from eye-witnesses or the actors, but it is only fair to state that most of them happened some years ago, though there is reason to fear that much the same sort of thing is going on still in the far north and west." He advocated the reservation for the natives of tracts of 500 square miles stocked with sheep and cattle for their support and tended by their own labour.

"Almost anything would be better than the present system, which is a disgrace to civilization. If we failed we should be no worse off than at present, and we should have at least the merit of having done our best. Unless some measures are quickly taken the aboriginal question will solve itself. Ten years ago the tribe I am best acquainted with could muster 130 fighting men; now it could not muster more than 40 at most, and few children are growing up. Measles in 1865, and the vices of civilization since, have caused this rapid decrease."[1]

One of those who doubted the accuracy of the correspondents of the 'Queenslander,' thought that "most of the officers would have scorned to have done the deeds attributed to them," but urged that the editor should "leave the matter to work its own end, which it will surely do." A correspondent who observed that doubts were cast upon the statements made, described four massacres of peaceful natives by order of officers. The editor (7th August) in announcing that the writer had authorized the publication of his name, added—"all things considered, we think it better to publish his initials merely." Such is the picture of the conduct of the Queensland Government and the Queensland colonists towards the native race. It is drawn by the hands of eye-witnesses and actors. The defence put forward by its apologist, "Never Never," is not its least repulsive feature. Over what he justified a larger number of his accomplices would throw a veil in the hope that the atrocities they could not excuse might wither out of men's knowledge unexposed. A still larger number, resident in towns, were probably ignorant, and may not have been enlightened by the manly conduct of the 'Queenslander.' The subject is not inviting. The dead or dying bodies of black brethren are passed by on the other side, while petty local claims or amusements engross attention. And yet unless, as a people, the colonists recognize a duty in the matter, for all these things shall a reckoning be made. If the community suffer in no other manner, the demoralization engendered by their own acts must corrupt the body politic, and wring from future suffering an expiation for past crimes. How deep the demoralization had become may be learned from one fact. The 'Queenslander' opened its columns to the subject in

[1] "C." 'Queenslander,' 10th July, 1880.

May 1880. The defence of past atrocities was almost as nefarious as the atrocities themselves. Yet when a member of the Queensland Assembly asked (21st October, 1880), that a Royal Commission might be appointed, and contrasted the more humane conduct of South and Western Australia with that of Queensland, he was opposed by no less a person than Mr. A. H. Palmer, the Colonial Secretary, on the ground that a Commission could "not find out anything they did not know at present," and that it would be better to increase the native police force rather than reduce it. Yet he "had never attempted (he said) to deny that many cruelties had been perpetrated" by some officers. The general body were "honourable and amiable." He was supported by others (some of whom knew the atrocities which had been committed) and succeeded in adjourning the debate, although a gallant struggle was made to procure inquiry. One member, in reply to Mr. Palmer's random depreciation of the charges made, significantly said he was "quite prepared to substantiate the statements he had made concerning the force, but could not do so until an Act of Indemnity was passed." Another thought discusssion useless. "The black race have got to go . . . the appointment of a Royal Commission is unnecessary and useless." This man's name was Morehead, and he subsequently became a responsible Minister. Another said he had "never seen a single atrocity," but before you can do anything "with the blacks you must establish a wholesome fear amongst them." Mr. Thompson averred that it was "futile to say that no atrocities had been committed." They were vouched on good authority, and the 'Queenslander' deserved high praise for arousing public opinion to a "sense of duty to those whose weakness entitled them to consideration." But mercy or justice were sought in vain from those whose chief aim was to suppress the truth. The majority even of dwellers in Queensland did not know it. There had been no inquiry for it since 1861. A Royal Commission might be compelled to reveal it. The majority adjourned the debate. The 'Queenslander' did not consider that the evasion of inquiry would shield the Legislature from eventual condemnation. Mr. Palmer had been "disingenuous to a degree which, in justice we must say, is not usual with him." Mr. Morehead's speech was

"simply the most brutal view of the relation between the colonists and the aborigines, formulated,—and he supported it with vulgar insolence." "Mr. Thompson expressed the sentiment of a great many people. . . . The public have tolerated the existing state of things so long, mainly because they did not know the truth, and because they accepted the explanations by which it has been glossed over by those in favour of the continuance of the present system. . . . We do not believe that the public sentiment of the colony is so depraved as to rest content with such an evasion. . . . By all means in our power we shall attract and rivet the attention of our fellow-colonists, both here and in the rest of Australia, to the disgraceful facts we have already brought forward, and we shall continue to do so until the Legislature is prepared to effect a reform. We are glad to find from the discussions that have taken place that we shall have a good deal of powerful assistance."

If shame should urge what virtue cannot prompt in the Queensland Government, the editor of the 'Queenslander,' Mr Gresley Lukin, will deserve the credit. What would the reader suppose was the effort made in 1880 to relieve the feeble remnant of natives, in districts where it was not deemed needful to maintain an active band to continue the slaughter? Mr. Palmer, the Colonial Secretary, in reply to formal inquiry, wrote[1]: "There are no aboriginal stations in Queensland under Government supervision. Two or three have been tried, but they have proved failures. We vote a sum annually for blankets, and a small amount for a gentleman at Mackay (on the Pioneer river) who has a good deal of influence among them, and keeps them in pretty good order."

The information thus authoritatively given was loose, if not intended to mislead. A former Ministry (Mr. Macalister's) had in 1876 appointed a Commission "to devise the best means for improving the condition of the aborigines." The good Bishop Hale (noted for his success in labouring on behalf of the natives at Poonindie in South Australia, and in Western Australia, before his translation to Queensland), and Messrs. A. C. Gregory, W. L. G. Drew, C. J. Graham, and W. Landsborough, formed the Commission. They found that a "gentleman at Mackay," Mr. Bridgman, had procured a reserve of 10,000 acres on which he

[1] August 1880.

had induced the natives to congregate, and where during their occasional sojourn he exercised "a beneficial influence over them." The Commission recommended the establishment of a school there, and Mr. Bridgman induced his black clients to assist in building it. In June 1878, about 23 boys of the average age of 9 or 10 years had "reached the standard of attainment of the two lowest classes of the primary schools," which was deemed satisfactory, as they had to learn to speak English while learning letters. Thereupon other reserves were formed, and the Commissioners procured the appointment of local committees to aid in the work. The "experiment promised well," and Mr. Douglas, Premier of the Ministry in 1878, moved for a grant of £1600, but "the motion was rejected without a division, and almost without discussion. The Commission were thus left without funds and obliged to abandon their work." In January 1879, the McIlwraith Ministry came into power, and Mr. A. H. Palmer became Colonial Secretary. In March 1879, Bishop Hale as Chairman of the Commission asked (in writing) whether there was any official report confirming a published narrative of a wholesale massacre of natives by a sub-inspector of police near Cook Town, and the Colonial Secretary "declined to answer any questions. This practically ended the career of the Commission. With no funds to do anything, and being unable to get a civil answer to questions which by their constitution they were certainly entitled to ask," their existence was practically ended, and Mr. Drew formally resigned.[1] Mr. Palmer's evil influence was not confined to prevention of fresh efforts to do good. The Ministry resolved to mar the work of the benevolent Bridgman. There were 40 children at the school formed near Mackay, when Mr. Bridgman left the district, and Mr. Jocelyn Brooke humanely undertook to become Protector of the Aborigines, and prosecute the good work begun by Bridgman. Mr. Brooke wrote (23rd May 1880):

[1] The extracts in the text are from a memorandum, on "the Aboriginal Commission" embodied in the pamphlet, 'The Way we Civilize.' It explains why Mr. Palmer so briefly but disingenuously replied to the formal inquiry addressed to him in 1880 about "Government supervision." The reader will hardly be surprised to hear that Palmer has recently been added to the roll of knights which includes a man who quarrelled with O'Connell for objecting to blood-shedding.

"The present Government with a view to retrenchment suspended the vote. The school was disbanded, and the reserve thrown open for selection. The blacks being uncontrolled, became a nuisance. . . Having (formerly) made them useful to many of the residents, they requested me to apply to the Government to be re-appointed. I did so, and was re-appointed by the Minister for Lands. Since then the blacks have not only been well behaved but useful to the planters. . . I have very little trouble with them. . . They are very sensible and obedient—far more so than I have any right to expect. They can be led, but not driven. They offend often through ignorance, seldom wilfully. I am sure that though the native police may be necessary in outside places, still in the inside districts they might be done away with.

When Mr. Palmer replied to inquiries on the subject in the manner quoted above, Mr. Brooke's letter had been published and the Colonial Secretary may thank himself for the fact that his language provoked examination of his connection with the mal-treatment of his fellow-creatures. The revocation of the reserve of 10,000 acres was the act of the Government; but the pretence that the native police required enlargement, and that the general body were "honourable and amiable" was his own. His jejune letter had only been written a few weeks when he resisted in Parliament the demand for inquiry as to the manner in which the 429,000,000 of acres wrested from the natives, and a revenue of a million and a half sterling were administered by the Government as regarded the dispossessed children of the soil, for whom, so long as the Imperial Government retained control, Governors were specially enjoined to make kindly provision.

Let the Queensland crimes and neglect be contrasted with the deeds of South Australia. Missionaries supplied Christian charity, material aid such as they could give, and zealous labour. In 1878 the vote for money and goods for their use at various dépôts and at four mission stations, Point Pierce, Point Macleay, Kopperamanna, and Hermansburgh, was £5254. To aid the infirm by distribution of medical and other comforts there were fifty dépôts. There was a fifth mission station at Poonindie, which received no pecuniary aid, but prospered by means of good management, and the labour of the natives. It had a reserve of 15,600 acres attached to it. The colony

which made best use of its land was most generous in yielding a portion for the behoof of its natural children.

| | | |
|---|---|---|
| At Point Pierce they enjoyed a reserve of | 12,800 | acres. |
| At Point Macleay | 4,498 | ,, |
| At Kopperamanna (Lutheran Mission) | 64,000 | ,, |
| At Hermansburgh, Finke River | 576,000 | ,, |

The last-named station had recently been formed by the Lutheran Mission Association, and was not far from the border of Queensland, where, in the Gregory district, many foul deeds had been done in civilizing the blacks after the Queensland fashion, and whither the Commissioner of Police longed to send more armed men to do unreported deeds. The Hermansburgh missionaries had learned the dialect of their district; buildings were erected; a large tract was fenced; there were 2530 sheep, 100 goats, 32 cattle, and 52 horses on the station. The station-master at the Alice Springs Overland Telegraph Station reported that the neighbouring squatters highly commended the mission,—that prejudice against it had been removed on seeing it,— and that the "uphill work" of the past and present would probably procure success. At Poonindie in 1878 more than 10,000 sheep were shorn, and 200 acres of wheat were reaped. In the same year at a ploughing match at Port Lincoln, a native won the first prize. The 'Queenslander' in July 1880 presented these and other facts to its readers. The Hermansburgh mission was near the Queensland boundary, and "specially interesting as situated in country similar to our own Western interior. . . . The South Australians are free from the stains that rest on us, and by their action have proved beyond the shadow of doubt that we are neglecting a duty which we can easily perform, and which would by no means overburden our resources." The reader will have no difficulty in determining the motives of the Queensland Government in refusing to amend its ways. That he will applaud the superior righteousness of South Australia cannot be doubted.

It is not easy to trace the deeds of Queensland, whether destructive or otherwise. The officers in command, who left dead bodies of the natives to rot, did not report their performances. A supporter of the existing atrocities admitted that

it would be fatal to the usefulness of the force if reports were exacted. The sums included in the Queensland estimates (adverted to by Mr. Palmer) as donations to the aborigines were merged in large amounts. The blankets for distribution were to be procured (*vide* estimates for 1879) out of a sum of £20,000, but were subordinate to the previous requirements of "arms, ammunition, and saddlery for the police, stores and clothing for lunatic asylum and gaols, stationery and stores (blankets for aborigines) and incidental expenses." All well-instructed men in Queensland knew that much of the £20,000 was expended on the ammunition with which the blacks were shot, and on the wants of those who shot them. In the same way, under the law department, £100 were allotted for fees for defending aborigines and Polynesians. We have seen that when an officer was, by rare sense of shame, committed for wilful murder of a black boy, a Judge of the Supreme Court ordered the acceptance of bail, and the criminal absconded. In the index to the estimates "medical attendance" to the aborigines was noted, but on reference to the item the vote is found to be a general one, for 28 officers scattered throughout the colony. How money was expended on the aborigines may be seen in the ghastly police report for 1878. Two hundred and six native troopers were maintained, and the Commissioner of Police required more. "The complaints of cattle-killing and hut-robbing by the blacks along the northern coast . . . . are never-ending, and never will cease as long as there are blacks there." (He has) "pushed out one detachment on the Gregory and another on the Burke river . . . but this is insufficient; additional detachments are required." The air of Queensland so reeks with atrocities committed and condoned that the few who plead for justice and mercy deserve the more praise. The very statistician seemed to fall in with the prevailing vice. The Registrar-General, Mr. Henry Jordan, finds no place for the aborigines in his account of the population. In his table of "causes of death in Queensland" in 1878, "arranged in the order of degree of fatality," Mr. Jordan omitted the rifle. The object of statisticians is to record augmentation of figures. As the object of the Government in Queensland would seem to have been to diminish the number of the natives, Mr. Jordan

wise in his generation, rejected them from the tables which he compiled. He shows that after 1861, Queensland, under various Loan Acts, expended £1,252,000 in importing immigrants. The sums spent in destroying those whom the colonists found upon the land are not mentioned.

The efforts of Victoria to mitigate the destroying effects of civilization deserve remark. A Royal Commission was appointed in 1877, "to inquire into the present condition of the aborigines . . . and advise as to the best means of caring for and dealing with them in the future." The Commissioners were Chief Justice Sir W. Stawell; Mr. F. R. Godfrey; Mr. E. W. Cameron; the author of this work; Mr. A. W. Howitt (one of the authors of 'Kamilaroi and Kurnai'); and Mr. J. G. Duffy. At that time under the efficient and Christian care of the Rev. F. A. Hagenauer, a Moravian missionary at Ramahyuck (a station supported by the Presbyterian Church), more than 80 inmates were sustained. They laboured for themselves under the patriarchal direction of Mr. Hagenauer. Cultivation of arrow-root and hops yielded a third of the local income of £240. The Government provided some stores and clothes; the Presbyterians maintained the missionaries. Twenty-one children were taught, and at the examinations by Government Inspectors had reached a higher standard than had been recorded in any of the State schools in the colony.

A Moravian mission with about 60 inmates was managed at Lake Hindmarsh by the Rev. C. W. Kramer. The Moravians had built the premises, and the zealous manager (formerly an assistant of Mr. Hagenauer) guided the inmates in their work upon the station; but the smallness of the reserve (less than 4000 acres in a sterile country) impeded pastoral pursuits. The Church of England maintained, with aid from the Government, two missions, one at Lake Condah, and the other at Lake Tyers. At the former there were about 80, at the latter about 70, inmates. The management was akin to that of other mission stations. The Board for the protection of the aborigines, established by the efforts of Mr. Heales in 1860, and empowered by law (33 Vict. No. 349) in 1869 "to protect and manage the aborigines," had two stations under their direct control; one at Framlingham near Warrnambool, the other at Coranderrk, 37

miles from Melbourne. The want of patriarchal guidance such as that exercised by the missionary pastor was felt at both stations, and their proximity to European townships subjected the inmates to temptation. Moreover, at Coranderrk the blacks were gathered from many distant tribes, and would have been somewhat less manageable in consequence, even if no township had been within two miles of the station. One hundred and thirty-five inmates were at Coranderrk, and the hops grown there in 1877-8 were sold for £1089. At Framlingham there were about 70 inmates. The total grant for clothing, stores, &c., for the year, at all places, was £7500. Some humane persons in the colony aided the Government in the distribution of comforts to the scattered natives who had not been gathered at the fixed stations. The reserves of land at those stations had not been made with sufficient liberality to ensure a supply of animal food produced upon them; and there were not wanting neighbours who grudged the extent reserved. The Commissioners recommended that the reserve at Lake Hindmarsh should be enlarged to 17,600 acres; that at Lake Tyers to 10,000 acres. The other stations were so hemmed in by settlers that there was no room to enlarge them for pastoral purposes. The report urged that the colony was bound to temper to the aboriginal inhabitants the effect of the occupation by Europeans, and to grant the small sum needful to maintain the stations. Even if the race should be fated to disappear there would "survive the memory that the Government of the day did not neglect a sacred duty to those who by no act of their own became subject to its control."

It was an ever-ready assertion of the ignorant that the aborigines were not capable of receiving the truths or consolations of Christianity. The following examination of the Rev. F. A. Hagenauer ought to set that question at rest. Practical and capable as any layman in worldly affairs, he was neither over-sanguine in temperament nor liable to deception, while he was too devoted to his Master to mistake passive acquiescence for faith.

"Question. You have been more than twenty years amongst the blacks?—Answer. Close on twenty years.

Q. And you have no doubt read statements as to their incapacity to

appreciate and take to heart religious instruction in the Christian faith. Now what is your experience upon that point?—A. You mean conversions to Christianity?

Q. Yes!—A. I believe I could give you over a hundred instances of men consistent Christians to the end, really and truly from first to last: their moral life and whole habits have proved it.

Q. So that you are quite of opinion that statement is an error?—A. That is an error founded on an old supposition. I have just had a tract printed on the subject of our first convert, in which there are facts bearing on this point.

Q. Your life has been spent among them during those years?—A. Yes, and for their good.

Q. And that is the result of your observation?—A. Yes."

Gladly spending, and spent, for his persecuted fellow-creatures, the good Moravian will see them yet counted as jewels by his Master. But how does the heart ache to think of their country-men throughout those twenty years done to death, and left mangled and stark on the soil of Queensland! It was estimated in 1877 that about 500 natives were cared for in Victoria in the five enumerated stations, and that about the same number were scattered throughout the colony; a few in employment at settlers' homesteads; some wandering on the banks of the Murray river, and elsewhere; some encouraged in loitering and debauchery at public-houses in remote districts. The rate of mortality in the latter case was of course appalling. The Government of Victoria took no steps to improve the condition of the natives in accordance with the report of the Commission, or to dole out a few oboli from a revenue exceeding £4,500,000, or to afford the use of a few acres of land. The Chief Secretary was intent at the time on journeying to England as an ambassador from the Legislative Assembly. If not forgotten, the natives were uncared for. But the missionaries and the Board for the Protection of the Aborigines laboured as of yore.

Western Australia, wide, waterless, and poor in this world's goods, gave more out of her poverty than Queensland out of her wealth. There were less than 29,000 colonists including children in the west, but they provided honestly in their estimates for the aborigines. For board and clothing of children at Perth and Bunbury, for provisions, necessaries, clothing, blankets, and

rewards for good conduct, for medical attendance, and aid to the Roman Catholic institution at New Norcia, the sum of £1210 was in specific terms allotted in 1878. In that year, moreover, the revenue had fallen £2000, and the emigrants were more in number than the immigrants; while in all these respects Queensland was prosperous in the eyes of those whose gospel was a catalogue of prices and exports. And yet the very secrecy with which Queensland shrouded her dark deeds, showed that she could not absolve herself in her own conscience, and the effrontery with which her public men rejected inquiry was in itself condemnation. Nevertheless she desired to extend her sway, and in 1883 we find her Agent-General, at the instigation of her Premier, urging the Colonial Office to place New Guinea "under the immediate control of the Colony of Queensland," so that "law and order may be established amongst the mixed populations." [1]

[1] Parliamentary Papers, C. 3617. 1883.

## CHAPTER XVIII.

### POWERS OF HOUSES OF PARLIAMENT.

THE mode in which the Constitutions of the several colonies worked while new men feverishly aspired to office, and courted popularity by creating resentment against a second Chamber when it exercised powers guaranteed by the letter of the law, deserves close consideration. In New South Wales the Council, or Upper House, being nominated by the Crown, was jealously regarded by the elected Lower House on all questions affecting Money Bills. This was natural, and was not resented by the Council. The members nominated by Sir W. Denison stood so high in public estimation that it would have been difficult for passionate members of the Assembly to create hostility against them. The roll of 1857 discloses the names of the Chief Justice, Sir A. Stephen; Justices Dickinson and Therry; a retired Judge, the upright Sir W. W. Burton; Deas Thomson, Plunkett, and Merewether, already mentioned in these pages; distinguished members of the legal and medical professions; settlers; merchants; and others of high repute. The Constitution had provided a minimum of 21 members. In 1858 there were 42.

As Constitutional difficulties in Australia have often arisen from contests about the powers and the composition of Upper Houses, a study of the circumstances of each colony is requisite. The men upon whom fell the task of dealing with problems of State were often unfit for it, but not the less were their rash acts destined to affect the future of the community which they distracted. The character of the members of the New South Wales Council preserved them for some time not only from general but partial obloquy. One or two individual railers there were, but they were in themselves so despicable, and their

scurrility was so ill-received by the public, that they served rather than injured those whom they reviled.

It has been assumed by some text-writers that there was a common design in Australia to define the powers and privileges of the two Houses in the colonies in exact conformity with those claimed by the House of Commons in England. But the assumption is erroneous. There was not one colony in which the Legislature which framed the Constitution aimed at a reproduction of those claims. Logically indeed they are themselves baseless, if the undeviating contention of the Lords be allowed weight; for while the Lords have never abandoned their constitutional right to amend Money Bills, their right to reject them can hardly be said to have been brought into question. The arbiter between the two Houses in England has been that moderation in both, which has refused to allow theorists on either side to jeopardize between the Chambers the harmony which is essential to a reasonable government subordinate to law.

It has been somewhat unfortunate that the text-book on Parliamentary practice, received throughout the empire, has been framed by one who, from his position and the traditions of his house, found affinities in every claim advanced by the Commons, and shrunk from giving weight to those put forward by the Lords. Thus much may be said without impugning the honour, the impartiality, or the learning, of a writer universally respected, and by those to whom he is known, beloved. At the same time if any one for literary exercitation were to array the cases in which the Lords have denied the claims of the Commons it would be seen that Sir Thomas Erskine May has frequently received assertion as proof. One instance may suffice. After admitting that the right of the Commons in granting supply was confined for nearly 300 years to origination of, and that the Lords were not during that period precluded from amending, Supply Bills, and frequently amended them, he states that on the 3rd July, 1678, the Commons resolved—

"That all aids and supplies and aids to His Majesty in Parliament are the sole gift of the Commons; and all Bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and

appoint in such Bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants; which ought not to be changed or altered by the House of Lords."

Sir T. E. May adds: "It is upon this latter resolution that all proceedings between the two Houses in matters of supply are now founded. The principle is acquiesced in by the Lords, and except in cases where it is difficult to determine whether a matter be strictly one of supply or not, no serious difference can well arise."

Thus the bare resolution of one House is put forward as final, and acquiesced in by both Houses. But he who examines the Journals of the day will find that the Lords on the very occasion which produced the resolution of the Commons, put forward counter-allegations which not only do not acquiesce in, but distinctly reject, the principle propounded by the Commons.

There were in June 1678 differences on a Supply Bill. There was conference between the Houses. On the 28th the Lords' members

"utterly denied any such privilege or rights in the Commons in relation to Bills of Money;" (and asserted) "that the sole pretence they had in matter of money was what we had, by the Act in Henry IV.'s reign, intituled '*Indempnity des Seigneurs et Communes*,' communicated to them, that Bills of Money should begin in their House; in all other respects and to all intents and purposes our legislative power was as full and free as theirs: we granted as well as they, they could not grant without us, not so much as for themselves, much less for us; we were judges and counsellors to consider and advise concerning the ends and occasions for money as well as they till we had limited ourselves as aforesaid, and let them keep this as a *vexata quæstio* as long as they pleased, which their predecessors had not done and would not be for the good of the kingdom they should continue, yet we would still exercise our hereditary right of judges and counsellors to His Majesty in such cases."

A second conference was held, and again the Lords "utterly denied any such right in the Commons further than was agreed for the beginning of Money Bills only."

Then followed the resolution (3rd July) cited by Sir T. E. May. The Bill amended by the Lords was abandoned; a new Bill was brought in; it was passed on the 8th by the Commons,

on the 12th by the Lords, and on the 15th July Parliament was prorogued. There were differences in subsequent sessions on the same question, and the Commons often agreed to amendments made in Money Bills by the Lords, whose acquiescence in the Commons' resolution of the 3rd July, 1678, can hardly be maintained except by those who are so firmly persuaded that they ought to have acquiesced, as to be deaf to argument. That the right to reject Money Bills was never abandoned by the Lords, was asserted by one of the wisest of their number, Lord Lyndhurst, in 1860, in these words: "Over and over again, I repeat it, nothing can be found in the Parliamentary Journals or in any history of Parliamentary proceeding, to show that our right to reject Money Bills has been questioned." It will be seen that in more than one Australian colony, a Lower House professing to rely on English precedent has averred that an Upper House cannot reject a Money Bill because it is conceded that the House of Lords cannot. These brief reflections on Parliamentary usage[1] in the mother country have been necessary as a guide in understanding events in Australia, where it will be found that, professing to respect that usage, rash innovators have been disloyal to it.

The New South Wales Constitution enacted that all taxation and Appropriation Bills should originate in the Lower House, and only there on recommendation from the Governor. Having clearly a lawful power to amend or reject Money Bills, the

[1] Among the lighter discoveries which a miner in Parliamentary tomes may make, the following is perhaps known to few. A Bill sent from the Lords was lost in the Commons. On 16th February, 1677, the clerk was ordered to inquire after a Bill taken out of the House by some member. On 21st February the Lords sent a message desiring expedition with the Bill. On the 23rd the Commons, "taking into consideration the ways and means of finding out the Bill that is missing, resolved That the protestation following be made and be subscribed by the members of this House, viz. 'I do protest before Almighty God and this honourable House that neither myself nor any other in my knowledge have taken away or do at this present conceal a Bill intituled, &c. In testimony whereof I have hereunto subscribed my name.' Ordered that the Clerk of the House do prepare a skin of parchment ruled with columns fit for members to subscribe the same." The Bill was apparently recovered by these measures, for (no new Bill with such a title having been received) a Bill with the same title was on the 8th March read in the Commons as an ingrossed Bill from the Lords.

Council exercised it. That it did not use it offensively was testified in 1873 by a sworn foe to a nominee House. Dr. Lang declared[1] that a "very favourable opinion was entertained by the public generally in regard to it," and that though he had vigorously opposed its constitution he had seen reason to change his opinion. Yet, when he and other witnesses asserted its popularity, it had in one session struck out a sum of £340,000 from a Loan Bill, and thrown out a Funded Debt Bill, intended to convert a deficit into a permanent funded debt. The latter course, though it excited the wrath of the Ministry of the day, was speedily justified by events, inasmuch as the consolidated revenue proved ample without the encumbrance with which the Bill would have burdened the country.

On the money question the unrestricted power to amend Bills preserved New South Wales and other colonies from evils which a power restricted to rejection threw upon Victoria. But the serious danger which menaced New South Wales was latent in the constitution of the Council, and in the risk that a weak or unscrupulous Governor might be led by a reckless Ministry to convert into an engine of party a senate which should have been a general safeguard.

Unable to carry his original scheme in 1853, Wentworth was fain to content himself with the temporary formation of a Council to endure for five years, unless in the interval the constitution of the Council should be amended under the power requiring the consent of two-thirds of each House. At the end of five years—failing any such amendment—members were to be summoned to life-seats. When Sir W. Denison appointed the original House, there was no doubt that he sought the fittest men; but no maximum limit of numbers was imposed, and no long time elapsed before the Governor was urged to over-ride the good sense of the Council by inordinate addition of members. Mr. Cowper, with Darvall, Parkes, and Dr. Lang, had laboured vigorously to obstruct Wentworth and Deas Thomson when the Council was first constituted. An instructive commentary upon their opposition to a nominated Council is furnished by the fact that Cowper was the first Minister who

[1] 'New South Wales Legislative Council Journals.' 1873. Evidence, Rev. J. D. Lang. Questions 1458, 1497, 1498, *et alibi*.

proposed to sap the independence of the Chamber by new creations on a scale which was equivalent to a revolution.

A Ministry in Victoria had already, in craving popularity, flung the sop of universal suffrage before an excitable population which had not demanded it, but from which Mr. Haines and his colleagues did not dare to withhold it while Mr. O'Shanassy, in bidding for office, made it one of his proffers. But Cowper feared that the Upper House might refuse to pass his measures. To obtain control of the whole body he asked the Governor to appoint fifteen new men (about 30 per cent. of the existing House). His pleas were the occasional difficulty in forming a quorum, and the strength of the opposition to the Government. Sir W. Denison was willing to fill up vacancies, but "objected altogether to the principle of putting in members for the purpose of giving the Ministry of the day a majority."[1] After vain insistance Cowper submitted to the strong will opposed to him. Vacancies were filled up, and two new members were introduced on special grounds. Warned by the unscrupulousness of Cowper, Sir W. Denison represented that in framing a Constitution for the new colony at Moreton Bay, an elective Chamber should be substituted for one which a Ministry might overbear at any time if a weak Governor's consent could be obtained. As his period of Government was protracted till 1861, it seemed that he might be compelled to deal with the reconstruction of the New South Wales Upper House. The five years' term of the first House was to expire in May 1861, and no new form having been provided, a second House composed of members nominated for life was to succeed the first.

Sir W. Denison advised the Secretary of State that the new members ought to be independent men who would practically represent the permanent interests of the country. He left Sydney in January 1861. His successor, Sir John Young (afterwards Lord Lisgar), arrived in March. The old Council was to expire in May, and despatches in reply to Sir W. Denison's warnings were on the sea, when, at the beck of Cowper and Mr. John Robertson, Sir J. Young lent himself to one of the most startling acts which any representative of the

[1] Confidential despatch. Sir W. Denison to Secretary of State, 5th April, 1858. ('Varieties of Vice-regal Life,' vol. ii. p. 435.)

Crown was ever asked or ever consented to perpetrate. Mr. Robertson's Land Bills were before the Houses, and no agreement had been arrived at on the 10th May. The five years' term of the Council was to expire on Monday the 13th. A jejune attempt by the Ministry to deal with the Constitution of the Council proved abortive. Cowper determined to create enough members to overbear by brute force the existing members. He told the Governor that he did not shrink from the responsibility. He could perceive no alternative. Many of the most reputable of his acquaintance declined to aid him. He and his colleagues sent missives and personally implored coy recusants. The matter became the talk of the town. Failing to find friends in halls of council he rushed to the streets.[1] Meantime the preliminary courtesy of communicating with the President of the Council was neglected by the Governor. When a ragged regiment of twenty-one victims was ready to be sworn in on the 10th May, a verbal intimation was afforded by a Minister, Mr. Robertson, to the dignified Sir W. W. Burton, who for three years had officiated as President of the Council.

The commissions were sent to the House, and the expectant members assembled outside the Chamber to collect their energies for the task of brow-beating and outvoting the grave senators who, though not robust in body, dared to resist a Ministry so puffed with anticipation of triumph as to appear blind to the nefariousness of their acts. Before he took the chair, Sir W. Burton saw a packet of papers arrive, but did not heed them. From his place in the House he informed the members of the discourtesy shown, and the verbal communication made to him. "I have held the office of President in honour, and as I cannot now consent to hold it in dishonour, I have resigned not only my office of President but also my seat as a member of the House." Gravely he left the Chamber, followed in like manner by Deas Thomson and other members, leaving a baffled minority quorumless behind them. Scarcely had the plotters began to think of their position when the voice of the Clerk of the House in formal tones announced that no ingenuity could

[1] He appealed to a highly-respected newspaper proprietor, who instead of arguing with him, answered: "I think you are making a great mistake. I must decline to take a seat in the Council on such terms."

extricate them from the pit into which they had fallen. The 10th was "the last sitting-day" of one week; Tuesday the 14th would in ordinary course be the first of another. But the House would die on Monday the 13th. "It is now my duty (said the Clerk), in the absence of the President and Chairman of Committees, to declare, under the 7th section of the standing orders, that this House stands adjourned until the next sitting-day"—that day which never was to come.

The accents of some who had come to swear lawfully in the House were converted into unlawful curses outside of it. It is not too much to say that honest men breathed freely, and Sir William Burton, who had foiled the conspiracy against the Constitution, was the hero of the hour.[1] Nineteen other members resigned their brief tenure of seats, and published their congratulations to Burton on his resistance to the blow aimed at the independence of the Council, and fraught with "imminent hazard of the subversion" of the Constitution. Sir John Young, finding himself in troubled waters, where others were better pilots than he, strove while accepting the resignations to allay excitement by regretting that such a large number of highly respected gentlemen should, from whatever cause, have decided upon withdrawing. Cowper was sore under defeat, and ventured to impugn in the Assembly Burton's narrative to the Council. Burton, in a newspaper, corrected Cowper's "garbled and incorrect statement." Addressing the latter he hoped that "in all your words and deeds (you may be) as

[1] It is perhaps worth while to mention that the veteran distorter of facts, Dr. Lang, describes the conspiracy as having succeeded. In his 'Brief Sketch of My Parliamentary Life and Times' (Sydney: 1870), he says: "The old gentlemen of the Colonial Upper House . . . had but slight sympathy with the rights and interests of the people, and the Government of the day had accordingly to treat them in precisely the same manner as Earl Grey was empowered . . . to treat the House of Lords in 1832, by introducing a sufficient number of men of liberal principles. . . . It is well known that this swamping process was not carried out in the House of Lords . . . but it was carried out here in real earnest; the President and his sturdy Conservatives vacating their seats and leaving the House for good when the *novi homines* . . . were actually brought in to swamp them." Persons unacquainted with Dr. Lang's character would probably be loth to credit a general statement that he was so ignorant as to misunderstand or so untruthful as to misrepresent the facts. I therefore quote his own words.

truthful as I have been in this, in which I have been vilified by you; and that you may feel some shame—may it be soon—for that scandalous act."

War to the knife being proclaimed by Cowper; and his colleagues being reputed able, and proved reckless; timid men trembled for the future. The Governor, ready at their bidding to assassinate the independence of the first Council, would, it was feared, make the second the mere creature of Cowper. But the stars in their courses were fighting against the plotters. Despatches from England apprised the Governor that the Home Government approved of the principles on which Sir W. Denison had recommended that the new Council should be constructed. Formal Royal Instructions, dated 5th March, 1861, had arrived, and however ready to tamper with the welfare of the colony, Sir John Young was not so quixotic as to jeopardize his own.

Another incident startled the petulant Ministers. Wentworth had returned to the colony just before they laid violent hands upon the Constitution with the Governor's connivance. The harbour was crowded with steamers; music of congratulation echoed over the waters, and thousands upon thousands poured forth to welcome back their countryman now verging towards the ordinary span of life, and returning from that visit to England in which he had been entrusted with the duty of promoting in its integrity the Constitution Bill which Lord John Russell maimed. The very day before Sir William Burton foiled the Ministry in the Council Chamber, Wentworth received a public address in the Hall of the University. He had outlived the unpopularity which for a time was fastened upon him by his detractors. Eccentric as his countrymen had been, wildly as they had wandered from the paths he had shaped for them in the Constitution, mangled as that Constitution had been by Lord John Russell and others in England; selfishly as Cowper, Parkes, and Lang had distorted it, and popular as had been every wrong done to it,—nevertheless, in their hearts, men knew which among them had really been wise, and that though they had been unworthy of his work the hero of Australia was again among them.

What would be Wentworth's reflections upon the shattered

framework of the Constitution which he had constructed for them? What opinion of the patriotism of the men of the day could he entertain on finding that in their greed for office they had, within four years of the coming into operation of the new Constitution, formed seven Ministries; that Cowper[1] had been at the head of three of them, and was apparently ready to accept colleagues of any profession so long as he could retain office with or without change of policy? Intriguers were abashed for a time. Sir John Young seriously consulted Cowper. He was bound to respect the recommendations of Sir W. Denison, approved in England. He could not consent to create a house of partisans. At first exacting, Cowper became submissive. He yielded to the Governor's desire that Wentworth should be consulted, and that the honoured J. H. Plunkett should be offered a seat.[2] The matured opinion of the Australian public was for the time master of the situation. The voice of the streets was hushed. Sir John Young did not (so far as printed despatches reveal the facts) report fully the strange episode in which he had been so graceless an actor. A Governor, in a later period (1872), however, left a record that the Secretary of State "merely expressed his regret at the course adopted by the Governor, which did not appear to him to be justified by the urgency of the occasion."

From that record may be gathered the narrative which Sir J. Young gave in 1865 of the steps he took in 1861 to undo the work which he consented to do in endeavouring to throttle the Upper House at the instigation of Cowper and Robertson.[3]

[1] In August 1856 Cowper expelled Donaldson's Ministry in which J. B. Darvall was Attorney-General. In September 1857 he drove out Parker's in which Darvall held the same office. Cowper's Ministry underwent many changes of texture in 1857-8. In 1863 he took Darvall into his fourth Cabinet. In 1865 he embraced him in his fifth. There were other incorporations of materials which might have been thought equally incongruous.

[2] Cowper had quarrelled with Plunkett, who in dudgeon had resigned all his appointments. "How can I, your Excellency, offer a seat to Mr. Plunkett who has grossly insulted me?" Cowper said. "Have you any objection to my offering it to him?" was the answer which prevailed.

[3] Extract (from despatch of Sir J. Young to Secretary of State, 16th February, 1865), contained in despatch of Sir Hercules Robinson, 27th August, 1872, to Secretary of State. 'New South Wales Legislative Assembly Papers,' 1872-3. Though the despatch quoted by Sir Hercules

"I consulted . . . the Ministers then in office; and also with their cognizance I availed myself of the advice of gentlemen of social standing and of leading position in other sections. In fact I called into counsel under the auspices of Mr. Wentworth, the framer of the Constitution Act, several gentlemen of various political opinions, who were at the time prominent in Parliament or in possession of much general influence. It was understood that Mr. Wentworth was to be President of the new Council, and I appointed him to the office as soon as it was formed. After many interviews and much deliberation, it was the general opinion of those gentlemen that twenty-seven members might with advantage be considered a convenient usual limit of the Council, and with this view I concurred. . . . Several declined, and eventually twenty-three only were gazetted. That number was not subsequently augmented beyond twenty-six during that Administration, which lasted nearly two years and a half afterwards." (It was not contemplated by these arrangements to set aside the Constitution, or absolutely tie the hands of future Ministers, or relieve Governors of responsibility,) "but I thought what was then done might with advantage be referred to thereafter by myself and others, not as an absolute guide, but as giving the assistance of able and impartial men, who were all equally anxious for the permanent stability of the Constitution."

Writing four years after the event, Sir J. Young slurred over the controlling motives of his repentance in 1861. A thwarted plot against the Constitution; public contempt; the opportune return of Wentworth before whom the Governor and smaller men shrank abashed;—these were the causes which made the baffled Ministry accept so meekly the terms imposed.

The minutes of the Executive Council, in June 1861, record the humility displayed. His Excellency "invites attention" to the "necessity which exists for the appointment of a new Legislative Council," and produces a "list of twenty-seven gentlemen to whom it appears to him that seats may, with propriety, be offered, and desires the advice of the Council on this point, and generally in reference to the question." The Council "approach a decision with feelings of no ordinary

merely expressed the regret of the Secretary of State at Sir John Young's conduct in 1861, it was no secret that an unpublished despatch inflicted censure which Sir John Young felt deeply.

anxiety." They think the Legislative Council should be elective; that the lapsed Land Bills ought to be passed; that the Ministry ought to have a fair working majority, &c. &c.; but they believe that "the list submitted to them by his Excellency will give the Government a fair working majority," and, "in the expectation that the gentlemen named in it will adopt these principles in deference to public opinion, and in a generous spirit, they are prepared to advise that seats should be offered to them respectively." They ask that a copy of their opinion may accompany his Excellency's offer of a seat in each case, "and as a fitting tribute to the eminent services conferred by Mr. Wentworth upon the colony, they finally advise that his Excellency should request him to accept the office of President." Wentworth consented (in his own words to the Legislative Council) in order that he "might assist in preparing a Constitution for this House which should supersede the present Council, and prevent the recurrence of any future attacks upon its independence."

How completely Cowper succumbed during this crisis may be inferred from the fact that not one of the twenty-one myrmidons whom he employed on the 10th May to strangle the old House, found a seat in the new. The one among them to whom a seat was offered declined to accept it. The only consolation Cowper retained was the fact that in order to reconstitute the Upper House on a sound basis, Wentworth was willing that no indiscriminate opposition to the Land Bills should be displayed in it. Deas Thomson; F. L. S. Merewether; Dr. Mitchell; and G. K. Holden, were restored to the places which they had, like Sir W. Burton, refused to retain in dishonour. Other persons of social repute were called in. Plunkett and Sir William Manning agreed to aid the veteran Wentworth, and though not without friends in the new body, the Ministry could expect no obsequious followers.

Charles Kemp, who had refused a seat in the month of May, accepted the one offered in June. He was one of the proprietors of the leading newspaper ('Sydney Morning Herald'), which paid admiring tribute to Sir W. Burton in meeting the wrong done to the old Council, but promptly recognized that the new members were worthily selected. Out of twenty-six

persons to whom seats were offered, seventeen accepted in a spirit which gratified the Governor in Council. Three others qualified their acceptance in a manner which was unsatisfactory, but they were nevertheless appointed. Five declined altogether. Eventually, on the 24th June, the roll was made up to the number of twenty-three, and the records of the Executive Council state: "The Council express themselves much gratified that Mr. Wentworth has acceded to their wish" that he would accept the office of President.

Sir William Burton, who had disarmed the assassins of the Constitution, was not again made one of its guardians. It was not to be expected that Cowper would kiss the rod which smote him; but the exclusion of Burton ostracised one of the worthiest in the land. He told some of his fervid admirers that though he had hoped to spend the evening of his life in Sydney, the non-offer of a seat in a new House was to him a sign that being thus placed in retirement, he had better end his days in the land of his birth.[1] But the spirit which Burton had done so much to evoke, did not evaporate at his departure. That the compact of 1861, which contemplated the appointment of "able and impartial men, anxious for the permanent stability of the Constitution," was respected by successive Governors and Ministries, may be known at a glance by the names of the persons who accepted seats. Blaxland, Ogilvie, James and William Macarthur of Camden, Campbell, Scott, Icely, Wallace, Chisholm, Cox, are to be seen amongst those newly appointed within ten years. But Wentworth was too sagacious to rely upon the permanency of the influence which his presence had exercised in the formation of the new House.

The nominee body was not his original proposition. It was the alternative forced upon the Legislature when in 1853 Wentworth's proposals—of an hereditary order which should in process of time like the Scotch peerage elect legislators—clashed with the comprehension of those around him. But the danger of "swamping," as the act of Cowper was called, was not unforeseen when the Council was first constituted. In

[1] As I write I remember that Cowper died in 1875 at the age of 68, and that Burton is yet alive in full possession of his mental faculties in England.

young communities rash acts are done, which in well-ordered states would not only be impossible, but could not be suggested by men holding responsible positions.

The Chief Justice had hinted in 1853, that "in a generation or two hence" an Australian Ministry might procure "a subservient and ductile majority" by nominating "a dozen or a score of partisans."[1] The evil which had then seemed distant, became in 1861 a living portent: nay, had Sir John Young and not Sir W. Denison been Governor in 1858, it would have given a deadly blow to the Constitution within two years of its inauguration. By common consent it was felt that though the compact between the Governor, the Ministry, and Wentworth, in 1861, was good so long as, like Washington's words, those of Wentworth might prevail with his countrymen, it would be well to place the independence of the Council beyond the reach of unscrupulous Ministers or weak Governors.[2] The Ministry were committed to the attempt to constitute the Council on an elective basis. To facilitate his labours the wary Cowper thought fit to remove from the political arena a dreaded but popular antagonist, Henry Parkes.[3] Him he sent with another orator, Mr. W. B. Dalley, to act as salaried agent in England in promoting emigration to Australia. But Cowper gained contempt rather than profit by removing in such a manner a competitor who, in debate on the Land Bills of 1861, had been a powerful critic.

In 1861 the Cowper Ministry introduced into the Legislative Council a Bill to render that body elective. The Bill was referred to a Select Committee of which Wentworth was chairman. A Progress Report (January 1862) recommended that Mr. Hare's scheme of proportional representation should be

[1] 'Thoughts on the Constitution of a Second Legislative Chamber for New South Wales.' By Sir Alfred Stephen. F. M. Stokes. Sydney: 1853.

[2] There had been previous attempts to reconstruct the Council. A Bill for the purpose was introduced by a short-lived Ministry under Mr. W. Forster (1859-60), but he was driven from office upon it. Mr. Parkes animadverted bitterly in 1860 against failure by successive Governments to remove the nominee House from the Constitution.

[3] After a dissolution in 1860, Parkes (addressing the electors), in defending the defunct Assembly, "admitted that there was no man in it who was endowed like Mr. Wentworth with that subtle and wonderful order of ability which is comprehended in the word genius."

carefully considered with a view to its application in re-constituting the Council in the next session. In June 1862 the Attorney-General re-introduced the Government measure, which contemplated manhood suffrage as the electoral basis for the Council as well as for the Assembly, but provided larger electorates for the former than for the latter. On the motion of Deas Thomson (18th June) the Bill was referred to a Select Committee of which Wentworth was chairman. On the 22nd August, the Committee reported the Bill with large amendments. Mr. G. K. Holden, a member of the Committee who had studied the details of Mr. Hare's scheme, had aided in drafting the new Bill.

The new House was to contain forty members, of whom ten might be selected by the Crown from retired Judges; members (for not less than two years) of the Executive Council; ex-Presidents or ex-Speakers; or persons who had sat for seven years in the Legislative Assembly. Hare's system of election was to be adopted. The whole colony was (as in South Australia) to form one electorate. The suffrage was to be conferred on freeholders of £20 value, on leaseholders, or householders . . of £50, and on members of learned professions, graduates of universities, and retired officers of the army or navy. The President of the Council had the privilege of speaking on measures in the House, and on the 10th September, 1862, Wentworth supported the Bill, not as the best theoretically but the best procurable.

"I never contemplated when I lent my hand in the framing of the Constitution, which is now nothing but a word, *vox et præterea nihil*, that any Ministry in this country would have the audacity to sweep the streets of Sydney in order to attempt to swamp the House by the introduction of twenty-one members. That was a contingency which I admit I did not foresee, and I cannot conceive how any man of honour and principle could foresee such an event . . . knowing as I do that a bad precedent may easily be followed, and no doubt will be followed, if any supposed necessity of the same kind exists, I am driven to look for something else, driven against my will—and I see no other alternative but to adopt in the Constitution of this House some modification or other of the elective principle. . . . From the time of landing, indeed long before, I felt that there had been a

dangerous and destructive innovation upon the Constitution of the Lower House . . . that the ultimate results would be a degeneration in that House . . . that the only safety that remained for the country was in the Constitution of a proper Upper House, that may resist the dangers and unconstitutional authority that is confided to the Lower. Of that opinion I still remain." (He feared with regard to the Bill the) "probability that it will be rejected, and that this branch of the Legislature will remain as it is for some sessions longer. Well, I shall regret to leave the country with this branch of the Legislature exposed to the perils which I know sooner or later will result in its degradation, but it is much better undoubtedly that things should be as they are, rather than that a Constitution should be accepted, based upon manhood suffrage, or otherwise than upon a property qualification."

Alluding to the crisis of 1861, he grimly said: "I do not myself think that with Sir John Young as Governor there will be another attempt to introduce twenty-one new members among us."

On the 17th September the second reading of the Bill was passed by a majority of nearly three to one. Emerging safely from Committee it was read a third time on the 8th October, and on the motion of the discomfited Attorney-General (Mr. Hargrave), the President selected four members to carry the Bill to the Assembly. They were Hargrave, C. Kemp, G. K. Holden, and F. L. S. Merewether. On the following day Wentworth announced his intention to retire. The members were "probably aware" that his motive in becoming President was to assist in preparing a constitution for an Upper Chamber, guarded against "attacks upon its independence." The Bill matured by the House had been sent to the Assembly.

"What may be the fate of that Bill I know not, and, to speak candidly, I care very little; for I have my misgivings about the Bill." (The qualification of electors was too low;—the absence of qualification of members was unwholesome.) "If the measure comes back to this House at all, I hope the House will take it in its entirety, and that they will not submit to any mutilation or changes in its essential parts. . . . I myself concurred in the adoption of the elective principle in consequence only of that recent event in the history of this House to which I have on a former occasion alluded." . . . "If I could believe, or if any reasonable assurance could be held out to this House

that any additional nominations would be made here on the same principle on which nominations are made in England; if I could only come to the conclusion that no improper attempt to swamp this House, and in that way control the plenary power of action that is essential to its existence, would be resorted to, I would never have consented to change the nominative principle in this House for the elective principle. For it is no part of the Constitution of England that the elective principle should be extended to both branches of the Legislature. I think we ought to take our stand upon the ancient foundations of the Constitution as far as we can."

If the Bill should not be received by the other House without alteration, he hoped no second proposal of the kind would emanate from the Council. The Attorney-General was profuse in compliments to the old man thus performing his last public act in the land where for more than forty years he had been eminent above all. Deas Thomson in touching tones tendered a sympathy deeper than that of Cowper's colleagues, and hoped that Wentworth's warning words would be pondered by all. Then the old man, with brief but eloquent words of deep thankfulness to the House for its courtesy, passed away from it. Before the Bill was read a second time in the Assembly, he had left his old home never to return to it alive. By his own desire there was no public demonstration at his departure. His return in the previous year had been triumphal, and his statue had been unveiled in the University while he was presiding over the Legislative Council. His second return was contemplated, and his friends abstained from public display. Among those who went on board to pay parting respect, were Cowper, Robertson, and another member of the Ministry. Yet Wentworth had in bitter terms condemned the degradation to which they had reduced the Legislative Assembly by tampering with the Constitution.[1]

[1] Cowper, Robertson, Hargrave, and another colleague left on record a remarkable proof of the manner in which public veneration extorted from them a tribute to the man whose labours they so often endeavoured to neutralize. At the Executive Council Chamber, 13th October, 1862, they recorded "the deep sense which they entertain of the valuable services rendered to the colony by Mr. Wentworth in having accepted the office of President of the Legislative Council, and of the manner in which he has fulfilled the important duties of that high position during a very critical

The leading newspaper declared on the day of his departure, that if nothing else had resulted from his influence than "the selection of the present members" of the Legislative Council the colony would be deeply indebted to him. "His last warnings sound like the last words of history, so fortified are they by his long experience."[1] It was well known that the sturdy tribune of ancient days in defence of public rights, and the scornful denouncer in recent times of popular delusions and excesses, was indifferent to praise or censure lightly given and lightly withdrawn. His enemies accused him of being false to his old principles. He thought that they had none of their own. His friends deplored that the degradation of the community seemed to ostracise him from the land. Though he lived more than nine years after his last public service to his country, he never returned to it. Yet he yearned for it in spirit, and in accordance with his wish was buried there, amidst profound and universal respect. If it be thought by any one that personal prejudice has warped the judgment of the writer, the fear may be allayed. Publicly he has often listened to Wentworth, but never was amongst his private associates. On public grounds history, if truly written, is compelled to pay tribute to the man, and on those grounds alone is it paid in these pages.[2]

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period in the history of the colony." 'New South Wales Legislative Council Journals,' 1873-4.

[1] 'Sydney Morning Herald,' 22nd October, 1862.

[2] Perhaps it may be well to mention in connection with his last appearance in the political arena, some facts respecting the close of his career. In 1853 his admirers collected funds to defray the cost of a statue of him. In 1862 the statue (from the chisel of Tenerani in Rome) was unveiled in the Hall of the Sydney University. Mr. James Martin delivered an eloquent oration in the presence of the Governor and assembled notables. "Though they break their idols as often as they make them the people in the long run learn to do justice to their benefactors, and Mr. Wentworth has enjoyed the singular good fortune of living to see conferred upon him an honour which is usually witnessed only by a man's posterity, and to see it conferred with the assent and applause, not only of those who have ever been his friends, but of those who were amongst the most bitter of his opponents. He has outlived the envy, hatred, and malignity which inevitably cross the path of every man who becomes eminent in public life; and now in his green old age, with his mind still clear and his faculties still unclouded, he has been allowed a foretaste of the posthumous renown which awaits him." A portrait of Wentworth is in the Parliament Houses in Sydney. He died

It may appear strange that, after declaiming for years against a nominated House, Cowper and his colleagues, when put in possession of a Bill in which the Council had accepted an elective Constitution, let the occasion slip from their grasp. But the reasons which weighed with the Council were not altogether

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in March 1872, having desired to be buried at Vaucluse, so long his residence on the shores of the Sydney harbour. Both Houses of the Legislature fervently requested his widow to allow a public funeral to be accorded to his remains. When Mr. (then become Sir) James Martin moved the resolution in the Assembly it was seconded by Mr. Parkes, the Premier, who modestly regretted his past "feeble opposition" to Wentworth. When the resolution was put by the Speaker every member stood up. In the Council a member of the Ministry moved and Deas Thomson seconded the resolution, unanimously carried. Deas Thomson testified that never even in England had he heard a more powerful debater than his "late honoured friend," and deplored that Wentworth's Constitution Bill had not been passed in its integrity. The previous speaker had called the Constitution "a great boon." Deas Thomson believed "it would have been doubly successful" if Lord John Russell had not tampered with it in spite of the pleadings of Wentworth when the Bill was discussed in England, and Wentworth and Deas Thomson as its promoters had interviews with members of both Houses at Westminster. Wentworth pleaded in vain. "It so happened that Lord John took a different view." Deas Thomson joined in "doing every possible honour" to him "whose reputation for all time to come as the greatest son of Australia would last as long as the country itself lasted." The speaker uttered the public thought. The streets, the avenues to them, and every coign of vantage were crowded. Public functionaries, representatives of all public bodies and of all denominations, joined in paying tribute. St. Andrew's Cathedral, to which one of Wentworth's recent acts had been the presentation of a costly Communion Service, was densely crammed while the funeral service was performed before the procession wended its way to Vaucluse, on the 6th May, 1873. The utmost decorum was "observed ('Sydney Morning Herald'), and the noisy hum of conversation was immediately stilled upon the approach of the procession." After consecration of the ground by the Bishop of Sydney and the conclusion of the religious services, the Bishop briefly alluded to the great orator and statesman interred there according to his own affectionate desire. "Those who loved him best have the consolation of knowing that the close of his life was a fitting preparation for one about to appear before an unerring Judge." Sir James Martin, always selected for difficult duty, then delivered a commemorative address. "Hereafter the best and ablest may gather lessons from the life of William Charles Wentworth, and catch perchance some inspiration from his tomb." Such were the last words of an address too eloquent to be marred by fragmentary quotation, and which was printed with a public record of the funeral. (Sydney. Thomas Richards, Government Printer, 1873.)

satisfactory to Cowper. Their Committee had by implication condemned his previous conduct.

"Whatever diversity of opinion may have formerly prevailed as to the comparative advantages of nomination and election, circumstances have since arisen, now matter of history, which have given the question a new aspect, and have induced a disposition to co-operate in the framing of a measure by which the elective principle may be applied to the Council . . . At the same time your Committee are far from admitting that in applying this principle the Council should rest on the basis of manhood suffrage as proposed in the (Government) Bill referred to them. They believe, on the contrary, that with regard to the Constitution of an Upper Chamber such a course cannot be adopted without setting at nought all the experience of history, and the warnings of all the great statesmen and philosophers by whom its lessons have been expounded."

The ring of Wentworth's voice was in these words. Cowper's hypocritical homage to Wentworth did not extend to the Bill. It was not until the 12th November that he nominally moved its second reading, but at the same time expounded radical alterations which he intended to make in it. He would abolish Hare's system of election; strike out the partial nominating power of the Crown; introduce secret voting; and divide the colony into twelve electoral districts. He did not propose, as on former occasions, universal suffrage in the electorates. He hoped to trim his sails for every breeze, and thus baffled his ship. One member said it was disrespectful to strangle the Council Bill in the manner proposed. Mr. William Forster said it would be better to reject that Bill, and introduce Cowper's as a new measure rather, than read the former a second time, and aid Cowper to destroy it. Another said that nothing but universal suffrage would suit his countrymen. Dr. Lang wondered at some of his friends. He was once thought extreme in his opinions, but found himself now a laggard. He would wish to have again the Constitution of 1843, with one Chamber, two-thirds elected, and one-third nominated. Under cover of obtaining a vote for the second reading of the Council Bill (in which the incorporation of Hare's system was pleasing to some members), Cowper and his friends plied their usual arts when the debate was adjourned. By 24 votes against 20 the second reading was

carried on the 13th November. But some who voted for it were in favour of Hare's scheme, and hostile to Cowper's amendments. Robertson, one of the Ministry, though he voted for the Bill, when taunted for abandoning universal suffrage replied that he would vote against the qualification proposed by Cowper. Several Government supporters voted against Cowper. One member was compelled to withdraw a statement that the Bill had been carried by "votes of sneaking cowards, who came in and voted with the Ministry without assigning any reasons." A disgraceful struggle amongst members in the lobbies ensued, before (by 19 votes against 17) the committal of the Bill on a future day was agreed to.

On the 26th November Cowper suggested a further postponement. Mr. Piddington asked the reason. Cowper assigned the "very slight probability of the Bill passing this session." Asked why he did not discharge it from the notice paper, he professed his willingness to do so. Dr. Lang objected to such a course. He approved neither of the Council's Bill nor of Cowper's. After a confused debate the Bill was shelved by 33 votes against 15. Dr. Lang was in the minority; and Cowper was in the majority with his principal antagonist, William Forster.

Mr. Piddington exposed the insincerity of the Ministry by pointing out, that among the 33 who threw out the Bill there were 10 members who had voted for its second reading. While the Council was left in the position which Wentworth had declared preferable to any mutilation of the Bill thus lost in the Assembly, the champions of turbulence in the Assembly had fair warning at this juncture, that the men whom, under Wentworth's control, Sir J. Young had made Councillors for life were not only intelligent but resolute. Mr. Terence Aubrey Murray, Speaker of the Assembly, was on Wentworth's retirement appointed President of the Council. He carried thither the traditions of the Speaker's chair. Wentworth had in the Council on one occasion given a cursory opinion that an existing Standing Order, relative to the adoption of usages between the two Houses, limited the powers of the Council. Subsequently he pronounced that, under the Constitution Act, the powers of the Houses were co-ordinate, except as to the mere right of origination of Money Bills; that, therefore, the Standing Order

in question was "*ultra vires*, and consequently did not, and could not, limit the powers of the House with regard to Money Bills." Before Wentworth's departure from the colony Murray ruled that the Council could not interfere with a Money Bill. The day after his departure Sir W. Manning moved, and Deas Thomas seconded, a motion declining to concur with Murray's ruling. After an impetuous, if not intemperate, speech by the latter, the motion was carried by 16 votes against 3 on the 28th October, 1862, or only a few weeks before Cowper sacrificed (in the Assembly) the Bill which would have remodelled the Council on an elective basis.

The failure to reconstitute the Council, in 1862, was not followed by earnest action or remonstrance. Events in the neighbouring colony of Victoria induced doubts in New South Wales as to the superiority of an elected Upper Chamber. A Ministry, under Mr. McCulloch, being unable to overbear the elected Council, and having no power to create members in it, determined, by "tacks" in defiance of the Constitution and of all Parliamentary usage, to compel the Council to submit wholly to any and every demand. Although the electorates in Victoria had frequently lacked appreciation of the momentous consequences involved in choosing members of the Council, the inherent strength of the representative principle was such that the McCulloch Government could not shake it. The men in the Sydney Council were more experienced than those in Melbourne, but their support throughout the territory was not so widely based. There was no place in Victoria so remote that it had not five representatives of one of the six electorates. In Sydney, though the members were intelligent, they were comparatively unknown, except to the few who studied political affairs.

The McCulloch Government, savage at defeat, and too reckless of the public weal to wait for the biennial elections to the Council, which periodically gave the electors power to dismiss one-fifth of the whole House and choose new men, plunged the colony into confusion, by refusing to send up an Appropriation Bill framed in proper form. Willing to justify themselves, they created wonder in neighbouring colonies by asserting that the "deadlock in Victoria" was due to the tyranny of the harmless Council, and not to the encroachments of the Ministry aided by a majority of the Assembly.

government in the colony, in the working of which Her Majesty's Government cannot but take a deep interest, although they seek in no way to interfere with its internal administration, I shall be glad to learn that your Ministers have thought it better to abstain from inviting you to depart from the understanding which has hitherto prevailed."

The response of Mr. Parkes, the Premier, to this appeal was the introduction of a Bill in the Assembly "to provide for the representation of the people in the Legislative Council." He was compelled to admit that there had not been any active opposition "for some years past" to a nominated Chamber; but in theory he thought it indefensible. It "did violence to the first principles of representative government." He wished to make "the other Chamber responsible to the people," but he alleged that he did not desire to deprive it of "independent judgment upon all measures." His plan was to have 31 members nominated, and 36 members elected by 12 electorates. All householders and many lodgers were to be voters. One-third of the members were to retire "every two years;" but, notwithstanding the rotary retirements, whenever the Assembly might be dissolved one-third of the elected members were to vacate their seats to satisfy an arbitrary idea evolved in the mind of Mr. Parkes. To make the terror of dissolution thorough in the Council, no principle was to regulate this vacation of seats. Lot was to determine members' fates. "It was thought that this would work in a very salutary and satisfactory manner, and would have great influence in tending to bring the Houses into harmony on all questions of magnitude and importance."

There was in Mr. Parkes' case the theoretical justification that he had ever advocated an elective system. But the practical motive which stirred other Ministries was strong in him. Sudden elevation to power maddens other men as well as Neapolitan fishermen, and anger at being thwarted in carrying a measure which has been laboriously piloted through one Chamber and is defeated in another, animates the reforming bosom of a disappointed Minister. Puffed up by power, when checked in his career, he declares that in his person the majesty of the people has been insulted. Scorning the fact that the

power he claims rests on the same basis as that which he upbraids for resisting him, he is ready, like a losing gamester, to obtain by riot what he cannot gain in conformity with rule.

Mr. Parkes carried his Bill in the Assembly. It reached the Council on the 2nd April, 1873. Mr. Samuel, the Postmaster-General, moved the first reading. The President cited authority to the effect that a Bill dealing with either branch of the Legislature ought to originate therein. Mr. Docker, a highly-respected and capable member, who had represented Ministries in the Council more than once, forthwith moved, "That this Council declines to take into consideration any Bill repealing those sections of the Constitution which provide for the constitution of the Legislative Council, unless such Bill be originated in this Chamber." He quoted Hatsell, Todd, and other cogent authorities. Mr. Samuel admitted that the Bill ought perhaps to have been initiated in the Council, but begged members "not to stand on points of etiquette." He risked a division, and was left alone: while, in an array of twenty, Docker was supported by the venerable Deas Thomson, by Sir William Manning, Sir William Macarthur (of Camden), by Messrs. William Busby, Edward Ogilvie (of Yulgilbar, Clarence river), and others who commanded respect in the community. On a subsequent day Mr. F. M. Darley, an eminent barrister (who was one of the number), carried a resolution that the division should be recorded, although Mr. Samuel's forlorn isolation had excluded a formal entry in the journals at the date of the occurrence. The resentment of Mr. Parkes was not responded to by the public. On the contrary, the public funeral of Wentworth, in May 1873, evoked the people's sympathy in a manner which elicited from the lips of Parkes regret for his "feeble opposition" to Wentworth on constitutional questions. The ashes of Wentworth were more eloquent than the voice of Parkes. When, with one or two scurvy exceptions, the population conspired to honour their greatest man, it would have been hard to inflame them with hatred to his handiwork.

The Parliament assembled again in September 1873, and the Vice-regal speech announced that no time would be "lost in

again submitting the measure of last session to reconstruct the Legislative Council on a basis of popular election." The Bill was introduced in the Council in compliance with Parliamentary usages, and was, by a majority of four to one, referred to a Select Committee. Before that Committee a strange chaos of discomfited humours and undefined aspirations was exhibited. Neither within nor without the Council Chamber had opinions been crystallized so that they could be preserved in the casket of an Act. The Bill put forward by the Government was virtually the same as the one set aside in the previous session. The qualification for electors was made the same as that of electors of the Lower House. The power of the Council to deal with Money Bills was curtailed.

Witnesses were examined throughout several weeks. Mr. O'Shanassy, then a member of the Legislative Council in Melbourne, testified to the wanton attacks made upon the Constitution in Victoria in 1865, when foreign matter was inserted in the Appropriation Bill with a design to deprive the colony of the deliberative functions of the Upper House in questions of policy. "Fortunately the Council had sufficient fortitude to resist, and the attempts failed." He would adhere to the elective system in Victoria, but was not so wedded to it as to think it applicable in all other places. Neither could he be induced to commend any defined suffrage for an Upper House. Expediency, and not principle, seemed to be his pole-star, and in dealing with electorates he leaned to the aggrandisement of himself or his supporters. In one point he was compelled to admit that the framers of the Constitution in Victoria erred when they deviated from Wentworth's Bill, and specially prevented the Council from altering Money Bills. "If we had had power to deal with Money Bills I believe we would have had more success than we have had."

Deas Thomson, then seventy-three years of age, gave his more patriotic testimony. He thought that, on the whole, the Sydney Council had worked well. He had been a member from the first, "excepting for the short period when I resigned, when there was an attempt made to swamp the House." He furnished food for reflection by showing that in North America, in 1867, the latest Constitution elaborated by British statesmen co-operat-

ing with colonial legislators created an Upper House nominated by the Crown. Since 1862, therefore, when the Council, under Wentworth's guidance, had with hesitation assented to an electoral basis, events abroad had fortified the reasons urged by Wentworth for adhering to the nominative principle, unless the Bill of 1862, with its comparatively high suffrage, and Hare's system operating throughout the colony as one electorate, should be accepted by the Assembly as proposed by the Council.

The Canadian Constitution entrusted the Governor alone, and not the Governor and his advisers, with the nomination of Councillors; and, warned by the past, Deas Thomson thought "such a change would be extremely beneficial." Deas Thomson surmised that the evil example of Sir J. Young in 1861 had warned the British Government of the dangers involved in nominations at the beck of violent partisans. For himself, noting the significant facts—that, after trial of the elective system, Canadian statesmen had reverted to the nominative—and that deadlocks had resulted between two elective Houses in another colony, he apprehended that similar consequences would ensue in New South Wales from adopting the elective system.

Newspaper proprietors and editors were examined. All agreed that the Council had worked well, and had survived the antipathy created against it in the public mind by industrious agitators when the Constitution Act was passed. They confessed that when the Upper House had altered money Bills the colony had been benefited. Yet, without assigning reasons, one of them thought that as public opinion was favourable to the elective system it was desirable to adopt it, although probably the result might be the saddling of the colony with a House of which the members would be inferior in "legislative wisdom" to the existing one, which was "greatly in preponderance" in that respect over the existing Lower House."[1] The editor of

[1] The witness was a proprietor of the 'Sydney Morning Herald,' supposed to be a moderate paper. The editor of the 'Empire,' considered democratic, thought the Sydney nominee House had "worked very much better than the Victorian" elected Council, but would change the Constitution in Sydney because "the opinions of the colonists" were in favour of election. But though he daily discoursed to the public on constitutional questions and facts, he knew so little about them as to state to the Committee that in South Australia the Council was elected by universal suffrage. Mr. Docker, the

the 'Empire' newspaper (which thought the term "liberal" synonymous with democratic), admitted that there had been "a deterioration in the elements of the Lower House gradually going on (after introduction of universal suffrage) up to the present time." Yet with this admission on his lips he advocated a single Chamber.

It was perhaps natural that such a blind leader of the blind should declare that "if there were no Upper House greater delay would take place," because the Lower "would feel that a greater degree of responsibility rested upon them if, after they had passed an Act, there was no further opportunity for revision." All the self-constituted guides of opinion in the press admitted that whenever the Council had exercised a check it had acted wisely. Another witness, Mr. G. K. Holden, who as a member of the House had aided in preparing the Bill of 1862, still advocated its principles; though, having accepted a legal appointment, he had ceased to take part in public discussions. One witness was content to retain the nominated House in spite of the attempt to swamp it in 1861, because it was "regarded by most right-thinking persons as an outrage that is never likely to happen again. . . I think that occurrence will be regarded as a warning to all future Governors." Several witnesses admitted that they had "not so strong a desire to see a change made in the constitution of the Council as they had" in former years. Some declared that there was no matured public opinion in favour of altering the existing Constitution.

Dr. Lang, one year the senior of Deas Thomson, poured involuntary tribute at the feet of the Committee on which sat his old opponents, Deas Thomson and Sir W. Manning. "I conceive that the great masses of the people are to a very great extent satisfied with the Legislative Council as at present constituted." His own opinion coincided with that of the great masses. The man who had a few years before denounced the "monstrous and shameless political villainy of Deas Thomson and Wentworth" in their political labours, and had averred that

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chairman, calmly said: "I may tell you that the Legislative Council which you thought was returned by universal suffrage" is based upon freehold estate of £50 value, leasehold annual value £20, occupation annual value of dwelling-house £25.

the nominative principle "vitiated the Legislature," now in the presence of Deas Thomson recanted his opinions, but not his slander, and in reply to Sir W. Manning, said: "There is a very favourable opinion entertained by the public generally in regard to the Council as a legislative body."

In December 1873 the Committee commenced to ruminate upon the evidence taken. The Attorney-General, Mr. Innes, had apparently one idea which no evidence could disturb. He moved that the Committee approve of the Bill as introduced by the Government. Deas Thomson moved that in view of the evidence taken, the example in Canada, and the condition of the colony, it was undesirable to change the Constitution. Sir W. Manning moved lengthy resolutions of a peculiar character. He accepted the consent of the Council in 1862 to an elective basis, and other conditions, as conclusive with regard to that principle. He utterly defied that consent by proposing that the suffrage for both Houses should be universal. He strove to qualify this proposal by conjoining with it, for the Upper House, large electorates and the system of cumulative voting practised in Illinois, which he commended in preference to Hare's system, or the proportionate voting under the Education Act in England; although he praised all three schemes. In view of the "broad representative character" assigned to the Council, and to maintain its dignity and usefulness, he deemed it "essential that the Council should possess the power of amending Money Bills." After deliberations enduring for weeks, Sir W. Manning carried substantially his propositions, and on the 25th February, 1874, perhaps wearied by contention and hopeless of final success, he induced the Committee to report general principles to the House in order that, if they should be approved of there, "the proper officers of Parliament" might be instructed to "remodel the Bill" which had been referred to the Committee.

On the 18th March Sir W. Manning moved the adoption of the Report of the Select Committee. Mr. Docker, the chairman of that Committee (the member who had in 1873 crushed the Bill sent up from the Assembly), intercepted the motion by an amendment, declaring that there should be a property qualification for electors, and that the report of the Committee, sinning as it did against that rule, ought not to be adopted.

Further, Mr. Docker proposed to the Council the views that Deas Thomson had vainly urged upon the Committee; viz. that the fundamental principles on which the Council was based in conformity with the British Constitution ought not to be abandoned. He asked the Council to declare that if change should be resolved upon it ought to assimilate the Constitution to that of Canada, where the "Governor alone," and not the Governor with advice of his Council, had the power of nomination. Mr. Docker demanded also that the

"maximum and minimum number of members should be defined, and should never be less than two-thirds of the number of members of the Legislative Assembly, and that it should be imperative upon the Governor to fill up all vacancies as they occur; thus removing from the Executive of the day the power of impairing the efficiency of the Council, either by unduly adding to its numbers for the purpose of carrying some favoured policy, or by reducing it to inanition by refusing to keep up its numbers to an effective standard."

Such were the safeguards which the doings of Cowper and Sir John Young[1] prompted the Council to demand. After several adjournments of debate Sir W. Manning's proposition was rejected by 16 votes against 4. Docker carried his resolutions by 11 votes against 9, and the question, on which there was no public excitement, ceased to occupy attention, socially or politically. Nevertheless, there has ever been in the Assembly an under-current of discontent whenever the Council has interposed to correct errors or check extravagance; and on such occasions Sir Henry Parkes was wont to raise his voice as of old in favour of an elective Upper House. But the community was less excitable than that of Victoria, and reason was generally on the side of the Council in its disputes. In a Stamp Bill, while Mr. John Hay was Speaker of the Assembly, the Council made amendments which were plainly wise. The Assembly resorted

[1] One of the witnesses before the Committee of 1873-4, the highly esteemed T. S. Mort, said: "I am of opinion that after the experience of Sir John Young and the sorrow he expressed for having permitted himself to give in his adhesion to an act which he so much regretted, such a thing is not likely to occur again." Probably in calm moments Sir John Young gave satisfactory assurances as to what he would do in times of excitement. It by no means follows that Mr. Mort or Sir John Young himself could trust his resolution in the time of need.

to the Parliamentary method of attaining the desired object without confession of error; laid aside the Bill, introduced another, free from the defects of the first, passed it, and obtained the ready concurrence of the Council.

In 1880 Mr. (then Sir John) Hay had long been President of the Council. A Stamp Bill was sent to the Council. It was so worded as to be retrospective. The Government professed that they did not intend it to be so. The Council amended it in such a manner as to deprive it of retrospective operation. The Houses differed. The arguments and eloquence of Messrs. Darley and Dalley in the Council outweighed those of the Assembly, but superiority in argument aggravates rather than soothes the passions of the worsted. There was the usual murmuring against the nominated Council; the usual prevalence of cultivated opinion that the Council was in the right; the usual insinuation by Parkes that he could have framed a better Constitution; but after the pendulum had swung from side to side for a brief period, its momentum was lost and the gravitation of the common sense of the people ended the difference as before. The Assembly passed a new Bill in the form which the Ministry had from the first declared that they had desired, but were loth to accept from the Council, and the Bill became law.

The popularity of the Assembly had not been increased by an attempt to enact a Privilege Law, which would have enabled them to bring undefined powers to bear against the public. The Council gallantly and successfully contended for public freedom, and though willing to concur in granting powers required to maintain extreme privileges within the walls of Parliament, would not launch them against private persons without those walls. To the extent to which public feeling was excited at all, it was in favour of the position of the Council.

The working of the elected Upper House in Victoria forms a singular contrast to that of the nominated House in New South Wales. If the most experienced men in Victoria had pressed forward and secured seats in the Council, the fortunes of the colony morally and politically might have escaped hazards to which they have been exposed, and degradation which they have

endured. If the electorates for the Upper House had secured such trained men as Sir W. Denison, with advice of James Macarthur and others, selected in Sydney, the Council might have formed a sea-mark amidst storms. Some people contended that fit men were not available. If such a contention be true the character of a community containing more than a quarter of a million of British males (according to the census) must be held to prove it unfit for representative institutions. But some who were presumptively fit were not willing to undertake public duties. A friendly critic could not declare that all who were elected to the Council were trained for their task. Notably in some provinces the fittest men were not preferred to the incompetent. Dr. Palmer, the Speaker of the old Council, was fourth on the poll, yielding place to one man who was utterly worthless as a legislator, but was put forward by Mr. O'Shanassy, whose object was to procure a follower rather than select a senator. There was sufficient sense of propriety amongst the elected to ensure the unanimous choice of Dr. (afterwards Sir James) Palmer as President of the new Council.

It has been seen that in his impatience for office Mr. O'Shanassy agitated for manhood suffrage, before the two Houses, constituted under the Bill which he assisted to frame, had been called into existence. Mr. Charles G. Duffy, then a humble henchman to O'Shanassy, laboured in the same direction. The first practical blunder made by the Council itself was in not insisting on compliance with the spirit of the Constitution, and in all cases compelling Ministries to place in the Upper Chamber at least one responsible Minister whose re-election by his constituents would ensure the ratification by an electorate for the Council of the formation of the Ministry. Such ratification was demanded by the Constitution as much in one House as in the other. The point was not absolutely forgotten, but members did not comprehend its importance. On the motion of Mr. Henry Miller, in May 1857, they resolved that they could have no "confidence in any Government that is not represented by one or more responsible Minister or Ministers in this branch of the Legislature." If they had acted upon that resolution in all cases they would have averted infinite

inconvenience and confusion. They would have ensured respect for the Constitution in the formation of a Ministry, and some circumspection in forming it; they would have been warned of the opinion of one of their own electorates; and they would have been compelled to respect that opinion. But their eyes were darkened. They yielded to a moral laxity, or political blindness, which they mistook for, or represented as, an unwillingness to obstruct. They allowed their early resolution to slumber. Occasionally it was alluded to: mild menace was employed about refurbishing it, but it hung like "rusty mail in monumental mockery" upon their walls. Instances without detailed narrative will prove the fact.

In 1856, 1857, 1858, 1859, 1860, 1868, 1869, 1871, 1875, Ministries were formed without a responsible Minister in the Council. To go through the form of presenting papers by command, some member, under the plea of good-nature, consented to associate himself with the Ministry "without office," and thus escaped an appeal to his constituents. Men of all parties sinned equally. Haines, O'Shanassy, Nicholson, Heales, McCulloch, Macpherson, Duffy, Berry, were among them. Haines, O'Shanassy, McCulloch, Francis, Kerferd, Service, and Berry at other periods obeyed the Constitution when it suited them to do so. How hollow was the allegiance shown may be inferred from the fact that when in 1878 Mr. Cuthbert, the responsible Minister in the Council, resigned office rather than request the Council to immolate itself by what the Premier called a Reform Bill, no other Minister was appointed. The Premier and his remaining colleagues divided Mr. Cuthbert's salary amongst themselves,[1] and interceded with their recent colleague to carry their messages to the Council as an act of commiseration. Complying with former examples he consented, and all who thought more of the man than of the country admired his conduct. The Council could not maintain its due weight in public affairs while it seemed to receive as a favour what it was

[1] Excepting sixpence, which it was said their financial genius was incapable of dividing into eight portions. An Opposition member thought such a reason too sarcastic, and suggested that when the last coin was produced each Minister exclaimed to his colleagues, in the words of Canning's Friend of the People,—"I give thee sixpence! I will see thee —— first."

called upon to demand as a right, not of the Chamber only, but of the country. Moreover, the relations between the Houses rapidly underwent changes by means of alterations of the Constitution.

To procure popularity, Mr. Duffy early devoted himself to the degradation of the Assembly; rightly deeming that it would then serve his own purposes better, and that its increasing dissimilarity from the Council would enable him to champion it to the uttermost in times of disorder. He had been presented with property to qualify him to sit in the Assembly. One of his first acts was to introduce a Bill to abolish the property qualification required by members of that body. He did not offer to restore the property he had obtained, but it was in his mind when he drew his Bill, for while striking out the enactment which charity had made applicable to himself (possession of freehold of the value of £2000), he showed his ineptitude by omitting to strike out the alternative requirement of possession of freehold "of the annual value of £200." He passed his Bill in the Assembly, and the Council, blind to fate, passed it also, though not without opposition. Mr. Fawkner saw and denounced its tendency.[1] In discussion, a member pointed out the inefficacy of the Bill by reason of its retention of the words relating to annual value. At that period Mr. O'Shanassy succeeded in ejecting the Ministry, and though he only held office for a few weeks, Duffy (being made Minister of Public Works) was able to induce the Governor to send down a message (which the Constitution enabled him to do) proposing an amendment in the Bill. To conceal Duffy's incompetency the Governor was made to say what every one knew to be wrong, viz. that the blunder in drafting the Bill was an obvious omission in copying. When the Governor's proposed amendment, after passing in the Assembly, reached the Council, the wiser members endeavoured to reject it, but were discomfited by 14 votes against 9.

[1] It is sometimes argued that the property qualification affords no guarantee and furnishes no check. Whatever may have been the case in England the requirement was very effective in the colonies. It has been seen that even the daring Dr. Lang feared to make this declaration lest the property which he affirmed to be unencumbered should be attached by his creditors.

Another wide departure from the provisions of the Constitution was caused in the same manner. O'Shanassy, Duffy, and others, deemed the advocacy of democratic principles the speediest way to power; and the community they strove to excite was apt for new things. Nevertheless, under all the provocations of the time, it cannot be said that the Assembly, elected by the suffrage established in the new Constitution, was desirous, as a body, to take the control of taxation from those who paid taxes, and to subject the industrious, who bore the burdens of the State, to the idle or unthrifty, who contributed nothing to its support. Everybody believed that the object of government ought to be the greatest good of the greatest number, but few then argued that such good could be attained by consulting the unlearned, and still fewer could be found, to declare that, if the majority desired what was evil, it was good for them to obtain it.

At the first elections under the new Constitution (1856), every member of the Ministry who appealed to an electorate for the Assembly secured his seat in spite of opposition. The country members were almost to a man respectable, and were numerous enough to hold in check the partisans of O'Shanassy, even when combined with the turbulent representatives of the gold-fields. But the hearts of some of the Ministry failed. They apprehended defeat, and determined to betray the Constitution. Although Captain Pasley in his canvass declared that the Constitution ought to be tried before being mutilated, his example was not followed by his colleagues. A junto in the Ministry resolved to foil O'Shanassy by a popular counter-proposition. The opening speech of the Acting Governor informed the Houses that they would be "asked to extend the basis of the suffrage," but not "during the present session to make alterations in the main features of the Constitution."

The measure brought in to fulfil this pledge gave the suffrage to "every male person of the full age of 21 years". Members who usually supported the Government were besought to assist them on the ground that, if O'Shanassy should defeat them, he would propose something worse;—the Government proposition being in such conferences admitted to be bad. It conferred the franchise on freeholders of an estate of the clear value of

£50, or of a yearly value of £5. No man could have more than one vote in a district, and the freeholder's vote conferred no special privilege on him in the district in which he resided, but he might, as a holder of property, vote in a different district if he could visit it at an election. Only the ability and reputation of Mr. Stawell prevented those, whose votes were solicited by the Ministry, from refusing to support a measure privately admitted to be bad, while publicly proposed by the sworn advisers of the Governor. Through his energy the Ministry escaped defeat for a time, but when he became Chief Justice early in 1857, the end was near. Mr. Childers, who had ever leant upon the strength of Mr. Stawell, deserted the remaining crew, and in a few days O'Shanassy was called to the helm. He took, as one of his colleagues, Mr. Foster, who, as Colonial Secretary in 1854, was howled out of office for doings which O'Shanassy had denounced. Duffy also was made a Minister, and his appointment in those days shocked the public sense so much that the ill-assorted union was doomed to brief duration. Mr. Haines returned to office with abler colleagues than O'Shanassy had procured; but they were nearly all committed to the proposed revolution in the franchise.

Mr. Michie, the Attorney-General, and Mr. David Moore, had advocated it in 1856; Mr. McCulloch, who became Commissioner of Customs, was one of the class common in Scotland, who vote at large for anything called liberal,[1] and assembled in thousands in Edinburgh, in 1793, in honour of the principles of Marat. Mr. Ebden, who became Treasurer, was wiser, but by the acceptance of office with his new colleagues was powerless, even if he had been willing, to stay the stream. Mr. Mitchell (who was Chief Commissioner of Police at Sandhurst, in 1853) represented

[1] Maurice Margarot, who was transported from Scotland in 1794, thought that Scotland was then as revolutionary as France. He was a delegate to Edinburgh from the London Corresponding Society, which traded with the French Convention. The object was, with Margarot, to copy that Convention. In his diary he recorded: "At Pennycuick there are 174 men for a reform, and four against it; viz., the parson, the precentor, the exciseman, and the schoolmaster." Though Margarot's name is joined with Gerald's, Skirving's, and Palmer's, on a monument in Edinburgh, it is proper to remember that those enthusiasts had little in common with him, and that, to use their own words, they "rejected and expelled him from their society."

the Government in the Council, and the Council passed the Bill without a division. It became law in November 1857. Any man might vote for a candidate for a seat in the Assembly, and any man might be a candidate. *Occupet extremum scabies* became a meaningless phrase in Victoria. No man was to be deemed inferior, or behind another. To fasten the doctrine firmly upon the public apprehension, a provision in the Constitution Act[1] was abrogated, because it aimed at securing a minimum of intelligence so far as education could guarantee it in the voter. By the new law, every one unable to read and write was ranked as the equal of the most learned in choosing legislators.

Both sides of the House being, on various grounds, pledged to the contents of the Bill, it became law without difficulty, although three Ministries existed during the session, which lasted from 21st November, 1856, to the 24th November, 1857. As early as in 1858, Mr. O'Shanassy was again in office, and again Mr. Duffy was his colleague. In the Council Mr. Henry Miller represented the Government. In that year further divergence between the constitution of the two Houses was created. The original numbers of members were thirty in the Council, and sixty in the Assembly. Without proportionate augmentation of the Council, eighteen members were added to the Assembly. Nor was this all. In order to destroy one by one all provisions to ensure delay, if not deliberation, a Bill to shorten the duration of Parliaments was sent from the Assembly; and though the Constitution required an absolute majority to sanction such a change, the Council, without dissent, passed the Bill through all its stages in two days. In process of time eight additional members were added to the Assembly; but in 1879 none had been added to the Council.

It may be convenient to mention here an attempt to corrupt the rolls for the electoral provinces of the Legislative Council. The Constitution Act, which established the property qualification (freehold of the clear value of £1000, or of clear annual value of £100), did not provide machinery for excluding fraudulent claims. Many districts had then no local municipal

[1] Clause xii. ". . . Provided, lastly, that no person who shall attain the age of 21 years after the expiration of two years from the passing hereof shall be entitled to be registered unless he shall be able to read and write."

representation, and therefore no ratepayers' rolls could be availed of in ascertaining whether a claimant of a vote was entitled to it by the value of his property. There were Revision Courts, and an elector could object to the retention of the name of a claimant, but there was nothing in the Electoral Act to compel the revising magistrates to test the validity of a claim. They might accept the mere assertion of the claimant, although he might, perhaps, have no property at all, or what he had might be worth only a tenth of the amount required by law.

Some members of a political "Convention," formed in Melbourne, in 1857, to promote what were styled "liberal principles," determined, in 1858, to overwhelm the lawful voters by fraudulently adding to the rolls hundreds of names of persons possessing no legal qualification. It was almost by accident that a magistrate observed that the new claims made in one district outnumbered many times the existing roll. The revision was postponed, with a view to obtain evidence from the district, situate a few miles from the place where the Court was held. It appeared that the active agent in the fraud was a man who had once kept a shop in the district on which he chiefly expended his energies. There he had been fined for unlawfully selling spirits, and he was determined to revenge himself, although he had left the district. His plan was simple. He extracted from the existing roll of electors for the Assembly the names of all freeholders who would, in his opinion, support his political views. Not one of them possessed the legal qualification. For the province he thus put forward more than 1400 claims; about half of them were for the district where his offence had been punished. The chairman of the revising magistrates, convinced that the proceeding "was an audacious fraud," intended "to stuff the roll of the district," [1] joined in striking off the names which witnesses in Court proved to be unfit to be retained. Had they been retained, it was probable that, in the periodic election for the province in 1858, a member would have been returned by votes, not one of which

[1] Evidence of Chairman, Q. 818. Legislative Council Proceedings, Victoria. 1858-9. Report of Select Committeé on South Province Electoral Rolls. As I revise my work I call to mind that the active agent in the fraud was in Her Majesty's gaol in Melbourne in 1882 in consequence of misprision of other men's goods.

existed by virtue of the Constitution. A Select Committee was appointed by the Legislative Council to report on the subject. It suggested various methods for preventing similar frauds in future, but no complete check was applied until 1868. In the mean time, though no wholesale fraud like that of 1858 was attempted, many claims were based upon property which neither by clear nor by annual value entitled the claimant to a vote.

In 1868 municipal institutions had spread throughout the territory. Ratepayers' rolls existed. Mr. (afterwards Sir) Charles Sladen, then a member of the Council, succeeded in carrying a Bill which, while it reduced the suffrage from £100 to £50 of annual value, established the principle that in all cases the test of value should be the ratepayers' roll. He thus both enlarged and purified the electoral body. Honourable men, who, owning property worth more than £50 and less than £100 a-year, had not claimed votes, were enrolled. Unscrupulous claimants who had secured votes, though not possessed of property worth £30 a-year, were purged from the rolls. The reform was far more substantial than the public knew at the time. It speedily raised the roll throughout the colony from about 11,000 to 28,000. It eliminated a large number of persons who, having obtained votes by fraud, were not likely to use them for a good purpose. Before this wholesome change was effected the relations between the two Houses were to be strained to the uttermost by the unconstitutional acts of a Ministry supported by the Assembly in a manner now to be told.

The question of Money Bills, though raised for tyrannical purposes in later days, did not cause any inconvenience during the Parliament convened in 1856. The Constitution Act enabled "the Legislature" to define its privileges under a restriction that they should not "exceed those now (1855) held, enjoyed, and exercised by the Commons House of Parliament or the members thereof." Each House was specially empowered to adopt Standing Orders, which when approved by the Governor were to be binding, but no Standing Order which affected the proceedings of the Chambers collectively was to be "of any force" unless adopted by both bodies (sec. xxxiv.). It might have been supposed that these provisions would have averted disagreement. The Council was in express words empowered to reject but not

to alter "all Bills for appropriating any part of the revenue, and for imposing any duty, rate, tax, rent, return, or impost" (sec. lvi.).

The two Houses agreed upon certain joint Standing Orders for the conduct of inter-cameral business, amendments in Bills, their presentation for Royal Assent, &c. All but the Appropriation Bill were to be presented by the Clerk of the Parliaments. The initiation of Appropriation Bills (vested specially in the Assembly) justified the exception. But Dr. Palmer, the President of the Council, was studious and able; and, if on no other ground, the fear of being worsted in argument restrained the leaders of the Assembly from putting forward the monstrous claims which their successors were to advance. The fact of the passing of the House of Commons' resolution of 3rd July, 1678 (cited at the beginning of this chapter) was recorded amongst the Standing Orders of the Commons, when they were collected and published for the first time by order of the Speaker in 1854. In face of the prompt denial by the Lords of the spirit and letter of the resolution, it was perhaps thought unprofitable to do more than record that it was passed.

The Assembly in Victoria did not adopt the resolution in their Standing Orders, but copied a somewhat ancillary or modifying Order, which declared that the Commons would not insist on their privileges in certain cases in which penalties, forfeitures, or fees, might be dealt with in Bills or amendments emanating from the Council. But it did not appear that these guarded privileges were other than those conferred by the Constitution Act as to initiation of Bills. Members who had assisted in passing the Constitution Bill were on the Standing Orders Committees which framed the separate and the joint Orders for both Houses. They were well aware that the only restriction imposed upon the Council was with regard to initiation and alteration of certain Bills. One of the Standing Orders adopted by the Council provided for the manner in which questions of finance should be considered. No exception was taken to it, the Governor approved, and it became binding under the Constitution. But power puffs up its possessors. There were occasional symptoms that the Assembly desired to encroach upon the position assigned by the Constitution to the Council, but no serious differences occurred until 1865. The Council in

the interim rejected some important measures. Several Bills to abolish State aid to religion were thus dealt with. Payment of Members of Parliament was rejected more than once. Many Bills incidentally involving taxation were amended by the Council. The amendments were sometimes wholly, sometimes partially, agreed to, and occasionally were not agreed to by the Assembly. On one occasion (February 1859) the Council was so ill-advised as to alter an Appropriation Bill. The alterations were in themselves trivial, but as they violated the letter of the Constitution, the Council explained that one of them was merely a correction of an error in the title, and the other "intended to further the meaning of the Legislative Assembly as expressed" in a note in a page of the Bill.

The Assembly refused to entertain the amendments on the ground that the Council was prohibited by the Constitution Act "from making any alterations in the Appropriation Bill," and the Council did not insist on the amendments. In 1863, however, the Assembly agreed to amendments made by the Council in a Bill repealing a provision in the Constitution, for staff and other expenses of the Governor. In dealing with Land Bills it was not denied that the Constitution Act vested the control of Crown Lands "in the Legislature" in such a manner as to leave each House unfettered. Copying Wentworth's words, the Victorian Constitution provided that all Royalties, mines, and minerals should similarly be vested.

Although the franchise for electors to the Council remained for many years as originally fixed (£100 annual value of freehold being the property qualification) there were symptoms that the opinions of the voters were tending to assimilation in many respects to those of electorates of the Assembly. Mr. T. Herbert Power, one of the most highly-esteemed members for the South Province, Dr. Hope of similar repute in the South-western, were discarded at the periodic elections in 1864, and inferior men, holding popular opinions on the land question, were preferred. A prudent Ministry, even if incapable of high or patriotic aspirations, might have availed itself of the working of public opinion within the lines of the Constitution. The elections of 1864 afforded encouragement to such a Ministry while they gave warning to the Council. Moreover, the general

election of the Assembly in the same year was largely influenced by a desire to pass a Land Bill proposed by Mr. Grant. But neither prudence nor patriotism guided Mr. James McCulloch, the Premier. Mr. G. Higinbotham, a theoretical enthusiast, steeped in a mixture of the ideas of John Stuart Mill and the French iconoclasts of 1789, was the Attorney-General. His personal character was so much respected that the Cascas of Victoria sheltered themselves under his name, believing that what would appear offence in them, "his countenance, like richest alchymy, would change to virtue and to worthiness." Mr. Michie, incisive in debate and repartee, was Minister of Justice. He, like Mr. Higinbotham, was a pronounced free-trader. So also was Mr. McCulloch. Mr. Verdon, the Treasurer, was fluent in speech, fluid in principle. A ship-chandler at Williamstown, he had busied himself with municipal affairs, had become popular, and entered Parliament. He had been Treasurer in a former Ministry expelled for its misdeeds, but allied himself in 1863 with some who had expelled it. His politics were thought to centre in himself. Mr. J. M. Grant, the hero of excited meetings in Melbourne in 1854, was Minister of Lands in 1864. There was a Minister of Mines who was one of the numerous class at the gold-fields who had already exercised baneful influence upon public affairs. An Irishman who had graduated in the school of hatred to England, he had equipped himself in America with the phrases which Professor Lowell held up to reprobation in the 'Bigelow Papers,' and was a power in the land where, but for the resolution of Sir C. Hotham, those phrases might possibly—at least for a time—have been accepted as canons of State. Mr. J. G. Francis was Commissioner of Trade and Customs. Because he had been successful as a merchant, it was presumed that he was sagacious. When he spoke he disappointed his admirers. He floundered amongst words, of which, if he knew the meaning, it was manifest that his ideas were confused. Yet he was to furnish the occasion for what was known as the first "deadlock in Victoria."

Bastiat has shown how things which are seen operate upon the ignorant, and how more numerous and weighty unseen conditions escape attention. This truth was to be confirmed in Victoria. Free-trade and protection are banners under which

there is no immorality in enlisting, although it may be foolish to reject material good which Providence gives. It was doubtless absurd to deny to a gold-producing community the free power to exchange its gold for the products of other lands. But it was a blunder which was not crime. The strife in Victoria was conducted as if it was the latter. Amongst the most procacious of Victorians in the older settlements the dwellers in Geelong had ever held a front rank. There, the idea that protection of local manufactures was the passport to man's highest good was early worshipped. In its concrete form it meant that if a shoemaker could prevent the importation of shoes, or cause the imposition of a sufficient Customs' duty to enable him to demand an arbitrary price for his labour, the shoemaker would be happy and good. Other artisans applied the principle to their own handiwork.[1] In towns and suburbs where artisans congregated the principle found votaries. Each sought to enhance the profit on a certain article. The unseen things—that prices of many other articles would be enhanced—were not considered, although the point and grace of Bastiat had been bestowed upon them. Men are passionate rather than logical animals. When in the ferment of opinions the demand for protection began to spread, the confusion in the chaotic mind of Mr. Francis found vent in a proposition for a revision of the tariff with a view to protection. The fumes from the nether regions intoxicated him. The inspiration which he drew from obfuscated depths he delivered from his tripod at the Custom-house—the temple in which he officiated—and, like some ancient Pythians, he was obscure in his deliverances. But there was no doubt that the smoke in the Victorian Delphos came from caverns where there was fire. Mr. McCulloch, at a general election held in 1864, scattered incense upon it. His professions as a free-trader deterred him from openly advocating protection, but he hinted at a "revision of the tariff." The chasm evolved more fumes than before, and

[1] One of the most amusing instances of blundering afforded by travelling-bag authors, who visit a country for a few weeks, was shown in Sir Charles Dilke's work, 'Greater Britain.' He probably met some enthusiast who entangled him. He extolled the patriotism of the artisans in Victoria in advocating protection, because, as it was clearly injurious to themselves, they could only be actuated by a self-sacrificing devotion to the supposed good of posterity.

emitted an Assembly more prone to protection than McCulloch had expected or liked.

The Governor (Sir Charles Darling) pronounced the oracle to the Houses in November 1864. "Your early attention will be called to a measure having for its purpose the re-adjustment of the tariff." There would also be a measure dealing with the constitution of the Council in order to bring it "more into harmony with the Constitution and with public opinion." The Council, which had just lost by force of public opinion two of its most esteemed members, and saw their places filled by less accomplished substitutes, promised to give "grave consideration" to the contemplated measures. At that date the Government was represented in the Council by a responsible Minister, Mr. Hervey. The second reading of the Bill to amend the Constitution was moved in January 1865. Fourteen members voted for it, and the same number against it.

Though the President voted with its supporters, he declared that as it had not received the concurrence of an absolute majority of the whole Council, the Bill was lost. Foiled in their efforts in the Council, the Ministry conceived the idea of coercing it. Their supporters in the Assembly were heterogeneous. The Attorney-General, Mr. Higinbotham, had openly declared that he would leave any Ministry which would propose any measure savouring of protection: but without support from advocates of protection, and from members of the gold-fields, the Ministry could not hope for a significant majority in the Assembly. Before the Houses met in November, Sir C. Darling, well informed by his Ministers, told the Secretary of State that popular opinion as shown by the general election was favourable to what is designated "Protection to native industry by means of levying import duties." The members for the gold-fields clamoured for the abolition of the export duty on gold. The abolished license fee had been the object of hatred, when levied upon the individual miner. The export duty he had only grumbled at as all taxes are grumbled at. But the extraction of gold, once due to individual energy of each digger, had in 1865 become the work of companies. The members for the gold-fields were generally shareholders, and were intimate with the promoters of companies. The Government proposed to

diminish, but not to abolish, the export duty. The Assembly outran its guides, and resolved that the duty ought to expire at the end of 1866. It was supposed that the Legislative Council was hostile to an abandonment of free trade, and averse to throw away the Royalty on gold collected at the Custom-house.

Mr. McCulloch resolved to bribe protectionists and enemies of the gold duty by tacking his measures to the Appropriation Bill, and thus coerce the Council to pass the composite Bill, or to furnish him with a popular cry, which might in the end annihilate them or their influence in legislation. This infraction of the Constitution and of Parliamentary usage was not proposed until the Government conceived that they could not satiate their gold-fields' supporters except by a violent course. After the rejection of the measure to alter the Constitution, the Houses were busy with numerous Consolidation Bills, and (though not without much discussion and conference) an amending Land Bill was passed in March. On the 15th February the Assembly passed resolutions reducing certain duties and imposing others, and ordered that a Bill should be thereupon brought in. On the same day a Custom and Excise Bill was introduced, but no copy of it was supplied on the first reading, although the second reading was made an Order for the ensuing day.

It may be surmised that some of the Ministers shrank from the act they were about to commit. Their conduct betokened doubt or fear. Instead of acting decisively in the customary manner to protect the revenue by receiving cash for the new rates of Customs duties, Mr. Francis accepted bonds. The Bill, ordered to be brought in to carry out the tariff resolutions of the House, was not produced. While men were wondering at the delay the Ministry were plotting at once to overbear the Council, and to outwit the members for the gold-fields, who had persuaded the Assembly to abolish the gold duty. The Tariff Bill did not appear, but the promised Customs and Excise Bill appeared with more than 500 clauses; and tacked to it, in a brief schedule, were the resolutions concerning the tariff. It was noticed that they were not framed in compliance with the demand for the total abolition of the gold export duty. It was to remain at 1*s.* an ounce. For a time the Government again hesitated; but, on the 2nd March, without attempting to

proceed with the Customs Bill, Mr. McCulloch announced that, after the most earnest consideration, it had been resolved to include the ways and means in the Appropriation Bill, and to throw the responsibility on the Legislative Council of rejecting the Appropriation Bill if they were so disposed."

Exception was taken at once to such a breach of constitutional propriety, but McCulloch, who can hardly be thought so foolish as to believe what he said, replied that he was only pursuing the "practice followed by the British Legislature." It was not supposed that he had mastered constitutional problems; but the friends of Messrs. Michie and Higinbotham were grieved when those gentleman contended that the tack was in strict conformity with Lord Palmerston's example in tacking the Paper Duties Bill to a Revenue Bill in 1861.[1] Lord Palmerston tacked nothing to the Appropriation Bill, even when the Upper House had rejected one of his measures. McCulloch tacked two incongruous measures to the Appropriation Bill, before the Council had been asked for an opinion upon them. The Speaker of the Assembly, Sir Francis Murphy, was a waiter upon convenience, and it was convenient for him to flatter the members of the House and the Ministry. He made no sign of condemnation. On the 9th March Mr. O'Shanassy raised his voice against the proposed scandal, but was not regarded. By 46 votes against 23, the Ministry carried their point, and the Speaker left the chair.

On the 23rd March, in reply to a question, the Council were informed that the Government intended to "introduce the new tariff clauses into the Annual Appropriation Bill." On the 28th Mr. Sladen obtained a Committee of the Council to search for precedents on "the subject of the tacking of Bills," and on Tax

[1] The Lords rejected the Paper Duties Bill, 21st May, 1860. The Commons passed resolutions affirming their own powers, July 1860. The Appropriation Bill—without any tack—went to the Lords, 23rd August, 1860. It is melancholy to find educated men asserting and inducing the unlearned to believe that Mr. McCulloch imitated Lord Palmerston. What really was done in England was to submit to the loss of the Paper Duties Bill in 1860, and in 1861 to include the repeal of the Paper Duties Bill in a general Customs and Inland Revenue Bill, in a manner which Lord Derby admitted was "fairly within the competence" of the Commons. The Lords had the power to divide the Bills if they pleased, he added.

and Appropriation Bills. On the 4th May the Council received the report. On the 16th, after adjourned debate, it was resolved without a division to insist on the Imperial Parliamentary practice and usage, with regard to matters which might be included in one Bill; that clauses of Appropriation could not conformably with that usage be introduced into Bills of Aid or Supply; and that clauses of Aid or Supply, in like manner, were barred from an Appropriation Bill. It is unnecessary to advert to the debate further than to say that the Minister in the Council urged that his colleagues would not be honest to their supporters if they did not "try all possible ways to secure the passage of the measure. They had a simple duty to perform." Though they would not venture upon a division in the Council, the Ministry pursued their course in the Assembly.

On the 13th July the usual motion was made preparatory to the introduction of the Appropriation Bill. On the 14th the Treasurer (Verdon) was ordered to bring in the Bill. Meanwhile the Customs' Duties Laws Amendment Bill was set down for a second reading. In it were inserted the tariff clauses. On the 18th July the Cabinet shuffled their cards afresh. Mr. Verdon on that day moved the second reading of a Customs Bill differing entirely from the one already seen. He had recast it.[1] The 543 clauses of the Customs and Excise Bill had dwindled to composite clauses nineteen in number. The total abolition of the gold export duty was conceded in the new Bill, from the 31st December, 1866. Appropriation, Supply, and Droits of the Crown, were inextricably mixed. The result was that the order of the House, that a distinct Bill should embody the tariff resolutions, had never been obeyed; that they had been inserted in a schedule to a Bill separately ordered; that the irregular Bill was abandoned, and a mongrel changeling, still more irregular, was put forward in its place.

Mr. Verdon affected to believe that the debate in March had disposed of the question. But he could not on that basis explain

[1] The title was "a Bill for granting to Her Majesty certain duties of Customs, and for altering certain other Duties, and for applying a sum out of the consolidated revenue . . . and for appropriating the supplies . . . and for other purposes."

why in the new Bill the Ministry had yielded to the clamorous gold-fields members, and had agreed to abolish altogether the gold export duty. He referred slightly to the objections to tacks, but said: "it had never been necessary to take such a course either here or elsewhere. . . . If even it became necessary to create a new practice, it was open to the House to do so." His learned colleagues would explain that no violent departure from precedent was involved in what he proposed. Mr. Verdon could hardly believe in what he said, and no one believed in him. All eyes were turned on the Speaker. If he were to allow the mongrel Bill to be read a second time, without a warning from the chair, he would proclaim his ignorance of Parliamentary practice, or his want of resolution to enforce it. To enforce it would give unpardonable offence to the Ministry. He took a middle course. He showed that the Bill was not the Bill ordered (on the 13th) to be brought in, and that therefore, as it had not been read a first time, it was not regularly before the House. But, while he professed to prophesy for the law, he yearned for the favour of those who would break it.

Doubtless a Speaker of the House of Commons (1841) had condemned the inclusion of appropriation clauses in a Bill to which they did not belong, but what then? There was only a Standing Order in the way. He shut his eyes to the fact that the Constitution Act bound the House to the English usage, until under the law other usage might be adopted, and approved by the Governor. One of the adopted Orders so approved, bound the Assembly to follow the practice of the House of Commons. The pliant Speaker said that if the House would suspend that Order he could put the question for the second reading of the Bill. He was not ignorant that if the Order were out of the way, or if it had never existed, the House would remain bound by the Constitution Act, and that no Standing Order affecting the mutual proceedings of the Houses could be effectual, unless adopted and approved by both. But his flattery of the House did not appease the Ministry. The Attorney-General rebuked him for not speaking sooner. He sneered at the English Speaker of 1841. He (Higinbotham) "sincerely believed that the present measure was no violation of the rule (against tacks);

but he was prepared to say that if it was a direct violation of it, the House would be justified under present circumstances in departing from it." The smitten Speaker writhed in his chair, and explained that "if the House was of opinion that this was the same Bill to which the Order (for bringing in the Bill) applied, he had no further objection to offer; but if on the other hand the House thought it was not identical with the Bill introduced, he could not put the question for the second reading to the House according to the Standing Orders."

The hour for brief adjournment arrived, and private persuasions were brought to bear upon the troubled Speaker. He was told that he ought to have explained his views in March if he thought the tack improper. He returned to his chair to pacify his tyrants. He pleaded there that in March no question was submitted for the Speaker's decision. But he "never disputed the right of the House to send up the Appropriation Bill" as proposed. He said that the House had a perfect right to do so, but his objection "was that there were certain forms necessary which had not been observed." He knew, but no one reminded him that the repeal of a clause in the Constitution Act was requisite to justify the course which he admitted to be forbidden by the Standing Orders. His humiliation was felt by all, and with mock deference he was asked to suggest in what manner the House ought to proceed. The course had been agreed upon behind the scenes. The House had only to read the Appropriation Bill a second time, to read the Customs Bill a second time, and then to refer the Bills to the same Committee, with an instruction to join them together. All knew that he had already affirmed that one of the Bills had not been read a first time, but pity or shame prevented further exposure.[1] Amid cries of "Where is the Bill?" the Treasurer carried the second reading of a Customs Bill, to which he gave the title, "Supply and Appropriation;"—but not before the Speaker had called a

[1] An Appropriation Bill was issued afterwards by the Government with four clauses and schedules. This when conjoined with the Customs Bill had 14 Customs clauses, four Appropriation clauses, and one clause limiting the operation of the Bill to 20th January, 1868. Two schedules repealed various Customs laws and contained the tariff. Two schedules contained the estimates and supplementary estimates.

member to order for alluding to the tariff items which in the Speaker's opinion belonged to another Bill.

At six o'clock on the 18th July, he would not allow the Appropriation Bill to be read a second time, because the tariff was attached to it. At eight o'clock on the same evening he would not allow a member to discuss the tariff items as they appeared in the Bill before the House. By 38 votes against 19 the instruction to unite the Bills was carried by the Treasurer. In Committee Mr. Francis admitted that the procedure of the Ministry "might be despotic, but he believed in a wholesome despotism." The Speaker, alarmed at the words of his tyrants, essayed again to modify their method of action. He did not deny any rights of the House, but it was "contrary to the practice and usage of Parliament to attach revenue clauses to appropriation clauses." Mr. McCulloch coarsely rebuked him. "The time had gone by for the Speaker to take such an objection. He regretted to find the Speaker not supporting the rights of the House, and he did not shrink from stating as much." In spite of the argumentative triumphs of Mr. Gillies and Mr. O'Shanassy on the Opposition bench, the third reading of the composite Bill was carried by 41 votes against 16.

After the conjunction of the two Bills they received in the proceedings for which the Speaker was responsible the brief title—"Supply and Appropriation of Revenue Bill, 1865." "Amidst much laughter" (the reporters said) the Bill was ordered to be sent to the Council. Some of the majority like sheep followed their leaders; some were hot with impulse to carry a disputed point; few doubted that it would be carried; still fewer would have striven to carry it at the cost of disorder or bloodshed. Amongst them it was suspected that the man most urbane in social intercourse would, for a theory, become the most implacable in wreaking his will upon his opponents. At this period the responsible Minister in the Council succumbed to commercial pressure, and forfeited his seat in Parliament. The Government did not attempt to replace him. They might well doubt if any electorate for the Upper House would re-elect any advocate of their proceedings. They fell back on the evil practice more than once tolerated before, and persuaded an old gentleman, personally respected but unaccomplished in reasoning

and in speech, to carry their messages and formally move their Bills in the Council. When their mongrel measure reached the Council the President thought it right to make the brief title more truthful, and on the business paper it appeared as a "Customs Import Duties, Gold Export Duty Act Amendment, Appropriation Bill." Read a first time on the 21st it was to be read a second time on the 25th. On that day the President, Sir J. Palmer, called attention to the clause in the Constitution which made "the rules, forms, and usages of the Imperial Parliament binding on the Colonial Legislature in the absence of any joint Standing Order to the contrary." The Bill sinned against those rules. "If such an irregular proceeding were permitted to mature into a settled usage, the veto of this House on this whole class of Bills would be abolished, although the power of rejection of such Bills was conveyed in language as clear and unambiguous as that which conveyed to the Assembly the power of originating Bills of taxation and supply." Asked whether the Council could divide the Bill and deal with its portions separately, the President ruled that it was precluded by the Constitution Act from doing so. Thereupon Mr. Fellows moved:

"That as by the 34th section of the Constitution Act the rules, forms, and usages of the Imperial Parliament are required to be followed, so far as the same may be applicable to the proceedings of the Legislative Council and Legislative Assembly respectively, until altered by some standing rule or order to be adopted by both the said Council and Assembly; and as it is contrary to those rules, forms, and usages, which have not been so altered, that any clause of Appropriation should be introduced into a Bill of Supply; and as this Bill of Supply contains a clause appropriating the supplies granted during the present session of Parliament to the service of the years 1864 and 1865, and moreover regulates the disposal of minerals in the waste lands of the Crown (over which this House claims to exercise equal power with the Legislative Assembly), and therefore encroaches upon the just privileges of this House, the subject matters of this Bill be not considered until they are dealt with in separate measures, and that this Bill be laid aside."

By 20 votes against 5 the amendment was adopted. The intellectual inferiority of the 5 was deemed as marked as the numerical. The questions of protection and free trade were not involved in the amendment but they were not disjoined from

the Bill in the public mind. Petitions had implored the Council not to pass the tariff. To one petition there were 24,000 signatures of ardent free-traders. But the Ministry relied upon finding many more than that number of fiery protectionists, among the artisans in towns, and miners at the gold-fields. The ignorant were with them, and were powerful. They resolved to set class against class rather than abandon their Bill. Their logical difficulties were internal. Mr. Michie had in a public lecture formally denounced protection as robbery by Act of Parliament. Mr. Higinbotham had vowed that he would shake the dust off his feet and quit a Ministry which would sink into such an abyss of folly as to desert any principle of free trade. They were intellectually the giants of the Ministry, and even its friends marvelled when the blind were seen leading those whose eyes were open. When a crowd is put into motion it rushes headlong like a herd across the prairies, few seeing whither they go. It was on the gregarious impulse that McCulloch relied. If it had enslaved Michie and Higinbotham, what might it not do with the crowd? The first step taken by the Ministry aimed at making retreat impossible. Two days after the loss of the mongrel Bill McCulloch moved resolutions, three of which he untruly declared to be the "very resolutions submitted to the House of Commons" in 1860 by Lord Palmerston. Lord Palmerston's second resolution frankly admitted that the Lords had exercised their power to reject Bills. McCulloch eliminated that admission. Lord Palmerston had not included the question of appropriation. McCulloch dragged it in. The fourth resolution was all his own, and scarcely one word of it was correct. It averred that the Bill laid aside was "framed in accordance with the rules, forms, and usages of the Imperial Parliament;" and that the Legislative Council had disregarded the rights of the Assembly; and it pledged the latter body to entertain no "further or other Bill for the appropriation of supplies" for 1865, until the tariff approved by the Assembly should be adopted by the Council. Thus the quarrel was made to hinge on the question of protection. The resolutions had been previously agreed to at a meeting of McCulloch's parliamentary supporters, and were carried in the House without a division.

On the 28th July, the Treasurer notified in the Government

'Gazette' that payments of salaries, wages, &c. would be suspended "until the necessary authority" could be obtained. The liabilities for July remained unsatisfied throughout August. It was not obscurely threatened that the convicts in the gaols would soon be let loose upon society in order to terrify the Council. There was an Act for enforcement of claims against the Crown. When the tacked Bills were thrown out persons who had paid the new duties exacted by the Government in anticipation of the passing of the tariff, sought to recover their payments. The Attorney-General in acknowledging service of a petition warned the petitioner that the Government would resist to the uttermost—"this attempt to recover moneys legally paid under the established sanction of the Legislative Assembly, and that the Act of Parliament intended to be passed to give legal form to the resolutions will be retrospective in its operation, and will subject all persons who endeavour by legal means to defraud the revenue to the cost of their litigation." This promise of persecution which might reach any man's home was calculated to alarm even a community accustomed to observe the freaks of those "dressed in a little brief authority." If the man who boasted that if the "tack" were in direct violation of law and usage, it should nevertheless be adopted, would accuse of fraud those who might resort to a legal tribunal to test their rights, it seemed that life and property might be unsafe if Mr. Higinbotham could have his way. The law pronounced against the validity of the duties levied, but the Government continued to collect them. After the loss of the tacked Bills a conference was held between the two Houses which involved discussion of the points of difference about their powers. A Bill authorizing construction of waterworks was amended in the Council and returned to the Assembly early in July. After the laying aside of the tacked Bills, the Assembly returned the Bill (26th July) with a message disagreeing with certain amendments as interfering with their privileges. The alteration of the limits of a district, the giving of a right of appeal against a rate, and a provision exempting districts from the operation of the Act in default of compensation to existing companies, were cited as breaches of the privileges of the Assembly. The Council (2nd August) sent back cogent reasons proving that the powers

conferred by the Constitution Act on the two Houses in no way justified the claims of the Assembly, and generally defending the amendments made by the Council in the Bill. At the same time they appointed six members to confer with a like number of the Assembly, and requested the Assembly to reciprocate. The Bill was much desired; and the Ministry (8th August) were fain to consent to the conference. Five meetings were held. The Waterworks Bill was on the table. The tacked Bills were in the minds of the members. Mr. Michie, thinking that the practice ought to be the same in the colony as in England, put the Constitution aside, and declared that the authority to reject Bills, expressly enacted "in the Constitution Act, must be read with this limitation, that the Council can legally but not constitutionally reject, for as they cannot be seized of the thing at all to give their assent without their having the power of rejecting, appropriate language has been used under these circumstances." He quoted the Paper Duties Bill of 1860, as an example in his favour, although the Lords threw out the Bill professedly as a temporary arrest, and the Commons did not send up another Bill until the following session. It is fortunate for the reputation of some lawyers that their necessities are held to excuse the use of indefensible arguments. Another distortion to which Mr. Michie submitted his own mind in endeavouring to distort the Constitution was equally remarkable. If the Council could reject a Money Bill, though it could not initiate one, successive rejections would "at last bring round to the Council the power of originating" such Bills. He asked for an answer to this argument. A member replied: "The only answer I have to give is this: if two men are travelling, and one wishes to go in a northerly direction and the other declines to do so, according to this argument the declining to go northwards is positively initiating a journey in another direction." There were four lawyers on the side of the Assembly, and two, Messrs. Fellows and Sladen, on that of the Council. After much speaking, a *modus vivendi* was found with regard to the Bill, but none with regard to the principles discussed. It was reported to the Council (22nd August) that "neither Committee had succeeded in convincing the other," but that both Committees had agreed to recommend certain amendments. To procure them, the Council

was asked to agree to certain amendments desired by the Assembly and to insist on others. The Council conformed. The Bill when returned to the Assembly was laid aside. A new Bill, framed to meet the view of the conference, was introduced, and after undergoing amendments was finally passed in October. While this collateral struggle was conducted, the Governor, Sir C. Darling, reported the state of affairs to the Secretary of State. A motion was carried in the Assembly (by 40 against 16) informing him that the tacked Bills had been laid aside "without message or communication to the Assembly," and praying him to adopt such measures as might "in the opinion of his responsible advisers be expedient or necessary" to satisfy public creditors. He had told his advisers that he would "adopt no step which is not strictly authorized by law." He would endeavour "to mediate between the contending parties." (In due time the Secretary of State approved (26th October) of the "intention to adopt no step which is not strictly authorized by law.") On the 29th August the Ministry essayed to effect their object through the Governor's mediation. In reply to the address of the Assembly he said that he could not sanction the issue of money unless the amount required were "legally available by an Act duly concurred in and passed by the three branches of the Legislature," and, affecting that the tacked Bills were still under consideration, he hoped that both Houses would restore intercourse on the subject "by conference or otherwise." To the Council he communicated copies of the address and of his reply; earnestly entreated them to display "an enlightened regard for the interests of the community;" and hoped that "active legislation with regard to the finance of the colony" would be "promptly resumed." They thanked him for his assurance that he would carry out the law, but (there being rumours afloat which they did not allude to) they hoped that he would not "become a party to any arrangement, by whomsoever proposed, which, though it may not violate the letter of any positive enactment, is opposed to its spirit and obvious intention." Their address was long. They were "desirous to agree to a Bill for appropriating the supplies in the usual and accustomed manner;" their reasons for laying aside the composite Bill were recorded, but it was not in accordance

with Parliamentary practice for either House when thus disposing of a Bill to send a message to the other on the subject. Having vowed to carry their tacked Bills, the Ministry resolved to use the Governor's authority in again averring (5th September) that the lost Bill was still "in possession of the Council." How the Ministry beguiled the Governor, was proved by the fact that on the same day on which he informed the Houses that he would strictly abide by the law, negotiations for evading it were commenced by the Treasurer, who asked various banks to open cash credits on the authority of the Governor in Council. Those who knew the Governor and Mr. Verdon had no difficulty in attributing to the proper person any duplicity which was evinced. Only one banker consented to co-operate. The only local director of it was Mr. McCulloch, the head of the Ministry. He was able to work in two camps. Five banks, because they could not legally aid him, declined to do so. The one which consented stipulated that the amounts advanced should be duly certified by the Audit Commissioners, and that the course proposed should be authorized by the Governor in Council. While he had before him letters from five bankers asking for further information to enable them to deal with what one of them called his "novel" request, the Treasurer obtained the Governor's consent (1st September) to an Order in Council authorizing him to make arrangements for payments by means of a cash credit.

On the 5th September, warned of the probable illegality of his acts, the Governor, by another Order in Council, authorized Mr. Verdon to borrow the sums required, and on the 6th that functionary did, under seal, "promise to repay to the" accommodating bank "all sums of money so lent as aforesaid." But neither he nor the bank deemed his promise valuable. They conspired to give a show of lawfulness to the result. The bank sued the Government on the 7th September for £40,000, and the Attorney-General by arrangement confessed judgment. The Treasurer, on that day, sent a clerk with a warrant to be countersigned forthwith by the Audit Commissioners. It contained £6 14*s.* 4*d.* added for costs. They found the form peculiar, and took time to consider it. On the 8th September they deemed themselves justified in signing, on the ground that the Supreme Court judgment made the money legally available, but they

guarded themselves by limiting their certificate to the payment to the bank, and not to the payments made by the bank.

On the 11th September they arrived at the conclusion that the Treasurer, being "a person in the public service," into whose "control" the borrowed money had passed, was bound under certain penalties (in Mr. Ebden's Audit Act) to pay it to a "public account," and deal with it in a certain manner. The Treasurer consulted his friends, and in ten days the Attorney-General decided that the Treasurer was not "a person" to whose "possession or control the money lent" had passed within the meaning of the Audit Act. "It was not money legally payable to the Treasurer." It was money which the bank might have refused to "lend, and which the Treasurer was under no obligation legally, or in the terms of the contract with the bank, to receive."

While these events occurred, men wondered at the audacity with which the Governor was asked to defy the law. When the explanation of them was afterwards published, their wonder was transferred to the slippery subterfuges with which, step by step, the Governor was urged forward and assured that all he did was legal. McCulloch had been trained in a bad school. In 1855 he had abetted a violation of the Constitution; in 1865, when thwarted in a rude assault upon it, he devised, or lent himself to, a scheme which was in effect a burglary upon the public chest. The operation was repetending. Mr. Verdon was to obtain a loan, the bank to file a petition against the Queen to recover the sum, Mr. Higinbotham to confess the debt, the case to be thus kept from trial, judgment to be entered by the prothonotary, the Governor to issue a warrant for payment of the debt and costs (although no defence had been set up), and the Ministry, composed of free-traders (excepting Mr. Francis), was to rely on the voices of protectionists in overbearing resistance to an evasion of law carried on in the name of law by perversion of law.

At this juncture the vacancy created by the retirement of the responsible Minister in the Council afforded an opportunity to test an electorate in the Eastern Province. A ministerial candidate was ignominiously defeated by Mr. Haines, who, after a visit to Europe, had returned to lament the mischief which

he and his co-mates had caused in the colony. Neither candidate had resided in the electorate, and the result might be taken as a fair proof of the electors' opinions. When the Governor, by advice, told the Council on the 5th September that the lost Bills were in their possession, he added, that "without violating the letter or the spirit of the law, he had (by advice) succeeded in making temporary and provisional arrangements" for defraying public expenditure.

On the 18th September he signed an argumentative despatch in defence of his conduct. The signature was probably all that he contributed. He was saturated with the views of others. Though the tack was resorted to without submitting the tariff in a proper Bill, "it seems probable (he said) that in this case it was the (Council's) intention to reject the tariff, as apprehended by the Assembly." On the claim of the Council to equal power over minerals derived from Crown Lands, he "saw clearly that it was impossible for the Assembly to make any advance towards an accommodation of the existing disagreement."[1] He insinuated that, "under the banner of what is here called free trade," certain interested importers were selfishly hostile to certain duties. He quoted the Paper Duties Bill controversy of 1860 after the manner of Mr. Michie. On the 20th September the Council resolved to address the Queen; to set forth the events of the session, to pray her to graciously consider them, and "to adopt such measures as may seem fit for maintaining in this colony the Constitution as by law established."[2]

The memorial of the events of the session and of the arrangements for emptying the Treasury was adopted in the Council by 17 votes against 4 on the 21st September. Although the mail

[1] Mr. Michie had in February declared that the gold export duty was "a rent or Royalty, distinguished from any tax from which no immediate advantage is gained." Several of Sir C. Darling's advisers had talked wisely on subjects on which they advised him otherwise.

[2] Some counter-petitions sent by Ministerialists entreated Her Majesty to "disallow the prayer of the memorial forwarded by the Legislative Council, approve the action taken by your representative, and support the Ministry and the Assembly." The Governor reported that the great majority of her subjects agreed with the petition that she would reject the prayer for the maintenance "of the Constitution as by law established." Several members of Parliament accompanied the deputation which presented the Ministerial petition to the Governor.

steamer was to depart on the 26th September, the Governor delayed the transmission of the petition till October. He wished to convey with it his comments. But on the 22nd September, in a despatch to the Secretary of State, he described the arrangement with the bank as one "of a very simple nature," and filled many pages with its justification. His advisers would "justify themselves to the Assembly." He enclosed a written opinion, of Mr. Higinbotham and Mr. Michie, that "Her Majesty's local Government has legally the power to enter into contracts . . . including contracts to borrow money for the payment of existing legal public liabilities."

On the 20th October he enclosed the petition of the Council in a lengthy despatch. He renewed his declaration that the tacked Bills were "impounded," not lost in the Council. He forwarded an opinion from Mr. Higinbotham that they were not lost, "although it is not very clear what is the precise effect, according to parliamentary practice, of the laying aside of a Bill." He sent extracts from their journals to show with what facility the Council passed Money Bills, and how "insignificant, therefore, was the alleged disregard of their legislative rights." He met the allegation that the arrangement with the bank was "not only collusive, but unconstitutional, if not revolutionary," by "an explicit assertion of its total want of foundation of truth," if it was the purpose to "allege that the so-called 'scheme' was concocted between me and my Ministers with the object, not of satisfying the public creditor, but simply of defrauding the Council of their right to reject or pass the Appropriation Bill, or of any other right."

He averred that "the Assembly," his "advisers as a body," and "the law officers of the Crown," did not regard as lost a Bill which was laid aside. In sixty-one paragraphs he defended all that he and his advisers had done, and denounced the Council and its supporters as "so fatuous as to believe that" he would be censured or recalled. Inspired by his advisers, or warmed into admiration of them, he declared that the "unequivocal expression of confidence in them personally, and of satisfaction with their general policy" (which the petition of the Council had), "evoked in all parts of the colony, except from those sections of the community to whose immediate interests that

policy does not minister," justified his adhesion to them. That any man could, from a sense of right, and without prospect of gain, desire the Constitution to be respected, was not conceivable in the mind of the framer of the Governor's despatch. Sir Charles Darling enclosed a complimentary address, in which the Assembly had thanked him for promptly "averting the anarchy and confusion calculated to result from the withholding by the Legislative Council of its assent to the supply and appropriation for the year."

One of the ministerial supporters in the Council sought to restore the lost Bills to the business paper. Mr. Sladen, on the other hand, sought to obtain the concurrence of the Assembly with an address to the Queen praying that the difference between the Houses as to the construction of the Constitution might be referred to the Judicial Committee of the Privy Council. The respective notices were on the business paper when the Council adopted their petition to the Queen (21st September). On the 3rd October, Mr. Sladen's motion, that it was expedient to have recourse to the Privy Council, was carried, and the Assembly were invited to appoint a Committee to assist in preparing a joint address. The Assembly retorted that "it was inexpedient, under any circumstances, that such differences should be referred as proposed," but they were willing to appoint a Committee "to confer upon the subject generally."

The message-carrier of the Government in the Council moved that the Council comply with the proposal of the Assembly. The Council (10th October) resolved, by 12 votes against 9, that as the Assembly had declared "its determination not to entertain any further, or other (Appropriation), Bill" for 1865 until the Council might have adopted the tariff in the tacked Bills—the Council was "precluded from inviting the Assembly to confer upon the subject of their message." Mr. Henry Miller, with whose name the reader is familiar, then appeared as intercessor. On his motion, amended by others, the Council resolved (24th October) that it was to be regretted that the Assembly declined to join in a reference to the Privy Council; that the Council were precluded from appointing a Committee as asked by the Assembly; but "as the Council are, and always have been, ready and willing, as far as they might consistently with

their constitutional rights and privileges, to confer with the Assembly," they would be prepared to appoint a Committee to confer, if the Assembly should think fit to appoint one to confer, as to the "construction of the Constitution Act." Six members who had voted for laying aside the tacked Bills opposed the resolution, but 12 members supported it.

The Assembly appointed a Committee of seven members, not on "the construction of the Constitution Act" as requested, but on "the subject of the differences between the two Houses" on the tacked Bills. One of the majority in the Council moved that a like Committee be appointed to confer "on the question —whether it is in accordance with Parliamentary usage to unite Supply with Appropriation, and to deal with the gold duty in one and the same Bill." Mr. H. Miller strove to make the reference general, but the special reference was affirmed by 15 votes against 7 on the 31st October; and a message was sent to the Assembly, "acquainting them that, as the Supply and Appropriation Bill was finally disposed of on the 25th July last, it could not be the subject of a conference," but a Committee had been appointed on the question as to Parliamentary usage. The Committee was chosen by ballot. Mr. McCulloch discovered that time was required to enable him to consider his position. His consultations lasted a week. On his motion on the 8th November, the Assembly regretted that the Council, by the "determination to treat the laying aside of (the tacked Bills) as a final disposition of that Bill by the Council," had "precluded themselves from fulfilling their intention to appoint a Committee to confer" generally on the differences which had arisen on the Bill.

In moving the resolution Mr. McCulloch feigned that the Council had ill-treated the Assembly by not explaining at an earlier date the significance of laying aside a Bill. However, he would now treat the tacked Bill as lost, and would introduce a new Customs Bill which would repeal a clause concerning units of entry; and he warned the Council that "if the repeal of the Units of Entry Act is thrown out it will be the duty of the Government, as it will be the wish of this House, to collect the Customs Duties under the Units of Entry Act (under which power was left to the Government to fix the units of entry on

goods). There is sufficient power within the four corners of that Units of Entry Act to enable the Government to collect the tariff as passed through this House, or indeed *any other tariff whatsoever.*"

This exposition of his ideas of constitutional government persuaded his supporters to adopt the proposed message to the Council. The Council subsequently replied that the Assembly appeared to be "under a wrong impression in supposing that the Council had only lately determined to treat the laying aside" of the tacked Bills as a "final disposition" of them, inasmuch as, "on the 25th July," they considered, and had ever since considered, them as finally disposed of.

Meantime, petitions in support of the "Constitutional party," as the Council's friends were styled, were sent to the Queen. Sir Charles Darling, in forwarding one of them, disparaged it as signed by somewhat less than a tenth of the adult male population, and could hardly believe that the "sense of alarm and insecurity" they expressed was seriously entertained by the "majority of the petitioners themselves." The remission and levy of duties at the Custom-house in defiance of a judgment of the Supreme Court,[1] the lawless abstraction of money from the Treasury,—under the glamour of his Ministers' advice,—were not, in his mind, calculated to excite alarm. A petition from a rural township furnished him with an opportunity of promulgating his views in the colony. He thanked the burgesses for assuring him that the public act for which he had been "assailed with personal opprobrium by a small section of the community" had "saved the colony from confusion and distress." "The spirit in which the small section" acted might be gathered from the attempts made to send into his "presence in the guise of a deputation the very men from whose lips" most offensive expressions had proceeded, and from "the grossly insulting language" of their organ in the press.[2] To the Secretary of State he wrote (November 1865) that, under the

[1] Mr. Higinbotham thus disposed of the judgment in a memorandum sent to England by Sir C. Darling: "Nor can the Government, acting at the instance and in support of the authority of the Legislative Assembly, allow the "decision of the Supreme Court to stop the collection of the duties."

[2] Enclosure in despatch of 24th November, 1865.

Act for enforcing claims against the Crown, the Government might have been compelled "to disburse by process of law every shilling they had contracted by means of loans." If the fact had been as he stated, it proved that there had been no need for him to use his authority in making the payments as he made them.

Little as Mr. Higinbotham respected as a politician a law he disliked, he strove by means of words to enmesh his opponents. Until 1865 the preambles of Money Bills merely declared their enactment by the Queen, with the "advice and consent of the Legislative Council and the Legislative Assembly." For the new Customs Bill he framed a preamble affirming that the Legislative Assembly was the sole grantor of supplies. He denounced as "fraudulent speculators" those who had brought actions to recover the duties unlawfully exacted, and the new Bill was carried by 39 votes against 14. It was retrospective, and a clause produced without notice provided that any actions or proceedings, "verdict, judgment, order, or decree" of the Supreme Court inconsistent with its retroaction, should be "set aside without costs." The Standing Orders were suspended, and the monstrous clause was passed. To members who, on the following day, objected to its insertion without notice, the Attorney-General replied that "substantially every person had notice." He had himself announced that all means would be taken to defeat the actions. "To give full effect to that intention it became necessary to introduce some supplementary words," and it was their own fault if members were absent at the time.

The press was not slow to impeach such language. But the Bill was sent to the Council on the 15th November. On the 16th it was rejected by 19 votes against 5. Its preamble, its retrospective interference with law, its subversion of the existing tariff without an appeal to the country, and other arguments, were fatal to it. When an appeal to the country had been once suggested, Mr. Higinbotham answered that the Government were "not going to give such a chance;" but a casual election gave hope that the Ministry would gain by it. The Governor became anxious. He told Mr. McCulloch that the recognition by the Assembly of the loss of the tacked Bills

deprived of parliamentary force the resolutions on which the Bills were founded. His responsibility for the arrangements with the bank was greatly increased. He thought the Assembly should be invited to pass an Appropriation Bill, and if they should decline to do so, be dissolved "for that reason alone." He found how unreal were his advisers' professions of sympathy. They would not ask the Assembly for supplies. To do so, and to appeal against the decision of the Assembly, would be a desertion of that body, and would put the "issue between the two Houses to the country imperfectly, and unjustly to the Assembly." They warned him against accepting their resignations (which, with a show of magnanimity, they had proffered some weeks before). "If his Excellency see fit to call in other advisers the year will have ended before they will have an opportunity of introducing the Appropriation Bill, and the dissolution, and the settlement dependent upon it, will be therefore indefinitely postponed."

Thus beleaguered, the Governor consented that his advisers might state any grounds as their reason for a dissolution; they having previously informed him that their war-cry would be "the rights of the Assembly." The Council sent him an unregarded address, reminding him that no Appropriation Bill had been transmitted to them as a separate measure; that they were, as they had previously informed him, willing to pass it; and that mischievous consequences might arise from a prorogation under the circumstances.

On the day on which the address was adopted (28th November) the Governor in person prorogued the Parliament. The questions which had arisen would, he said, "make it memorable in the annals of the country." The failure to revise the tariff was a subject for regret, as well as the fact "that the Constitution provides no means by which disputes between the Houses can be determined." To elicit "the enlightened will of the community" on "definite issues," he was about to "exercise the important and delicate trust . . . of dissolving the Assembly, a result from which, be it said to its honour, it has not shrunk, as the history of the last few days has shown." He trusted that "the opinion of the constituencies" of the Assembly would settle the matter, and that the two Houses would legislate

accordingly. That the Council also was an elective body, that periodically one-fifth retired, that two of its most esteemed members had been rejected in 1864 because they held unpopular views on the land question, neither he nor his advisers thought it useful to remember. It was true that the Ministerial supporters had at a secret meeting agreed to a dissolution. They were goaded by a desire to banish from their Chamber certain persons who had presented to the Governor a petition to the Queen.

There were forty-five persons living who had become members of the Executive Council under responsible Government. Twenty-two signed the petition, eleven were absent from the colony, two were Judges of the Supreme Court, three declined to sign, and the remainder were the McCulloch Ministry. The petitioners arrayed the acts which "from week to week" were done, and which "could not have been committed, much less persisted in, if his Excellency the Governor had not given them the sanction of his authority." They besought Her Majesty to take such steps as might "appear necessary for maintaining the Constitution in its integrity, and for securing due observance of the law." The petitioners did not publish their doings, but the Governor consulted his Ministry. He allowed the Treasurer (Verdon) to excite commotion in the Assembly by commenting on the petition before it had been transmitted to the Queen. He postponed its transmission for some weeks, while compiling his defence; and unfortunately allowed the animosity of his advisers to distemper his reply (December 23rd). In traversing the indictment against him, he alleged that the design to recover at law duties illegally exacted was, "however feasible in law, certainly of questionable morality," and he proceeded "to expose the true character of" the memorialists and of their conduct. He admitted that it might "appear remarkable that almost every member of the Executive Council who is not at present an adviser of the Governor should have united in preferring this impeachment of my conduct," but he could explain the coalition. Every mercantile signer, including Mr. Strachan of Geelong, was "directly, personally, and avowedly interested in the rejection of the revised tariff which lies at the root of the present political situation." Others were "active, and in

some instances virulent, political opponents" of the Ministry. A formal argument was directed against Mr. Fellows, who had once, on erroneous information as to the English practice, stated that votes of the Assembly made money legally available before embodiment in an Appropriation Act, but had, on learning the truth concerning the English usage, candidly admitted his error.[1] Mr. Fellows, Mr. Dennistoun Wood, and Mr. Ireland, were accused of "ministering to their own personal and pecuniary profit by conducting actions brought against the Government under their advice." Nothing could "more completely exhibit the spirit of political intrigue" than Mr. O'Shanassy's case. That gentleman was "utterly inconsistent, insincere, and unconstitutional." After defending at some length the conduct of himself and his advisers, the Governor turned fiercely upon his assailants;—accusing them "one and all of conduct highly discreditable," amounting "to a treacherous conspiracy against the Governor." They had "suppressed—wilfully suppressed every material fact and circumstance" on which the Governor justified his conduct. "Vindication of public morality" called for their dismissal, and but for the fact that their removal at a time when many of them were candidates for the new Assembly, might be liable to misapprehension, the Governor would "have suspended them all from office until Her Majesty's pleasure were known."

Whatever course Mr. Cardwell might advise Her Majesty to adopt, the incautious Governor declared it

"impossible that the relations between the petitioners and myself can, in the face of this conspiracy, be such as ought to subsist between the Governor and gentlemen holding the commission of an Executive Councillor, whether occupying or not responsible office; and it is at least to be hoped that the future course of political events may never designate any of them for the position of a confidential adviser of

[1] Mr. Fellows was generally recognized as one of the ablest lawyers in the colony. The despatch writer argued that Mr. Fellows's opinion was "of no weight whatever," and that of him and other signers "it is difficult even now to say what their real opinions are, or at any rate what they would be declared to be if their political position were again changed." This sentence was not ascribed by colonial readers to the man who signed it; the date was 23rd December, 1865.

the Crown, since it is impossible their advice could be received with any other feelings than those of doubt and distrust."

Thus did Sir Charles Darling tip the shaft which was to lay him low with venom distilled by his advisers. Mr. Francis, whose ill-assorted notions had led his colleagues step by step into antagonism with their avowed principles, distinguished himself as a mal-administrator in his own department. When in February he exacted increased duties on certain articles in conformity with his proposed tariff, he did not levy a diminished duty on those articles on which his scheme lightened the duties. The throwing out of the tacked Bills in July, the condemnation in September by the Supreme Court of unlawful levy, afforded no light to Mr. Francis. He pursued his course for a time. Suddenly, 11th October, he issued a notice that, not the existing legal duties, but the proposed reduced duties would be collected at the Custom-house. No bonds were taken for the difference unlawfully remitted, and the revenue was subjected to plunder by authority. He himself was a dealer in some of the articles affected (tea, sugar, &c.); but no one imputed his wrong-doing to personal greed.

When the Council rejected the Tariff and Gold Duty Bill in November, he abandoned the collection of the increased duties, but still abstained from demanding the lawful amount on articles on which he wished to lighten the impost. Only the prorogation restored the law in the Custom-house. Maugre all these things, the Governor was made to say that the troubles of the colony were but "a repetition of similar scenes in the mother country," and that the incidental irritation was, he trusted, "more than compensated by the additional proof they afford of the vigorous public life of the colony, and of its fitness to enjoy representative institutions."

The elections were held early in 1866. Confidence in their land policy, and shapeless expectations of benefit from protection, obtained large support for the Ministry in rural electorates. At the gold-fields the proposed abolition of the gold export duty was traditionally popular, and though companies were to pocket the abandoned royalty individual miners cast in their lot with the companies. Everywhere the Council

was bitterly assailed. No term was too vile to be hurled at the members. Their age, their own small number, that of their constituents, were among the reasons why they should be trampled into obedience or out of existence. The compactness of the colony facilitated the bringing of pressure upon the electorates, and the Ministry used it without stint. Riotous bands went from suburb to suburb to howl down the Constitutionalists, and prevent their speeches from being heard or reported. While the friends of law and order contended at the hustings, a despatch from Mr. Cardwell warned the Ministry and the Governor of the dangers of their course. They did not promulgate it; but it was hinted that it betrayed no desire to interfere with local affairs, and that it would be necessary for the colony to resist any such interference if attempted.

Even without the light which Mr. Cardwell's words would have afforded, the electors in the metropolis and suburbs exhibited independence galling to the Ministry. Mr. Higinbotham was placed in a minority by the most populous portion of his constituency (Brighton), and only secured a total majority of 46 by the votes of ardent protectionists in the rural parts. His opponent was Mr. J. Wilberforce Stephen, who strenuously supported the position of the Legislative Council. The most effective placard used by Mr. Stephen's friends was one which without comment reprinted Mr. Higinbotham's own election card of 1861, side by side with his votes in 1865.[1] So detrimental was the republication of his own cards deemed that

[1]

| 1861. MR. HIGINBOTHAM'S ELECTION CARD OF JULY. | 1865. MR. HIGINBOTHAM'S VOTES IN PARLIAMENT. |
|---|---|
| Brighton Election. | |
| MR. GEORGE HIGINBOTHAM IS IN FAVOUR OF FREE TRADE | *Payment of Members.* 7th April, 1865. Mr. Higinbotham voted at the rate of £300 for each Member. |
| . . . . . | |
| Retention of the Gold Duty | *Gold Export Duty.* 2nd February, 1865. Mr. Higinbotham voted for the Abolition of the Duty. |
| . . . . . | |
| AND IS OPPOSED TO Payment of Members; Protection; Conferring upon the Governor the power of dissolving the Upper House. | Mr. McCulloch in his address to the electors of Mornington says: "The Government is prepared to give the Governor power to dissolve the Council." |

the Chairman of his Committee destroyed them, and was prosecuted for doing so. Mr. Michie was absolutely rejected in the populous St. Kilda in which he was a resident. The despatch (dated 27th November, 1865), which Sir Charles Darling kept from public knowledge until the end of April 1866, carefully enumerated the facts of the whole case before pronouncing upon them. Only a few sentences need be cited here. "I have no hesitation in saying that independently of the judgment of the Supreme Court, no consideration, at least none that is discernible in your despatches, should have induced you to give your concurrence to the levying of these duties." The plea of the validity of the resolutions of the Assembly based on the English practice was "manifestly irrelevant." In England if the concurrence of the two other branches of the Legislature "were withheld, the sums so levied by anticipation would be repaid, and they would of course be no longer levied." But the Governor and his advisers were

"perfectly aware that the Bill would not receive the sanction of the whole Legislature, and the exaction of these duties was not in anticipation, but in defiance, of the judgment of the Legislative Council. It was therefore not only in its origin unlawful, but there was every reason to presume that it would remain so. I look with extreme apprehension on a state of things in which the Government of a British colony is engaged in collecting money by mere force from persons from whom the Supreme Court has declared that it is not due. . . I do not understand on what ground it can have been imagined that you were legally authorized to borrow from a private bank large sums of money on behalf of the public. No authority is alleged, and I am unable to conjecture any. . . If payments were legally due . . it was open to (claimants) to recover what was so due in the ordinary course of law. It was for one or other branch of the Legislature to yield, or for both to compromise their difference. It was not for you to give a victory to one or the other party by a proceeding unwarranted either by your commission or by the laws of the colony. . . By such a proceeding the Governor and his government might . . . at any moment withdraw any amount of public funds from the public account to which it is consigned by law, and place it at their own command, relieved from all the checks with which the Legislature has carefully surrounded it. The expenditure of the monies thus obtained"

was apparently equally irregular. . . "It is not alleged that the Supreme Court was ever called upon to give judgment on the question, and you do not inform me of any law which would warrant you in paying away any public money except under the authority of such a judgment or of the auditor's certificate."

"As at present advised, therefore, I am of opinion that in these three respects—in collecting duties without sanction of law, in contracting a loan without sanction of law, and in paying salaries without sanction of law—you have departed from the principle announced by yourself and approved by me, the principle of rigid adherence to the law. I deeply regret this. The Queen's representative is justified in deferring very largely to his constitutional advisers in matters of policy and even of equity. But he is imperatively bound to withhold the Queen's authority from all or any of those manifestly unlawful proceedings by which one political party or one member of the body politic is occasionally tempted to establish its preponderance over another. I am quite sure that all honest and intelligent colonists will concur with me in thinking that the powers of the Crown ought never to be used to authorize or facilitate any act which is required for an immediate political purpose, but is forbidden by law. It will be for the gentlemen who guide the opinions of the colony or form the majorities in the two Houses to . . ascertain, and you will of course afford them every facility for ascertaining, how the Government of the country is to be carried on. It is for you to take care that all proceedings taken in the Queen's name, and under your authority, are consistent with the law of the colony. . . ."

To this despatch the Governor transmitted an elaborate reply (22nd January) prompted by his Ministers. Mr. Higinbotham resented the intervention of an English, as an invasion of the dignity of a Colonial, Minister; and his colleagues so much required the sanction of his reputation that though none of them agreed with him in sneering at the Secretary of State as a foreigner, none of them cared to cross their colleague.

The Governor was told to say that "the final judgment of the full Court upon the questions of law . . was not given, nor was final judgment entered up and recorded, until the month of December, some time after the duties had altogether ceased to be collected." The "sufficient authority as to what is legal or illegal" . . (he had deemed) "the opinion of the law officers

of the Crown in the colony. That opinion I both took orally and obtained in writing, and did not fail duly to communicate to you. It affirms the legality of borrowing money for the purpose of meeting the legal liabilities of the Government.

When the Assembly asked him to take steps to maintain the "efficiency of the public service," he "regarded this resolution as to all intents and purposes a vote of credit," and "ample authority for the Executive to incur financial liability, subject to a subsequent audit, and Legislative approval of the expenditure." He averred that the original dispute between the Houses was upon the tariff; that it "grew into the larger question whether the Assembly should or should not effectively control" taxation; that the claim had been "hitherto successfully resisted by the Council; that the illegal loans and payments" could not have affected the question either "one way or the other," and that he could not have "inflicted a greater injury on the Council than by abstaining from any attempt to relieve the pressure" which would have allowed "anger and exasperation . . to accumulate against that body." He intimated that before Mr. Cardwell's despatch arrived it had been determined not to resort to loans on account of the expenditure for 1866. Nevertheless it appeared afterwards that it was not until February that he formally acquainted his Ministers that the Secretary of State had instructed him not to sanction unlawful payments, and not to sanction the levying of duties unauthorized by law. He declared that the "honest and intelligent colonists . . most favourably regarded" all that he had done, and he expended many paragraphs in insinuating that Mr. Cardwell's strictures were founded not on facts supplied by the Governor, but on private information. His prompters misled him. Though he did not formally forward the address of the Council to the Queen (adopted 21st September) until October, he had on the 23rd September transmitted, in the usual course, copies of the Council journals, and this fact his advisers either knew not or forgot, in January.

Having thus disposed of Mr. Cardwell, the Ministry met the new Parliament in February. Mr. Henry Miller, who in the previous session adjured the Council to "nail their colours to the mast," and asked what could be expected when a tyrant

Minister called upon "the lowest of the low to rise up and execute lynch law upon certain members he thought proper to denounce," had become a ministerial supporter in the Council. Sir Francis Murphy was not re-elected Speaker tacitly. He thus explained his recourse to the popular Ministry to secure his return to the House. "I had to consider under the circumstances what was best to be done, and as a party was opposed to me, I had to see what party I could look to for assistance. I had no other resource than to ask the Government upon grounds of public feeling whether they were willing to assist me in obtaining a fresh seat or contesting my own." The majority of the House was, like himself, chosen discreetly, not so much by the constituencies as by the McCulloch cabal. Sir Francis Murphy was elected Speaker by 52 votes against 18.

The Governor invited the Houses to determine without delay the questions on which the country had pronounced. The Assembly echoed his speech. The Council, disclaiming any desire to unduly interfere with fiscal questions, apprised him that "as required by the Constitution Act (they would) always insist upon a strict adherence to the usage and practice of the Imperial Parliament in regard to the contents of Bills." If clauses dealing with revenue derived from Crown lands should be included in Supply Bills it would be their "duty to pursue the same course" as in the preceding session. The reform of the Legislative Council adverted to by the Governor they would refer forthwith to a Select Committee. By 18 votes against 7 the majority carried their address, Mr. Henry Miller having allied himself to the minority of the previous session.

The despatches to and from England were not laid before the Houses until April. From one of the Governor's he withheld a sentence commenting on exasperation of the Free Trade League at the result of the elections, and at his inability to take a view of his duty which would "conduce to the promotion of their pecuniary and personal interest." The omitted phrases appeared in the documents laid before the House of Commons.

There was a clause in the Constitution Act (45th) which "permanently charged the (consolidated revenue) with all the costs, charges, and expenses incident to the collection thereof," subject to review and audit as "directed by any Act of the

Legislature." It was transcribed from Wentworth's Bill. Mr. Ebden's Audit Act had defined the method of audit. In October 1865 Sir C. Darling had sent to England a minute (of his own) suggesting that under the 45th clause the "salaries of most of the civil servants were . . provided for by a permanent law, and therefore independent of further legislative sanction." Mr. Higinbotham and Mr. Michie elaborately confirmed that minute on the 22nd September, 1865. The collusive arrangements with the bank were providing funds at the time. When they were condemned attention was turned afresh to the scheme in January 1866.

The Governor, by arrangement, invited his Treasurer in future to submit with warrants, under special appropriation, a certificate from the Commissioners of Audit that all appropriations made under the 44th and following sections of the Constitution Act had been "duly carried into effect." The certificate of the Audit Commissioners was to show that the required money was "legally available." The Treasurer handed the Governor's minute to the Commissioners. They pointed out that their certificates, though carefully weighed, were never held to imply that "priority of claim" was guaranteed in them. They showed that in February 1865 the Attorney-General had given a distinct opinion that they were only required to "ascertain that Parliament has sanctioned the expenditure of public money for the particular purpose, and has provided funds." This opinion coincided with their previous practice. To depart from it in the manner proposed would withdraw from the control of the Assembly all expenses connected with receipts and collection of the revenue, and would make it impossible to remit funds to England, in anticipation, to meet interest due on railway bonds. They suggested that an existing Civil Service Act would justify them in giving certificates after the Assembly had in each year fixed the maximum and minimum salaries in each class. No Government, however, had as yet acted upon the provision in that Act.

Mr. McCulloch carried down the necessary message concerning the salaries, but shrank from acting upon it. On 19th February the Governor again referred the matter to "the Cabinet." That body did not announce a decision until the 15th March. They had not flinched from violating the Constitution, but the hint

which the Audit Commissioners gave about infringing the rights of the Assembly alarmed them. They might perish under the fangs of their own hounds. They discovered that the law officers' opinions were untenable. "The appropriations in the Constitution Act and by the Civil Service Act are not special appropriations in the sense in which the term has been usually employed." There were qualifying conditions. The Audit Act, not inconsistent with the Constitution, must be read with it. "In any case I apprehend (the Treasurer[1] wrote) the Constitution Act will not be so interpreted as to take from the Legislative Assembly its rightful control." Plots against possible successors influenced the Ministry. What they had wished to do they wished to prevent others from doing. They resigned office on the day on which, by the hand of the Treasurer, they condemned the device which they had been maturing so long. They had again tacked to a Customs Bill a Bill (Gold Export Duty) dealing with the droits of the Crown. The tack was opposed in the Assembly; but Mr. Higinbotham haughtily said, "The Government came into Parliament not to discuss the tariff, but to pass it." The Parliament had "come together to pass the tariff."

On the 13th March the Council rejected the tacked Bills, because they repealed existing permanent laws and enacted "merely temporary provisions in their stead;" because the revenue derived from the gold Royalty was "foreign to a Bill of aid or supply, and has always been separated therefrom in legislation;" and because the preamble was without precedent, and implied that "the constitutional disability of (the Council) to originate or alter Bills . . (was) not the only difference between the powers of the two Houses in regard to such Bills." Resolved to throw upon their opponents the task of forming, or the ignominy of failing to form, a Ministry, McCulloch and his friends would not leave them the skeleton key which they had prepared for rifling the Treasury when collusive loans became

[1] The minute, in the name of the Cabinet, strayed into the use of the first person by its signer. His surname was Verdon. There was much laughter when it appeared that the minute which condemned the Governor's laboured despatches and the opinions of the law officers was signed imperiously "Geo. V.," or as was hinted George the Fifth,—a new master for the Governor. It will be seen that the McCulloch Ministry was ready in 1867 to abandon the minute of 1866.

impracticable. They endeavoured to conceal the traces of their work. When despatches were afterwards communicated, portions of them and many minutes were kept back; though in the English Parliament the deficiency was often supplied. Pressed to introduce a Money Bill to enable public creditors to be paid in March, the Ministry refused, and having dismantled the fortress which they had been making strong for their own purposes, they tendered their resignations with a long justificatory minute. The character of it may be inferred from one of its statements. The Ministry expected that the Tariff Bill when "no longer obnoxious to the objections urged on a former occasion," and separated from the Appropriation Bill, would pass, and the "conflict between the Chambers might be terminated." They sent it to the Council. "It was then objected that the repeal of the gold duty was improperly included in the measure." They knew when they referred to this as if it were a new objection, that in the motion rejecting the tacked Bills of 1865 the Council recorded the inclusion of the gold-duty repeal as one of the reasons which compelled them to reject it. Nevertheless Mr. McCulloch described the objections of the Council as "mere pretexts," and believed that the members, "utterly indifferent as to the character of the tariff . . awkwardly masked a deeper policy . . the resumption of the control of the Crown lands, by means of the displacement of the present Ministry."

When the ministerial manifesto became public the Council lost no time in refuting the allegation that the tacked Bills were freed from the objections urged in 1865, and in denying the motives imputed to them. The refutation was recorded in their journals, and the Governor was requested to forward it to the Secretary of State if he should deem it his duty so to forward Mr. McCulloch's minute. On the resignation of the Ministry the Governor did not send for Mr. Fellows, but asked in writing whether he would be prepared to form "an Administration." Mr. McCulloch was reminded that he had publicly stated that it was altogether contrary to constitutional government that a Ministry should resign because of a defeat in the Upper House. He admitted the fact, but said "the Constitution has now failed. The other branch of the Legislature has taken

a revolutionary course." Not aware that the Governor had recently denounced him as one whose advice must necessarily be received with "doubt and distrust," Mr. Fellows answered in writing that if it should be found impracticable to form "a Protectionist Ministry," he would endeavour to form an Administration. He thought that the Governor ought to communicate with some member of the Assembly with a view to appointing a Ministry whose views coincided with those of a majority there. He also presumed that the Governor would impress on the existing Ministry the necessity of pursuing the invariable course of obtaining supplies and giving legal effect to votes for the public service pending any elections required.

The Governor (still advising with his old friends) declined to communicate with any member of the Assembly. He evaded the topic of a Supply Bill, and asked for the names of members in either House whom Mr. Fellows would propose to him. On the 17th March he received a communication (26th January) from Mr. Cardwell confirming previous despatches; regretting that the Governor had deferred to advice to "pass by the decision of one branch of the Legislature;" declaring that it was "always the plain and paramount duty of the Queen's representative to obey the law, and to take care that the authority of the Crown derived to his Ministers through him is exercised only in conformity with the law;" trusting that "forbearance and wisdom" would enable the colony to "solve its own difficulties" without the lamentable necessity of reference to the Imperial Parliament, which (however) undesirable as it was, "would be infinitely preferable to a violation of the law."

The Governor withheld this despatch from public view, although he was specially directed to communicate it and others to the Council. Even the formal acknowledgment of the address from the Council to the Queen, stating that "Her Majesty had been advised that the proceedings which gave rise to it were contrary to law, and had given instructions intended to prevent their recurrence," was kept back until May, when the arrival of information from England made it impossible to conceal it. His advisers were growing imperious towards him and towards all men. A newspaper commenting on McCulloch's

statement announcing his resignation, said that it "fairly bristled with falsehood." On the 16th March he induced the Assembly by 40 votes against 19 to declare the article "a scandalous breach of" their privileges. The Attorney-General, who had once edited the newspaper, seconded a motion to summon the printer, his former friend, to the bar. To strengthen their position friends of the Ministry strove to pass (on the 16th March) a resolution pledging the Assembly to withhold "confidence from any Administration which (should) refuse or neglect to adopt" the tacked Bills "already submitted to the Council." McCulloch disclaimed complicity with the resolution, but was not believed. The Attorney-General urged that it "ought to be passed before the new Government came in." So eager were the majority to render it impossible for Mr. Fellows to succeed in his task that through the night, and until the afternoon of the following day, the discussion raged.

An amendment that the tariff by itself should be sent to the Council, as members had expressed a willingness to pass it, was scornfully rejected. The Governor was so blinded by these triumphs, that he wrote (29th March) a despatch to the Secretary of State commenting on the characters of members of the Free Trade League. One was an ironmonger, another an outfitter, and one he knew on the best authority had "passed through the Insolvent Court, or made assignment under the Act within the last few years.[1] On the day on which he thus wrote Mr. Fellows announced that he was prepared to submit the names

[1] On the same day the offending printer appeared at the Assembly bar. He admitted the publication, and inquired whether he might be heard by counsel. Mr. Higinbotham opposed a motion to that effect. It was lost by 21 votes against 39. Being recalled, the printer read a brief statement avowing his responsibility, averring that the article complained of impugned not the personal honour of McCulloch's statement, but its consistency with truth, as the context would show, and added: "I further declare in vindication of the liberty which the press of right enjoys, that, as thus understood, the article referred to is no more than a fair criticism upon a statement made by a servant of the Crown in his public capacity and in a public place." Mr. Higinbotham moved his committal to custody. The printer had aggravated his offence. "If that be the liberty of the press, I say the liberty of the press must be suppressed." The printer declined to petition for release, even when McCulloch returned to active power in a few days. Wishing to be rid of his prisoner, McCulloch (27th March) moved that he be discharged on payment of his fees. But he would not go on

of his colleagues, and again urged that the Governor might suggest to McCulloch the obtaining of temporary Supply. He believed that on the Governor's invitation the Assembly would not decline to adopt the usual practice. If it should refuse he hoped that impartiality would induce the Governor to grant a dissolution.

Sir Charles Darling spent two days in consultation, and replied that he could not, with any appearance of consideration for McCulloch and his colleagues, invite them to obtain for others a vote which they were politically unable to seek for themselves. Neither would he dissolve the Assembly. Mr. Fellows replied that under such circumstances the gentlemen he had consulted were unwilling to proceed in the matter, and he looked upon the refusal to grant facilities for obtaining supplies or to dissolve, as an attempt to coerce the Council or deprive it of its constitutional position. In attempting to form a Ministry Mr. Fellows had not improved his position. The Council had never claimed, nor had the Assembly ever recognized, that such a responsibility should accrue because of the loss of any measure in the Council. To assert that it ought to accrue when the action of the Council was mere resistance to aggression was to court failure.

At this time, to terrify sober people, a torch-light procession was arranged, and members of the Assembly who supported McCulloch were prominent in the demonstration. Fortunately common sense existed amongst some of his followers. The possible, if not probable, consequences of such proceedings alarmed many citizens, and the first fiery procession in honour of the Ministry was also the last. Meanwhile the Governor, having kept not only from the public, but from those whom he had nominally entrusted with the task of forming a Ministry, all knowledge of Mr. Cardwell's instructions, took McCulloch again to his bosom.[1] On the 28th March McCulloch announced

such terms. He was allowed to see friends, and his former friend Higinbotham inveighed against incarceration "converted into a means of personal recreation and enjoyment." Another time the House ought to imprison "editors and proprietors" with publisher. The country press teemed with denunciation of the tyranny of the Assembly, and Mr. Higinbotham's views did not receive public sympathy.

[1] On resuming office McCulloch furnished the Governor with an elaborate

that the Tariff Bill would be again introduced, with an alteration as to the date of its coming into operation.

The Speaker ruled that such an alteration would justify the re-introduction in the same session, but difficulties remained. Though the Opposition were overborne by votes of those who were informed that they were to pass, and not discuss, measures, protests were made. Alluding to the torch-light procession, and the imprisonment of the printer by order of the House, a member denounced the "incarceration, of which the House ought to be ashamed, and a brute force exhibition which the Ministry had encouraged, and which the Chief Commissioner of Police ought to have been instructed to put down." The imprisoned printer meanwhile had become inconvenient. He would neither petition for release, nor avail himself of permission to go away on payment of fees. If, as seemed inevitable, a new session should be necessary, he might go away scathless, and the Ministry might be shamed by defeat.

Mr. Fawkner, in the Council, was about to move for a Committee to prepare a narrative of the acts of the Government. A ministerial friend moved there on the 4th April, that a Committee be appointed to confer with a Committee of the Assembly on the "differences now existing between the two Houses" with reference to "Bills of Supply." After discussion the motion was withdrawn, but was to be renewed on the 11th April—McCulloch having induced the Assembly to adjourn while his friend strove to influence the Council.

The Governor, meanwhile, appealed (6th April) to Mr. Cardwell. He was devoting his best consideration to the question whether there were any means by which effect could be given to the "orders that the Government should not levy any Customs' duties except those which are absolutely fixed by the

minute, in which he assailed the Council, and hoped that body would make concessions which would "render the continuance of government according to law possible." The minute emphasized the fact that the Appropriation Bill was presented for the Royal Assent by the Speaker, and said the provision "originated with the Council." It was, however, a Joint Standing Order framed in compliance with the 34th section of the Constitution Act. All other Bills were to be presented by the Clerk of the Parliaments. McCulloch did not attempt to explain how the Order could be obeyed when foreign matter was tacked to the Appropriation Bill. Neither Speaker nor Clerk could then conform to it.

consent actually given, of the three branches of the Legislature." Unless confused by his advisers he would have known that such a statement was a perversion of Mr. Cardwell's clear instructions. On the 10th April he informed Mr. Cardwell that it was hoped that a conference might lead to a termination of disputes. Throughout these troubles he was restrained by his advisers from revealing the nature of Mr. Cardwell's despatches. It was feared their publication might induce a belief that the Governor had been forced into a false position in order to serve the ends of others. On the 10th April, their torch-light meeting having singed the fingers of the Ministry, their prisoner being resolute to remain in their hands, and the further concealment of Mr. Cardwell's instructions becoming daily more difficult, the Parliament was prorogued by a proclamation which re-convoked it for the following day. The warrant under which the printer was held died with the session. A friend went to the House and drove him away in a carriage, after paying fees for sustenance, but refusing to pay fees for commitment and arrest. The printer sailed to a neighbouring colony before the Houses assembled again, and was not molested on his return.

On the 11th April the Governor in person stated—"in order that the Supply Bill of last session may be again considered, it has been found necessary that there should be a new session," and therefore the Houses had been called together. The Customs' Duties Bill, tacked to the Gold Export Duty Bill, was sent on the 11th April to the Council, and on the 12th the member, who had sought for a conference in the former session, successfully renewed his motion "with reference to the Bill of Supply now before the House." The Assembly agreed to the proposal. On the 13th, the Committees met to confer. It was understood that the Council would willingly pass the tariff if disencumbered of a tack, and if a proper preamble could be agreed upon. It was agreed that upon the assurance that the repeal of the gold duty was inserted in the "Bill as a tax, and not as territorial revenue, and upon their disclaimer of any intention on the part of the Assembly of tacking it, with a view of coercing the Council to pass it," the Council should not insist on their objection.

The preamble was altered after much discussion. To preclude

future doubts the exact words to be used were agreed upon. Instead of asserting that a grant was completed by a vote in the Assembly, the preamble was to state the fact that the Assembly had voted in a certain manner.

"Whereas we, . . . the Legislative Assembly, . . . in Parliament assembled, did . . . freely and voluntarily vote that a supply be granted to your Majesty, and whereas towards raising such supply, . . . we did . . . vote that the several duties herein after mentioned be charged, we do therefore . . . beseech . . . and be it enacted by the Queen's Most Excellent Majesty by, and with the advice and consent of, the Legislative Council, and the Legislative Assembly of Victoria, &c. &c.[1]

The clause limiting the operation of the Bill was abandoned by the Assembly; by mutual consent the Bill was discharged from the business paper in the Council, in order that a new one might be initiated in the Assembly, and on the 18th April the Bill, amended as agreed to, as well as a new Appropriation Bill legalizing expenditure during 1864, 1865, and 1866 (to the great relief of the public mind) became law.

Then, and not till then, did Sir Charles Darling (1st May) communicate the despatches commanding him in all cases to obey the law. Then only was the answer to the address of the Council to the Queen made known, though it was found to have been in the Governor's hands while he affected to consult with Mr. Fellows as to the formation of a Ministry. Thus, at last, was explained the new-born zeal of McCulloch to effect a compromise. Thus was it discovered why the persistency of Higinbotham was excluded from the conference. But the public did not discover the whole truth. Beguiled, confused, and hurried by his advisers into acts of partiality and contention, Sir Charles Darling, whose early training had been military, had a sense of duty which, though dormant under the influence of his advisers,

[1] The preamble of the tacked Bills, 1865, was, "Whereas we . . . the Legislative Assembly . . . have . . . freely and voluntarily resolved to give and grant unto your Majesty the several duties hereinafter mentioned, and whereas we the members of the L. A. aforesaid have granted to your Majesty the several sums in the Schedules hereto . . ." After the Conference, and in compliance with it, the preamble of the Appropriation Bill of 1866 was made to state: "... whereas we ... towards making good the supply which we have cheerfully voted ... have resolved to vote ... the sums hereinafter mentioned . . ."

was not dead. When he received distinct instructions from the Queen, he would obey them. Finding this to be the fact, and knowing that copies of the despatches from England would soon reach the colony, McCulloch yielded to necessity. He, with Verdon, consented to the compromise recommended by the Conference Committees. Higinbotham, wounded in spirit, held aloof. His unvarying personal kindliness, and his sympathy for the Governor, probably deterred him from stirring his supporters to refuse submission to the "foreign nobleman" or "clerk in Downing Street." By such epithets he was wont to describe the Secretaries of State, and the accomplished Sir Frederick Rogers, who subsequently became Lord Blachford.[1]

The Governor, hoping to see a compromise effected, did not disclose his instructions until it had been accomplished. But there were passages in his own despatches which his advisers did not desire to reveal to those assailed in them. McCulloch, who imprisoned a printer for impugning his statements, was equal to the occasion. He declared in the House (25th April): "There was no desire to withhold the despatches; they would be given every one from beginning to end. No one was more anxious that this should be done than his Excellency himself."

Several despatches were, nevertheless, kept back, and became public in the colony only after having been printed by order of the House of Commons. When McCulloch produced those which were communicated to the Victorian Parliament in April 1866, it was evident from his manner that he was concealing something when he pleaded that it had been requisite "to recast the form in which the despatches were to be produced."

[1] Mr. Higinbotham maintained a knotty consistency to the last. Governors obtain a certificate from law officers to the effect that there is nothing to prevent the giving of the Royal Assent to Bills as passed. Mr. Higinbotham "declined to assume the responsibility of advising his Excellency that there is no legal objection to the Governor giving the Royal Assent to the (Customs) Bill." His objection was based on the fact that it had been "in its passage through Parliament" made a permanent measure. But the Governor had instructions on the point, and would have signed the Bill under any circumstances. This being ascertained, Sir C. Darling wrote: "Mr. Higinbotham informed me that he was of opinion that under the Secretary of State's despatch I should be justified in assenting to the Bill." Men of weak will can hardly estimate the sacrifice of desire performed by the Attorney-General in permitting the Governor to do his duty on this occasion.

The Ministry might well be confounded. The poison infused into the Governor's despatches had been fatal to him. A despatch recalling him arrived in April. No general correspondence from England dwelt on his recall, but a telegram to Ceylon carried the tidings which the mail-steamer received and bore with it while it brought the despatch. Concealment was impossible. McCulloch could only "recast" the despatches under dread of ultimate exposure. It is unnecessary to transcribe the clear, cogent, yet courteous phrases in which Mr. Cardwell tore into shreds the arguments which the Governor's advisers had prompted. The cause of recall was Sir C. Darling's intimation with regard to the twenty-two Executive Councillors that it was "impossible their advice could be received with any other feelings than those of doubt and distrust." Mr. Cardwell had in previous despatches desired to lighten, as far as he could, the painful consequences of what it had been necessary to write, and

"to avoid even the appearance of taking part with one side or the other in controversies which ought to be locally decided. . . It is your own act now which leaves me no alternative; you force me to decide between yourself and the petitioners. You place me in the position of having to determine whether you can continue to represent the Queen in a colony in which you have avowed that none of these gentlemen can ever be received by you as confidential advisers with any other feelings than those of doubt and distrust."

The Queen's representative ought to keep aloof from all personal conflicts, and

"so conduct himself as not to be precluded from acting freely with those whom the course of Parliamentary proceedings might present to him as his confidential advisers. While on the one hand it is his duty to afford to his actual advisers all fair and just support, consistently with the observance of the law, he ought, on the other hand, to be perfectly free to give the same support to any other ministers whom it may be necessary for him at any future time to call to his counsels. The colony is entitled to know that the Governor gives this support to his ministers for the time being, and that he is able and willing if the occasion shall arise to give the same support to others."

"I regret to say that in the present instance you have rendered this impossible. It must be evident to yourself that you occupy a position of personal antagonism. . . It is impossible, I much regret to say, that

after this you can with advantage continue to conduct the government of the colony."

The General on the spot would act as administrator until a successor might be appointed.

"I trust that no occasion will arise in which it will be clear to his judgment that the advice of his Ministers for the time being would involve a violation of the law. In such a case it would doubtless be his duty to endeavour to obtain the aid of other Ministers. Her Majesty's Government have no wish to interfere in any questions of purely colonial policy; and only desire that the colony shall be governed in conformity with the principles of responsible and constitutional government, subject always to the paramount authority of the law."

Pity for the Governor was mingled with thankfulness that Mr. Cardwell presided at the Colonial Office.

In a lengthy minute Sir C. Darling communicated to Mr. McCulloch the fact of his recall, and strove to explain away the paragraph which had caused it. The confusion in his mind must have been great when he adduced his written communications with Mr. Fellows as proofs of confidence, and failed to remember that he in no manner acquainted that gentleman with the position of affairs, or the nature of Mr. Cardwell's instructions. Prompted, if not written by, his fatal advisers, the minute was published before it could reach the Colonial Office.[1] But the blow was not less crushing because brought upon the Governor by his own acts; and though it could not be averted, the giver could be assailed. Mr. Cardwell, himself distinguished, and sprung from a family distinguished at an English University, was described by leading supporters of the Ministry as "a man from the ditches of Birkenhead." Mr. Higinbotham and Sir C. Darling were extolled as faultless. One speaker would, by cutting the bond which united the colony with the mother country, teach her that colonists were not serfs. Another, addressing about 1500 persons, believed that several regiments would be

[1] Mr. Cardwell, in acknowledging (to the new Governor) the despatches, pointed out that it was not consistent with the duty of a Governor, while still holding the Queen's commission, to address such a protest to his Executive Council "against the decision of the Government which he had not yet ceased to serve. I notice this, lest by silence I should seem to sanction an objectionable precedent."

required to clear the market-place of those before him. Another would prohibit the landing of any new Governor.[1] Complimentary addresses were presented to Sir C. Darling. He qualified his claim to be considered reasonable by informing a deputation that in the "recent political difficulties . . . nothing was done that was not justified by law." He was infested with the obstinacy of his advisers. He was made to justify on political reasons in a formal message to the Council (7th May) the withholding, from that body, of despatches which he had been commanded to lay before them, and to attribute to delay in printing, the arrangements which resulted in producing the despatches in the Assembly four days before they were given to the Council. The fact that the McCulloch Ministry held office provisionally when some of the despatches arrived was pleaded as a defence for not obeying the order to produce them. Yet he and McCulloch, on the day of the nominal resignation of the latter, had, to throw obstacles in the way of Mr. Fellows, recorded a Cabinet minute abandoning the grounds urged by the Governor, and elaborately supported by the law officers, for treating the 45th clause of the Constitution Act as a sufficient legal appropriation of supplies without a Parliamentary grant for the year. So clouded had his judgment become that he denied that Mr. Cardwell's despatches on the collection of duties, the collusion with the bank, and the address of the Council, had "any reference to the questions then (March 1866) at issue between the Houses." He had kept them back because it was "probable that they would occasion considerable discussion." Those who preferred disruption from the Empire to failure of their local schemes, spoke more boldly than the dejected, but unconvinced, Governor. Mr. Higinbotham was "aware that the Secretary of State had founded Sir C. Darling's recall on a sentence—it may be an impolitic sentence. . . I think I am not expressing an unfair view when I say that that sentence has been made the occasion, and that it was not the cause, of

[1] A "Committee of Safety," organized after the fashion of a Paris Club, had been formed in April. The Ministry were rather disconcerted when it was known that one of their patrons in the Committee had been a convict in Tasmania. There was an attempt to deny the truth, but a respectable man who had been in Tasmania, earnest for the abolition of transportation, would not be gainsaid. In averring the truth he extinguished the Committee.

(the) recall." Mr. Cardwell's despatches "threatened dangers to the public liberties of the people." The speaker would care nothing for Mr. Cardwell if the colonists were but united; but, to his uncomforted mind, merchants seemed ready to purchase a continuance of importing monopoly by surrender of civil government, and pastoral tenants willing, "on the same terms, to defeat the agricultural interest. I believe there is not a discontented official, from the Judge[1] on the bench of the Supreme Court——." Cries of "shame" interrupted the speaker at this point, and he concluded by urging the House to "use their opportunity (the appointment of a Committee on the subject of the removal of the Governor) to the uttermost." One member denounced the Attorney-General's words as traitorous, and called for their retraction. The House made no such demand. The Committee was appointed by McCulloch's followers, and it became known that it was about to recommend a grant of £20,000 to Lady Darling for her separate use, in order to elude the irregularity of making the Governor a recipient of a gift. He, however, informed the House that while "he was yet administering the government his family would not feel at liberty to accept the bounty of the Parliament and people of Victoria until (he) shall have first ascertained whether Her Majesty shall be pleased to signify any commands thereon," and he had petitioned for

[1] There had been an angry correspondence between one of the Judges and Mr. Higinbotham, who, as Attorney-General, looked upon Judges as "officers of his department." In consolidating a Bill he endeavoured to re-enact clauses of an old Act, 15 Victoria, antecedent to the Constitution Act of 1855, which clauses the Judges considered to have been repealed by the later provisions of the Constitution Act. The clauses were such as would have subjected Judges to the will of a Cabinet, as in former days they had been under that of the Governor and Council, with the difference that, in the latter case, the exercise of power was provisional, and subject to Her Majesty's pleasure. The Judges petitioned against the clauses—the Houses differed—the Bill was lost (1865). In debate Mr. Higinbotham warned the "learned persons" that, "so long as he believed the law to be what it was, the law should not remain inoperative. So long as he had the honour to hold the position he now enjoyed . . . any Judge should be suspended or dismissed from his office for misconduct according as the circumstances of the case appeared to justify the degree of punishment." It is unnecessary to say more than that a special clause in the Constitution had—copying Wentworth's Bill—made the Judges' tenure of office "good behaviour;" though they were removable on Address from both Houses.

inquiry as to his conduct. That conduct the Assembly commended. By forty votes against nineteen, it was resolved that the country was "greatly beholden to him for his steady adherence to the principles" of responsible government. Accomplices commending iniquity give a new zest to the adage which represents Satan as reproving sin. Triumphant in numbers, if not in sense, the majority carried an address praying that the Queen would be pleased to sanction the acceptance by Lady Darling of the proposed grant. The language used in the debate was such that it was thought necessary to exclude strangers.

Difficult as it might be to procure returns in the Assembly, there was yet a power to obtain them for the Council. The privilege exercised by the Lower House was secured for the Upper, by the express language of the Constitution Act. Mr. Fawkner carried an order for a return of the amounts recovered of the unpaid duties which Mr. Francis had abstained from collecting in 1865, though for a portion of them he had taken bonds. Mr. Fawkner also asked for the opinions of the law officers, as to £62,000 of unpaid duties for which no bonds were taken. Mr. Henry Miller produced a curt "memorandum" in reply, after a delay of a fortnight. "No amount has been recovered under the bonds, nor will any actions be proceeded with pending the result of inquiry by a Committee of the Legislative Assembly about to be appointed to investigate and report upon the subject. Written opinions regarding the £62,000 have not been obtained from the Crown law officers." The Council (17th May) represented "this serious infraction of the law" to General Carey, the Administrator of the Government. Nearly £100,000 of Customs' duties had been unlawfully remitted. In the Assembly the subject was discussed on the 18th May. A member of the Opposition brought it before the House as alarming. Ministerial supporters, who admitted that Mr. Francis had broken the law, declared that he ought to be upheld. The bonds might be enforced, but the larger sum they would abandon as the cost of a constitutional "struggle." A Ministerial Amendment, moved by Mr. W. M. K. Vale, declared that "those uncollected duties only for which bonds were given should be collected, and that such duties should be collected

forthwith." Mr. Gillies, whose logical triumphs were especially hateful to the Government, pointed out that to pass such a resolution would be to appropriate certain moneys (cash deposits) to persons interested therein, and no such appropriation could be made except on recommendation by message from the Governor. He appealed to the Speaker on the point of order. Sir F. Murphy, remembering former humiliations, thought the House should "be its own judge in the matter," and that he ought not to be asked "to interpret the resolution beyond its obvious meaning." Mr. Gillies would be sorry to ask anything unreasonable, but the Speaker must in previous cases where resolutions had been ruled out of order, have put his own interpretation on the matter. That was all that was asked.

*The Speaker.*—If I am requested to express an opinion I must say that I see nothing irregular in the amendment. It is simply a direction for the collection of duties for which bonds have been given.

*Mr. Gillies.*—Only.

*The Speaker.*—What is the meaning of only?

*Mr. Gillies.*—That other duties should not be collected.

*The Speaker.*—I do not understand that the word releases anything.

Mr. Vale admitted that the House could not remit taxation, but did not think his amendment invaded that principle. The Speaker did not consider a remission of debt could be made by the use of the word "only." If such were the effect, however, the procedure would be wrong. Mr. Gillies thought Mr. Vale would be straightforward enough to admit that such was the distinct intention of the amendment. "It proposes that the sum of £63,000 legally due to the Crown, should not be collected. If it does not, my argument falls to the ground."

Vale meant "never to vote for the collection of the £63.000." The Speaker considered the meaning of a resolution a different thing from what a member might say. Mr. Higinbotham could not deny the meaning of the resolution to be what Mr. Gillies alleged, but urged, "we are not to be guided by what we may suppose to be the meaning of a resolution." The Speaker thereupon declared that his ruling must be adhered to unless the House should decide otherwise. A member moved that Vale's

amendment was "not in order." The Treasurer (Verdon) implored the mover to withdraw his proposition. Whatever the result, it would be unsatisfactory, "inasmuch as the House has not had an opportunity of considering whether or not the objection is a good one." McCulloch and his colleagues were willing to vote with Vale, but loth to leave a record of their breach of the Constitution. Mr. Gillies was dealing in his usual pungent manner with the case, when Mr. Vale withdrew the obnoxious word "only," in which the Speaker could find no meaning, but which was intended to relieve debtors to the Crown of large liabilities. Although the amendment, thus altered, was adopted by 28 votes against 16, it was seen that a way had been opened (as a member told the Assembly) to wholesale fraud and corruption.[1]

Further discussions took place in both Houses. The Council called the attention of the Acting Governor to various infractions of the law by which the revenue had suffered. Mr. Cardwell's instructions were too plain for General Carey to misunderstand, and his advisers consented after some delay to satisfy the judgments recorded. On the 1st June, General Carey prorogued the Houses. As his successor was to arrive in a few weeks, General Carey escaped the pressure which had been fatal to Sir C. Darling. But clear commands as to the future were conveyed in despatches, which reached the temporary Governor. The sophistries which had defended Sir C. Darling were refuted. The collection of duties in anticipation of an Act of Parliament was shown to be constitutional when the usual expectation exists that such an Act will be speedily passed. Sir Charles Darling's despatches showed that neither he nor his advisers entertained such expectations. General Carey was informed that "a decision of the Supreme Court is law until it shall have been reversed upon appeal, and that neither the opinion of your law officers, nor the determination of the Executive Government, ought meanwhile to prevail with you against it." Mr. Cardwell acknowledged the difficulties of Sir C. Darling's position, but irregular acts of power were not the proper remedies.

[1] Though no one imputed personal motives to McCulloch or to Francis, it was observed that, both as bond givers and as sureties for others, their names appeared in the returns, as did also the names of some of their supporters in the Assembly.

"Anarchy, indeed, may ultimately result from continued opposition between two constituted authorities, each obstinately insisting on its extreme rights. But anarchy has come already, when the Executive Government, entrusted with power for the maintenance of public order and the protection of private rights, uses that power for the purpose of illegally setting aside the authority of one branch of the Legislature, and of overbearing the decisions of the Supreme Court, and depriving the subject even for a time of that which the Court has decided to be his."

In introverted confusion Sir C. Darling had been made to urge that he had really strengthened the position of the Council by the collusive loans which Mr. Cardwell had condemned.

"My observation was equally applicable, whatever might be the political effect of the illegal step. The true interest of every one who loves free institutions, and appreciates constitutional government, is that no such considerations shall be entertained at all. It is for you to inquire, not whether the result of any step which you may be invited to take will operate in favour of this body or of that, of one political party or another, but whether it is in itself legitimate. If it be clearly contrary to law you will refuse compliance, and will inform your Ministers that, while in all lawful matters you are desirous of being guided by their advice, you have a higher and paramount duty, which is to observe the existing law of the colony."

In May, Mr. Cardwell announced that the Hon. H. T. Manners Sutton would proceed to Victoria as Governor forthwith. Some passages in Sir C. Darling's despatches were answered for the benefit of General Carey in the spirit of previous despatches.

Amongst the taunts thrown out against the Council was the fact that the aggregate constituencies did not exceed 11,000, and in the second brief session of 1866, a Select Committee was appointed to report upon the subject of amending the Constitution of the Council. They made a progress report in favour of a reduction of the qualification of members and of electors, but the close of the session would have made legislation impossible even if other conditions had been auspicious. A divergence of opinion was already perceptible amongst the Ministerial supporters. Many wished to draw the Council closer in sympathy with the bulk of the people. They who wished to set up a tyranny in the name of the people dreaded any measure

which, by strengthening the Upper House, might mar their plans.

To prevent subsidence into peace a quarrel between the Houses was fomented in 1867. Sir C. Darling had announced his intention to appeal against his recall; but he found, in England, that an appeal would not redound to his credit. Mr. Cardwell's sagacity was no longer in Downing Street, Earl Russell's Ministry having fallen in June, 1866: but Lord Derby was not expected to reverse decisions founded on law, nor could the new Colonial Minister, the Earl of Carnarvon, undertake to recast, in any mould acceptable to the late Governor, the decisions of Mr. Cardwell. Lord Carnarvon had to deal with the address from the Legislative Assembly, requesting the sanction of the Queen to Lady Darling's acceptance of £20,000. The rule forbidding the receipt of presents by a Governor would be nugatory, he said, if what he "was precluded from receiving might properly be given to his wife." Her Majesty had received the address "very graciously," but could not be advised to acquiesce with it. He hinted that acceptance of the proposed gift could not be "regarded otherwise than as a final relinquishment by Sir C. Darling of Her Majesty's service, and of all the emoluments and expectations attaching to it." The new Governor opened Parliament in January 1867, saying nothing about constitutional questions or differences. An attempt on the part of the Ministry to strengthen their position in the Council had failed. Mr. Henry Miller had accepted responsible office, and to punish the tergiversation of which he was accused, Mr. Strachan resigned a seat (about to lapse in another province), and defeated Mr. Miller in the Western. The subject is principally worth notice because it was one of several indications that the conduct of the majority in the Council had gained friends amongst the electors throughout the colony.

In 1864 Dr. Hope had been ignominiously rejected by an inferior candidate in the south-western province. In 1866 Dr. Hope was elected by the same constituency. In 1864 Mr. T. H. Power was rejected in the south province in like manner. In 1866 a sympathizer with Mr. Power's opinions was returned. No Ministerial candidate was tolerated by the constituencies which had been framed to represent the holders of the diffused

property, and by means of the educational franchise, the intelligence of the country. In half the provinces the Ministry put forward no candidate at the periodic elections for the Council. That body, however, desired to reduce the franchise, and again appointed a Select Committee which recommended a reduction of the property qualification for members and electors; the addition of two additional members elected by the persons professionally and educationally enfranchised, and of a member for the Melbourne University, to be elected so soon as there might be an electoral body of 200 graduates. The report was adopted in May 1867, but conflict between the Houses was then imminent; and though a Bill was introduced, it was discharged without being read a second time. Conflict arose partly upon the proposed grant to Lady Darling, and partly upon the pretension of the Assembly (abandoned in 1866) to be sole grantors of supplies asked for by the Crown. Mr. Higinbotham, absent from the conference at which the pretension was abandoned, did not rest until he revived it.

A Customs' Duties Bill was sent to the Council, 27th March, 1867. It combined clauses of administration with provisions for taxation. The President, Sir J. F. Palmer, being appealed to, ruled that, under the Constitution Act, the Council might reject but not alter the Bill, although the House of Lords might alter the administrative clauses. It would be for the Council to "consider the desirableness of establishing the practice that Money Bills should be Money Bills only, and not include extraneous matters" partaking "of the nature of a tack."

A Committee was appointed to confer with a Committee of like number of the Assembly with regard to the Bill itself, and to "the course of proceeding generally with Bills, the primary, but not the only, object of which is the imposition of any duty, rate," &c. After discussion, at which no member of the Assembly hinted at a desire to overthrow the agreement made in 1866 as to the form of preambles of Supply Bills, it was "mutually agreed that a progress report to both Houses should recommend that

"inasmuch as doubts have arisen respecting the form or contents of any practice relating to Bills required by the 56th section of the Constitution Act to originate in the Legislative Assembly, it is expedient

that the practice of the Lords and Commons respectively be observed as to such Bills, and as to all subjects of Aid and Supply, and that each House should be guided in all matters and forms relating thereto by the precedents established by the House of Lords, and by the House of Commons respectively."

The Council,—unsuspicious that Messrs. McCulloch, Verdon, Higinbotham, and Francis, intended to wrest the new resolution to destroy the result of the conference of 1866, formally ratified by both Houses,—agreed to the proposal of 1867, and, as requested, amended the Customs Bill, and sent it back to the Assembly, where it was to be laid aside in order to introduce a new one, freed from objection. The President warned the Council (22nd May, 1867) of the danger of doing "a wrong thing" even on the invitation of the other House. They could not constitutionally amend the Bill, and ought not to make the attempt. They might reject it in order that an unobjectionable Bill might be sent to them; or they might pass it, making a special entry in their journals of the exigency of the case, and embodying in a joint Standing Order the recommendation of the conferring Committees as a guarantee "against recurrence of unparliamentary practice." His words were not heeded. The Bill was amended and returned to the Assembly.

The Committees of the two Houses conferred upon the Bill, and on the 5th of June mutually recommended that the Bill should be considered "strictly a Bill of Aid and Supply, and not alterable by the Council." The Assembly was asked by its own Committee to lay the Bill aside and introduce another, free from certain provisions objected to by the Council.[1] Without having mentioned in conference the form of preamble agreed to in 1866, McCulloch, Higinbotham, Verdon, and Francis, left the conference room with a determination to repudiate that form, under cover of the inchoate recommendation with regard to Bills of Aid and Supply.

Those who have never surrendered their judgment to partisanship may wonder that men of mature years could gravely discuss

[1] The Assembly could hardly fail to see that under this precedent they sanctioned a departure from their own claims, and concurred with an arrangement under which by a circuitous method the Council was aided by the Assembly in effecting alterations in a Money Bill.

one thing in conference, and as gravely maintain afterwards that another thing was dealt with there. The final report (18th June) recommended that the object of the resolution (sent up in the progress report in May) "should, if possible, be accomplished by means of a joint Standing Order of both Houses, and that each House should cause the Standing Orders to be considered with a view to make them consistent with that resolution."

Mr. Sladen loyally complied with the recommendation. On the 19th June, the Council on his invitation referred the matter to the Committee on Standing Orders. When that Committee reported (in August), the protervity of the McCulloch Ministry had already sought another occasion of quarrel with the Council, and the suggested joint Standing Order was never adopted, nor even prepared; although in each House divergent recommendations were made as to the form it ought to assume. The Council Committee recommended the adoption by each House of a resolution embodying—one new joint Standing Order, concerning the mode of communicating messages between the Houses; another Order declaring that "The three fair prints of all Bills, except the Appropriation Bill, and Bills of Supply, and Tax Bills, shall be presented to the Governor for Her Majesty's Assent by the Clerk of the Parliaments;" and a third declaring that "The Bills required by the 56th section of the Constitution Act to originate in the Legislative Assembly shall, so far as regards the subject matter thereof, be framed in accordance with the practice of the Lords and Commons respectively in regard to Bills of the like nature."

The Assembly received from its Committee a totally different recommendation as to the nature of the suggested new joint Order, viz. "The three fair prints of all Bills, except Appropriation Bills, and Bills of Free Gift, when passed, shall be presented to the Governor for Her Majesty's Assent by the Clerk of the Parliaments. All Appropriation Bills, and Bills of Free Gift, shall, when printed, be furnished by the Clerk of the Parliaments to the Speaker of the Legislative Assembly for presentation by him to the Governor for Her Majesty's assent." No other suggestion was made. It was then seen that the Conference Committees had been prudent in doubting whether it

would be possible to frame a joint Standing Order which would be more easily interpreted than the Constitution Act. In each House the Standing Orders Committee failed to produce anything which was accepted by its own Chamber. The Committee of the Council bestowed its chief pains upon the framing of Appropriation and Supply Bills so far as regarded their subject matter. The Committee of the Assembly, less attentive to the spirit of the Conference, only conceived a Draft Order concerning the ceremonial act of presenting Bills for the Royal Assent.

The consequence of such divergence was that neither House thought it useful to prosecute the attempt to frame the required Order, and the Conference on the Customs Bill resulted merely in finding a means of passing that measure. The McCulloch Ministry, as they could not make new Orders, resolved to violate those which existed,[1] and to depart from the form of

[1] It may be proper to mention here that, in a later day, an attempt was made to prove (1877), that the Conference of 1867 resulted in the clear and formal recognition of the claims of the Assembly. It was openly stated, and not denied, that the Speaker (Duffy) drafted the reasons adopted by the Assembly. It might seem incredible, except to those who knew him, that he would venture to refer to the abortive efforts of the Conference to procure a joint Standing Order: yet he declared that the Assembly had reason to believe its claim "removed for ever from the domain of controversy." Assuming that others were as ignorant as he was careless about the facts, he alluded to the Conference of 1867, but not to its report that a new joint Standing Order was essential, and that existing Orders would need revision to harmonize them with it. A newspaper said that the Council (20th November, 1877) tore Duffy's reasonings to shreds in giving a "complete history of the events of which the reasons of the Assembly narrated only the preliminary proceedings," and in declaring that they had no grounds for supposing that the Assembly would "thus endeavour to galvanize into life a project which never reached the stage declared essential to its vitality." Both Duffy and the Premier of the day were puzzled; but after a fortnight's consideration, the latter moved resolutions in which it was stated that the Assembly "failed to see the purpose or pertinency of the supplementary narrative furnished by the Council of incidents following the agreement of 1867." But though the Assembly did not shrink from "writing itself down" in such a manner, and passed the resolutions (20th December, 1877), it was not deemed advisable to send them to the Council, which would have found no difficulty in exposing their insufficiency. It was often demanded in 1877, that the two Houses in Victoria should occupy exactly the relative positions of the Houses in England. Yet if the Councillors in Victoria had been so foolish as to claim the privileges of the Lords in a conference, the colony would have

preamble definitely agreed upon after so much discussion in 1866.

In two Consolidated Revenue Bills (February and May) of 1867, they had adopted that form. In a Consolidated Revenue Bill of September 1867, they reverted to the form abandoned in 1866. The Council asked for a Conference "to take into consideration the form of preamble." McCulloch, Higinbotham, Verdon, and Francis then announced, that though the form agreed upon, in 1866, had never been mentioned in the Conference of 1867, it was present to their minds when they recommended a new joint Standing Order. The failure to pass that Order was to them nothing. They had a majority ready to vote for anything. Mr. Fellows asked whether a "previous compact acted upon" was not to be respected. Mr. Higinbotham thought it "superseded by the agreement, which stated the doubts and difficulties which the Conference was to settle."

Mr. Verdon admitted that, in the Revenue Bills of February and May 1867, the compact had been respected; but it "was understood between the learned Attorney-General and myself that . . . it was only pending we used the old one."

A member of the Council interjected that the joint Standing Order suggested by the Council Committee in compliance with the recommendation of the May Conference, did not bear out the contention, that the preamble, agreed to in 1866, was affected by the Conference in May; and Mr. McCulloch replied: "We cannot help your Standing Orders." Mr. Sladen, who had sat in both Conferences, averred that only a particular class of Bills had been in his mind when he moved for, and obtained, the May Conference of 1867. Mr. Higinbotham (who was not a member of the Conference, in 1866) "did not know whether it was so with the Council members or not," but he had other Bills in his mind in May.

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reverberated with denunciations of their insolence. The Commons "enter the Conference room uncovered, and remain standing the whole time within the bar at the table. The Lords have their hats on till they come just within the bar of the place of conference, when they take them off and walk uncovered to their seats: they then seat themselves and remain sitting and covered during the Conference." 'May's Parliamentary Practice' (3rd edition, p. 344).

The Council members abstained from forcing the Assembly members to admit that the Draft Order, prepared by the Standing Orders Committee of that body, was as fatal to the contention in September 1867 as was the proposition of the Council at which Mr. McCulloch sneered. The Conference came to no agreement, and made no report.[1] It might seem useless to try to bind by any agreement the men who, after settling the exact words of a Preamble, and using them in two sessions, openly broke their pledges. The Council, never rigid in insisting on form or privilege, passed the Bill as it stood. Some of themselves and many of their friends knew not how men in time may become the slaves of words. Thus the dispute was asserted to be formal, and when it arose the Houses were engaged in controversy on a substantial proposal to pay £20,000 as a reward to Sir C. Darling for his conduct. This was styled the second deadlock in the colony. It was the work of the Ministry which caused the first. When the recalled Governor despaired of obtaining approval in England of the courses he had sanctioned, he hankered, as was not unnatural, for the grant for which the Assembly had prayed the sanction of the Queen. He vainly sought the consent of Lord Carnarvon to an infraction of usage on the subject. In April 1867, his necessity, if not his will, made him elect to relinquish the Queen's service, and accept the proposed grant of £20,000. His determination was made known to McCulloch, who asked Governor Manners Sutton to initiate the grant by message to the Assembly. The Governor, who had induced the Ministry to postpone the tender of any official advice on the matter while Sir C. Darling remained in the Queen's service, complied. Mr. Sladen obtained a Committee to search for precedents as to the "usage and practice of the Imperial Parliament with respect to grants of money made under extraordinary and exceptional circumstances." The Committee reported, within a week, that the aid of the Commons, and the concurrence of the Lords, were usually invited by message from the Crown; "after compliance with which invitations," subsequent steps were taken to provide separately, or in the Appropriation Act, for the grant proposed. The able President,

[1] The notes of the short-hand writer were afterwards printed. Legislative Council Proceedings, 1867.

Sir James Palmer, was Chairman of the Committee. They furnished many cases in confirmation of their report; one signally in point, (that of John Palmer,) in which the Commons for several years vainly strove to give effect to a grant.

The rejection in different years of several Bills by the Lords did not lead to the inclusion of the grant in any Appropriation Bill; and it was not until the claim of right was abandoned by Palmer's friends, and a diminished sum was sought as a boon, that Palmer's Per Centage Bill was passed in 1813. In that year there were two Bills. When, on the 5th July, the first was thrown out in the Lords, a second, framed to meet their objections, was initiated in the Commons and was speedily passed. The fiery Tierney objected to the defeat by the Lords of "the declared sense" of the Commons; but, large as the majority was in the Commons in favour of Palmer, there was no resort to a tack.

Taking all the circumstances into consideration, the Council Committee reported that "a grant to Sir Charles Darling, or to any member of his family," could not, according to Parliamentary usage, "be included in the Appropriation Act." The Assembly was not deterred by this Report. The day after it was brought up the Appropriation Bill was sent (14th August) to the Council. On the 20th its second reading was moved. Every member of the House was in his place. By 23 votes against 6 the Bill was rejected, because it did not conform to Parliamentary usage, which forbade the mixing of the grant to Lady Darling "with the general supply for the services of the year," and because "the grant itself is unconstitutional and highly mischievous, and calculated to produce corrupt practices in every department of the State."

A narrative address from the Council to the Governor explained (22nd August) the events which led to the rejection of the Bill. An amendment moved by a member, who, in his desire for peace, sometimes voted against a course on behalf of which he had furnished cogent reasons, found only four supporters. In the address adopted the Governor was informed of the "form of preamble mutually agreed upon by both Houses;" and its abandonment was described as "a breach of the compact then made (1866), and as tending to destroy that feeling of amity

between the two Houses which we had hoped had been restored, and would for the future be maintained."

Governor Manners Sutton had the tact which his predecessor wanted. With the Ministers who ruined Sir C. Darling, he conducted serious correspondence before he replied to the Address of the Council. On the day of the adoption of that Address, Mr. McCulloch asked the Governor to prorogue the Parliament, in order that an Appropriation Bill might be considered in another session. The Ministry, at the same time, "reserved to themselves liberty to recommend" a dissolution of the Assembly as a last resort. They averred that the result of the recent election of the Assembly ought to have been final. They had reiterated so often that "the country" meant constitutionally only one of the two elected Houses that they had perhaps begun to believe what they said. They were discreetly silent as to the breach of compact which they had induced the Assembly to commit in abandoning the preamble formally adopted by both Houses, and they charged the Council with refusing to abide by the preliminary resolution which each House had been asked, and neither House had been able, to embody in the required joint Standing Order. It was as if a thief, having robbed a traveller, should call upon the police to assist in further stripping his victim. They were unable to deal with the crucial case of the "Palmer Per Centage Bill" otherwise than by declaring it "a marked and manifest exception to the ordinary usage of the House of Commons."

In other words, they would appeal to that usage when it might suit their own purposes; otherwise they would scout it. In the interval they proposed to satisfy the public creditors by means of an Act enabling them to sue the Crown, concerning which the Governor had previously taught them that he was capable of exercising some discretion. A warrant was put before him, in which his signature was required to authorize payment of a judgment obtained by a suitor under the Crown Remedies Act. Having satisfied himself by inquiry that he was "not only legally empowered but morally bound to issue the warrant," the wary Governor took occasion to warn his advisers (21st August) that it "clearly was not the intention of the Legislature in passing the Crown Remedies Act to

substitute judgments of the Supreme Court for Parliamentary grants"—that the adoption of such a practice

"would withdraw the public funds from the control of Parliament, and place them practically at the disposal of the Governor on the advice of Ministers named by himself, and no longer restrained by Parliamentary checks which, under Parliamentary Government, render Parliamentary supplies a necessary condition for the expenditure of public money, and therefore for the retention of office by any administration."

Parliament "in the aggregate" was concerned, but the Legislative Assembly "most deeply interested, in the maintenance of the existing Parliamentary control."

The hollowness of the pretext under which, when resigning office in March 1866, the Ministry affected to respect Parliamentary control, was shown in their reply to Governor Manners Sutton when they had matured their plans for a fresh quarrel with the Council. They told him that, so long as Ministers were "practically responsible" to the Assembly "invested by law with the sole control of the public finances, the large powers" of the Crown Remedies Act were "not likely to be abused," and that their exercise might be found "essential to the protection of the rights of that Chamber, as well as conducive to the highest interests of the people represented by it." On this head the Governor replied that, as he had already explained his views, it was "unnecessary for him to recur to it." Nor did he accept their general advice. In his judgment immediate prorogation would be premature. He "frankly informed" them that he thought it desirable for him to communicate with the rejectors of the Appropriation Bill who had declined to afford[1] funds for the services of the year.

The Ministry tendered their resignations. The Governor consulted Mr. Fellows (23rd August), not withholding from that gentleman, as Sir C. Darling had withheld, any information as to the state of affairs, but not unreservedly committing himself to accept the advice offered. Mr. Fellows considered that he was by such a course consulted "on an isolated question of law,"

[1] Yet, if the tack of the Darling Grant was unconstitutional, it was the act of the Assembly in tacking, and not that of the Council in rejecting, which prevented the lawful granting of funds.

and not as a constitutional adviser. He also thought that no attempt had been made to "bring the two Houses into harmony." The Governor recognized Mr. Fellows' right to decline "offering advice unless invested with the authority of a Minister," furnished McCulloch with the correspondence, and asked his advisers to "regard themselves as occupying the same position" as before the tender of their resignations. They wished him to consult other Members, who had rejected the Appropriation Bill. He accordingly consulted Mr. Fraser, one of the majority on that occasion, but usually friendly to Mr. McCulloch. It was he who had moved for the Conference on the tacked Bills of 1866, and thus led to the solution of disputes by the agreement upon the preamble and other matters. Mr. Fraser was supplied with the Governor's various communications to McCulloch and Fellows, and informed that the Governor was "not prepared to commission any gentleman to form a new Government without reason to believe that existing embarrassments would be mitigated or removed, and power procured for" meeting in a strictly constitutional and regular manner "the current public expenditure." Mr. Fraser consulted members in both Houses, but in vain. Such was the Governor's tact throughout these transactions, that the confidence of all persons in his impartiality was unimpaired. Mr. McCulloch was re-invited to the helm, and again advised a prorogation, with a view to re-submit to the Council the Bill already rejected—a Supply Bill for current expenses being asked for, pending the prorogation. It was not until he had accepted this advice that the Governor replied to the address of the Council on the rejection of the Appropriation Bill. He avoided imputations upon any one, but trusted that, "by the exercise of a wise moderation, combined action might be restored to Parliament, and the Executive Government relieved from their existing inability." . . .

The temporary Consolidated Revenue Bill was sent to the Council on the day (3rd September) on which the Governor thus addressed them, and it was disfigured by the breach of faith already recorded with regard to its preamble. By 19 votes against 9 the Conference already mentioned was obtained; but, emboldened by numerical support, and the failure of Messrs. Fellows and Fraser to form an Administration, McCulloch and

his colleagues cast to the winds their former compact, and complained that the Council would not give effect to the suggestion which both Houses had failed to embody in the requisite joint Standing Order. The Conference on the Revenue Bill having made no recommendation, the Council passed it, recording at the same time that it was irregular to pass such a Bill without any intention to appropriate the supplies of the session; and that they passed it in "full reliance that the vote which caused the rejection of the Appropriation Bill will not be paid out of the money now to be made available, and in the hope that his Excellency's advisers will not again recommend a course which can only lead to future complications." Prorogued on the 10th, the Parliament met again on the 18th September. The Governor regretted the necessity to convoke it so soon after its recent labours. The Council disclaimed responsibility for that necessity, and reminded him that they were, and always had been, desirous to assent to the ordinary appropriation disencumbered of the proposed grant to Lady Darling. Harmony could scarcely be hoped for while that Bill was made the "instrument of attempts to coerce (the Council) on questions of public policy."

On the 2nd October the Governor in a special message recommended the "Council to concur in a provision for the payment to Lady Darling of the sum in anticipation of receiving which Sir C. Darling" had retired from the service. By 20 votes against 5 the Council rejected a proposition to concur, on the ground that the English practice of recommending, "in the first instance, exceptional grants, finds no counterpart in a recommendation to the Council of an exceptional grant to which that body has already informed your Excellency it entertains grave objections." They would give earnest and serious consideration to the question, if brought before them "in such a manner as will not preclude" giving effect to their opinions upon it. The cautious Governor replied that, on a matter of "Parliamentary discretion," it was "undesirable that he should intervene in such a manner as would withdraw differences from their proper sphere, and so give them a character which does not naturally belong to them, of a conflict between one or other of the two Houses and the representative of the Crown." It became known in after years that he "earnestly urged" his advisers to include

the grant in a separate Bill. They, on the other hand, let him understand that they were driven onward by their followers, and could not abide by what was lawful or constitutional. His message was received on the day (16th October) on which the Appropriation Bill containing the Darling grant reached the Council, and was rejected by 20 votes against 5.

The Assembly, on the 29th October, sent up a Supply Bill for £500,000. On the 5th November the Council adopted an address to the Queen, narrating facts concerning their rejection of Bills containing the grant which would lead to a "literal or substantial violation of the rule" that a Governor should not receive pecuniary "or valuable presents from the inhabitants of the colony over which he presided, either during the continuance of his office, or on leaving it." They could not deal with the grant until Her Majesty might have sanctioned "a departure from the Colonial Regulations," and they prayed for a signification of her pleasure. An attempt was made by a ministerial supporter to procure a Conference on the Supply Bill, but the Council resolved (5th November) to reject it because it did not disclose in the requisite manner the purposes to which the money was to be applied, and because, as the Governor's intention to dissolve the Assembly immediately had been made known, the Bill could not be followed by an Appropriation Act during the currency of the existing Parliament.

The application of the Crown Remedies Act gave significance to the resolution. Deprived of the condemned collusive arrangements with a bank, the Ministry had resorted to the Act to pay suitors directly, and thousands of actions were brought and satisfied. "Suits brought by persons employed in the public service to recover salaries and wages due will not be defended." Such was the official instruction given by the Attorney-General to the Crown Solicitor. The Governor's warning in August about the abuse of the Act, and his courteous influence, had not been without effect. Mr. McCulloch in November admitted that the Ministry, while not resisting just claims, ought carefully to abstain "from any step which might tend to substitute, in financial affairs, Executive for Parliamentary authority:" Mr. Higinbotham accepted the same view. The Governor entirely concurred in "condemning any such (substitution) as

unconstitutional." He confided in the assurance that none but "liabilities indispensably necessary for the protection of life and property, and to prevent confusion," would be incurred.[1]

The moderating influence of the Governor was necessary to restrain the Ministry from courses in which their supporters out of doors were ready to support them. In many places riotous crowds overbore the efforts of constitutional candidates to obtain a hearing. It was accepted as an article of faith that, if "an old hat" were placed in nomination by McCulloch, it was the duty of all "loyal liberals" to support it, and this shibboleth (propounded by a member of a learned profession) was notably adopted in September 1867. Probably many who blindly accepted were unconscious of the tyranny like that of Gesler, which they were abetting. A man who kept a house where it was said that persons of ill reputation resorted in Melbourne was set up by McCulloch in a county near Geelong. An opponent was Mr. Graham Berry, heir in hope of the potency of McCulloch. The keeper of the eating-house was triumphant. When he wished to take his seat he demanded that the Ministry who had obtained his seat, should introduce him. They complied; but even amongst McCullochites there was surprise when the man was ushered to the House between two Ministers. It was hard to predict to what excesses such a Ministry so supported might be impelled.

They did not resort to the methods of obtaining public money, which had been formally condemned in the time of Sir Charles Darling, but they eluded the spirit of the law by an adroit use of its forms. There was no question that the Crown Remedies Act could be used in enforcing claims which were by law justly due. It was freely resorted to, and a jury, in a defended case, gave a verdict against the Crown early in

[1] In addition to ordinary despatches printed at the time, several unreserved confidential despatches from Lord Canterbury were published after his death. In 1878 Sir George Bowen, distressed by another deadlock, made known to his advisers and their friends the confidential despatches of Lord Canterbury. They carried an address, asking for their publication. By a telegram Sir G. Bowen applied for permission. With some reluctance the Secretary of State consented to the publication of a portion of the despatches which Sir G. Bowen had shown. The family of the deceased Governor complained of the unjust abuse of his confidence. Indefensible as was the publication, it threw light upon the intrigues of 1867.

November. Law officers, Audit Commissioners, and the Governor's advisers co-operated in regarding the confession of judgment, or the verdict of a jury, as sufficient to make money "legally available." That the transaction was a trick was undoubted, but it seemed unimpeachable, until the violated law avenged its own wrong. The subtilty of the Bar overthrew that of the Government. By ingenious arrangement a suit was brought—not by nor against the Crown—but of which the issues involved the question whether, without formal appropriation, monies became, under the Constitution and the Audit Act, legally available to meet a judgment. After reserving judgment the Supreme Court pronounced that a judgment of that Court under the Crown Remedies Act did not of itself render monies in the Treasury legally available for the satisfaction of such judgment.

This decision, the Governor wrote (27th December, 1867), "will of course guide the proceedings of the Audit Commissioners as well as of the Governor for the future." Though unexpected, the result was not regretted by him. On the contrary, he believed that it "reconciled the letter of the law with the spirit of the Constitution." Meanwhile certain liabilities were still met by confessions of judgment. The marring of their plans did not affect the desire of the Ministry to dissolve the Assembly. The dissolution was somewhat postponed by the arrival in November of H. R. H. Prince Alfred. Nothing could exceed the loyal fervour of the reception accorded to him. It merged for a time political rancour. The Governor, as was his wont, strove to make it conducive to harmony between the Houses. A special session of one day was convened by proclamation for the 25th November, although by a previous proclamation Parliament had been prorogued to a later date.[1]

The dissolution took place in December. Mr. Fellows

[1] The Governor's speech only invited the Houses to consider the "auspicious occasion," on which he felt sure that the deliberations of Parliament would be of a character to enhance "the cordiality of the welcome about to be offered by this loyal colony to the son of our Queen." McCulloch's friends were becoming encumbered by the epithet "loyal" which they had illogically assumed, and which had begun to render ridiculous some demands of "loyal" liberals.

resigned his seat in the Council, and was triumphantly returned to the Assembly by a large suburban constituency, in spite of the vigorous hostility of the Ministry. Mr. O'Shanassy was elected without opposition to the vacant seat in the Council. Mr. K. E. Brodribb gallantly strove to oust Mr. Higinbotham at Brighton, but was defeated by a majority of 90. The victor pointed the moral of the struggle by saying, "I have been told, gentlemen, that I am a disloyal man. Well, gentlemen, I congratulate the electors of Brighton on being also disloyal men." It was, perhaps, partly in consequence of this unpalatable accusation that the speaker was rejected in 1871, when he polled less votes than in 1866 or 1868, and his opponent, Mr. Thomas Bent, polled more than any candidate had received before.

The Ministry were, however, victorious generally. The Governor clearly represented to the Secretary of State the dangerous condition to which the colony might be reduced, by the refusal of the Assembly to include the grant in a separate Bill, which he held it might do "without loss of dignity or peril to its privileges," and by the refusal of the Council to concur in the grant if sent up in the Appropriation Bill. The continuance of the struggle would give "immensely increased power to the advocates of extreme democratic opinions, and result ere long in a revolutionary condition of affairs." [1] He rejoiced that "the opposition minorities at the polls" would be large, because the fact would strengthen him in "refusing to accept any illegal or unconstitutional advice if it should be tendered (which he doubted) by the majority. Your Grace will not, however, understand (he resolutely added) that my rejection of any such advice, if tendered to me, would be dependent on the prospect of support here." The Governor divined the situation well. Troubles and errors of the past; the mischievous Land Orders mischievously set aside; the subjection of legislation to crowds of gold-miners, with no more interest in the country than a robber has in the welfare of the traveller he assails; the unconstitutional example set by the first Haines Ministry; the degradation of the suffrage by it, with aid from O'Shanassy, Duffy,

[1] Confidential despatch, 4th February, 1868, which Sir G. Bowen obtained leave to publish in 1878.

and others; the abolition of a property qualification; the shortening of Parliament; the conduct of a portion of the press—had combined to make the unreflecting accept as a political axiom that, whatever might be demanded in the streets, ought to be made law, if only a majority of one could be secured for it in the Legislative Assembly.

The other branch of the Legislature, also elected, was to have no voice. The minority, however numerous, who were outvoted at the polls for the Assembly, were to be stifled. They were only to join in paying taxes. This was the plain, unvarnished contention of Mr. McCulloch and his triumphant friends, and of a newspaper, which aimed at popularity in 1868, as it had sought it in abetting rebellion in 1854. At this juncture a despatch from the Secretary of State, without positively enforcing a particular course upon the Governor, conveyed

"the opinion of Her Majesty's Government (under Mr. Disraeli, January 1868) that the Queen's representative ought not to be made the instrument of enabling one branch of the Legislature to coerce the other, and therefore that he ought not again to recommend the vote to the acceptance of the Legislature . . . except on a clear understanding . . . (and) in a manner (enabling) the Council to exercise their discretion respecting it without the necessity of throwing the colony into confusion."

The Ministry, shocked at any question of their supremacy over usage and law, professed admiration for both, while declaring that the "form of a Bill of Supply" was "completely within the discretion of the Assembly," and that "the interference of the Crown" in the matter "threatened the existence of responsible government in the country." But the courteous Governor was not like his predecessor. Seeing more clearly the breakers ahead, he would nevertheless do his duty in the storm. When it had passed he was able to write (August 1868) that he had taken no "step which would have identified the Governor with the opponents" of the Ministry, but that at the same time he had "announced in terms which no one had sought to misconstrue or explain away, that the adherence of a Governor to his instructions is not dependent on the will of a majority, but essential to the connection between the colony and the mother-

country,"—and that he had "maintained this principle." Violent partisans on each side denounced him, but (he wrote in one of the confidential despatches, revealed by one of his successors), "as the performance of my duties as the representative of the Crown is inconsistent with my identification with either political party, I must expect that the organs of both should denounce me."[1] Having nothing to conceal, he published such despatches for general information as it was in his power to disclose.

Committed to violent courses, the Ministry were abashed by the calmness and sagacity of the affable Governor. As he would not shrink from his duty, they determined to throw responsibility on their opponents. They hoped that failure would make the Parliamentary minority abandon the contest. Despatches arrived, approving of the Governor's proceedings, but regretting the rejection of the Supply Bill in 1867. In one (February 1868) the Duke of Buckingham qualified his previous instructions by saying that, considering all the circumstances, the proposed grant, whatever might be thought of its propriety, was not so unmistakable a violation of existing rule as to "call for the extreme measure of forbidding the Governor to be a party, under the advice of his responsible Ministers, to those formal Acts which are necessary to bring the grant under the consideration of the local Parliament."

The contradiction between this despatch (1st February) and its immediate precursor, which reprobated the recommendation of the grant without a clear understanding that it could not lead to confusion, was noticed by all, and afflicted many. The Governor lost support in doing his duty. They who had opposed the Darling grant on the ground that it was incompatible with the honour of the Queen's service, saw the Secretary of State undermining them. The Council, whose contention had been justified by Lord Carnarvon and by the Duke of Buckingham,

[1] The difference between the two Governors is exemplified in this sentence in a despatch not intended for publication. Sir C. Darling, in a despatch which could not but be made public (as it was his commentary on the petition of the Executive Councillors), averred that the "unscrupulous and mendacious character of the 'Argus'" was such that it might be asserted that any statement in its columns was "untrue." Sir C. Darling must have known that his description was, if justified at all, applicable to a newspaper which supported himself.

found the latter contradicting himself. The prime movers of the plots of the Ministry (who might have been expected to be contented with the sudden change of front at Downing Street) were encouraged to extort a completer confession of weakness, and declared that it should be laid down at once, and for all time, that a Governor should receive no instructions whatever from the Colonial Office.

Ere long all parties in the colony were startled by the voice of Sir Roundell Palmer, who as Attorney-General had advised the able Mr. Cardwell in 1865. He gave notice that he would move that the Commons regret "that a vote for a grant of money to indemnify the late Governor of Victoria for loss which he sustained by his recall, should have been recommended by a message of the Governor to the Legislative Assembly of that colony with the sanction and approval of Her Majesty's Government."

The vacillation of a Conservative Minister was about to be atoned for by the patriotism of a Whig. The "loyal Liberals" of the colony, as McCulloch's party called themselves, were to be castigated by one whose loyalty and liberality were real. It was, perhaps, then, that some of the majority began to suspect whither the masters of the plot would lead them. The keen and brilliant B. C. Aspinall was interrupted by Francis and McCulloch for saying (in June 1868) that if the Darling grant should be made, the people of the colony would be taxed for "disconnection from the mother-country." Mr. Francis appealed for protection against the charge of "sedition." Mr. McCulloch called it "infamous," and trusted that Mr. Aspinall would be silenced even if "continuance in disorderly conduct "should render it necessary to expel him."[1] But Mr. Higinbotham, prone in theory to what his colleagues disclaimed

[1] Aspinall having explained that he did not mean that the majority knowingly laboured for separation, but that their labours tended thitherwards, a motion to silence him was withdrawn. "Then (he said) a generous majority will perhaps permit me to go on. . . . The present Governor is willing to do all he can . . . to assist any Ministry . . . to pay all that is rightly owing . . . but honourable gentlemen opposite say: 'Our hireling, Sir C. Darling, must first be paid.' (Shame) so I say. I say very much shame . . . that all the suffering and distress should be allowed to continue simply because certain gentlemen wish to carry out an unholy contract."

in practice, inveighed against a system under which a Governor received commendation or dispraise from a foreign nobleman. "An independent sovereign . . . I say (the Governor) is." Unless the Duke of Buckingham should withdraw from his interference, the colony should, as it could, "correct that state of affairs." Till the crack of doom the House should not give way. Sufferings of others in the community were but dust in the balance compared with the importance of securing the absolute supremacy of the Assembly. Unfortunately for Mr. Higinbotham's consistency, a member read an extract from a speech in which, only four years previously, Mr. Higinbotham had said: "As long as Victoria remained a dependency of England—and long might she so remain—so long would they have the English Government intervening between the colony and the Throne. It was impossible that it could be otherwise."

Nothing is fatal to the reputation of the idol of the hour. Mr. Higinbotham was allowed to call 'Hansard' a pestilent publication. When the Duke of Buckingham's despatch (of 1st January) warned the Governor that he ought not, by recommending the Darling grant, to lend himself to the coercion of one House by the other, the Governor handed it (6th March) to his advisers. They informed him after some days that they would "not take any course, submit to any condition, or offer any advice inconsistent with the decision," to include the Darling grant in "the Appropriation Act of 1867." He astutely pointed out that the instructions were only conditional, "and while it would undoubtedly be the duty of the Governor to reject any advice (if such advice should be tendered to him) the acceptance of which would involve a violation of his instructions, that contingency has not arisen." Confident that their majority would enable them in the end to control the Governor and abash the Secretary of State, the Ministry resigned, alleging that, though the contingency had not arisen, they were not "justified in assuming" that it would not. Not finding him so pliable as Sir C. Darling had proved, they resolved to make discovery of his weakness and bend him to their terms. He consulted many persons, showing all the correspondence to each with imperturbable affability and coolness. Mr. Fellows, who advised with Mr. O'Shanassy, required a right to a dissolution, in case of a

refusal of supplies by the Assembly. The Governor reserved his judgment, as to granting a dissolution, according to circumstances. Captain MacMahon was appealed to; but, as one who had concurred with the request of Mr. Fellows, he could do nothing. In the end of March, Mr. J. Carre Riddell (of an ancient Border family) was appealed to. He wished to know whether the McCulloch Ministry was precluded from asking for supplies. The Governor, though not in doubt himself, thought it improper "for him to solve doubts entertained by others," and Mr. McCulloch declined to add anything to the statements in his minute of the 10th March. Mr. Riddell abandoned his task on the 6th April. Mr. Sladen and Mr. T. T. A' Beckett of the Upper House, and Captain MacMahon of the Lower, were successively applied to. The Duke of Buckingham's vacillating despatch of 1st February arrived early in April, and made confusion worse confounded.

Parliament not having been formally opened by the Governor, he could not, consistently with Parliamentary usage, communicate the despatch to the Houses, and his Ministry, holding office temporarily, were unable to advise him. In the dilemma Mr. A' Beckett's agency was informally used to communicate the despatch to members, who responded to his invitation of the whole body of the Council. They who assembled acknowledged the courtesy of the communication, but "declined to express any opinion upon the despatch." Mr. A' Beckett reported (17th April) that under the circumstances he could not hope to form an Administration. Captain MacMahon and Mr. Sladen on the 18th and 19th declined the same task, though the latter consulted his friends before relinquishing it. The public became weary of the delay. The Governor, who had most reason to be disgusted at its causes, gave no sign of ill-temper. On the 20th April he informed McCulloch that he had unavailingly sought to relieve the Ministry by consulting members of both Houses: that he had "never sought to impose (on those members) any restrictions on the opinions or conclusions at which they might arrive" with respect to the proposed grant. He had distinctly stated to all that, "while it would be inconsistent with his duty to the Crown to deviate from the instructions" (1st January) of the Secretary of State, yet "he was" prepared, as

the representative of the Crown, "to assent to any decision which might be concurred in by the other two branches of the Legislature." He added that the course of his communications led him to the belief that under existing circumstances the Council "would inevitably reject any Appropriation Bill (general) in which the proposed grant to Lady Darling might be included, and that therefore even the abrogation by the Secretary of State of the instructions above referred to would not lead to a settlement of the question." McCulloch saw no reason to endeavour to extricate the Governor or the colony from the difficulties into which the Ministry had brought them. He obstinately repeated that others, and not the Ministry, were responsible for the daily multiplying evils, and for "whatever other evil consequences" might spring from them, and repeated the request to be relieved (22nd April). The Governor had many consultations with McCulloch before he formally replied on the 28th April. One of the confidential despatches brought to light in 1878 shows the position in which the Governor stood at its date, the 25th April. "The simple truth is that the party having the majority is angry because I will not aid them in crushing the minority. And the party in the minority is incensed because I will not regard them as a majority." On the 28th he informed McCulloch that, as that gentleman regarded himself "as unable to offer any advice which the Governor could accept," he had no resource but to "recommence his endeavours to relieve the Ministry." [1] The member of the Council who had obtained the conference which terminated the confusion arising from the "tacking" in 1865, procured at this period the signatures of seven members who agreed to vote for the Darling grant in a separate Bill without an objectionable preamble.

The Governor considered the information important, but was

[1] It is not to be supposed that he was insensible to the indignity of being subjected to the efforts made to compel him to violate his instructions. In 1874, when, not Mr. McCulloch, but Mr. Francis, had created another disagreement between the two Houses, the Governor (then Lord Canterbury) said to a friend: "Well, thank God! I am not among them now." Oddly enough, Mr. J. Wilberforce Stephen, who contested a seat against Mr. Higinbotham, and was an ardent speaker against McCulloch and Francis during their Ministry, became a colleague of Francis in 1872, and equally ardent in supporting such unconstitutional propositions as he had formerly denounced.

unable to take steps to meet their views. He was *functus officio* in his executive capacity after recommending a grant, and in his legislative capacity could have no cognizance of a grant till presented to him in a Bill passed by both Houses. The form of the grant must be dealt with in the Assembly, or in a "conference between the two Houses" after its submission to the Council in a Bill. An administration prepared to recommend Mr. Fraser's views was "preliminarily necessary," and Mr. Fraser was invited to form one. He respectfully declined the task (1st May). Mr. Fellows was again sent for, and at his suggestion Mr. Sladen was invited (2nd May) to form a Ministry. He associated himself with Mr. Fellows, Mr. Gillies, Mr. Langton, Mr. Kerferd, Mr. Bayles, Mr. McDonell, and Mr. O'Grady. No "preliminary conditions or restrictions" were imposed upon him as to the advice he might tender. Messrs. Sladen, Fellows, and Langton were returned by their constituencies, but the retiring Ministry were able to secure the defeat of Mr. Gillies, whose reasoning power they dreaded. The man chosen to oppose him was an adventurer, who had been an ardent free-trader until he saw that a majority was in favour of protection. Eventually he was expelled for receiving bribes, but not until McCulloch had associated himself with him in a Ministry. The Governor opened the Parliament in person on the 29th May. His speech made no allusion to the Darling grant, but paid a compliment to the public spirit, and patience, exhibited by the community during the "deplorable state of affairs" resulting from the "absence of the usual Appropriation Act."

A cowardly act of an assassin,[1] who had shot Prince Alfred in the back near Sydney, had evoked loyal sympathy, which annihilated for a time even political contention, and combined men of all opinions in demonstrations of loyalty, at

[1] As the attempt failed, it was convenient to deny that it was prompted by the contrivers of the murder of Sergeant Brett at Manchester, and of the Clerkenwell explosion in 1867. If it had succeeded, the assassin would probably have been exalted to the bad eminence which was accorded to the heroes of those exploits, who have been styled "martyrs." The man who wounded Prince Alfred had been a drunkard, though not intoxicated at the period when he was inspired by the Fenian exploits in England. It was urged that he was of unsound mind, but he was convicted and executed. He had corresponded with Fenians in Ireland.

the time of the meeting of Parliament. But it did not slacken the energy with which McCulloch strove to obtain office, and to make amends by money for the disgrace which he had brought upon Sir Charles Darling. With that gentleman he kept up a correspondence in which, at one time, he proffered the appointment of Colonial Agent in London in case Her Majesty should determine that, while Sir C. Darling remained in the service, his wife could not receive the £20,000. The Council responded promptly to the Governor's speech: the Assembly on McCulloch's motion demanded the removal of the Governor's new advisers. The facts that McCulloch had resigned—that funds were not legally available to meet public debts—and that the Governor had applied to many members of both Houses before the Sladen Ministry was formed, did not retard the demand, which was coupled with another: viz. that the grant to Lady Darling should not be included in any other "form of legislative enactment than that already determined by the Legislative Assembly —the Appropriation Act of 1867."

Professing loyalty, the address assailed the Duke of Buckingham's interference as a dangerous violation of the rights of the Assembly. Professing pity for public servants who were starving, it declared that they might continue to starve until the faith of the Assembly, pledged to an improper grant, should have been kept. The Parliamentary struggle may be briefly described, though it was protracted.

The Governor, in replying to the address upon his opening speech, recognized its expressions of loyalty. He was sure that the Assembly did not desire him "to violate the conditions on which" he held his trust. He had not been instructed to interfere with, and felt that the Assembly would acquit him of having "shown any desire to interfere with," their constitutional rights. He was ready to acquiesce in the settlement of the Darling grant question, "no matter on what basis," in the only lawful and constitutional manner, "namely by the concurrence of the branches of the Legislature." He had resorted to his existing advisers only when their predecessors absolutely and repeatedly resigned. He could not ask for supplies except through a Minister, and he earnestly hoped for a restoration of co-operation between the Houses.

McCulloch and his friends imperiously demanded that the House should meet on the following (not a sitting) day, in order that it might be informed if the Ministry intended to propose the Darling grant, and include it in the Appropriation Bill for 1867. The House obeyed. Mr. Fellows, whose genial humour gained respect but not votes from his tormentors, said he was asked whether he was prepared to adopt a course which the previous Ministry "would not enter upon." He would not support the inclusion of the grant in the Appropriation Bill; but, if the House desired, would recommend it in a separate Bill. McCulloch had indeed shrunk from advising what he wished to compel others to do. The tact of the Governor and fear of failure had restrained him. He now moved an address (8th June) praying the Governor to dismiss his Ministers. They had become "a calamity." Mr. Fellows found his concession to the wavering Duke of Buckingham of little use. When he agreed to include in a separate Bill that which at his instigation the Council had rejected as unconstitutional and corrupt, he was taunted for inconsistency. The defence was that the country was so weary of strife that the constitutional party thought it best to attain peace; but the attack was never discontinued, and even amongst those who nominally supported Mr. Fellows in the Assembly there was equivocation. Mr. Duffy and Captain MacMahon, though voting with the Ministry, damaged them in their speeches. The reason leaked out during a speech by Duffy. If Mr. Fellows when asked to form a Ministry had acted properly, Duffy's "honourable and gallant friend Captain McMahon might have been sent for, and he probably would have succeeded." McCulloch's motion was carried by 45 votes against 14. The Governor answered the address courteously. He pointed out that the suspension of public business and public payments had existed before his Ministers took office, that he had not removed their predecessors, nor had those predecessors retired at his instance. "I am not informed that the removal of my present advisers would result in that legislative co-operation without which any government must be powerless." He was assured by his advisers that if such a result could be secured by the formation of a new Administration they would resign forthwith. The majority in the Assembly strove to

prevent the Ministry from making a financial statement. They dreaded the Treasurer's ability, and they wished to storm his (Langton's) position. McCulloch moved suspensions of Standing Orders, and ostentatiously assumed control of the House.

The mark aimed at was avowed openly,—viz. by forcing the Darling grant into the Appropriation Bill of 1867, to bring the Governor and the Secretary of State under the heel of authority; to inflict (Mr. Higinbotham said) "a censure upon the Executive Councillors" who had petitioned the Queen; to remove all obstacles to the exercise of arbitrary power by one House, which should be able to tax at will, and imprison without question. A base motive was already not only suspected, but whispered about. Thrice (1861, 1865, 1867) had a Bill for payment of Members of Parliament[1] been rejected by the Upper House. When Mr. Fellows said (9th June) that by passing the Darling grant in a separate Bill the honour of the country, which members talked about, would be redeemed, he was met by cries of No, and one member said, "There is something underlying it." "I believe (he retorted) something does underlie it. Probably £500 a year does." No man attempted to gainsay him. The opposition, led by McCulloch, carried an address (24th June) praying the Governor to recommend the Darling grant "as the same was recommended . . . and granted by the late Legislative Assembly." Mr. Higinbotham declared that one penny more or less than the £20,000 would tarnish his victory. He must have the bond, and the bond only, as demanded in the lost Bill of 1867. The Governor (26th June) replied that if the solution of difficulties could be obtained in the ordinary manner by change of advisers he would at once call upon one of the majority to form a Ministry. But the crisis was abnormal. His late advisers had informed him of the hopelessness of an attempt to re-submit the lost Bill. His existing advisers concurred. He was ready to give effect to the wishes of the Assembly when advised of the probable concurrence of Parliament. McCulloch described the Governor's message as extraordinary. One of

[1] Though Sir Henry Barkly's influence had prevented his Ministry (Heales') from making the question a *casus belli* between the two Houses, it had not slumbered. £500 a year for each member was proposed in one of the Bills.

McCulloch's recent colleagues supported a motion that Mr. Langton the Treasurer be silenced. On the 29th June McCulloch moved a rejoinder, in which passion prevailed so far as to assert that the Assembly had not informed, and did not propose to inform, the Governor that the Appropriation Bill of 1867 would be re-submitted. The discrepancy between this statement and the former Address to which the Governor had replied was exposed, but the majority preferred pervicacity to confession of error, and McCulloch carried his resolutions. Careless about their own assertions, they viewed those of the Governor with "profound concern and alarm." On the following day, on the motion of a member who had been a naturalized citizen of the United States, but had returned to a nominal allegiance to the Queen, the Assembly resolved that the retention of office by the Ministry was injurious to the Crown, repugnant to the Constitution, and in "malignant antagonism" to responsible Government. The patient public saw these things in wonder. The Governor (2nd July) was advised to say in response to the two violent addresses, that he believed he was "giving practical effect to the wishes" of the Assembly by recommending them to provide for the payment of £20,000 to Lady Darling. Mr. Sladen deprecated discussion in the Council lest it should mar the prospect of peace. Captain McMahon, in the Assembly, vied with the partisans of McCulloch in denouncing the "dirty" compromise by which the Ministry disgracefully proposed to serve the Governor, and do for "the filthy lucre of office" what they had till then opposed. The effort to procure peace, by negotiations with those (Mr. Francis was one) deemed moderate amongst the Opposition, had not pacified them, and had offended some of the few Ministerial supporters in the Assembly. That Mr. Fellows, whose generous hand poured money freely to supply public or private need, was corrupt or avaricious no man believed. The majority of the Assembly were no better pleased than Captain McMahon with proposals not necessarily restoring them to power. Power in the colony was not confined to Ministers. It was sporadic among their followers. By grants for local works, appointments of friends of local intriguers, and kindred means,[1] the Treasury had

[1] A highly respected, wealthy, and benevolent man was a candidate for

become a storehouse for rewards. The administration of the public lands was of like character. If payment of members would have stayed the plague it would have been well to commute a greater evil by sufferance of a less. But no salary was needed by the honest, no bribe could lure others to become pure. On the 3rd and 6th July hot debates ensued in the Assembly. The majority objected to be concluded by the message as to the amount. They had insisted on £20,000, but they discovered that it was a breach of their privileges to deny them the right to "put (Mr. Higinbotham said) £20,000, £50,000, or £100,000 into any Supply Bill." As to coercing the other House,—did members know that coercion had been used against the majority? He produced a threatening letter sent to himself, and asked if it was not (to borrow an epithet from it) a piece of the scoundrel tactics of a scoundrel faction? Mr. Fellows, having looked at the letter, destroyed its effect by saying, "I received two such letters myself, and I wanted to see if the writing was the same." Mr. Langton also had been threatened. The Ministry had been allowed to adopt (6th July) a resolution to grant the £20,000, but were acrimoniously assailed by McCulloch and his followers on the same day. A dissolution had been hinted at, and though no Minister gave colour to the reports, members were distressed. Mr. Duffy proposed to move that "a dissolution of Parliament under existing circumstances would be an unprecedented and unjustifiable exercise of the Royal prerogative." The harassed Ministers were "to be trampled by the abject rear" as well as o'errun by their competitors on the 7th July. But a message of arrest was on the way. Sir Roundell Palmer's notice of motion for the 12th May (of which intimation had reached the colony early in June) had purified the atmosphere. By sea and throbbing electric current the tidings came in time to stay proceedings. The alarmed Sir C.

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a seat in the Assembly. "We know, Sir," said a farmer to him, "that you are the fittest person for making laws and that sort of thing. But we want a man that will take a £5 note to do a job for us, and you would not do that, and Mr. —— will." Mr. —— was elected, and became Minister of Lands, wielding an engine capable of ministering to vast corruption. The patriotism of the rejected candidate was rebuked, but his kindness was not extinguished by defeat. Before leaving the colony soon afterwards he gave £1000 to a hospital in a neighbouring town.

Darling told the great lawyer that it was impossible to censure the Conservative Government, as proposed by him, without involving injustice to Darling. A Committee of inquiry ought to be sought by Sir R. Palmer. The latter courteously disclaimed any view personal to the recalled Governor; but could not qualify his motion (postponed for a time).

"The principle I desire to maintain is, that grants of money to retiring Governors of colonies by Colonial Assemblies (unless proposed with the spontaneous approval of the Crown on grounds of public service recognized as exceptional and meritorious by the Crown as well as by the Assembly) are not only inconsistent with the regulations of the service, but are subversive of the true relations between the colonies and the British Empire, and ought under no circumstances whatever to be allowed."

Sir Charles Darling acknowledged the "courteous and considerate tone" of his correspondent, and justified the idea that eccentricities in his despatches might have been original by declaring that nothing could be more acceptable to him "than the affirmation in (Sir R. Palmer's) motion that the Crown *has* given its sanction to the grant." But he must have found wiser counsel than his own. On the 14th May he sent the correspondence to the Colonial Office. He argued about some lapsed emoluments in Victoria (which need not be detailed here, and which were eventually paid to him with unanimous approval), and expressed his readiness to withdraw his "relinquishment of expectations connected with the service" (though he was ready to be bound by his former election to abide by the "result in the Legislature of Victoria"), under the "assumption, I need scarcely say, that the power of the Crown will not be further interposed to my disadvantage." His "relinquishment of the service" was, he "emphatically" declared, suggested to his mind by a letter from Downing Street in 1866. On the 19th May, while the colony was convulsed by his affairs, he was told that the Duke of Buckingham presumed that he was to understand that the relinquishment of service was made under "misapprehension." In that case the Duke would not hold him bound to his decision. But the withdrawal of it must be "absolute and unconditional," and if entertained at all must be made at once.

There was no time for reference to evil counsellors in the colony. No telegraphic wire then reached the south. On the 21st May, learning that he had been under misapprehension, Sir C. Darling asked permission to withdraw his "relinquishment on the ground that it was made under the misapprehension referred to." On the 22nd permission was granted, and he was informed that it would be necessary for him to write to Sir J. H. Manners Sutton to intimate his inability to accept himself "or by Lady Darling the proposed grant of £20,000." On the same day the Governor of Victoria was informed by the outgoing mail that Sir C. Darling had re-entered within the pale which prohibited the acceptance of the grant by Lady Darling. The vessel sped safely with the despatch. A telegram to Alexandria was sent from Downing Street on the 28th May, and a consul transmitted it by the mail steamer to the Governor of Victoria in these terms: "Since my despatch of the 22nd May, Sir C. Darling has written to declare his inability under the circumstances to accept the proposed grant either himself or by Lady Darling." On the 7th July the Governor communicated the despatches in full to the excited Houses.

A stranger might have expected universal joy at the cessation of strife.[1] But wounded spirits which longed for triumph would not be comforted. On the 8th July Mr. McCulloch, by 45 votes against 19, carried a resolution withholding supply until the Ministry could be expelled. They resigned immediately; and McCulloch returned to office with a different band from that which quitted it with him. Mr. Higinbotham would not consent to terms which did not pass the British Empire under the Caudine Forks. Mr. Francis would not associate himself with one or two of those with whom McCulloch linked himself. Six new names appeared in the Ministry. Mr. Verdon, anticipat-

[1] Amongst these a recent colleague of McCulloch (too amiable to desire to injure any one unless to serve a political purpose) must be included. The equally amiable Mr. T. T. A' Beckett hastened to congratulate him on the happy termination of the crisis. They were in public view on a railway platform. "Are you not delighted?" said the Councillor, who had so vainly striven to form a conciliatory ministry. He shrank back from the countenance by which he was confronted. In deep emotion the adviser of Sir C. Darling ejaculated: "Mr. A' Beckett, I can't speak to you," and moodily turned away. "Can you understand this?" said Mr. A' Beckett to a friend. "Quite," replied he; "and also that you do not understand it."

ing a general desire for posts in the Cabinet, had gone to England as Agent-General. The Officials in Parliament Act prohibited his acceptance of the post until six months might elapse after resignation of his seat. But a Ministry which had violated many Acts was not restrained from breaking another, although with mock deference to form, the nominal assumption of office in London was postponed so as to approach, though not reach, the lawful time: and the colony paid its emissary during the interval of travel.

The Darling grant appeared no more. The lapsed emoluments claimed by the recalled Governor were accorded without a dissentient voice in either House. The retiring minority assisted their successors to procure supplies, and within two days of McCulloch's resumption of office, both Houses passed, and the Governor assented to, a Bill which legalized payments of nearly two millions sterling; £1,200,000 of which were (according to the Governor's statement) devoted to "undisputed claims awaiting satisfaction." The Council passed the Revenue Bill, and the subsequent Appropriation Bill (for 1867, 1868, £4,796,911 19*s.* 7*d.*), recording their protest against the violation of the compact mutually agreed upon by the Houses in 1866, as to the form of preamble to be thenceforward used in such Bills.[1] By reiteration of untruth, and deceptive

[1] An amusing incident occurred with regard to the Appropriation Bill. The original Bill sent from the Assembly omitted the words, "Most Gracious Sovereign" in the preamble. After the Bill had passed both Houses in that shape the Clerk of the Parliaments, in tendering, as usual, two paper copies to the Governor (who is empowered by the Constitution to recommend amendments in all Bills) pointed out the fact. Cabinet Councillors met; printers' clerks were called before them; the original document glared before the indignant McCulloch. A pompous Minister, who because he was a member of the Assembly thought it the greatest of earthly bodies—swore that, "Let the thunderbolt fall where it will, on somebody's head it shall." To allow the shapeless preamble to stand was to stultify the infallible Assembly; to correct it was to admit infallibility. The Cabinet conflict ended on the understanding that the Governor might recommend an alteration. Subsequent deliberation caused a deputation to the Clerk of the Parliaments to ask whether he would (under power of an existing joint Standing Order) report that a "clerical error" was in the Bill. He had nothing to guide him to the inference that it was a clerical error, and said so. A Cabinet Minister returned to him with a functionary, who certified that the error had been clerical. The Clerk of the Parliaments reported the discovery to

reference to the abortive joint Standing Order of 1867, however, it is probable that the ministerial party persuaded many of their followers that the Council, and not the Assembly, had broken faith.

The relations between the two Houses were considered in the Council, while the brief Sladen Ministry was in existence. A Select Committee was appointed on 30th June to report on the "subject of altering and amending the Constitution." The veteran Fawkner had come to the conclusion that the right of amending Money Bills, existing in the second Chamber in America and in British colonies, was necessary in Victoria. The Select Committee recommended a joint Committee of both Houses. The Council sought (20th August) the concurrence of the Assembly. The latter body (after a silence of weeks), on the motion of McCulloch, declined to accede to "a method of legislation unknown to the British Constitution," which required Bills to be completed in one House, and "transmitted to the other for consideration when so completed." The Council had before it a Draft Bill (to alter its own electoral basis) reported (26th August) by its Select Committee; and on the day (15th September) of refusal by the Assembly to co-operate, that Bill, on which Mr. Sladen had bestowed much care, was read a second time. While finally dealt with, it lost his supervision. The defective provisions of the Electoral Act deprived the House of several members at a critical time. The periodic elections, held every two years for one-fifth part of the House, had been (under advice of different law officers) held at incongruous times. As the Governor issued the writs the matter was beyond the purview of the House. If a law officer deemed that a new writ could not be issued until the old member's seat had been vacated,

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the Assembly. One of McCulloch's new colleagues moved the correction of the error of which McCulloch was ashamed to speak. The man endeavoured to conceal from the House the fact that it was abandoning its claim of superiority to law and usage; and the omission was rectified. The chosen champion was accused of dishonest practices, and had to quit the Ministry in 1869. He was re-elected by Ballarat West. In 1870 he was expelled for "corrupt practices;" and was re-elected by a large majority, though opposed by Vale, who was his colleague in the McCulloch Ministry in 1868.

it followed that one-fifth of the House might be wanting for many weeks.

Mr. Sladen's Bill remedied the defect by providing that the President of the Council should issue the writs; that elections in each province should be held on the anniversary of the first election in 1856; and that the writs might be issued in anticipation, so that on no day might the House be deficient in number. He provided for a member for the University, but there was a jealousy in the House of a representative of learning, and on a division the clauses were rejected. Mr. Sladen no longer sat in the House when his measure was completed. The divergent opinions of law officers about former writs rendered his term of office doubtful, and he ceased to attend after the earliest day on which it could be supposed to lapse.[1] But the

[1] It may be proper to notice in his case the obloquy which a man might encounter for telling the truth. The amount (£63,000) of Customs' duties for which Mr. Francis took no bonds in 1865 has been mentioned. At a public place, outside the House, Mr. Sladen was reported to have designated the suspension of the law as a fraud upon the revenue by which at least one of the Ministry profited. Mr. McCulloch corresponded with him on the subject, and denied in the Assembly that he had made "one penny by the transaction." "The statement made by Mr. Sladen is untrue, and he must have known it to be false when he made it." Mr. Kerferd pointed to a return showing that £667 appeared as uncollected duties opposite Mr. McCulloch's firm. McCulloch blunderingly replied that it would be found that the money was paid by the firm when "the bonds were called up. What then becomes of the charge?" On the following day the accurate Mr. Langton asked whether the uncollected duties of 1865 had "since been paid into the Treasury." McCulloch had discovered that though his firm had paid upon bonds, they had not paid a farthing of the dues which Mr. Francis had illegally remitted altogether. He confessed that in his previous reply he had "confused the two amounts." He produced a memorandum from a partner affirming that because the goods unlawfully passed through the Customs, had been sold to "buyers at prices which included the reduced duties"—"the profit, if any, was made by the customers instead of by the firm." McCulloch boldly repeated that the charge against him was "falsely made," although on goods cleared by his firm £667 was still due to the Government. The successor of Mr. Francis, Mr. W. M. K. Vale, was the man who had moved that "only" certain duties be collected on the occasion, when Mr. Gillies foiled a pliant Speaker and an obstinate majority. He argued in 1868 that "two general elections had vindicated the course pursued." If his constituents had affirmed that the sun revolved round the earth he would have perhaps rejected the Copernican theory. Mr. Sladen's last words in the session (13th August) were: "The admissions made by

Bill passed through the Council. The reduction of the qualification of electors from £100 to £50 annual value, and the maintenance of the rated value as the standard, enlarged and purified the rolls. It seemed as if the measure would be lost when it reached the Assembly only four days before the time of prorogation.

The Ministry, however, did not oppose it. Mr. Higinbotham was doubtful about its advantages. By increasing the number of electors "you give additional force—or you give some force—to the argument, that the Council is a representative body. You so far deprive it of, I will say, almost the contempt of the community for it as a representative body, to which, happily, it is now subject." He did not rail at the members personally, but at a vicious system. "It is the want of responsibility that makes men unjust, tyrannical, and arbitrary in their conduct as politicians." Public opinion was perverse in uniformly reviling and censuring the Assembly — the only House "ever criticized harshly and unjustly, not merely by its avowed enemies, but by its mistaken and misjudging friends." Each member must judge the Bill for himself. He did not "entertain a shadow of belief that it was honestly presented" to the Assembly with a desire for harmony, and could not "personally vote for it." But though wise in his own generation in dreading lest the Bill should militate against the arbitrary claims of the Assembly, Mr. Higinbotham did not arrest its progress. The Assembly did not even divide upon it. It became law on the 29th September; and so great was the fraudulent corruption of the existing electoral rolls that, after a reduction from £100 to £50, there were some districts in which the application of the rating test decreased instead of augmenting the lists. The general result was in a

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Mr. McCulloch show that my allegation is perfectly true, and that at the present moment he is a debtor to the revenue of the colony to the amount of £667 6*s*. 8*d*." To this day the revenue has not received any of the £63,000 in question. The reader will recollect that an Under-Secretary of State, Merivale, lamented the ineffaceable stain of vulgarity and the demoralization of patriotic impulse attendant upon the manner in which the Colonial Office recommends the distribution of honours. McCulloch was knighted about the time at which Merivale wrote these words in the 'Fortnightly Review' (1870).

short time to raise the electorates throughout the colony 200 per cent. The Governor's closing speech in 1868 trusted that the new law would "operate beneficially." He was too sagacious to believe that the extinction of the Darling grant controversy had banished strife. He wrote confidentially: "The political differences and party animosities which aggravated and intensified that controversy have not been extinguished."[1]

[1] Todd's 'Parliamentary Government' speaks of Lord Canterbury as exemplary, statesmanlike, firm, moderate, and thoughtfully regardful of all interests (p. 122).

## CHAPTER XIX.

### PAYMENT OF MEMBERS.

THE surmise that under cover of enthusiasm for Governor Darling some members of the Assembly masked their advance to the principle that by their sole vote they might help themselves at will from the Treasury was no vain imagination. It was to become a portentous fact. The unreflecting who deemed that payment of Members of Parliament was not in itself popular, flattered themselves that if the question should become crucial the seekers of payment would be rejected at the poll. It was not foreseen that the utility of a member to those who secured his election would bind them to him for general uses, although they might not be solicitous concerning payment of members. So far as public opinion on the question had been tested on a cognate principle, it was adverse to payment. The municipal law had provided that the first meeting of householders and landowners in a district should decide whether the municipal councillors "shall or shall not receive any pecuniary compensation." Throughout the whole territory, as year by year municipalities had been formed, this question had been decided in the negative. There was one important difference as to application of the principle. Municipalities would have had to pay their members out of local funds as Members of Parliament once were paid in England. In the colony the Treasury was to be sacked. If a member would sometimes rifle it on behoof of his constituents they would allow him to rifle it for his own. Several times the Assembly sent to the Council Bills on the subject. In

June 1861, the Council discharged without a division an order for the second reading of a Bill to provide £300 a year for each member of the Assembly only. Mr. Heales and his colleagues (Brooke, Verdon, Grant, and others), in appealing to the constituencies of the Assembly in 1861, announced that the amount which the Assembly might decide upon would be inserted in the Appropriation Bill. The Council in their address to the Governor, September 1861, alluded to the public statements by the Ministry to the effect that the item would be "placed upon the estimates," and hoped that the subject would not be brought before them in a manner which "would preclude the possibility" of their passing the Appropriation Bill. It became known that the suave sufficiency of Sir Henry Barkly had saved the colony from turmoil for a time. He declined to recommend an appropriation for payment of members except in a separate Bill, and his Ministers submitted. Mr. Duffy taunted them in the House for having been governed by the Governor.

In 1865 the Council threw out a Bill to give £300 a year to members of both Houses. In 1867, after rejecting the Appropriation Bill because the Darling grant was tacked to it, they threw out a Bill in which the amount was raised to £500. In 1868 no Bill was brought forward, but Mr. Duffy took up the question. He observed its increasing popularity amongst the intriguers who controlled elections. He had aided in reducing the electoral franchise, abolishing the property qualification, and shortening the duration of the Assembly. He only asked the House to grant a Committee, but he declared that the time had "long since passed when (the English) example ought to be abandoned in all these colonies." In 1869 a Bill was sent from the Assembly. It provided £300 a year for members of both Houses. A call of the Council was made, and the second reading was rejected without a division. In 1870 the Assembly renewed its efforts. Mr. McCulloch after a brief expulsion was again in office as chief Secretary, and Mr. Francis was Treasurer.

The tradition of Sir Henry Barkly's name restrained even those who clamoured for payment from resorting to the Appropriation Bill as the engine with which to extort it. Only a separate Bill appeared available, and separate Bills had been,

and seemed likely to be, rejected by the Council. To propitiate that body it was determined, with show of moderation, to ask for an experimental measure, limited in duration by its own provisions. To prevent necessity of a repeal, which it might be difficult to ensure, the Bill was limited to three years and one session thereafter. The member of Council, Mr. Jenner, who had (without office, according to a too common laxity) represented the Government for the Ministry which succeeded McCulloch in 1869; and the member, Mr. T. T. A' Beckett, who, with responsible office, represented the McCulloch Government in 1870, concurred in supporting the Bill. It applied to both Houses.

Mr. Highett, a member of the Conference Committees of 1866 and 1867, moved that a Conference Committee of seven members be appointed to confer with a like number of the Assembly on "certain amendments." He wished to exclude members of Council from the provisions in the Bill. Some members, indignant at the breach by the Assembly of the formal agreement of 1866 (about preambles), declared that they would have no conferences. Let the Bill be rejected. Mr. Strachan and Mr. Degraves thus succeeded in defeating Mr. Highett, and in passing the Bill which they opposed. By fourteen votes against eleven he was defeated. Had they supported him he would have carried his proposal by thirteen to twelve; and it was accepted by all that there was a considerable majority in the Council determined to throw out the Bill altogether unless the Assembly would in conference consent to exempt the Council from its provisions. But some members in the Council were eager for payment, and some who voted for the conference in order to effect a change by courteous means, would not reject utterly the Bill which Messrs. Strachan and Degraves would not assist in amending. The President, when appealed to, ruled that it could not constitutionally be altered by the Council. Thus though Strachan, Degraves, and Henty joined in voting against the second reading with seven of the eleven who had voted for a conference, four of those eleven, Messrs. J. Graham, J. Cumming, P. Russell, and F. Robertson, deserted Mr. Highett, who voted for the conference and against the Bill; which by their aid was carried by fifteen votes against ten. Its title was euphemistic;

—"to provide for reimbursing members their expenses in relation to their attendance in Parliament." [1]

Much pressure had been brought to bear upon the Council to ensure the passing of the Bill. The 'Argus' newspaper laboured to induce the Council to sanction payment of members in 1870. In a few years it urged them to undo their work by refusing to renew the Act. A keen observer (Anthony Trollope) who was in Melbourne in 1872, remarked the operation of the original Act. "Whether it will be renewed not a few in the colony profess to doubt. . . I have but little faith myself in the moderation of a dog that has once tasted blood, and do not believe that the members of the next Parliament will be endowed by so strong a spirit of patriotic martyrdom as to abandon by their own act the salaries which they will then be enjoying." [2] Before the expiry of the Act Mr. Duffy had been at the head of a Ministry with Mr. Berry as his Treasurer. Mr. Duffy threw the latter overboard in May 1872, but the jettison did not right the ship. Mainly in consequence of abuse of patronage, and what was charitably called "disingenuousness" of statements, Mr. Duffy was driven from office in June 1872.[3] Mr. Francis

[1] The division which in its consequences entailed so much misery upon the colony may perhaps be given.

| FIFTEEN AYES. | TEN NOES. |
|---|---|
| R. S. Anderson. | J. O'Shanassy. |
| T. T. A'Beckett. | Niel Black. |
| G. W. Cole. | T. McKellar. |
| H. M. Murphy. | W. Skene. |
| B. Williams. | J. F. Strachan. |
| C. J. Jenner. | N. Fitzgerald. |
| Dr. Hope. | J. Henty. |
| A. Fraser. | W. Degraves. |
| F. Robertson. | W. Highett. |
| W. A. C. A'Beckett. | W. Campbell. |
| J. Graham. | |
| J. Cumming. | |
| R. Turnbull. | |
| P. Russell. | |
| W. H. Pettett. | |

Amongst the majority was a member whom McCulloch and his friends had in 1868 exerted all their energies to force into the Council with the view to degrade (it was said) the body they could not coerce.

[2] 'Australia and New Zealand,' vol. i. p. 508.

[3] It may be as well to note here how Duffy's disingenuousness spread

succeeded him, taking as colleagues Mr. Gillies, and Mr. Langton, who had been eminent in resisting in Parliament the acts

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from the colony to Europe. Though he called himself a free-trader it was under him that the Victorian tariff was made more largely prohibitory, under the name of protection, in 1871. His conduct caused comments which wounded his vanity. Many years afterwards he endeavoured to elude them by averring that in 1866 John Bright and Mr. J. Stuart Mill told him in England that he might in their opinion honourably "come to an agreement with the protectionists"—let them try experiments, by bonus or by imposts on particular articles, and thus become a member of a Ministry with them without dishonour. He spoke in public at an entertainment given to a Canadian politician in Melbourne. Mill was dead at the time (1877), but John Bright on being appealed to—declared that though he had seen Duffy in England in 1866 he had said nothing of the kind imputed to him—and that he was "greatly surprised that any one in the least acquainted with (him) or with (his) life should have supposed it possible that (he) could give it (his) support. . . . I may say with confidence that my views have been entirely misunderstood and misrepresented by Sir C. Duffy." Stung by this rebuke, Duffy produced an extract from a journal in which he had recorded at the time the opinions which he imputed to Bright; but in so doing furnished proof against himself by citing the letter which he had received from Mill at the same period, and which he had unjustifiably referred to as sanctioning his coalition with others in enforcing protection. Mill had written that a politician sighing for office might waive his opposition to protection, or "even for adequate public reasons consent to join a protectionist Ministry, but only on condition that protection should be an open question; that he should be at liberty to speak his mind publicly on the subject." The conditions upon which Mill thought coalition tolerable had notoriously not been complied with; and John Bright, if he saw the disingenuous defence of Duffy, thought it unworthy of notice. On the same occasion (1866) Duffy lamented to Thomas Carlyle the fact that "universal suffrage had made all government, that is, all good government, impossible in the colony." On his becoming Premier, subsequently, he took occasion in the Assembly to denounce all checks (of registration, &c. &c.) as frauds upon the grand and sacred principle of universal suffrage, the sheet-anchor of all that was good. Another visitor to England (1874) asked by Mr. Carlyle whether Duffy's tale of 1866 still held good, remembered Duffy's subsequent conduct, and replied: "Well, Mr. Carlyle, since Duffy told you that story he has held office as Premier in Victoria, and in that position sung the praises of universal suffrage as the corrective of all evils, and denounced as a fraud upon it a provision that ratepayers in arrears should be struck from the ratepayers' roll, because though they could still take out electoral rights for a shilling, they were not transferred wholesale from the municipal to the Parliamentary electoral roll, as was the case with all who had paid their rates." Mr. Carlyle raised his eyes in wonder. One of the company said to the visitor when the host (Mr. Carlyle) was absent, "Did you know that Duffy was a friend of Carlyle's?" "I did," was the

of McCulloch, Higinbotham, and Francis himself in former years. Mr. Wilberforce Stephen, who had been the vehement opponent of the McCulloch Ministry out of doors at the same periods, became Attorney-General, and it might have been hoped that there would be moderation in the Ministry although several of McCulloch's former friends were in it. But power corrupts even kindly natures; and the temptation to grasp it appears irresistible in many minds. Because an Electoral Bill[1] was laid aside by the Council in August 1873, the Ministry were furious. They made their colleague in the Council (Fraser) notify his intention to restore the Bill to the paper. They were offended when the President (Mr. W. H. F. Mitchell, who had succeeded Sir J. Palmer) ruled that laying aside a Bill was final, as had been ruled and accepted in 1865. Mr. Fraser strove to introduce another Bill, and was defeated on a division in the House (4th September). The Ministry[2] then withdrew a Bill for the alteration of the Constitution of the Council previously introduced, but not read a second time, and in November the Governor, Sir George Bowen, in proroguing

reply, "and I thought it the more necessary to let him know the truth about him. It is intolerable that he should come whining to Carlyle with complaints against the evils of ochlocracy, assume a high moral tone to please a great man, and immediately return to the colony and strive in office to intensify that which he had professed to lament."

[1] The Bill took away the suffrage for the Assembly from owners of property, except in the district in which they resided. The "plural vote" (as the vote by right of the ratepayers' roll in the district in which the voter did not live was unaptly called by its enemies) was to be abolished. Thus, for West Melbourne, which contained the bulk of the places of business of merchants, lawyers, and traders, not one of those classes was to vote. The representation of the heart of the metropolis was to be given to the few shopkeepers and tradesmen who did not reside in the suburbs, to storemen, clerks, and others who lived on their employers, premises. The object aimed at by Mr. Francis can be understood by those who reflect upon the change which would be wrought in the electoral roll for the City of London if names of all non-resident owners and householders were struck out of it. The existing law in Victoria gave only one vote to any man in any district.

[2] In this Bill the Ministry abandoned the principle of periodic elections for the Council and retirements by rotation. If the members should in two consecutive sessions reject a Bill passed by the Assembly the Governor was to have power to dissolve the Council. The number of members was raised from 30 to 36. The suffrage was lowered from £50 to £25.

Parliament was made to deplore, if not to comment with anger on, the rejection of the Electoral Bill, "without even an attempt to amend it."

Accepting the position of Sir C. Darling rather than of the more politic Governor Manners Sutton, he trusted that the questions on which the Houses had been "unable to concur" would be "settled by the opinion of the constituencies" (not of the two Houses, but) of the Assembly at the ensuing elections. That Mr. Francis should repeat the unconstitutional violence to which he had been trained by his former colleagues surprised no one. That Messrs. Wilberforce Stephen and others who had fought against it previously should lend themselves to Mr. Francis surprised many. Mr. Francis appealed to the electors of one House against the decision of the other. He professed to adopt the "Norwegian system" of producing accord between the two Houses, but his method of adopting it was as if a man were to break a finial from a Gothic cathedral and declare that he carries the building in his hand.

In Norway, a restricted suffrage elects by indirect process members of one body, the Storthing. That body resolves itself into two; the Lagthing and the Odelsthing. If the two should differ they can be called together and decide by a mixed majority the disputed matter. But the original constituency having been one in Norway, and the electing constituencies having been different in Victoria, it would be absurd to admit the validity of Mr. Francis's contention that there was analogy between his professions and his acts, when he declared that he was adopting the Norwegian system. A glance at the composition of the Victorian and Norwegian electorates reveals facts which need no comment. For the Victorian Council the suffrage was £50 a year, rateable value of property, with ancillary provisions for qualifying professional practitioners, university graduates, &c. For the Victorian Assembly there was manhood suffrage. The Assembly contained 78 members, the Council 30. The Houses elected by different suffrages would meet at a numerical disadvantage which would effectively stifle the votes of the smaller House.

There was no manhood suffrage in Norway. No one under 25 years of age had a vote. The qualification was composite,

but high.[1] The voters chose deputies. The deputies afterwards chose the members of the Storthing. In case of vacancy of seat there was no new election of a member, but the man who had been next to the successful member at the previous election took the vacant seat in the Storthing. For such a body, when resolved by its own act into two, to be united again for a special purpose was no violence to Lagthing or Odelsthing; nor could any of its primary or mediate constituencies be injured, for they were the same. The joint-sitting in Norway tended to harmony; the proposed sitting in Victoria was fraught with discord.

At the elections bitter words were spoken against the Council by members of the Ministry, who returned with a majority. The Governor informed the Parliament in May 1874, that his advisers regarded the response of the constituencies of the Assembly as "unequivocal" on the question of Reform which would be forthwith submitted. A new responsible Minister appeared in the Council, Mr. Fraser having visited England, and Mr. R. S. Anderson having accepted office and sought re-election with success.

The propounded scheme of Reform never reached the Council. By the Constitution Act an absolute majority was required for its second and third readings in each House. By 48 votes against 28 it was read a second time in the Assembly (17th June), but it was assailed in Committee. Mr. Higinbotham impeached it for indirectly waiving some unwritten capacities of privilege of the Assembly, and on the 21st July the third reading was carried by the insufficient majority of 35 votes against 33. Mr. Higinbotham and six others, who had supported the second reading, opposed the third. McCulloch opposed both the second and third. Mr. Francis was ill and absent. For a moment it seemed as if his baffled colleagues were about to send the Bill unlawfully to the Council, although five votes were lacking to constitute an absolute majority. The Constitution Act plainly enacted that it should "not be lawful to present

[1] A House of Commons Paper (C. 3665), of 1883, shows that in 1879 when the population of Norway was 1,904,600, only 99,554, or about 5 per cent. of the population, formed the electorate. Five years' residence was required. In Victoria, according to 'Hayter's Year-book,' there were (in 1880) 207,000 registered electors, for the Assembly, out of a population of 860,000;—or about 25 per cent.

to the Governor (for the Royal Assent) any Bill by which an alteration in the constitution of the Council or Assembly may be made unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members of the Council and Assembly respectively."[1] Standing Orders in each House required the clerk to certify the passing by such majority, of "any Bill for repealing, altering, or varying all or any of the provisions" of the Constitution Act. The Speaker called attention to the required form of certificate, and the Attorney-General (Mr. Kerferd) said the Constitution only said it was not "lawful to present certain Bills to the Governor." It appeared that obedience to the law was to be neglected or entrusted to a clerk. But better counsel prevailed, and the Government abstained from sending the abortive Bill to the Council.[2] Mr. Francis, being ill, retired. The Ministry was modified by the recession of Mr. Langton, and the admission of Mr. Service as Treasurer;—Mr. Kerferd, the Attorney-General, becoming Premier. For reasons unrevealed, the Ministry, as a body, afforded facilities for the renewal of payment of members. Before the retirement of Mr. Francis, a Mr. W. C. Smith, known in former days as a broker[3] at land

[1] A clause in the Constitution Act exempted from this provision Bills altering qualifications of electors or members, altering provinces or districts, or altering the numbers of members.

[2] In 1879 the colony saw with surprise a serious effort to pursue this course. Mr. Berry was the Premier. He had carried the third reading of a Reform Bill by 43 votes in a House of which the whole number was 86. The Attorney-General of the day tendered a formal opinion that the number 43 was an absolute majority of the House of 86 members. There was such laughter at the opinion (and it would have been of so little avail to act upon it without security for the passage of the Bill through the Council) that the Ministry applied for legal opinions from several eminent barristers, and arithmetic and law were reinstated. It is fair to say that one of the ministerial allegations was that as a seat was vacant at the time "the whole number of members of the Assembly" ought to mean the whole number of the incomplete and not of the complete House.

[3] Under various Land Acts some brokers made a lucrative trade of bidding for land at auction. Under threats of opposition at the sale they levied a kind of black mail upon the grazier who wished to buy, and who was induced to offer a commission. Under these equivocal arrangements it was observed that other commission agents permitted their congeners to obtain lots with little or no opposition, and thus the public Treasury derived no benefit from open auction. The agent and his principal pocketed the amount lost to the State.

sales, succeeded by 31 votes against 24 in carrying an address praying the Governor to take the necessary steps to renew the Bill; and he was supported by three Ministers. One of them was Mr. Gillies, who had on all occasions supported the Bill on general grounds; but others had no such excuse. Mr. Higinbotham, maugre his placarded opinions adverse to the principle of the Bill, voted with Mr. Smith in the division which by so narrow a majority led to future strife. There were secret conferences and some changes in the form of the measure, which eventually passed the Assembly under the title of a Bill "for the continuation of an expiring law." Its one clause revealed no more of its purport than the title. The third reading was carried by 35 votes against 18. Three Ministers, Service, MacDermott, and Ramsay, were in the minority. Three, Kerferd, Mackay, and Gillies, were in the majority with Higinbotham, Grant, and Mr. Berry, who was about to make the question notable in future years. The Council was besieged with advice. The session was near its close. A deadlock was anticipated in the event of a refusal by the Council to pass the Bill. Mr. T. T. A' Beckett took charge of the Bill. He strove to convince the Council that they would display moral weakness if averse from payment to themselves they should deny it to the Assembly. He contended that in a mere renewal of a Bill no permanent interests were involved. One member gave such concise reasons for opposing the measure that they may be recorded. The principle of paying representatives was bad. The practice had been prejudicial. Lastly, he had promised to vote against it. Postponement for six months was rejected by 12[1] votes against 11. Vexed at the success of the arts resorted to, one of the minority moved that the Bill be laid aside, in order that the Assembly might, if it should choose to do so, send up a Bill excluding the Council from its provisions. Mr. Cuthbert gave singular reasons for opposing the motion. The Assembly might tack payment of members to the Appropriation Bill. Some members might yield to such a pressure. He,

[1] The twelve were: Mr. Anderson; Captain Cole; Messrs. Cumming; H. Cuthbert; W. A. C. A' Beckett; T. T. A' Beckett; Dr. Dobson; T. F. Hamilton; C. J. Jenner; F. Robertson; J. A. Wallace; and Sir F. Murphy (late Speaker of the Assembly).

"upholding the dignity of the Council," would reserve his right to resist it. It was believed that the absent members of the Council were opposed to the Bill, and the casual majority present pushed it forward through all its stages, lest in a fuller House the third reading should be lost.

The Governor, Sir G. Bowen, blind to fate, foresaw not that manœuvres to procure present peace were laying the foundation for future troubles. Mr. Cuthbert, equally blind, knew not that in 1877 he was himself to move the second reading of an Appropriation Bill to which payment of members had been tacked, and to find the House so united against him that he would not risk a division. Grumblers complained that the Governor ought not to have solicited members to assist a Ministry; but, in his despatches and public messages, he claimed to have exercised his functions with the dignified neutrality essential to his position. Neither in 1870, when it first passed the Bill, nor in 1874, when it renewed it, had the Council the advantage of the presence of Mr. Fellows or Mr. Sladen. The first, after his gallant effort to replace law upon its pedestal when McCulloch and his accomplices had overthrown it, never returned to the Upper Chamber. Those who dreaded his powers were glad to transfer him from the Assembly to the Supreme Court, having previously passed an Act increasing the salaries of Judges. With some reluctance, and urged vehemently by the legal profession, Mr. Fellows took his seat on the Bench. Mr. Sladen had been in Europe, and his unimpeached integrity and earnest industry were not at the command of the Council. Mr. O'Shanassy had quitted it also. The influence which Messrs. Fellows and Sladen had wielded was not one of control but of co-operation. They had placed their ability and diligence at the disposal of their fellow-members, who had been glad to find spokesmen of the views of the majority. Out of doors the truth was not understood, and O'Shanassy, impressed with a sense of his own importance, was indignant at finding himself unable to command those whom he erroneously supposed to have been commanded by others.

It was customary for its enemies to brand the Council as a selfish body representing only interests of squatters and landowners: but though it contained in 1856 eight pastoral tenants

of the Crown the number in the House rapidly diminished; and, practically, the old pastoral tenancy itself was extinguished when free selection without previous survey became law; and sufferance was the badge of the tribe in whose hands Earl Grey's Orders in Council had once placed the Crown lands of the colony. The thirty tyrants whom McCulloch and Higinbotham, and after them Mr. Berry and Sir B. O'Loghlen, denounced as irresponsible, were a peaceful collection of middle-aged and old merchants, professional men, and others, whom only violent measures could goad to resistance.[1] They confined their attention more to practical than abstract questions. In the session of 1874 they made various amendments in a Local Government Bill, and an attempt was made to excite ill-feeling against them, but it failed. There were in 1869, 1870, 1871, 1872, 1874, 1875, so many changes of Ministry that there was a solution of continuity of attacks upon the Constitution.

They were to be resumed at a later date (1876) when Mr. G. Berry was Premier. Mr. Macpherson was the first to invite him into his Ministry in 1869. McCulloch turned out Macpherson in 1870, and took Macpherson into his own Cabinet. Duffy turned out McCulloch in 1871, and made Mr. Berry Treasurer, but got rid of him in May 1872, and was himself expelled in the following month, when Mr. Francis, one of the heroes of the first dead-lock, formed a Ministry, including Mr. Wilberforce Stephen, and others of his former opponents. The Francis Ministry was reconstructed on his retirement after the failure of his project of reform in 1874; but in 1875 its new head, Mr. Kerferd, retired because, when he had carried a budget resolution by a bare majority, the Acting Governor declined to dissolve the Assembly. Mr. Berry was accepted as the leader of those who

[1] In 1878 the Council appended to a statement sent to the Colonial Office the following summary of its component parts: "Six owners of large country estates; seven owners of smaller properties (two of these are pastoral tenants of the Crown). Seven merchants and shipowners; two barristers; two solicitors; one brewer; one auctioneer; one banker; one farmer; one mining proprietor; one broker." Out of about 5500 votes, polled at an election in 1878, 3486 were given by bakers, butchers, drapers, merchants, licensed victuallers, bootmakers, and others of different occupations. This fact also the Council published.

had transferred to freeholders the antipathy which had been fastened upon the squatters, or pastoral tenants of the Crown, under Earl Grey's Orders in Council.

Free selection under Duffy's Land Act of 1862 had been, as was predicted by the opponents of that Act, a fruitful source of evil and of ill-feeling. Many selectors merely acquired freeholds in order to sell to others; and neighbouring proprietors were often the purchasers. Moreover, it was broadly stated that frequently the selectors were the mere agents ("dummies") for neighbouring proprietors, who provided means for making the periodical conditional payments which were necessary before the selector could apply for and obtain a title on payment in full of the dues to the Crown.

The unpopularity of the squatter thus devolved upon the freeholder of many acres. "By sorcery," his enemy would say, "he got this isle." Thus special causes sharpened the envy borne by the envious towards the frugal. Until industry shall cease to win its rewards, the time cannot come when the bray of an Aniello will fail to find an echo in the streets.

Legislation in Sydney and in Melbourne had in 1861 and 1862 aimed nominally at creating an industrious yeomanry. It had failed in its object, and many of its promoters attributed the failure to the wiles of those who had opposed the legislation. Meanwhile the agriculture which refused to be created by law was planting itself steadily on the soil, not by artificial aid but by natural process to meet surrounding demands. Slow growth, however, was unpleasing to those who desired to see their handiwork prosper, and ardent land reformers conceived the idea that if they could not create a class of small farmers they might at any rate prevent the existence of large freeholds by a special tax on large holdings.

These ideas were floating in the community in 1875, when Mr. Berry was entrusted by the Acting Governor with the task of forming a Ministry on Mr. Kerferd's retirement. Singularly enough, Mr. Berry had recently moved a hostile resolution, but had been defeated by 32 votes against 22, and might therefore have been deemed ineligible for the task of leading the existing House. When sent for he endeavoured to secure the co-operation of McCulloch and others, but on their refusal formed a Ministry

comprising Messrs. Lalor and Grant (who were notable at Ballarat and Melbourne in 1854), Mr. W. C. Smith, and several others, of whom some represented districts comprising gold-fields.

At this point it seems desirable to glance at events connected with the formation of the Royal Colonial Institute. A letter from three of its members furnished an occasion on which Mr. Higinbotham induced the Legislative Assembly to pass (1869) resolutions tending to sever the colony from the Empire. Whether the superciliousness of Earl Granville,[1] the want of patriotism on the part of Professor Goldwin Smith, or the craving of nobler spirits for some purer air than Downing Street and local contentions were engendering, wrought out the formation of that Society, or whether these co-operated with other causes, the time had come when patriotic Englishmen at home and abroad could provide in the heart of the Empire an organization through which the national pulse could beat, with forces gathered from every quarter of the globe where the flag of England had been unfurled.

In 1868 a number of gentlemen met in London to discuss the proper method of arresting the current which, under the specious names of liberality on the part of Mr. Gladstone's Ministry, and philosophy on the part of Goldwin Smith, tended to sweep from their moorings the various State vessels which formed the wide-spread fleet of the Empire. The originators of the little Colonial Society[2] found that they had struck a responsive chord. Their humble meeting of December 1868 ripened into an inaugural meeting in March 1869, which had been preceded by an inaugural banquet (10th March), at which Mr. Gladstone and Lord Granville breathed fervent aspirations for that united Empire which they had been suspected of undervaluing if not betraying. At the

[1] 'Ministerial Memoranda in reply to Earl Granville,' published in 1870 as "the Case of New Zealand" by the Ministry of Mr. (afterwards Sir) William Fox, described the Earl's innovations as the fruit of "the policy of the Imperial Government towards New Zealand since the accession of Mr. Gladstone to office," which "evidently contemplated the disruption of the Empire." In a special memorandum Mr. Fox declared that it would hand "down to the future inhabitants of New Zealand a rankling feeling of alienation to the mother country."

[2] In 1870 it became by Royal grace the Royal Colonial Institute; the latter term being adopted to prevent confusion of initials with those of the Royal College of Surgeons.

banquet two hundred were assembled. Amongst them are recorded the names of Viscount Bury the first President, the Duke of Manchester, the Marquis of Normanby, Sir Stafford Northcote, Mr. Reverdy Johnson (U. S. Minister), Sir J. Pakington, and many colonists. The promoters failed to enlist the voice of Wentworth in their cause. His years must have been heavy upon him, for he was then nearly eighty years old. In the rush of emulation's thousand sons it is probable that what he had done "in past" had been obscured by the dust stirred up by feebler successors, and to many of the banqueters he may have been unknown. There were some present who ought not to have allowed his to be an "unregarded age in corners thrown." Mr. Gladstone proposed the "Prosperity of the Colonial Society." No man unacquainted with his versatility could have supposed that his fervid devotion to "the great and noble tradition of the unity of the British race," expressed feelings which had been to him exotic until they found congenial soil in English hearts. His rhetoric roused sympathy. The Duke of Manchester expressed his hope that at a future day representatives of the British race would find a central body in the constitution of the Empire, in which they might influence its fortunes. Sir George Cartier, on the part of Canada, breathed loyal sentiments, which were loudly applauded.

The Marquis of Normanby utterly repudiated the sentiment of those who professed "anxiety that the connection (of England and the colonies) should cease." Earl Granville superciliously dilated upon the reorganization "of the Order of St. Michael and St. George," of which it would be his "humble duty to maintain the honourable character." Sir Charles Nicholson (so long the Speaker in Sydney) augured well from the gracious intention to confer titles of honour on colonists,[1] and amidst applause "deprecated the mischievous speculators who would have a severance of the colonies from the parent state," Sir Charles Clifford (long the Speaker in New Zealand) said there was without doubt a feeling in England, though not at that board,

[1] There were estimable families worthy of distinction, and the honouring of whom would have adorned social life and fostered public virtue. But with few exceptions they were not offered the distinctions of the hour. James Macarthur, Wentworth, and others declined them.

that the colonies were "not essential to the welfare of the mother country." The colonists were of a different opinion, and to retain their sympathy it was necessary "that their feelings should not be maligned."

At the subsequent inaugural meeting Viscount Bury controverted the efforts "to dismember the Empire," which had enlisted the talents of Goldwin Smith. Mr. Chichester Fortescue, Chief-Secretary for Ireland, and the Marquis of Normanby predicted pleasant days. Sir C. Nicholson, "in common with the colonists present, repudiated and rejected with indignation the doctrine and the influences of the school" of Goldwin Smith and his abettors.

The doings of the Royal Colonial Institute may be briefly glanced at hereafter. At present it is instructive to observe in what manner its movements were scrutinized in that colony which Dr. Lang commended to Duffy (on his immigration) as the most apt and liable to the designs of those who longed to dissever the Empire. Three gentlemen, Mr. J. A. Youl of Tasmania, Dr. Sewell of New Zealand, and Mr. Blaine, all members of the Institute and then in England, by a circular to the colonies had urged the holding of a conference in London, "on the present state of relations between the mother country and the colonies."

Mr. Higinbotham saw danger in the scheme. On the 2nd November, 1869, he moved resolutions declaring the "care of the political rights and interests of a free people" proper for themselves. Somewhat inconsistently, his second resolution desired that Victoria should "remain an integral portion of the British Empire," with an obligation to defend itself from "foreign invasion." His speech retrieved his consistency, by explaining that he classed the Secretary of State as a "foreign Minister." The third resolution protested against any interference "of the Imperial Parliament with the internal affairs of Victoria, except at the instance or with the express consent of the people of the colony." The fourth denounced all instructions from the Queen through an English Secretary of State as "derogatory to the independence of the Queen's representative, and a violation both of the principles of the system of responsible government, and of the constitutional rights of the people of this colony." The fifth, like the close of the American Declaration of Independence,

pledged (not the people nor the Parliament but) the Legislative Assembly to any measures necessary in "putting an early and final stop to the unlawful interference of the Imperial Government in the domestic affairs of (the) colony."

The *modus operandi* which Mr. Higinbotham suggested for giving practical effect to his resolutions was brief, though his speech was long. The Chief Secretary ought to "sit down to-morrow morning and write directly to Lord Granville;" to enclose a copy of the resolutions, and say that, "after a day to be named, no official communication" addressed to the Governor "would be entertained by Her Majesty's advisers, would be received by them, would be permitted to have official publication in this country, or would be laid on the table of either House of Parliament. If that were done I think it would settle the question." He had been himself in office, but, after the episode of the Darling grant, he "could not consistently with self-respect continue to hold the office of Executive Councillor in the country, and resigned." The debate was long.

Mr. Macpherson, the Chief Secretary, shrank from the task of destroying the Queen's supremacy with his pen, and strove to recall the House to the obnoxious members of the Colonial Society by an amendment declining to sanction the appointment of any person to represent the colony in London at the conference suggested by Messrs. Youl, Sewell, and Blaine, as to the "state of relations between the mother country and her colonies." He was defeated by 45 votes against 15. McCulloch, Kerferd, Grant, Wrixon, Francis, Casey, MacMahon, and Stutt supported Higinbotham. There were divisions on other points (40 to 21 on the second resolution), but the whole of them were carried in December 1869, a few days before the end of the session. Mr. Macpherson did not obey the resolutions and the speech. Mr. G. Berry became his Treasurer after the close of the session, and the Secretary of State was permitted to serve the Queen without notice of dismissal. Mr. Aspinall, who had opposed the resolutions of 1869, became a Cabinet Minister at the same time as Mr. Berry; and the declaration of independence which many members thought foolish, even while to avoid reputation for illiberality they supported it, passed out of mind. The Colonial Society which had evoked Mr. Higinbotham's

thunders meanwhile pursued its way. In 1870 it was the Royal Colonial Institute. Dukes, Marquises, and Earls became office-bearers. Mr. Cardwell was, as vice-president, in alliance with Lord Lytton, Sir Stafford Northcote, the Duke of Manchester, and others. Herman Merivale, Mr. J. A. Youl, Sir W. Denison, the former Governor of New South Wales, were members of the Council. More than 200 resident and more than 60 non-resident Fellows were enrolled. Both classes contained names of colonists; amongst the latter, India East and West, America, Africa, and Australia found representatives. Ere ten years elapsed more than a thousand members had joined the Institute. The Honorary Secretary, C. W. Eddy, too soon to be removed by death, was fervid in the cause, and F. P. Labilliere, a native of Victoria, about to be the historian of its early days, was his warm coadjutor. Independently of the Colonial Institute there had been activity amongst a section of English politicians with regard to colonial questions. The disintegrating policy imputed to Messrs. Gladstone and Lowe, and of which it was considered that Earl Granville was convicted, was protested against at meetings known as the Cannon Street meetings; which bore fruit in proving that there was a strong desire to prevent Earl Granville from shaking off the colonies, although their representatives in London might fail to propound any new policy which would be generally accepted. Mr. J. A. Froude wrote that "Lord Granville took pains to exhibit his indifference whether the colonies went or stayed; and it is this indifference, so ostentatiously displayed, which is the active cause of alienation." By denials faint at first, but strengthening as it became clear that Englishmen in general had not adopted Goldwin Smith's ideas, the Ministry escaped their difficulty, and when Earl Clarendon died the suave obnoxiousness of Earl Granville was transferred to the Foreign Office.[1] Earl Kimberley carried to Downing Street better

[1] Lest it should be thought that only colonial eyes could detect danger in Earl Granville's conduct, let the following paragraph from the philosophical 'London Spectator' be read: "It is with a sigh of relief that we see him quit his department before any colony has declared at once its independence and its undying hostility to Great Britain. It was a very near thing indeed. . . . Lord Kimberley certainly has the opportunity, and may possess the will, to reconcile the Government at once with the colonies and with the immense majority of the English people, who do not pay taxes in order that their country may become a third-rate power."

professions, and when Mr. Knatchbull-Hugessen took thither his honest solicitude the patriotic were re-assured by his iterated assertions. "Once more I tell you (1872) that unless I am utterly and entirely deceived the policy of the Government is to cement the union between the colonies and the mother country." Patriotic colonists believing his words felt that they could rejoice over the repentance of some of his colleagues. Although Mr. Duffy had opposed Mr. Higinbotham's resolutions he was not loth when, in 1871, he became Premier, to endeavour to cause a collision of Imperial with colonial interests. Calling himself a free-trader, he as Premier enforced protection. The Constitution of Victoria barred the Legislature from imposing any Customs' duty upon goods from any one country which "shall not be equally imposed on the importation of the like article, the produce or manufacture of or exported from all other countries and places whatsoever." It occurred to Mr. Duffy's Ministry that if the colonies could be induced to frame a prohibitory intercolonial tariff the exclusion of English merchandise would follow. A popular protest against "Imperial interference in fiscal matters" commended itself to a mind trained to hate the English Crown.

Mr. Duffy warmly abetted the scheme which was to make England, not a favoured, but a foreign nation in relation to Australia. Conferences were held, at which Ministers represented various colonies. Whether from intention, or from that unreadiness which compelled him to pen his speeches before uttering them, Duffy at one of those conferences so expressed himself in discussion, that a Minister from a different colony ejaculated immediately afterwards to a friend: "That man Duffy is as great a traitor as ever."

Earl Kimberley courteously received the results of the conference, and after discussions, the Imperial Parliament passed an enabling measure, which only local jealousies disabled the colonies from promptly using to the prejudice of the Empire. The spirit of dissidence which spurned any closer connection with England than with Russia, avenged itself upon schemers against the mother country. Like those reptiles of which a severed portion can become a new creature of low organization, from which the process of severance can be repeated time after

time—so the colonies under the Imperial law could detach themselves from the Empire by enacting tariffs hostile to England. The weapon of severance was sharpened by the English Ministry. Local concord could not be attained, and the weapon was not used. Plotters who cursed their mother, could not agree to bless their sisters. The opening of telegraphic communication with Australia by the energetic South Australia in 1872, touched chords of affection in loyal hearts throughout Australasia. It was celebrated by a banquet at which Earl Kimberley presided in London. Enthusiastic cheering greeted him as he proposed the "Integrity of the British Empire," and at both ends of the world it was found that there was warmer loyalty than had been suspected.

The 'Times,' moreover, by acquiescence with the supposed desire of the Government to cast away colonies, had elicited a stirring appeal from the Poet Laureate[1] against the base ideas which had been associated with the Ministry. The Earl of Kimberley seemed "to protest too much," when he supposed that the Ministry was "in some quarters suspected of holding disloyal views," and "rejected the accusation with scorn." He sufficiently accounted for a new patriotism amongst his colleagues, when he said that "the very imputations cast upon the policy of the Government proved that the vast majority of Englishmen

[1] "... we lately heard
A strain to shame us—'keep you to yourselves;
'So loyal is too costly! friends, your love
Is but a burden: loose the bond and go.'
Is this the tone of empire? here the faith
That made us rulers? this indeed her voice
And meaning....
What shock has fooled her since, that she should speak
So feebly?—wealthier—wealthier—hour by hour!
The voice of Britain, or a sinking land
Some third-rate isle half lost among the seas?
The loyal to thy Crown
Are loyal to their own far sons who love
An ocean empire, with her boundless home
For ever broadening England and her throne
In our vast Orient; and one isle, one isle
That knows not her own greatness;—if she knows
And dreads it, we are fallen."
Tennyson's 'Ode to the Queen.'

were opposed to any idea of disintegrating the Empire." Another phase of intercolonial relations attracted attention about the same period, and may be alluded to. The early attempts of Wentworth to federate the colonies as loyal limbs of the Empire have been mentioned. There were some who sought by federation to detach the colonies from the Empire. There were others who speculated without loyalty or disloyalty. The last detachment of Imperial troops was removed from Victoria in 1870. There were regrets in many minds when the symbols of the English army were seen for the last time, and it was felt that no regimental banner would again float proudly in the air. But there was no resolve in the public mind to arrest McCulloch in his course. The Imperial Government were willing to leave, and the Colonial Government professed a wish to retain, a small body of men to assist in fortifying, and to aid in organizing local volunteers, for defence of the colony. The colony was willing to pay for the cost of the Imperial troops, which in time of war were to be under the orders of the chief Imperial officer in the colonies. Under him they could be gathered from the several colonies, and massed for service in any spot. It occurred to Mr. McCulloch, that in an emergency the commanding officer might remove the Melbourne detachment to ward off danger in another colony. He insisted that unless a guarantee were given, that no such removal should be permitted, Victoria would not pay for the maintenance of a detachment. Such a guarantee to each colony would have put it out of the power of the commanding officer to combine his forces in case of need. The Imperial Government could not consent to McCulloch's demands. He would not abate them. The troops were removed.[1]

These events caused reflection upon the defenceless condition of the colonies. In New South Wales a volunteer force had been formed in 1854. Mr. (afterwards Chief Justice Sir) James Martin, was notable for the energy and capacity he displayed in Parliament and elsewhere on the subject. For a time his efforts

[1] McCulloch complained that the troops were removed because the Home Government would not let them stay. This was true, but not the whole truth. McCulloch would not consent to keep them except on conditions which would have made military control and decision impossible or useless.

were weakly supported, but in 1860 the movement spread rapidly throughout the rural districts. In Victoria volunteer regiments were raised in 1854 and 1855, but their numbers were not large. In 1859 and 1860 fresh impetus was given, and about 4000 were enrolled. On the loss of the Imperial troops in 1870 a local battery of garrison artillery was formed. In South Australia the removal of the regular troops seemed for a time to diminish military zeal. There had been volunteers, but they disappeared, until in 1877 a new corps was formed, when Sir W. Jervois visited Australia to advise upon colonial defences. In Tasmania, although the necessities of her condition retained soldiers of the line for some time, there had been a volunteer force which was broken up in 1866, and was not revived until Sir W. Jervois, on behalf of the Imperial Government, appeared as a counsellor. The undefended state of the colonies, when the Imperial troops were withdrawn in 1870, seemed to furnish an opportunity to those who looked with disfavour upon wholesome union with the mother country. The method suggested by Mr. C. G. Duffy seemed grotesque to many, but nevertheless, as it proffered immunity from foreign attack, some persons advocated it.

He proposed that the colonies should be neutralized in time of war. That belligerents should consent to spare a wealthy city which they might sack, was hardly to be expected, nor was it a comfortable reflection for a loyal subject, that under Duffy's proposal an English man-of-war would be treated as a stranger, and compelled to quit a colonial port, as soon as she had received the bounded civilities accorded equally to her and to her foes.[1] The motive of such a project was not difficult to divine. Soon after Duffy failed to mature it he became the chief Minister in the colony, and found scope for giving effect to his public views on patronage, which were—not that the fittest man should fill an office, but—that Irishmen in the colony were entitled to the

[1] Amongst the published correspondence at the time was a letter from Mr. Strangways (once Attorney-General in Adelaide) pointing out to Duffy that the only way to secure the desired "neutrality" was to induce England to regard the colonies as "independent sovereign states," although a difficulty might arise if England used any of the colonial ports to facilitate her operations "in levying war on nations with whom such colonies were at peace."

proportion of places which their number in the census bore to the total population. There were private views on patronage which went much further, but did not meet the public eye. After Duffy left office Mr. O'Shanassy, without personal allusion to his former friend, but then bitter foe, moved resolutions[1] condemnatory of the claim set up on behalf of the Australasian colonies to make treaties "with foreign states," and the speech was printed in pamphlet form.

The separation from England, which Dr. Lang in 1856 commended to Duffy as the mark for his aim; and the neutralization of patriotism, which the latter evolved subsequently, having vanished into air, he seems to have been moved in his old age by the *laudis titulique cupido*, which caused his countryman, Wolfe Tone, to attire himself in French uniform, gaze in solitude at his appearance in a mirror, and sigh for future fame. *Quis virtutem amplectitur ipsam, præmia si tollas?* Negotiations were set on foot, and he was adorned in the name of the Queen by the Gladstone Ministry in 1873, and became Sir Charles Duffy. While he was Premier in 1871, he and his colleague, Mr. Berry, represented Victoria at an intercolonial conference, and he proposed resolutions which representatives from other colonies recoiled from, but which might be supported from different points of view, either as tending to severance from the Empire, or on the presumption that they were favourable to the development of colonial trade.

In some minds in the colony there was a jealousy of those who, living in England, discussed colonial affairs, and the prudence with which the Colonial Institute ostracised party politics from its debates procured no favour. It was denounced as impertinent or wicked for a man who had acquired competence in Australia to raise his voice about Australian affairs in London. Having no representative character, and assuming no responsibility, members of the Institute might have been spared many taunts; but having often a deep interest in the welfare of their several colonies, they did not desist from making known their views, and striving to find a common ground for the nurture of loyalty throughout the Empire. Amongst them, as amongst those who denounced them, there were various opinions

[1] 10th September, 1872.

and motives; and perhaps the most mischievous opinions were entertained by those whose motives were unimpeachable.

Mr. Higinbotham himself, weary of waiting for the day when the Secretary of State should be silenced, and the authority of the Assembly should be confessed,—retired from Parliament. He had outlived his popularity in the Brighton constituency, which for some years adhered to him. In 1871, puzzled at his vehement support of principles he professed to condemn, the electors, without any unfriendly feeling to the man, rejected his services.[1] He was elected by another constituency, but did not find on either side of the House consolation for his wounded spirit. Some members cared more for their own aggrandisement than for the promotion of his views. Having no selfish, personal aims, he was among them, but not of them. When they obstructed the business of the country by an abuse of Parliamentary forms, he, agreeing neither with the policy of the majority, nor with such a manner of resisting it, quitted the political arena in 1876. "I find that it is impossible for me, in the present emergency (he said), to join the ranks of either side."

It may be useful to mention, that during Mr. Berry's brief Administration in 1875, and while an Acting Governor (Chief Justice Stawell) held the reins during the absence on leave of Sir George Bowen, Mr. Higinbotham made a last effort to warp the relations between Victoria and the mother country. Lord Carnarvon had written a despatch (elsewhere mentioned) on the exercise of the Royal Prerogative of pardon. Mr. Higinbotham proposed to move in September, that the opinion of a Secretary of State had "no legal authority," on such a subject, "in a colony possessing responsible Government," and that "the expression" of such an opinion conveyed "an insult to the independence of the representative of the Crown, and a menace to the system of self-government established by law." It was "the imperative duty of Her Majesty's Ministers for Victoria to

[1] He inveighed at a meeting against the treacherous conduct of a majority of the Assembly on certain points. He demanded (as usual) unquestioned supremacy for the Assembly. An elector asked how he could in the same breath demand that supremacy and inform his constituents that the body for which he demanded it was faithless and unworthy to be trusted with power. His circumlocutory reply did not satisfy the common sense of the meeting.

take immediate and effectual steps to guard the Queen's Representative in this colony from being made the recipient in future of illegal official communications from any Imperial servant of Her Majesty." Mr. Langton immediately gave notice that in a colony "possessing responsible Government proposals dealing with subjects of such gravity and importance" ought to be submitted to the Legislature by a Minister.

The Berry Ministry was too busy in struggling for life to engage in abstract discussions, and neither resolution nor amendment employed the Assembly. The Ministry was defeated on a financial proposal on the 6th October. McCulloch succeeded in forming a Cabinet on the 20th. An adjournment for Ministerial elections produced no antipathy to the Imperial Government. On the 20th January, 1876, on a test division, McCulloch sustained his position; and four days afterwards, disheartened at a want of sympathy with his projects, and disapproving of the tactics of others, Mr. Higinbotham resigned his seat, and entered the Assembly no more. He retired to the privacy in which he was beloved by all; and only ceased to practise at the Bar when during the Administration of Mr. Service in 1880 he was called to the Bench of the Supreme Court.

It is now proper to recur to the Ministry which Mr. Berry formed, when the Acting Governor sent for him in 1875. The attempt to entrust the guidance of the Assembly to a member whom it had refused to follow entailed the natural consequence. The House rejected his budget. He, like Mr. Kerferd, failed to obtain a dissolution, and McCulloch was sent for. It was hoped that the Ministry he formed would foment no ill-will between the Houses. Messrs. Gillies and Kerferd, who had opposed the tacking of Bills in 1864-5 in the Assembly, and Mr. R. S. Anderson, who had resisted it in the Council, joined McCulloch, and in both Houses the Ministry had a majority of friends.

Unable to regain office, Mr. Berry's followers determined to obstruct business. By adroit selection of speakers against time, and by taking rest in detachments, it is possible so to strain the forms of a deliberative body as to render it useless for deliberation.

The triumph of misrule comforted those who were not called upon to rule. The Government proposed a new Standing Order,

compelling the Speaker or Chairman to put a question on demand, under certain contingencies. The Opposition determined to resist it to the death. Word by word amendments were to be moved. Night succeeded day, but no rest was found. The debate, which began on the 8th February, continued without intermission throughout the day and night, through the following day and night, and until late on the 10th. Abuse of the forms of the House was to destroy its officials, if not some of its members. The end could not be looked for in any given week. Abusing the heroic words of Stonewall Jackson, the Opposition applied to themselves the epithet made famous by the gallant Confederate General. They did not perceive that by one form of the House they might themselves be foiled. One of their amendments had been defeated, and a member was rising leisurely to move another, which would have let loose each speaker afresh, when a Ministerial supporter,[1] Mr. R. Murray Smith, promptly obtained the Speaker's eye and voice—and moved the "previous question." The Opposition did not see at first the necessary consequence. Though generally resorted to in order to avoid expression of opinion by the House on a subject, which it is thought unwise or inconvenient to decide upon at the time, the effect of the question (as put by the Speaker), "That this question be now put"—is to enable the House promptly to decide, either to

[1] One who was not a member of either House, and was actuated by mere humanity, suggested the remedy. He had no desire to serve either party. *Tros Tyriusve mihi nullo discrimine agetur.* But the warfare was being waged, like McCulloch's deadlock struggle, unfairly. Passing through the Parliament library he saw an aged official, ghastly and weak. The library had to be open for members to lounge or rest in, but the old gentleman had to be awake. With an assistant he had arranged to take watches, by day and night. A few more days would probably have terminated his sufferings. Yet he did not complain. Meekly but feebly he accounted for his weakness by telling the facts, and sighing that he was informed the debate would last more than a fortnight. The unmurmuring tale could not but touch any heart. Neither Berry nor McCulloch could claim to prolong debates to the loss of human life, but neither to Berry nor McCulloch could the visitor appeal. He bethought him of Mr. R. Murray Smith as a man open to good sympathies. He asked if he wished to prevent lingering death by terminating the debate, and volunteered to suggest the means if Mr. Smith would use them himself and not make them a ministerial weapon. He stipulated that secrecy should be observed, lest by being warned the protracters of suffering should prevent Mr. Smith from attracting the Speaker's eye; and then told the remedy.

shelve the matter, or to pronounce an opinion. If it be decided that the question shall be put, it must be put at once by virtue of the word "now." One debate ends the matter; and thus the *clôture*, or the "iron hand," as McCulloch's resolution was called, was adopted in Victoria, for one session. When this truth became known to the misnamed "Stonewall brigade" of Victoria, they raved against the "Parliamentary trick" by which they were crumbled. Their liberality arrogated for none but themselves the use of Parliamentary forms. Their violence was ominous of the manner in which they would comport themselves in the struggle which they announced their desire to renew with the Upper House. Mr. Berry had frequently impugned McCulloch's conduct in 1866 as wanting in vigour. The ranks of the Council were recruited in 1876 by the unopposed return of Sir Charles (formerly Mr.) Sladen to his old seat, amidst general gratulations. But other provinces were not so wise as that which elected him. It was not the reduction of the franchise in 1868, but culpable apathy that restrained some public men from finding seats in the Council. As a rule, the most capable candidates were chosen at a contest, but occasionally candidates were allowed to usurp, without competition, a vacated seat. Nevertheless, the patriotism of the members, as a body, was undoubted, and they acquired consideration from the fact that they were elected, and liable to periodic change at the will of their constituents.

An Electoral Bill, passed in 1876, increased the disproportion between the Houses by raising the number of the Assembly to 86. It failed to restore the provision of the Constitution that no man should vote who could not read and write. It enacted that at a general election all elections for the Assembly should be held on the same day. The Council passed the Bill without a division in October. They did not receive similar treatment from the Assembly. A Select Committee, moved for by Sir C. Sladen, recommended an augmentation of the Council from 30 to 42. The necessary Bill was passed, and sent to the Assembly on the 15th November; but though the session lasted until 22nd December the Bill was not returned.[1] The Governor was

[1] There was an air of intrigue in the course adopted by McCulloch and his colleagues. One of them moved the first reading, and caused the second reading to be included amongst Orders of the Day for Government business.

made to inanely congratulate both Houses upon the "more equitable adjustment of the representation of the people by removing inequalities;" and in May 1877 the Houses saw the fruit of their labours.

It may appear tedious to dwell upon the contentions of 1876, but it is necessary to allude to them in order to understand passions prevalent in the country in 1877. It will not be necessary, however, to narrate the phases of subsequent disorders with the minuteness which appeared desirable in describing the doings of McCulloch, Francis, and their friends.

The transfer of men from one standard to another made it difficult for the press to appear consistent. A newspaper aiming at popularity often found itself condemning a man it had formerly extolled, and praising one whom it had formerly censured. McCulloch, O'Shanassy, and Berry,[1] had thus been smitten by alternate praises and censures. One of the staff of a paper had

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Thus, they prevented any private member from taking up the Bill. When challenged on the subject they made irrelevant excuses, and afforded no facilities for any private member in proceeding with the Bill, which was never brought to a second reading.

[1] When Mr. Macpherson made Mr. Berry Treasurer in 1870 the 'Age' averred that the appointment was shameful. ". . . We venture a belief, we almost express a hope, that so traitorous, so untrustworthy a politician as Mr. Berry will not be recognized as fit to control three and a half millions of revenue, the contracting of loans, the regulation of the public account, and to have in his hands the public purse. . . . He has betrayed the politicians who took pity upon him, and rescued him from ruin, but in supporting Mr. Berry they have consented to bribery and corruption in its worst form. . . . We protest against the degradation which the whole colony would undergo by Mr. Berry taking his seat on the Treasury benches as the Finance Minister of Victoria." At a later date, when Duffy terminated his official association with Mr. Berry, the 'Age' declared (May 1872) that the latter was "unfit to be an honourable member of the Assembly," and that his "resignation of the Treasurership with the approbation of his colleagues is such an indication of self-consciousness of infamy as will render it advisable for him to retire from Parliament altogether for a time at least." Nevertheless at the general election in 1877 there was no more ardent supporter of Mr. Berry than the 'Age.' Power at the Treasury on Mr. Berry's part lost its horrors when it might be applied to increase the receipt of public money at a friendly office. A consistent Opposition paper—'The Daily Telegraph'—was deprived of Government advertisements, and the superflux was shaken on fimetic fields, which produced the required crops.

been a professing member of the Constitutional party in the days of McCulloch (1865). He conceived that what was called "loyal liberalism" would pay him best; and, eking out his literary hire with various functions succeeded in obtaining one of the decorations of which Herman Merivale had predicted the worth. The rankling effects of old jealousies, and various causes, which it is unnecessary to recapitulate, cast down the late idol of the crowd —McCulloch—at the elections, in a manner which astounded his friends and his foes. Of the 86 seats it was calculated that about 60 fell to the latter, and of the minority not much more than half would follow their idol of 1868, who had become the object of distrust in 1877. He hastened to resign; following an abnormal example recently set in England, but reprehensible as tending to oust Parliament of its functions, and to deprive the Crown of authentic materials for judgment in creating a new Administration. Sir George Bowen entrusted Mr. Berry with the easy task of forming a Ministry. The colleagues, who had been so promptly condemned by the Assembly of 1875, were acceptable to that of 1877; and, after a brief delay, a member of the Council (Mr. Cuthbert) also accepted responsible office, and was re-elected without opposition.

It has not been necessary, in dealing with the constitutional disputes between the Houses, to allude to every temporary difference. There would be little or no use in two Chambers unless there were occasional argument, or even respectful conflict. Mining on private property was one subject of contention. Lord John Russell's instruction to Sir George Gipps, that Crown grants should convey everything whatsoever within the soil, had in very few instances been complied with. Grantees did not contemplate the presence of precious metals, and Lord Russell's words were not insisted on. The Government, under Deas Thomson's sagacious guidance, took care not to carry out the letter of their instructions; and on the discovery of gold in 1851 asserted plainly the right of the Crown to gold on private as well as on Crown lands.

The Surveyor-General in Victoria had, maugre repeated warnings, sold so much land reported as auriferous, that those who measured progress by the finding of gold declared that it was necessary for human happiness that gold-seekers should have a

right of entry and search on all lands. The Council had asserted that property of one man ought not to be sacrificed on the demand of another; and there were so many freeholders in the vicinity of gold-fields that it had been found impossible to stir up general hatred to the Council for maintaining rights which were widely spread. Moreover, though there were vague ideas that the wider the field the more prosperous the employment for working miners, the fact was notorious that the production of gold had fallen mainly into the hands of companies, which erected expensive machinery, and traced at great depths the gold-bearing strata.

There were disputes amongst lawyers as to the ownership of the gold on private lands, and they were not decided on the highest authority until 1877. Meanwhile owners of lands made contracts with enterprising miners. Land alienated by the Crown for a few pounds was re-sold (on presumption of private property in the gold) for scores of thousands of pounds. A Bill to legalize contracts between land-owners and miners was brought in by the O'Shanassy Government in 1858, but so little importance was ascribed to it that when the Council slightly amended it the Assembly allowed the Bill to lapse without any attempt to maintain its own views or to convince the Council; although the session lasted until February 1859. In 1872 another Bill was sent to the Council. It empowered the Government to grant mining leases to enterers on private lands. Petitions against it were poured into the Council. The Bill was amended by excision of the powers conferred on the Government, and by legalizing private contracts. The Assembly rejected the amendments, and affirmed that the exaction of money by means of private contracts was regardless of the rights of the Crown, and of the revenue of the colony, which the Assembly wished to protect by demanding payment of a rental to the State. The Council insisted on its amendments, alleging that it was unreasonable to exact revenue only from gold found on private lands, and that "to confer extraordinary powers upon a political Minister[1] over all property in land under colour of extracting gold therefrom" was harassing,

[1] The Minister of Mines at the time had been in Sydney a devoted follower of Dr. Lang.

and fraught with danger. The Assembly insisted on the original Bill without further reasons on the last day but one of the session, and the prorogation left the matter unsettled. It seemed at this period desirable to make the refusal to deal with it a ground of accusation against the Council. Speculative promoters of mining companies sedulously fomented ill-feeling, but the interests of freeholders near the gold-fields stood in their way. No less than twenty of the members of the Council[1] owed their seats in part to electors residing in populous gold regions.

One of the objections to the Bill of 1872 was the unlimited power to make regulations which it gave to a Minister. To remove this obstacle, the Governor's speech in 1873 announced that "the whole of the provisions required to administer the Act (had) been included in the Bill" to be submitted. The Bill was expedited in the Assembly, and reached the Council within a month of the assembling of Parliament. It was referred to a Select Committee which largely amended it. On the 30th September it was read a second time by a majority of two votes. In October, in Committee of the whole Council, it was resolved that the Government should not have power to grant leases on "lands alienated before the passing of this Act without the consent in writing of the owner thereof;" though as to all other lands the power was conceded. After this the Chairman (21st October) obtained leave to sit again in six months. The amendment, requiring an owner's consent, did not satisfy the desire of those speculators who had fixed greedy eyes upon certain private lands, and in such a shape no one cared for the Bill. The Governor was made to say that "the absence of special legislation on the subject caused serious impediments in the way of the settlement of the people," and the members were dismissed to the general election in which Mr. Francis, the hero of protection, and of uncollected Customs' duties, was to goad the electors of one Chamber to ill-will against the members of the other. The failure of his scheme of reform, and his

[1] The Eastern Province included Beechworth and other populous places. The North-Western included Sandhurst, Castlemaine, &c. The South-Western included Ballarat, &c. The Western comprised many scattered townships in the vicinity of gold-fields.

resignation, have been told. His colleagues who carried on the Government did not send their Mining on Private Property Bill to the Council until 1st December, 1874. The Payment of Members Bill, which closely followed it, was more important in the eyes of some members than the Mining Bill, and a cumbersome and intricate measure, to consolidate laws relating to local government, engrossed attention.

Two days after renewing the Bill for payment of members, the Council, by a majority of one, rejected the Mining Bill (17th December). All were willing to legalize mining on private property with the consent of an owner, but nearly all thought it senseless to discuss the subject within a week of the prorogation. Another Bill on the subject reached the Council in March 1876. At that time an appeal to the Privy Council was pending on the question of the ownership of gold on private lands.[1] Opponents of the Bill who contended that the gold went with the land, were willing to abandon their opposition if the judgment should be hostile to their views, and the Bill was shelved (4th April, 1876). The same fate attended another Bill in a succeeding session, when by 13 votes against 10, the Chairman of Committees was ordered to leave the chair.

Early in 1877 it was known that the Privy Council had decided that the right to gold did not pass with the grant of the containing land. Thereupon a Bill was sent to the Council in October 1877 which deviated widely from measures with which the Assembly had formerly been content. Mr. W. C. Smith, notable as a land-broker, was also a promoter of mining schemes,[2] and he had become Minister of Mines under Mr. Berry, who became Premier in May 1877, with an overwhelming majority in the Assembly. Mr. Smith's Bill was framed in such a manner as to vest in him enormous powers.

There sat in the Council a member, Mr. J. A. Wallace, practically acquainted with gold-mining, and not concerned in promoting legislation except to the extent within which he might in common with the general public be a gainer. On his motion

[1] Woolley *v.* the Ironstone Hill Company.

[2] It was shown that he had in England extolled a particular mine because it was on private land, and free from vexatious interference by Government.

Mr. Smith's Bill was referred to a Select Committee (23rd October, 1877), was amended, and was returned to the Assembly on the 6th December. Mr. Wallace provided that the owner of land required for mining should be compensated under the general compensation statute applicable to resumption of lands. He carefully set out the regulations which were (in his measure) to supersede the arbitrary powers aimed at by the Minister of Mines, whose enthusiasm for the Bill disappeared as soon as it was remodelled. The Assembly allowed it to drop. A "deadlock" raged in 1878, but Mr. Wallace induced the Council to pass his Bill again. It was sent to the Assembly on the 1st October, but was never returned, although the session was protracted for more than two months. The same fate attended a Bill similarly sent down on 23rd September, 1879, although the session lasted until February 1880, and it became impossible for the Ministry to complain to any well-informed person that mining on private property was obstructed by the Council. They ceased to cause the Governor to deplore in his speeches to Parliament, that lack of legislation which was caused by themselves. Other measures which were for a time retarded by difference of opinion between the two Houses need not be dwelt upon.

The most noisy and least capable of reflection never failed to incriminate the Council whenever it rejected or altered a measure, but the common sense of the community, which, though easily excited, was not wanting in intelligence, saw that unless a second Chamber had discretion to say yes or no to a Bill, it was idle to give it power to discuss it. Though a quarrel between the two Houses could hardly be founded upon the question of mining on private property, in all harangues by enemies of the Council it was accused of evil-doing in the matter. The lovers of change were, however, fully persuaded that unless the Council could be robbed of its discretion, some schemes might fail. They therefore sought[1] at an early date

[1] Mr. C. H. Pearson, once a fellow of an English University—once a free trader, but subsequently a patron of protection—has written in an English periodical, that the Ministry carefully avoided collision with the Council. But he was then on the staff of a newspaper in Melbourne, and the fumes of a peculiar atmosphere may be charitably supposed to have clouded his judgment.

for an occasion of quarrel between the Houses, trusting that the enormous majority controlled by Mr. Berry in the Assembly in 1877 would enable him to do what McCulloch and his colleagues had failed to do in 1866.

Lord Canterbury had been succeeded in the Government in 1873 by Sir G. F. Bowen, and it was hoped that the latter would be found more pliant than his predecessor. It was rumoured that the Speaker of the new Assembly was an adviser, in secret, both of the Governor and of the Ministry. He was no other than Sir Charles G. Duffy.

Whoever selected the occasion of quarrel, it was thought desirable in the first instance to procure it by the enactment of a special tax on land affecting those only who held large tracts of freehold. To those holders had descended the unpopularity which had been attached (under Earl Grey's Orders in Council) to the squatters, or pastoral tenants of the Crown. Many of those tenants had been transformed into freeholders under Land Acts, one of which (under O'Shanassy) Duffy had fathered, and which he had extolled in a pamphlet. The Act had afforded facilities for acquiring land under false pretences, and plundering the State. There were honourable exceptions. The fraudulent may have been a minority. But some poor men, who had no intention to retain land, selected it under the vicious principle of free selection embodied in Duffy's Act, and sold it as soon as possible, thus enriching themselves at a loss to the State. Some rich men largely availed themselves of the Act (while Duffy himself administered it), and acquired by questionable means large properties, of which it was the professed object of the Act to prevent the creation. By rich and poor, with the aid of the Government, the State was defrauded. It was in the Council that the inherent defects of the Act had been pointed out. There only had serious efforts been made to oppose its enactment. Yet by a singular inversion of responsibility, when the ill-working of the Land Act became manifest, the Council was upbraided because some of its members were owners of large estates.

It was contended that the only way to mete out justice was to pass a "progressive land tax," starting at a high point, and rising by leaps and bounds in a manner which would make

lucrative tenure of large estates impossible. The adopted phrase was that it was necessary to "burst up the large estates." The general question of taxation had been discussed during the preceding Administrations of Mr. Berry, Mr. McCulloch, Mr. Francis, and Mr. Kerferd, and its urgency was increasing day by day. An Education Act passed in 1862 had created a deficit. It had raised the cost of education to the State, from an annual average far below £200,000 to one exceeding half a million sterling, and its cry was still that of the horse-leech. It was deemed popular to demand fresh taxation from a special class. If the rich should resist, or if the Council, daily taunted as the representative of property, should demur to a partial impost, popular indignation might be aroused. All holders of more than 640 acres of land were to be deemed owners of a "landed estate," which was to be valued under the law and taxed at the rate of £1 5*s.* for every hundred pounds of the capital value, "over and above the sum of £2500." Valuers were to classify lands in four classes. Commissioners were to hear appeals against the classifications. The Commissioners were to have power to fine and imprison (for a term of three months), and there was to be no appeal from them to any Court whatsoever in or out of the colony.

The warrant of commitment "to the nearest or most convenient gaol," required "no order, conviction, or other formality," and was to be a "sufficient warrant" for all gaolers. A fine imposed was to be made known to a "law officer," who was to "cause a final judgment to be signed in the Supreme Court for the amount . . . and costs . . . and no writ of error or appeal shall lie or be had thereupon." It was deemed that the singling out of a small number of persons, the ostracism of the common law, and other arbitrary features, would provoke the Council to throw out the Bill, and thus induce a contest in which the rich might be accused of selfishly striving to escape taxation. Those who thought expediency the highest wisdom advised the Council to accept the Bill with its hideous clauses, under which a Commissioner (there was no stipulation that he should be a lawyer) might send men to gaol without regard for an Englishman's rights. The "something underlying"—payment of members—hinted at by Mr. Fellows in 1868—was

deemed by these advisers a better battle-ground on which the Council might meet Mr. Berry's followers.

On the 11th September the Land Tax Bill reached the Council. On the 2nd October a debate (commenced 26th September) terminated in the rejection, by 16 votes against 11, of a proposal by Sir C. Sladen to lay the Bill aside because it created a tribunal with unusual powers, and without the customary safeguards for the liberty of the subject, and because under the Constitution Act it was a Bill which the Council could not alter but might reject. Some of the majority deplored the unrighteousness of the Bill for which they voted.

While the fate of the Land Tax Bill was in suspense, Sir G. Bowen, who knew well that the tact of Sir H. Barkly had averted such a procedure in 1861, consented to do what Sir H. Barkly had declined. There were no published minutes on the subject, but the facts had often been admitted in public by Mr. Heales (the Premier whom Sir H. Barkly had refused to gratify), and by other persons. Sir G. Bowen, who was charged with labouring to avert a dead-lock by entreating members of the Council to renew the Payment of Members Bill in 1874 (when Mr. Kerferd was Premier), agreed to do more for Mr. Berry. He consented to co-operate with a proposal to place the item in the Appropriation Bill, and thus coerce the Council to renew the payment in a form which would for ever withdraw the matter from their control, or to accept the responsibility of rejecting the Appropriation Bill to which it was tacked.

There was an obstacle. The Duke of Buckingham's despatch of 1st January, 1868, had laid down the doctrine that the Governor "ought not to be made the instrument of enabling one branch of the Legislature to coerce the other," and that without "a clear understanding that (the disputed vote) will be brought before the Legislative Council in a manner which will enable them to exercise their discretion without the necessity of throwing the colony into confusion," the Governor ought not to recommend the vote to the Legislature. It was true that without withdrawing the despatch of 1st January the Duke had subsequently left Governor Manners Sutton to exercise his own discretion in the particular matter of the Darling grant, but the first despatch was of more general and binding nature.

With the advice of his Ministers, Sir George Bowen resolved to obtain the authority of the Colonial Office for disregarding the instructions of January, 1868. A telegram was first resorted to (19th September, 1877).

"Payment of members having been twice affirmed by Parliament, by Act, my Ministers now propose to place it on the estimates as in New Zealand and Canada.[1] Am I prohibited, as some contend, by the despatch of 1st January, 1868, from consenting to this? No Imperial interest is concerned, as was the case in the Darling grant. . . . Another collision with the Imperial Government and the House of Assembly is probably inevitable if I am prohibited . . . from following the advice of my Ministers in the matter. Pray send me a reply. The question is urgent."

The Secretary of State could not gather from this missive the fact that payment of members had only been affirmed previously as a temporary experiment, and that by all three branches of the Legislature it had been recognized as a subject which could only be dealt with in a separate Bill.

The Earl of Carnarvon, instead of requiring full explanation by despatch, before committing himself to opinions on a question of importance, replied by telegram that as the responsibility was with the Ministers he saw "no reason" why the Governor "should hesitate to follow their advice."[2] The Governor followed it, and in his despatches assured the Earl that he would with "increasing watchfulness and inflexible resolution" abstain from showing "personal favour to either political party," although some members of the Council complained, that he urged them, in season and out of season, to abandon their opposition to payment of members, and enable him to escape in peace. He was but a lodger. Their future was bound up with that of the colony.

[1] A deputation (April 1878) to Sir M. Hicks-Beach pointed out that this statement was incorrect—payment in Canada being provided for "not by the annual Appropriation Acts," but by special Acts.

[2] The Earl answered to the same effect (20th December) a despatch written by Sir G. Bowen on 19th September. The despatch avoided reference to Sir H. Barkly's refusal to allow the item to be included in the ordinary estimates, and mentioned McCulloch, Francis, Duffy, and "other leading public men of all parties," as substantially agreeing that compliance with the Duke of Buckingham's despatch was unjustifiable, and would "threaten the existence of Parliamentary Government."

The responsible Minister in the Council was asked (1st November) whether the continuance or otherwise of payment of members would be submitted to them in a separate Bill as on former occasions. His reply was that it was "highly undesirable that the Legislative Council should interfere, even by a question," on a subject within the function of Ministers, and "controlled by the exclusive privileges of the Assembly."[1]

The Council informed the Governor by address (8th November) that they could not accept such a declaration; that in 1861 the offensive item was not included in the estimates—that several Bills on the subject had been thrown out—that the two which were passed had been passed "on the understanding that they were tentative only and limited in their duration;" that the question was "still in the region of experimental legislation," was one of "public policy" demanding treatment in a separate Bill; and that to include a sum for payment of members in the annual Appropriation Bill "might make such procedure the instrument of enabling one branch of the Legislature to coerce the other." He answered courteously that he had consulted and would again consult on the subject the advisers by whom he was bound to be guided in all matters of "purely local concern." The Ministry sent a separate Bill to the Council on

[1] It was at this period that there was ascribed to the Speaker (Duffy) an elaborate justification of the claims of the Assembly with reference to amendments made by the Council in a Water-works Bill and in a Railway Bill. The reasons have already been mentioned, with the fact that they deceitfully alleged that the Conference in 1867 had formally sanctioned them. The Council took occasion to show that the joint Standing Order recommended by the Conference of 1867 was never made, and that the project so completely foundered that even the Assembly itself never passed the draft of the Order, which to arrive at maturity would have required adoption by both Houses and approval by the Governor. The Council again offered, as in 1865, to submit all differences as to interpreting the Constitution to the Judicial Committee of the Privy Council. Mr. Berry's prompter drafted a weak reply, but though the Assembly adopted it, it was never sent to the Council. The Assembly laid aside the Bills which produced the discussion, and sent amended Bills to the Council, which passed them. It is perhaps worth mentioning, as a proof of the Governor's inaccurate information, that he absolutely sent (22nd December) to Lord Carnarvon as the "final message transmitted by the Assembly to the Council" the document which never was sent to that body.

the 6th December, but at the same time kept the item for payment of members in their Appropriation Bill.[1]

On the 11th December, the Council by 18 votes against 8 declined to read the Payment of Members Bill a second time. On the 13th the Appropriation Bill was sent up and (while it was set down for second reading on the 20th) the Governor formally announced that on that day he would go to the House to give the Royal Assent to Bills. The debate on the Bill was in progress when he entered the Chamber and assented to other Bills: it was resumed on his departure; and, without a division, the Bill was laid aside because it contained provision for payment of members already rejected in that session, and "because to tack to the annual Appropriation Bill a question of public policy precludes the Legislative Council from giving a free and deliberate vote concerning it, and deprives them therefore of their constitutional right."

Again, the community had the horrors of a "dead-lock" before it. Confidence was arrested if not destroyed, trade was paralyzed, fear and doubt were among all men. Mr. Berry's demeanour was not calculated to re-assure the public. On the day of the rejection of the Bill he declared in the Assembly: "We must have the power to coerce. The Council say they will not be coerced, but I say they must be coerced."

The blow which the Ministry determined to inflict required the helping hand of the Governor, and he who extolled his own impartiality, and was commended by telegram from Downing Street (9th February, 1878) "to maintain constitutional impartiality of action," was involved in more than one personal altercation, which it is needless to expatiate upon, but which caused correspondence which found its way to Downing Street.

[1] There were two other Bills—(a Forts and Armaments Bill, with an abnormal preamble—and an International Exhibition Bill, which, without assent of the civic authorities, proposed to take possession of one of the city parks set apart by Mr. Latrobe for permanent recreation), which the Council rejected (27th and 28th November): the first by 20 votes against 2, the last by 11 votes against 6. The cost of the forts and armaments was subsequently included in an Appropriation Act, and the Government, having made terms with the Corporation of Melbourne as to the site, also carried out their intention with regard to the Carlton Gardens by means of the Appropriation Bill. As the Council was attacked by the Ministry for its obstructiveness, it has been necessary to mention the Bills.

On the 31st December, the Ministry presented him a memorandum in which they impugned, as "incompatible with the principles of responsible government," the instructions of Mr. Cardwell (to Sir C. Darling), and of Earl Granville (to the Earl of Belmore in Sydney), that the Governor was bound to obey the law. The word "Governor" ought in all cases to mean "Governor in Council." They wished to remove the fetters which restrained the Governor from accepting ministerial advice. Would he obtain from the Colonial Office permission to sign warrants to extract money from the Treasury contrary to law, and in accordance with an irregular practice followed before 1862, by which on the mere vote of the Assembly money was paid, until (when the illegality was discovered) the practice was abandoned and constitutional usage was restored?[1]

They put forward the need of money for defences against foreign foes as a plea for urgency. The Russians might invade, and Mr. Berry could not without money provide "ships' crews, torpedoes, ammunition, or other means of defence." He did not appeal to the Home Government for advice, but, "to vindicate responsible Government and sustain the true dignity of the Crown," it was necessary to "relieve the representative of the Crown of all personal responsibility." The process he advocated was simple. He did not wish to "suspend any laws," and wrote as if it were a moderate request to ask the Governor to violate instructions.

The Governor wrote as if he would rather be without a conscience. He sent the memorandum to Earl Carnarvon as though it affected not his functions, and hoped that the decision on the "important and pressing subject" might be received by telegram. But neither he nor his advisers waited for the reply. On the 8th January, while the Legislative Council was sitting, they issued a 'Gazette' notice, which was literally a revolution by placard. They had asked Sir G. Bowen to sanction

[1] The Ministry appended, and Sir G. Bowen forwarded, the old, retracted, opinion of Mr. Fellows, that money became legally available on the vote of the House of Commons and in Victoria. Though the retraction was candidly made when Mr. Fellows had learned the facts of the case, Sir G. Bowen and Mr. Berry did not mention it. The latter when asked why he did not send the later opinion (as that of Mr. Fellows) said the other one suited him better.

"reductions in the public service with a view to economize the funds." He acquiesced without ascertaining whether the act required was in conformity with law. One of the Ministers had formerly been dismissed from the public service on the report of a Board on which sate Mr. T. Higinbotham, the amiable, but incorruptible and firm, Engineer-in-Chief of the public railways. It may be that animosity against him and a few others gave to the Ministerial plans the form they took. The dismissed underling of former days had become a Minister in 1877, and he was reported as saying in the Assembly with regard to the 8th January, "I have had my revenge."

The 'Gazette' notified the removal of the upright Higinbotham, of many other heads of departments, of all Judges of County Courts and Courts of Mines, all police-magistrates, wardens of gold-fields, coroners, and scores of others. The dismissed functionaries only learned the fact on reaching their offices on the following morning—which was known afterwards as "Black Wednesday." The Attorney-General was Mr. Trench. He had some glimmering of sense, or instinct, that confusion would result from the action of the Ministry; for he issued a notice (9th January) directing the Clerks of Courts to "refrain from issuing any process," or doing anything in regard to County Courts, Courts of Mines, or Insolvency, which might "pertain to the Judge or the holding of a Court." The public morality of the colony sustained a grievous shock. The immorality which flourished officially was exuberant in joy.

The Governor, having set his hand to the act demanded of him, travelled by railway to a distant place, and at a banquet on the following day boasted of his impartiality, and jocularly declared that it was not for him to interfere between two Houses unless he could dissolve them both. But newspapers in neighbouring colonies denounced his assertion that he had kept within the domain of the law.[1] The pungent 'Ballarat Star' asked

[1] "Sir George Bowen has had to blow his own trumpet, and boast of impartiality; but unfortunately the very speech in which he made that boast the loudest will remain as a permanent indictment against him. The struggle in Victoria, though partly political, was also largely social, and was avowedly made so by the Ministry and its supporters. . . . No Constitution in the world, written or unwritten, can withstand the sort of treatment to which Mr. Berry subjected the Constitution of Victoria. . . . Class was set

(11th January) if the denial of justice was not a violation of law, and if so at what point did the Governor's duty to keep within the law appear clear to him? Even when the act of the 8th January seemed most successful there were symptoms of consciousness that it was wrong, and in the end would redound to the discredit of the Government. An address, signed by Dr. Moorhouse, the much-respected Bishop of Melbourne, and by representatives of nearly all the religious denominations, without going into political questions, deprecated the dismissals as unjust, and "likely to exert an injurious influence on the national character." They sent their protest not to the Governor but to Mr. Berry. The tricks of law are the sport of criticism, but its intricacies often arrest political crimes. The Queen's representative and his advisers had not noticed in the deep foundations of English charters the words which the great English Churchman had engraved there for all time: *Nulli vendemus, nulli negabimus, aut differemus, rectum aut justitiam.*[1] After more than six centuries those words rose to condemn at the antipodes a denial of justice to Englishmen.

The dismissals on the 8th January were to be followed by more, and it was muttered that schemes for invalidating bank notes, issuing Government notes without lawful authority, and preventing goods from being landed at the jetty which the Hobson's Bay (private) Railway Company had built and used, would be promulgated. Lalor, the Commissioner of Customs, as if to show that his rebellion in 1854 was due to no hatred of tyranny, publicly stated (18th January) how he would, if the Ministry were "provoked," speedily settle the mining on private property question. From owners who had made bargains for royalty on gold extracted from their land he would, "in the exercise of the wisdom of the Crown, take the gold and give it

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against class in the most undisguised manner, and to this social strife the Governor lent himself in his speech at Ballarat. He brought all the resources of his wit to bear, to hold the upper classes up to public contempt, and the distinct way in which he arrayed himself against them will prevent any impartial historian from admitting that he comported himself calmly, evenly, and impartially, throughout the strife." ('Sydney Morning Herald.')

[1] Thus in the Great Charter. The demands of the Barons previously drawn by Langton were as clear as the terms he placed in the Charter. *Ne jus vendatur, vel differatur, vel vetitum sit.*

to the man who digs it out. That would be very unpleasant for the owner; but if they are contumacious for long, don't be at all alarmed or surprised if you see a list of that sort as well as the list of dismissed civil servants." The Governor, about the same time, was cheered by a public assemblage when he declared that in what he had done he was supported by an "overwhelming majority of the people of Victoria." On other occasions he denounced the friends of the Legislative Council as conspirators to destroy him as they had destroyed Sir C. Darling. "Anyhow (he said) I defy them to kill me, either politically or physically." On all occasions he repeated that he would maintain absolute neutrality "with unceasing vigilance, with inflexible resolution, and with strict impartiality." Once he declared that he was "the one public man in the colony who kept his temper unruffled, his head cool, and his hand firm and steady." Such a statement invites an accurate narration of the Governor's acts. He did not acquaint the Secretary of State with the abolition of the Courts until 23rd January, when (after the censure which his conduct met throughout Australia) he had in part retraced his steps in order to satisfy the Great Charter.

Private telegrams were sent to England. The Governor was alarmed. The protest of the Bishop of Melbourne and other ministers commended itself to the public conscience. Sir G. Bowen consulted many persons, and irreticently poured into the ears of each what he had confided to others in secrecy. He had reason to fear that his telegrams and despatches might be deemed deceptive. The insinuation that the Council and not the Ministry caused the dispute was at the root of the matter; but there were other misleading statements. He had telegraphed that the reductions on Black Wednesday were "temporary, to economize funds for police, gaols, and protection of life and property." But one of his advisers had boasted that the act was one of revenge. The Premier declared that gentlemen supposed to be friends of members of the Council were singled out for dismissal that the Ministry might return "blow for blow."[1] It transpired that many so-called temporary

[1] One of the common figments of the day averred that a private establishment, the Melbourne Club, was a dangerous political organization.

dismissals would be permanent, and that in room of the displaced men friends of the Ministry were to be appointed. One of those dismissed was Mr. G. Gordon, a hydraulic engineer of high repute. The Government in India had, on request, sent Colonel Sankey, R.E., to aid the Victorian Government by a special report on some mismanaged water-works; and, subsequently, Mr. Gordon, by invitation, resigned his prospects in India and accepted permanent office in Victoria. The only defence made by a Minister was that as Mr. Gordon's salary would suffice to maintain many poor families it was good to break faith with him.

There were said to be instances in which the suddenness of the shock of dismissal had smitten down some officers so that they died. Where sickness had been in a family previously, want was already within the doors, when, without a moment's notice, officers, culpable in nothing, were deprived of bread, and told that what was taken from them would serve to feed others. Mr. Higinbotham's removal was admitted at one time to be an act of revenge, but it is significant of the influence which morality exercises amongst those whom it does not restrain, that after a time it was found expedient to deny that the Minister was prompted by a spirit of which others disapproved.[1]

Sir G. Bowen could not but reflect that it had been competent for him to stipulate that whatever was necessary by way of economy should be done impartially. If no money were legally available he could sign no warrants directed to the Treasury. If any were legally available justice required that it should be distributed fairly, and not confined to a few. There was one thing which, having the downfall of Sir C. Darling in view, the

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Having been for many years the only club in the colony it necessarily comprised men of various opinions, and as necessarily was free from political bias. If any member had striven to convert a social club into a political engine he would probably have been expelled as a nuisance. Nevertheless Ministerial supporters were never weary of repeating a statement which was as absurd in Australia as it would have been to accuse the Athenæum Club in London of the partisanship which is the essential feature of the Carlton and the Reform Clubs.

[1] Stung by the etchings and letter-press of the 'Melbourne Punch,' conducted at the time with distinguished ability, he induced Sir G. Bowen to cancel the 'Gazette' notice of a former year containing his dismissal.

Governor was careful to avoid in his despatches. Though he assailed its members in speech, he told Lord Carnarvon (26th January) that though he could not concur with the address of the Legislative Council to the Queen, he would continue to treat the Council with the "high consideration due from the representative of the Crown to either House of the Victorian Parliament." In the same despatch, however, he wrote that the Council "virtually" claimed to be "practically supreme;" to have the "constitutional as well as legal power of throwing the country into confusion by rejecting the annual Appropria- Bill whenever it (the Council) is opposed to any of the items contained therein;" . . and that it was in the "power of the Council at once to remove the inconvenience of which it complains by resuming amicable relations with the Assembly."

On the 22nd January he formally recorded (in a memorandum which he sent to the Secretary of State) the fact that he had verbally attempted to dissuade the Ministry from the act of the 8th—that he had grave misgivings about the administration of justice—and wished at least that his Ministers would reinstate such judicial officers as might be "willing to dispense with their salaries until the passing of an Appropriation Act." He begged "Ministers (as he had already recommended the Premier) to take measures for publicly contradicting the false rumours which had been circulated," that "interference with the currency or banking institutions" was contemplated. He was "precluded by the Queen's instructions from sanctioning any measure of that nature, and from interference with trade and shipping." (Yet in the previous month he had sent to England without any remonstrance a proposal that all responsibility should be wrested from the Governor.) He styled the rumours false, but they were widely believed in the colony.

Although the Attorney-General had certified that the strangling of the law on the 8th January was proper, the Governor procured contrary opinions. The Governor was forthwith "assured (by the Ministry) that a sufficient number of judicial officers would be retained to keep the machinery of justice . . at work, and to prevent any serious inconvenience to the public." Moreover, unpaid justices were patriotically at work. The concessions made to him encouraged Sir G. Bowen

to ask for more. On the 24th Jan.[1] he "felt it his duty to direct the immediate attention of Ministers to the question of the legality of some of their recent acts." They had assured him on the 8th that their dismissal of Judges, &c., was "strictly legal." "It has now become clear to his judgment that this is not so. (He requested them) to cancel forthwith the notices . . . respecting judicial officers . . . and every other act or notice whatsoever which has involved or may involve a violation of the law."[2] He quoted despatches from Mr. Cardwell to Sir Charles Darling in support of his resolution to govern—"subject always to the paramount authority of the law." On the same day it was announced in the 'Gazette' that with advice of the Executive Council he had "directed that the Order in Council, dated the 8th instant, removing from office the persons holding the offices of Judges of County Courts, Courts of Mines, and of the Court of Insolvency, also Chairman of General Sessions, be cancelled." Separate notices announced the cancelling of the Orders removing all coroners, and all police-magistrates and wardens.

On the 26th Sir George Bowen reported that, on his representation, the Cabinet "agreed to cancel the acts referred to. I enclose a copy of the Government 'Gazette' showing that this has been done. . . . As my Ministers consented to retrace their steps in the manner proposed, it was not necessary for me to take any further action at present in this matter." The despatch was laid before the House of Commons in March 1878. One of its enclosures purported to be the "Fourth Supplement to the

[1] The Legislative Council had on the 22nd asked for a copy of the Ministerial memorandum which proposed to relieve the Governor of all responsibility. The contents were unknown, but the fact that it had been sent was known. The Governor declined to produce a document not "received and acknowledged by the Secretary of State." In a communication on the 22nd he had told the Council that he would "maintain firmly that neutrality which pertains to the Crown." On the 23rd, Sir C. Sladen carried an Address to the Queen showing that by the act of 8th January "the Governor under a perverted use of statutory powers virtually suspended several statutes," and had plunged the colony into confusion. At this time Sir G. Bowen discovered that his acts had not been "strictly legal."

[2] Sir G. Bowen observed "that in the first instance the Premier" shared the "grave doubts" of the Governor as to "the legality and equity of some of the measures adopted by Ministers . . . though he afterwards yielded to the views of a majority of his colleagues."

Victoria Government 'Gazette' of 18th January," and contained only the three notices of cancellation above cited. An English reader might think the despatch conclusive. Any one who saw the "Fourth Supplement" as published in Victoria judged differently. It contained other notices of the same date (24th) as the cancellations. By them several County Court Judges, 32 coroners, 53 police-magistrates, and various officers in the Treasury and other departments were again removed or dispensed with; and to the critical it might seem that the despatch was framed with a view to withhold the facts from sight. When the English Blue-book arrived in the colony the difference between the document sent, and the 'Gazette' of which it purported to be a copy, was manifest. The despatch truly said that the Order of the 8th of January was cancelled in the 'Gazette'; but it did not say that the same 'Gazette' repeated the dismissals with few exceptions. To guard against the imputation of utter denial of justice a few persons were placed in particular offices, and it was notified (22nd January) that Courts would be held and appeals dealt with "according to law." The Ministerial memorandum (31st December), which proposed to divest the Governor of all responsibility, was not received by the Earl of Carnarvon, who resigned office in January 1878, and was succeeded by Sir Michael Hicks-Beach. But the Earl had been warned of equivocal weapons which the Governor was inclined to use. Sir George Bowen discovered, among the archives of his office, unpublished confidential despatches from Governor Manners Sutton on the subject of the Darling grant. There were passages in them which condemned the attitude of the Legislative Council, and Sir George Bowen by telegram (31st January) asked for permission to publish them, "or extracts from them." Extracts would have been more advantageous to him than publication in full, for Governor Manners Sutton firmly asserted that he had refused, and would refuse, his "assent to any such proposition" as that on the rejection of a Money Bill by the Council that body should be ignored. But before permission to publish was applied for the confidential despatches were made known to Ministerial supporters. Lord Carnarvon was solicited to telegraph his answer. Meanwhile the Council on the 22nd January

asked for a copy of the Ministerial memorandum (31st December) to which the Governor expected a telegraphic reply. After the delay of a week he declined to furnish it: and implored the Secretary of State by a telegram "for a speedy decision by telegraph on the" memorandum, "so as to arrest public danger and suffering here arising from stoppage of supplies by Legislative Council." On the 5th February the Council without a division adopted an Address requesting him to forward to the Secretary of State a telegram—praying that nothing might be done with regard to the withheld memorandum until opportunity for comment might be afforded them; stating that the Governor had refused to furnish a copy; and adding that the President of the Council would send direct to England a copy of the telegram from the Council. The Governor replied that, as the President was sending the telegram his responsible Ministers advised that it was "unnecessary to repeat it." On the 9th February the Secretary of State postponed his decision as to the production of the Darling grant confidential correspondence, and relied on Sir George Bowen to "maintain constitutional impartiality of action." Sir George replied 12th February in the same manner that he was "strictly" doing so. Meanwhile violent words were used with regard to the lost Appropriation Bill. On the 6th February, by 52 votes against 23, the Assembly resolved to revert to the practice which had prevailed in the colony before adoption of the constitutional method of obtaining money from the Treasury. On the 13th February the Assembly by 46 votes against 14 adopted an Address to the Queen, in which they sought to cast on the Council responsibility for loss of the Appropriation Bill. They complained that the Council had done what the Lords had never done in rejecting an Appropriation Bill, and blamed the Council for the consequence of the act of the Assembly. Their long address concluded with a statement that Sir George Bowen had been strictly impartial, and that if any representative of the Crown should be so "unwise as to employ the influence and authority of the Crown to help a minority in impeding the wishes of the great body of the people, the certain result would be to diminish the just authority of his office and the legitimate influence of the Crown." In the debate the Premier was applauded for

declaring it just as likely that the sun would go back in the heavens "as that that £18,000 (payment of members for six months) will be taken out of the Appropriation Bill."[1] Sir George Bowen wrote a special despatch (21st February), calling attention to the compliment paid to himself by the Assembly. The Council on the 19th February adopted a lengthy Address to the Queen, in which they denied "the aspersions cast" upon them, and attributed the loss of harmony between the Houses in 1878, as in 1865 and 1868, to "an attempt by the Government of the day to deprive the Council of its constitutional rights." At this period the Council received petitions from thousands of persons urging it to maintain its constitutional position; and a petition to the Queen, numerously signed by the inhabitants, was forwarded to the Governor for transmission to England. It justified the claim of the Council to have the question of payment of members submitted separately for judgment; it denounced "the practical denial of justice," and other acts of the Ministry; and prayed that steps might be taken "to preserve the integrity of the Constitution, and to uphold the authority of the law." The Governor transmitted it without comment, but enclosed a memorandum in which the Attorney-General on behalf of Mr. Berry vilipended the petition on the ground that "any petition on any subject can easily be got up in any large town," and that the "constitutional representatives of the people of Victoria" were in the Assembly alone. What character Mr. Trench assigned to the Legislative Council (created by, and elected under, the Constitution) did not appear. On the 22nd February a telegram from Sir Michael Hicks-Beach startled Sir George Bowen and his advisers. The memorandum of 31st December had been received, and the

"telegram from the President of the Council. Communicate memorandum to Council that their observations on it may be placed before you. I do not feel justified in volunteering any opinion on the memorandum, which, I observe, does not invite my intervention. Your duty in this question is clear, namely, to act in accordance with advice of Ministers, provided you are satisfied the action advised is lawful. If not so satisfied

[1] The prophetic utterance was marred by the fact that after a few weeks the sum was taken out of the Bill.

take your stand on the law. If doubtful as to the law have recourse to the legal advice at your command. I shall present the memorandum and other correspondence to Parliament shortly, and think they should be published in Victoria also. Telegraph your reasons for desiring to publish further correspondence in Darling case, more especially despatches which, being confidential, I am disposed to think had better be withheld."

The responsibility which Sir George Bowen had endeavoured to discard was thus left with him. A despatch in due time amplified but did not qualify the telegram. Sir Michael Hicks-Beach thought it very "important that unless the controversy should unhappily prove otherwise incapable of settlement, both Her Majesty's Government and the Queen's representative in the colony should be kept free from any share in it." When Mr. Berry on the 5th March read the telegram, the Opposition loudly cheered the injunction that a Governor should take his "stand upon the law," but Mr. Berry retorted that the advice of Ministers, "backed up if necessary by the written opinion of the Attorney-General," was all that was implied. He nevertheless induced his colleagues (23rd March) to concur in a memorandum protesting against any "interference from any quarter whatever" with their opinions and advice. The Governor went as far as he could to commend their views to Sir Michael Hicks-Beach. The latter (5th July) in cogent terms defined the duty of a Governor in accepting responsible advice, and at the same time guarding himself from infractions of law for which he might be responsible himself. By the Constitution Act there were certain duties imposed on the Governor, and his responsibility with regard to them could "not entirely be borne by the Ministers nor by the local Parliament." When the telegram (of 22nd February) reached the colony (after some interruption in transmission) the Council was adjourned till the 6th March. On that day the Governor forwarded the Ministerial memorandum of 31st December to the Council, and added that the Secretary of State "acknowledged without comment the receipt of a telegram from the President of the Council." This was true in one sense, but the injunction of the Secretary of State to take his "stand on the law" was really an answer to the Council. This fact was obscured by not sending a copy of the telegram to the Council,

and by omitting from it, as read to the Assembly by Mr. Berry (5th March), the direction to communicate the memorandum to the Council, and the suggestions that the correspondence should be published, and the confidential character of Governor Manners Sutton's despatches should be respected. It was deemed advisable to conceal as long as possible the manner in which the occurrences of Black Wednesday and other matters had been reported to the Secretary of State. The despatches were not produced in the colony until long after copies of them as presented to the House of Commons had been sent to Victoria. By that time public attention was so much engrossed by other matters that many characteristics escaped observation. When the previously withheld memorandum was laid before the Council, it was referred on the motion of Sir C. Sladen to a Committee; and on the 2nd April an Address to the Governor was adopted, after a new Appropriation Bill, divested of the item for payment of members, had been received from the Assembly. Numerous as were the supporters of law and order in the colony they did not outnumber those who longed ignorantly for change or hoped to profit by anarchy. This fact was conspicuously proved when in January 1878 Sir C. McMahon (the former Speaker) resigned his seat for West Melbourne. Sir Bryan O'Loghlen cast in his lot with the popular Ministry, and confident in the support of his countrymen, and the hope of successful personations in a district where the electoral roll was grossly corrupted, stood for a constituency which had on almost all previous occasions returned a constitutional member. Mr. Francis, the hero of protection, had after a visit to Europe become somewhat wiser than of yore, and stood forward as an opponent of misrule. On the 4th February, by 1973 votes against 1883, Francis was beaten.[1] Shortly afterwards Mr. Trench resigned the Attorney-Generalship, and O'Loghlen on taking it was again unsuccessfully opposed by Francis. Though the numbers were nearly even, the majority being less than a thirty-eighth part of the votes polled in February, and though

[1] There was notorious personation. Well-known citizens going to vote in the forenoon found that they had been personated early in the morning. So many deceased persons were marked as having voted that it was said that Sir Bryan O'Loghlen had "polled the cemetery."

it was known that the intelligence of the constituency was arrayed against O'Loghlen, his success without doubt aroused serious misgivings in men's minds. Sir George Bowen in florid phrases informed the Secretary of State that the appointment of "Sir Bryan O'Loghlen, Baronet, M.P. for the county of Clare in Ireland, and member for West Melbourne," would be "of great value in the Executive Council, especially in legal and constitutional questions." At first he held no office of profit, but in March Sir B. O'Loghlen became Attorney-General, and emulous of the historical bird of Sir Boyle Roche, strove to be a member of two distant Parliaments at once, and to annihilate on his own behalf the disqualifications which prevent a member of the House of Commons from accepting an office of profit and retaining his seat; but the House of Commons declared his seat vacant. Though unable to return their former enemy and new friend, Francis, the Constitutionalists, in spite of the utmost efforts of the Ministry, had returned for an important suburban constituency (Booroondara) Mr. R. Murray Smith, who had lost his seat for St. Kilda by one vote in May 1877. Having failed to establish the legal sufficiency of the mere vote of the Assembly to empty the Treasury, Mr. Berry (7th March) carried by 48 votes against 12 a new proposition;—that under the 45th section of the Constitution Act the costs incident to the management of the revenue and expenditure were specially appropriated, and should "during the present financial year and no longer be treated as a special appropriation;" and that the Treasurer should ascertain the amount of the said costs . . . from 1st July, 1877, to 28th February, 1878, "and transfer the same in aid of the Ways and Means Acts 1877-8." Mr. Trench and Sir B. O'Loghlen certified (11th March) to the legality of the procedure. The Ministry advised the Governor to sign a warrant for £350,000, and he, introducing into his reply that which did not appear in their formal advice (viz. that the measure was temporary, and would "not be used by Ministers for the issue of public money, if an amicable arrangement of the differences between the two Houses should be soon agreed upon"), signed the warrant; informing the Secretary of State that a refusal would "simply have brought the representative of the Crown into hopeless collision with the representatives of the people in Victoria."

Meanwhile Sir G. Bowen had again pressed for permission to publish Governor Manners Sutton's confidential despatches; the Assembly had carried a resolution praying him to do so, and Sir M. Hicks-Beach telegraphed (6th March) that he would not refuse his consent to the promulgation of any public despatches on the Darling case, and of certain confidential despatches mentioned by Sir G. Bowen, with the exception of one despatch and a portion of another, which would be "better withheld. But Ministers must be responsible if any matter so published gives offence or causes difficulties."[1]

On the 19th March, the despatches already shown to members, and to writers for the press, were sent to the Assembly. Mr. Berry boasted that no member of the Ministry had any agricultural or commercial ties in the colony, but some of their followers were connected with trade, and the "dead-lock" seriously affected it. Two members, Mr. Lyell on the Opposition side, and Mr. Munro a Ministerialist, conferred together (4th March) after it became known that the Governor had received a telegraphic reply to the Ministerial memorandum. They recommended that by simultaneous action in both Houses a compromise should be effected. The Assembly was to introduce an Appropriation Bill shorn of the "tack" of payment of members, the Council to pass the Payment of Members Bill (in its possession), which limited the payment to the term of the existing Parliament, and did not, as in 1870 and 1874, extend it through the first session of a succeeding Parliament.

After consulting, extra-murally, various members of both Houses, Mr. Lyell temporarily failed to carry his scheme. Mr. Berry carried his proposition to authorize the Governor by the vote of the Assembly to use the 45th section of the Constitution Act to extort money from the Treasury; in spite of a warning from Mr. R. Murray Smith, that as the Ministry had not acted on the former resolution to pay money on the mere vote of the

[1] A married daughter of Lord Canterbury was in the colony at the time. She was noted as forward in good and charitable works. (After alluding to her father's successful labours to allay political troubles) she wrote to the 'Argus' (21st March): "I confidently affirm that had my father been alive these despatches would not have been published. I also do not hesitate to say that I consider their production at this time to be an act which he would earnestly and heartily have deprecated."

Assembly, so they would be wise to abandon their new idea, and to act constitutionally by sending a legitimate Appropriation Bill to the Council. The Governor, as has been seen, signed the warrants (11th March), and produced (19th March) Lord Canterbury's despatches of 1867. Sir Charles Sladen brought up (20th March) an address commenting on the Ministerial memorandum; upon the Governor's sedulous withholding of that document from the Council; upon the contradiction by that memorandum of a recorded decision of the Supreme Court; upon the relations between the Audit Act and the Constitution Act, which forbade the adoption of the 45th section of the latter as a complete Appropriation Act, without the ancillary provisions contemplated and authorized by the Constitution Act, and formally provided in the Audit Act; and repeating the readiness of the Council to pass at once an Appropriation Bill divested of a tack.

Indignant at the surreptitious use of the authority of Mr. Fellows in approval of a practice which, as soon as the facts were known to him, he unequivocally condemned, the Council appended to their address the formal words in which "Mr. (now Mr. Justice) Fellows" explained publicly in 1865 how and why his hasty opinion of 1858 was erroneous with regard to the manner in which funds became "legally available" in England. The Address was brought up on the 20th March, and was formally adopted on the 2nd April. Mr. Cuthbert, meanwhile, on the plea that his colleagues intended to adjourn from the 19th March to July, had on the 14th endeavoured without notice to obtain a hearing on behalf of the Payment of Members Bill, which could still be dealt with, inasmuch as the decision of the Council in December had been not to reject or lay it aside, but that it be not "now (11th December) read a second time." Mr. Cuthbert failed on the 14th, and Mr. Berry on the 20th induced the Assembly to adjourn till the following week, with a view to the adoption of the Lyell-Munro compromise.

On the 21st March, Mr. Cuthbert moved, according to notice, the second reading of the Payment of Members Bill; and, contrary to his custom, indulged in provocative remarks which aroused Sir C. Sladen to unusual vehemence. How can the Postmaster-General tell us "what he thinks we ought to do

when he is in concert with others to destroy the independence and dignity of this Chamber; when he is conspiring against us?"[1]

The debate was adjourned till the 27th. On the 26th the Assembly were informed that Messrs. Lyell and Munro had resumed their intercessory functions. Mr. Berry, in giving notice that he would move on the 28th for a Committee to find out what had become of the Appropriation Bill (laid aside by the Council on the 20th December, 1877), said that the best course would thus be taken, and people would be "satisfied that the privileges of the Assembly have been substantially maintained."

On the 27th Mr. Cuthbert assured the Council that in the new Appropriation Bill the "item to which so much objection has been raised would be excised." The Payment of Members Bill was read a second time on the 27th. On the 28th it passed through Committee, and Sir C. Sladen endeavoured to procure the assent of the Council to a Conference, with the object of limiting the operation of the Bill to members of the Assembly. By 13 votes against 8 he was defeated, and the Bill was read a third time forthwith.

On the same day Mr. Berry's Committee was appointed, and employed five minutes in finding out and reporting that the Council had "laid aside" the irregular Appropriation Bill. A new Bill was brought in, on Mr. Berry's motion, shorn of the item for paying members. One of the Ministerial supporters denounced the compromise as the "blackest piece of political treachery ever enacted within the walls of this Chamber." Mr. Berry deplored his follower's petulance, but was "at a loss to understand how this Chamber could have won a greater or more complete victory." He had asserted that payment of members "should not cease for one single day. It never has ceased; and now the measure authorizing its continuance only awaits his Excellency's consent to become the law of the land." "With

[1] Mr. Cuthbert rose to order. The President (Sir W. H. F. Mitchell) thought the language not "unparliamentary under the circumstances." Mr. Cuthbert threatened to retaliate. Sir C. Sladen, one of the kindest of men, protested that he did not wish to use offensive language or hurt Mr. Cuthbert's feelings. The latter said he had "done so," and Sir C. Sladen replied: "Then I withdraw the expression I used"—but abandoning the word "conspire," urged that Mr. Cuthbert was "acting in concert with others" who strove to make the Council "a nullity."

the limited power at our command (he continued), by patience and perseverance, by tact and judgment, and by adherence to principle, we have won a victory . . . notwithstanding that there is a power 16,000 miles away everlastingly disturbing the machinery of this country."

On the 2nd April the Council adopted the Address commenting on the Ministerial memorandum (31st December) so tardily procured. On the third they passed the Appropriation Bill; on the 4th the Governor replied to their Address, in which he saw "a personal and gratuitous attack on the representative of the Queen," and an effort to load him with responsibility for acts done under "advice of his constitutional Ministers." The action of the Council, however, would not induce him to "swerve in the slightest degree from that neutrality between political parties which belongs to the Crown he represents." On the 9th April the Assembly presented an Address complimenting the Governor on the "vigilance, equity, impartiality, constitutional foresight," which made him "a model for constitutional Governors."

On the 9th April he prorogued the Parliament, announcing that, to prevent recurrence of evils, his advisers would "with all possible despatch prepare a measure to alter" the Constitution.[1] The distant power "everlastingly disturbing the machinery of this country" was to be dealt with. A warning to a Governor to "stand upon the law" was highly offensive to those who desired to break it; and a plot had already found shape in the brain of one of those whom Sir G. Bowen consulted. Long before the proposal to send an embassy to England was publicly hinted at, one who knew the Speaker, Duffy, well, remarked that Duffy was contriving a quarrel which should result in a mission to England of which he was to be a member.

The reasons Duffy was said to have drawn up, and which the Council shattered in November 1877, did not lead to the desired catastrophe. The Governor was plied with frequent arguments

[1] Mr. Berry had on the 6th March given notice of resolutions—that the unconstitutional action of the Council had made alteration necessary—that the Constitution ought to be framed on the British model; "that the present elective Council be replaced by a second Chamber," affording British guarantees; and that "the Government take all necessary steps to give effect to the foregoing resolutions." On the 2nd April he withdrew his resolutions.

throughout the contest on the Appropriation Bill. That contest had passed away, but on a question of reform it was hoped that strife indeterminate in Victoria might compel a resort to England which should exalt the ambassadors if not contribute to success of their schemes.

Sir George Bowen described in an elaborate despatch (11th April) the dangerous crisis he had escaped from by refusing "to be cajoled or threatened into the adoption" of a course which would have made him break with his Ministers, "and with the overwhelming majority in the colonial House of Commons, and also with the country at large." A glimpse behind the scenes was afforded by passages in which he animadverted upon the "attempted dictation of a section of" the Council, and of an "active clique out of doors," which had pursued him with "persistent and malignant attacks," such as had persecuted all his predecessors whenever in "maintenance of their constitutional neutrality they failed to obey implicitly the behests of that faction." He argued at great length that if he had dismissed his Ministers to please a beaten minority he would have been perilously infatuated. He did not appear to perceive that to refuse to do an undutiful act was not a dismissal of Ministers, and that a Governor whose Ministers resign because he refuses to break the law is in a widely different position from one who dismisses them. He confidently looked for approval of his "impartial attitude." His despatch enclosed the address from the Council exposing the deception practised in sending to England as the opinion of one of the Judges (Mr. Fellows) that which was contrary to his known opinion, but the Governor expressed no regret for his share in the transaction. On the 12th April he appealed for similar approval to that earned by Governor Manners Sutton, whose example he had "steadily followed." On the 11th he had reminded his Ministers that with the passage of the Appropriation Bill their plea of want of funds had disappeared, and that the judicial and civil officers whose services were dispensed with on Black Wednesday ought to be dealt with "in a spirit not only of equity but also of a wise and politic liberality."

On the 15th County Court Judges, Crown Prosecutors, and a few police-magistrates were reinstated. On the 24th he

appealed for a "general reinstatement, at least until the end of the financial year (30th June), seeing that the salaries have all been voted and included in the Appropriation Bill up to that date." Systematic retrenchment and re-organization in the service might afterwards be made. But removals prompted by revenge were not to be set aside on grounds of equity. The Ministry declined to gratify the Governor; alleging under the hand of Sir B. O'Loghlen that they were moved by the "imperious necessity which exists for maintaining in their integrity the principles which underlie self-government," and that they "respectfully" insisted that the matter was one which they had the "exclusive right of dealing with." Sir G. Bowen discovered too late that it was more easy to be persuaded to do an unjust act than to persuade others to undo it. He therefore in a wordy despatch (8th May) argued that there was "ample authority for the assertion of ministerial privileges and responsibility" by Sir B. O'Loghlen, and enclosed detailed reports (from departments), framed to meet Ministerial views.

A dismissed police-magistrate (Mr. Gaunt) sent a petition to the Queen. He had been 25 years in the service, had a large family, and without notice was cashiered. On the morning of Black Wednesday he had ridden twelve miles to hold a Court at Creswick, and there learned his dismissal from a practitioner in the Court. Some junior magistrates had been re-appointed. He, who, on faith of the regulations offering pensions at a certain age, had refused lucrative private positions, was cast aside. The Governor transmitted the petition with a Ministerial declaration that Mr. Gaunt was dispensed with, not dismissed, and that compensation for his removal was payable to him under the Civil Service Act on a certain scale, but he had not applied for it.[1] In the recess one or two Parliamentary changes were made. Mr. McCulloch resigned his seat for Warrnambool, and Mr. Francis was elected in spite of Ministerial opposition. But the Ministry strengthened the learning amongst their supporters in

[1] Subsequently Mr. Gaunt received the compensation. Sir M. Hicks-Beach (15th July) requested the Governor to inform Mr. Gaunt that the petition was laid before the Queen, but the Secretary of State was unable to advise upon its prayer, the matter being one which "under the Constitution" of the Colony "was within the jurisdiction of the Governor and the Executive Council."

the House by promising a lucrative appointment[1] to one of their dependents who sat for Castlemaine, and in whose room Mr. C. H. Pearson was elected in June 1878. Little was known of the new member except that he had said he was bound to support free trade as cogently as to believe the facts of the multiplication-table, and that he had openly allied himself with the opponents of free trade.

In June the Ministry prepared a memorandum for the Governor to transmit to Sir M. Hicks-Beach. The latter had in April received in London a deputation of persons connected with the colony who deprecated the course pursued by Sir G. Bowen, and pointed out in a carefully-prepared document the deceptive nature of some of his communications. They were so well-informed as to mark that while the Governor telegraphed to the Secretary of State on the 23rd January that the Government would do "nothing contrary to law or Imperial interests," he wrote on the 24th January to his Ministers, that though they had advised that all the deeds of Black Wednesday were "strictly legal, it has become clear (to the Governor's) judgment that it is not so."

Though in receiving the deputation Sir M. Hicks-Beach used no expressions to which objection was taken, and allayed anxiety by stating that the Victorian Parliament had passed the Appropriation Bill, and was prorogued, Mr. Berry denounced the members of the deputation. Their interference had "excited general indignation," and any such statements as they made ought "in the spirit of the Colonial Regulations" to be referred to the colony for verification.

Sir M. Hicks-Beach, in replying, did not suppose that it was the intention of Sir G. Bowen's Ministers to suggest any limitation of exercise of discretion by a Secretary of State in receiving persons who wished to wait upon him in connection with public affairs. The desire that communications made in England should in all cases be referred to the colony, was one which he preferred "to regard as having been made under misapprehension. It would have been well if you had explained to your Ministers that (the Colonial Regulations)

[1] The Officials in Parliament Act compelled the man to wait six months. He passed through the probation, and obtained the place.

refer expressly to documents coming from a colony, and can have no bearing upon verbal or written representations addressed to Her Majesty's Government by persons in this country."

There was no want of courtesy in the new Secretary of State, but there grew a consciousness that there was in him something of the character which made Mr. Cardwell so obnoxious to those who endeavoured to mislead him. The plan of a quarrel resulting in an embassy, including the Speaker Duffy—began to take shape.

Before narrating the events of the session of 1878, it may be well to state concisely the effect of the replies of Sir M. Hicks-Beach to the questions remitted to him during the previous session. The law officers in England agreed that under sec. 45 of the Constitution Act money was specifically appropriated for certain charges, but with respect to the "question whether, when the Committee of Supply has voted money for other purposes . . . and such vote has been duly reported to the Legislative Assembly, the amount voted becomes thereupon legally available, &c., the law officers are of opinion that it does not, and that it is not available until it has been appropriated by an Act of the Victorian Legislature." As the Ministerial memorandum seemed to "proceed upon a misapprehension of the procedure of the House of Commons in England with respect to taxation and appropriation," the despatch[1] clearly expounded that procedure for the information of the Governor, the writer being confident that it was the "desire of all parties in the Victorian Parliament that a sound and regular procedure should be followed in respect of the expenditure of public money," and trusting that the information given would be "of service."

Another despatch, calculated to stir seriously the Governor and his advisers, referred (25th August) to the dismissals on the 8th January, and the statements made on the 6th May that a general reinstatement was unadvisable, and that the Ministry had "exclusive" right of dealing with the Civil Service. Avoiding expressions of opinion on the policy of Sir G. Bowen's advisers on the late unfortunate Parliamentary controversy, Sir M. Hicks-Beach dealt "solely with the personal duties of

[1] 17th August, 1878. A valuable State paper.

the Governor." Gravely referring to the violence of the 8th January, he thought that the action proposed cast upon the Governor a duty to satisfy himself that it was justified, and in the particular case it did not appear to Sir M. Hicks-Beach that "any such exclusive right or responsibility was vested in Ministers as could relieve (the Governor) of this duty." He desired to make every allowance for the difficulties of Sir G. Bowen's position; but the latter would "have done better in the interests of the colony, and in the maintenance of the principles of Parliamentary or responsible government, if (he) had informed (his) advisers that (he) felt unable to put his name to the documents directing the removal of those officers." He thought it desirable to make some observations on the subject, because the Ministerial memorandum of 6th May seemed to animadvert upon the Governor for "even questioning the course taken" in January.

The Secretary of State thought the Governor had a clear right to discuss topics with his Ministers. In November 1878 Sir G. Bowen strove to justify himself by references to precedents laid down by a long line of statesmen and Governors, and by urging that it would have been an act of "perilous infatuation" for him to decline the advice of the only Ministry possible at the time. With regard to Sir M. Hicks-Beach's regret that for doing what he had believed to be his duty the Governor had been the object of hostility, Sir G. Bowen felt assured that no previous Governor had been so strong as he in the "general support and sympathy of the great majority of the community," and that the only hostile persons were "insignificant in numbers, and almost entirely without political influence." With regard to the questioning of a Governor's right to discuss affairs with his advisers Sir G. Bowen was precise. "The Ministers request me to state that they entirely disclaim the opinions thus imputed to them, and that they regret that they have not expressed themselves with sufficient clearness on this point." [1]

Sir M. Hicks-Beach received with much satisfaction the

[1] Their memorandum (6th May) was signed Sir B. O'Loghlen, and without doubt if the Ministry did not question the Governor's right to intervene their language was unhappy.

disclaimer of the Ministry, but could not yield to Sir G. Bowen's importunate appeal for commendation of his act in sweeping away all County Court Judges and stipendiary magistrates by a permanent order in dealing with what was represented to him by his Ministry as a temporary emergency. He regretted that he was unable to change the opinion already conveyed to the colony in disapproval of the Governor's complicity in the act of Black Wednesday. The Ministry, however, did not reinstate some worthy officials, but filled their posts with other men, and largely increased the expenditure by perversion of an act ostensibly resorted to in order to diminish it. Before Sir G. Bowen left the colony he made a final effort to influence Sir M. Hicks-Beach by saying that two delegates from the colony, Messrs. Berry and Pearson, would be prepared to give further information with regard to Black Wednesday. He transmitted (in November 1878) an "official memorandum," signed by a Minister "for the Chief Secretary," which certified that "only sixty" members of the Civil Service had been then dismissed. It was never known on what ground the memorandum would have been justified, if controverted. It was so wide of the truth that it puzzled the Canadian historian Todd, who, while quoting it, added that "later returns give a much larger number of removals." If a sense of shame induced an effort to conceal the truth, it would seem that if public opinion had not converted the Ministry from all vices it had made them ashamed of one.

The session of 1878 was opened on the 9th July. The Governor announced that the Reform Bill which would be placed before Parliament would "undoubtedly be considered from a patriotic point of view by members of both Houses," and that its acceptance would "put an end for all time" to the "periodical deadlocks which (were) a standing disgrace to the constitutional institutions of Victoria." Yet he might have seen that it was not the Constitution, but its abusers, who were disgraced when, on failure to carry a measure by constitutional methods, they resorted to unconstitutional violence. The *dramatis personæ* in the new scene which Victoria was about to present are now known to the reader, and it will be unnecessary to follow in detail all their proceedings or their pleas.

The Legislative Council assured Sir G. Bowen that they would carefully consider the measure for reform which was to be introduced; the Assembly accepted his assurance that it would put "an end for all time" to all trouble. Its features were peculiar. One provision in the Constitution Act forbade the presentation for the Royal Assent of certain Bills altering the Constitution unless such Bills had, on the second and third readings, been passed by absolute majorities in both Houses; and, even when presented, the Governor was bound by the Constitution to reserve them for Her Majesty's pleasure. Standing Orders in each House were ancillary to this provision, and were approved by the Governor.

The measure introduced to remove "the standing disgrace to the constitutional institutions of Victoria," proposed that

"any Bill (of the kind alluded to) . . . passed by the Legislative Assembly, and ordered to be carried to the . . . Council . . . if not formally passed by the Council within one month . . . shall (excepting in cases of dissolution or prorogation) . . . be then deemed to be a Bill which has been properly passed by the Legislative Council, within the meaning of and in pursuance of the provisions of the Constitution Act, and one also which it shall be lawful to present to the Governor for Her Majesty's assent to be given to the same by and *with the advice and consent* of the Council . . . and Assembly, and every such Bill shall as soon as the month herein mentioned shall have elapsed, be certified to by the Clerk of the *Executive Council* as *having been passed by the Legislative Council*, any Act of Parliament, or Standing Order, or joint Standing Order, to the contrary notwithstanding."

There were various singular provisions, but only one other in which a functionary like the Clerk of the Executive Council was to be called upon to attest what was contrary to fact. In case of dispute between the Houses—on Bills which the Assembly, the sole arbiter, might not pronounce to be a Money Bill, bringing the new functions of the Clerk of the Executive Council into play without delay—if such Bills should, in two consecutive sessions, fail to pass the Council—there was to be a *plebiscitum*, in which the voters for the Assembly were to supersede the Constitution. If those voters should not disapprove of

a Bill thus subjected to them, the Clerk of the Executive Council was to certify that the Bill had "passed the Legislative Council," notwithstanding any provision in the Constitution Act or "any Act."

Observers from a distance might have deemed it impossible that such a proposal could be even seriously discussed in a community of British origin. But previous events had prepared the way for the advocacy of such a Bill by the Ministry [1] in Victoria. A minority resisted the Bill in the Assembly, but its second reading was passed by 59 votes against 22, its third by 50 votes against 21. Before it was sent to the Council that body had sent two Bills to the Assembly. Sir C. Sladen obtained a Select Committee, on the report of which the Council passed (in September) one Bill lowering the qualification of voters for the Council from £50 to £25, increasing the number of members of the Council from thirty to forty-two, and making other cognate changes.

Another Bill, passed by absolute majorities of 16 to 2 on the second, and 21 to 4 on the third, readings, proposed to remove difficulties about Money Bills by enabling the Council to procure the excision of objectionable items in, and thus securing the passing of, an Appropriation Bill. Neither of the Bills was discussed in the Assembly. Mr. Berry intercepted the action of their friends by taking charge of them, and not allowing either of them to approach a second reading. He could hardly expect his own Bill to fare better in the Council. The responsible Minister, Mr. Cuthbert, who had sat there, and who (as his own department, the Post Office, was unmolested on Black Wednesday) had consented to adhere to the Ministry for a time, broke his official connection with them when they propounded their Reform Bill in 1878, though, to facilitate legislation, he took charge of ordinary measures.

Public opinion in the constituencies of the Council was tested

[1] One of them, long before the Assembly was asked to read the Bill a second time, thus denounced opposition to the Government and expounded Home Rule." "If this Government were determined to take steps to carry out the will of the people, had honourable members realized what those steps would be? Perhaps the deportation of the members of Council over the Murray, or it might be to invite the Governor to go on board a steamer in the bay?"

in August and September by the six periodic elections which occurred at intervals of two years. The Ministry found a champion in the central or metropolitan province, but he was defeated (27th August) by 3854 votes against 1659, by Dr. Hearn. An analysis of the voters showed that 681 were bakers, butchers, drapers, and retail storekeepers; 527 were merchants and importers; 515 were described as gentlemen; 487 were licensed victuallers; 200 were builders and contractors; and every trade or occupation had its representatives amongst the smaller numbers in the scale, which concluded with a list of 28 persons, each of different callings, amongst whom was a porter. The Council, nevertheless, was still denounced as "isolated from public sympathy," and revolutionary. On the 15th October Mr. Berry sent his Reform Bill to the Council. Mr. Cuthbert declined to handle it, and Sir C. Sladen gave it a place upon the business paper by moving the first reading. Beyond that stage it never advanced.

The plot to send to England an Embassy, including Duffy the Speaker, has been alluded to as mentioned in the previous year. So premeditated was it that long before Mr. Berry's Reform Bill was read a second time in the Assembly the Ministry submitted a memorandum to the Governor on the subject. If their laudable efforts should fail, they would "most reluctantly be compelled to despatch to England Commissioners chosen from (the Assembly) to lay before . . the Imperial Government the matured result of its deliberation, with a view to get that result embodied in an Act of the Imperial Legislature, and with a full confidence that it will be so embodied at the earliest possible moment." They admitted that their appeal "was and ought to be an exceptional proceeding," but the incorporation of the Constitution Act as a schedule to the Imperial Statute of 1855 justified them. Sir G. Bowen was very gracious to Sir C. G. Duffy, and the plot bid fair to waft that intriguer to Europe as an important envoy, spreading his plumes of pride before his old companions in sedition, and plying his not unpowerful pen in the cause of disorder at the antipodes.

The early period (6th August) at which the Secretary of State was informed of the plan was almost fatal to it, for his reply

glanced so clearly at its defects, and intimated so plainly that any Embassy on the subject ought to comprise "gentlemen representing the Council and the Assembly," that the Governor and the Ministry were fain to prorogue Parliament without acquainting either House officially with the unwelcome news, and to labour to convince the Secretary of State that his despatch did not arrive until the prorogation had taken place.

Though neither the Council nor the Assembly discussed the Reform Bills sent to them, an effort was made, if not to arrange, yet to manifest some desire on the part of the Government to arrange locally the questions of reform. The circumspect despatches of Sir M. Hicks-Beach warned the Ministry and the Governor that, unless they could show that all reasonable steps had been taken in the colony, they would find no sympathy in overbearing by Imperial aid one branch of the Legislature in a constitutionally-governed colony. Mr. Berry, before the Assembly Reform Bill reached the Council, asked Sir C. Sladen to put it "on the notice-paper as an Order of the Day,"[1] and volunteered to move in the Assembly for a conference on the several Bills if Sir C. Sladen would take a similar course in the Council. On the 22nd October the Committees were severally appointed. Sir C. Sladen, Mr. R. S. Anderson, and Dr. Hearn represented the Council, Mr. Berry, Sir B. O'Loghlen, and Mr. C. H. Pearson the Assembly. Long conferences were held, and contrary to custom they were secret. On the threshold Mr. Berry demanded that under "no circumstances" should the annual appropriation be liable to rejection, and that "definite legislative finality should be provided with respect to all other Bills."

The Committee of the Council reported that such a demand rendered negotiation fruitless. They, however, submitted alternative proposals. Let (A) the Appropriation Bill, to the "perverted use" of which troubles had been due, be confined to grants for "usual and ordinary services." If an item in it should be objected to, let the Council request its withdrawal; if the Assembly should be obdurate, let the propriety of the contested inclusion be referred to a tribunal of Governors of adjacent colonies, the remainder of the Appropriation Bill being legalized in the mean time. Let all disputes as to construction

[1] 'Victorian Hansard,' p. 1450. 1878.

of the Constitution be soluble by petition to the Queen in Council. Or (B) if the Council should affirm by an absolute majority that a disputed grant ought not to appear in the Appropriation Bill, let the latter be passed without such grant, and let the Governor have power to dissolve both Houses; and let either House have power to petition the Queen in Council as to abstract questions of construction of the Constitution. Mr. Berry informed the Assembly that he "almost regarded these proposals as an insult." He proposed at the final conference, "That a short Bill be introduced for submitting the rival Reform Bills prepared in the Council and the Assembly, with such amendments as either body may introduce, to be accepted or rejected in their entirety by a poll of all qualified electors, the result of such a poll to be considered final, and to be carried into law by both Houses." In other words, the problem which the chosen representatives of the people in both Houses had been unable to solve was to be decided practically by the denizens of the metropolis and of a few populous places which outnumbered the inhabitants scattered elsewhere. The representatives of the Council could not deal with such a proposal, and Mr. Berry lamented the failure of his "well-meant attempt" and "moderate proposal" to settle a question which "must be settled either by outside authority—by which I mean the Imperial Parliament—or ultimately by the people of this colony themselves."

There were many members in the Assembly in 1878 who had voted for Mr. Higinbotham's resolutions in 1869 against reference to a Secretary of State, and some ministerial supporters shrunk from the proposed appeal to England. One of them moved an amendment, and on a division the usual Government majority dwindled to 45 votes against 32.[1]

It is recorded in the Victorian Year-book (the compiler of which was taken to England as Secretary to the Embassy) that on the 4th November the Cabinet decided that Messrs. Berry, Pearson, and Sir C. G. Duffy should be the ambassadors, and

[1] About the same time the Government carried an extraordinary item in the Appropriation Bill. By 29 votes against 17 they voted £1228 to refund duty, paid according to law, upon machinery imported nearly two years previously. Mr. Berry and Mr. Pearson supported the vote.

that Sir B. O'Loghlen should wear Mr. Berry's mantle in the colony. The secret (if that could be called a secret concerning which Duffy admitted that Mr. Berry had consulted him before the commencement of the session, and obtained his consent if the Assembly should authorize its "Speaker to go on such a mission")[1] was kept from the House. Mr. Berry often resorted to what were called "caucus" meetings of his party. The decision of the Cabinet was submitted to one of those meetings, and the delegation of Duffy as a representative of the colony was there warmly denounced; although (after an adjournment) the proposal of Mr. Berry was carried on the 7th November. Though no reporters for the press were present, a statement found its way into the newspapers, that in addition to giving inestimable advice to the Ministry, Duffy had, in Mr. Berry's opinion, "materially assisted in keeping the Governor straight," and in corresponding with "leading public men in England."

The way seemed clear for the coveted posts of ambassadors. On the 7th November, Mr. Berry advocated a grant of £5000 for the "expenses of three Commissioners to England." He declared that unless the Assembly had been "extremely moderate in its pretensions" there would have been "a deadlock in nearly every year of our existence:" that unless the Assembly would "surrender its privileges" it was threatened with a perpetual "deadlock which it will be impossible to remove." Finality of legislation must be obtained, and that term included (though he did not say so) a condition that—if the Assembly should vote to each of its members, or to any partisan, some thousands of pounds,—the Council should have no power to reject an Appropriation Bill, although power to reject all Bills was expressly conferred upon it in the Constitution Act. All he wanted was that the Secretary of State should "do something by means of which the Imperial Legislature will provide that within some definite period the will of this country shall become the law of the land, that will constitute the step we wish him to take. That is all we expect . . I don't think there is the least probability of our request being refused." He did not name his Commissioners. Mr. Service, the leader of the Opposition, wanted to know their names, and looked

[1] 'Victorian Hansard,' p. 1744. 1878.

upon it as "an affront to the people of the colony that an Embassy should be sent home to make proposals of so vague and general a kind." Mr. Berry had once objected to referring Money Bills to a *plebiscitum*, and had asked what a man following the plough could know "concerning the question of the imposition of a tax." Mr. Service asked what the Secretary of State could think of the ambassador who spoke thus, and nevertheless demanded Imperial aid in enacting a law for finality in legislation by means of a *plebiscitum*.

Mr. Pearson, the ambassador *in posse*, defended the Embassy, but did not care in what manner the Assembly might obtain the power demanded. So long as anything required by the Assembly[1] could be obtained—the Bill of 1878 might be left behind, and the Imperial Government might clothe with authority a Bill twice passed by the Assembly; or might "abolish the Council altogether"; or might amalgamate the two Houses "in some form that may make it certain that the Assembly shall not be swamped";[2] or adopt any other method. Otherwise, in place of reform, the Government might resort "to a revolution which might shake the very foundations of society. . . Does any honourable member mean to say that if the question of our national existence was at stake we could not resort to desperate expedients?" The colony asked more than England thought good for herself; "but a great and generous nation will not consider that—will not desire, in the words of one of her greatest orators, 'to rivet the chains of her own slavery for us.'"[3] Though the House recognized a fitness of things in associating the Speaker with sedition, it had no desire to make Mr. Pearson and Sir C. G. Duffy its delegates. There was, moreover, a section of the ministerial supporters who objected to any appeal to England.

[1] One of the Ministry thus summed up the case. "The intention of the Government measure is to enable the Assembly to put their hands into the public purse in an easy, accessible, peaceful manner." 'Punch' thereupon depicted him as picking the pocket of a lady (Victoria).

[2] The Assembly contained 86, and the Council 30 members.

[3] A member ungraciously reminded Mr. Pearson that he had at an election meeting declared himself in favour of payment of members, but finding the meeting adverse, declared that he would vote against it. This was at Booroondara where he was defeated. Being elected at Castlemaine he changed his intentions again.

The Speaker, during the debate, sat upon thorns. Before it commenced he had been guilty of partiality in calling on a ministerial supporter to speak, in defiance of the fact that an independent member had risen first to make a motion on the order for going into Committee of Supply. It was freely stated beforehand that the Speaker was about to baulk the independent member, who was no other than Mr. Thomas Bent, who had unseated Mr. Higinbotham at Brighton in 1871, and had retained both his independence and popularity. It was moved that Mr. Bent be heard, and during the debate the Speaker admitted that one reason for his partial choice was that Mr. Bent had once brought discredit on the House by speaking against time. Mr. Bent retorted that the Speaker never had occasion to call him to order, and that his constituents knew him too well to take "the slightest notice" of the Speaker's censure.

During the debate on the vote for the Embassy a member showed the absurdity of including Duffy in it. Had he not in 1869 declared that he had "invariably insisted that no body of men, except the Queen and Parliament of Victoria, had any power to make laws binding upon this country," and that "any claim of the Imperial Parliament to modify our Constitution once granted, of to interpose at all by legislation in our domestic affairs, he held to be a plain usurpation?"

The Assembly adjourned from the 7th until the 12th November. The Speaker's anomalous position as a Cabinet and Crown adviser, and a petitioner for that which he had formerly condemned, became the talk of the town. Mr. Bent called a meeting, 11th November, of his constituents, to whom Mr. Berry had threatened to remit him by expulsion from the House; denounced the "revolution in the air" betokened by the proposal to delegate to England the Irish rebel who had boasted that he remained a rebel when he reached the colony; and received a vote of confidence from a crowded and enthusiastic meeting. The differences developed in the ministerial ranks, and the exposures made in public, snatched from Duffy the coveted honour. The clay moulded so carefully and so long, cracked in the furnace of public opinion.[1]

[1] Amongst the most powerful agents which scorched the Ministry was the Melbourne 'Punch,' whose artist, Mr. Carrington, threw genius into its

When the Assembly met, on the 12th November, the Speaker's heart had failed him, as on some former occasions. It was feared that the votes of the malcontent Ministerialists aided by the Opposition would condemn his appointment. Mr. Berry rose to impugn the accuracy of the report of what took place at the "caucus of ministerial supporters held last week," and to defend the Governor and the Speaker. The latter then rose to deny that he had acted in any way as the adviser of the Governor, and to allege that though he had consented, before the session began, to join the Embassy, he had, after the approval of his appointment by the Cabinet, requested Mr. Berry to "substitute somebody else," and only withdrew his "positive refusal" at the intercession of Mr. Berry. Nevertheless, resolved that the office of Speaker should not in his hands "be liable to any impeachment by just or even captious objectors," he had, on the 11th, "for the third and last time, intimated (his) resolute determination not to be made a member of the Commission."

Though many doubted these statements, few were surprised. Mr. Service asked whether it had been intended, as rumour said, to confer the post of Agent-General in London on Duffy if he should make the Embassy successful. Mr. Berry could only reply that he thought "the inclusion of Sir C. G. Duffy (in the mission) most essential to its success." A ministerial supporter who had at the "caucus" opposed the appointment of Duffy, warmly declared that after hearing the speeches of the Speaker and Mr. Berry, the House must "almost lose all faith in our public men." The Governor thought it his duty to inform the Secretary of State that Sir C. G. Duffy "was invited, but declined to form part of the delegation." The result was that, after adjourned debates, a vote including the disputed item was carried by 46 votes against 22, on the 13th November, —an amendment to prohibit the Commissioners from asking for

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illustrations. On this occasion a cartoon entitled "The Two Rebels," depicted the devil on bended knees paying tribute to a wigged and gowned figure in whose triumphant face the sly sedition which characterized it was still regnant. "The D——. Take them, dear Duffy—hoof, horns, tail, and all—and give me your wig and gown. I thought I knew a thing or two, but I'm innocence itself compared to you. I give you best—bless you."

Imperial interference having been previously rejected by a smaller majority (45 against 32).

The failure of the Conference Committees to devise any means for reconciling the claims of the Ministry with constitutional government, had been reported to both Houses on the 29th October. Legislation on general subjects was not interrupted, and the cogent reasoning of Messrs. Gillies and Service in the Assembly left its mark on various measures. An amending Land Bill sent to the Council on the 26th November, was expeditiously passed. It was recognized that the Embassy would be sent to England, but the near approach of Sir M. Hicks-Beach's despatch intimating that any delegation should spring from both Houses was unknown. Mr. Berry said his departure was "almost an heroic proceeding," and that he was still prepared to consider any reasonable basis of compromise. The remission of Customs' duties paid in January 1877, was approved by the Assembly on the 19th November, 1878. On the same day Sir C. Sladen induced the Council to appoint a Committee to prepare a statement for transmission to England concerning the differences which had arisen between the two Houses. On the 21st a comprehensive statement drawn up by Dr. Hearn,[1] a member of the Committee, was adopted by the Council. Mr. Cuthbert strove to modify a passage which referred to the Governor's complicity in the suspension of a number of laws by dismissals of Judges and Magistrates on Black Wednesday, but was defeated by 16 votes against 5. On the 26th Mr. Cuthbert moved resolutions in accordance with the main suggestions of the Conference Committee of the Council, and carried them by 18 votes against 7. After adjourned debate Mr. Berry carried a resolution in the Assembly, declaring that the resolutions transmitted from the Council "involved an infraction of the rights and privileges of the Assembly," and ought not to be entertained. He also declined to proceed with the two Reform Bills (passed by the Council) which had been before the Assembly for more than two months. To lower the franchise for the Council would by "popularizing" it give it a "far better vantage ground" than it possessed already. He was aided by the Speaker, whom a

[1] The fact was mentioned by Sir C. Sladen in the Council.

member asked (28th November) whether the Commissioners could represent Parliament in England without authority from Parliament. "This House" (replied Sir C. Duffy) "is Parliament for all political purposes."

Sir John O'Shanassy cited in reply the words of the Constitution Act. "The Legislature of Victoria shall be and is hereby designated the Parliament of Victoria," but the ministerial phalanx was proof against argument and law. On the 4th December the Appropriation Bill was read a third time in the Council, subject to a protest against the vote for expenses of the Commissioners, who were not duly authorized to represent the colony in England. On the 6th Parliament was to be prorogued. On the 4th the mail steamer was at Port Phillip. On the 5th Sir George Bowen received Sir M. Hicks-Beach's despatch (of 1st October), conveying his opinion that "no sufficient cause has yet been shown for the intervention of the Imperial Parliament" at the request of Commissioners from the Assembly (described in anticipation by Sir G. Bowen, 6th August).

The past had shown the various opinions advocated at different times in the colony. The Bills of 1878, transmitted by Sir G. Bowen, differed from all former plans, and the proposed *plebiscite* involved change of a "graver character than any hitherto suggested." He could not think that the rejection of such a scheme by the Council would justify so "exceptional a proceeding," as Sir G. Bowen's advisers rightly termed it, as an "application to the Imperial Parliament to alter, without the consent of the Victorian Legislature, that Constitution Act which was originally framed in the colony, and merely confirmed and made operative by an Imperial Statute." Feeling that the question was "by no means ripe for legislation" in England, he was anxious to render any service in his power, and if after the close of the colonial session it should be "thought that gentlemen representing the Council and the Assembly respectively could with advantage lay their views before" him, he would be ready to hear and advise with them in the hope that they "might agree upon certain principles" by which, "through the exercise of mutual forbearance and concession," legislation consistent with constitutional precedents might be brought about.

Blank were the faces which looked upon the despatch. It was resolved to conceal it from the Parliament, which was prorogued on the following day with a speech intimating that all other questions would be subordinated to what Sir G. Bowen's advisers felt to be the "dominant and overwhelming political necessity of the day." A communication to the Secretary of State led him to believe, though it did not state, that the despatch did not arrive until Parliament had been prorogued. In England Messrs. Berry and Pearson fostered the belief by averring that the despatch was "handed to the Ministers a few days after Parliament had been prorogued;" that, if it had been communicated in time, they "would have felt it their duty to request that it might be laid before Parliament;" but that it was "only right to add that the proved futility of attempts at reconciliation frequently renewed had produced a state of feeling in both Houses which made it undesirable to protract discussion in Parliament." The Secretary of State, perhaps unsuspicious of the fact that only the formal handing of the despatch had been delayed, acknowledged Sir G. Bowen's despatch as one which notified "that he had received my despatch of 1st October . . respecting (the) mission too late to present it to the Parliament of Victoria before the close of the session."[1]

Something had to be done with the despatch. Sir George Bowen had been relieved, and was to proceed to the Mauritius as Governor. The despatch was published in the 'Gazette' on the 18th December. Something was done also with regard to the cogent statement adopted by the Council on the 21st November with which the Ministry had not dealt during the session. On the 26th December Sir George Bowen transmitted a ministerial memorandum. He was "informed that there was

[1] These details are somewhat nauseous, but the character of the times can hardly be understood without a knowledge of them. The eminent writer, Mr. Todd, was misled in this matter. He says the despatch did not arrive until the question had been disposed of, but that "it was at once published, however, in the 'Official Gazette.'" It may be presumed that some informant prompted him incorrectly. ('Parliamentary Government in the Colonies,' p. 515). He adds (p. 516), that the "despatch did not reach Victoria until *after the prorogation* of Parliament, otherwise it would have received consideration in Parliament."

no time (between 21st November and 6th December) for a statement in reply to be prepared on behalf of the Assembly." When prepared, it misrepresented the Constitution. It arrayed the instances in which the Council had exercised the functions conferred upon it by law as proofs that it had resisted the law, and had "steadily endeavoured to usurp the power of amending Appropriation Bills." It averred that the right to reject Bills was "merely technical," although expressly enacted in the Constitution, and was "a revolutionary weapon." Though the two Houses were elected, the memorandum spoke of "the country" as constitutionally meaning only the electorates for the Assembly. Though by the biennial vacations a fifth of the seats of the elected Council were submitted to the constituencies, it called that body "non-representative" and irresponsible, and designated its powers as "so vast as to have no parallel in past or present history." It declared that the Assembly had "only resorted to tacks" from necessity. Mr. Pearson had resided in South Australia before migrating to Victoria, and his hand was shown in passages which denounced the conduct of the elected Council in South Australia as likely to lead to the same confusion there as existed in Victoria. It sadly admitted that the Council of South Australia had "not yet caused a deadlock because the Assembly had given way for a time." Asserting in one breath that the Council was non-representative, and therefore bad, it said in another that to extend the franchise for it might make "deadlocks more frequent, more protracted, and more bitter, since the Council would then be more widely representative than it can at present claim to be." It alleged that the Government had "no wish to reduce the second House to a sham;" had "not provoked contest" with the Council; had "caught at every overture of conciliation," and made "every effort at compromise that was compatible with Legislative finality." The reader has seen that "Legislative finality," as proposed in the Government Reform Bill, was to be obtained by making the Clerk of the Executive Council attest that a Bill rejected by the Council had been passed by that body, and was capable of receiving the Royal Assent as a measure agreed to by both Houses. Sir George Bowen, in transmitting the memorandum, reminded the Secretary of State that he had originally asked

whether he should "pursue the course which the Council attempted to dictate," or "follow the advice of the responsible Ministers," and that the Earl of Carnarvon had (28th January, 1878), directed him to adopt the latter course. It was natural that its authors should endeavour to conceal their memorandum, but the concealment was not of long duration. The papers were laid before the Imperial Parliament, together with a despatch from Sir George Bowen (27th December) containing the bold statement that the Council had "declined to appoint any delegates to represent that House." Whether it would have declined if asked to do so was unknown. But it was never asked. In fact it remonstrated with the Governor in a special address (4th December) against the despatch of Commissioners without "authority of an Act of Parliament." In the same despatch Sir George Bowen gave his own views on the situation of the colony he was about to leave. He would revert to an Upper House nominated by the Crown, but he was silent as to any limitation of its numbers which would protect it from being overborne. He was strongly opposed to the *plebiscite*, which would be "destructive of Parliamentary Government." If an elective Upper House should be retained, he would compel the two Houses to vote jointly on Bills passed by the Assembly in two consecutive sessions, and he would enable the Government to dissolve the Council under "certain defined conditions," which he did not define. Sir George Bowen in his later despatches dwelt upon the improved tone which prevailed in the colony during the close of his Government. But no one else observed it. The Ministry were the butt of so much criticism about the Embassy that they became less popular in some places than they had been. It was once a part of the "Loyal Liberal" policy to prevent an Opposition member from being heard. In the day of McCulloch as in that of Berry a moveable band passed from suburb to suburb to applaud their leaders and silence their opponents. Few rural meetings represented real local opinion. The Minister of Railways carried claqueurs from place to place without charge; and voters also when they were needed at elections. It was significant of some change when towards the close of 1878 there seemed a disposition to accord a public hearing to opponents of the Ministry. Irritated perhaps at this

tendency, Sir B. O'Loghlen, the Acting Premier during Mr. Berry's absence, rendered himself notorious by notifying in the Government 'Gazette' that the 'Argus,' being a lying paper, would receive no information from the Government. The expensive telegrams acquired at public cost were communicated to the 'Age' newspaper. The labours of Mr. Berry in England need not be described. In the London 'Examiner' he was once spoken of as "an extraordinary compound of a mountebank and a communist;" and perhaps it was on such grounds that Sir Charles Dilke associated himself with Mr. Berry at Chelsea, where the latter, *suo more*, boasted of the liberal triumph in the enactment of the education law in Victoria, although as a matter of fact he had voted against it. The result of the Embassy may be learned from the despatch which Sir Michael Hicks-Beach addressed to the Marquis of Normanby in May 1879.[1] It may be doubted whether the well-weighed terms of that document were fully appreciated by the ambassadors in England, or by the friends of order when it reached the colony. The Secretary of State did not authorize the publication of a despatch not received by his correspondent, but Messrs. Berry and Pearson, at great expense to the colony, sent by telegraph a "summary, temporarily confidential," and Sir B. O'Loghlen by the same electric agency throughout Victoria congratulated "the public on the success of the Victorian Embassy with the Imperial Government." If the hearts of the constitutional party had not been hardened against reception of rumours they might have been appalled. What the Ambassadors had sought was an Imperial enactment giving absolute power to a majority in the Assembly. It was difficult to believe that such a power could be, on an *ex parte* statement, conceded by the Secretary of State, who in October 1878 had pointed out that the two Houses ought to be represented in any Embassy. It appears that Mr. Berry's position gave him ascendancy over Mr. Pearson, and that the latter was not always present when the Secretary of State discussed the subject of the Embassy. The demeanour of Sir Michael Hicks-Beach was as effective as his pen. Mr. Berry at Chelsea stated to a meeting of his admirers over whom Sir Charles Dilke presided (30th April 1879): "I am perfectly satisfied with the result of my

[1] The new Governor had arrived in February 1879.

visit in the interviews I have had with public men. I have been most successful with public men on both sides."[1] Finding his Chelsea friends applausive, he boasted of his performance on Black Wednesday.

"The Government removed from office all the permanent heads of the public departments. As a matter of fact this was the very hotbed of support which the Council received[2] . . . at all events they were removed from office and never re-appeared. (At this the Chelsea audience laughed.) . . . we proved in the face of the whole of the so-called society in the colony . . . that we should not temporise or in any way yield to them—that in short we were able to deal blow for blow."

While Mr. Berry spoke thus he was in expectation of a formal answer from Sir Michael Hicks-Beach. "Three lines of a Bill would effect all we require"—was Mr. Berry's plea to Sir Charles Dilke and his friends. But Sir Charles Dilke was not one of the majority in the House of Commons. Mr. A. Mills had a notice on the paper of the House of Commons on the subject of the constitutional difficulty in Victoria, and it was not to be expected that all under the banner of Lord Hartington agreed with Sir Charles Dilke, while the Chancellor of the Exchequer, Sir Stafford Northcote, was known as the friend of Mr. Mills. On the 3rd May, Sir Michael Hicks-Beach announced the opinions of the Government in a despatch which he sent to the colony, and of which he informed Mr. Berry. As in October 1878, so in May 1879, he thought "no sufficient cause had been shown for the intervention of Parliament in the manner suggested." Mr. Berry's new proposal, made in London, that Parliament should "enable the Legislative Assembly to enact in two distinct annual sessions with a general election intervening any measure for the reform of the Constitution," seemed "even more open to objection" than suggestions previously made, but it was unnecessary to discuss it, for (Sir Michael Hicks-Beach wrote):

[1] Report ('Argus,' 14th June, 1879).

[2] In the same month Mr. Pearson, in a letter to the 'Times,' asserted that the Legislative Council in Victoria, after "seeming to assent" to a proposition to be guided by English precedent, "deliberately rejected it." The failure of the Assembly to perform its part in framing the proposed Standing Order in 1867, and its repudiation of a distinct arrangement adopted by both Houses in 1866 as to preambles, prove the value of Mr. Pearson's arguments.

"though fully recognizing the confidence in the mother-country evinced by the reference of so important a question for the counsel and aid of the Imperial Government, I still feel that the circumstances do not yet justify any Imperial legislation for the amendment of that Constitution Act by which self-government, in the form which Victoria desired, was conceded to her, and by which the power of amending the Constitution was expressly, and as an essential incident of self-government, vested in the Colonial Legislature with the consent of the Crown. The intervention of the Imperial Parliament would not, in my opinion, be justifiable, except in an extreme emergency, and in compliance with the urgent desire of the people of the colony, when all available efforts on their part had been exhausted. But it would, even if thus justified, be attended with much difficulty and risk, and be in itself a matter for grave regret. It would be held to involve an admission that the great colony of Victoria was compelled to ask the Imperial Parliament to resume a power which, desiring to promote her welfare, and believing in her capacity for self-government, the Imperial Parliament had voluntarily surrendered, and that this request was made because the leaders of political parties, from a general want of the moderation and sagacity essential to the success of constitutional government, had failed to agree upon any compromise for enabling the business of the Colonial Parliament to be carried on.

"4. It is, nevertheless, important that the question should be settled as soon as possible where it can properly be dealt with, that is, in the Colonial Parliament; and I shall be glad if, by the observations which I am about to make, I can remove some part of the misunderstanding which has been amongst the chief obstacles to such a settlement.

"5. Following the generally accepted precedent, the Constitution Act of Victoria established two Legislative Chambers, the Council and Assembly, and laid down to a certain extent their mutual relations; of which, it appears to me, a better definition rather than an alteration is now required. For as no party in Victoria desires to abolish the Council, I feel confident that there can be no wish, in the words of your Ministers, to 'reduce it to a sham,' or by depriving it of the powers which properly belong to a second Chamber, to confer on the Assembly a complete practical supremacy, uncontrolled even by that sense of sole responsibility which might exert a beneficial influence on the action of a single Chamber. Nor can I suppose that the extreme view of the position of the Council, which it has recently to

a great extent itself disclaimed, can be supported by any who have sufficiently examined the subject.

"6. The recent differences between the two Houses of Victoria, like the most serious of those which have preceded it, turned upon the ultimate control of finance. I observe that the address of the Legislative Assembly of the 14th February, 1878, dwells almost exclusively on the necessity of securing to that House sufficient financial control to enable adequate supplies to be provided for the public service, and it is prominently urged in Mr. Berry's letter of 26th February, in proof of the necessity for finding some solution of the present constitutional difficulty, that 'scarcely a year passes but it becomes a question whether the supplies necessary for the Queen's service will be granted.' But this difficulty would not arise if the two Houses of Victoria were guided in this matter, as in others, by the practice of the Imperial Parliament, the Council following the practice of the House of Lords, and the Assembly that of the House of Commons. The Assembly, like the House of Commons, would claim, and in practice exercise, the right of granting aids and supplies to the Crown, of limiting the matter, manner, measure, and time of such grants, and of so framing Bills of Supply that these rights should be maintained inviolate; and as it would refrain from annexing to a Bill of Aid or Supply any clause or clauses of a nature foreign to or different from the matter of such a Bill, so the Council would refrain from any steps so injurious to the public service as the rejection of an Appropriation Bill.

"7. It would be well if the two Houses in Victoria, accepting the view which I have thus indicated of their mutual relations in this important part of their work, would maintain it in future by such a general understanding as would be most in harmony with the spirit of constitutional government. But after all that has passed, it may be considered necessary to define those relations more closely than has been attempted here, and this might be effected either by adopting a joint Standing Order, as was proposed in 1867, or by legislation. Of these, the former would seem to be the preferable course, for there might be no slight difficulty in framing a statute to declare the conditions under which one House of Parliament, in a colony having two Houses, should exercise or refrain from exercising the powers which, though conferred upon it, must not always be asserted. But I must add that the clearest definition of the relative position of the two Houses, however arrived at, would not suffice to prevent collisions, unless interpreted with that discretion and mutual forbearance which

have been so often exemplified in the history of the Imperial Parliament.

"8. If, however, it should be felt that the respective positions of the two Houses in matters of taxation and appropriation can only be defined by an amendment of the Constitution Act, there may be other points, such as the proposal to enact that a dissolution of Parliament shall apply to the Legislative Council as well as the Assembly, that might usefully be considered at the same time; but I refrain from discussing them now, feeling that their merits can best be appreciated in the colony itself.

"9. It has been urged that some legislation is necessary to insure mechanically the termination, after reasonable discussion and delay, of a prolonged difference between the two Houses upon questions not connected with finance. I do not yet like to admit that the Council of Victoria will not, like similar bodies in other great colonies, without any such stringent measure, recognize its constitutional position, and so transact its business that the wishes of the people, as clearly and repeatedly expressed, should ultimately prevail; nor have I yet seen any suggestion for such legislation which I can deem free from objection.

"10. I hope that the views which I have expressed may not be without influence in securing such a mutual agreement between the two Houses as to remove any necessity for Imperial legislation, and that as both parties profess to desire only what is reasonable, and as there has been now an interval for reflection, a satisfactory and enduring solution of the difficulty may be arrived at in the colony. The course of action which Her Majesty's Government might adopt should this hope unfortunately be disappointed, must in a great degree depend upon the circumstances which may then exist; but I can hardly anticipate that the Imperial Parliament will consent to disturb, in any way, at the instance of one House of the Colonial Legislature, the settlement embodied in the Constitution Act, unless the Council should refuse to concur with the Assembly in some reasonable proposal for regulating the future relations of the two Houses in financial matters in accordance with the high constitutional precedent to which I have referred, and should persist in such refusal after the proposals of the Assembly for that purpose, an appeal having been made to the constituencies on the subject, have been ratified by the country, and again sent up by the Assembly for the consideration of the Council.—I have, &c.,

"M. E. HICKS-BEACH."

Accepting the statement that no one in the colony desired to "reduce the Council to a sham," Sir M. Hicks-Beach was perhaps ignorant that Mr. Berry had declared in the Assembly: "We must have the power to coerce. The Council say they will not be coerced, but I say they must be coerced."

Admirable as the despatch was in many respects, it yet failed to recognize the fact that both Houses in Victoria were elected, that periodical elections brought public opinion to bear upon the Council as well as on the Assembly, and that the Council had passed, and the Assembly had refused to consider, Bills for lowering the qualification of voters for the Council, and making more frequent the recurrence to their suffrages.

When the despatch became known in England, Mr. Mills did not proceed with his resolution, neither did Sir C. Dilke and his friends raise objections. The construction put upon the despatch by telegram was followed by speech when Mr. Berry arrived in Melbourne in June. He asserted (at Geelong) that "not only the Liberal party, but also the Conservative party in England had not a word to say for the obstructive policy of the Legislative Council," and trusted that the "emphatic verdict from England" would suffice. At Melbourne a "National Reform and Protection League" congratulated him on the "marked success" of his mission; and declared that Sir M. Hicks-Beach's despatch "defined in clear and unmistakable language the relative powers of the two Chambers." Mr. Berry, who had seen the despatch, accepted the declaration with pride. When the despatch was published on the following day, the League could not repudiate its judgment without implying that Messrs. Berry and Pearson had misunderstood or garbled it. It was therefore in all "loyal liberal" statements commended as satisfactory. One more appeal to the country Mr. Berry would make. Again he would triumph—"let us be free by one supreme effort"—and Victoria would be an example to "the human race." Such was his language at a banquet (in July 1879) at which he was unfortunate enough to use words which made a jury give damages against him for slander.[1]

The Marquis of Normanby in opening the Parliament (8th July 1879) announced that a reform measure would be

[1] The verdict was afterwards upset on technical grounds.

submitted at the "earliest possible moment." The Ministry had kept from the public many despatches, and the Council promptly asked the Governor for such as he might feel "justified in making public" in relation to constitutional reform. On the 29th July they obtained them, and then for the first time became known the equivocal methods by which information had been conveyed to the Secretary of State. The Council again passed and sent to the Assembly its Bill for extending the franchise for, and increasing the number of, members of the Council. Again the Assembly, though the session was prolonged for several months, disregarded the efforts of the Council.

Bills to legalize mining on private property; to transfer the jurisdiction over election cases from the Council to the Supreme Court; and to consolidate the laws relating to the management of towns and populous places, were similarly neglected when sent to the Assembly. That body became restive. Some of Mr. Berry's followers muttered that he laboured for his own aggrandizement. Others thought he did not labour enough for theirs. Public opinion seemed no longer brow-beaten. In a populous constituency (West Bourke) abounding in farmers, but containing villages, the Ministry sustained a defeat, although in 1877 their candidates had obtained vast majorities. The event was made more significant by the circumstance that the defeated candidate was a supporter in the press.

After the elections in 1877 the Ministry had, through the agency of an Elections and Qualifications Committee (appointed by the Speaker, Duffy), expelled from the House more than one member, in defiance of both the letter and the spirit of the law. The dreaded Mr. Gillies was thus got rid of, although the Committee was compelled to report that neither by himself nor by any agent had there been any mal-practice on his behalf. To obtain what the sworn Committee shrank from, the vote of the Assembly was procured on more than one occasion. Mr. Gillies was returned after his expulsion in 1877, and the election in 1879 in West Bourke proved not only that former constitutional voters retained their dislike for disorderly government, but that hundreds had, at least for a time, joined their ranks. The mutterings of the storm were heard within the walls of Parliament. One member, formerly devoted to the Ministry, proposed

a resolution of time-honoured remembrance in England, condemning as criminal the exercise of official power by a Minister in interfering with freedom of election. Mr. Berry by 37 votes against 26 was supported in a contrary view; but it was a Cadmeian victory. He suffered a worse fate with regard to his Reform Bill. He proposed an Upper House nominated by the Crown. He retained his *plebiscitum*, with regard to ordinary measures, but thought it dangerous to submit the wishes of the Ministry on money matters to the vote of those who were unskilful in finance. The second reading was carried by 50 votes against 28, but after defections and disputes the Bill failed on the third reading to secure the support of an absolute majority. Forty-three votes were recorded for it, though it could scarcely be asserted that they were given. There was one besotted creature, who had in a lucid interval, or for some unknown purpose, exhibited signs of independence. It was deemed essential to keep him from falling from allegiance, though in the process he became unable to stand. He was locked up in the ministerial room. When the division was about to take place two Ministers entered the Chamber with a cadaverous burden between them.[1] They were then confident that the vote they brought made the forty-fourth, which would have given them an absolute majority in a House of 86 members. But a member whom they had not dreaded, rose and briefly gave his reason for opposing the Bill, and only 43 votes against 38 were arrayed in its favour. For a moment the Ministry thought of a campaign against arithmetic, and Sir B. O'Loghlen[2] furnished the necessary legal opinion. But more prudent counsels prevailed. It would have been useless to send to the Council a Bill which could not lawfully be presented for the Royal Assent. It could scarcely be seriously contended that 43 votes were as numerous as 44, or

[1] 'Punch' in a vivid cartoon represented them supporting their supporter as "the forty-third patriot who stood firm in support of the Government Reform Bill." Mr. Berry after the loss of his bill had been unfortunate enough to say that forty-three had "stood firm" against all temptation.

[2] Sir B. O'Loghlen had a more than common feeling in the matter. He had declared that if the Bill should become "law in Victoria it will be adopted in the six colonies of Australasia, and will become a new starting-point for the English race." The *plebiscite* would soon be adopted in England, he thought.

that the whole number of the House was affected in law by a casual vacancy. The Ministry consulted independent barristers of eminence, who condemned their project, and it was abandoned, although at the moment of defeat Mr. Berry confidently asserted in the House—"the Assembly of to-day consists of only 85 members, and therefore 43 members constitute an absolute majority of the whole number." No disputes arose between the Houses during the session as to constitutional questions, but a Stamp Duties Bill, which included clauses for management and collection, was passed by the Council under protest that such clauses ought not to have been included in a Bill which the Constitution Act debarred them from altering.

It was not until the 5th February, 1880, that the Parliament was prorogued with a view to a dissolution. Mr. Berry abandoned his proposal of a nominee Council, and predicted a crowning victory, but at the elections (28th February) his majority disappeared. The previous casual elections had truly indicated the change in public opinion. The Ministerial supporters were estimated at 37. The remainder of the House (49) was composed of about 35 adherents of the leader of the Opposition (Mr Service) in the previous Assembly, and a mixed band of a few followers of Sir John O'Shanassy, and members whose votes depended upon arrangements unknown to the public. Sir John O'Shanassy had notoriously trafficked, in 1877, with those who chased McCulloch from public life. He demanded assistance to Roman Catholic schools in the guise of "payment by results." Mr. Berry was said to have promised something, but he did nothing. So far as O'Shanassy could influence voters who were protected by the ballot he threw his weight in certain districts against Mr. Berry at the elections in February 1880; and as soon as Mr. Service took office without pledging himself to adopt O'Shanassy's views, the latter cynically allied himself with Berry to destroy Mr. Service's Ministry.

There was much platform oratory before Mr. Berry's majority was broken in February. In former days of misrule constitutional speakers were howled at and unheard, and were sometimes in personal danger. When in 1880 they were courteously heard, some change at the polls was expected. A stranger walking through the streets of Melbourne on the day after the elections noticed a

look of relief on men's faces. But the victory was encumbered with a legacy. It had been accepted by candidates, and had been urged by the press on all sides, that the Constitution ought to be changed. The vague conclusion that "something ought to be done" was in most men's mouths. That public men ought to respect the existing law until it could be constitutionally changed, and that with common sense and such moderation as is necessary in ordinary affairs of life the Constitution (plastic under the will of the electorates of the two Houses) might serve the country better than some schemes which had been propounded, hardly any person ventured to hint. Mr. Service's proposal at the hustings had been to reduce the franchise for the Council from £50 to £10 on the ratepayers' roll, to increase the number of provinces, to reduce the tenure of seats from ten years to six,[1] to give a power to dissolve the Council on occasion of unreconciled dispute between the Houses, and (if after a double dissolution harmony should not be attained) to make the two bodies sit together to solve their ultimate difference. Sir Charles Sladen's Bills had proposed reduction of the franchise and of the tenure of seats, but with some respect for existing conditions. Mr. Service's proposals amounted to a revolution. If in any extension of the suffrage the new electors approach the old in number there is risk of confusion. It was calculated that Mr. Service's proposal would raise the number of voters at least 400 per cent. Such a project threw overboard the ballast of the ship, and contained no guarantee for her future stability. It banished from the Constitution the principle borrowed from America, which established a periodic and gradual re-composition of the Upper House in a manner which continually subjected it to the influence of public opinion, but guarded against its being overborne by gusts of passion. There was no reason to regret the defeat of such a Bill. Mr. Service failed to obtain not only the statutory majority, but any majority at all. The second reading was rejected by four votes. The dissolution asked for was not accepted by all Mr. Service's followers with good grace. Duffy, the chosen Speaker of the previous Assembly, had gone to Europe to publish his views

[1] This provision would have enabled the constituencies to change two-thirds of the Council in every four years.

upon Irish affairs. The Speaker chosen by Mr. Service's majority in May 1880 was Sir C. MacMahon, Duffy's predecessor. He was one of a number of members who called the dissolution a blunder.

The fickleness of the community was strongly shown in 1880. The constituencies which struck down Mr. Berry in February set him up again in July. It was in vain that Mr. Service, Mr. Murray Smith and others proved that in his new proposals Mr. Berry had again changed front.[1] The faculty of lying was winged by the facility of circulating lies, and cries were fabricated for use in the days immediately preceding the election in July. It was rightly reckoned that belief in them might be created, and that before the truth could be learned the poison might have done its work.[2] At the elections in July Mr. Service's majority disappeared as Mr. Berry's had vanished in February. The retainers of O'Shanassy declared war against Service, and thus gave Berry a majority. The first act of the new drama was the election of Mr. P. Lalor, the rioter of 1854, as Speaker. In this O'Shanassy took an active part. The Government as such made no opposition. But one of their number, who had in 1878 denounced to his constituents the revolutionary proclivities of the proposed ambassador—Duffy—did not allow the election to escape censure. He avowed that as a native of the colony he regretted "that to obtain the distinction of being Speaker of the House it is absolutely necessary that a man should be a rebel against the British Crown. I am quite sure the teetotal members of the House will be gratified to go back to their constituents, and say that they voted for a man who has been drunk on the floor of this House." The speaker was interrupted by loud cries of "shame" from those

[1] In June Mr. Berry denounced the lowering of the franchise proposed by Mr. Service for the Council. It would make that body dangerously powerful, and would be a "blow to manhood suffrage." Finding the people generally favourable to a reduction, he, after three days, advocated the enfranchisement of every ratepayer throughout the colony. His reform schemes became so numerous that many people forgot some of them.

[2] A firm was accused in direct terms of intimidating its servants. Before the servants had time to deny the imputation the election was over. The firm brought an action for libel—the newspaper apologized, and paid the prosecutor's costs.

who were willing to put Lalor in the chair of Duffy, and he added that it was a disgrace to the country to make Mr. Lalor the Speaker. "If no one else does so I shall oppose this election. . . . Things have come to a very sorry pass in Victoria when this takes place." These words were reported in the newspapers and in Hansard. Nevertheless Mr. Berry congratulated Mr. Lalor on an "unanimous election;" and the latter, whose duty it became to vouch and sign the official records of the day's proceedings, did not fail to certify that his election had been unanimous.

The next act of the majority was one with which Sir J. O'Shanassy did not identify himself. It was customary to present the Speaker to the Governor. After compliance with such custom the Governor proceeded to the Council Chamber to declare the causes of summoning the Parliament. Until he had done so, in the colony as in England, neither House could undertake any business except such as might be incident to the Royal command, such as taking the oaths, choosing a Speaker, &c. Mr. Berry did not wait for an authorized opportunity. On the day of choosing the Speaker (22nd July), he feared lest the elements of the new House might crystallize in a manner unconformed to his views. O'Shanassy's power was unknown. To claim the leadership of the combined Opposition, Mr. Berry (as soon as the Speaker had acquainted the Assembly that the Governor had officially received him) moved a vote of want of confidence. He denounced any resistance on the part of the Government as an unworthy clinging to office. Mr. Service pointed out that until the Crown or its representative had declared the causes of summoning Parliament no business could be done. But to prevent delay he was willing to allow a vote of want of confidence to pass without debate at the proper time. He had met Parliament with a resolution to refute the foul slanders which had contributed to his defeat at the hustings. If the Opposition were willing to admit by silence that they were false he was willing to let them occupy the Treasury benches without discussion. Mr. C. H. Pearson, less practical than Mr. Berry, assailed Mr. Service's proposition as an attempt "to compound a constitutional felony." Mr. Pearson (Berry's fellow Ambassador) would not thus "draw a veil of oblivion

over all the corrupt acts of the last few weeks." Mr. Service was ready to debate the charges at the proper time, and having explained the Parliamentary position left the House with his friends. The new Speaker put the question.[1] Sir John O'Shanassy took no part in defending the irregularity. Mr. Service discreetly took no notice of the resolution, and the Governor formally declared the causes of summons on the 27th July without having been apprised by the Ministry or by the Speaker of the impropriety to which the latter had lent himself. Mr. Berry at once moved a new motion of want of confidence without remark.[2] Mr. Service, true to his promise, permitted it to pass without discussion, and Mr. Pearson, soothed by Mr. Berry and hope of the future, assisted in drawing a veil over the past which Mr. Service could more effectually defend than Mr. Pearson could attack. Mr. Berry's first efforts were directed to a coalition with members of the Service Ministry. Mr. Service retained his own opinions. Mr. Berry appealed to Sir J. O'Shanassy, who had in February helped to overthrow Berry, and in July to overthrow Service. Mr. Berry found Sir J. O'Shanassy's terms more exacting than the rank and file of his friends would submit to. He turned to them, and rejecting all but two of his former colleagues, formed a Ministry out of his friends of the Parliament of 1877. Of two new Ministers one was an advocate of payment

[1] One of his reasons was characteristic. He admitted that the rule was that nothing could be done without warrant from the Crown. But because during George III.'s lunacy, when the Crown was incapable of giving any warrant, both Houses agreed to use the seal in name of the Crown, he considered the Crown might be dispensed with. He was one of that numerous class which thinks that the fact and not the essence of an exception furnishes proof of a rule. Because when no competent Crown existed it could not be appealed to, he thought that the rule that it should be appealed to might be set aside when there was a competent Crown or representative of it.

[2] Unwisely the Assembly stated in their address to the Governor that a motion of want of confidence had been carried before the causes of summoning Parliament had been declared. The Governor gravely regretted that he had been informed of the fact that so complete a departure from Parliamentary practice had occurred. The Speaker wrote an elaborate opinion to controvert the Governor's position. That of the Speaker cited cases which told against himself. Mr. Berry produced reasons for disagreeing with the Governor, but they were never adopted by the Assembly, though they remained long on the notice paper.

of members who had during the short period of Mr. Service's rule flitted from party to party. Mr. Vale, who had twice taken office under McCulloch, and once under Duffy who turned out McCulloch, re-appeared in the Ministry as a lawyer. He had been called to the bar in England after his expulsion with the Duffy Ministry in 1871. Some persons anticipated that the lawlessness of 1878 would be repeated in 1880 unless the existence of a stronger minority than that of 1878 should exercise restraint. Dismissals akin to the violence of Black Wednesday were resorted to, but in a less wholesale manner. The capable T. Higinbotham had been restored by Mr. Service to the post of Railway Engineer, and rumour ran that the new Minister of Railways would again remove him, or make it impossible for an honourable man to submit to the indignities which would be cast upon him. The Service Ministry had disrated a subordinate who had been advanced in 1878, and he was immediately re-appointed by Mr. Berry's colleague in 1880, though there were charges against him. What other weapons were to have been drawn from the quiver of annoyance remained unknown; for, though apparently hale, the upright Higinbotham passed suddenly away, amidst the surprise and grief of numerous friends, and an inquest ascribed his death to apoplexy. One of Mr. Berry's colleagues had striven to force a Bill for payment of members through the Assembly during Mr. Service's brief rule; another was the person who, when Mr. Berry withdrew the item for paying members from the Appropriation Bill (1878), denounced the withdrawal as "the blackest piece of political treachery ever enacted within the walls of the Chamber." Every indication of storm was in the air. The Payment of Members Bill was sent to the Council in September before Mr. Berry had made a financial statement. Mr. Murray Smith had obtained only 21 votes against 40 when he strove in the Assembly to divide the Bill into two, so that the payment of each House might be considered separately. In the Council Mr. Berry's[1] former colleague, Mr. Cuthbert, carried by 18 votes against 5 a resolution to ask for a conference with a view to divide the Bills. As the constituencies had not cared to return a majority hostile to payment of members, some

[1] In 1880 Mr. Berry was unable to find a member of the Council willing to coalesce with him and accept responsible office.

Councillors said they were willing to renew temporarily the payment for the Assembly, but would not consent that the Council should be paid. Rejection of the composite Bill seemed assured. The periodic elections for the Council had taken place, in August and September, and in all cases the chosen candidates had declared their hostility to payment of members. The Council was strong after its appeal to its constituents. A Melbourne International Exhibition was to be opened on the 1st October. Internal discord would mar its prospects. On the 30th September Mr. Berry yielded to the demand of the Council. A brief conference between Committees was held, and the separation of the Bill into two parts was recommended. Within half an hour many of the 40 who had opposed Mr. Murray Smith's proposition rushed with avidity to support it, and by 57 votes to 5 the object of the Council was accomplished. Separate Bills were sent to that body forthwith, and without a division the Bill to pay the Assembly was passed through all its stages, and the Bill to pay the Council was extinguished. Universal approbation greeted the successful Council, and many were sanguine enough to hope that the spectacle of one House labouring for the public good without fee, would lead to a reformation of the other. For the time, at any rate, payment of members ceased to be a bone of contention. Some other ground would have to be chosen to create strife.

The hopes of the lovers of disorder rested mainly on the reform question, so long debated without other results than paralysis of business, disturbance of the public mind, and arrest of private enterprise. The general elections of February and July 1880 had sanctioned neither the proposals of Mr. Berry nor those of Mr. Service. The constituencies had not accepted the idea of a *plebiscitum* with which Mr. Berry's friends had endeavoured to win them. There were signs that they were weary of turmoil, and doubted whether wisdom resided in those who had stirred up strife, and had shown no capability in financial affairs. Mr. Berry's supporters in the House began to waver in allegiance. Some dared to propound schemes differing from his. He seemed willing to defer the question, but his word was no longer law.

Mr. Service left the colony in March, and Mr. R. Murray

Smith and Mr. Francis were chosen as leaders of the Opposition. The former had ever been consistent in advocating Free Trade, which the latter had been the first to undermine. But Mr. R. M. Smith, though deemed one of the best speakers in the House, was polished in language, and by abstaining from offence won the respect of opponents.

The Council had transmitted their Reform Bill to the Assembly, and that body had, according to its custom, neglected it. Mr. Berry, on the 3rd March, carried the second reading of his Reform Bill without a division, and Mr. Murray Smith strove unsuccessfully to cause a reference of the two Bills to a Joint Committee of both Houses. Sir Bryan O'Loghlen (once Attorney-General for Mr. Berry) failed to carry a similar motion on the 9th March, but the Ministerial majority was narrow (40 *v.* 33).

The signal defeat of a Ministerial candidate, who stood for the seat vacated by Mr. Service, gave warning that Mr. Service's friends maintained their supremacy, but did not qualify the support accorded in the Assembly to Mr. Berry's Reform Bill, which was read a third time on the 23rd March with an absolute majority of the whole House (48 *v.* 27). When it reached the Council the President, Sir W. H. F. Mitchell, ruled that a Bill dealing with the constitution of the Council ought, in compliance with Parliamentary usage, to originate in the Council, and that the same usage precluded the Council from dealing a second time in the same session with the subject already dealt with in the Bill transmitted to the Assembly. Mr. Berry indignantly moved the adjournment of the Assembly in consequence of the President's ruling. It was sought to abrogate the ruling by a direct motion that the Council should disagree with it, but the members of the Council rejected the motion. Having formally supported their President, they nevertheless waived their Parliamentary claims, and requested him to put the question that the Bill be read a first time. At conferences held in April the managers for the Council offered to support in their House a considerable reduction of the electoral suffrage fixed in their Bill, but the managers for the Assembly were dissatisfied, and the conference ended on the 12th apparently without result. But many persons within and without the walls of Parliament

lamented that the labour of years should be thwarted by a difference of a few pounds in annual rating. The matter was looked at as if it were a variation in a market-price rather than one which involved future consequences to the State. Informal conferences were held out of doors, and a majority was plainly desirous to force the Ministry to deal with the matter at once, rather than retain it as a weapon for further offence. On the 2nd May the Council read the Bill of the Assembly a second time, and incorporated in it the provisions of its own Bill, modified by the inclusion of propositions made at the recent conference. In effect they substituted their own Bill for that of the Ministry.

The signs of the times were not lost among those who had been the most ardent to demand the Ministerial measures. They felt that their hold upon the public was weakened. The Legislative Council had not in vain presented the spectacle of a deliberative body declining to accept payment when the Bill to sanction their payment was submitted to their decision. A Reform League, through which the Ministry had often secured support, pronounced in favour of accepting the best terms which could be obtained from the Council. But Mr. Berry chewed the bitter cud of failure. A dissolution was spoken of, but it was rumoured that the Governor would not commit himself beforehand to any promise which would destroy the hope of settling disputes in the existing Parliament. The amendments made by the Council were considered in the Assembly, and large alterations were made. The representation of freeholders was mutilated. The franchise was taken from owners in any district in which they did not reside. There was no expectation that the Council would accept the alterations. Mr. Berry, on the 11th June, announced at a public meeting that the Bill must die, and three days afterwards (a private meeting of members having been held) he made a formal statement to the same effect in the House.

Sir Bryan O'Loghlen strove to procure a fresh conference, and a member of the Assembly having stated without authority that the Council would make certain concessions, a conference was held on the 16th June. Sir Charles Sladen declined to be one of the managers, lest he should appear to sanction the idea that

the members of a branch of the Legislature could be bound or compromised by unauthorized statements made on their behalf. The managers agreed to recommend that the franchise of freeholders should be reduced to £10 (yearly value), and that of leaseholders and occupying tenants to £25 (annual value. The property qualification of members was also reduced to £100 (from £150 as it stood in the Bill of the Council). All the educational and professional qualifications of electors were retained.[1] The number of provinces (14) and the number of members for each (3), with a tenure for six years, were as fixed by the Council.

There were other amendments, but none that affected the principles of the measure of the Council. Warned by the past wrong done to the Constitution in forming Ministries without a responsible Minister in the Upper House, the Council had, in the later editions of their Bill, stipulated for such a functionary, but yielded to representations that legal provision would be needless, because no Ministry in future would evade the requirements of the Constitution. The majority of the Assembly were so well content with the recommendations of the conference that the resolution to return the amended Bill to the Council was carried by 59 votes against 4.

The Council accepted the result of the conference without demur; and, in accordance with the Constitution, the Governor reserved the Bill for the signification of Her Majesty's pleasure. Mr. Berry made a fruitless effort to obtain credit for settling the question of reform. Sir Bryan O'Loghlen, on the 1st July, carried by 41 votes again 38 a resolution of want of confidence in the Ministry. Mr. Berry applied in vain for a dissolution of the Assembly, and on his suggestion that he had a "right to demand a verdict from the constitucncies," and that it was scarcely constitutional for a Governor to refuse a dissolution

[1] A resident in Melbourne, an Editor of a newspaper, gravely informed the London 'Times' (19th August) that all these qualifications had been struck out. They included all clergymen, barristers, solicitors, officers, and retired officers of Her Majesty's forces, medical practitioners, graduates of Universities in the British dominions, certificated schoolmasters, and matriculated students at the University of Melbourne. Neither the 'Times' nor its readers could be expected to distrust a statement sent with apparent authority, and thus an error was imposed on the British public.

"to a Minister asking for it," was astutely replied to by the Marquis of Normanby. A phrase in the reply—"If the principle were once admitted that a Minister had a right to a dissolution whenever he saw fit to advise one, a vital blow would be struck at the power and independence of Parliament. The Minister would then become the master of Parliament instead of the servant of the Crown, and the knowledge that a vote against the Government might terminate its existence would act as a constant drag upon the independence of Parliament, and the exercise of that supervision over the actions of the Government which it is its duty and right to exercise"—was so aptly worded as to take from the retiring Ministry all hope of making the public believe that the conduct of the Governor was imperious or unfair. Sir B. O'Loghlen prudently composed his Cabinet of members of the constitutional party, and of those who had supported Mr. Berry. He assumed control of the Treasury without salary, and was Premier and Attorney-General.

Vehement efforts were made to prevent his re-election. The member who had (without office) represented the last Berry Ministry in the Council, resigned his seat and opposed the new Premier, but in vain. Only one of the Ministry was defeated; but as he had by turns supported and opposed almost every Ministry, his defeat was accepted as a censure of tergiversation rather than of his new position. The policy of the Ministry was declared to be peace, prosperity, and progress; and the constituencies seemed willing to accept it. A member of the Council accepted responsibility as Solicitor-General, and was returned without opposition.

The Houses met on the 4th August. The chagrin of Mr. Berry's friends found no sympathy amongst members. Addresses and a Supply Bill were passed without demur, and the Houses adjourned to enable the Ministry to prepare their measures. Having satisfied the spirit of the Constitution by placing a responsible Minister in the Council, the Ministry gave him a coadjutor who became a member of the Cabinet without departmental office. At the same time (19th August) two members of the Assembly accepted places in the Cabinet, and were re-elected by their constituents. The stumbling-block in the path of the Ministry was the Education Act. To obtain public money,

not for public but sectional uses, O'Shanassy, the Parliamentary leader of the Roman Catholics, had by turns intrigued against Mr. Berry and Mr. Service. He doubtless over-rated his influence, but to affect so few as six votes was sufficient to command nearly one-seventh of the House on a division. When Mr. Berry formed his Ministry in 1880 he endeavoured to make terms to propitiate O'Shanassy, but failed. It was asserted that the latter would be content with nothing less than control. To avoid the rock ahead the O'Loghlen Ministry early resolved to appoint a Commission of Inquiry as to the working of the Education Act. When the intended composition of the Commission was known, Mr. Ramsay (who had been Minister for Education under McCulloch in 1875-6-7) challenged it, but though there were many discussions in the lobbies, the majority of the Assembly refused to undo their own handiwork which created the O'Loghlen Ministry; and after adjourned debates, Mr. Ramsay was defeated by 47 votes against 27. One of Mr. Berry's recent colleagues subsequently advocated the formation of a Protestant party to defeat the supposed designs of Sir B. O'Loghlen, but the majority, who supported the Education Act, were confident in their power to maintain it intact, and no one believed that he who proposed to found a new party cared for the principle implied by its name.

Two elections held in December proved that constituencies ratified the decision of the Assembly, and it was undeniable that for a time, at least, the country was weary of turmoil and of those who promoted it. Confidence was restored, capital sought outlets, and enterprises were undertaken so rapidly that prices of building materials sprung upwards, while on every side new houses and stores were erected. Sir Archibald Michie having declined the chairmanship of the Education Commission, Mr. J. W. Rogers, Q.C., accepted it. A significant election for the Upper House occurred before the session closed. One of the candidates was believed to be willing to tamper with the Education Act by conferring separate endowments. Before the polling day the rites of burial were refused in New South Wales by the Roman Catholic ecclesiastical authorities to the body of a well-known politician, who though a Roman Catholic had supported the Public Schools Act in that colony. The moral

sense of both communities sustained a shock, and men acquainted with the province for which a member was elected in Victoria declared that the losing candidate was deprived of hundreds of votes by the intolerance displayed in Sydney.[1]

Sir Bryan O'Loghlen passed a Loan Bill for four millions sterling without difficulty; and induced the Parliament to revive legislation against the Chinese,[2] as the surrounding colonies were reviving it. A short Bill was passed to amend the Reform Act of the previous session by postponing the day for the elections for the Council in 1882, from the second Thursday in September till the last Thursday in November, because the new electoral rolls could not be prepared for the earlier date in that year. On the day before Christmas the Ministry entered upon the recess to which Mr. Berry had deemed himself entitled, but of which he had vainly striven to deprive his successor.

The elective Upper House of South Australia furnishes a remarkable contrast to that of Victoria in relation to dealing with Money Bills. The difference is due partly to the fact that in South Australia the Constitution Act embodied only the restrictive provision as to the origination of Money Bills in the Lower House, which Wentworth had incorporated in the Constitution of New South Wales, and partly to the fact that the population of South Australia was less easily swayed than the large urban and gold-fields' constituencies of Victoria. Nevertheless, at an early date the strife which arose afterwards in Melbourne began in Adelaide. It was hushed by the good sense of the community, which was not inclined to destroy because of temporary friction the component parts of a Constitution in which both Houses were elected by the people themselves.

The Council in 1857 amended a Tonnage Duties and Wharf-leasing Bill. The Assembly resolved that it was a breach of their privileges "to modify any Money Bill passed by" the Assembly, and asked the Council to "re-consider the Bill." The

[1] Finding the effect of their conduct, the ecclesiastical authorities endeavoured to persuade the public that there had been a mistake, and some maimed rites were permitted.

[2] There were unfounded notions as to the number of the Chinese in Australia. As careful a census as could be compiled showed that there were about 44,000 in Australia, Tasmania, and New Zealand. Fourteen thousand of these were in Queensland, and about 13,000 in Victoria.

President of the Council, a lawyer, was asked by the members to state his opinion. He showed that it was irregular to ask for re-consideration in the manner before him, and equally irregular for one House to acquaint the other "by what number any Bill or resolution before them passes." He drew the plain fact from the Constitution that the power of the Council was bounded only by the requirement that Money Bills were to "originate in the House of Assembly." In other respects the powers of both Houses were "co-extensive and co-equal." If further limitation had been designed it would have been carried out by express words, as in the case of Victoria, where Money Bills might be "rejected but not altered" by the Council. In Tasmania the Council, like that of South Australia, being unrestrained by the Constitution, had altered Money Bills, including the Appropriation Bill. Legally under the Constitution Act the South Australian Council had full power to alter the Bill. The restriction attempted to be imposed upon the Council by analogy with the Imperial Parliament was untenable. Nor had the House of Lords ever admitted the claims of the Commons except as to the origination of Money Bills. Moreover, the assumed right of the Commons was grounded on their representative character, and in South Australia both Houses were elected. The Council resolved that it had a right to do as it had done, and was "bound in justice to the people by whom it was elected to maintain their rights, and to exercise the power given to it by the Constitution Act;" at the same time it regretted that the Assembly had not adopted "the Parliamentary course of requesting a conference." The Assembly thereupon resolved[1] that they had the sole right to tax, and that the Council could not alter a Tax Bill. There was subsequent conference, and a compromise suggested by the Council was agreed to. The Council was willing to content itself with suggesting alterations in any Money Bill, "except that portion of the Appropriation Bill that provides for the ordinary annual expenses of the Government." If suggestions should not be accepted, the original Bill would be "assented to or rejected." While claiming

[1] Almost *ipsissimis verbis* of the resolution of the House of Commons (3rd July, 1860), which Mr. McCulloch induced the Assembly of Victoria to vary in 1865.

"full right to deal with the monetary affairs of the province, the Council (did) not consider it desirable to enforce its right to deal with the details of the ordinary annual expenses of the Government." It would demand a conference, to state objections and receive information, on an Appropriation Bill. The Assembly did not abandon its claims, but consented not to assert them, and a dispute which might have convulsed Victoria created no confusion in Adelaide. In Adelaide the Assembly did not put forward the pretence that it was unconstitutional for the Council to do what the Constitution Act empowered it to do. Moderation and good sense have hitherto prevented disorder in South Australia. Although in 1879 there was a serious difference between the Houses about a question of the site of new parliament buildings in Adelaide, the example of ministries in Victoria found no imitators, and the sobriety of the community was not shocked by lawless acts. Yet the franchise for the Assembly in Adelaide was (in the Constitution Act of 1856) qualified only by six months' residence, and the relative instability of the popular mind in Victoria, may not unreasonably be ascribed to the irruption of gold-seekers.

It could not be asserted that in well-meaning intelligence or energy the inhabitants of Victoria were deficient. Previous pages have explained in what manner they allowed public affairs to fall under the control of those who had evinced no fitness for their management. South Australia settled disputes between her two Houses without appeals to the streets or to Downing Street. In 1881 it was resolved to divide the colony into four electoral provinces, to increase the number of members of the Council from 18 to 24, to diminish the term of office, and to render the Council dissoluble under certain conditions. If the Council should reject a Bill passed by absolute majorities in the second and third readings in the Assembly, and—a general election for the Assembly[1] having intervened—should in a new Parliament reject such a Bill again, it was made

[1] In debate a member of the Assembly complained that the Council had "made the terms of the dissolution unnecessarily harsh as against the Assembly." In the Council the President sagaciously ruled that amendments involving "material alteration" must be passed by the absolute majorities required for the second and third readings of Bills "affecting any alteration in the Constitution."

"lawful for, but not obligatory upon, the Governor to dissolve the Council and Assembly . . . or to issue writs for the election of one or not more than two new members for each district of the Legislative Council, provided that no vacancy . . . by death, resignation, or any other cause shall be filled up while the total number of members shall be twenty-four or more."

There was nothing in such a measure which even in the last resort subjected the Council to any other control than that of its own electorates. The first addition to the House was made by elections by the whole colony as one province, and six new members were chosen out of fourteen candidates.

The narrative of Tasmania is similar to that of South Australia. The law of the land has been obeyed. The Constitution has not been violated by any turbulent leader placed for a time in authority. The original franchise for the Assembly (£10) was altered to £7 without producing a desire for revolution. The franchise for the Council was reduced from £50 to £30 in like manner. The right to amend Money Bills allowed by the Constitution Act has been maintained by the Council, and though there have been disputes beween the Houses they have led to no public shame. The Constitution has never encountered conspiracies between Ministries and their supporters determined to misconstrue or to overthrow it by force. Mr. T. D. Chapman, one of the most outspoken advocates of Parliamentary privilege (at the time when Sir Henry Young unduly shielded Hampton from public scrutiny as to the Convict Department), after a long career in the Assembly went to the Council, and was upbraided because there also he maintained the rights of the body to which he had been elected.

The Council had always insisted on its power to amend Money Bills. The Constitution committed only the initiation of such Bills to the Assembly, and the Council resolved to respect the Constitution. There were objectors to the position of the Council. Some desired to transplant from Victoria the prohibition of amendments by the Council. But common sense prevailed. One sentence quoted from a minute by Governor Weld in 1879, when asked to dissolve the Tasmanian Assembly, mainly on financial grounds, is ample evidence as to the

wholesome Parliamentary condition of Tasmania. "The question of the relations between the two Houses has indeed been raised, but it has not taken a substantial form, or become a line of party demarcation." It would have been impossible for Mr. Weld to make such a statement unless it had been true. It is impossible to read it without perceiving how unwise were the framers or adapters of the Constitution of Victoria in depriving the second elected Chamber of that power to amend Money Bills which was advantageously exercised not only by other elected Chambers responsible to constituents, but by members of Houses nominated by the Crown. In May 1879, when the Assembly had voted an expenditure exceeding the probable revenue for the year, the Council, on the ground of that excess, resolved that it was inexpedient to authorize any appropriation for more than six months of the year. After much discussion and array of Parliamentary precedents, Supply for eight months was passed by both Houses when six of those months had expired. The Council, in an address to the Governor, trusted that he would appreciate their endeavour to prevent financial embarrassment, and he assured them that Parliament might always rely upon his adherence to constitutional usage. A prorogation ensued, and on the re-assembling of Parliament the Council protested against delay in dealing with public business.

Mr. Chapman bore the brunt of attacks upon the Council. A member of the first responsible Ministry in 1856, and of four subsequent Cabinets during twenty years, Mr. Chapman had experience, ability, and vigour. His critics upbraided him for championing the privileges of the Upper House as vehemently as he had supported those of the Lower. Every determination of the Council was imputed by some to his protervity; but others questioned whether he exercised influence, although, in any movement, his aptitude for affairs made him prominent. Public opinion rejoiced rather than grieved at the existence of two Houses intent upon economizing the funds. When men looked across Bass's Straits they found motives for abiding by the Constitution of Tasmania.

Mr. Weld had to deal with the delicate question of wielding that "great instrument in the hands of the Crown,"[1] whose use

[1] Sir Robert Peel, 1846.

by the representative of the Crown involves sometimes more intricate considerations than surround its exercise by the Sovereign in person.[1] In 1877 he was assailed for consenting to a dissolution, but his conduct was approved in Downing Street. In 1879 he was pressed to dissolve the Assembly by a Ministry from whom the Assembly had withdrawn its confidence, and the head of which had been specially censured in the Council. They complained of that which is the only guarantee against injurious legislation in some colonies—"equally divided parties in the House." They wanted to submit "to the country" a new financial policy. Mr. Weld declined to dissolve a House which had been elected "under the auspices of the party in office." He had no ground for believing that a general election would materially alter the strength of the conflicting parties. He could not consent "to appeal to the country on a financial policy which has never been rejected by the Assembly, nor even by the Legislative Council this session. The question of the relations between the two Houses has indeed been raised, but it has not taken a substantial form, or become a line of party demarcation." The Ministry resigned, and the maintenance of office by their successors justified, in fact, the theoretical position of the Governor.

After acting for the second time as administrator of the Government by virtue of his office of Chief Justice, Sir Francis Smith in 1880 resigned the reins to the accomplished Sir Henry Lefroy, who by an unusual arrangement was sent from England to hold them until Sir G. C. Strahan, the newly-appointed Governor (detained by untoward events in South Africa), could assume office in Tasmania. In all these cases it was seen that though agitators denounced any dependence upon, or connection with, the remote mother-country, the girdling of the earth by the obedient pulse of electricity had banished inconveniences of space, and placed at the disposal of the Crown for peculiar

[1] "A constitutional Governor is personally responsible to the Crown for his exercise of the prerogative right of dissolving Parliament; and he is bound to have regard to the general condition and welfare of the country, and not merely to the advice of his Ministers, in granting or refusing a dissolution." 'Parliamentary Government in British Colonies,' p. 588. Todd. London: 1880.

service, any British subject, however distant he might be, when the word of command was flashed to him. Thus was Sir Hercules Robinson summoned from New Zealand. Thus was Sir G. Strahan retained in Africa to act as High Commissioner until relieved by Sir Hercules Robinson.

It devolved upon Sir J. H. Lefroy to observe the seething of the limited discontent which disappointed men had been able to stir up against the Constitution, whenever they failed to carry a measure. Mr. Giblin, Premier in 1881, formulated his complaint against the Council in the usual manner. Within three years it had laid aside and rejected, at the request of Mr. Chapman, ten financial measures. To thwart Mr. Giblin was unconstitutional in his eyes, but he contented himself with declaring that it was unconstitutional for the Council to claim co-ordinate power with the Assembly. After reiteration of the erroneous assumption that every Upper House in a British community must be *ipso facto* barred from giving effect to its judgment on financial questions, Mr. Giblin asserted roundly that the intention of the framers of the Tasmanian Constitution was to limit the powers of the Council conformably to Mr. Giblin's views.

A modern wit has advised that no man should prophesy until he knows the result. It was unwise of Mr. Giblin to speak for the framers of the Constitution while they were yet alive. The Attorney-General of 1856 had become Chief Justice, and his office might restrain him from correcting the Premier's blunder. But the Colonial Secretary of 1856, Colonel W. T. N. Champ, was under no such constraint. He had long resided in Victoria, and sent thence a complete contradiction of Mr. Giblin's statement. As "one of the framers of the (Constitution) Act" he denied that they had any intention to legislate in the manner imputed to them. He "was Premier of the first Ministry that administered the Act, and never entertained a doubt but that the new Legislative Council possessed, and would exercise at their discretion, all the powers now objected to by Mr. Giblin." They had exercised them continuously, and whether it was desirable or not that their powers "should be curtailed as suggested by Mr. Giblin," Colonel Champ remarked that "delightful" Tasmania, and its peaceful, "happy, and prosperous

community have been spared the political storms that have so, almost continuously, clouded the atmosphere of Victoria, creating discontents and animosities," &c.

It was well that a responsible framer of the Tasmanian Constitution was ready to condemn Mr. Giblin's baseless pretensions. It was a subject for grave reflection that his reference showed that in the one colony in which the power to alter a Money Bill had been taken away by statute, there also, and there only, had there been any stoppage of legislation, any refusal to discharge public debts, any array of class against class, any lawless acts done by Ministries in violation of the Constitution.

Many colonists agreed with Colonel Champ. A newspaper correspondent at Hobart wrote (though his sympathies were with the disturbing Giblin), "public opinion cannot be said to be excited." The community having elected two Houses to do their business, were willing to let them do it. A Tasmanian newspaper commenting on Colonel Champ's letter, confessed that the Constitution contained "all that is necessary to the good government and happiness of the people."

The remonstrances of Sir W. Denison, against rendering the Upper House in Queensland liable to such an experiment as that by which Mr. Cowper vainly urged him to overbear the Council in Sydney in 1858, ensured some forethought as to the formation of the new Legislature when the district of Moreton Bay, by severance from New South Wales, became the colony of Queensland in 1859, by virtue of an Order in Council which the Crown was empowered to promulgate by the Imperial Statute (18 and 19 Vict. cap. 54), granting the Constitution of 1855 to New South Wales. It was held by the law officers in England that the Constitution of the new colony ought, in deference to previous enactments and pledges, to be "generally similar" to that of New South Wales,[1] and the Council was nominated by the Crown. The new Governor was Sir George Bowen, who, after being President of the University at Corfu, had become Secretary to the Government of the Ionian Islands in 1854. Thence he was translated to Queensland in 1859, and Lord Lytton, who appointed him, furnished at the same time a

[1] Despatch, 13th July, 1857. Secretary of State to Governor Denison, Parliamentary Papers, vol. xli. 1857-8.

didactic essay upon the duties of a Governor politically, socially, and in matters of deportment. At the same time Sir Charles Nicholson, formerly Speaker of the single Chamber in New South Wales, was induced by the Colonial Office to place his experience at the disposal of the new colony as President of the nominated Upper House, and a guarantee was afforded that a knowledge of Parliamentary usages would supply the sagacity which Lord Lytton's phrases might have failed to inculcate. Sir Charles Nicholson had recently been made a baronet, and obeyed the Royal wish. It cannot be doubted that his abilities were useful in moulding the forms of the Queensland Government. He quitted his post, and was succeeded by Maurice O'Connell, a son of the officer who married the daughter of the deposed Governor Bligh. In 1861 the attempt to overwhelm the Upper House in Sydney with Sir John Young's complicity, took place, and warned the northern colony of danger. From such a catastrophe Queensland has been hitherto preserved, and the number of Councillors has not been augmented for party purposes. No transient differences between the two Houses have obstructed the public business, or disgraced the public credit.

Although gold-fields attracted many miners, the vast extent of the colony prevented them from exercising the same influence in politics which their congeners in Victoria had brought to bear. Yet the suffrage for the Lower House was in 1872 brought down to all registered males, with the sole qualification of six months' residence.[1] It is impossible to kindle misplaced enthusiasm rapidly throughout a territory comprising more than 600,000 square miles, with gold-fields widely scattered therein; and Queensland has not suffered the pangs which overtook the compact Victoria, which contains less than 90,000 square miles. Neither did the population swarm into Queensland as into Victoria. Twenty years after the foundation of the former, the total souls were computed at little more than 200,000. The recorded immigration in three years (1852-4) in Victoria was 270,386, and consisted mainly of perturbed spirits, gathered in masses quick to hear and prompt to be misled. The lesser

[1] At the same time the former qualifications were retained as alternatives. But a voter had only one vote in any electorate.

populations of South Australia, Tasmania, and Queensland, have perhaps their circumstances to thank for their immunity from evils which have scourged some of their neighbours. New South Wales, also, though surpassing in population all Australian colonies except Victoria, is of wide extent, and dispersion of her people in various distant localities causes numerous interests to be combined in her Legislature, where the resultant of forces necessarily takes a more wholesome direction than if one or two overpowering classes could annihilate all weaker influences. Careless observers may deem the ancient English principle of representation a mere representation of classes. Designing demagogues aim at perverting it into such a representation. The sage historian of this day[1] teaches us in his searching study of the Constitution to find, not in class, but in local, representation the healthy germs of British progress, and the physical condition of New South Wales exempted her in part from the evils which a narrower compass enabled the designing to impose upon Victoria.

Western Australia, largest in area, but containing in 1879 less than 29,000 souls, affords little occasion for comment. It has been seen that some aspiring spirits yearned for representative government, and found no sympathy, while the Imperial Government was compelled to assume responsibility and incur expense, and while the introduction of convicts threatened to disqualify the population for a wholesome exercise of the suffrage. On the Governors fell the distasteful task of gaoler, as well as the nobler one of legislating. With the close of the government by Mr. Hampton transportation to the colony was discontinued. The new Governor, Mr. Weld, honourably known as a colonist and as a responsible Minister in New Zealand, was destined to advance the interests, and to introduce a change in the form of administering the government, of Western Australia. He found an Executive Council appointed by the Crown, and a Legislative Council in which five official members sat with five unofficial members, appointed by the Crown. In 1870 a new Legislative Council assembled. Two-thirds of its eighteen members, like those of its predecessor in Sydney in 1843, were elected by voters, but upon a £10 instead of a £20 suffrage. Three

[1] Stubbs, 'Constitutional History of England,' vol. ii. p. 161.

official members, and three unofficial, were also nominated by the Crown. Soon afterwards the total number was raised to twenty-one, of whom fourteen were elected. These changes were popular, but as had happened elsewhere, they whetted the public appetite for more. England planted, as usual, only one of the seeds of her own form of government, and the appropriate crop was produced. Diffusion and degradation of the suffrage —the concentration of all power in the hands of those delegated by numbers—were pronounced to be the only portals to happiness. Nor was the Western land unmoved by other grievances complained of in the East. The dwellers at Champion Bay demanded separation. They dreamed that revenues insufficient when undivided would confer greater benefits if compelled to bear the weight of two separate governments. Aided so often and so much by Imperial funds, they had not felt the responsibility of self-dependence, nor the accompanying pleasure of complying with it, and they did not count the cost of their demands.

Mr. (afterwards Sir) William F. C. Robinson succeeded Mr. Weld, and a resolute effort was made by the advocates of responsible government. They received support from the energetic Mr. F. P. Barlee, who had been Colonial Secretary for twenty years. So highly were his services and talents esteemed that some men said that if, after adopting responsible institutions, Mr. Barlee could be retained to administer them, all would be well, but without such a guarantee the colony could not undertake the perilous risk.

Yet the popular outcry waxed in strength. Mr. Barlee himself, while Mr. Weld was Governor, introduced a Bill to meet demands believed to conform to his own convictions. But prudent persons doubted whether a community of 26,000 persons, of whom nearly a fifth were supposed to be, or to have been, convicts, was ripe for governing a third part of Australia. The Speaker of the Legislative Council (now Sir) Luke Leake, confessed (1875) that in his opinion the time had not arrived for so momentous a change.

Lord Carnarvon (August 1875), avowing a predilection for responsible government, could not resist the conclusion that the small number of persons who constituted "the unconvicted

"male[1] population of the colony ( . . . some three or four thousand"), were unfitted to govern a territory stretching far into the tropics, where "coloured labour" was already employed. Governor Robinson personally concurred with the Secretary of State, but the morbid activity of the rash rebelled against the reason of the wise.

In 1878 Mr. S. H. Parker renewed the attempt to obtain responsible government as asked for in 1875. The "earliest possible period" was, in Mr. Parker's opinion, the best. But Mr. M. Brown and Sir T. Cockburn Campbell saw danger in accepting hastily so costly a responsibility. They moved separate amendments warning the Home Government that unless vexatious Imperial interference with details were discontinued the demand for responsible government would gather strength. Mr. Marmion was willing to declare boldly that the proposed change ought not to take place in 1878, on the ground that after passing the resolution of 1875 the Council had been informed by Lord Carnarvon that the grasping of responsible government would entail the loss of Imperial aid for police and magistracy,[2] the disbandment of the enrolled pensioners, and other material sufferings.

By 13 votes against 5 the Council resolved to adhere to present woes rather than fly to others. The Governor congratulated the members at the close of the session on their sagacity in dealing with the "serious issues" and "hazardous changes" put before them, and their refusal to allow their "judgment to be swayed by external influences."

The discovery of an unexpected deficiency of £30,000 in the revenue during the government of Sir Harry Ord spurred on the opponents of the existing form of government. On his voluntary retirement, his predecessor, Sir W. Robinson, returned to the genial air of Australia, Governor as before. At a general

[1] Elaborate statistics furnished by the Governor (October 1875) indicated more than 5000 adult males who had been convicted; and 3009 of "unconvicted male population of 21 years and upwards, from which a Parliament could be chosen."

[2] In November 1877, Lord Carnarvon had sanctioned a reduction of the Imperial grant for magistrates and police. It was in 1877-8, £14,000. It was to be reduced gradually, and to cease in 1887-8. The Pensioner Force also was to be disbanded not later than March 1887.

election early in 1880—assuming of course the often-profaned name of "liberals"—the advocates of change strove, and hoped to elect a majority determined to demand self-government. But they could command no more than five of the fourteen elected members, and as the Crown appointed the remainder of the House, the lovers of new things were reckoned as less than a fourth part of the House. They hoped, however, that Mr. Gladstone's accession to office would be marked by a change of policy, and were dismayed when they found that if they should obtain responsible government it would be at the cost of separation of the northern territory. A newspaper correspondent lamented that Lord Kimberley could be so ignorant as to suppose that Western Australia would "accept self-government coupled with such a terrible sacrifice." Pearls on the coast and the fine pastures of the Fitzroy would thus be torn from the colonists, who would be left to their barren territory infested with the poison plant.

It cannot be said that the financial administration suffered by the continuance of a Governor's responsibility; for Sir W. F. C. Robinson, on being transferred from Western Australia to South Australia in 1883, was able to congratulate his Western friends on the fact that their exports (£502,769) exceeded their imports (£404,831), and that he left them a substantial balance of £32,000 in the Treasury; a sum which though small in itself bore a large proportion to the expenditure of the year (£205,451).

## CHAPTER XX.

### RELIGION AND EDUCATION.

THE material progress of the Australian colonies, after they assumed the control of their revenues, and of legislation under their various Constitutions, will be best seen by comparing their statistics. The higher conditions on which the true welfare of a community depends will demand first attention. State aid to churches was at an early period withdrawn from all the colonies. Sir Richard Bourke's Church Act, which commanded so much veneration in 1837 in New South Wales, and extorted admiration from Dr. Lang, was doomed to lose not only his allegiance, but that of a majority who had not, like him, become hostile only on ceasing to derive incomes from it. The grant guaranteed in the Constitution Act of New South Wales, for religious purposes, was not abandoned by the Upper House without a struggle, but it was repealed in 1862 with a proviso maintaining existing life-interests. With the exception of such daily diminishing remnants of aid, voluntary support maintains the machinery of the various Churches in Australia, and a sketch of their condition cannot but be interesting to a student.

The Church of England in New South Wales contained five dioceses in 1882—Sydney, Newcastle, Goulburn, Grafton and Armidale, and Bathurst; and steps were being taken to carve another diocese out of the large area of the diocese of Goulburn. Nearly 250 clergymen officiated in the colony. The Church of Rome (next to the Church of England in point of numbers) had several dioceses, and numerous clergy. The Wesleyans, with a smaller number of adherents, had many places of worship, and 93 ministers besides 321 local preachers. The Presbyterians had 90 ministers. The Congregationalists had 34 pastorates; and the Primitive Methodists had about 20 ministers. In populous districts the various religious bodies

could do much to supply the means of religious ministrations; but on the outskirts of the colony it was ever a life-and-death struggle to do so. A sparse population, scattered over a large area, could neither gather in one place nor combine its resources, and could only be visited by peripatetic ministers supported by the Christian love displayed by distant friends. None but those who visited the outlying districts could fully appreciate the sore need which existed, but many contributed who had not visited them.

The difficulties of the case stirred some members of the English and Scotch Churches in Victoria to create a Pastoral Aid Association, under whose care subscriptions from members of both Churches were administered in common in remote districts. The same places of worship were used in turn by ministers of each Church periodically; and thus, with a limited expenditure, the ordinary ministrations of each were more frequently supplied than would otherwise have been possible; while neither Church obtained less veneration because both thus strove to perform their Master's work.

The populous Victoria has already been divided into two bishoprics of the Church of England: Melbourne and Ballarat. In the first there are more than 100 clergymen, in the second about 50. Among contributions towards the building of a cathedral in Melbourne it may be noted that some were given by members of other denominations, stirred by a generous sympathy with the large-hearted zeal of Dr. Moorhouse, the Bishop of Melbourne, who exercised a moral influence extending far beyond his own communion and the bounds of the colony. The system of Church government through an Assembly of the clergy, and of laymen elected in every parish, was adopted for the first time in Australia in the diocese of Melbourne in 1854, under the fostering care of the first Bishop, Dr. Perry. The local legislature passed an Act which was in effect a declaration that the members of the Church might manage their own affairs, as any other religious denomination could manage its own; but the provident Bishop, with aid of voluntary representatives who assisted in maturing the proposed measure, guarded against any assumption that the law interfered with, or could be construed as enabling the members of the Church to interfere with, their standards of faith. With recognition of law, however, they meet

freely to manage their temporalities, and elect their various functionaries, who are thus not outlawed as they might have been, if, when the Privy Council decided that the Queen could not appoint or control bishops in colonies possessing representative government, the members of the Church had been deemed incapable of that government *inter se* which is freely accorded to other religious bodies and to ordinary societies and corporations. Synodical action was afterwards adopted in South Australia (1855); Tasmania (1858); New South Wales (1866); Queensland (1868); Western Australia (1872). A Provincial Synod, meeting once in three years, was established in New South Wales, where dioceses were sufficiently numerous to constitute an ecclesiastical province. A General Synod, consisting of the Bishops of Australia and Tasmania, and of laymen elected by the representative bodies in each diocese, has been created by mutual compact, and the priority of the oldest seat of an Australian bishop has been recognized by ascription of the office of Primate to the Bishop of Sydney. Many more details might be given with interest to members of different denominations, but those which have been stated are justified on general grounds by the large proportion borne by members of the Church of England in the population of the colonies. The census of Victoria, where the members of the Church of Rome are more numerous than in some of the Australian group, shows the relative numbers of the sects to be:

| | |
|---|---|
| Church of England | 311,291 |
| Church of Rome | 203,480 |
| Presbyterians | 132,591 |
| Methodists | 108,393 |
| Baptists | 20,373 |
| Independents | 19,878 |
| Lutherans | 11,149 |
| Pagans | 11,159 |

—which title may be deemed as comprising, in the view of the compiler of the census, the Chinese. Various definitions in the tables include smaller numbers of other denominations. If less detail be given of the polity of the members of the Church of Rome than of others in these pages, the explanation that it is derived from abroad might be sufficient, even without the

addition that an Englishman might erroneously describe that which has its foundations in a foreign land. The zeal of the members of the Church of Rome is everywhere great, and in Victoria they have several bishoprics, convents, and religious houses; St. Patrick's College being managed by "Jesuit Fathers." The Presbyterians in Victoria, and the Wesleyans, have many ministers, and it would be difficult to exaggerate the results of the labours of either body in meeting the requirements of their people during the turmoil consequent upon the rapid influx of population on the discovery of gold. Ormond College, affiliated to the University of Melbourne (1881), was founded by Mr. Francis Ormond at great cost, and while doing so much for his own, the Presbyterian, communion, he found it in his heart to promote the building of a cathedral for the Church of England by a timely gift of £5000. The Congregationalists, the Baptists, and Primitive Methodists have many ministers and places of worship in Victoria, and the latter body has no less than 808 Sunday-school teachers. The Wesleyans had as many as 44,000 Sunday-school pupils in 1882. In Queensland the Church of England adopted, by voluntary compact, a Synodical constitution in 1868, but paid tribute to mundane necessities by incorporating itself by virtue of Letters Patent under an Act of the local legislature (1861) with regard to religious, educational, and charitable institutions. The Bishop of Brisbane in 1882 was the worthy Dr. Hale, who laboured long on behalf of the aborigines in South Australia, at Poonindie and elsewhere, before he became Bishop of Perth in Western Australia in 1857. Thence he was translated to Brisbane, in 1875, where he was fated to see a system adopted towards the aborigines contrasting vilely with that of South Australia. A bishopric was created in North Queensland in 1878 to narrow the enormous area over which he presided. As yet the ministers of all denominations in Queensland are comparatively few in number, but each sect has an organization, as in the other colonies.

Under its first Bishop, Dr. Short, the Church of England in South Australia was organized with a governing Synod, and has about fifty ministers and eighty churches, with many other buildings in which Divine service is held. The Church of Rome has seventy-two churches: the Wesleyans have more than fifty

ministers, and a large number of places of worship. The Presbyterians, Congregationalists, and other religious bodies have in like manner laboured with success, if number of churches and schools can testify to it. Western Australia, vast as is its extent, has but one bishopric of the Church of England,—Perth; and eighteen parishes; but the Church adopted Synodical government in 1872. The Church of Rome has long had a bishop in the colony. The Presbyterians have but one minister, while the Wesleyans have seven. A large proportion of the inhabitants belong to the Church of England, and it has been observed that while in most of the colonies the Jews have synagogues they are without one in Western Australia, whither not more than eight or nine of their faith have thought it worth their while to migrate. Tasmania had a bishopric of the Church of England long before that Church adopted synodic government in 1858; and has seventy churches, besides a larger number of other buildings used for public service. The Church of Rome has also a bishopric and forty-three places of worship. The other religious denominations have a less number, but have been active as elsewhere. In New South Wales the University preserves its endowment, and has received munificent gifts from living colonists, and in bequests. It has affiliated colleges, severally founded for the Churches of England and Rome, and for the Presbyterians. Excellent advanced schools in Sydney and elsewhere feed the University.

Mr. Charles Cowper (deemed a supporter of denominational education), incorrectly estimating public opinion, was no sooner installed in office in 1857 than he thwarted the efforts of the Board of National Education, of which the upright Plunkett was chairman. Plunkett himself incurred some obloquy, because he laboured for the national system. Such odium it was impossible for Cowper to incur, because when he thought one principle unpopular he chose another. Plunkett forwarded for promulgation some new rules adopted by the Board with regard to non-vested schools. Cowper declined to recognize them, on the ground that the Board had exceeded its powers. Plunkett with scorn, if not petulance, denied the propriety of Cowper's interference, and Plunkett's letter appeared in the 'Empire' newspaper. Cowper promptly "dispensed with Plunkett's

further services." The latter protested against his "removal by a fraction of the Executive Council," and at once resigned his commission as a magistrate and every office held at pleasure of the Government, "the reign of terror" having commenced. To the Governor, Sir W. Denison, he tendered his resignation of the office of President of the Legislative Council, and his seat in that body, and Sir W. Denison accepted the resignation "with extreme regret." Another member of the Board, Mr. G. K. Holden, tendered to the Government his resignation on the ground that he had been identified with Mr. Plunkett's conduct. Cowper, having drawn from Mr. Holden an acknowledgment that though identified fully in principle he did not necessarily adopt the language of Mr. Plunkett, whose position was more commanding than his own—thought it "not necessary to adopt any proceedings" with regard to Mr. Holden's seat. Petitions from the governing Board and from various localities prayed for Plunkett's re-instatement, but the petitioners were informed by the Under-Secretary that the Governor regretted that Mr. Plunkett's course rendered his removal a matter of necessity. Though triumphant for the time, Cowper had prepared for himself future trouble, which, if he had comprehended the popularity of the national system, or the esteem entertained for Plunkett, he would have striven to elude. A general election in 1859 revealed his blunder; and an Education Bill which he introduced in the new Parliament was defeated by an immense majority, and caused the downfall of his Ministry. Subsequently the two systems of education, national and denominational, contended side by side until 1866. Unprescient but zealous, the friends of the latter would not reconcile themselves to the fact, that the time would arrive in which it would be publicly acknowledged that where the State cannot affirm that it has a conscience on the question of religion it cannot be solicited to distribute grants in its aid; and that to urge it to allot such grants for the propagation of contradictory tenets is neither wise nor conscientious.

In September 1866, Mr. Henry Parkes, the Colonial Secretary, in an Administration of which Mr. James Martin was Premier, carried a Public Schools Bill which gathered into one focus the public efforts. If there was nothing new in the elaborate speech

of Mr. Parkes it nevertheless explored the field of facts foreign and local. The time had come for change; and in the land where Sir Richard Bourke had been prevented from sowing the seed Mr. Martin's Ministry reaped the crop. On the second reading of the Bill, Mr. Parkes announced that the National Schools "most closely resembled" those which "ought to be established all over the country," and despite the tenacity which clings to presumed sectarian advantages, the Parliament adopted his consolidating measure. At that date there were (he said) 385 National Schools containing 18,126 scholars; and 445 Denominational Schools with 23,746 scholars. The startling fact that there were computed to be 100,000 children "receiving no education whatever" was accepted by the House as a challenge for legislation. The Bill retained the just provision, of the existing National Schools, that while four hours should be devoted in the day to secular instruction, clergymen or others, authorized by parents or guardians, should find facilities for imparting at the school building that religious teaching which the State was debarred from providing. It was not proposed to abolish the payment of fees; and neither of the Houses imported into the Bill a provision which by relieving parents of their most solemn responsibility, demoralizes them while imposing on the public; and which, in a community where the ordinary labourer was opulent by comparison with his class in Europe, was as absurd in practice as unsound in principle. The Upper House made amendments, to some of which the Assembly agreed. A Council of Education was formed with large powers, and leading public men accepted seats in it. Wherever 25 children could be gathered together, the Council could establish a school. It could also grant certificates to Denominational Schools, which, though placed under the Council, were to receive teachers of the denomination to which the school belonged, and were, so long as the children in attendance might not be diminished below thirty in number, to be supported by the State in conformity with the public regulations. Half-time, and provisional schools, could be set on foot to meet the wants of some of the untaught 100,000 children scattered in secluded places.[1] The effect of the Act was rapidly shown. The number

[1] The Ministry which passed the Act was composed of Mr. Martin,

of private and public schools in the colony in 1865 was returned[1] as 1067. The teachers were 1467, the scholars 53,453. In 1875 the corresponding numbers were 1586, 2542, and 127,756. The tendency of the combined schools to swallow up the others was indicated by the declining numbers of the certified Denominational Schools, and pointed to the day when the Public Schools system would cover the whole ground on which public money would be expended. The readiness of parents to pay school fees was shown by the sum (exceeding £73,000) paid in 1879. Buildings were liberally supplied by the Government. The total grant for education was £350,000 in 1879, and it must have been a forlorn hope which moved the prelates of the Church of England, and the Church of Rome, and other ardent denominationalists to arrest the system proved to be grateful to the people, when in 1879 Sir Henry Parkes, as Premier, introduced a measure extending rather than destroying the principles of the Act of 1866. He declined to pauperize or demoralize parents by abolishing school fees. He made no war upon religion. A Minister for Public Instruction was created. Secondary schools were provided for. In State-schools, under a conscience-clause, religious but "non-sectarian" teaching was accessible, and the inspectors efficiently examined the scholars to the satisfaction of the parents. The Scripture lesson-books (sanctioned by the good Archbishops Whately and Murray of the Churches of England and of Rome) were used, and class-rooms, in which special religious instruction could be given by the friends of the children, were guaranteed. Education at some school, or in some manner, was made compulsory, but it was not made free, though Mr. Parkes somewhat illogically reduced the school-fee so largely that the amount of fees in 1881 fell to £46,347, there being then an aggregate attendance of 146,106 scholars; while in 1879, on an aggregate attendance of 134,624 pupils, the school-fees paid were £73,000. The discontinuance of public aid to Denominational Schools was provided for, and the wrath of their

Premier and Attorney-General; Mr. Parkes; Mr. Joseph Docker; Mr. G. Eagar; Mr. J. B. Wilson; Mr. J. Byrnes; and Mr. R. M. Isaacs (Solicitor-General).

[1] 'Essay on New South Wales.' G. H. Reid. 1876. Printed by the Government Printer, Sydney.

supporters was unmeasured. Striving to maintain sectional grants, and with no reason to doubt that temporary success might eventually plunge them into the condition into which a reaction against such success had plunged a neighbouring colony, they made a gallant but happily a vain struggle against the Public Instruction Act of 1880. *Carior est Deo homo quam sibi.* At a general election in 1880, the constituencies unequivocally pronounced in favour of the Act.

There are not many occasions on which a Governor can stamp the impress of his own mind in a colony possessing responsible government. There are many in which by a refusal to do wrong he can prevent others from violating the law. Sir W. Denison placed his acknowledged ability at the disposal of the colony by advising upon all general subjects without constituting himself the advocate of any person or party. He presided over a Philosophical Society, and not perfunctorily. When, before the separation of Moreton Bay was accomplished, efforts were made to attract convicts thither, he prudently warned the Secretary of State that it would be unwise to sanction such a scheme. There would be a large expenditure, and when it had been incurred, the antipathies of the people would be aroused, "and the story of Van Diemen's Land would be repeated." He went to Norfolk Island in 1857, when a Royal Order had vested the government of the descendants of the mutineers of the 'Bounty' in the Governor of New South Wales. He drew up a code for their government, and retained in it some of the quaint provisions which they had devised at Pitcairn's Island for themselves. He went to New Zealand for supplies for his little island, and he gave advice to Colonel Gore Browne which ought to have averted the war commenced at the Waitara. When that crime was perpetrated Sir W. Denison gave warnings to Colonel Browne, and to the Secretary of State, which ought to have prevented the spread of mischief.[1] He resisted the efforts of a Ministry in 1858 "to

[1] A serious despatch from him to Governor Browne appeared in the Parliamentary Papers. In a private letter to Sir Roderick Murchison he touched upon the ill-omened cause of the war of 1860. "The treatment of the natives by the whites has been such as would naturally induce the conduct which we designate as rebellion; and to tell you the truth, I believe that it was intended that such should be the result." ('Varieties of Vice-

swamp the Upper House."[1] He warned the Secretary of State of the necessity to guard against the occurrence in Queensland (where a nominee House was about to be created), of the dangerous assault upon the Constitution which he had foiled in New South Wales. Before he left the colony he urged the English Government to be scrupulous, when re-constituting the Upper House on a permanent basis, to provide that the new members nominated for life should be representatives of the colony, and not of a party. He deprecated the languid virtue of public men in England, who would countenance measures tending "to promote separation" of the colonies. When thousands of gold-seekers rushed from Melbourne to Port Curtis, he wrote—"the Government, if it can be so called (sends for these fellows), feeds them at the expense of their better-behaved industrious neighbours, and brings them back to play the same trick again as soon as an opportunity offers." He never shrunk from duty. When urged by Mr. Cowper to dissolve the Legislative Assembly in 1860, and to allow the public requirements to be met by payments unwarranted by law, he declared that after a certain date he would sanction no disbursements unauthorized by regular Appropriation Acts. When after correspondence about the issue of a Crown grant (promised long before by a previous Governor), he received instructions to issue it, and Mr. Cowper (then Colonial Secretary in a Robertson Ministry) refused to affix the public seal, the resolute Governor desired the Secretary to hand the seal to him, and with his own hand sealed the grant.[2] His upright moral character maintained respect amongst those who denounced many of his acts. Vehement as had been the opposition to his policy as Governor in Tasmania,

regal Life.' By Sir W. Denison. London: 1870.) History has repeated itself in New Zealand since Sir W. Denison's death.

[1] Confidential despatch to Secretary of State. 5th April, 1858.

[2] There was much commotion as to this high-handed act. The Robertson Ministry resigned on account of it on 9th January, 1861. But on the following day Cowper became Premier of a Ministry in which Robertson and every other member of the Robertson Ministry, including Cowper, resumed office. The Parliament met on the 10th January, and (Sir W. Denison having left the colony to become Governor of Madras) it was proposed to pass censure upon him for his conduct in sealing the grant. The previous question shelved the proposal.

there was no personal ill-will to the man, and when he left Sydney the demonstrations of public esteem were mingled with signs of warm affection.

Of Sir John Young's career little need be said. He arrived after responsible government had been established for years, and little was expected from him in influencing the fortunes of the colony. But he had been a member of the House of Commons, Chief Secretary for Ireland, and Lord High Commissioner of the Ionian Islands. How he disappointed expectations, and how he repented, has been told. The Earl of Belmore succeeded him, and with regard to nominating members of the Council upheld the understanding arrived at by Sir John Young under the auspices of Wentworth. He called attention to a laxity of practice with regard to public payments. Sir William Denison's discouragement of irregularity in 1860 was exceptional, and after votes had been passed in the Assembly it had become common for the Governor in Council to authorize payments in anticipation of the sanction of those votes by the Legislature. Sir W. Denison had, like Sir John Young, complied with the custom, which originated with a Ministry of which Cowper was the head in 1858. Lord Belmore consulted the Secretary of State as to his responsibility in countenancing so loose a practice, and was told that he could not legally do so: nay, more; unless under supreme emergency, he was bound to refuse to sign irregular warrants if put before him.

The Legislative Council had, in 1860, resolved that the making of such irregular payments was "derogatory to the privileges of Parliament, and subversive of the Constitution." In 1869, when payments were made, nominally by virtue of an Act, but actually before the necessary Bill had been sent to the Council, that body expressed its regret at such an irregularity, and transmitted its resolutions to Lord Belmore. The particular pressure at the time was caused by an inadvertent adjournment of the Council on the motion of a Minister, and there was no strife between the Houses to embitter discussion of the subject. This Lord Belmore explained to the new Secretary of State, Earl Granville, who pronounced that no temporary inconvenience could be considered an emergency justifying departure from rule, and that the Governor would "not be at liberty on any

future occasion to repeat the step." The Treasurer in a cumbersome minute which the Premier, Mr. Robertson, requested the Governor to forward to England, combated Lord Granville's arguments as an interference with local matters, "entirely unconnected with Imperial interests." Earl Granville (January 1870) admitted that the matter was local, but not that the Governor could escape personal responsibility. The Legislature might have deprived the Governor of power, and left the Treasurer uncontrolled. But it had not done so. The Constitution Act expressly declared that no part of the revenue should be "issuable except in pursuance of warrants under the hand of the Governor." The noble Lord trusted there was "little chance" that (as suggested by the Treasurer) adherence to instructions might embroil the Governor with his Ministers. "I should deeply regret it. But in so painful a contingency it would be better to be in collision with your advisers than with the law." A change in that law, or an address from both Houses, might relieve the Governor of responsibility. "Whatever is the decision of the colony, you will be bound to defer to it." Meantime the Governor must do his duty. In the last resort he was "the judge of his own duty, and was not at liberty to sign the warrant required . . . by the Constitution Act," if clearly convinced that to do so "was to violate the law. . . . The fact that the custom of Parliament in this country precludes the House of Peers from altering a Money Bill does not warrant the conclusion that the Council in New South Wales should be deprived of the power of rejecting one, a power which undoubtedly belongs to the peers in this country, but which would be taken away in New South Wales if the Ministry had the power of spending money indefinitely on a vote of the Assembly." The colonists must remember that when by their own legislation they imposed duties on the representative of Her Majesty, it was for that representative to do his duty, and for them to support him.

Lord Belmore in a careful minute suggested certain amendments in a Bill to regulate the audit of accounts then before Parliament. "We may (he said) start with the proposition that Lord Granville's instructions must be obeyed at all risks."

The Bill before Parliament was modified to meet his recom-

mendations, but though it protected the public by making the Auditor-General's office tenable during good behaviour instead of during pleasure, it did not relieve the Governor of the responsibility described by Earl Granville. The Act was not disallowed in England, and a new Secretary of State, Lord Kimberley, approved the Earl of Belmore's proceedings.

It cannot be denied that he laid not only New South Wales, but the empire, under an obligation, by obtaining a decision on the question. There had been many who had not weighed its importance, though governing different colonies successively. Sir W. Denison had fallen in with evil practices, although he once confounded a Minister by declaring that he would not dissolve the Assembly without lawful procurement of funds.

Lord Belmore on his first assumption of office saw the danger of irregular practices, and—as far as one man could—guarded against them. If he had done nothing else he would have deserved the gratitude of the colonists. He resigned office in 1872. His successor was Sir Hercules Robinson, who had presided at Montserrat, and governed at St. Christopher, Hong Kong, and Ceylon. He had the courage of his convictions, a desire to do his duty to the Queen and to his country, and a healthy sympathy with all manly and honourable pursuits, as well as with all wholesome efforts to raise the moral and religious tone of the people. It could not be otherwise than that he should be popular, although as a vigorous speaker he sometimes aroused an opponent. He ever held that a Governor, while giving loyal support to his Ministers, was in no manner barred from expressing his individual opinion on questions of moment. His adherence to "the understanding between the leading politicians in 1861" as to the construction of the Upper House has been mentioned. He resisted random dissolutions of the Assembly at the request of impatient Ministries unable or unwilling to obtain supplies. To Sir H. Parkes and to Sir J. Robertson, rival framers of Cabinets in 1877, he showed the same firm front. Willing to dissolve, he reserved to himself the right to reconsider the subject in the event of a refusal of supplies. Having disposed of his difficulties without appealing to England for advice, he thought them, on general grounds, deserving of consideration by the highest authorities on such

subjects. Lord Carnarvon consulted the Speaker (Mr. Brand) and Sir Erskine May. The question was whether a Governor was bound to accept or reject advice unconditionally, or whether he was justified in demanding that Supply should first be obtained. His conduct was sustained by the authorities consulted. Mr. Brand (pointing out that under the bad practice of "deferring supply" the Governor ceased to be independent, the Ministers were hampered by the constant need of temporary Supply Bills, and the House had an inducement to "stop supply" to prolong its own life) hoped that recent complications would lead to "voting supplies more in accordance with the practice of the mother country."

The Governor's firmness was not without result. In 1878, being defeated on a Crown Lands Bill, Mr. Farnell, the Premier, resigned. Sir John Robertson, accepting the task of forming a Ministry, found no difficulty in inducing Mr. Farnell to ask for supplies. The Committee of Supply rejected a proposed grant for an International Exhibition, and Sir J. Robertson relinquished his task. Mr. Farnell returned to office, but the Assembly would not permit him to retain it. There had just been a general election, and as the House seemed unapt to afford a majority to Parkes, Robertson, or Farnell, Sir H. Parkes, when sent for by the Governor, formed a coalition with Sir J. Robertson[1] (the only senator who up to that time had passed a Land Bill), and a working majority was obtained. Although the readiness of Sir J. Robertson to stand aside or to assist in carrying on the Government finally extricated the colony from difficulty, the previous firmness of the Governor had much effect in guaranteeing that the general, and not merely party, interests, would be remembered when dissolutions were recommended; and the colonists felt that though a Governor might not often be called upon to exercise high

[1] When Sir J. Robertson's attempt to form a Ministry failed, he resigned his seat in the Assembly. Most people expected that his retirement from public life would be brief. He alleged that the even balance of parties in the Assembly made it necessary for some one to retire in order that public business might be carried on. Parkes thought it essential that Robertson should help to carry it on; and Robertson went to the Upper House. The Ministry included several who had been colleagues with Parkes, and several who had been colleagues with Robertson in former years.

functions as a statesman, they had in Sir Hercules Robinson one who was capable of them in case of need.

Lord Belmore had with the concurrence of his Ministers (Robertson, &c.) submitted to the Secretary of State an important question as to the exercise of the Royal Prerogative of mercy. Ought the Governor to act upon his independent judgment, or ought he to be guided by ministerial advice? There was diversity of practice in different colonies. A man like Sir W. Denison would on all occasions weigh the circumstances of each case. Sir George Bowen in New Zealand, when Messrs. William Fox and Julius Vogel kept the keys of his conscience, left "signed pardons in blank to be filled up and used during his temporary absence."[1] The Royal Instructions commanded the Governor to extend "or withhold a pardon or reprieve according to his own deliberate judgment, whether the members of (the) Executive Council concur therein or otherwise." Lord Granville told Lord Belmore in 1869 that he had a right to exercise his own judgment, but ought to allow weight to the advice of his Ministry. Lord Kimberley in a circular despatch (1871) diluted, without withdrawing, his predecessor's prescription. Sir Hercules Robinson found in 1872 that Lord Granville's decision was so ungrudgingly accepted in Sydney that the Governor in all except capital cases was expected to exercise the prerogative without responsible advice. He thought it desirable to obtain such advice on all acts he had to perform, and applied for further instructions.

Lord Kimberley (1873) defended his former despatch, and added that the Governor, compelled to secure advice in capital cases, might obtain it in others from a Minister in the most convenient manner. A sagacious Colonial Minister might well

[1] Todd. 'Parliamentary Government in the Colonies,' p. 258. 1880. He does not mention the name of the Governor, but fixes the date. The practice was older than the term of Sir G. Bowen. I have seen a memorandum written by Mr. Gisborne (Colonial Secretary) in New Zealand, declaring: "It has been usual during the present and former administrations of Governors to entrust to the responsible advisers of the Crown signed blank pardons for exercise on their responsibility in the case of the absence of the Governor from the seat of government. This practice is essential to the proper administration of justice, as the immediate release of prisoners is often necessitated, &c."

prefer that the prerogative should not be under the control of a local politician. Pressure of party friends might warp justice; or, if not complied with, might breed ill-will. When Sir H. (then Mr.) Parkes was invited by the Governor (1874) to suggest a method of advising with regard to the prerogative, he pointed out the difference between the Crown and the representative of the Crown. The latter, responsible to the former, was "subject to a superior and instructing authority." Nevertheless Sir Hercules expressed a desire that in all cases written advice should be tendered by a responsible Minister, and the Ministry formally concurred in June 1874; although Parkes very properly pointed out that the refusal of a Governor to accept advice would involve a Minister's resignation;—a conclusion which Sir Hercules could not rebut. He thought, however, that though true theoretically, the objection would practically vanish with regard to trivial cases.

Lord Carnarvon (October 1874) commended the course adopted. It left the Governor "actually as well as formally . . responsible for the exercise of the prerogative," but imposed upon him the duty of "consulting his Minister or Ministers" before deciding. Thus, the matter was theoretically set at rest. Practically, however, there had been trouble on the subject. Mr. Robertson's baneful "free selection of land before survey" had studded the country with dens in which horse-stealers and other criminals found harbour. One of them had organized a gang of robbers, and, after many atrocities, had left his comrades to follow their evil courses, and decamped with booty to Queensland, where in a remote spot he kept a store. Arrested there, he was tried in Sydney, and cumulatively sentenced (1864) to imprisonment for 32 years. A morbid sympathy was displayed in his favour. Public men pleaded in 1871 that his good behaviour in prison justified a remission of the remainder of his sentence. Sir Hercules decided that if he should continue to behave well he might be permitted to expatriate himself in 1874. When that time arrived the general question as to the exercise of the prerogative was finally decided, and the convict was soon afterwards pardoned, conditionally on leaving the colony. There was an excrescence which aggravated the transaction; but which does not require

full exposition. The Governor without authority made use of a private conversation with the Chief Justice, Sir J. Martin. The latter in violent language condemned the abuse of a distorted conversation.

The subject had been mooted in the Assembly early in June. Members reprobated the rumoured intention to release the convict. On the 11th June a motion disapproving his release was only rejected by the Speaker's casting vote. On the 23rd the Governor, deeming himself pledged to the release, placed an argumentative minute before the Executive Council. His strong nature recoiled from yielding to clamour against the pardon. His minute was laid before the Assembly on the 25th June, the last day of the session. The Opposition were indignant. When the House was again convened, on the 3rd November, the member who had been formerly defeated renewed his censure, and was again defeated by the casting vote of the Speaker. Mr. Parkes obtained a dissolution in the same month.

When the new Parliament met (27th January, 1875), Mr. Robertson persuaded the Assembly to record its regret that the Ministry had advised the communication of the Governor's minute to the House. It was "indefensible in certain of its allegations;" if "an answer to the respectful and earnest petitions of the people, (it was) highly undesirable to convert the records of the House into a means of conveying censure or reproof to (the) constituents; and if it refer to discussions in the Chamber, then it is in spirit and effect a breach of the constitutional privileges of Parliament." The new House gave Mr. Robertson a majority of four. The Ministry resigned on the 29th January.

The Governor was aggrieved at the imputation that his minute was "indefensible" in its allegations. The House had not ordered the presentation of the Address in the usual manner, and the Speaker presented it. Sir Hercules, while without responsible advisers, sent a message by his aide-de-camp (2nd February). He could not acquiesce in the imputation in the address. Ultimately responsible for the exercise of the prerogative of mercy, he claimed unreserved freedom in communicating with the Executive Council, and in that regard his minute was "entirely

justifiable." Sir Hercules entrusted Sir W. Manning, a member of the Upper House, with the formation of a Ministry. As a colleague with Mr. Robertson in 1868 and in 1870, Sir W. Manning was supposed capable of uniting with his former friends. He failed, and recommended the Governor to send for Robertson. In doing so Sir Hercules explained that while prepared to change the Ministry in compliance with the wish of the Assembly, he had felt bound to protest (in his message of 2nd February) against "an encroachment on the prerogative of the Crown."

Mr. Robertson formed a Ministry. Mr. Parkes wrote in the following year that "no men ever strove more laboriously or hesitated less" in grasping at office than Robertson and his friends. Lord Carnarvon approved of the Governor's conduct, including the minute promulgated when he was without responsible advisers. Mr. Robertson was able to work harmoniously with a Governor against whom the resolution condemning the advice of Mr. Parkes had not been aimed with personal disrespect. The convict, who could boast of having caused the downfall of a Ministry, transferred his roguery or his repentance to California. Even those who objected to some of the Governor's acts admired his resolute sufficiency. A Select Committee recommended the dismissal of a volunteer officer. Sir Hercules pointed out that the law required such a case to be tried by a court of volunteer officers assembled by direction of the Governor, and declined to adopt the recommendation of the Committee. After much discussion, the Assembly rescinded the resolution adopting the report of the Committee. Sir Hercules, after a prolonged term of service, became Governor of New Zealand in March 1879. Recalled thence in order to succeed Sir Bartle Frere in the difficult post of Governor at the Cape of Good Hope, he passed through Sydney in 1880, and the greeting he received was so universal and enthusiastic that it seemed as if all were friends as well as admirers. He was no flatterer; but on the eve of leaving New Zealand justly commended the school system of New South Wales in preference to that of New Zealand. The former did not encroach upon the right of parents to confer religious education upon their children, and Sir Hercules saw no prospect of real happiness for

a community in which religion was neglected, much less in one in which it was discouraged.

New Zealand did not demand payment of fees by parents. New South Wales did. Sir Hercules warned the New Zealanders that their legislation "not merely sacrificed a considerable amount of much-needed revenue, but its inevitable tendency is, I believe, to deaden parental responsibility, to encourage irregular attendance, and to weaken the feeling of self-reliance by teaching people to look to the State for everything." He reminded them that in New South Wales the "fees amounted to about £1 for every child in average daily attendance, and contributed nearly 25 per cent. towards the total ordinary expenditure." Those who desired that a Governor should be mere clay in the hands of a Ministry were aghast at the Governor's speech. Wiser men in New Zealand and in New South Wales rejoiced that his courage enabled the colonists to derive benefit from his sagacity; and all knew that he gave loyal support to his advisers for the time being, whatever might be his opinion as to their policy.

It was not only within the precincts of New Zealand or New South Wales that Sir Hercules was called upon to serve the Queen in Australasia. The annexation of the Fiji Islands to the Empire was accomplished by him. The islands of the Pacific had been since the days of Cook the scenes of unreined debauchery and ruffianism through the visits of roving ships. Individual offenders sometimes perished in affrays. More often, with help of European weapons, they asserted with high hand their lawless impunity. In Fiji there was in the beginning of the century a gang of convicts and others well provided with fire-arms, who by the hire of their services in tribal wars were so puffed with success and abandoned in villainy, that the very savages were ashamed. Missionaries plied their sacred task after a time, and not without success. The followers of Wesley saw the Fijians turn from cannibal orgies to Christian worship. Roman Catholic missionaries were also active. Trade spread around like circles in the water when the inpouring and outrushing at Australian ports followed the discovery of gold in 1851. At Fiji a number of English subjects were congregated, and not only trade but settlement ensued. The so-called labour-trade—the lawless

and sanguinary kidnapping of islanders—sprung up to supply the demands of cotton-growers, who during the Secession rebellion in America and the decay of cotton culture there, hoped to find profitable market for their Fiji crops. To Queensland also the islanders were carried. Few colonists were accomplices in the most brutal incidents of the trade, but many were careless how their slaves, whom they called servants, were acquired.

Usually boats were invited to a cruiser, and the natives were inveigled on board, or in default of other mode of capture, their canoes were sunk, and the swimmers were taken on board by force. The Queensland Government passed laws (Polynesian Labourers Acts) intended to regulate the traffic, and in some of the ships conveying the labourers it may be hoped that no law was broken, that all the deported Kanākas knew what they were engaged to do, and that, although large numbers died on sea and shore, a remnant returned to testify that they had been honourably used. But at Queensland there was British Government. Amongst the Europeans and Americans gathered at Fiji there was none at all. A vessel could, if her master feared investigation at Brisbane, shape her course to Fiji or elsewhere. When a massacre of more than usual atrocity occurred on board, the dead and wounded were cast into the sea, a little water or whitewashing cleared the crew of their deed, and the surviving prisoners were disposed of.[1]

Rumour told what there was no evidence to establish in a court of law. An inquiry in Sydney in 1869 elicited an opinion that the good fame of England demanded measures to acquit

[1] One case obtained notoriety in 1872. The 'Carl' sailed from Melbourne on her foul expedition, which the rascals engaged in it called "blackbirding." How by rapine they obtained her cargo, and murdered scores of the poor wretches who were expected to "mutiny," need not be told here. The master was tried in Sydney and sentenced to death, but the sentence was commuted. Two accomplices were tried in Melbourne, but by error were released on the plea that after conviction they were not detained in a place appointed by the Secretary of State. Proved to be murderers, they were sentenced to imprisonment. Without giving time to allow the Secretary of State to fix the place of detention, the Judges released them by a decision which was appealed against, and was reversed by the Privy Council. Great interest was displayed for the prisoners, as they were said to have been misled by others, though they had been well educated.

her of complicity in foul deeds. Commander Palmer (H. M. S. 'Rosario') seized the 'Daphne' at Levuka (Fiji) as a slaver. The Queensland authorities had supplied him with proof that the recruiting agent was empowered to convey fifty natives to Brisbane. The agent sent eight to his own plantation at the New Hebrides, and there were about a hundred on board to be sold at Fiji at £6 a head, under the guise of payment for their freight. The 'Daphne' was tried before the Vice-Admiralty Court in Sydney, but not condemned. There was a difficulty in defining a slave "within the meaning of the statutes." Thus was Lord Belmore informed. Exposure of crimes is more offensive to some minds than their commission.

In 1859 a chief, Thakombau, called king (the regulus of the Romans), weary of the struggle to maintain authority amongst his people and the mongrel mixture arriving from abroad, offered the sovereignty of the Fiji Islands to the Queen, on certain conditions. The Government sent Colonel Smythe, R.A., to inquire, and on his report the Duke of Newcastle declined Thakombau's offer. In 1871 a kidnapper was convicted and imprisoned in Queensland. In the unsettled Fiji there were then supposed to be two thousand white men obtaining labourers from other islands. In 1871 the heroic bishop, John Coleridge Patteson, was slaughtered at Nukapu. A kidnapping murderer, on one occasion, put on the garb of a bishop to entice islanders on board his vessel, slew some, captured others, and enraged the fugitives and their friends on shore. Five islanders were kidnapped at Nukapu and taken to Fiji; and it was believed that in revenge for their loss the Bishop was murdered, and five marks of revenge were placed upon his body. The martyr to his countrymen's crimes perhaps roused by his death his country's conscience.

The Crown having been vainly asked to grant protection to Fiji for a limited term, to enable the British residents and others to establish "a form of government analogous to that of the Sandwich Islands"—where, recognized by Europe and America, and largely influenced by the latter—a local responsible Ministry had been created in 1864, with other devices to adapt Anglo-Saxon institutions to Polynesian wants; some of the English strove to create a local government with King

Thakombau and a Parliament. Trouble ensued between the Cabinet and the Parliament. A law reporter on the staff of a Sydney newspaper became an upright Chief Justice, and an adventurer from the same place became Mayor of Levuka. Melbourne furnished, among others, one man who had been expelled from her Legislative Assembly. Institutions formed without sanction of higher powers are like ships without rudders. The Earl of Kimberley deputed the brave and good Commodore Goodenough to report (with the English Consul in Fiji) on the existing confusion. Again the sovereignty was proffered to England (21st March, 1874), and again declined.

In September 1874 Sir Hercules Robinson was empowered to negotiate at the islands, and on the 10th October, 1874, a deed of cession was executed. The land question, the exorbitant claims upon land, and pecuniary problems incident to those claims, were left by Sir Hercules mainly in the discretion of the Crown. A charter was issued by the Queen for the government of the islands as a Crown colony, and a Governor was selected, of whom it could be said that he, if any man, could show that, without injustice to the Polynesians, all wholesome progress for both races could be ensured. The charter was proclaimed in September 1875 by Sir Arthur Gordon, who, in 1877, was appointed High Commissioner in and over the Western Pacific. That he was able was well known. That he was resolute was soon discovered. His determination to govern the native race fairly, and fit them for existence in the circumstances with which Western customs had surrounded them, was no sooner known than they who wish to see the dark races vanish before the pale bitterly denounced him. His sagacity in obtaining the required contribution from the natives through the agency of native institutions and customs was assailed with arguments of which events speedily proved the futility. His Ordinance was passed in February 1876. The Europeans, who would have compelled the natives to work at cheap rates for planters rather than cultivate their own lands, averred that the new scheme would not benefit the natives; that the chiefs would monopolize labour, food would be dear, and the colony be plunged into misery. It was alleged that the native taxes, levied by co-operation with the chiefs, would be less productive than the old

taxes imposed by the camarilla which advised King Thakombau. The previous system yielded £3500 in 1875; the new, during a part of 1876, yielded £9300, and in 1877 more than £15,000. The Secretary of State[1] declined to interfere with Sir Arthur Gordon's measures.

Sir Hercules Robinson acquired the islands in 1874. Before he left Australasia in 1880 he saw the fruit of Sir Arthur Gordon's labours in Fiji, and knew how they were recognized in England. Whether the experiment thus tried shall yield permanent results depends upon Sir A. Gordon's successors for more than one generation. His worth was in 1880 transferred to New Zealand on the departure of Sir H. Robinson. It is not too much to say that if he had been Governor of Maoriland in 1858, he would have done with ease what it was harder to do at a later date in Fiji. He would have found in Te Waharoa, the king-maker, the very man fitted to work with him for the advancement of the Maori race, and in keeping good faith with the colonists. There was no difficulty in approaching the Maoris. They were eloquent with tongue, and fluent of pen; and the Chief Justice, Sir W. Martin, with Bishop Selwyn, was there to speak, and did speak, the words of wisdom to the unheeding Government.

[1] Sir Michael Hicks-Beach. 1879. In March 1879, at the Royal Colonial Institute in London, Sir Arthur Gordon read a paper on Native Taxation in Fiji. Sir Michael Hicks-Beach, Secretary of State, was present. Lord Selborne, after hearing the paper, hoped "we have at last found the way" to make the native races gainers and not sufferers by the colonization they cannot avoid. The preposterous claims to land put before Sir Arthur Gordon by speculators residing in Melbourne and elsewhere were supported alternately with flattery and with insolence. For a small sum paid to discharge obligations contracted by chiefs before the cession of the islands to England, the claimants averred that they had become owners of villages, cultivations, &c., without any regard to the position or rights of the resident natives. On the 13th March, 1883, Sir John Gorrie, Chief Justice of Fiji, read a paper before the Institute in London. He extolled the "incessant labour, patient investigation, and desire to do justice to both races" displayed by Sir Arthur Gordon, and by Mr. Victor Alexander Williamson, the Chairman of the Lands Commission, in adjudicating on claims to land. Trusting that "the interesting and noble race" of Fijians might be preserved by the equitable rule established by Sir Arthur Gordon and maintained by his successor Mr. Des Vœux, Sir John Gorrie felt that "a noble civil triumph had been nobly achieved, casting a lustre on the motherland greater than the glory of many victories."

To a certain extent the Australian colonies were brought into contact with Fiji, as a portion of the Western Pacific over which Sir Arthur Gordon was High Commissioner. In January 1881, at an Intercolonial Conference held in Sydney, the Queensland representatives urged that massacres in the Pacific Islands had become more numerous "since the appointment of a High Commissioner," and the Conference recommended that the office of High Commissioner should not "be vested in the Governor of any of the Australasian colonies"—that "more effectual means should be devised of trying natives of the islands" for offences "against British subjects"—that appeals from the High Commissioner's Court should be heard in an Australian Supreme Court, and that more frequent visits of Her Majesty's ships "would tend to lessen in a great degree the crimes now so prevalent." The Conference appended to its report numerous extracts from newspapers, charging Sir Arthur Gordon with indifference to murders committed by the natives. The Chief Justice of Fiji was similarly assailed in extracts, the writer of which styled himself a "vagabond." A Sydney newspaper declared (3rd December, 1880), that "the only course now open is to bring the teaching of fire and sword to bear upon the minds of the barbarians," and (4th December, 1880), "our people have been cruelly and relentlessly massacred, and the Solomon Islanders must be dealt with in like fashion. All ideas of Exeter Hallism must be thrown to the winds." The Commodore (Wilson) on the station was attacked because he was not considered so thirsty for blood as the newspaper scribe. Sir Arthur Gordon, on receiving the minutes of the Conference, sent to the Governors of the Australian colonies a memorandum which proved that he had been blamed for not exercising powers which he did not possess. When in Melbourne in 1878 he had informed a deputation that the "British Government disclaim all obligation to protect or interfere on behalf of persons voluntarily placing themselves in positions of danger in a savage country, and that those who enter on such enterprises do so at their own risk and peril." That language had been approved by the Imperial Government. The memorandum vindicated Chief Justice Gorrie from the aspersions against him which the Conference had circulated, and touched higher principles than

had been dwelt upon in the Conference. The papers printed by the intercolonial representatives eschewed all mention of crimes committed against the islanders. But there was in the Pacific a disinterested observer, who took occasion in April 1881 to warn the Commodore of the real state of affairs. The Commodore had recently been instructed to consult the High Commissioner before proceeding to active hostilities in the islands. The observer who addressed him was Baron N. de Miklouho-Maclay, a devotee to science, who had resided many years on the coast of New Guinea, and had visited many islands. His letter to Commodore Wilson was published. He was prepared to prove "that the exportation of slaves (for it is only right to give the transaction its proper name) to New Caledonia, Fiji, Samoa, Queensland, and other countries by kidnapping and carrying away the natives under cover of false statements and lying promises, still goes on to a very large extent. . . . (The islanders were) assuredly not more cruel and revengeful than the whites (skippers and traders) who visit them." The natives committed murders, but murders were committed against them.

"It is certain that so long as such institutions as kidnapping, slave trade, and slavery are suffered or even sanctioned by the Government (under the name of free labour trade), and shameless spoliation which goes by the name of 'trading' continues in the islands, these results—the massacres—will constantly recur. The least that the blacks have a right to expect from the civilized races is neither pity nor sympathy, but justice; and this I feel confident can be given them, but it is to be hoped that the Imperial Government will never permit skippers and traders taking the law into their own hands, and under the pretence of doing justice, further their own personal interests and trading schemes. It would be desirable if an international understanding upon this subject could be speedily brought about, for the criminal actions of skippers not sailing under the British flag are at present removed from the jurisdiction of the High Commissioner of the Western Pacific, and the notice of British men-of-war." [1]

[1] When Bishop Patteson was murdered in 1871 serious representations were made to induce the British Government to obtain a concert between the United States and the great European powers, in order that by mutual right of search the kidnapped islanders might be rescued, and the vessel which bore any of them against their will, might be confiscated. Only such

The trade in "labour" was largely carried on at Queensland, and it was Mr. (now Sir) A. H. Palmer, the Colonial Secretary of that colony, who moved (at the International Conference in 1881), that more effectual means were required to punish the islanders. In his own colony he resisted inquiry as to the manner in which the natives were done to death, and murders by kidnappers excited no apprehensions in him. Yet at the date of the Conference it was notorious that a French vessel ('Aurora') had plied her trade by staving in canoes, and ruthlessly capturing their owners. Vessels were licensed for the trade by Governors of the Australian colonies. Thirty-three were licensed in Queensland in 1876, and some of them were humanely commanded, but others were not. Bonds were entered into; but as no supervision was exercised over any vessels except those which carried colonial immigrants, there was no check in the case of those which were licensed "to employ labour." Natives desirous to go to Fiji were transported to Queensland, and those who undertook to work as seamen for a few months were disembarked to labour in the plantations of Queensland or Fiji. Nearly 18,000 were deported to Queensland before 1881, and many were, in accordance with their contract, carried homewards at its close, but misery pursued some of them. "Unless landed not only on his own island but at his own village, the islander is sure to be consigned to slavery if not death, as well as to the forfeiture of his hard-earned store of trade in return for his three years of labour and expatriation." It could not be doubted that Commodore Wilson with such facts before him would recommend that stringent conditions should be enforced as to the character of licensees, the mode of hiring the islanders and returning them to their homes, and the treatment which the labourers should be entitled to claim.[1] Baron Miklouho-Maclay enumerated many

a stringent remedy could deter the marauders of the Pacific, but it did not find favour in the eyes of the Government.

[1] It is proper to state that the Queensland Government appointed a medical board to report upon the mortality on sugar plantations on which 320 Polynesians were employed. The report was that the excessive mortality amongst the islanders "labouring there was" owing to poor feeding, bad water, overwork, "and the absence of proper care when sick." On behalf of the Immigration Agent, an official (to whom the report was referred) stated that, while he knew the plantations in question, he could

instances of brutality in the islands which had come within his knowledge, and his authority was beyond reproach. Enough has been said to draw attention to the problem which Sir Hercules Robinson took the first step to solve, when he acquired at Fiji a fulcrum by means of which the British Government might strive to bring its own outlaws under subjection; and, if possible, co-operate with other powers willing to do likewise. At Sydney Sir Hercules was succeeded by Lord Augustus Loftus, who after a diplomatic career in European Courts, turned to the task of governing a colony; while Lord Dufferin, after governing in Canada, devoted himself to the duties of Ambassador at the Russian Court which Lord Augustus had quitted.

The manner in which the once-vexed question of transportation was swept from the arena of discussion during the government of Sir John Young in New South Wales deserves notice. Every Australian colony except Western Australia protested with equal vigour against the continuance of transportation; but Mr. McCulloch proposed a singular method of coercion, which, through the misery of the weak, might appeal to the pitifulness of the strong. He would fix his fangs upon Western Australia in order that to loosen his hold upon her throat the Imperial Government might throw him the sop he desired. There had been a Commission of Inquiry in England, and it had recommended, amongst other measures, an extension of the system of transportation to Western Australia, of which the eminent gaoler Mr. Hampton was then Governor.

In 1863 the Legislative Assembly of Victoria had, on the motion of Mr. O'Shanassy, adopted an address to the Queen, strongly protesting against the revival or continuance of transportation to any part of the Australian continent or adjoining settlements. The Duke of Newcastle, while courteously acknowledging the address, did not promise immediate redress.

not agree to the first assigned cause, but could "conscientiously endorse" the others. The death-rate in 1878 was 14 per cent. But for the confidence that the Pacific could furnish an unlimited supply for the same doom, self-interest might have induced kinder treatment of the islanders; for on sixteen estates, while the average wages of 428 white labourers were £84 5*s.* 6*d.*, the average paid to 1594 Kanâkas was £6. The figures partly explain the lurid fact that while more than 17,000 islanders had been taken to Queensland, less than 10,000 had been returned.

Early in 1864 Mr. McCulloch, in a ministerial memorandum, expressed his surprise and regret at the apparent disregard by the Imperial Government of the remonstrances of the colonists. It must tend to weaken their attachment to Great Britain. Adherence to the course indicated by the Secretary of State would be "universally regarded as an act of oppression and injustice." He denied that the "willingness of the people of Western Australia to receive the off-scouring of British society" was a justification of the policy of sending convicts thither. On the 17th March, 1864, he carried in the Assembly resolutions protesting against the continuance of transportation to Western Australia, and denying the right of the Western Australians to calculate upon the continuance of so mischievous a scheme. One member wished to add to the address a paragraph expressing the readiness of Victoria to part with 500 of her own convict class if required, but his proposal was rejected. Dispensing with the official decorum which required such correspondence to be conducted under the sanction of the Governor, Mr. McCulloch by circular letters to New South Wales, South Australia, Queensland, Tasmania, and New Zealand (August 1864), invited co-operation in refusing to hold any intercourse with Western Australia. He suggested an intercolonial conference. The Royal mail steamers ought to be prohibited from calling at any of her ports. He informed the Governor separately that the time "had arrived for the exercise of such a power of self-government." New South Wales declined to take a step which "would amount to an undue interference with the Imperial functions." South Australia was willing to co-operate. Queensland doubted the expediency and the need for the course proposed. New Zealand, sympathizing with the main object, could "not coincide in the expediency of interfering for that purpose with the postal arrangements between England and Australia." Tasmania cordially approved the object, but required "ample time" to consider the method proposed. She would send representatives to a conference. On the 26th November, 1864, Mr. Cardwell wrote to Sir Charles Darling. The Government had been guided to their decision by an anxious desire to consult the interests and wishes of Her Majesty's Australian subjects. "While on the one hand it has needed no menace of

opposition to induce them carefully to consider the representations of the Eastern colonies, so on the other the inopportune arrival of that menace has not prevented their taking the decision which on other grounds has appeared to them to be on the whole expedient."

As to Mr. McCulloch's proposal, Mr. Cardwell was "glad that the irregular course of proceeding adopted by the Government of Victoria had received no encouragement" in Sydney, where there was no attempt to exercise undue interference with the exercise of Imperial functions. The despatches from Sydney and Melbourne had arrived while Her Majesty's Government were considering the whole question. It had been decided to terminate transportation within a limited period—three years. The immediate occasion of the decision was the necessity to issue regulations for the disposal of Crown lands in newly-explored districts in the northern districts of Western Australia,[1] but a "just consideration for the interests, the feelings, and the deep conviction of the Australian communities in general, weighed most materially in bringing Her Majesty's Government to this conclusion." The first to encounter the risk of a decline in the standard of morality by means of association with freed criminals; the first to repel such association by inherent sense of right, although compelled by two Governors to resist attempts to drown that sense; long doomed to undergo the unfounded imputation that her society had not successfully resisted those attempts; and making common cause in the last effort to shake off all real and all imputed evils connected with transportation, the old colony was, when the final fiat went forth and transportation died, justified by her public men in receiving commendation for the constitutional manner in which they had laboured to destroy it. Mr. Cardwell's promise was faithfully kept. In 1867 the last ship with convicts was despatched to Western Australia.

The judicial and jury systems of the colonies may be considered together. The long struggle with regard to juries in New South Wales, and how the grand jury called into being

[1] Speculators had already applied for large tracts of land recently explored in the North-west. It was proposed to found a settlement at Camden Harbour, whither settlers were preparing to go from Swan River. South Australia was also forming a settlement at Escape Bay in order to make use of Stuart's discoveries at the North.

for a moment as rapidly perished, will be borne in mind. South Australia, priding herself upon distinctness of origin, for a brief space clung to the time-honoured grand jury of England. In Queensland and in Tasmania a grand jury never existed. In 1874 New Zealand alone possessed it, but in that year the influence of one of the Judges (T. H. Fellows) caused the introduction, in a Judicature Act of Victoria, of a permissive clause by virtue of which it was made lawful for a Judge of the Supreme Court to summon a grand jury under certain circumstances. But to make the jury of presentment only an exceptional remedy instead of an inflexible rule was not to introduce the law of England. The discretion of the Judge was not a safeguard like the Great Charter. It must seem strange to Englishmen that their brethren in colonies have abandoned one of the great muniments of their liberties. In the United States of America our kindred were wiser. The great American jurist, Story, commends all men to read Blackstone's eulogium on the strong and twofold barrier of a presentment and a trial by jury to guard and keep sacred for all time the liberties of the people. The founders of the American Constitution enshrined within it the palladium of English freedom. The loss of their birthright by Australians may be attributed in the first instance to the inevitable conditions of a penal settlement, but afterwards to the mean motives furnished by the convenience of employing paid functionaries to control all indictments without regard for those securities against tyranny or vindictiveness which Judge Story declared to be as necessary in a democracy as under a king. Although, however, the Executive Governments were prone to devices by which they might control the administration of justice, it may be recorded to their credit, as regards the Supreme Court, that in all the colonies there was a laudable desire to maintain the purity and independence of the Judges. Able men were in the early days appointed by the British Government, and a high tone prevailed upon the Bench. It was one of Wentworth's demands that their position should be secured by a provision on Her Majesty's Civil List in the colony, and by tenure of office during good behaviour, and not at pleasure. The example of the older colony accrued to the advantage of the others. Fortunately, also, the high standard maintained upon

the Bench while Governors were responsible for appointments was afterwards aimed at by responsible Ministers. Conspicuously, Mr. Parkes in Sydney selected the fittest man for the post of Chief Justice, when with a certainty of giving umbrage to a follower he appointed Sir James Martin. The existence of an appeal to the Privy Council has also been of inestimable value, not only as a check upon crude decisions, but as a guarantee that the calm light of reason and law will be thrown upon intricate cases which local prejudice may fail to unravel. The Areopagus of the Empire, while doing justice in individual appeals, affords guidance to other colonies as well as to those appealing, and contributes to maintain a standard of uniformity in all. This tendency was increased by a general habit of adopting wholesome changes in the law when they were made in England, and could be applied to a colony. But beneath the arena of the Supreme Court the exigencies of a young community and a craving for departmental control, banished reverence for the safeguards of English liberty. It would have been impossible to establish grand juries in the primitive condition of New South Wales. Their factitious existence in 1825, and their speedy annihilation, left scarcely a trace behind. The apparent convenience of investing a Government officer with the functions of a grand jury blinded most persons to their treason to principles. Yet now and then a voice was raised. Chief Justice Sir James Dowling declared in 1838 that New South Wales was, in his opinion, fitted for the

> institution of the grand and petty jury system. . . . Nothing but a well-grounded apprehension that in the infancy of the colony justice would not be properly administered by such a system, would warrant the substitution of the Attorney-General in place of a grand jury, and arm him with the enormous discretion of determining on his own personal responsibility in what cases he should or should not put the law in motion. Such a measure, so repugnant to the principles of the British Constitution, could only have reference to a society of outcasts. . . . Experience dictates the policy and the necessity of casting upon society the largest possible share in the administration of those laws by which it is to be governed."

Nothing followed this protest: and between 1856 and 1880 nineteen responsible Ministries ruled in the colony, and still the

jury of presentment was denied to the Queen's subjects, not by the Crown, but by their own representatives. Victoria (except to the permissive extent just mentioned) and Queensland, offshoots of New South Wales, have also been content with the substitution of a Minister for a grand jury of their countrymen. Tasmania is in like condition. Western Australia is departmentally prosecuted. South Australia, attracted by the license to which prosecution by an Attorney-General gave scope, discarded her early Ordinance of 1837, which declared that "no person shall be put on trial on any indictment . . . unless the Bill shall first have been presented by a grand jury, and shall have been returned by them a true Bill." (Existing rights, if any, of filing *ex officio* informations were reserved.) It was under the rule of Sir George Grey that the first but unsuccessful blow was dealt at grand juries. It was enacted (1842) in the colony, "that in order to dispense with the attendance of the grand jury, and otherwise to expedite the business of sessions of the peace, all criminal proceedings before any such Court of General Sessions shall be by information in the name of Her Majesty's Advocate-General." Lord Stanley disallowed the Ordinance. But the local authorities, with Sir George's help, persevered. In 1843 they pushed aside, without abolishing, grand juries, by an Ordinance (No. 12, 6 and 7 Vict. 1843), which ordered that "no person should be put upon trial . . . unless the Bill . . . shall first have been presented to a grand jury on the prosecution of Her Majesty's (Attorney or Advocate-General), and shall have been returned by them a true Bill, reserving always nevertheless to (Her Majesty's Attorney or Advocate-General) the right of filing informations *ex officio*, and to the Supreme Court the right of permitting informations to be filed." This Ordinance was allowed; and, the path being smoothed, the work of repudiating a great social duty was consummated in 1852 by another (when Sir Henry F. Young was Governor, and Mr. R. D. Hanson the principal law officer), which declared that "from and after the passing of this Act, no person shall be summoned or liable to serve upon any grand jury,"—repealed the section of the Ordinance of 1843 above cited; and made presentment "in the name and by the authority of" a prosecuting officer sufficient when the lives of Her Majesty's subjects were imperilled. The

motive of departmental convenience was thus allowed to prevail, although some colonists were of opinion that the grand jury system had worked well. Let the reader pause to reflect for one moment on the substitute provided in the colonies for the palladium of British liberty. The Attorney-General of the colony may have been called to the Bar the day before his adoption by a Ministry. He may know little law and no morality, He may be seditious. If he have ability it may be noxious. There was nothing to prevent Charles G. Duffy from becoming Attorney-General except the fear of so vain a man lest professional incompetence should expose him to shame. If he had become Attorney-General he might have trampled on the liberties guaranteed to Englishmen by the Great Charter. By his word alone and at the public cost the life of any man might have been put in peril. To an English reader such a prospect might seem beyond the range of possibility. Nevertheless, the grand jury of Victoria in 1880 consisted of a personage who was a colleague of McCulloch, Verdon, and Francis in 1866, and of Messrs. Duffy and Berry in 1871, and who was once designated by Duffy himself as "a foul-mouthed ruffian." To him was committed the conscience of the community. He wielded the arm of the law. As Attorney-General he set it in motion; and claims advanced by his predecessors put it within conception that he might pronounce its sentences from the Bench.

Originally Judges appointed by the British Government, and those promoted by Governors, were men whose characters commanded public esteem. When responsible government was within view, it was deemed desirable to secure the position of Chief Justice for an Attorney-General, even though, on a vacancy, he might have to pass *per saltum* over the heads of several Puisne Judges. Thus in 1857, in Victoria, the Attorney-General became Chief Justice, although Sir Redmond Barry had been several years upon the Bench, and the other Judges, Molesworth and Williams, bore high characters.

It was at first hinted, and afterwards openly contended, that the preference awarded to the political Minister was conformable to English usage. The public were somewhat blind to the danger to their own liberties. The Bar and the attorneys of the Supreme Court could not desire degradation of the Bench, but

the ability of the occupants of the office of Attorney-General in New South Wales, Victoria, Tasmania, and South Australia, seemed to make danger remote. A second translation was beyond the ken of practitioners intent on the business of the day. They were lodgers. The generation to succeed them must care for itself.

But circumstances caused reflection in Sydney. There were no less than three Attorneys-General in a Cowper Ministry between 1857 and March 1859. It was clear that political exigency might constrain Cowper to make any man Attorney-General. (He did appoint one, without known qualification, who had been only three years in the colony.) Long before Cowper had found his third client in 1859, one of the Judges, the prescient J. N. Dickinson, than whom no functionary was more respected, consulted a friend in England, one of the Barons of the Exchequer.

Was "there in England, any right, invariable custom, or inflexible etiquette, for the Attorney-General to receive any judicial office which may become vacant in his time?" He clogged his letter with no reference to the local circumstances which might create a colonial Attorney-General devoid of any legal or personal fitness for office. Baron Watson furnished an exhaustive reply.[1]

As between the law officers and the Cabinet there was an understanding that the Attorney-General might go to the Common Pleas, but not elsewhere; though Lord Eldon had resolutely denied the existence of any right. There was no known or acknowledged rule in England. To apply one "to a colony under a new order of things is absurd. The stability of new as well as of old Governments depends on the faith the people have in the administration of justice, as also in the administrators." Any rule might entail pernicious consequences, and would tend to make colonial lawyers regardless of law, and prone to intrigue. Baron Watson's letter furnished food for reflection, but did not allay apprehensions. There is seldom a vacancy on an Australian Bench without alarm lest an unfit appointment should be made. Parkes in New South Wales set a high example when he offered the post of Chief Justice to

[1] Judge Dickinson sent it to the 'Sydney Morning Herald,' March 1859.

Sir James Martin, and offended his colleague, the Attorney-General, who claimed the office. But it is not given to all to pass such long years in public life as have been spent by Sir Henry Parkes; nor does the wisdom acquired in political struggles often come while the politician is strong, and has opportunity to apply it. His act, applauded at the time, may be cited by those who demand that the worthiest shall be promoted to the Bench, but his example may be set at nought. Fortunately the traditional character of the Supreme Court, and a sense that the public might be shocked at the association of an *indoctus* with more learned Judges, have hitherto averted degradation from the Bench.

The extinction or absence of grand juries, and the possible claims of a venal official usurping their functions, were not the only dangers encountered by society in consequence of transferring to departments functions which ought to have been retained amongst the people. Sir Richard Bourke commented sagaciously on the value of an independent magistracy, not only as administering justice without cost to the State, but as supplying social help and good counsel to neighbours, and strengthening the wholesome ties which bind a community together. In all rural districts the unpaid magistrates sufficed. It was inevitable that in the heart of a large population a paid magistrate should be required, because numerous processes occupied his whole time. But elsewhere duties of petty sessions were performed by an independent magistracy. Governors appointed, as a rule, fit persons, and they commanded respect and esteem. Occasionally mere vanity led a man to ask for appointment to the coveted post of honour, but he was innocuous. The same craving for departmental authority which was fatal to grand juries undermined the worth of the unpaid magistracy. A well-filled Treasury enabled a Government to appoint numerous stipendiary magistrates as servitors of a department, and the independent magistracy was almost functionless, except in a few districts. The example set in one colony was followed in others, although South Australia was least infected by it. A singular debasement of the magisterial body ensued. As the stipendiary magistrates were multiplied and engrossed the work, responsible Ministries thought it unimportant whether unpaid magistrates were competent or

incompetent. The style of a Justice of the Peace was still coveted, and appointees were proud of affixing it to their names on all occasions. It was deemed that a magistrate had nothing to do, and Ministries appointed men capable of doing nothing. So customary did the prostitution of patronage become that more amusement than shame was excited when a man unable to read and write was added to the magisterial roll in Victoria by Messrs. O'Shanassy, Duffy, and Ireland. But evil appointments were not confined to that colony. The more unfit a man might be, the more covetous he was to retain his distinction, and more than one Ministry gave offence by proposing to purge the magisterial roll in New South Wales.

It is difficult to forecast the future under such conditions. It may be hoped, though it would be bold to expect, that when a few generations shall have been reared upon the soil in habits of industry, the malign influences of recent days may be modified. But it is easier to destroy than to rebuild upon the foundations laid by the valour, patience, or wisdom of our forefathers.

Another evil closely allied to the favouritism which placed unfit persons in the magistracy, was destined to grow with portentous rapidity. Mr. Latrobe had been pure in exercise of patronage, but he had been profuse in accepting the recommendations of his principal officers, some of whom largely availed themselves of his pliancy. Sir Charles Hotham was able to make an annual saving of £40,000 by abstaining from filling vacancies occurring in three months. In the days of Mr. Latrobe and Sir C. Hotham there was no attempt on the part of the Government to interfere with the civil servants in their private relations. They discussed municipal and even political affairs at public meetings. As their liberty was unquestioned, it seemed free from abuse. But it was a personal liberty. No pressure was put upon them by the Government while Governors were responsible.

With the accession of responsible Cabinets to power came the desire to abuse it. A junto in the first Haines Ministry were infested with the idea that they had in some occult manner succeeded to the position previously held by the Queen; but they were in office for too brief a period, and the liberty of the people which the civil servants shared had been so long extant, that, except in a few cases which were veiled from

the public eye, the Ministry did not indulge in freaks of power. They became a responsible Ministry in the end of November 1856, and they died in March 1857, on losing the sustaining strength of their Attorney-General when he became Chief Justice. O'Shanassy, Duffy, Foster, and others, in a brief reign of seven weeks, had time only to die indecently. Haines, strengthened by Messrs. Ebden, Michie, Fellows, and others, ruled for nearly a year, but then gave way to a Ministry compacted by Mr. O'Shanassy of different materials from those which were shattered in 1857. Mr. Henry Miller, a member of the Council, accepted a responsible post. Dr. Evans added debating power to the House, and unscrupulousness in the Cabinet. The wiliness of Duffy was supplemented by the bold and immoral, but ready recklessness, of R. D. Ireland, the Solicitor-General. The Attorney-General, Mr. Chapman (dismissed from office in Tasmania by Sir W. Denison, when he failed in an attempt to "run with the hare, and hunt with the hounds"), found a nominal subordinate, but a real master, in the Solicitor whom no scruples affected. Mr. Harker, the Treasurer, was deemed conscientious enough to give respectability to unburdened colleagues. The way in which patronage was dispensed by this Ministry may be estimated from the fact that, in two months, more than 134 territorial magistrates were appointed, at the period of a general election in 1859. The Legislative Assembly, apprehensive of the manner in which such a Government would endeavour to influence elections, had resolved that every officer under ministerial control should be required under pain of dismissal to abstain from taking any part in elections for members of Parliament. The resolution was moved by Mr. W. Nicholson, who wished to protect the purity of the ballot, of which he was called the father. It was seconded by Mr. Michie. Nicholson averred that interference had become so common as to require repression. Mr. O'Shanassy made a merit of necessity, and accepted the resolution, which was carried without a division. Some of his colleagues discovered a pleasing vice in their necessities, and were unscrupulous in evading the resolution.

If the morality of a Ministry was such as to lead them to tyrannize in such matters it was better that officers of every grade should eschew the political arena altogether. Abstinence

became almost imperative upon honourable men. Others at first secretly disobeyed the public regulations. In time the mask was thrown off, and returning officers at elections took part in canvassing, and in exultation after success. How weak the public conscience may become was shown in 1880. A returning officer appointed by Mr. Berry in West Melbourne, took an active part in elections, and was a member of a political league.

Mr. Service, during a Ministry of a few months, gave him the option of remaining in office impartially, or electing to continue his career as agitator. The man, rendered insolent by the encouragement of friends, declined to change his position. Mr. Service removed him from (the unpaid) office, and reappointed a much respected citizen, who had once been Mayor of Melbourne, and had previously vacated the post of returning officer in West Melbourne when visiting Europe. On Mr. Berry's speedy resumption of office in 1880, he dismissed[1] the new holder of office and reappointed the predecessor. In the populous metropolis indignation found vent only in casual sarcasms upon the restored partisan. Yet the abstinence enjoined upon officers in 1859 had been formally imposed at a later date.

Under a Civil Service Act of 1862, the Government had been empowered to make regulations. Mr. McCulloch in 1864 republished the resolution of 1859, and amongst the shackles riveted by regulations on civil servants affected by the Act of 1862, was one which prevented them from becoming members of Borough Councils, Road Boards, or even Committees of Building Societies, without special written permission from a Minister. It was known that such duties could be discharged without encroachment on the hours devoted to Government business, but this exercise of power was not resisted by Parliament or by public opinion. A civil servant was expected to ask permission to do his duty to his neighbours.

Other dealings with the public officials in Victoria, in 1878, have been mentioned elsewhere. They found no counterpart in any other part of Australia, but were denounced by public opinion. In Tasmania (which in earlier times there had been

[1] He first endeavoured to induce Mr. Moubray to resign. Mr. Moubray declined to resign a position which he believed he had filled to the satisfaction of upright citizens. He was admired but not supported in his gallantry.

a project to annex to Victoria) lamentation for her neighbour's imputed disgrace was outspoken and universal. It is fair to mention that at least one gross case of mal-administration and injustice had deformed the civil service of Victoria before 1878. It will be remembered that one of Mr. Latrobe's earliest requests (after the discovery of gold) was that a scientific geologist might be sent to him. The choice fell upon Mr. Alfred R. C. Selwyn, highly esteemed by Sir Roderick Murchison, Professor Ramsay, and other authorities of repute in Europe. Mr. Selwyn had for about nine years been engaged in field-work in the geological survey of England. He was scientific, practical, upright, active, and energetic. His labours were appreciated by all who understood their nature. But they were slighted by others. The Surveyor-General paid little or no attention to his repeated warnings against the alienation of auriferous lands, and from an early period there were intrigues to make the geological department subordinate to the Surveyor-General's. While Governors were responsible they did not yield to such abnormal propositions.

Sir Roderick Murchison paid high tribute to Mr. Selwyn's talents. It had been believed by European writers that gold veins diminished in richness as they descended. Mr. Selwyn saw reason to doubt the invariability of such a rule. This "skilful observer" (Sir R. Murchison wrote) "infers that the quartz veins of the Silurian rocks of Victoria are older than the granites, (and that) although no very reliable evidence exists of their increasing downwards very greatly in richness, neither is there any evidence whatever in Victoria which would enable us to state that any vein rich at the surface will die out, or suddenly become unprofitable." Sir Roderick Murchison, while qualifying his views in a new edition of his 'Siluria' (1859), said :

"In bowing to the reasoning of a sound geologist who has so carefully explored our most auriferous colony, and in necessarily modifying my former suggestions respecting the profitless nature of gold-mining in the solid rocks of Victoria, I still adhere to the belief that, in general, gold veins diminish in value as they descend; (but) in modifying a portion of my views, I readily admit that inasmuch as the broken or drift gold of Victoria exceeded anything of which we have

a record in history, so it is a fair inference that the quartz reefs in the solid rock of the same colony, from the higher parts of which the richest drifted materials were derived, may prove much more remunerative than those of other countries."

In spite of this testimony to the worth of the "sound geologist" of Victoria, designing persons scattered insinuations against him. Incapable of any low art in order to obtain popularity, he heeded little when he was accused of speaking insolently of those "deep leads of gold" which he had converted Sir R. Murchison to respect. Intrigues conducted by persons not worth naming were, however, permitted to undermine his position. A Ministry of Mines was created in 1860, and the first Minister was Mr. J. B. Humffray, the agitator at Ballarat in 1854. In 1868, while McCulloch was Premier, another Minister of Mines informed the "sound geologist" that his services would not be required after the end of the month. Mr. Selwyn, fully aware of the intrigues conducted against him, did not notice them, but pointed out that, when he was induced to sacrifice his position in the survey of England, the land revenue of the colony was under Imperial control, and by analogy to Imperial usage his position might reasonably be deemed secure during good behaviour, but McCulloch was as surly as his colleague. Fortunately there were wiser Ministers in Canada than in Victoria. Unknown to the plotters against him, there had been sent to Selwyn an offer of the post of Director of the Geological Survey in the Dominion. Victoria lost one of her ablest officers and most estimable colonists, but he was not ruined. His dismissal was a forecast of more wholesale proceedings in 1878, for which motives of economy were to be disingenuously pleaded as they were pleaded in the case of Mr. Selwyn.

The Martin Ministry which passed the Public Schools Act, in 1866, had the honour of extending the municipal system of New South Wales. More than thirty municipalities had been formed under a permissive Act of 1858 passed by a Cowper Ministry, but a check had been sustained. Soon after Martin's comprehensive measure was passed there was (1871) a large addition to the number of corporations. In 1881 about ninety

dotted the interior and encircled the principal towns already boasting their Mayors and civic state.

The senior Corporation—that of Sydney—was unfortunate, and had the reputation of being ill-managed. Abolished in 1853, and supplanted by three Commissioners—it was re-established in 1857, but did not maintain respect or prove its sufficiency. More than once the Government advanced money to enable it to redeem itself from debt. Once (1875) its estate was sequestrated by order of a Commissioner of Insolvency. But there is a soul of goodness in principles of local government which contends against dissolution. They survived the tyranny of Norman sovereigns, and the corruption of later days. They were reluctantly adopted by the colonists when Sir George Gipps strove to graft them upon a community long accustomed to obtain from the public Treasury, and not from local rates, the means for local improvements. He could not induce the rural districts to adopt them, although many of the residents knew that each fresh settlement in the United States claimed and exercised them from the day of its birth. But when once established they took root in Australia, and the diversity of forces which they bring to bear in Parliament may yet be the means of warning the colonists against that dependence upon the Exchequer which makes the industrious the slaves of the indolent; and having first converted the executive government into the tool of the ignorant, ends in subjecting the liberties of the people to the caprices of the Government of the day.

When the contingent of Imperial troops was removed from Australia[1] the volunteer organization of New South Wales was greatly strengthened, and while in office, as well as afterwards, Sir James Martin was conspicuous in its support. An outer and an inner line of defence soon protected the metropolis nestled on the numerous promontories which jut into the picturesque harbour, and more than 2000 volunteers, containing riflemen who compete with the marksmen of the world, were arrayed to drive invaders back from that oldest city

[1] Mr. Parkes in 1859 moved resolutions condemning the retention of Imperial troops and advocating local arming. Mr. W. Forster, the Colonial Secretary carried by 39 votes against 11 an amendment affirming that the regular troops ought to be supplemented by a national militia.

planted by England in the South, which no one sees without admiration.

Throughout the Australasian group attention was drawn to the means of defence. In every colony some public men uttered warning notes. The Imperial Government was moved to assist with advice, and contributed in some cases towards furnishing vessels of war. Sir William F. D. Jervois (practised in the field as early as in 1841, and during many subsequent years, in designing works of defence throughout the Empire) was deputed by the Earl of Carnarvon to examine the capabilities for defence in Australia before he became Governor of South Australia in 1877; and his word was received as of authority by all who met him. Reports on such subjects are fortunately confidential; and it is sufficient to say that all patriotic colonists were grateful to the Government which sent so able a Commissioner to advise the local authorities. At a later date a Royal Commission, of which the Earl of Carnarvon was chairman, sat in London [1] for three years, and received evidence from all parts of the Empire on the defence of British possessions and commerce abroad. The subject has been spasmodically dealt with in the Australian colonies. The accumulated wealth in each metropolis was felt to be a temptation for marauders in time of war, and to deserve some safeguards always. But the mode of defence and the responsibility of providing it were problems which taxed the ingenuity of public men. Large sums were expended in fortifications at Melbourne and Sydney, but the changing conditions of military science bred frequent doubts as to the wisdom of the outlay. The Imperial Government were willing also to leave Imperial troops, which the colonies were ready to pay for; but, on the refusal of the Government of Victoria (under McCulloch) to recognize the right of the Imperial Commandant to mass the scattered companies for strategic purposes in time of need, and thus, it might be, withdraw them for a time from the colony which provided their pay, it came to pass that the ensigns of England were removed. Public opinion hardly concurred with the result, and urged the local governments to adopt measures

[1] The other members were Lord Camperdown; Sir H. Holland; Sir A. Milne; Sir L. Simmons; Sir Henry Barkly; Mr. Whitbread; Mr. Hamilton; Mr. Childers; and Sir T. Brassey.

of defence. Forts and bodies of volunteers sprung rather from the governed than from the governing. The Imperial Government lent precious aid by delegating Sir W. Jervois and other officers to advise with the Colonial Governments as to the best methods of defence. The difficulty has been to ensure concert between the colonies. The Federal Government which Wentworth aimed at in his early draft of the Constitution of New South Wales, and in subsequent efforts, has not yet been created, though languidly approved in public. No acceptable scheme has been propounded by responsible advisers in any colony. The truth of the maxim—*divide et impera*—is shown in the condition of the colonies, although not by the will of the Imperial Government, but in compliance with their own cravings, several of them were divided. Sundered for selfish purposes, they have discovered no means of combining for purposes common to all. It is almost pathetical to observe the efforts which they make to remedy their disjointed condition. There is no want of loyalty among them. When Dr. Lang formally proposed that New South Wales should sever the ties which bound her to the Empire, public opinion sympathized with the member of the Legislature, who thought that the proposition should be "thrown on the floor and swept out by the common hangman."

When Mr. C. G. Duffy more insidiously recommended that the colonies should be declared free from all connection with the Empire in time of war, he found no support. Whatever any designing popular leader may prevail upon any colony to do in times of excitement or emergency, there is no defect of courage or of loyalty amongst the people. They are proud of their heritage in the past of their common country. The great names of its heroes, sages, and poets, are theirs as fully and endearingly as they belong to the dwellers in England. But as regards measures to bind together what all wish to see united, no mode of life has yet been found. Common sense and constitutional custom alike forbid the Imperial Government to resume control of questions demitted to the separated colonies. It would almost seem that only the demon of actual war will rouse sufficient consciousness of danger to compel union for defence. Writers in the colonial press discuss the subject, and papers upon it are

read at the meetings of the Royal Colonial Institute in London. All agree that something should be done, but none have succeeded in convincing others what it should be. That the taxpayers of the United Kingdom should defray the cost of defending wealthy and populous self-governing colonies can hardly be suggested; and yet, dimly imagined, though not formulated, optimists in the colonies recognize in such a suggestion their only hope. That voluntary enthusiasm, unregulated by law and unaided by local taxation in the colonies, can suffice to ward off a well-planned attack cannot be seriously maintained, and yet when the subject is discussed it is found that loyal colonists have little to rely upon except their conviction that the private patriotism which poured out colonial contributions in aid of the Patriotic and other funds when England was at war will not be wanting in time of need. It is true that loyal sentiments abound, and that without them no defences can be relied upon; but it is not true that now, as in the days when men fought hand to hand, rich towns can be guarded against the devices of scientific warfare. It is the old fable of the bundle of sticks. Until the local legislatures assent to taxation levied for common purposes of defence, they must live in danger from any marauder who can undertake a costly expedition against them. They have not been altogether idle. Victoria led the way in providing for her naval defence, in which she was aided by gifts from the Imperial Government. She possesses an armour-plated turret-ship with 400-pounder Woolwich guns, and an armed frigate of 2730 tons, and has made arrangements to procure gun-boats and torpedo-launches. The Imperial Government presented the armed corvette 'Wolverene' to New South Wales in 1882. Including a torpedo corps, New South Wales has 2130 men enrolled on shore. Victoria has more than 3000. South Australia has two cavalry and two artillery troops, and 800 infantry, besides 1000 Rifle Volunteers distributed throughout her territory, and has arranged for the procurement of a war-cruiser and of torpedoes. Queensland has an artillery brigade, besides a regiment of infantry, and her extent of coast must speedily induce her to provide naval protection. Tasmania, when the Imperial troops were withdrawn, was defenceless; but in 1878 enrolled a volunteer force, and has artillery and infantry

at Hobart and at Launceston. Western Australia has, in Mounted and in Rifle Volunteers, nearly 600 men enrolled. The Imperial Government had in 1882 a flag-ship (7320 tons) and other war-vessels on the Australian station, besides gun-boats on service in the Pacific Islands. For convenient reference it will be necessary to tabulate the statistics of the several colonies, but a glance at the labours of each will be useful. The map shows the cordillera which frowns steeply down upon the coast of New South Wales. Unpierced by any colonist until Blaxland, Lawson, and Wentworth threaded their way over the Blue Mountains in 1813, the barrier was a defiance difficult in all places to overcome. At the foot of many steep hills might be seen masses of large limbs of trees which had been slung behind descending drays to check their movement. The difficult roads were traversed by toiling oxen dragging laden pole-drays. In dry seasons carcases of the patient beasts, outworn to death, tainted the air. There had been speculations about railroads, but the cost was supposed to forbid them. The revenues were insufficient. Gold had not then been found in the soil, nor had the colonists discovered how to raise loans in the London market. Yet it was urged, and began to be accepted as true, that a railway over a mountain track, when once made, would be less costly in the end than the making and repairing of the crumbling roads which sustained a traffic, dilatory always, and often marred by disaster. Moreover, at the far side of the mountains lay the rich pastures which, even in the time of Governor Gipps, fattened more live stock than all the lands of the colony on the Eastern slopes, and daily abounded more and more in beeves and flocks. On the South one main road coursed over the more traversable hills by way of Goulburn to the valleys and plains of the Murrumbidgee and the Lachlan. To the West costly embankments and cuttings traversed the less practicable steeps towards Bathurst; and thence by gentle declines the northern watersheds of the Lachlan, the Bogan, the Macquarie, and the Castlereagh, were reached. The rich valley of the Hunter river was kinder to man. There were only a few steep hills near the dividing range at Murrurundi, where, on the Page river, an affluent of the Hunter, the great North Road led to the luxuriant Liverpool Plains, the Nammoy,

and other tributaries to the Darling not estranged with Queensland, and the bracing table-land called New England. Where the sources of the affluents of the Hunter descended from the Munmurra there was easy access across the moderated dividing range, on the other side of which the waters of the Talbragar flowed to the Macquarie river, and found their way to the Darling. The mountain barrier was scaled by minor roads availed of by a few persons at particular places, but the three routes described were the arteries by which the commerce of the interior was borne, and these three routes the public men of Sydney resolved to convert into railways. Credit in London followed increase of population and wealth in the colony; and by credit it was determined that the mountains should be overcome. The pigmy private scheme of raising £100,000 to form the Goulburn Railway seemed mean. Though the first turf was turned in 1850, the distraction of labour to the gold-fields in 1851 strangled the project; and after a few years the Government purchased the rights of the Company, and also of another Company which had undertaken to make a line from Newcastle to Maitland on the Hunter river. The railway between Sydney and Paramatta was opened in 1855; and, year by year, progress was made Southwards. Menangle, close to the Cowpastures, where old John Macarthur selected the Camden Park estate, Mittagong on the height of the range, Goulburn (1869), and Wagga Wagga (1878), were successively reached on the South line. In 1880 it was prolonged to Albury, the border town on the road to Melbourne. The western line, by Penrith (1862); the Weatherboard (1867); and Bowenfels, reached Bathurst in 1876. The northern line by Maitland (1858); Singleton (1863); Murrurundi (1872); and Tamworth (1878); brought the dwellers at Liverpool Plains, and at the Southern part of the great table-land of New England, within easy access of the port of Newcastle. The mountain barriers were conquered, and the interior was within command. Other extensions secured the victory, but it was won when the iron horse rushed over the forests and the plains watered by tributaries of the Murray and the Darling.

Some politicians in Victoria were unable to separate the desire of New South Wales to open a railway to the Murrum-

bidgee, from a scheme to attract from Victoria the traffic which the inhabitants of the district known as Riverina[1] had conducted, and the conduct of some public men in Sydney encouraged the suspicion. Melbourne was the nearest port to the district. Its wool was shipped thence, and from Melbourne it derived supplies. A few talked of separation, but the bulk of the settlers were more prudent. At one time they conceived a plan of obtaining special establishments for the "Riverina Province." A Superintendent, a Supreme Court, were to be theirs, and their petition to the Sydney Legislature prayed for ten members to be chosen by themselves for the New South Wales Assembly. The Darling was to be canalized, and the balance of the local revenue was to be rigidly expended on the spot. They asked for concessions with regard to pastoral leases, and claimed pre-emptive right over portions of their runs. Their petition was presented in 1864, and they had numerous friends in the Parliament. The territory] then contained nearly 3,000,000 sheep, and 500,000 cattle, but the inhabitants were only 22,000 in number. Mr. Martin was Premier at the time; Mr. William Forster was Colonial Secretary. Mr. John Robertson, the author of the Land Acts of 1861, was in opposition. Dr. Lang was always in favour of separating any district from any controlling power. Disunion was to him the first law. But cravers for separation could scarcely hope for success. The powers reserved for the Queen, in the Constitution Act, to erect into a separate colony or colonies portions of New South Wales were limited to the Northern boundary. The consent of New South Wales would be essential to permit the severance of Riverina; and, if the severance could be procured, the new province would be an inland territory. For Customs' revenue it would be at the mercy of its neighbours. To impose double duties on articles crossing its boundary would be futile or ruinous. Contraband trade would run riot over a boundary encircling a vast territory inhabited by 22,000 persons sparsely distributed. Alliance with any other colony would leave the district in the

[1] The extensive area through which the Murrumbidgee and the Lachlan found their way to the Murray, and by West and North extending to the Darling territory, received this name in ordinary conversation. The level space between the Murrumbidgee and the Murray was included in it.

same relative difficulty as that against which it protested in 1864. Alliance with Victoria might subject the pastoral tenants to worse evils than those of which they complained.

The member for Balranald, Mr. A. Morris, moved (16th February, 1864) resolutions founded on the petition of his constituents. Mr. John Robertson controverted the resolutions, and suggested that they should be shelved. Dr. Lang supported them; and, after adjournment, the Colonial Secretary moved "the previous question," by which, after long debate, the resolutions were shelved by 27 votes against 11. The petitioners devoted their energies, not to chimerical efforts for separation, as some discontented spirits desired, but to obtain consideration for their wants, and the Government by degrees thrust forward the railways in the manner already described. Public works were carried on meanwhile in the district, and the extension of Circuit Courts abated the grievance of residents who had been put to great inconvenience and expense when absenting themselves from their homes, and travelling far to obtain justice.

Public men in Victoria, who had obtained separation when their numbers were so small that any boundary accorded to them was sure to be contracted, and their successors who ruled the land in later days saw with dismay the result of their impatience and legislation, as Riverina became daily drawn by stronger ties to the metropolis of New South Wales. The very wealth of Victoria was distracted to Riverina and Queensland by the hostility which Victorian Ministries displayed against graziers, who, ostracised by local legislation, were driven to new pastures, and enriched other colonies by their enterprise. Abundance of coal in New South Wales enabled her to reduce the working expenses of her railways far below, in that regard, the cost in Victoria, where only thin seams had been found near Cape Paterson, at a locality which made it more costly to raise the mineral there than to import it from New South Wales by sea. Nevertheless Victoria carried her railways to two points, Albury and Echuca, abutting on Riverina; and though the Government could proceed no further, private enterprise availed itself of natural advantages in connecting Riverina with Melbourne. A company obtained permission from the Sydney Government to form a railway from Echuca to Deniliquin. It was opened in

1876, and the traffic it commanded stimulated New South Wales to hasten the construction of a line diverging from Junee to secure the trade of the lower Murrumbidgee. The bonds which connect the two colonies are natural; their separation interferes with healthy circulation on both sides of the artificial boundary.

Two circumstances conduced much to the rapidity with which flocks and herds were spread and tended on the wild lands of the interior. Throughout long years the forests of the Eastern slopes to the Pacific, and the hilly nature of the country, compelled the colonists to keep their sheep in small flocks. One man shepherded throughout the day a flock of three or four hundred sheep, and folded them in hurdle-pens at the station, where a watchman slept in a watch-box near the hurdles at night, and by day kept house in the hut which was the common home. The hurdles were continually moved from place to place to ensure cleanliness; and with the help of the two or three shepherds the watch-box was moved also. The number and size of the flocks was regulated by the nature of the country or the area at the command of the grazier. When the champaigns beyond the sea-coast watershed were reached, larger flocks were at once formed. A shepherd could more easily observe his charge there, though a thousand in number, than amongst the forest ridges of the settled districts. But still the flocks were folded at night in hurdles, or in a well-fenced permanent enclosure kept clean. The native dog was the dreaded foe which made it necessary to secure them. It was not a wastrel, straggling behind, that contented him. If, as sometimes happened, a shepherd lost his flock, the wild dog would rush upon them, and not content with worrying one, would inflict mortal wounds upon many, returning at night to his prey. Then master, overseer, and all available servants went abroad to search for the lost sheep, and the keen sight of a native was inestimable in seeing them afar. Traps of various kinds were used to destroy the dogs, and many a transported poacher applied his art to save the property of the Australian master to whom he had been assigned. But the palliatives were local, and the dog mastered the situation. As the sheep were daily driven to and from their feeding-ground the grass for some distance from the shepherd's hut was so eaten and trodden down, that on the worn space it seemed sometimes

that there never had been or would be pasture there. The daily trampling of the flocks on their way to the distant grass defeated the efforts of nature to repair the ruin. The man who first proved the gain which would accrue from dispensing with the morning and evening march of the flocks was an ex-convict shepherd in the genial climate of Liverpool plains. His master was a shrewd settler on the Hunter river. The man offered to tend 2000 sheep if his master would increase his wages considerably, and allow him to obtain his food at any of the stations at which he might call for them. He required no hut and no aid from a watchman at night. He would cook his own food, as other travellers did when they paused on a journey. The master agreed. The man wandered with his lazy and contented flock to rich pastures within the run for which his master paid a license-fee to the Government, but which were mostly out of reach from any of the fixed stations. The flock grew fatter and lazier; the wool was improved in quantity, and to a certain extent in quality, inasmuch as the sheep escaped the hardships which sometimes injure the growth of the fleece.

But the successful skill of one man could not be imitated throughout the territory. His well-trained collies and his own peculiarities enabled him to defy the native dogs, but there seemed always a risk that the fine flock might at some time be decimated. Gradually the truth dawned upon graziers that the wild dog might be destroyed by poison. When gold was found, and shepherds abandoned the crook for the pick-axe, it became impossible to tend sheep in the accustomed manner. As the prospect of gain at the gold-fields became a rough measure of the rate of wages in all occupations, the increased expenditure would have been such that, even if he could have found shepherds, the grazier would have been unable to pay them. Out of the nettle danger he plucked the flower safety. Shepherds could only be dispensed with if the runs were fenced. Irretrievable confusion would have ensued (even if there had been no wild dogs) by letting flocks roam at large. Not attached to any spot by affection they would have wandered without restraint, and have been inextricably mixed with those belonging to distant neighbours. The cost of fencing was a severe tax, but the cost of overseeing sheep within enclosures of great size

wherein they might roam at will, feed at pleasure, and rest or sleep at pleasure, would be diminished incalculably. They would also thrive better. Dogs were destroyed throughout the land by distributing poisoned baits. Baits were drawn across the runs to guide them to their destruction. Strychnine relieved the squatter of the enemies whom neither traps nor sporting dogs had succeeded in exterminating. Runs were fenced in. Logs and boughs were cut down in the most convenient places, and laid along the boundaries to form "brush fences." Boundary-riders were employed to visit them, and repair any gaps caused by subsidence, accident, or wilfulness. The rough fences in time gave way to wire fences, and where timber could not be procured, wire was used in the first instance. Dividing fences were added as soon as possible, to separate certain sheep. The pastoral advantages of the land were enhanced. What dire necessity enforced was economical in the end. The new method of sheep-management speedily became common throughout Australia, although the old custom lingered in certain districts longer than might have been expected, in face of the admitted fact that land judiciously fenced would maintain twice as many sheep as could be kept upon it in flocks followed by shepherds.

The knotty question of the sale and occupation of the waste lands so freely handed to the colonists by the Crown was destined to be dealt with by Mr. John Robertson, who when first elected in 1856 advocated free selection over all Public Lands. On the introduction of a Land Bill he endeavoured to insert a clause providing for this disastrous principle over all land "surveyed or unsurveyed." For this he then obtained insignificant support, although he was instrumental in defeating the Bill with the aid of those who disliked it on other grounds. His energy and knowledge of affairs commended themselves to the needs of Mr. Cowper, and he was taken into the Ministry in 1858. Mr. Martin, who was Attorney-General in Cowper's Ministry, had previously carried a measure to increase the assessment on stock depastured on Crown lands; and Mr. Robertson signalized his accession to office as Secretary of Lands by issuing forthwith a regulation subjecting all future pastoral leases to such conditions as Parliament might impose. In 1860 Mr. (afterwards Sir) John Hay carried, by a small majority, an

amendment which permitted selection "after survey." There was a dissolution. Robertson appealed to the people in favour of "free selection before survey," and introduced his Land Bill, which was made the bone of contention between the two Houses in 1861. After the reconstruction of the Upper House he carried two measures "for regulating the alienation of Crown lands," and for "regulating the occupation of Crown lands," with which his name was identified. He succeeded in excluding from them any limitation of selection to proclaimed agricultural areas. To ensure their sufficient advocacy in the Council he resigned his seat in the Assembly and went to the Upper House, where he piloted them safely, and they received the Royal Assent in October 1861. Monuments of his industry and capacity, which for many years no other Minister could touch with success, they long remained the land code of the colony, which only he could persuade a majority to modify. But popular as he made the demand for "free selection before survey," it poisoned the springs of government, defrauded the revenue, was the agent of demoralizing the people, and scattered them in places remote from good, and subject to the worst, influences.

All the evils which Gibbon Wakefield had predicted from such a perversion of the administrative functions of the State, as the disposal of land indiscriminately at an insufficient price, afflicted New South Wales with a force modified only by the inexorable past, in which the bulk of the desirable soil within many days' journey from the coast had been alienated before Mr. Robertson's measures were enacted. The dispersion of the early settlers at Swan River struck from Wakefield the spark which kindled other men's minds, and arrested for ever the improvidence of granting enormous tracts to individuals in whose hands they remained a waste. Though Robertson's free selection purported to distribute the lands to the many instead of to the few, the want of precaution as to price entailed innumerable evils. Men selected land at the low rate prescribed, not in order to cultivate it, but with a view to sell it to some affluent neighbour at a higher price. By fraud some graziers selected vicariously, kept up the payments made in the name of their agents, known in common speech as "dummies," and obtained a transfer when the title had accrued. The Act permitted any

"person" to select. Names of numerous children, some only a few months old, were used. Relatives, real or fictitious, were similarly availed of. Thus thousands of acres were amassed in one hand under an Act of which the purview limited the selection by one person to 320 acres. Residence was required, and improvement at the rate of £1 an acre. Moveable or worthless huts, in which a man, scrupulous to seem truthful, could remain a few hours to justify his claim of residence, were used to imply occupation, as "dummies" were put forward for deception as to "person." The opponents of the measure pointed out the fatal facilities afforded to fraud, but its supporters denounced all objections as devices of the friends of the squatters whom Earl Grey's Orders in Council had unjustly foisted upon the lands. Reason, if not silenced, was overborne. Yet after 112,000 selections had been completed it was found that only 19,000 had residents upon them. The State had lost the difference between its minimum price and that which the speculator, fraudulent or honest, had been willing to pay to the outgoing selector, who often proceeded to re-enact a similar deception elsewhere. The odium attached to the leases of the squatters increased the popularity of the scheme for squandering the freehold upon others, and many selections were made on portions of leased lands which it was hoped the squatter's necessities would compel him to purchase from the selector to protect himself from damage. The demoralization of the system might be traced from its earliest stages to the time when influence was brought to bear upon members of the Legislature to induce them to remit or tamper with the deferred payments due by selectors, and with the accumulated interest due by defaulters.

The main features of the Alienation Act were that "one person" might select from 40 to 320 acres of any Crown lands (excepting town, suburban, reserved, &c.), at a price of £1 an acre, and pay one-fourth of the value as a deposit on application, having three years in which he might pay the balance without interest. After three years he was chargeable with interest at five per cent. Residence and improvement to extent of £1 an acre were required. Certain lands might be reserved by the Government, but practically the waste lands were submitted to selection without regard to intrinsic value or to situation.

There were some reserves for townships, and other purposes; and lands within them, or unselected land, might be sold by auction at a minimum upset price of eight pounds for town lots, two pounds an acre for suburban, and one pound for country lands.

But Mr. Robertson, while sowing the bitter seed of indiscriminate selection, was actuated by no ill-feeling towards others; nor did he contemplate the demoralization which ensued. His Crown Lands Occupation Act was professedly framed so as to meet the just requirements of the pastoral interest. He divided the lands of the colony into three classes: first class settled (the old "settled districts" of Earl Grey); second class settled; and (the great bulk) unsettled districts as "all other Crown Lands." In the second and third classes leases might be issued for terms of five years. He devised an elaborate scheme for appraising "the fair annual value of a run for pastoral purposes," exempting from computation the value of improvements effected by the claimant for a lease.

Briefly as the Acts may be described, they, and the regulations promulgated, were intricate. Their faults and the frauds committed under them were palpable, and Mr. Robertson himself in 1875, Premier of the eighth[1] Ministry formed after the passing of the Bills, was constrained to amend them. Personal selection was enforced; vicarious selection and illegal contracts were made misdemeanours; no one under sixteen years of age was allowed to select; forfeiture of conditionally-purchased (*i.e.* selected) lands was exacted in certain cases; and various other provisions were found necessary by the astute author of the Act of 1861. He also enlarged to 640 acres the area which could be selected by one person; and compliance with conditions on one allotment enabled the grantee to select again. Stoppage of vicarious selection was not the only necessity. A portentous danger had become apparent. Until 1872 the selections had not comprised 360,000 acres in any year. In 1873 and 1874 they sprung to 1,391,719 and 1,586,282 acres; and the estimated amounts due, or to fall due, upon them, in December 1874, were £4,349,598.[2]

[1] He had been a member of five; and was Premier of one of them in 1868.

[2] 'Essay on New South Wales.' G. H. Reid. Government Printing Office. Sydney: 1876.

Though the author of the Land Act had imbued it with baneful principles—had subjected to plunder the public estate which should have been administered with circumspection; had created an army of sturdy impostors, before whom the Government might be found a feeble creditor; had facilitated the frauds by which, under the pretence of forming an industrious yeomanry, the State had indirectly alienated to graziers, for a fraction of its value, land which, prudently parted with, might have been sold for many millions sterling, and have paid for hundreds of miles of railway—he had an honest heart in his work, and joined in amending it. Invited frauds, and prompt demoralization; cupidity of selectors, sometimes sharpened by a sense of gratified revenge; cupidity of squatters, resorting to mean artifices of self-defence by immoral if not illegal acts—these were taints which no amendments could wash away. There was yet another consequence which ensued more speedily than the worst forebodings had predicted. The reckless creation of legalized haunts removed from the observation of the police, from the advantages of schools, from the visits of pastors, and from the restraints of society—created homes for harbour of villainy. Any scoundrel anxious to live beyond the purview of the authorities could "select before survey" the most convenient and secluded nook for the perpetration of his own or his comrades' villainies. There was no check upon the multiplication or dispersion of such dens. They were scattered wheresoever they might best suit the purposes of thieves, and thwart the operations of the police. The mode of disposing of Crown Land preferred by the Sydney Legislature at the dictation of Robertson, and initiated in the Victorian Parliament at the instigation of Duffy and others, led of necessity to desecrating with the names of homes the lairs of robbers and murderers. There was no law, no authority, in the land which could prevent the most hardened ruffian from choosing the place most suitable for his schemes; where (under the protection of the ill-omened law) he might, in his cheap and dirty castle, defy the police. They who remembered the days when Governor Darling's Bushranging Act was needed to repress the dangers which beset the colonists, who knew that when Governor Bourke desired to modify that Act the universal sense of the free community compelled him to

renew it in 1834; and remembered also that the Committee of Inquiry on Police reported in 1835, that the scattered occupants of Crown lands in remote districts "raised property by depredations, sold spirits, and contributed to debauchery," and abetted "nefarious practices" in their homes, "screened from general observation" on nooks of Crown lands occupied without authority—were deemed old-fashioned when they predicted evil.

Sir Richard Bourke had checked the mischief by a measure (1836) to prevent unauthorized occupation of Crown lands. The military mounted police, aided by the laws in restraint of bush-ranging and of unauthorized occupation of waste lands, effectually crushed the evils of former days. But the military cavalry had long been practically cashiered by the economical care of Charles Cowper. Yet, as the Crown lands were under pastoral occupation, it might have been supposed that the country might be free from irregular settlement of such lawless characters as were designated by the police report of 1835. The State could reclaim for sale the land leased to squatters, but if it obtained a just price it might reasonably hope that wholesome occupation by industrious yeomen would be the result. The State, if wise, would naturally sell lands in appropriate localities, so that the blessings of Christian life might go hand in hand with the government in providing for the welfare of well-doers. Thus was South Australia acting at the time.

Mr. Robertson's Land Act abnegated the function of Government. It legalized that promiscuous and secluded occupancy which had been stamped out in 1836, and put weapons of offence and defence in the hands of many daring scoundrels. The rapidity with which those weapons were used brought speedy retribution. Gangs of active young thieves, provided with aptly selected lairs, and resorting to similar receiving houses, revelled in the newly-acquired facilities accorded by Mr. Robertson's attempt "to make better provision for the alienation of Crown lands." [1]

From 1862 to 1867 columns of newspapers were filled with narratives of robbery and murders. The disgraced Governments of the day were incapable of finding a remedy, until Mr. J.

[1] Preamble to the Act, 25 Vict. No. I. 18th October, 1861.

Martin cut the Gordian knot by an Outlawry Act so incisive that, in a brief space, temptation to informers and immunities of the police relieved the colony from enormous expenditure and much shame. Sergeants and policemen, travellers, drovers, miners, and others, had fallen victims to the cowardly revenge or the daring resistance of the gangs who rode about the country like conquerors, earning popularity amongst the harbouring selectors by lavish use of the money which they stole from travellers, from coaches, or by robbing a gold escort.[1] A reign of terror prevailed throughout a wide district. In five years more than forty lives of robbers and others were known to have been lost. This was the first penalty, and purchased at great price. The wider demoralization and the more lasting decline which are incident to banishment from school and Church might have left deeper scars if, under the Ministry of Mr. Martin, in 1866, Mr. Parkes had not alarmed the public by showing the barbarism in which children were being reared. The Education Act of that year afforded facilities for imparting to the children assembled in the schools the religious instruction which parents desired that they should have. That the duty of providing for that separate religious teaching, which the secular character of the Government prevented it from bestowing, devolves upon parents or friends, detracts in no manner from the just praise due to the Ministry which passed an Act tending, it may be hoped, to redeem the colony from some consequences of its Land Act.

It was not only by selection that lands were alienated in 1873 and 1874. Large purchases were made by auction at the same time, nearly three-quarters of a million sterling being paid into

[1] Eight of them in 1862 robbed an escort of about £21,000 of gold and £7490 in bank-notes at Eugowra in the Lachlan district. They were good horsemen, and dashed from place to place with rapidity. They had harbouring friends placed by free selection wherever needed. At Eugowra they delivered a volley from ambush and rushed upon the coach. Similar disastrous results ensued in Victoria, although a more compact territory gave better facility for coping with them. Some years elapsed before the youth of Victoria entered upon the license offered to them. But when they did, under a young active ruffian, himself a selector, it was found that the class which harboured him had almost undisputed possession of the mountainous district on the border of which he committed many acts of rapine and murder. It was officially reported that his gang, four in number, caused a public expenditure of £50,000.

the Treasury in the latter year. The land alienated in the colony at the date of the amending Act of 1875 (including that granted before the raising of the upset price to £1 an acre) [1] was 19,250,000 acres—the amount realized for it was £15,800,000. This sum, and loans amounting to £11,470,000, had enabled the population (606,000 in 1875) to execute numerous public works. The general taxation in 1875 was £1,138,901. The number of cultivated acres was only 451,000 acres, while at the same date, under a sounder system, South Australia cultivated 1,444,586 acres, having sold 6,398,823 acres for about the same number of pounds sterling.

In 1879 the land alienated in New South Wales was about thirty-one millions and a half acres; the amount realized was £28,420,000. The general taxation was £1,272,000. The population was 734,000; the acres cultivated were 635,000; the wheat raised was 3,613,000 bushels. At that date South Australia had 259,000 souls; had sold 8,478,000 acres for £11,445,000; had 2,271,000 in cultivation; and produced more than 14,000,000 bushels of wheat.

It could not be expected that the large interests involved in the creation of a vast body of debtors to the Crown would leave the Government free from assault by those who desired to cancel their indebtedness, and those who intrigued for support among the debtors. Many ministries essayed the task of amending the land laws; some succumbed under it. In 1880, Sir John Robertson, a member of the Parkes' Ministry, passed another Land Bill, after much amendment and discussion between the Houses. It was alleged that it tended to remit a portion of the selector's dues, but he maintained that the public claims would be enforced. A diminution of the amount (£1) formerly required to be expended on improvements to ten shillings an acre was hotly opposed as a first step towards a remission of the claims of the State. It was argued that the interest due would be repudiated if possible, and that success in such an attempt might lead to a renunciation of the principal. The balances due altogether on conditional purchases were about £9,000,000 sterling; the interest due in 1880 exceeded £200,000, and in future years was expected to amount to £450,000.

[1] Fractions of thousands are dispensed with when millions are cited.

After the new law came into force prophecies that repudiation would be attempted were quickly realized. Delegates from selectors attended a convention in Sydney with a view to urge, if not constrain, Mr. Hoskins, the Minister of Lands, to remit accrued interest; and Sir John Robertson, who usually had the courage of his opinions, and was then on a tour in Riverina, spoke boldly against any abandonment of its dues by the State. He addressed a meeting composed principally of selectors, and claimed credit for the vicious principle under which he had in 1861 abnegated the functions of the State in administering the public lands and subjected them to indiscriminate plunder. Every man was the best judge for himself, and if people would "sit down on unfit land, they would have to clear out for their stupidity." On that point he had battled against "tremendous efforts" of those who wished to limit selection to "agricultural areas." On the plea that land required for public purposes, or specially valuable, was excluded from selection, he was bold enough to deny that selection had been indiscriminate. He had at the same time denied that the selectors would refuse to pay what they "bargained to pay."

"In these days, when an attempt was being made to avoid the payment of interest by free selectors, he was glad to see that some disclaimed repudiation. The Government in that direction must consider the interests of the whole people. . . . What had to be considered was whether the people who had not got the land would be willing to pay this £450,000 per annum interest for those who had."

It remained to be seen whether other members of the Legislature would concur with him, and whether at an ensuing general election the extent of the colony and its diversified interests would avert from it those evils which narrower limits, larger population, and a somewhat different class of public men, had caused elsewhere.

Up to 1880 the metropolitan and long-settled districts had not, in New South Wales, made common cause with the wild demands of any class in the interior, whether composed of gold-miners or selectors of land. Sir Henry Parkes, instead of proposing to plunder the reputed wealthy in order to subsidize the

complaining selectors, was able to declare on the eve of a general election (1880), that no Government could abandon its claim to the payments lawfully due from selectors without committing a breach of trust to the rest of the people. General prosperity, and contentment with a Government in which Parkes and Robertson appealed to the country as friends instead of as foes in 1877, caused the return of a majority favourable to the Government. The advocates of repudiation in Victoria were disappointed at the want of sympathy displayed in New South Wales. If they had known how large a proportion of the electorates of that colony were interested in the equity of taxation they could hardly have expected a different result.

Gradually the public learned the truth of the arguments which had been urged against "free selection before survey." At the end of 1880 there had been 141,329 selections, comprising 15,677,070 acres under the Land Act of 1861 and its successors. It was found that a large proportion of the selections, *i. e.* 36,628, comprising 4,003,391 acres, had lapsed, or had been cancelled or forfeited: and the public knew that much land had passed into private hands [1] in a manner not contemplated by the propounders of the new theory for parting with the property of the State. What argument and prophecy failed to teach was taught at last by facts.

Sir Henry Parkes, partly on grounds of health, journeyed to Europe in 1882, was received with distinction as the head of a strong Ministry, and on some occasions spoke as if his position enabled him to patronize or to reform the antiquated institutions of England. He returned to an apparently strong Ministry, and a session opened with flourishing financial prospects. An amending Land Bill, fathered by himself and Robertson, consolidated existing Acts, and introduced amendments, not to destroy, but to perfect the system embodied in them. The Assembly, after long debate, rejected it by 43 votes against 33; and the rejection was founded on disapproval of the principle of free selection, so long endured by the community. A dissolution ensued. Parkes was defeated in East Sydney, where four oppo-

[1] The loss on the 11,673,679 acres parted with by the Crown under the system of selection may be surmised, but cannot be calculated.

sition members were returned, and he was only able to secure a seat for a remote district where a candidate retired in his favour. Sir John Robertson resumed his seat, but not without a contest. Mr. Stuart, the leader of the Opposition, boldly formulated his views. Free selection subjected the pastoral tenant to plunder, and the *bonâ fide* selector to oppression;[1] while rancour was engendered, and fraud was common. He would divide the territory into zones, in the outermost of which he would, while retaining the freehold, afford security for pastoral avocations, and agriculture would prosper elsewhere in suitable areas. Security of pastoral holdings would enable the Government to derive larger revenue from the holders. The country responded favourably to Mr. Stuart's appeal, and when he became Premier in January 1883 he appointed a Commission (Messrs. Augustus Morris and George Ranken) to report upon the whole condition of the public lands, their tenure, and their alienation.

In general progress, apart from the evils caused by rash legislation, the community maintained a high reputation for liberality, honour, and hospitality. They awarded £10,000 to Hargraves, and in 1877 settled a pension of £250 upon him. They gave considerable grants to the Rev. W. B. Clarke, whose geological labours were highly valued. Charitable institutions were largely supported. The Bench administered justice without fear or favour. The stranger was welcomed as a friend, and could find society yielding to none in any part of the world for grace of manner and tone; although the gatherings at the Governor's receptions had become less select than in the days when a Governor was not only the crown of the social, but of the political edifice.

When Prince Alfred visited the colonies the loyalty which greeted the son of the Queen was fervid, and when an assassin shot the Prince from behind (March 1868) the indignation of

[1] "If a pastoral tenant could by an outlay of money improve his run by well-sinking, dam-making, or in any other way, he dared not do it. Why? Because in the first place it brought an army of locusts about him, in the shape of free selectors, who dotted themselves all round about him, and compelled him in self-defence to play game against game, and move against move. The whole policy seems to me an immense game of chess. It is one trying to checkmate the other, causing confusion, expense, and waste of labour." (Speech of Mr. Stuart.)

the crowd would have torn the man limb from limb, but for the intervention of bystanders and the police. The Premier (Mr. Martin, the Attorney-General) conducted the prosecution with temperate decorum, and the man was hanged for an attempt to murder, not because his intended victim was a Prince, but because such an offence, against whomsoever committed, was so punishable by the colonial law. It may be well to state here with regard to Mr. Martin, that in 1873, while he sat as Sir James Martin in opposition, the post of Chief Justice became vacant by the resignation of Sir Alfred Stephen, and Mr. Parkes, conscious of the disaffection which his act might cause amongst his immediate followers, boldly offered the position to Sir J. Martin, and the talents which had for a quarter of a century adorned the halls of legislation, were transferred with general approbation to the Bench.

The statistical progress of New South Wales will most conveniently be scanned in juxtaposition with that of other colonies, but it may be mentioned that, in addition to the growth of cereals and ordinary farm produce, sugar was cultivated and manufactured largely. Not only coal and gold, but tin, copper, and iron were procured. In 1849 the coal raised was 48,000 tons; in 1859 it was 308,000; in 1869 it was 919,000; and in 1875 it was 1,254,000. Ships were built in early days, but the industry largely expanded as wealth and population increased, and without resorting to the conceit that happiness was dependent upon prohibition or restrictions, New South Wales saw her arts and manufactures prosper by allowing the energies of her people free scope in any direction which commended itself to their enterprise and good sense.

The tariff which Deas Thomson passed in 1852 aimed at reducing to the smallest number the articles on which, for fiscal purposes, and for them only, it was desired to impose Customs' duties. Until 1864 no serious attempt was made to destroy his handiwork. In that year it was found that eight successive Ministries, which had existed after 1856, had involved the finances in confusion. To meet a deficiency of £400,000, the Ministry [illegible]duced a tariff of a moderately protective character; the

[1] The [illegible]r. Martin) having been long notable for a tendency system of sel[illegible]tion, to which most of his political friends were

disinclined. The Assembly passed a Bill which the Council rejected. Free Trade was the battle-cry in New South Wales at the same time that Francis and McCulloch were resorting to violence to enforce protection in Victoria. Mr. Martin went back shorn of his strength, and in two months Mr. Cowper had formed a Ministry to guide the Free Trade majority chosen by the electors.

Mr. Parkes, having returned from England after a mission on which he had been despatched by Mr. Cowper, was again in the House, and contributed to oust the Martin Ministry. Mr. Cowper's Treasurer (Mr. T. W. Smart) proposed a Stamp Tax which was adopted, and a Package Duty which was also adopted, although Mr. Parkes, who supported the first, opposed the last.[1] Still the finances were in disorder. The session which began in January, and closed in June, 1865, was followed by another in October, and Mr. Cowper proposed (in December) a duty of 5 per cent. *ad valorem* on all imports, which was received with exultation by the protectionist minority whom Cowper had driven from the Ministerial benches, and with triumph by Cowper's friends. Their conduct was denounced by Parkes as "the triumph of the successful double-dealing and manœuvre of their slippery chief." If members returned under the auspices of the Free Trade Association would sanction the "downright political profligacy" of such a scheme, "farewell to all consistency in public life in the country!"

Maugre his protest, the scheme was adopted, and it was not until another Martin Ministry, which included Parkes, another Ministry under Robertson, and another under Cowper, which included Robertson, and another under Martin, which also included Robertson, had successively wielded power, that Parkes himself became the head of a Ministry, which in 1873 swept away, in a time of financial prosperity, the tariff which he had denounced as monstrous and injurious. The Sydney tariff of 1865-6 could not be called protective when compared with that of Victoria, but from the date of its repeal in 1873, curious eyes

[1] When first sent to the Council both Bills were amended there. The Speaker of the Assembly having ruled that though the amendments did not tend to increase the public burdens they were not such as the House of Commons would accept, Mr. Cowper laid the Bills aside, and introduced amended Bills which were passed without delay.

were bent upon the commercial and productive developments in the two colonies, adjacent in territory, but divergent in policy. Those who measure happiness by statistics may find food for reflection in the following figures.[1]

| | | Population. | Public Debt. | Exports. | Imports. | Tonnage Inwards and Outwards. |
|---|---|---|---|---|---|---|
| | | | £ | £ | £ | |
| N. S. Wales | 1873 | 560,275 | 10,842,415 | 11,815,829 | 11,088,388 | 1,762,478 |
| ,, | 1879 | 703,143 | 14,937,419 | 13,086,819 | 14,198,847 | 2,540,724 |
| ,, | 1881 | 751,468 | 16,924,019 | 16,049,503 | 17,409,326 | 2,786,500 |
| Victoria | 1873 | 772,039 | 12,445,722 | 15,302,454 | 16,533,856 | 1,519,015 |
| ,, | 1879 | 840,620 | 20,050,753 | 12,454,170 | 15,035,538 | 1,940,222 |
| ,, | 1881 | 862,346 | 22,426,502 | 16,252,103 | 16,718,521 | 2,411,902[1] |

The interest in the comparison is enhanced when it is remembered that in 1864 (when protective duties were first imposed in Victoria) the relative figures were in—

| | | | | | | |
|---|---|---|---|---|---|---|
| N. S. Wales | ... | 400,000 | 6,073,000 | 9,037,832 | 10,135,708 | 1,254,225 |
| Victoria | ... | 601,343 | 8,443,970 | 13,898,384 | 14,974,815 | 1,261,814 |

At this stage the narrative of events in Victoria may in some respects be brief, inasmuch as the chapter dealing with constitutional struggles has shown how the conception of securing healthy circulation by interfering with its natural channels had birth; how it was cradled by Mr. Francis, fostered by Mr. McCulloch, and pampered by Messrs. Duffy and Berry.

Sir Richard Bourke's Church Act, which applied to Port Phillip as a part of New South Wales, was repealed in Victoria in 1870. In 1857, in 1860, and in 1861, the Legislative Council threw out repealing Bills which had been passed by the Assembly. In 1857 the majority was only 14 against 13. There was no general desire for the abolition of State aid to religion, but the abolitionists (like the promoters of the Marriage of the Deceased Wife's Sister Bill in England), though few, were zealous, and succeeded in spreading a belief that the measure was liberal. Some among them contended that if the State could not claim to support a form of religion on the ground of its truth, which on highest motives the State was bound to acknowledge and support, it could not as a matter of duty, and ought not as a matter of reason, or of just administration, to support conflicting sects. Mr. McCulloch was Premier in 1870. His old comrade in enforcing protection,

[1] These figures are taken from the summary of Australasian statistics in Mr. Hayter's 'Victorian Year-Book,' 1881-2; and the Census of April 1881.

Mr. Francis; Mr. Archibald Michie; and Mr. T. T. A' Beckett; were members of the Ministry. Mr. Macpherson, who expelled a McCulloch Ministry in September 1869, and was himself expelled by McCulloch in April 1870, was received into the Ministry which McCulloch immediately formed. The abolition of State aid was to take effect after five years; and, to bribe the different denominations to consent to the prospect, the Bill proposed to enable them to dispose of and apply to their use all lands which had been granted to them, and from which the benevolent Latrobe had fondly hoped that, in murky towns, generation after generation would derive free air and health, as well as enjoyment and consolation. By the Constitution Act an absolute majority of the whole House was required for the second and third readings. The majority was obtained by eighteen votes against seven in the Council. If economy was aimed at the effort exhausted the Houses; for in the same year, the way having been previously paved by Mr. Duffy's inquiry concerning payment of legislators, a vehement supporter of Mr. McCulloch carried a Payment of Members Bill in the Assembly, and it was passed by a narrow majority in the Council. It was observed that the minority which opposed the abolition of grants for religious purposes voted against paying members of Parliament; and that the majority which effected the nominal saving voted also for putting it into their own pockets.

The question of education was often and long discussed. The dissipation of power, and the doubtful propriety involved in maintaining two Boards, working separately if not in antagonism, produced its logical result. Many men were weary of so anomalous an application of the machinery of the State. Various vain efforts were made by Mr. Haines, Mr. Michie, and others. The latter, as Attorney-General (1857-8), introduced, but was unable to pass, a Bill which contemplated an education rate, but left it to the inhabitants to pronounce (as had been the case with regard to municipal institutions) at what time they would adopt the system of rating. There was ample protection for the consciences of parents and children, and aid was not to be given to any school in which reasonable facilities for imparting religious instruction were not afforded to all clergymen, nor to any school

where any child was directly or indirectly compelled to take part in any religious exercise or class objected to by its parent or guardian. The State teaching was to be secular; religious instruction to be available outside of school hours, in the school buildings. Any parent who could not prove that he was in some way causing his child to be taught to read and write could be fined to the extent (and repeatedly) of twice the amount of the school fee at the public schools, at which, if the parent could not afford to pay the fee, education could be obtained free. Mr. Haines, the Premier, thwarted his colleague, Michie. Mr. O'Shanassy, loth to lose the flesh-pots of special grants, stormed against the Bill. The rating clauses, though optional, and the power to fine a man who would not cause his child to be taught, nor allow it, under a conscience-clause, to receive free education, would be "a renewal (he said) of one of the most objectionable and intolerant clauses of the old and exploded penal laws of England." The Assembly rejected such arguments. Mr. Michie carried the second reading of his Bill, but difference from his colleague Haines, a gradual loss of ministerial power in the House, and obstruction by Mr. O'Shanassy and his friends, amongst whom Mr. Duffy was conspicuous in endeavouring to remit the Bill to the limbo of a Select Committee, eventually choked it. The advocates of denominational schools, though not powerful enough to destroy the united system, succeeded in thwarting all endeavours to interfere with their own. Mr. O'Shanassy, soon after the loss of Michie's Bill, became Premier, and united education received no countenance from him. It was reserved for a man not in office to carry a measure which directed into one channel the resources of the Treasury.

Mr. O'Shanassy, the ardent friend of sectarian grants, was driven from office in October 1859. Amongst the charges against him was the abuse of patronage, of which the chief instruments were Mr. C. G. Duffy and Mr. R. D. Ireland, the first being Minister for Lands, and the second Solicitor-General. O'Shanassy was replaced as Premier by Mr. William Nicholson, the old opponent of transportation, and the "father of the ballot;" who, resolute in honourably dispensing public patronage, offended followers who had found previous Ministers more pliant. When, during contests between the two Houses upon

a Land Bill in 1860, Mr. Service and Mr. Francis resigned, the Ministry was seriously weakened in public estimation, although all the causes of the defections were unpublished. When, after a recess of two months, Parliament was re-assembled, a plot had been hatched by Mr. O'Shanassy and certain malcontents in the Assembly, to get rid of the Administration. If he had moved a resolution of want of confidence it would have been rejected. He kept in the background, and put forward Mr. Heales (who had been generally his opponent in politics, but had been lured to desert Nicholson), and several others, amongst whom Mr. G. F. Verdon appeared.

The plot succeeded. Nothing was proved against Mr. Nicholson. The debate ought to have secured his position, but he was ostracised by votes previously arranged. The new Ministry was so completely without a leader, that when the successful conspirators met to arrange their plans they were fain by secret voting to determine upon whom the guidance of the incongruous majority should devolve. The choice fell upon Mr. Heales. In order to retain a convenient source of information, Mr. O'Shanassy secured the appointment of Mr. R. D. Ireland as Attorney-General. Clever, and unburdened with principles which would prevent his alliance with men of any principles or professions, Mr. Ireland had been O'Shanassy's Solicitor-General (1858-9).

Mr. Brooke was an intelligent adventurer, who had proffered his pen in aid of the Government in the days of Mr. Latrobe, and was equally ready to ply it in a contrary manner. Mr. Verdon, who with Brooke for the first time appeared in a Cabinet, had been a member of the Convention in 1857, and was to become the colleague of McCulloch in 1863. Mr. Humffray, the former delegate from the Ballarat Gold-fields, became Minister of Mines. Mr. J. M. Grant (Dr. Lang's old pupil) joined the Ministry soon after its formation. It sustained defeat (in 1861), when Mr. O'Shanassy thought his time had come. The majority against the Ministry was large in the Assembly. In the Council they could hardly be said to have a supporter. The Minister (Mr. R. S. Anderson) who represented them there as a responsible officer at the beginning of their career, had early in the year quitted them. Nevertheless, such was the

adroitness of the Attorney-General, Mr. Ireland, that Sir H. Barkly, the Governor, was persuaded by him to dissolve the Assembly within a year of its election, although there was no doubt whatever that there was a large majority in it ready to support a Ministry formed from its ranks; and although, if Mr. Heales and his colleagues should return with a majority after a general election, there was imminent prospect of antagonism between the two Houses.

For once the wisdom of Sir Henry Barkly appeared to sleep. The elections sent the Ministry back to Parliament, but their reputation as to financial unfitness enabled Mr. O'Shanassy to drive them from office. With characteristic effrontery Mr. Ireland, who had quitted the Heales Ministry after obtaining for them a dissolution, took the post of Attorney-General under O'Shanassy. Mr. C. G. Duffy went back to the Lands Department. The new Premier was (November 1861) at the head of a coalition, which his administrative ability enabled him to control, although it behoved him to guard against the intriguer, who, having betrayed former friends in Ireland, was not likely to flinch from ingratitude in Australia.

Mr. Haines, the accredited head of the party whom O'Shanassy had previously contended against, became O'Shanassy's Treasurer. Mr. Mitchell, formerly head of the police, and a nominee member in the old Legislative Council, accepted responsible office; Captain McMahon, Mr. Mitchell's successor as Commissioner of Police, accepted a portfolio without office. Dr. Evans added his sonorous power of debate. Mr. J. D. Wood was Minister of Justice. There were ten in the Cabinet; but those who knew them suspected that it would be controlled by the strength of O'Shanassy and the intrigues of Duffy and Ireland.

At a very early date Mr. O'Shanassy gave warning that his hand would be heavy on institutions he did not like. Mr. Haines had, like himself, been a virulent opponent of the national system of education. Before Mr. Heales left office he had corresponded with the National Board as to its financial requirements, and had on the 25th October, 1861, informed the Board of the amount which would be placed upon the estimates for the ensuing year.

Mr. O'Shanassy resolved to repudiate his predecessor's act;

and the manner of this breach of faith led to the abolition of the denominational schools which O'Shanassy desired to serve. Within a week of his assumption of office he called upon the National Board for a statement (not of their requirements, but) of their actual liabilities. They gave it. They had previously, at O'Shanassy's suggestion, informed the Treasurer that, unless the Government intended to enable them to continue their current payments to teachers, it would be necessary to give a (stipulated) month's notice to those who would be discarded by the refusal of the Government to pay their salaries. Mr. Haines, after a little delay, answered that he could "only suggest the advisability of at once giving the notice." Told that his delay had made it impossible to give the legal notice in time to apply it to 31st December, but (if thought necessary by him) it could be applied to 31st January, 1862,—he could "add nothing to his (former) suggestions."[1] These acts were warnings that with O'Shanassy, Haines, Duffy, and Ireland in power,—there was danger, overt and covert, to the cause not only of united education but of good faith. They had been so daring in showing their intentions that they defeated themselves.

The despised Heales, though out of office, found many others as well as his old followers ready to assist him in passing a Bill for the "maintenance and establishment of common schools"—and neither the capacity nor obstinacy of O'Shanassy, nor the wiles and energy of Duffy and Ireland, prevented the Bill from being transmitted to the Council on the 12th June, 1862. There it was passed without a division on the following day, and received the Royal Assent on the 18th, when Parliament was prorogued. It dissolved the Denominational School Board, and vested in a new "Board of Education" the property held by the National School Board. It provided that school lands and buildings held under trusts from the Crown to religious denominations should remain so vested, subject to power on the part of the denominations to sell them, and apply the proceeds to purposes akin to the trusts. It forbade the granting of public money in aid of buildings or repairs except on sites vested in the Board. It set apart four hours for secular instruction, but

[1] Victoria Legislative Council Proceedings. 1861-2. A. 6.

threw no obstacles in the way of imparting religious instruction at other times to children whose friends wished them to receive it. It prescribed the numbers requisite to entitle a school to receive aid from the Board. It enabled the Board to permit children whose parents or guardians were destitute to receive gratuitous education, as had been customary under the national and denominational systems; although in a country where wages were high, the remission of fees had been rare. It was customary for theoretical dogmatists to declare that all education ought to be gratuitous because payment of fees by some parents, and exemption enjoyed by others, would create invidious distinctions in schools and families. All who had been practically concerned with schools in the colony were aware that there was no foundation for such arguments.

There were two defects which clogged the utility of Mr. Heales' Act. One—that it was not expressly enacted that the Board might withdraw aid from any one of several schools which, though possessed of the minimum attendance of pupils, were so contiguous that all such schools were not needed—might have been overcome by departmental administration, or by a short amending Act, if the Government had been loyal to the principle of the law. The other defect—that the Government might appoint as members of the Board sworn foes of united or common education—was one against which Mr. Heales was warned in vain during the progress of the Bill. Mr. O'Shanassy availed himself of it in order to warp the measure from its purpose, and did not foresee that his temporary success would lead to a measure still more odious in his eyes. There had been on the defunct National Board members of various religious denominations, including the Roman Catholic,[1] who had laboured for the common good without fee or other reward than that desired from a sense of doing good to all, and seeking special favour for none. These, or such as these, should have been selected to administer the new Act which, in its main principles, continued the operations of the National (or Lord Stanley's Irish) system, such as it was when the righteous

[1] As a colleague, who saw the worth of Thomas Herbert Power, the author may be excused for recording his name as that of one whom the bigotry of others could not warp from charity and duty.

Archbishops, Whately of the Church of England, and Murray of the Church of Rome, lent it their sanction. The members of the defunct Denominational School Board had been appointed on different grounds. However honourable they might be, the tendency of their office was to make them crave, each for his own sect, as much public money as possible. The voracity of each for morsels was only checked by the fact that one denomination could not begin to swallow until the portion of each had been fixed.

Men of such disposition and training ought not to have been appointed members of the new Board. Yet they were those whom Mr. O'Shanassy appointed to administer a law framed on principles which they had ever strenuously resisted. They, trusting to his support, undertook their task, and the healthy working of the new system was cramped from the first; although the popularity of the Act prevented its betrayers from openly showing their hostility. It is needless to trace the administration of the Act. It will suffice to say that, emboldened by success in various artifices, Mr. O'Shanassy's principal factor tested in a court of law the power of the Board to withdraw aid from an ill-attended Roman Catholic school in a country district, and to devote it to a more efficient school in the neighbourhood. Loyalty to the Board would have made the members resolve doubts by asking for amendments needful to enable them to carry out the undoubted spirit of the Act. But some of them had been appointed for no such purpose. The public saw with disgust the law wrested from its plain intention by men whose duty it was to administer it in good faith. A peculiar conjunction of political circumstances soon afterwards enabled a Ministry, of which Mr. J. G. Francis was the head, to visit upon Mr. O'Shanassy his own sins, and startle the colony into the hasty enactment of a measure for which there was no demand, and of the miseries arising from which it is impossible to see the end.

Mr. C. G. Duffy was for a time the chosen champion of his Roman Catholic fellow-subjects. He had quarrelled with O'Shanassy, and there had been accusations and recriminations, reconciliations at request of their Roman Archbishop, and renewals of strife. Through agency of an astute class (known

socially as Jesuitical, though perhaps not formal members of the Society from which the term was derived) sometimes O'Shanassy, and sometimes Duffy, assumed prominence in affairs affecting the Roman Catholic sect. Their followers never condemned either of them, but devoted special attention to the one who was in a position to confer favours.

At this period Duffy was their Coryphæus. He had, in twelve months, distributed favours on a scale which startled even those who remembered surprising performances of others.[1] He clung tenaciously to office, and vainly urged the Governor to dissolve the Assembly. Mr. Francis, untowardly connected with disorders of former years, was fated to show the way to further disorders. The majority which expelled Duffy had been small, and Mr. Francis and his friends, seeking to weaken Duffy, seized upon the education question as one which would serve their purpose. The bulk of the population had always befriended united education, and the feeling in favour of it had been strengthened by time and by the acts of Mr. O'Shanassy's crookedly-constructed Board. There were also fervid persons who drank in eagerly as liberal and truthful any doctrine savouring of repugnance to authority, law, and religion. The best, the most industrious, did not suffer from this evil thirst, but the gold-fields and populous towns and suburbs contained those who did. Mr. Francis determined to avail himself of it in order to trample down the strong minority which the wiles of Duffy could still command, and might wield with effect. The coalition Ministry which had been formed by Mr. Francis was compounded of those who had abetted McCulloch's proceedings

[1] The observant Anthony Trollope was in the colony, and heard some portion of the debate which drove Duffy from office. He remarked ('Australia,' &c. vol. i. p. 512): "A Ministry that was beaten in June 1872, was turned out solely on the ground that it had misused its patronage." In the main this was correct. Duffy, in endeavouring to show that the appointment of Mr. Cashel Hoey in the office of the Victorian Agent in London was originally suggested by Mr. Childers, was detected on cross-examination, and compelled to admit that a previous hint had been sent to England by himself. When with furtive glance and stammering utterance the admission was drawn from him, there seemed a consciousness throughout the House that he had sealed his own doom. Very adroitly, he even then by emissaries prevailed upon his enemies to omit all reference to his "disingenuousness" in the resolution carried.

in 1864-5-6 and 1868, tempered by others who had been prominent in denouncing them. Of the first class were Messrs. Francis, Casey, and Mackay; of the second were Messrs. Langton, Kerferd, and Gillies, who had been prominent in Parliament; and Mr. J. W. Stephen, who out of Parliament had been energetic in protesting against the acts of McCulloch and Francis in the past. There were one or two others, who though not previously influential, might be deemed followers of Mr. Francis, and likely to afford him a majority in the Cabinet. Mr. Stephen was Attorney-General.

The Ministry determined to introduce a system of education which should not only be secular, but should war against the possibility of the giving of religious instruction in the school buildings even during the time which preceded the daily formal opening of the schools. One plea for the Bill was the notorious fact that large numbers of children—"the gutter-children" they were called—received no education. This plea was accepted with enthusiasm in the Assembly. The watch-word was education free, secular, and compulsory. At first Mr. Stephen, who introduced the Bill, argued that if education were to be free it could not logically be other than compulsory. When he was reminded that many other things were compulsory which were not free—such as giving sufficient sustenance to children and to animals, and keeping premises in wholesome condition—he was in want of arguments, but not of supporters. When he was told that to relieve the parent of his most solemn duty must be demoralizing, he pleaded that he could not carry his project without offering the gift, which was in reality a bribe, to procure the assent of the people. When he was told that the human mind would not tamely submit to the ostracism of religious teaching, he replied that he hoped his system would stamp out not only denominationalism in schools, but every other "ism" in religion, even Presbyterianism. When he was told that by hostility to the efforts of parents to secure religious education in a manner fair to all, and partial to none, he would furnish them with a grievance which might be prejudicial at the polls, he laughed at the idea, but in a few years it became an important fact. When he was told that the millions sterling which would be

sunk in erecting school buildings would lay an unnecessary burden upon the people, and that excellent schools supported by private enterprise would be crushed out of existence by free schools, he said he cared not, and that he would soon spend so much in bricks and mortar that it would be impossible for any Government to undo his work, whatever the resulting taxation might be. When he was told that a clause, remodelling the existing Board of Education, and empowering them to apply the public funds on sound principles was all that was needed, he said it was too late to think of that, for he had formed his resolution. Thus was a radical change effected in a few weeks, in a manner which took the country by surprise.

In spite of opposition the Bill passed through the Assembly. Mr. O'Shanassy sat at the time in the Council, and moved that the Bill be shelved, but was defeated by 18 votes against 8; although more than a hundred petitions from its constituents implored the Council not to inflict upon the community the grievous hardships, and incur the formidable dangers, which would flow from neglect or denial of religious instruction to the young in numerous districts throughout the colony. In Committee Mr. Niel Black made a gallant but futile attempt to strike out the clauses which compelled the State to demoralize parents by giving gratuitous education. He was defeated by 15 votes against 10. Nothing daunted, he obtained the assent, by a majority of one, to the elision of a proviso that "secular instruction only" should be given in any State school building. On a subsequent day the Ministry found two more supporters, by whose aid they re-inserted the prohibition; but the Council added a provision that nothing in the Act should "prevent the school buildings from being used for the purpose of imparting religious instruction by ministers . . . or laymen . . . at such hours other than those used for secular instruction as by regulations may be fixed by Boards of Advice in each district."

The representative of the Government, Mr. Fraser, averred that the words were unnecessary. He had been told that the Bill as it stood would permit such use of the buildings. This was palpably erroneous; and the Council insisted. They also carried a clause making the local Boards of Advice elective by

ratepayers instead of nominated by the Government, and thus gave an opportunity to the people to control in some degree the new system. In the Assembly Mr. Stephen, dreading lest the Bill should be lost (as the prorogation was at hand), substituted for the amendment of the Council the words—"But nothing herein contained shall prevent the State school buildings from being used for any purpose on days and at hours other than those used for secular instruction." At the same time, like his colleague in the Council, he averred that even without them, the previous words—"In every State school secular instruction only shall be given, and no teacher shall give any other than secular instruction in any State school building"—did not debar the giving of religious instruction in the manner desired by the Council.

The force of unreason could no farther go; but the Council unwisely accepted his new amendment. The Governor in Council was empowered (sec. 18) to make regulations for the use of school buildings: the Boards of Advice were empowered "to direct with the approval of the Minister (of Education) what use shall be made of the school buildings after the children are dismissed from school, or on days when no school is held therein." In the Council the mover of the original amendment consented to the change as intended "to meet the views of the Council"; and though he was undeceived by events, he may have been justifiable in trusting the assurances given. Mr. Stephen himself administered the Act, and however incredible it may seem, it is true that he and several successors in office obstinately refused to make the regulations which the Act enabled them, and them only, to make respecting the use of the school buildings before school hours, and thus violated the understanding upon which Mr. Stephen was allowed to substitute his amendment for the one made by the Legislative Council. Spurred by such an ignoble example, some Boards of Advice threw obstacles in the way of imparting religious instruction after the dismissal of children from schools. In this they were less mischievous than their type, for it could not be supposed that children, after the hours of secular teaching, longing to disport themselves or to return home, would apply for salutary instruction which the Government notoriously discouraged.

A glance at the operation of the Act in the first four years shows that the bribe of free education emptied a large number of private schools. Affluent people were known to send children in carriages to receive pauper education. Prophecies of demoralization of parents were at once accomplished. They who had not applied for alms did not refuse them when proffered. But a notable result speedily followed. It was felt that if the "gutter children," in whose name free education had been sought, should be haled to the schools in rags under the compulsory clauses, the children of the affluent would be withdrawn, and the system would appear to have failed. It was determined that the poor children should be left in their squalor, and the streets reeked with urchins on whose behalf so much had been said, and for whom nothing was done. The boasted humanity of the Act was strangled by its authors.

To make the system seem to succeed was the object. Judged by the test of attendance, the public accepted it as a success. Profuse expenditure on school buildings squandered more money in the first year than the total annual cost for all purposes under the former Common Schools Act. The administrator of the Act was alarmed when he found the expenditure largely in excess of the provision. The fact was kept from public view, and further liabilities were incurred without due authority, but as the Parliament increased the grant for the succeeding year without demur, the facts were never generally known. Much money was spent in compensating teachers. One who taught a common school terminated his connection with the Board of Education on 31st December, 1872, and "endeavoured to start a private school." Gratuitous teaching elsewhere left him without scholars. He went to Mr. Stephen, and was offered employment under the new Act.[1] He received afterwards £1137 18*s.* 11*d.* as compensation, though his abandonment of the public service had been voluntary. By such means thousands of pounds were added to the public charge, but none of the "gutter children" entered the schools. Under the Common Schools Act the annual average cost had been less than £155,000. In 1871, including £14,000 for buildings, the amount voted was £211,386. In 1872 it was £220,000. By recognizing the

[1] This gentleman published a statement of his case in a newspaper.

power of the Board to devote aid to the most deserving school without liability of a suit at law such as O'Shanassy's nominees on the Board had caused, the cost of the common schools might have been diminished, and their efficiency increased.

| | | | | | |
|---|---|---|---|---|---|
| Under the new Act | | the first year's expenditure (1873) | | was | £505,969 |
| ,, | ,, | the second | ,, | ,, | 620,931 |
| ,, | ,, | the third | ,, | ,, | 544,723 |
| ,, | ,, | the fourth | ,, | ,, | 452,573 |

The yearly average of cost for six years and a half was nearly £600,000. And besides all this there were other funds expended upon Industrial and Reformatory Schools: for long before the great act of demoralization by law was completed, there had been worthless parents who had abandoned their children, and those children had become a charge upon the State. It almost ceased to become a crime in those parents to neglect their duty when the State invited all others to imitate them. It was vaunted as a virtue by the State that it expended enormous sums on education, and the profusion of giving was enhanced by the appetites of the receivers. The schools were made to confer secondary education in special subjects, and the expense increased.

Some Councillors must have felt that in refusing to support Mr. Niel Black's amendments they had not only entailed demoralization upon the country, but involved it in debt. Several millions sterling had been expended by the Education Department. The common schools would have better done the secular work, and the spectacle of a Government in a British colony contending against parents and pastors who desired at their own cost to impart religious instruction in the school-rooms before the arrival of the hour for secular teaching,[1] would not have been seen. The Roman Catholic portion of the

[1] It may perhaps be worth mentioning that pastors were sometimes told to visit the children in their homes if they "wanted to get at them." If a minister only thus had access to (say) 100 families, time would not suffice either to visit or to teach; and only one family could be taught at a time. At the school one visit reached many families, and one lesson benefited them. But the palpable advantage of the latter process furnished to some the strongest motive for denying the clergy access to the school before ordinary school hours.

community boldly resisted the Act, and with admirable zeal maintained at their own cost many schools. They hoped by importunity to weary the people and the Government into giving them a special grant, which they asked for under the specious name of payment by results; but which would, in truth, if other sects had been relegated to the State schools, have constituted the Church of Rome the one endowed Church in the colony. The earnest and eloquent Bishop of the Church of England, Dr. Moorhouse,—wrung to his inmost soul by the denial of a right to read the word of God to children,—pleaded with his people and with the Government, and would have gone through any indignity but wrong-doing to carry out the Great Teacher's wish that little children should be brought to Him. In neighbouring New South Wales, meanwhile, under safeguard of a conscience clause, ministers could freely impart religious teaching to their little flocks. But many persons adopted the doctrine that "free, compulsory, and secular education" was a new starting-point for the human race. Successive ministers of education followed the example of Mr. Stephen, and refused to make those regulations which he was empowered by law to make, and with regard to which he had assured the Parliament that they could have been made even without the words which he inserted in order to overcome the objections of the Council to the exclusion of religious instruction. It was accepted as a part of the "Liberal" creed that it was illiberal to allow a parent to obtain religious instruction for a child, even at the expense of the parent. The great bribe of free education might be imperilled if any change were permitted in the administration of the law. Ministerial patronage largely intruded in the appointment of teachers, and in the beginning of 1878, occasion was taken (on Black Wednesday) to dismiss Inspectors of Schools and others. When re-appointing some the Minister of Education discarded others.[1] To say that the community as a whole desired the control of such a department to be entrusted to unclean hands would be to libel it. But its better moral sense did not so assert itself as to make it impossible that an unfit person should preside over a department exercising control

[1] The Secretary to the Department was dismissed with others, and was not recalled, but his duties were handed to another.

over the moral and intellectual development of the rising generation. When Sir Bryan O'Loghlen became Premier in 1881 he appointed a Commission of Inquiry, and its labours exposed much abuse of patronage in the appointment of teachers by responsible Ministers. While the official inquiry was carried on efforts were made out of doors to secure facilities for imparting religious instruction. These efforts were not confined to one denomination, and their earnestness deserved success. In some schools it was partially obtained, though without antipathy to religion a majority has yet maintained its faith in the general administration of the Education Act. The public in New South Wales maintained their faith in free selection until compelled by experience to condemn it. It is to be hoped that the public in Victoria may yet awake to their danger, and recoil from the Frankenstein of unbelief which the administration of the education department has tended to engender. They have not been unwarned, but as yet have not believed that the danger exists. It is hard to persuade men actuated by no irreligious motive that their acts have an irreligious tendency. It will be dismal for their descendants to be plunged into moral disorders because their fathers would not see even though they were warned.

In encouraging intellectual culture Victoria has ever been conspicuous in many ways, and the Public Library of Victoria deserves special mention. The University was founded by Mr. Latrobe in imitation or emulation of that which was established in Sydney. The Public Library was also founded by him, but he had no example to follow; nor perhaps, unless he had been able to find the man as well as name the hour, would the great work have been accomplished for which Victoria obtained good eminence in Australia. Mr. Latrobe appointed Mr. Redmond Barry, Solicitor-General, when Victoria became a separate colony. In 1852, Mr. Barry became Puisne Judge of the Supreme Court. In 1853, Mr. Latrobe committed to him, as principal trustee, the Public Library. It is not too much to say that to his zeal, persistent devotion, and untiring industry the institution was indebted for its growth and the hold which it gained upon the affections of the community. It is not often that the life of a public

establishment depends on the labours of one man. But this may be said of the Melbourne Public Library, to which he secured free access for the public from the first, and to which his fostering care in process of time added a National Museum and an Art Gallery. Coadjutors he had, but no compeer; and when he died in 1880 there was a sense of a national loss in the vanishing of Sir Redmond Barry from the place in which he had laboured so long. Nor were his efforts confined to the library. Mr. Latrobe committed to him the preliminary care of the nascent University in 1853. The Council of the University elected him their Chancellor, and annually re-elected him throughout his life.

## CHAPTER XXI.

### GENERAL AND STATISTICAL.

HAVING dealt with the two subjects on which the happiness of a community mainly depends—their spiritual and moral culture,—it will be well to trace the succession of Governors in Victoria after the coming into operation of the Constitution.

Sir Henry Barkly assumed office in December, 1856. His tact and ability enabled him to cope with the difficulties of a position rendered troublesome by previous events, and by his being beset by Ministers prone to lawless acts when thwarted. His suave sufficiency diverted one Ministry from a declared purpose to tack a question of policy to the Appropriation Bill, but he did nothing to provoke public discussion of his success. Armed at all points, but never boasting of his armour, the patron of science and promoter of all social improvement, he was respected by all whose esteem was desirable. If on one occasion he granted an injurious dissolution, it may be said that he could hardly be expected to divine the worthlessness of those to whom he granted it; and all knew that in singleness of purpose and patriotic impartiality his conduct was above reproach. He retained his position beyond the usual term of office, governed at the Mauritius for another protracted term, and closed his career as Governor with a third, also protracted, at the Cape of Good Hope.

The unfortunate Sir Charles Darling assumed office in Victoria in September 1863, and was hurried by his advisers into the proceedings already described. His submissive reign contains little record beyond them. Deep sympathy was felt for him, even by those whom he misrepresented. It was not doubted that he was willing to act rightly. Had he had no tempter he had not found sin.

His successor, the Hon. J. H. T. Manners Sutton (who succeeded to the peerage as Lord Canterbury while in Victoria) brought to his difficult task infinite tact and much Parliamentary lore. If he failed to observe that the elected second Chamber in Victoria, bound not by ancient usage but by Statute law, bore more resemblance in principle to the Senate of the United States of America than to the hereditary peerage of England, it would be harsh to condemn him for a misprision founded upon attachment to the usage of his native land. The right road to constitutional changes was by the operation of public opinion upon the constituencies of both Houses, and not by coarse coercion of one House by the other. In six years, at the utmost, at all times it was within the power of the electors of the Upper House to change three-fifths of the members at the periodic elections, and casual vacancies were filled so frequently that in 1878 there had been (in addition to 66 members chosen at the recurring elections compelled by law) no less than 57 elected in consequence of deaths, resignations, or acceptance of office. But, putting aside this misprision, it may confidently be affirmed, that without fear or favour he maintained the impartiality of his high office in the critical time which followed the misgovernment of Sir Charles Darling. The story is told in another chapter; but the comment of the Canadian historian, Todd, may be quoted here. "Under circumstances of unparallelled difficulty he acted in a most exemplary and statesmanlike manner, combining firmness with moderation, and evincing a thoughtful regard for the interests of all who were concerned in the issue of the struggle." Long after the controversy about the grant to Sir Charles Darling had been appeased, the defeated Duffy Ministry claimed a dissolution of the Assembly; and their leader strove to convince Lord Canterbury that the claim was undeniable. Mr. Duffy averred that it had become in England a "maxim of constitutional law that the alternative of resignation or dissolution is left absolutely to the discretion and responsibility of Ministers." Lord Canterbury thought it questionable whether a succession of precedents in recent years had given the strength of a maxim of constitutional law to Mr. Duffy's allegation as regarded England, and explained that on a Governor, personally amenable to the Crown, serious responsibilities

were imposed, of which no Governor could divest himself. He proceeded to demolish, with less literary ability, but far more sense than was displayed in the ministerial memorandum, the special reasons on which a dissolution was claimed. Mr. Duffy thereupon resigned, and a Ministry was formed which belied Duffy's prophecy, that the existing Parliament could not furnish a strong Government. Lord Canterbury found the colony convulsed, and left it in peace, carrying with him the good wishes of all, and the respect of both Houses of Parliament. He had allayed the storm, but he knew too well the impulsive and lawless tendencies of some public men to be without apprehension for the future.

His successor, Sir George Bowen, on leaving Queensland, had governed in New Zealand until 1873. While his despatches teemed with praises of his own impartiality it was complained that only in them it was to be found. He wished to be on good terms with all, suffered the proverbial consequence, and was soon immersed in troubles which might perhaps have been averted by the tact, or prevented by the sagacity, of Lord Canterbury, or of Sir Henry Barkly. The story of those troubles has found a place in the narrative of the relations of the two Houses in Victoria. When Lord Canterbury left the colony he foresaw the risks of days to come. The conduct of McCulloch and his friends in 1864 and 1866, had warned him that a higher sense of responsibility to law was needed by some public men in Victoria. The convulsions over which Sir G. Bowen presided did not appear to have taught him that he had done nothing to guard against future evils.

Of the Marquis of Normanby it would be unbecoming to speak in this place. Annals may recount events, even while their actors fill high places to which reverence is due. But historical analysis of a career is unbecoming until it has closed. If the life of a man cannot be pronounced happy till it has ceased, much less can the short and sometimes distracted reign of a Governor be weighed until the last of its troubles has been put into the scale. It may be said that his experience in both Houses of the Imperial Parliament, and his career as Governor in Nova Scotia, in Queensland, and in New Zealand, induced a general belief in his capacity when he went to Victoria, and that

on his arrival there were no voices to proclaim that anything but adherence to duty could be expected from him.

Although the land question in Victoria has been dwelt upon at some length previously, it is necessary to devote some space to it here. Mr. Haines and his colleagues strove in 1857 to pass a measure dealing with the subject on which the Commission appointed by Sir Charles Hotham had furnished such conflicting opinions. After long debates the Bill reached the Council on the 8th September, 1857. Its framework was laid down in certain resolutions which the Ministry induced the Assembly to adopt with modifications in 1856, when Mr. Haines was Premier at the commencement of the Parliament. Mr. O'Shanassy's brief Ministry of March 1857, only postponed the subject for a few months. Originally (1856) Mr. Haines proposed to issue leases "to the present authorized occupants for pastoral purposes at an acreable rent so as to produce an average of twopence for each acre available for such purposes," and that leases should not be issued to other persons unless submitted to competition by auction. An amendment, declaring that leases should not issue at all, but that the occupants should pay for annual licenses to use the lands at the rate proposed, was carried in January 1857 without a division. Mr. O'Shanassy, Mr. Michie, Mr. Grant, Mr. Humffray, Dr. Evans, and Mr. E. Syme, editor and part-proprietor of the 'Age' newspaper, supported it. In 1857 Mr. Haines, again in office, fashioned his Bill on the resolutions formerly passed. But a change had come over the minds of the men in opposition. The old antipathy to squatters was aroused. From rural town and village delegates were sent to Melbourne. They sat as a Convention, as if to over-awe the Parliament. Their characters were diverse. The man who subsequently strove by fraud to stuff an electoral roll in an electorate for the Legislative Council, appeared as a member for a suburban district in which he had resided, and for offences in which he had been convicted before the petty sessions. Two or three persons delegated him to the Convention in compliance with an invitation from the secretary of a Victoria Land League. There he found others who had been, or who were to be, victims of justice, like himself; and he, twenty-three years afterwards, was, on conviction of fraud, to suffer imprisonment with hard labour.

But all of the motley eighty-eight were not of his class. They were as irregular as they were unsanctioned by law. Some populous places sent no delegates. A few persons, gathered in an alehouse in a rural district, sent several. Sometimes a delegate was a member of a Municipal Corporation; sometimes an enthusiast respectable, if at all, by reason of his ignorance. Mr. Wilson Gray, a briefless barrister, was bursting with the conceptions of Irish land reformers. Sir George Stephen, a Cambridge graduate, distinguished in the cause of abolishing slavery, had recently immigrated, and while moaning over the confession that he knew nothing when he left England about the land question, proved by speech and letter that his subsequent studies had been profitless. Mr. Gillies, already noted for capacity as a member of the Ballarat Mining Court, for the first time brought before the Melbourne public talents for debate in which he was not afterwards surpassed when they were transferred to Parliament. Mr. G. Verdon was sent from Williamstown. One man went to discuss legislation who was unable to write, but had by practice succeeded in producing a wavering sign to represent his name. Mr. Wilson Gray became President; Sir George Stephen was one of the Vice-Presidents. From the 15th July to the 6th August the Convention laboured. Wild schemes were broached. Like the ass which rubbed off its useful ears in endeavouring to obtain horns, the Convention would have chased from Victorian pastures the live stock[1] in the land, in order to make homes for farmers by selection "over all the unalienated lands of the colony, surveyed or unsurveyed," and by making all unalienated Crown lands "open as free pasturage for the public." One member quoted Gibbon Wakefield's approval of the choice by the colonist of the site of his home, and did not appear to see that the sufficient price demanded by Wakefield ensured selection in suitable situations. Having condemned the Land Bill, the members proceeded (August 1857) to affirm that the following principles were essential to happiness in Victoria:—manhood suffrage; equal electoral districts, based on population, for both Houses; abolition of property qualification for members of both Houses; "abolition of preliminary registration of voters, as tending to the disfranchisement of the

[1] Nearly 5,000,000 sheep and more than 600,000 cattle.

people"; and payment of members, which they advocated "with special emphasis and force." They sent a deputation to Mr. Haines to urge him to withdraw his Bill, and failing in their object, they resorted to the Opposition. They wished to go in full body, but the Opposition had no room at their command in the Parliament Houses which would hold more than thirty of them. Among the minority who received them were Mr. O'Shanassy, Mr. Duffy, Messrs. Brooke and Grant, who were to distinguish themselves with regard to the lands in 1861; Mr. Humffray, Mr. Owens, Mr. Blair, and Mr. Syme, who had been distinguished in 1854. Mr. Foster, who was in 1854 the object of their hatred, was now their companion. There were twenty-two of them, and to avoid offending by selection, the Convention addressed them in alphabetical order. Mr. Brooke became the recipient of a protest which affirmed that the Convention had "been elected by a large majority of the people." Nevertheless Mr. Haines's Bill emerged safely from the Assembly, where the third reading was carried by 30 votes against 23. The Council ordered a call of the House to consider it, and to the mingled surprise and joy of their enemies, instead of eagerly passing the Bill alleged to be framed in their interests, ordered it (22nd September) to be read a second time that day six months.

Every prophecy about the tendency of the Bill, and its reception by the Council, was falsified. It was found that the upbraided Upper House had administered as short shrift to the Bill as could have been desired by the mock Parliament, which, in the name of a Convention, had assumed, like its French prototype, to pronounce upon the destinies of the country, and which, after appointing a "Council of the Convention," was adjourned, *sine die*, on the 6th August, 1857.

It devolved upon Mr. W. Nicholson to pass the first measure, which dealt with the general settlement of freeholders on the Crown lands. Mr. Service was the Minister for the Land Department. McCulloch and Francis were in the Ministry, and Mr. J. Dennistoun Wood was Attorney-General. The Land Bill authorized selection after survey, and enjoined the Government to survey within twelve months, and to proclaim as open to selection not less than three millions of acres in the proclaimed districts. If more than one person should apply for a lot (limited

to 640 acres) the choice was to be determined by auction, at which only applicants for the lot could compete. The minimum price in all cases was £1 per acre. On occupation by selectors of one-fourth of a proclaimed district the remainder was to become a "farmers' common," for the benefit of the occupants of the selected allotments. The principle of auction was to be applied with regard to all lands except those selected. On the other provisions of the Act it will not be necessary to dwell, although its 86 clauses were intricate. Severe penalties were imposed upon unauthorized occupiers of Crown lands, and were to be increased on repetition of offence.

By not repealing Earl Grey's Orders in Council the Act left the tenure by pastoral tenants subject to them, and they might be administered more or less arbitrarily according to the interpretation put upon them by the Government; and when the Houses differed upon the Bill differences as to the application of the Orders led to the retirement of Mr. Service and Mr. Francis from the Ministry.

The Bill was read a second time in the Council in May 1860, and suffered change in Committee. The Assembly refused to agree with many of the amendments. The Council waived some, but insisted on others. The Assembly persisted in disagreeing. It was stated that the Ministry would resort to Earl Grey's Orders in Council to effect their purposes. Hot debates ensued in the Council, where a member moved that such action "taken upon the sanction of one branch of the Legislature," would be "highly unconstitutional," but withdrew his proposition, and Mr. Fellows induced the Council to ask for a Conference of Committees on the Bill (7th August).

There were dissensions in the Cabinet, and on the 3rd September Mr. Service and Mr. Francis resigned. On the following day the Assembly appointed a Committee to confer, which was reciprocated by the Council. On the 5th Mr. Fellows brought up a report. After transmission of messages upon parliamentary practice, which it is needless to detail, the Council waived many amendments, and on the 14th September the Assembly ratified the final propositions of the Council. On the 18th the Bill was assented to, and Parliament was prorogued.

Though Mr. Nicholson had succeeded in passing a measure on

a subject with which no previous Ministry had been able to deal, he suffered in the struggle. A plot to oust him was matured during a brief recess, and on the 26th November he gave way to Mr. Heales, without having been permitted to produce a promised measure dealing with "the occupation of Crown lands for pastoral purposes."

After a brief Vice-Presidency at the Lands Department by Mr. J. S. Johnston (conspicuous as an opponent of Mr. Latrobe's Government in the old single Chamber), Mr. J. M. Grant assumed that post (21st February, 1861), under Mr. J. H. Brooke already mentioned; and in conjunction with the Attorney-General, Mr. Ireland, they devised a plan for granting licenses to occupy "agricultural waste lands of the Crown for the purposes of settlement and cultivation." It was pretended that the 68th clause of Nicholson's Land Act justified the scheme; but that clause only contemplated licenses to occupy, for a term not exceeding seven years, sites of inns, stores, bridges, ferries, and other purposes *ejusdem generis*. Although a voluminous defence of the scheme was produced by Mr. Ireland, neither he nor any one else was convinced by its distorted casuistry or irrelevant technicality.

The Houses were in session when the notification of the new scheme appeared in the Government 'Gazette.' Mr. Fellows carried in the Council, by 12 votes against 5, a resolution (26th June, 1861), pointing out the illegality and impolicy of the notice. An address requested the Governor to prevent the issue of licenses until a future Parliament should have "an opportunity of dealing with the question." Sir Henry Barkly laid before the Council Mr. Ireland's opinion, and added that "while anxious to defer to the desire" of the Council, he would "not feel justified in interfering with the exercise, by a tribunal (the Board of Land and Works), duly constituted by Act of Parliament, of powers conferred upon it by another Act of Parliament, at the instance of one only of the three branches of which that Parliament consists." Then it was that, the Ministry being defeated in the Assembly, the Governor consented to dissolve that body. The majority clogged the grant of supplies with a prohibition of their issue after the 31st August, "unless Parliament be then sitting;" the Governor was advised in proroguing the Houses

(3rd July) to declare the limitation "obsolete yet dangerous," and the Ministry appealed to the country to support them in the act by which they claimed to have "settled the lands of the colony." How they returned successful, meeting Parliament on 30th August, and how their financial incompetence enabled Mr. O'Shanassy to overthrow them in November 1861, has been sufficiently adverted to.

The opening speech of the Governor extolled the beneficial effects of the "occupation and cultivation licenses," "granted by the Board of Land and Works." The Council replied that they concurred in desiring "to see the lands settled upon by those desirous of providing homes for their families," but they looked upon the unconstitutional, if not illegal, mode which the Ministry had, "by a mere departmental regulation, adopted on the very eve of the meeting of Parliament," as a wanton violation of the principles of responsible government. The Assembly approved what had been done, and the Governor regretted that the Council did not agree with the views which it had been his "duty to enunciate," and which had "met with the concurrence of the other branch of the Legislature." The Council entreated (26th September), by 17 votes against 3, that the legality of the licenses might be tested in the Supreme Court. The Governor (1st October) replied that his advisers were "satisfied of their legality."

The manner in which Messrs. Brooke and Grant exercised their functions at the Board of Land and Works was much discussed. It was not charged against them that they took bribes personally, but that their sympathy secured support by favours sweet and precious but not secret. The potentiality for bribery which the Crown lands constituted, may be gathered from the fact that the 'Victorian Year Book' (1878-9) records that on the 31st December, 1878, the total quantity of land alienated in the name of the Crown was eleven and a half millions of acres, most of which was taken up under departmental control, and which might have realized, instead of eighteen millions and three-quarters of pounds sterling, at least three times that sum, and have defrayed the cost of the railways, which at the same date had mainly created the public debt exceeding seventeen millions sterling. Land in a populous neighbourhood worth many

pounds an acre was, for a nominal fee, awarded to grateful applicants.

When the Heales Ministry was ejected Mr. Ireland joined its supplanters, and as Attorney-General for Mr. O'Shanassy was ready to destroy for him some of the contrivances which, as Attorney-General for another, he had assisted to construct.[1]

In the interval between the passing of the Nicholson Land Bill and the construction of the O'Shanassy Ministry, Mr. John Robertson succeeded in New South Wales in passing his Land Bills of 1861. It was hoped that Victoria would vie with her neighbour, and Mr. Duffy resolved to curse his adopted country with free selection before survey. Mr. Ireland and his new colleagues endeavoured to guard against a repetition of the deeds of Ireland, Brooke, and Grant. They enacted that only under the new Act (1862) should the Governor have power to convey land. A map delineating the lands of the colony was produced. Ten millions of acres, initialled on a map by Duffy, were to form agricultural areas; four of those millions were to be open for selection before survey "within three months of the passing" of the Act; and at least two millions were always to be similarly open, while so much might remain in the hands of the Crown. Lands proclaimed open for selection might, if unselected, be sold by auction at an upset price of £1.

The lawless occupation promoted by Grant and Brooke, and justified by Mr. Ireland, had been pronounced illegal by the Supreme Court. The new law legalized it by constituting the occupiers, at their own option, selectors under the new Act, or licensees for the period defined in their spurious licenses. The Act professed to limit the right of selection to 640 acres for any one person. The selector could pay a moiety, or the whole sum due, at once (£1 an acre); or by paying a rent of 2*s.* 6*d.* an acre (extending ever eight years) become entitled to a Crown grant whensoever the price of £1 an acre might be received at the Treasury. The claim of "his heirs or assigns" was made as

[1] During a debate in which Mr. Ireland was somewhat aggressive, while in the Heales Ministry, he ventured to interrupt Mr. O'Shanassy, who pointedly replied: "The honourable member knows well that there are some gentlemen on this side of the House who have only to hold up their little finger and he'd gladly come over to them."

valid as his own. If more than one person applied for the same allotment, the choice was to be determined by lot as in Sydney. The pastoral occupation of Crown lands was dealt with in the same Bill, and the rate of rent was prescribed. No pastoral license was in future to be a bar to resumption by the State.

Mr. O'Shanassy had perhaps grown wiser since, in 1855, he declared in the Gold-fields Commission report that the "facilities of settlement experienced in South Australia did not arise from land regulations different" from those of Victoria. He retained some of the spirit of Lord Stanley's Land Act of 1842 by enacting that one-fourth of the land revenue should be devoted to assisted immigration, but the clause was disobeyed by successive Ministries, and was eventually cancelled. The sinuous methods which ensured the passage of the Bill in the Assembly need not be detailed. A certain class was propitiated by an amendment empowering former purchasers of Crown lands to become selectors to the extent of 320 acres.[1]

The scramble for land at a fraction of the value for which it could be sold by auction was rapacious. The carcase of Victoria was laid bare for a hungry pack. All the evils rife in New South Wales were intensified by the compactness of Victoria and her larger population. Mr. Duffy, the President of the scramble, was so proud of it that he issued a pamphlet (entitled 'Guide to the Land Law') from several printing presses in London and in the colony. In flowery language he expatiated upon the certainty that "new immigrants would take joyful possession of the independence tendered to them" under his auspices.[2] He sat on the Land Board dispensing favours. Ere long it was discovered that he had ministered to the creation of large estates. The "dummy" of New South Wales started into luxuriant life in Victoria.

[1] This wanton waste of the public estate was widely availed of. Land-jobbers bought up the rights of selection and trafficked in them.

[2] He descanted upon "maize" as a useful plant not generally "known —that wonderful cereal which is the prime resource of the settler in the American prairie," &c. :—and, apparently unconscious that it was in the early days the main staple of food for man in the colony, and had continued to be the chief reliance in Australian stables for more than half a century, he proposed to make grants for long periods in order to foster the culture of maize as a "new industry."—'Guide to the Land Law,' 1862.

Mr. Duffy aided the process; but, when popular indignation was excited at the difference between his promises and his deeds, he strove to cast the odium upon his colleagues. When he landed in Victoria he boasted that his law-books were his strongest weapons. When fraudulent selectors were found conveying thousands of acres to those who had employed them, he averred that he was guiltless of the clause which compelled the Government to grant titles in fee to selectors, their "heirs or assigns." He was willing to plead ignorance of the meaning of the word "assigns" rather than acknowledge that failure was attributable to himself. At a later date (1877) he inveighed against the selectors who had assigned their allotments, and declared that his Act had failed "because the very class for whom we legislated sold their inheritance for some paltry bribe." There was a general feeling that it had failed, but while endeavouring to amend it the O'Shanassy Ministry gave place in 1863 to the McCulloch Cabinet, which involved the colony in the disasters of 1864-5-6.

It may be well to mention here as one of the aidant causes of the fall of the Ministry that O'Shanassy, Ireland, and Duffy endeavoured to destroy the secrecy of the ballot, and at the same time to conceal the fact. They had ever opposed the ballot, but they knew that any open attempt to abolish it would fail. Under the existing law returning officers were compelled to send all the papers used at an election, sealed, to the Parliament Houses. After safe custody, during which they might be produced in compliance with the order of a Court at a trial, they were at the end of two years destroyed, and thus there was a guarantee that though they could be consulted for purposes of justice, they could not otherwise be looked at. This guarantee was removed by the O'Shanassy Administration, by a short clause directing returning officers to arrange the voting papers in numerical order, and deliver them to the Clerk of the Peace in the district, who was to keep them "in like manner in all respects as the records of his office." Both Houses passed the Bill without remarking that any one could claim to see such records, and that thus the votes of electors could be traced at leisure, by comparing the voter's number on the ballot paper with his number and name on the electoral roll. A few days

afterwards Mr. O'Shanassy fell, and though the incoming Ministry did not advise that the Royal Assent should be withheld, they brought in a brief measure which restored the secrecy of the ballot, and compelled deputy returning officers to seal, and to allow scrutineers to seal up all packets sent to the principal returning officer, who was compelled to send, so sealed, all such packets to the Parliament Houses with his own papers similarly secured.[1] It is fair to add that in 1863 Mr. O'Shanassy passed two important Acts "to consolidate and amend the laws relating to Municipal Institutions," and to provide for Local Government in Road Districts "and Shires," without the limit of Boroughs. He also passed a Civil Service Act. In capacity and legislative mastery he had no superior in the Legislature.[2]

McCulloch made Mr. Heales Minister for Lands. When the latter died (in 1864) Mr. Grant, who had been Vice-President under Heales, succeeded to the Presidency of the Board of Land and Works, and it was not difficult to predict in what manner the old associate of Mr. Brooke would wield his power. A Land Act was passed in 1865. It contained various provisions intended to facilitate free selection beyond the boundary of the areas which had been subjected to it under the Act of 1862. To prevent the practices sanctioned under the Duffy Act, large powers of disallowance of applications to select were vested in the Government, and they were freely if not impartially used by Mr. Grant. A clause (42) empowered the Governor to "issue licenses for any period not exceeding one year," which (entitled) holders "to reside on or to cultivate any lands on any gold-field."[3] The license was in no case to extend over more than twenty acres. The manner in which this clause was wrested deserves notice. The form of license issued by the Government demanded "residence on the land during the continuance of the license," or, within four months of its date, enclosure of the land with a proper fence, and cultivation of "at least one-fifth portion." As

[1] The necessary addition with regard to seals of scrutineers was inserted by the Legislative Council, on the motion of Mr. Highett.

[2] Since the text was written Sir John O'Shanassy has passed away. 1883.

[3] The term "gold-field" was explained in the Act as "within the meaning of any Act now or hereafter to be in force relative to the gold-fields or lands adjacent thereto."

the licenses were only contemplated at gold-fields, it was stipulated that they were to be no bar to searching for gold by miners. The Governor was empowered to resume the land without compensation, and the license was to be forfeited on breach or neglect by the licensee of any of its conditions. Mr. Grant was Minister of Lands in 1869, and to him Mr. Duffy applied. He had a pension from the Queen, and wished to form a country-seat. A new Land Bill was in process of incubation; and the Parliament, warned by past abuses, might restrict the powers of the Minister for Lands. Mr. Grant was compliant. By his aid, in March and April 1869, Mr. Duffy became licensee for several allotments, two of which exceeded the lawful limit of 20 acres, and none of which were near a gold-field, although the license issued in the Governor's name described the land as "situate on a gold-field or adjacent thereto." Conditions of residence and cultivation were nominally imposed. The land was at Sorrento, near Point Nepean, and there never had been a gold-field there, nor was there any adjacent gold-field. When the facts were exposed, neither Duffy nor any Minister could contend that there had been any such gold-field. It might have appeared difficult to convert a license to occupy (for a term not exceeding twelve months) into a freehold, but the large lavishness with which Mr. Grant had scattered the public lands to obtain popularity, emboldened him to expect that at the elections he would be rewarded rather than rebuked for violations of law.

Victorian Ministers had long discovered that, by obtaining power to make Regulations for administering an Act, they could do things unsanctioned by the law. Thus the licenses for a year were (by Regulations which violated the Act) made convertible into freeholds on performance of conditions satisfactory to the Minister responsible for the Department. After some changes of Ministries, Mr. Grant was again Land Minister in 1871, under Duffy, who had so often been his assailant, and who had called Mr. W. M. K. Vale a "foul-mouthed ruffian," yet took him to his bosom with Grant.[1] Mr. G. Berry and Mr. Longmore were

[1] Each had, like Gay's characters, something to forgive. Mr. Vale had condemned Duffy (two years before) to "everlasting shame and infamy," and declared that the "abominations of the Land Act of 1862 and Mr. Duffy's pension run side by side."

their colleagues, but there seems to have been no opposition to the conversion of Duffy's tenancy into freehold. Therefore, Duffy being Premier, the accommodating Grant intimated to him the satisfaction of the Government with his compliance with the conditions of his license on more than one allotment, and he received grants of land on a spot where it was originally illegal for him to receive a license; where, if it had been legal, only one could have been held; and where the maximum area which could have been lawfully occupied at a gold-field, was exceeded in his favour. He was not the only responsible Minister who obtained metaphysical aid in transgressing the law, at Point Nepean. Mr. J. J. Casey (McCulloch's Solicitor-General in 1869) became Land Minister in 1872 under Mr. Francis. He obtained at the coveted sea-side retreat at Point Nepean (while Mr. McKean was Land Minister in 1870), no less than 136 acres under the clause which fixed at twenty acres the maximum to be licensed for a year at a gold-field; and he pressed his application for the freehold so eagerly, that in 1871, while Duffy was Premier and Grant was Land Minister (all three being lawyers), Mr. Casey obtained a grant of the land. The facts were elicited in consequence of a petition from a fisherman who complained that Mr. Casey had "evicted" him from his "little garden," occupied under a fisherman's license. When the fisherman appealed for justice, and represented to the Land Office that Mr. Casey had never resided on, nor cultivated, nor fenced the ravished plot, he was informed that "as the Honourable Mr. Casey had obtained the land for an occasional summer residence the Board of Land and Works waived the residence condition in his case." The determined fisherman, whose name, Henry Watson, deserves mention, replied that the other conditions had been disobeyed; and was answered that the cultivation condition had been waived lest Mr. Casey "should injure the indigenous shrubbery."[1] The evicted fisherman was sufficiently acquainted with Irish affairs to draw comparisons between Duffy's protestations in Ireland, and the eviction permitted at Point Nepean (where Duffy sold some of his land at fifty times the amount he

[1] A return showing the form, and conditions, and dates of the licenses at Point Nepean, and the petition of Watson, are printed in the Victoria Legislative Council Papers, 1873. With them the text conforms.

had paid to the Government). Soon after these exploits, Messrs. Duffy and Casey were selected as fit recipients of honour conferred in the name of the Queen. The first became K.C.M.G. in 1873; and five years later Mr. Casey entered the portal which leads to that decoration of which Earl Granville had pledged himself to "maintain the honourable character," by confining his recommendations "to those who had done real and great service to that Empire upon which the sun never sets."[1]

The modes in which laws were set aside under a mockery of their provisions have been best seen by comparing those provisions with the practices of various Governments. That the laws themselves would lead to demoralization and corruption; that the public estate would be squandered; that wealth would find methods of accumulating land; that the creation of an industrious yeomanry, which all professed a desire to establish, would not be secured by indiscriminate selection; that selectors would often select, merely to traffic in, their allotments—was urged during the passage of the various Bills, but was urged in vain. There was one notable instance in which 320 acres selected (at £1 an acre) on account of a spring copious enough to supply water to an extensive tract, were sold by the selector for £10,000, and the profit which ought to have enriched the State went into the pocket of a speculator. One result was speedily attained. Squatting, or tenure of pastoral tracts, was practically extinguished. Affluent settlers converted many runs into freeholds; needy settlers saw their runs cut up by selection. Only barren, uninviting spots remained in the hands of pastoral tenants, and gradually their area became more and more contracted. The word had gone forth. The odious Orders of Earl Grey, so long denounced, were annihilated. The Government recognized it as a prime duty to destroy the interests which had been created under them. The selectors, real and spurious, whom Mr. Duffy

[1] Speech at inaugural dinner of Colonial Institute, March 1869. Lord Granville was a Minister in 1873; but his colleague Lord Kimberley was Colonial Secretary when Duffy was decorated for his "real and great services." It was rumoured that Duffy's friend Childers, who was also a Minister, was sanguine enough to think that a riband given to Duffy would soothe Irish agitators. It can hardly be supposed that the consenting Premier, Mr. Gladstone, was the dupe of such a hope.

had let loose, spread over the fair lands with the cry—*Hæc mea sunt; veteres migrate coloni.*

Too late it was found that the attempt to grasp too much had resulted in loss to Victoria, while the wisdom of the South Australians, who would not accept Earl Grey's baneful orders, left their pastoral interest unmolested. Another result followed speedily. Capitalists carried from Victoria to the spacious interior of the continent the funds which the law precluded them from investing in pastoral pursuits at home. The old and the new colonists suffered from their own intemperance.

While indiscriminate selection of unsurveyed lands rendered impracticable the pursuits of the grazier in many places where it would have been better for the community to maintain them, and while by various devices some graziers wrested the law to their own purposes (aided by selectors who took up land only to sell it at a profit), the occupation of the squatter was speedily destroyed except on lands deemed unfit for culture. After a time it was found that soils once considered unsuitable for farms produced good wheat, and the pastoral tenant found no rest for the sole of his foot except where the scanty herbage was unfriendly to his pursuits. Thither he fled, and sought in vain for consideration on the plea that for such land it was inequitable to demand rent which would be reasonable elsewhere.

But the name of a pastoral tenant stank in the nostrils of the rulers of the colony. Other foes followed the proscribed squatter. Rabbits multiplied in millions in Victoria. A hardy pest, content with meagre fare, but not averse from rich pasture, the rabbit spread over the land, and aided the Government in making the squatter of Victoria a thing of the past. Under one Administration it was proposed that the squatter should be compelled to destroy all rabbits on his run: a condition which it was impossible to fulfil, and which, if imposed by law, any sane man would avoid by wandering elsewhere with his flocks, rather than undertake to destroy creatures which might cross from neighbouring lands at any moment, and thus make his efforts as useless as those of one who might strive to empty a reservoir without power to arrest a stream running into it.[1] The

[1] The Governor's speech to the Victorian Parliament, 3rd July, 1883, said: "The almost complete abandonment of the large tract of Crown lands

slaughter of millions of rabbits seemed to have no effect upon their numbers. In fecundity and frequency in breeding both the rabbit and the hare exceeded in Australia anything heard of in Europe. Rabbits were pursued with the zest which had characterized the crusade against squatters, but were not so easily exterminated. The annihilation of the squatting interest may be inferred from the fact that when a pastoral tenant found himself unable to pay his former rent of £750 for a run, which was subdivided for selectors and a prey to rabbits, the highest tender obtained by the Government was £10.

A provision of the Duffy Land Act of 1862 deserves remark, inasmuch as it was the theme of high-sounding phrases in his speeches and pamphlet. Under his patronage new arts were to spring up, and the culture of centuries in Europe was to be rivalled at a bound in Victoria by his pupils.

"When any person desires to make vineyards or oliveyards, or mulberry or hop plantations, or permanently to establish in Victoria any useful plant or industrial enterprise or process which was previously unknown or not generally known and used therein . . . the Governor may grant to such person a lease . . . not exceeding thirty acres for any term not exceeding thirty years . . . but not more than one hundred leases shall be issued in one year . . ." (Sec. 47.)

At any time after five years from the commencement of the lease a favoured lessee might by paying £1 an acre convert his nominal leasehold into freehold. The opportunies for favouritism and waste which such a clause afforded were plain. It was derisively styled the "novel industries clause," whenever in some choice spot thirty acres were leased to promote an industry which had existed in the colony for a quarter of a century. The result was ludicrous. One person obtained a lease in order to make a vineyard near a railway, about twenty miles from Melbourne. He escaped competition which might have raised the price of the land by some scores of pounds, but the making of the vineyard cost thousands, and even his friends wondered at his petitioning for a favour so questionable and futile. There were many similar cases. But close to the heart of Melbourne more

known as the 'Mallee country,' calls for immediate legislation with a view to the speedy and thorough re-occupation and reclamation of that territory. A Bill to accomplish this will be at once laid before you."

preposterous acts were done under cover of a Land Act of 1869. Melbourne stood on the north bank of the Yarra river. Land in its leading thoroughfares had been sold for hundreds of pounds sterling per foot of frontage. Large warehouses lined the street abutting nearest to the river. On the south bank the land was low; and, in default of the adoption of any plan for regulating flood waters, the Government had abstained from alienating allotments there. Annual licenses were granted at nominal rents or fees even before the Duffy Act was passed, but they were easily revocable, and were granted chiefly to enable offensive occupations to be carried on without annoying any residents, or for a ferryman or boatman's convenience. It was not supposed in 1862 that, under the eye of the metropolis, Duffy's clause could be wrested to the arbitrary leasing of land, which bore some such relation to the most valuable sites in Melbourne as Lambeth bears to the Mansion House in London. But impunity breeds boldness. When the Act of 1869 was passed, the community had been inured to departmental rule. Leases for seven and even for twenty-one years were granted by various Ministries, including that of Duffy in 1871.

In 1872 some persons were startled at finding that many acres had been leased on the borders of the river, close to the metropolis, and on the road leading to populous suburbs. No effort had been made to conform to the spirit of any land law. Storing merchandise, coach-building, coopering, and dozens of kindred occupations daily carried on in Melbourne, figured in a return which was presented to Parliament in 1872, to explain in what manner the public land had been dealt with under the plea of cherishing "novel industries." Those who had paid enormous prices for land for similar purposes were ill-pleased, but the general public were unconscious or indifferent, and endured without murmuring what it would at one time have condemned.[1] Under the Duffy Act of 1862 no less than

[1] Before a Select Committee in 1872 the Assistant-Surveyor-General declared that the Minister of Lands "very often" gave verbal instructions of which no record was kept, but which the permanent officials obeyed: that the Board of Land and Works was to a certain extent a fiction, inasmuch as the Minister could dispense with its advice, and sell by auction or selection as he might think fit; could cancel proclamations of forest

1,423,235 acres were taken up under selection. Under the McCulloch Act of 1865—administered chiefly by Grant—2,813,128 acres were taken up. Under the Act of 1869, 930,450 acres were selected before the 31st December, 1871. In the end of 1878 there were more than nine millions of acres of which "the purchase had not been completed."[1] There were various methods of intensifying the evil principles of the law. It was openly averred that favour was shown to persons holding what were called "correct principles," and that preference was given to selectors themselves on arbitrary conditions; and yet the community in which these averments were made was equal, perhaps, in individual intelligence to any in the world.

None of the Land Bills of Victoria passed without long discussions in the Houses, and frequently there were Conferences resulting in compromises. The land law of 1869 continued the principle of free selection with deferred payments, and the extent to which that principle was availed of may be deduced from the fact, that on the 31st December, 1874, there were 5,650,000 acres in process of alienation under it, and cautious persons contemplated with alarm the relations of the State to a host of debtors, potent in electing representatives of their creditors. In 1878 the area in the same condition exceeded nine millions of acres. At that date a comparison between Victoria and South Australia yielded the following result—

| | Population. | Land Sold. | Land Cultivated. | Wheat—Bushels produced. | Public Debt. |
|---|---|---|---|---|---|
| Victoria | 827,439 | 11,458,634 | 1,609,278 | 6,060,737 | 17,022,065 |
| South Australia | 248,795 | 8,068,082 | 2,011,319 | 9,332,049 | 5,329,600 |

In South Australia the progress had been steady; in Victoria it had been fitful. From 1837 to 1878 there were only five years—1870, 1873, 1874, 1877, and 1878—during which Victoria exported a surplus of breadstuffs. In South Australia they formed a large per centage of her exports. In 1875 Victoria imported 200,000 bushels of wheat, and in the same year South Australia exported breadstuffs valued at £1,681,000.

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reserves, and subject them to selection by an Order of the Governor in Council; and that there was "no actual power" which could check him.

[1] Hayter's 'Victorian Year-book,' 1878-9.

In 1880 the figures were :—

| | Population. | Land Sold. | Land Cultivated. | Wheat—Bushels produced. | Public Debt. |
|---|---|---|---|---|---|
| Victoria | 860,067 | 12,152,527 | 1,997,943 | 9,727,369 | 22,060,749 |
| South Australia | 283,849 | 8,942,427 | 2,574,489 | 8,606,510 | 9,865,500 |

The severe conditions under which South Australia pursued her labours may be inferred from the fact that in 1879, a season less dry than that of 1880 had enabled her to produce more than fourteen millions of bushels of wheat.

One consequence of the small area and comparatively dense population of Victoria, coupled with her peculiar administration, deserves remark. The land laws in all the colonies were framed ostensibly with a view to attract immigration. But in Victoria they speedily assumed a form which subjected the Crown lands to be scrambled for by the population already gathered within her boundaries. When the expenditure on education and other charges created a temporary deficiency in the revenue in 1877, a land tax, aimed at those only who owned country land exceeding a certain value, was passed.

In 1880 another theory was propounded. The provision in the Land Act of 1862, that one-fourth of the net proceeds of the public lands should be set apart to assist immigration, had been systematically set aside by various Governments, and was eventually repealed. The Land Act of 1869 allotted £200,000 of the land revenue annually to a trust account for railway loan liquidation and construction. In 1880 numerous selectors were about £400,000 in arrear in payments to the Treasury. Many of them besought the Government to relieve them by advances or loans. They were told by a Minister that the only remedy he could devise was to abstract from the Railway Fund £2,200,000 which it had received under the Land Act of 1869, and by means of it to "assist the selectors to remain on the land." Thus after squandering the public estate for a fraction of its value, the colony would see its Treasury emptied to endow the least industrious; while the more industrious cultivators, who had regularly paid their rents or acquired their freeholds, would be taxed to support the idle or unsuccessful.

Whether the community of Victoria will condemn, as that of New South Wales in 1882 condemned, free-selection, remains to be seen. Some of those who once advocated it have learned

its dangers. Some, hopeless of sound administration, murmur that there will be no safety or peace while a Government has any Crown land to dispose of. Some cling to the idea that the failure of free selection is due only to the abuses which under Duffy's and other Acts ministered to the creation of large estates.

After the general election (1882) in New South Wales recorded its disapproval of free selection, a general election in Victoria was held in 1883, but more on financial than on other issues.[1] There was nevertheless a formal proposition to arrest all alienation of Crown lands until the community could ascertain the result of past legislation, under which it was alleged that more than twenty millions of acres had been parted with out of the fifty-six millions in the colony. The latest returns (it was said) showed that there had been (up to 31st December, 1881), 103,844 selectors, and on a "liberal estimate" only 30,209 remained in possession. More than 73,000 had "parted with the holdings which were given them that they might remain on them as a prosperous yeomanry."

A "leasing system" seemed to some the only mode of escape from inability to sell land at a sufficient price to benefit the State. There were a few who ruminated sadly on the thought that Gibbon Wakefield's system, or auction, would have been better than the scramble under which they found that so large a proportion of the area of the colony had been alienated without consideration of its value. The spirit of Wakefield might have sat in the clouds and mocked at the realization of his prophecies.

Recently-published statistics[2] show the following condition of land in Australia at the close of the year 1881.

| | Area in acres. | Granted and sold. | Average price per acre. |
|---|---|---|---|
| New South Wales | 197,872,000 | 36,942,449 | £0 18 5 |
| Queensland | 427,663,000 | 5,355,576 | 0 14 9 |
| South Australia | 578,192,000 | 9,582,903 | 1 6 9 |
| Victoria | 56,245,760 | 12,614,400 | 1 12 0 |
| Western Australia | 624,588,800 | 1,712,363 | (not stated) |
| Tasmania | 16,880,000 | 4,232,870 | 0 9 4 |

[1] The consequence of the election was the defeat of the O'Loghlen Ministry and the formation of a coalition under Mr. Service as Premier. Both Sir Bryan O'Loghlen and Sir John O'Shanassy were rejected by their former constituents.

[2] 'Official Directory and Almanac of Australia.' 1883. George Robertson, Melbourne.

The figures for Queensland and Victoria do not include land of which the purchase was not completed. Of such land there were 3,720,000 acres in Queensland, and 7,145,362 in Victoria. Such land is included in the returns for South Australia and New South Wales, and in the latter colony there were 13,590,840 acres of uncompleted purchases in process of alienation under the selection clauses. It must be remembered that both in New South Wales and in Tasmania large quantities of land had been granted before Lord Goderich's regulations established the principle of sale by auction.

The political condition and the Government of Victoria have engrossed so much space that the state of the colony has been described almost sufficiently. It was blest with so many natural advantages that it was difficult to retard material progress by misgovernment. Much was done to cramp commerce and create discord between classes. But the resiliency of a youthful community and the natural kindliness of the people asserted themselves. Many visitors wondered at the signs of prosperity which they saw at an Exhibition in Melbourne in 1880. There had been local and Intercolonial Exhibitions before,[1] and in 1879 New South Wales was about to hold an International one. One of the reserves for public recreation set apart in Melbourne by Mr. Latrobe, was taken as the site after discussion and arrangement with the corporation of the city. On it a large building was erected, and the Exhibition was opened on the 1st October, 1880, by the Marquis of Normanby, in presence of Governors from nearly every Australian colony, his guests.

On the eve of that opening the Legislative Assembly accepted, with regard to payment of members, a compromise formerly rejected. At the request of the Council they divided their Bill into two parts, and when the Council rejected payment for themselves and accorded it to the Assembly, smiling faces were presented to the crowd at the Exhibition. Nor were the public displeased at the result, and some critics expressed a hope that even an outlay of half a million sterling might

[1] In New South Wales in 1854; Melbourne, 1854; Queensland, 1861; Victoria, 1861; New Zealand, 1865; Victoria, 1866; New South Wales, 1870; Victoria, 1872; New South Wales, 1873 and 1875; Queensland, 1876; New South Wales, 1879.

prove a wise investment if it should lead to a conviction that industry and prosperity would be best promoted by removing trammels from trade. From every European State, from Turkey, India, China, Japan, and America, articles 32,000 in number were poured in; 3270 awards of first order, 2486 of second, 1877 of third, 1036 of fourth, 733 of fifth, were made, and it is recorded in the 'Victorian Year-book' (1881-2) that the net cost of the Exhibition to the revenue was £250,500.

The facility of borrowing money in England to construct railways was largely availed of, at first with circumspection as to the probable remuneration derivable from expected traffic, afterwards with less calculation. Each district marshalled its forces to obtain lines. Ministerial necessities encouraged the demand. Loans afforded the supply. It was accepted by all, that railways could only be constructed by means of loans; and every hamlet put forward a demand for its branch line. It was difficult to satisfy all, but vigorous efforts were made to win political support. This was the consideration, and this the necessity. With unconscious irony as regarded the manner in which free selection had placed nominal farmers in remote places, it was argued that as the State had permitted such selection, it was bound to make railways to carry away produce whether it might or not be carried at a loss to the State.[1] Under such influences it was not to be wondered at that in 1880 the public debt had grown to £22,000,000 while the public estate had diminished. Something was left for posterity, however, in the shape of railways. There were also public buildings of many kinds, and roads and bridges throughout the territory. Expensive school-houses studded towns and country. Spacious Parliament Houses and other large public buildings had been planned, and some were in use. The Mint deserved admiration as an instrument which was fitted to perform, and performed, its work well, but the prime necessity for it had passed away before

[1] Amongst the first measures announced by the Service Ministry in 1883 was one to abolish patronage and settle by law the "selection, appointment, promotion, and control of all persons in the public employ." A Railway Management Bill was also introduced, under which a Board of Commissioners, and not ministerial authority, was to control the railways, and patronage in appointments was to be abolished.

it was built. Any effort to remedy the loss in exchange suffered during the importation of coin in 1852 and subsequent years would have been wise if, like the South Australian Bullion Act, it had been prompt. But the Sydney Mint (sanctioned in 1853) had, though tardily, supplied the wants of Australia, and had been at work from 1855, long before the Melbourne Mint began its work in 1872. The Act which established it granted £20,000 a-year to the Crown, and the officers were appointed by the Crown.

In 1882 it appeared[1] that the receipts from the commencement had been £62,982, and the expenditure £102,158, showing an annual average loss of sixty-two per cent. It was deemed, however, that the issues of coin during the whole period, £18,660,600; and the bullion, £448,767, had afforded mercantile securities which compensated for the stated loss. How commercial pressure, like hydrostatic, reaches remote channels was shown by the fact that from 1872 to 1880 the bullion issued at Melbourne was only £94,757 in value. The issue in 1881 was £448,767, a French Banking Agency having largely exported gold in bars.[2]

In all vicissitudes the people of Victoria have been profuse in charity both in public grants and private gifts. To hospitals and asylums the public grants were, in 1881, no less than £188,740.

Queensland, the northern neighbour of New South Wales, was launched into existence as a separate colony in the end of 1859, under the powers reserved to the Crown by the Constitution Act of 1855. There was the usual correspondence about adjustment of accounts, but the Imperial Government and that of New South Wales facilitated it upon equitable principles.[3] The first Assembly elected in Queensland recorded in an address to the Queen, its "heartfelt gratitude for the great

[1] Hayter's 'Victorian Year-book.'

[2] The Sydney Mint had in 1881 issued gold coin to the value of £46,837,000, and bullion of the value of £2,268,194. The annual excess of expenditure over receipts was less in Sydney than in Melbourne.—(Ib.)

[3] Certain sums had been collected in ordinary course by the Treasury of New South Wales (including pastoral rents and assessment, £10,544). Many of them had been received in advance.

attention and impartial justice" which had been displayed. The Queen had, by Order in Council, empowered the Governor-General in Sydney to make provision for convoking the first Legislature in Queensland; and the qualification of electors and members was the same as that fixed by the Constitution Act of New South Wales of 1855.

The new colony started therefore under Wentworth's auspices, as regarded the suffrage. The population was supposed to consist of 17,082 whites, and 12,000 aborigines. The estimated revenue was £160,600. On arrival at his post, Governor Sir George Bowen appointed Mr. R. W. G. Herbert to be Colonial Secretary. Mr. Herbert had been private secretary to Mr. Gladstone the Chancellor of the Exchequer, and he presided over the Queensland Ministry until 1866. The Order in Council creating the colony had, in keeping with the Statute under which it was promulgated, set apart £1000 (out of a Civil List of £6400) for public worship; but it was left to the local Legislature to deal with the question freely. Mr. Herbert carried the abolition of the provision by 14 votes against 9 in the Assembly, which consisted of twenty-six members. The members of the Ministry, three in number, sufficed to turn the scale, and to pass the Bill which the Council, consisting of fifteen members, agreed to without demur. A larger sum than had thus been saved was appropriated to increase the salary of the Governor by a Bill, reserved for Her Majesty's pleasure.

It may be remembered that Dr. Lang in 1847 sent emigrants to Moreton Bay under false pretences. He had received land orders after obtaining money from emigrants, and the latter "found on arrival in the colony that the promises of the said John Dunmore Lang were of no avail, and that no land was forthcoming."[1] He had been duly warned of the impropriety of his proceedings by Earl Grey at the time, and the Sydney Legislature had exposed and condemned them. Nevertheless he asked for compensation, and appeared before a Committee in Brisbane in 1860. Some of his dupes presented a counter-petition. The Committee reported that his scheme of immigration was "a commercial and strictly sectarian effort" unworthy of compensation, but that his exertions to bring about separation

[1] Petition of the Immigrants. Queensland, Parliamentary Papers. 1860.

from New South Wales deserved thanks (which he received with discontent).

At an early date Sir George Bowen and his Ministry sanctioned an interference with law. Communities which demand separation from a parent colony loudly assert that their contributions to the revenue are absorbed by the central Government. All irritation felt is ascribed to injustice thus inflicted. Queensland was flushed with this imposthumous disorder. She resented the laws which she inherited with her independence. So impetuous were her controllers that Governor Bowen and his Executive Council (without waiting for legislation, although the Parliament was about to assemble) directed the Custom House officers to abstain from collecting the export duty on gold, which by virtue of an Act passed in Sydney before the separation of Queensland those officers were bound to collect. The Legislature forthwith passed an Act (1860) to indemnify the Custom House officers for complying with the Governor's command to disobey the law. They repealed the export duty on gold in the Indemnity Act. They eschewed such revenue. Experience made them repentant. They mismanaged their finances. In 1864 they re-imposed an export duty of 1*s.* 6*d.* an ounce upon gold. There were in Queensland as elsewhere some who looked upon a Royalty—on treasure appropriated by a miner at his own option—as a tax. But an empty Exchequer gaped for money; and, as the Chinese were expected to rifle the mineral wealth of the public estate, the Queensland Parliament waived their notions of economy under the twofold desire for money, and for levying mail from the Chinese. Still they could not accommodate their income to their expenditure.

In 1865 they resorted to increased import duties on spirits and other articles. In October 1866 they augmented them again, having previously in much commotion issued (August 1866) Treasury Bills to stave off insolvency. In October, also, they levied Stamp Duties, and authorized the issue of bills or notes payable in specie on demand. They succeeded, however, in maintaining throughout these transactions a police force at the cost of £60,000. One of the chief duties of that body is sufficiently described in another place. In 1872 they

reduced the gold export Royalty to 1*s.* an ounce, or less than 1½ per cent., for the privilege of appropriating the gold in the soil. Eventually the Royalty was abandoned.

The manner in which the suffrage was dealt with revealed the absence of popular pressure, or proved that circumspection was more prevalent in the new colony than amongst her neighbours. Although Dr. Lang had striven by efforts which the Select Committee deemed selfish, to introduce into Queensland the elements from which he derived support in Sydney, and although any limitation of the suffrage was denounced by him, as it was by his co-worker Mr. Duffy, as a fraud upon the best interests of mankind, the qualification of electors was left until 1872 practically the same as it had been defined by Wentworth in 1853.

A freehold of a clear value of £100.
Household occupation of premises of the clear annual value of £10.
A leasehold tenure based on a similar annual value.
A depasturing license under the Crown.
An annual salary of £100.
An occupant paying as much as £40 a year for board and lodging.
A lodger paying £10 a year for lodging only.

Such were the qualifications in Queensland, as they had been in New South Wales. By an Act of 1867 Queensland continued practically the existing system, while increasing the number of the Assembly to 32. But in 1872 she followed in the wake of her neighbours. By an Act, 31 Victoria, No. 5, all persons 21 years of age, except those specially disqualified or incapacitated, were entitled to be enrolled after six months' residence in a district. No care was taken to provide that a voter should be capable of reading or writing. The various property qualifications—household, leasehold, tenure of a license to depasture on Crown lands, and ownership of freehold—were retained; but a voter had only one vote in one district.

It was notable that the Ministry which carried the measure was driven to it by fear of loss of support in case of refusal. It was taunted with insincerity, but retained its position. The same Ministry had in the previous year abolished the provision which required a majority of two-thirds in each House in

amending the Constitution. The clause requiring those majorities originally descended to Queensland by virtue of the Constitution Act of New South Wales; but, in 1867, under the Ministry of Mr. (afterwards Sir) R. R. Mackenzie, the clause was re-enacted in a locally made Constitution-Bill. Mr. A. H. Palmer was Colonial Secretary under Mackenzie in 1867, but was Premier in the Ministry which (in 1871 and 1872) abolished the clause restraining constitutional changes, and granted universal suffrage. Unstable as were colonial politicians they could yet point to equal instability amongst public men in the mother country, where a man of towering ability might be seen vehemently advocating changes while the echo of his own words denouncing such changes had hardly died away. The Queensland Assembly elected under the original Electoral Act evinced zeal for public education. The grants to schools were meagre in 1859, and the schools, most of which were denominational, were scantily attended. The children at public schools were 819; at private schools, 698. The latter were thirty in number. The first Queensland Parliament largely increased the grant for education, and made provision for the establishment of Grammar Schools. The impetus given in 1860 was maintained, and ere long the dangerous fallacy was adopted that the State ought, by making education free, to relieve affluent parents of their responsibilities; although a few school requisites, such as slates, were cautiously withheld. There remained in 1875, fifty-four private schools, whither independent parents sent about 2000 children at their own charge. In 1876 the existing Board of Education was superseded by the establishment of a Department of Public Instruction under a Minister of Education. The system was free, or eleemosynary, but was not aggressive against religion, since it allowed religious instruction to be given in the schools, at other than the ordinary school-hours, by ministers or others acting for parents of scholars. In 1879, in 210 State schools, 21 non-vested, and 87 provisional schools, about 45,000 children were reported as receiving instruction.

Sir George Bowen never exercised the large powers wielded by Governors before the era of responsible Government. That era was in Queensland contemporaneous with his assumption of

office. His first Ministry, under the guidance of Mr. Herbert, lived longer than was usual in Australia. But the Colonial Secretary was the only member who remained in it throughout. There were three successive Attorneys-General,—the same number of Treasurers,—and two Ministers for Lands. The three offices thus held were all, besides Mr. Herbert's, which were joined with responsibility. The Secretary for Lands and Works was not appointed until two years after the inauguration of the Government. The local treasury was poorly furnished when Sir George Bowen assumed office, and the wants of a young country, with perhaps the inexperience of a new Legislature prone to expenditure without counting cost, reduced the Government to difficulty. Mr. Herbert retired on the 1st February, 1866; and Mr. Macalister, who had been his Secretary for Lands and Works, formed a Ministry which included as Attorney-General, Treasurer, and Secretary, gentlemen who had been at different times members of the Herbert Ministry. The Governor was therefore surrounded by advisers long known to him. The Premier, who was Secretary for Lands and Works, proposed to overcome the financial difficulty by issuing inconvertible paper currency, made a legal tender by law, to the extent of £200,000. The expenditure at the date (1866) was £594,000; the revenue, £490,000. The imports for three years had been nearly double the exports.[1] The novelty of the Ministerial scheme, and the fact that Royal Instructions required reservation for Her Majesty's pleasure of Bills affecting the currency, caused the Governor to withhold his approval. He suggested the issue of Treasury Bills and an increase of taxation. The Ministry, having vainly pressed their scheme, tendered their resignations, which were not accepted. The Governor in vain offered to permit the introduction of their measure, reserving his final decision until he could obtain instructions from England. The Ministry, after successfully entreating him to lay the facts before the Houses, resigned. Mr. Herbert was called in, and having constructed a Ministry containing only one of his former colleagues, passed a Bill authorizing the issue of Treasury Bills for £300,000. The

[1] In 1866 the figures were—Imports £2,467,907 Exports, £1,366,491
„ 1880 „ „ „ 3,087,296 „ 3,448,160
„ 1881 „ „ „ 4,063,625 „ 3,540,366

Governor assented to it, and the triumphant but then unpopular Herbert retired after holding office for eighteen days. Mr. Macalister returned to office with two of Mr. Herbert's recent colleagues, and two of his own. Certain persons petitioned for the recall of the Governor on the ground that he had unconstitutionally brought about a ministerial change. But Lord Carnarvon approved of his proceedings, and if resentment had not died out speedily it would have been neutralized by the close of Sir George Bowen's term of office and his translation to New Zealand in 1867. The crisis was long remembered in Queensland politically as well as commercially. Mr. Herbert's colonial career terminated with his brief campaign of 1866. In 1868 he became Assistant-Secretary to the Board of Trade; in 1870 Assistant-Under-Secretary in the Colonial Office; and in 1871, as permanent Under-Secretary, filled the chair which Sir James Stephen, Herman Merivale, and Lord Blachford had adorned.

Major Blackall, after governing for two years, died universally regretted in the colony, and was succeeded by the Marquis of Normanby, who was ere long called upon to deal with a difficulty in the Assembly. The Acting Governor had recently granted a dissolution when the Ministry had a majority of only one. In the new House Mr. A. H. Palmer, the Premier, commanded a majority. But there had been acrimonious public meetings, and Brisbane and Ipswich had returned Opposition members. The minority, hoping for accessions in the House, and popularity in the country, abused the forms of Parliament, and refused to grant supplies unless the Government would proceed with a Bill to change the electoral distribution. They would vote two months' supplies on that condition. Mr. Palmer boldly said he would have the ordinary supply or none. Business was arrested. The minority presented a memorial to the Governor. They cast imputations upon the Government, and demanded redress of electoral grievances. The Governor, "ready to uphold to the utmost the dignity and privileges of Parliament," and respect the right of the people to direct through their representatives the course of legislation, pointed out that the "right of the representatives" appertained "to them not in their individual but in their collective capacity," and he declined "to accept the

opinion of twelve members as the decision of a House of thirty-two members."

"It appears to me that your memorial has been founded on a total misapprehension of the principles of the British Constitution, upon which the Constitution of this colony has been founded. Neither in this colony, nor in England, nor, so far as I am aware, in any British colony, does the Constitution give an inherent right to any man to participate in the election of the representatives of the country. The franchise is regulated in each instance by Act of Parliament, and whether the law is good or bad, so long as that law continues unrepealed it is binding on all. . . . The Opposition when pressing their claims so strongly must remember that others have claim to consideration besides themselves. I shall always be ready to pay the greatest deference to the opinion of Parliament, but that opinion must be expressed by the majority of the Assembly in their legislative capacity, and not by a minority without the walls of the Assembly."

The firmness of the Governor probably conduced to the compromise made, and when he was summoned (1874) to the Government of New Zealand he left a reputation in Queensland which an ambitious man might envy, but which he could not be accused of having sought in any other manner than by doing his duty.

Mr. (afterwards Sir) W. W. Cairns, governed for a brief period, and was called upon to decide the serious question whether a Bill passed by the Legislature (1876) involved a breach of international duty. The Chinese were attracted in large numbers to the gold-fields, and to deter or expel them[1] the Bill exacted from them six times as much for a miner's license as was demanded from others. The Governor obtained a special report from Mr. S. W. Griffith, the Attorney-General, who thought it unnecessary to reserve the Bill for the Queen's pleasure. But Sir W. Cairns needed no warped opinion to convince him that the Bill conflicted with the existing treaty with China. When he informed the Ministry that he would reserve

[1] Mr. A. Macalister, C.M.G. assured the Royal Colonial Institute (11th December, 1877), in an elaborate paper, that a "mistaken impression" had "got abroad that the object of Queensland was to exclude the Chinese from the colony. No such intention has ever been expressed. The only desire which the colonists have as yet evinced has been to regulate and control the admission of Chinese."

the Bill they remonstrated. To go beyond his "instructions, or to allow the unusual character of proposed legislation, not forbidden by them, as a sufficient ground for not giving immediate effect to the wish of the Legislature, would be of serious consequence to the independence and freedom of Parliament." The Governor nevertheless reserved the Bill. The Secretary of State declined to recommend its allowance, but suggested amendments which would remove defects. The special Act, which in the turmoil of Victoria Sir Charles Hotham passed in 1855, was a stumbling-block to Lord Carnarvon, but he pleaded that it had been repealed. Moreover, that Act limited the number (one person to ten tons of tonnage) which a vessel might import, and inflicted fines for excess, but imposed no disability on the Chinese when on shore except registration and payment of a fee (not exceeding twenty shillings in a year) towards a fund to be expended in adjusting disputes between the Europeans and Chinese. Stringent as it was, it was not of common nature with the Queensland Bill; but Lord Carnarvon rested his approval of the Governor's conduct on the necessity under his instructions to reserve the Bill. He was willing to co-operate with the local legislature nevertheless, in dealing with the difficult question before it. Meanwhile the Queensland Premier invited the Australasian colonies to aid him in devising measures to assert their rights of self-government and discard considerations about treaties. Mr. Parkes, in Sydney, could not see in Lord Carnarvon's despatch any hostility to the

"constitutional rights of Queensland. Being integral parts of the empire the colonies must clearly be subject to the obligations of the empire; and it is no more than the duty of the Imperial authorities to guard against local acts of legislation conflicting with the honour of the Crown. In the present case there does not appear to be any just ground for anticipating that Her Majesty will be finally advised to withhold assent from any measure for the protection of the people of Queensland which respects Imperial obligations, and does not exceed the necessities of the case."

This timely advice had weight; and the Sydney Assembly supported the just claims of Queensland by urging that the Imperial Government might obtain such a modification of the Tien Tsin Treaty as would regulate Chinese immigration. The

Queensland Government addressed itself practically to its task instead of railing at treaties and at Imperial authority. Acts were passed in 1877, and amended in 1878, to the satisfaction of all but the Chinese, who had to pay a poll-tax of £10 on arrival by land or sea, but might recover it if they departed within three years, having meanwhile committed no offences, and the amount being subject to deduction of the cost of treatment they might have received in any hospital. Governor Cairns did not remain long in the colony. In 1877 he became Governor of South Australia, but immediately resigned, on account of ill-health.

The question of Chinese immigration was not finally set at rest by the Acts of 1877 and 1878. In 1881 an outbreak of small-pox in Sydney was traced to a Chinese child, and though it was found impossible to prove that the disease was imported from China (and many ships arriving from Europe and the East Indies were from time to time placed in quarantine on account of small-pox), popular antipathy to the race was increased. It was shown in various ways. At an International Conference in Sydney (1881) the Chairman (Sir H. Parkes) brought under consideration an official notification in Western Australia concerning the introduction of Chinese immigrants at the public expense. Mr. Berry, on behalf of Victoria, moved a resolution condemning the introduction of Chinese into any of the Australasian colonies. Mr. Palmer carried an amendment condemning their introduction "in large numbers." The Chief Justice of Western Australia (who acted for that colony at the Conference) declined to vote on the question, and on any Imperial question.

A remonstrance addressed to the Secretary of State was adopted by all the other members of the Conference. It not obscurely threatened Western Australia with restrictions on her intercourse with the other colonies, but it dwelt also upon the social dangers apprehended in case of a large immigration from China. A draft Bill based upon the Queensland law was recommended by the Conference, and was passed subsequently (with little variation) in the different colonies. Sir Arthur Kennedy, who succeeded to the Government of Queensland in 1877, saw his charge advance with the usual rapidity of a new

community established in a fertile territory. He kept aloof from party dissensions which were occasionally acrimonious. The Opposition bitterly impugned the Premier (McIlwraith) with regard to contracts for railway purposes, and an inquiry was instituted in England which deserves mention if only to record the confidence reposed by all parties in Mr. George King (M.L.C.) of Gowrie. Ministerialists and the Opposition concurred in delegating him to represent the colony, and a coadjutor was appointed by the authorities in England. The result was an acquittal of Mr. McIlwraith from all blame, and proceedings instituted in the Law Courts ended in like manner.

During Sir A. Kennedy's government a proposal to annex New Guinea to Queensland acquired shape. At various times annexation to the Empire had been mooted in previous years, and a letter from Mr. Labilliere to the Earl of Carnarvon was referred by that nobleman in 1874 for report from Governors in Australia. Some colonial public men who advocated annexation saw no reason for throwing any of its cost upon the colonies, and Lord Carnarvon's inquiry whether the principal colonies would contribute not more than £4000 a year (each) elicited nothing but discussion. Missionaries were settled at various points in New Guinea, and there was correspondence as to the necessity for establishing some authority to restrain outrages by Europeans "on natives of islands beyond the Queensland limits."[1] Mr. Chester, the police magistrate at Thursday Island (a Queensland officer), reported that the men were "mostly runaway seamen and discharged Polynesians," and that the missionaries complained of the outrages they committed.

Again the Colonial Office was urged to annex the eastern portion of New Guinea, and in November 1878, moved by rumours that gold had been discovered there, and that some lawful authority would be needed, Sir Arthur Gordon, the High Commissioner in the Pacific, arrived at the conclusion that annexation would be inevitable in order to avert "a reign of lawless violence and anarchy." In the end of 1878 the seekers

[1] Despatch. Sir A. Kennedy to Her Majesty's High Commissioner for the Western Pacific, 19th December, 1877.

for gold returned unsuccessful to Australia. Again in 1882 the subject of annexation was revived, in consequence of rumours that the French and the Germans were about to intervene there, but the Earl of Derby announced that the Government were "not prepared at present to re-open" the question. In February 1883 the Queensland Agent-General in London (by letter) urged immediate annexation, and Lord Derby (8th March) called for a report from Sir A. Kennedy "before so grave a step could be considered." Before his invitation was received a commercial telegram announced that the Queensland Government had (4th April) taken formal possession of New Guinea for Her Majesty, and Sir A. Kennedy in reply to inquiry from the Colonial Office telegraphed (16th April): "To prevent foreign powers from taking possession of New Guinea, Queensland Government, through Police Magistrate, Thursday Island, took formal possession in Her Majesty's name on 4th instant, pending your decision on my despatch this mail."

In the neighbouring colonies approval was expressed in various forms, that of South Australia being, in Sir W. F. C. Robinson's words: "My Government request me to convey their opinion that New Guinea should be under British rule, and hope the action of the Government of Queensland may have that result."[1]

In the first instance Lord Derby declined to ratify the annexation, but coupled his refusal with a hope that

"the time is now not distant when in respect of such questions, if not for other purposes of government, the Australasian colonies will effectively combine together and provide the cost of carrying out any policy which, after mature consideration, they may unite in recommending, and which Her Majesty's Government may think it right and expedient to adopt."

Public feeling in the colonies was too sensitive to be soothed into apathy. A generous loyalty and patriotism abounds among the colonists more than is known to some of their English friends, and stirs them to rejoice in the well-being of the Empire, which they would deem injuriously affected if New

[1] The Premier in Queensland telegraphed (21st April): "All colonies heartily endorse our action, and are urging approval. Consider annexation by foreign power calamitous. Assure Lord Derby no expense Imperial Exchequer. Press early ratification."

Guinea were seized by any continental European Power. Moreover, they who have done so much to repel from their shores the convicted criminals of England, and who have already suffered from proximity to New Caledonia, whence French convicts have occasionally escaped to Queensland, might well be excused if hasty in taking measures to ward off foreign intrusion in New Guinea, situate so close to Australian shores. Lord Derby's hesitation stirred all men's minds in Australia; and already Parliaments have spoken in accordance with popular feeling.[1]

It may be that the dread of ill neighbours will furnish the motive power which has hitherto been wanting to induce federation in the Australasian colonies. Sir Arthur Kennedy, under whose government the question was brought to a crisis in 1883, was about to retire at the time, and the Colonial Office was not to receive counsel from him, inasmuch as he died on the voyage from Queensland to Europe. Sir Anthony Musgrave, once Governor of South Australia and afterwards at Jamaica, was translated to Queensland.

The problem of dealing with Crown lands was not encumbered with the difficulties existing in Victoria or in New South Wales. The parent colony had herself suffered less than Victoria from Earl Grey's regulations. Cupidity of many thousands scrambling for prizes in a lottery where the allotments were to be carved out of a small territory could find no counterpart in Queensland, where at the date of separation, 1st December, 1859, the male white population, including children, was 10,494,[2] and the area

[1] Both Houses in Victoria, at the instigation of Mr. Service, the Premier, resolved, in July 1883, that "it is essential to the future well-being of the Australasian colonies that New Guinea and the Pacific Islands between New Guinea and Fiji, including the New Hebrides, should be annexed to the British Crown, or that England should establish a Protectorate over them;" that concerted action on the part of the colonies was desirable to accomplish such a result; and that Victoria was "willing to contribute its proportion of the expense entailed by such annexation or Protectorate." For the welfare of the natives it would be far better for them to come under the Imperial Government, as at Fiji, than to fall under sway of some public men who have ruled in Queensland.

[2] These were the figures laid before the Queensland Parliament in 1860. Population flowed in so rapidly that on the 31st December, 1860, 11,000 had been added. ('Colonial Office List,' p. 138. 1879.)

of the colony about 670,000 square miles; and where, at the same time, under the Sydney Government, the requirements of the community had already been met to some extent by the sale of lands and the leasing of runs. Circumstances prevented Queensland from falling into the pit which deceived her neighbours, and of which it does not appear that Queensland saw the full danger. Her scanty population was her safeguard in her callow days; and the fact that in 1878 it amounted to only 210,000, although various gold-fields had long been occupied, explains how she escaped the evils entailed upon larger populations gathered upon more limited space.

The few dwellers in Queensland owned or controlled more than three millions of sheep and nearly half a million of cattle. They expended in 1860 more than £23,000 for land at public auction. They held 1300 pastoral runs, comprising more than 41,000,000 of acres of Crown lands, under lease. It was difficult to raise a storm against the pastoral interest, which formed the life-blood of the settlement, and ministered to almost all employment both in town and country. But in proportion as the circumstances of Queensland exempted her from danger by indiscriminate selection of lands which the selector had no intention to cultivate, it was safe for her to offer facilities for selection which her population was not numerous enough to abuse throughout her territory. In 1860 she passed two important laws[1] to encourage settlement of an agricultural class. The industrious farmer was tempted by a privilege of lease of adjacent land at a nominal rent, and the principle of auction[2] was departed from on agricultural reserves in order to extend farming operations. The unassisted immigrant was invited by the offer of grants of land of the value of the cost of his immigration.

Ere long the Legislature travelled on the downward road, which led the province of Auckland into such humiliating contrast with Canterbury in New Zealand. Their enormous

[1] An "Occupied Crown Lands Leasing Bill," and an "Unoccupied Crown Lands Occupation Bill."

[2] The Queensland laws of 1860 were assented to on the same day as Mr. Nicholson's Victorian Act of 1860, which enabled a man to select after survey without competition by auction.

landed estate had intoxicated the men of Queensland. In 1868 the price of "agricultural land," with deferred payments, was lowered to fifteen shillings an acre, while "first-class pastoral" land was similarly eligible at ten, and "second-class pastoral" at five, shillings. The maximum which could be selected in the first-class was 640 acres; 2560 and 7680 could be secured respectively in the others. Injurious tendencies of the law were heightened by its abuse. Fraudulent selections enabled speculators to grasp larger blocks than the spirit of the law allowed. Combinations by members of a family gathered into one hand tens of thousands of acres in coveted districts. Those who had taken part in the lotteries of New South Wales and Victoria carried their experience to new pastures in order to overreach the authorities in Queensland. Some settlers incurred heavy liabilities by purchasing at auction lands which, if selected by others, would have rendered it impossible for the settlers to follow their previous pastoral pursuits.

There was one feature in the Queensland law which differed from that in Victoria. All Crown lands were not open to selection; and survey preceded selection. But the surveys were on a large scale. When the Act of 1868 was repealed in 1876 there were upwards of 29,000,000 acres subject to conditional selection, besides 597,000 acres open under a Homesteads Areas Act, which was deemed necessary, in 1872, to meet the wants of genuine selectors anxious to make homes.

The Homesteads Act was itself abused by those who selected under it with an intention to sell the land to a richer neighbour. The trifling payment of sixpence an acre for five years, with personal residence and some improvements, on a block not exceeding 160 acres, entitled the selector to the freehold, which he could then dispose of at considerable profit, having made it a nominal home during the probationary period.

The law of 1876 abolished the three classes of land created in 1868, perpetuated a low upset price, and continued the system of selection or "conditional purchase," under which one selector might obtain as much as 5120 acres, or as little as 40 acres. At the end of 1879 there were upwards of 23,000,000 of acres open for general, and nearly 2,000,000 open for homestead, selection. Of a total of 5,570,160 acres conditionally purchased,

3,720,000 had not been finally dealt with. It is almost needless to say that they had not fallen into the hands of the yeomanry class for which they had been ostensibly subjected to selection. The great interior (traversed by Leichhardt and by the numerous exploring expeditions of which that of Burke and Wills was the precursor) was occupied rapidly within the Queensland borders. At the end of 1881 there were more than 8,000,000 sheep and more than 3,500,000 cattle roaming over land, part of which had a few years before been explored at the risk of death from thirst. Pastoral lands in the "unsettled districts" were leased for terms of twenty-one years, with conditions of stocking the land (to one-fourth of its capacity) at a rental of five shillings per square mile for a third of the time, ten during the next, and fifteen shillings during the last term of seven years. Travellers rode across once dreaded wastes, selecting tracts for occupation, or with a view to sell the right of occupation during the authorized term. Waterless tracts, on which the grazier was compelled to store the rainfall artificially, were held at a rental of three shillings per square mile. Such efforts to reduce to the service of man the perishable annual grasses conflicted with no sound system of economy. The freehold of the land remained with the State. But, like New South Wales and Victoria, Queensland strove to enforce artificial settlement by sacrificing her inheritance. Her public men seemed unconscious that as the first cost in purchasing land bore but a small proportion to that required for improvements and implements, the Government could promote no beneficial occupancy by transferring to private speculators the profit which the State might have secured by a sale of the land for its market value. Thus it came about that when (1881) Queensland had sold 5,355,576 acres she had received only £3,956,317, or less than fifteen shillings an acre (though many valuable sites had been parted with in and near towns at comparatively high prices), and several other millions of acres were in process of alienation under selection at low rates.

By a wiser economy South Australia had (1881) obtained for 9,582,903 acres £12,814,212; and while Queensland had only 128,075 acres, South Australia had 2,613,903 under cultivation.

Sales by auction were still continued by the Government of

Queensland, but to a limited extent. In 1879 less than 13,000 acres were thus sold, and the proceeds barely exceeded £23,000. The average price at which lands had been conditionally selected in the same year was only 11*s.* 3*d.* an acre; while the average obtained for homesteads selected was 2*s.* 11*d.* an acre. Yet one industrious province in New Zealand had obtained £3,608,000 for 2,300,000 acres, and was notoriously prosperous in agriculture.[1]

There were certain industries for which Queensland was better adapted than the Southern Colonies, and her first Parliament encouraged them by offering a bonus to the successful cultivator of sugar and cotton. But the inexorable law of cost of production militated against the profitable growth of the latter. Wages were too high to enable the grower to compete with foreign lands in which labour could be hired at a small fraction of the wages in Queensland. Polynesians were imported, many of them in a manner which was occasionally punished in the Queensland Courts. The prophecy of Dr. Lang (that industrious British families would soon cultivate cotton without employing hired labour) vanished into air.

The function of a legislator is to avail himself of natural conditions. If he endeavour to distort them they avenge themselves in his failure. It is in the long run useless to sell anything at a loss. In 1870 there were 14,000 acres under cultivation of cotton, and the crop was heavy, but prices were unremunerative. In 1876 there were only 573 acres under cotton cultivation. In 1878 there were only 37. When commercial conditions permit a resumption of the industry at a less cost of production, the soil and climate will still be at the service of man.

But sugar cultivation yielded prosperous results. In 1866 there were only 600 acres cultivated. In 1876 there were 14,000 acres. In 1879 sugar was exported to the value of £276,000, the chief buyers being spirited capitalists in Sydney,

[1] Canterbury strove to abide by Gibbon Wakefield's principle of a sufficient price. Auckland strove by a low price of land to produce prosperity. When Canterbury had sold 2,300,000 acres she had received £3,608,000; Auckland having sold 2,144,000 acres had received £274,000. In prosperity as regarded agriculture, no man has ever asserted that Auckland could be compared to Canterbury. Mr. Anthony Trollope wrote (1873) that Canterbury was "second in success to no colony sent out from Great Britain."

who had established a refining company, and supplied the demands of a great part of Australia. Polynesian islanders were largely employed in the cultivations, as they were in various industries.

Nature and circumstance proved in other directions the fitness of Queensland. When more than 5,000,000 acres had been alienated (1881) the total production of wheat was 39,612 bushels, while of maize there were upwards of 1,300,000 bushels. Among the exports of 1881 wool showed a value of £1,330,000; gold, nearly £1,000,000. Tin and copper swelled the exports in a less degree, but coal, though abundant in the territory, was scantily exported, and New South Wales coal was used by steam-vessels trading with Queensland.

Though the youngest of the Australian colonies, Queensland was the first to invite private enterprise to construct a railway traversing her wide domain. She made railways with her public funds from Brisbane and Rockhampton and northern ports, but her rulers were not content to struggle with immediate wants by efforts which seemed to lag behind the need. Mr. McIlwraith, the Premier, when launching a fresh loan for £2,000,000, sounded capitalists in London, and the Governor in opening Parliament (July 1880) recommended the subject to the Legislature. "The possibility of straining the credit of the colony by appeals to the English money-market for fresh loans to complete necessary public works, induced my Ministers to regard favourably the carrying out of a system of railway lines by private enterprise stimulated by generous land grants." Proposals for "connecting the eastern sea-board with the Gulf of Carpentaria had already been received."[1] Though confronted by a resolute Opposition in 1880, on many points the Ministry were aided in framing a Railway Companies Preliminary Bill conferring power on the Government to enter into contracts (subject to Parliamentary ratification by law), by which companies would construct railways on consideration of obtaining alternate blocks of land

[1] When Queensland had made 400 miles of railway the cost was estimated at £9000 a mile. If the transcontinental line could be constructed at £6000 a mile, the colony would gain much by the introduction of some five millions sterling entailing no charge upon the State, and satisfied by grants of lands remote from the sea.

abutting on the line. As to the quantity of land there was much debate, and it was arranged that within 200 miles of the Gulf of Carpentaria, where the climate was deemed unsuitable for European constitutions, the contractors might employ Asiatic labour. To the south of that limit they were not to employ "any Asiatic or African not of European descent." The result is as yet in doubt. The Government followed the course marked out in 1880, and made arrangements with a Company; but an adverse division in 1883 on the question of the contemplated grants of land, caused the Premier to appeal to the country, and the decision cannot be known until these pages are in type.

It will be remembered that Governor Robe encountered vehement opposition to his measure for granting State aid to religion in South Australia. As soon as their political institutions permitted them to do so, the colonists, consistent from the first, abrogated the provision. The munificence of Lady (then Miss) Burdett-Coutts, for which Europe was too narrow, endowed the Church of England in Adelaide, Cape Town, and British Columbia, with bishopric funds, amounting in the aggregate to nearly £50,000. Voluntary efforts amongst the members of that Church and other religious sects have sufficed to maintain them in such a manner in South Australia that the colonists affirm that the interests of religion have gained rather than suffered from the responsibility cast upon the community to care for its highest interests unaided by the Treasury.

Though legislation was infrequent with regard to education the subject was often seriously discussed. An Act was passed in 1851 to assist the people in giving "good secular instruction, based on the Christian religion, but apart from all theological and controversial differences on discipline and doctrine." The Scriptures were read daily in the schools, but no denominational teaching was given during school-hours. A Central Board of Education presided in Adelaide, and District Councils acted as District Boards. Teachers were licensed, and received salaries supplemented by fees which could not exceed one shilling a week for a scholar. The earnestness of the parents was proved by the fact that the returns showed that their contributions nearly balanced the amount of salaries. In 1864 the fees were £12,555 (at the rate of a guinea per child), and the stipends were

£12,914. The Government contributed one moiety of the cost of school-buildings, the ratepayers contributed the other. The Government paid fees (sixpence a week) for destitute children and orphans. A healthy spirit of co-operation is manifest in these details. But it was deemed that too large a proportion of the public grant was expended in populous places where private enterprise could find best remuneration, and that more ought to be done to aid the sparsely-inhabited districts. It was considered also that teachers were inadequately paid. Two Select Committees reported on the subject. One, in 1868, found that "a large number of children between five and fourteen years of age did not attend any schools." Witnesses stated that the reading of the Bible was often confined to boys in the higher classes, because all the children could not read it. Secularists urged the Committee to ostracise religious teaching altogether, but the Committee, "prepared to go with the most enthusiastic advocates of purely secular education" in securing it, would "never give consent to any legislative enactment against the reading of the Bible in common schools." There were some schools in which earnest teachers forfeited a grant from the State rather than refuse to mingle religious instruction with their ordinary teaching. In September 1870, Mr. Henry Kent Hughes, recently the Treasurer in a Ministry of which Mr. Strangways was Premier, submitted to the Assembly (during the Ministry of Mr. John Hart) resolutions in favour of "the system known as payment by results," which should leave ample facilities for explaining the Bible so "as to reach the hearts of the children," while the Government should "pay only for secular results." His efforts were unsuccessful, and it was not until 1875 that the Parliament passed an Act which subjected the schools to a Council of Education directly responsible to a Minister of Education. Teachers' salaries were augmented. Grants of land were to be set apart with no niggard hand every year, and the rents were to be devoted to school-purposes.[1] A first endowment of 100,000 acres was provided for in the Education Act of 1875. The Bible might be read, without note or explanation in the schools, before the commencement of the four

[1] The grants were not defined otherwise than by a provision in the law that they were not to exceed 20,000 acres in any year.

hours and a half allotted for secular instruction. Ordinary attendance during those hours was compulsory until the attainment of a standard prescribed by the Council. Children whose parents could prove inability to pay, were to receive gratuitous instruction; but fees could be enforced in other cases. They were small in amount (fourpence a week for children under eight years, and sixpence for others), but they yielded nearly £17,000 in 1878. The local historian summed up the Act thus: "Education is secular, but not to the exclusion of the Bible: free to those who cannot afford to pay a small fee; and compulsory wherever practicable."[1] If the Government can withstand the demands of those who crave an eleemosynary system, the working of the South Australian Act may furnish another proof of the fitness of the community to control affairs of State. In 1878 the colony was so satisfied with its resolution to subject public education to the control of a responsible Minister that it extended his functions, and swept away the Council which had previously been responsible to him. The Minister for Education was able to report, in 1881, a steady increase in attendance of scholars, and satisfactory results as to the payment of school-fees and the operation of the compulsory clauses. At that date the total area of land granted to the Department was 201,463 acres. The money given by the State was £86,000: the total number of pupils was 40,578 (3827 being in provisional schools).

The foundation of the Adelaide University was the work, not of the Legislature, but of private liberality. Mr. W. W. Hughes offered to give £20,000 to form a Union College, to provide higher education for the members of several denominations. His friends were of opinion that a University, opening its doors to all, would be more widely useful. He concurred, and agreed to found two Chairs in a University. An Association was formed in 1872. An Act of Incorporation was passed by the Legislature in 1874. Fifty thousand acres of land were granted as an endowment; a site for a building in Adelaide was given, and annual aid from the revenue (with a maximum limit) was guaranteed in proportion to the revenue otherwise derived. A Council of twenty members was created,

[1] 'South Australia.' William Harcus. 1876. Published by authority of the Government.

and the voluntary Association resigned its trust to the new authority in 1874. The munificence of Mr. Hughes was emulated by Mr. (afterwards Sir) Thomas Elder, long known as the patron of exploration. He presented £20,000 to the University as soon as it was established. The first Chancellor was Chief Justice Sir R. D. Hanson; and a Vice-Chancellor was found in Dr. Short,[1] Bishop of Adelaide, to whom the Church of England and the colony had been indebted for the good services of St. Peter's Collegiate School during a quarter of a century. The first degree earned in the new University was conferred in 1879 :—a staff of Professors having been procured from the mother country. The Department of Education offers for annual competition several scholarships, tenable for three years at the University.

The Church of England has a "Collegiate School of St. Peter's," founded by Bishop Short in 1849, and a "Pulteney Street School," with 400 scholars, who receive commercial and classical education. The Wesleyans have a "Prince Alfred College," of which Prince Alfred laid the foundation-stone in 1867, and in which there were in 1881 more than 327 scholars. The Presbyterians, Congregationalists, and others have a "Union College" in which a few scholars are trained for the University.

When Sir Richard G. MacDonnell had presided at the introduction of responsible government, he retained in his new circle of duties the respect and affection of the colonists. Strong, physically and mentally, he gave the colony the benefit of his talents without obtruding them in a manner which might have neutralized his credit for impartiality. His sympathy with all wholesome efforts endeared him to all, and when after a prolonged term of office he went to Nova Scotia (1862), his departure was universally regretted. It was during his government that the two Chambers disagreed as to their rights with regard to Money Bills. He was not dragged into the discussion. But his despatches proved the deep interest he took in all questions of importance, and how he contributed to their settlement. One question, which did not seem important to persons in other

[1] In 1881 the Bishop, amidst testimonials of affection from members of all denominations, resigned his see, at an advanced age. The 'Adelaide Observer' stated that a public address was presented to him (1882), before as "large and representative a gathering of citizens" as had been seen.

colonies, was raised by him, but not settled for many years. The South Australians were sensitive as to social precedence, which was not accurately defined in the Colonial Regulations. Their old contest about aid to religion had left scars. Sir R. MacDonnell was told by the Duke of Newcastle that the Governor ought to determine questions of precedence, but would do well to "proceed by analogy to the rules" in the mother country.

In 1871, another Governor, Sir J. Fergusson, fixed certain rules. In them the Bishops of the Churches of England and Rome had high place. The two Houses disapproved of such recognition of ecclesiastical functionaries, and passed a Bill "to provide for the regulation of precedency in South Australia," which the Governor reserved. Lord Kimberley announced that it could not be allowed, inasmuch as it encroached upon prerogative, and that the Queen could not be advised to deprive individuals, such as the dignitaries excluded by the Bill, of any precedence to which they were entitled. An address prayed the Queen (1872) to remove the grievance felt by the inhabitants at the precedence over ministers of other denominations ascribed to the two Bishops. Meantime, the Bishop of the Church of England, Dr. Short, offered to give up the precedency to which he was entitled. The Secretary of State promised that in future no dignitary of any religious persuasion should have precedence assigned to him in the colony by the Crown, and directed the Governor to inform the Bishop that Her Majesty fully appreciated his disinterested conduct in offering to waive the precedency attributed to him. The subject is only worth mentioning as showing how the bending of the twig influences its aftergrowth. A quarter of a century elapsed between the contest with Governor Robe about State grants to churches, and the address to the Queen about the barren matter of personal precedence. That there was no personal feeling against the venerable Bishop of Adelaide was proved by the fact that he was chosen as the first Vice-Chancellor of the Adelaide University, and on the death of the Chief Justice was made Chancellor, with popular approval.

The urbanity of Sir Dominic Daly, who succeeded Sir R. MacDonnell, won golden opinions, and his death at the close of the customary term of government elicited such earnest

feeling as to prove the hold he had gained upon the people by his genuine sympathy with their interests.

In 1868 Sir James Fergusson, a soldier of Alma and Inkerman, a Scotch county member, and an Under-Secretary of State on two occasions, succeeded Sir D. Daly. He also interested himself in local affairs and encouraged high aims. He heartily joined in the enterprise of opening telegraphic communication with England by the line to Port Darwin in 1872, and in the following year was translated to New Zealand, the Governorship of which he resigned in 1874.

Sir Anthony Musgrave, after governing at St. Nevis, St. Vincent, Newfoundland, British Columbia, and Natal, assumed office in Adelaide in 1873. He had been there only four years when he was translated to the Western hemisphere as Governor of Jamaica in 1877. The distinguished Engineer officer, Sir W. F. D. Jervois, was in that year engaged at the request of the British Government in examining the position of the Australian colonies with a view to advising as to their defences, and whilst actively performing that duty was appointed Governor of South Australia. His appointment was the first made in Australia under a new order of commissions. It had become customary to issue a minor commission to a new Governor, empowering him to act under the commission and instructions held by his predecessor until similar documents could be transmitted to him. In 1875 it was resolved to issue on behalf of each colony formal letters patent constituting permanently the office of Governor therein, and providing that all future holders of the office should be specially commissioned under the Royal sign-manual to perform the duties. The new scheme, after much correspondence with Canada, was matured in 1877, and South Australia was the first to be brought within its operation in the Southern Seas.

In 1883 Sir W. C. F. Robinson left Western Australia and became Governor of South Australia, when Sir W. Jervois was translated to New Zealand.

After their resolute and successful resistance to Earl Grey's land orders, the South Australians continued to maintain sale by auction, and to preserve harmony amongst all classes under regulations which facilitated the occupation of land by pastoral tenants, but enabled the Crown to resume at six months' notice

any land required for sale. But the deeds of her neighbours, though they did not convince her public men, compelled them to abandon in some degree the principles to which they had previously clung. Sir Arthur Blyth at a meeting of the Royal Colonial Institute in London read a paper which admitted this fact in 1880. He was then Agent-General for South Australia. He had been a member of about nine Administrations in the colony during the years ranging from 1857 to 1876. Alluding to the land systems of Victoria and New South Wales, he said—

"It will be readily understood that when this course of action was entered upon in the central colony of Victoria, it would soon be a necessity for adjoining provinces to follow more or less in the same direction, and regulate their enactments for agricultural settlement somewhat upon the same principles. . . South Australia held out the longest against the new system, which was viewed by those of conservative tendencies to be contrary to sound principles of political economy, and savouring of socialistic ideas."

It is difficult to discover any ground upon which Gibbon Wakefield's colonizing scheme could be deemed hostile to general settlement. He it was who shattered for ever the granting of large tracts to the rich; and his system aimed at mutual benefit for all without favour to any. Nevertheless it is easy to see that the South Australians might dread a loss of population, and become faint-hearted, although the provinces of Canterbury and Auckland were furnishing daily proof that so sound was Gibbon Wakefield's principle of a "sufficient price" that even close proximity to the foolish did not neutralize the efforts of the wise. It seemed that the lands of the Australian continent, handed over so confidingly by the mother country, were to be dissipated by contentions in which each colony sacrificed its own welfare, and cheapened its wares to destroy the business of its neighbours.

But although South Australia was driven by her neighbours to alter her land laws, she never made her Land Department a mart for the purchase of political support. From that stain her public men were free. For some time the Government adhered to the old law, which expended a moiety of the land fund in promoting immigration, and constructing roads and bridges. Not antipathy to immigration, but other urgent needs relegated the law to comparative disuse; and aid is still given to promote

immigration. In changing her land law South Australia refused to adopt the vicious principle of selection before survey, although she encountered difficulty in checking the practices of a class of men called "land-sharks," who, having no intention to become farmers, bought land from the Government with a view to levy tribute from *bonâ fide* farmers to whom they hoped to re-sell. She legislated at different times, but always with a view to secure industrious occupants of the soil. Her first Act on the subject (known as Strangway's) exacted previous survey, submitted the lots to "auction for choice" at an upset price not less than £1 nor more than £2 per acre, the latter being reducible if the land should not be selected at that rate. She did not abandon auction, although after the choice of a lot had been unsold by auction (to a selector), land eligible under that auction could be selected on deferred payments by *bonâ fide* cultivators, to secure whose occupancy stringent enactments were passed. The purchaser covenanted to make certain improvements within stated times. In every year after the first as much as one-fifth of the land was to be cultivated by him. He was allowed many years to fulfil all the conditions, and to make his last payment, but he who had resided on the land for five years might then complete his purchase and obtain a title. It was not until country land was unsold by "auction for choice," and after two years of liability to such auction, that it could be sold unconditionally, and then the price was £1 an acre. For a time the maximum to be selected was limited to 640, but subsequently it was enlarged to 1000 acres. Town and suburban lands were sold by ordinary auction for cash. With these precautions South Australia succeeded in placing general cultivators upon the soil under the system of deferred payments.

Whenever and wherever it was deemed expedient to bring more land within reach of the farmer, the Government gave notice to the pastoral tenant or tenants, and the required lands were resumed. The land being surveyed in appropriate blocks, the "auction for choice" of selection afforded a guarantee against favouritism, bribery, or sacrifice of the public estate. Bidders who declared an intention to occupy the land could not be competed with by others intending to farm by means of agents or servants. The successful bidder was permitted to

extend his holding to 1000 acres, but he paid for it in proportion, the upset price being £1 an acre. The second class of purchasers, who intended to farm by deputy, competed with one another after the first class had been satisfied. When both these classes were satisfied, and the State was assured of receiving fair value for the choicest portions of the public domain, the residue of the surveyed land could be taken up by selectors at the rate of £1 an acre. Time was afforded to the farmer to enable him to meet the heavy expenses of settlement, to erect buildings, fences, and to provide implements and stock. He was required to pay only ten per cent. of the price of the land, and till three years had elapsed no further payment was required. The fraction thus paid was deemed interest, or rent, and the price of the land had still to be paid in full.

Improvements were required, and at the end of the third year a further payment of ten per cent. was demanded as interest, or rent. At the end of the sixth year one-fourth of the purchase-money was to be paid; at the end of the ninth the remainder was expected, and the selector could acquire his freehold. But the resident farmer could acquire it at any time after five years; and at any time a selector could pay any portion of the purchase-money. Thus the providence of the State determined the area and situation of the land to be alienated. By limitation of the area it was hoped that aggregation of land in hands of speculators would be prevented. By deferred payments it was thought that the farmer might raise from the land itself the means of buying it. The conditions of improvement and cultivation guaranteed his industry. The preference of residents, both at the preliminary auction and in the acquisition of title, ensured, so far as legislation could ensure, a yeomanry attached to the soil. Though driven by the acts of others to make great changes in her land laws, South Australia never accepted the pernicious vagrancy of free selection before survey.

It was hardly to be expected that after the question of remitting the debts of selectors had been raised in New South Wales and Victoria, the denizens of South Australia, which yielded scanty crops, would abstain from urging claims for consideration. Cultivation was extended rapidly into the territory

North of Adelaide, and the yield per acre diminished as the area which had less rain-fall was subjected to the plough. For some time South Australia declined to grant indiscriminate aid, or to allow the payment of interest to be accepted as a discharge of the principal of the debts of selectors; but the scanty yield of wheat induced the Government to allow selectors to cancel their existing obligations in certain cases in 1882, and re-buy at a less rate the farms which had been unprosperous. The contention of South Australia has been with the aridity of her climate as well as with the temptations held out by her neighbours. The average yield of wheat per acre in the Australasian colonies[1] brings into strong relief the natural difficulties with which she had to contend.

| | Acres under Wheat in 1881. | Mean yield in bushels, 1874 to 1881 inclusive. | Population in Dec. 1881. |
|---|---|---|---|
| Victoria . . . | 926,729 | 12·65 | 882,232 |
| New South Wales . | 221,888 | 14·52 | 781,265 |
| Queensland . . | 4,708 | 13·17 | 226,968 |
| South Australia . . | 1,768,781 | 8·33 | 293,297 |
| Western Australia . | 21,951 | 12·05 | 30,013 |
| Tasmania . . . | 51,757 | 17·85 | 118,923 |
| New Zealand . . | 365,715 | 27·02 | 500,910 |

The wholesale evasions practised under the Act known as the Duffy Act in Victoria were in South Australia impossible; and the enormous alienations effected under the same Act because Mr. Duffy either did not know the meaning of the word "assigns," or, knowing it, sanctioned transactions which he professed to oppose, found no counterpart in Adelaide. Severely as South Australia guarded against the "dummyism" rampart elsewhere, it was confessed that a small proportion of it existed in the agricultural colony; but it was rigorously repressed. The purchaser was bound by a solemn declaration. Forfeiture of all rights and all improvements followed detected fraud or breach of covenants. Refusal to reply to inquiries which might tend to criminate him entailed similar consequences on the purchaser, and one exposure made it impossible for the culprit to become a selector anywhere else in the colony. On the whole it may be said, that if compelled at all to abandon sale at a sufficient

[1] Hayter's 'Victorian Year-book.' 1881-2.

price, or sale by open auction, South Australia qualified the necessity by provisions calculated to prevent valuable lands from becoming the prey of speculation or the sport of rogues. Whether her people will be prudent enough to return to the soil the elements needed for reproduction remains to be seen. In the first task of subduing the earth they have been pre-eminent. The quality of their wheat was vouched by its carrying off prizes at European Exhibitions.[1] A part of her well-earned success South Australia gladly ascribed to the ingenious Mr. John Ridley, one of her own colonists.

In a time of confessed prostration, when for lack of sufficient labour it was dreaded lest the crops should rot upon the field, he applied himself to discover a remedy, and in the summer of 1843-4 showed his neighbours the Ridley reaping-machine, reaping and thrashing in his field under the control of two men, one of whom guided two horses, and the other managed the machine. Labour and time were economized at the critical period of harvest. An hour after the golden treasure had waved upon the wheat-stalk some of it was converted into flour fit for the use of man. Soon the reaping-machine was in every field. That Mr. Ridley became a hero, that a testimonial was publicly presented to him by Governor Grey, that he received the thanks of the Legislature, and valuable plate obtained by subscription, and that more than a generation after his exploit grateful colonists determined to keep his memory green by a permanent foundation within the Adelaide University, was only fitting, and deserves to be chronicled.

Another name is honoured in the land, and the labours of Mr. R. R. Torrens, like Mr. Ridley's, benefited adjacent colonies. The first Treasurer under responsible government, he had previously served the State as Commissioner of Customs, and conceived the bold idea that—maugre all the meshes of the law, and the hardening into custom strong as law of the habits of generations—he could, if the colony would hear him, show how the transfer of land could be as easily effected as the transfer of shares in a ship, which commercial usage sanctioned without the intricate and expensive processes which encumbered and

[1] In London in 1851 it obtained first prize. In Adelaide in 1865 a prize bushel weighed 68 lbs. 13½ ozs.

delayed transactions in land. He would give security of a title which might with the utmost ease and simplicity be negotiable and transferred. He had no fair field of nature to deal with. Rather his task was like Rinaldo's in the enchanted grove near the camp of the crusaders. Others had abandoned the task in horror. Wherever he struck, groans of the lawyers warned him that his deeds were impious. It was impossible, they said, that aught but unutterable woe could flow from his rashness:—*non turba questa secreta sede.* But like Rinaldo, though the foe was hundred-armed, he smote down the tree of evil growth, and like the army of Godfrey, the colonists in a serener air could enjoy the bounties of Providence, of which dark incantations had deprived them. Head of a Ministry in 1857, he quitted the political arena to devote himself to his task. Public opinion supported him against Bench, Bar, and scrivener. The Real Property Act became law in January 1858, and was to be operative in the following July. He resigned his seat in Parliament, and became Registrar-General in order to make needful regulations, and control the working of the new law. Amid learned prophecies of failure he achieved success. Title by registration was substituted for title by deed. His instructions to all who desired to bring their property under the new law were so clear that any ordinary person with time at his disposal could dispense with legal assistance in complying with the forms; and the cost was almost nominal. Useless dust of ages was swept away. By the old law every change of ownership lengthened the chain of which each link had to be tested in every subsequent transaction. By the new law the last registration was complete in itself, and no retrospective searches or opinions—no new intricate deeds—were needed. To ensure the soundness of every transaction a per centage of one half-penny in the pound was paid when land was for the first time subjected to the law. The fund thus created was guaranteed by the State in order to compensate rightful proprietors who might have failed to protect themselves when lands were brought by others under the Act. The precaution was wise, but almost superfluous. When thousands of properties had been registered no claim had been made upon the fund. When the accrued fund exceeded £30,000 only £300 had been required to meet demands.

The same success attended the Torrens Act in Victoria, where in 1879 7,557,700 acres had been subjected to its provisions. The guarantee fund was then £57,000; only three claims had been substantiated upon it, and they involved an aggregate payment of £718. Mr. Torrens protected third persons by enabling them to enter caveats. Advertisements and notices warned all owners and neighbours of an intention to submit any property to the law. He had one crowning advantage which only a new territory could offer. All lands alienated from the Crown after the date of his Act were subject to it. At the end of 1879 the value of property brought under the Act was nearly twelve millions sterling in South Australia alone. Long before that time Mr. Torrens had grafted his reform upon the neighbouring colonies. To some he went while the lawyers were arraying their forces against the dreaded innovation which was everywhere proposed, everywhere opposed, but everywhere triumphant. In some places, when defeat was impending, the legal fraternity made a merit of necessity; and when they could not stay the measure, induced the Government to make a lawyer the Registrar-General, with a view to maintain legal technicalities in fact or in form. His opponents continually asserted that Mr. Torrens did not understand the difficulties of the case, but events proved that defects in comprehension were not on his side. He retired to England and became member for Cambridge, but the multitudinous interests connected with land in the mother country were an insurmountable barrier to his reforming efforts, although the example set in Australia furnished arguments when Lords Westbury, Selborne, and Cairns, applied their great powers in order to effect in England what had been done by the "Torrens' Act" in Australia. Worthily in his case the Queen was advised in 1872 to confer honours upon him, and he was knighted.[1]

There is so much to praise in the results of the labours of the public men of South Australia that it has been unnecessary to dwell at any length upon their faults. That many of them were not without faults, with which it is nevertheless needless

[1] The 'Colonial Office List' (1879) states that he was knighted "in recognition of his services more especially in connection with the Registration of Titles to Land Act."

to encumber these pages, may be inferred from a pregnant statement made to a Select Committee of the S. A. Assembly in 1872, by Mr. J. Hart, C.M.G., a man who had been a member of eight Ministries and Premier of two. "I have expressed my opinion on the hustings, and in the House, that the Parliament of 1868 was the most corrupt that ever sat in South Australia."

The vast tract now called South Australia, including her northern territory bounded by the Arafura Sea, was not her original domain. At first her northern limit was the 26th degree of south latitude. McDouall Stuart's exploits and the energy of the South Australians induced the Imperial Government to enlarge their domain. In 1864 the colony resolved to subdue its new acquisition. Land orders were offered for sale in England and in Adelaide. Mr. B. T. Finniss sailed from the South with a staff of surveyors to pave the way for settlement, and to preside as Government resident. His companions were discontented with his selection of Escape Cliff at Adam Bay as a site. Some of them bought a little boat—the Forlorn Hope—and were fortunate enough after a deep-sea voyage to reach Champion Bay, and carry their complaints to Adelaide. All had been mismanaged—they said. Mr. Finniss was recalled. His successor, the surveyor he left in charge, was as hapless as himself. There were suggestions that the money received for land orders should be returned to the baffled settlers, and the place should be abandoned. The London selectors demanded interest for their money. The colony knew not how to complete its survey within the stipulated time. Captain Cadell, the navigator of the Murray, was sent to inquire, but his sanguine expectations were distrusted. Mr. Goyder, the Surveyor-General, was sent in 1869, and promptly selected Port Darwin as the site for the new town, Palmerston. In a few months difficulties vanished. Gold was found, but not abundantly, in those days. Then the telegraphic line was constructed across the continent. With their accustomed energy the practical colonists passed a special land law for their northern territory. To invite settlers to so remote a spot the price of land was fixed at 7*s.* 6*d.* an acre on credit. Survey was to precede selection as in the South. Special blocks of ten thousand acres might be

secured at the price named. Advantages were offered to graziers[1] in shape of long leases at low rates. To cultivators of sugar a bonus of £5000 for the first 500 tons of sugar produced and manufactured in the territory was offered; and although it was not claimed, and though the progress of the settlement did not keep pace with hope, the colonists might feel that as far as they were concerned, they had done what they could. When gold was found a Royalty was levied on exportation at the custom-house.

A few miles of railway were made in South Australia by private companies, but after brief hesitation the Government undertook the task. With each extension northwards, the more sanguine contemplated with hope the construction of a transcontinental line to Port Darwin.

It may be convenient to summarize in this place the statistics of Australian railways and electric telegraphs in 1881.

| | Population Dec. 1881. | Miles of Railway open. | Electric Telegraph[2] lines, miles open. | Public Debt. | Area sq. miles. |
|---|---|---|---|---|---|
| Victoria . . | 882,232 | 1,247 | 3,350 | £22,426,502 | 87,884 |
| New South Wales | 781,265 | 1,041 | 8,515 | 16,924,019 | 316,320 |
| Queensland . . | 226,968 | 800 | 6,280 | 13,245,150 | 668,224 |
| South Australia . | 293,297 | 832 | 4,946 | 11,196,800 | 903,425 |
| Western Australia | 30,013 | 92 | 1,585 | 511,000[3] | about 1,000,000 |
| Tasmania . . | 118,923 | 172 | 928 | 2,003,000 | 26,375 |

The debt per head of the populations would imply a heavier burden on Queensland than elsewhere, but when her territory and resources are considered a different result is obtained; and, on the other hand, if a mere test of unalienated land were applied to the enormous but arid wastes of Western Australia, delusive conclusions would be arrived at.

Municipal government did not thrive in South Australia without check. The Corporation of Adelaide, established in

[1] The South Australian absence of jealousy of shepherds was deducible from a sentence in a paper read before the Royal Colonial Institute in 1882: "Practically the whole of the country north of the 26th parallel of south latitude has been taken up for grazing purposes." Usually pastoral leases were obtained without competition, but when a demand was anticipated the principle of competition was introduced.

[2] On the 25,604 miles of telegraph lines there were about 40,000 miles of wire in use. Nine hundred more miles were in the course of construction in Tasmania in 1881. In the same year more than 1100 miles were being constructed on the continent, 573 of which were in New South Wales.

[3] From the 'Official Directory and Almanack of Australia,' 1883.

1840 by Colonel Gawler, was extinguished in 1843, and Commissioners reigned in its stead. In 1852 Sir Henry F. Young passed an Act to re-incorporate the town, and Mr. (afterwards Sir) James H. Fisher, who had been the Resident Commissioner of Crown lands at the foundation of the colony, and had been thrice Mayor of Adelaide during the brief existence of civic functions, was again elected, and again thrice chosen by the burgesses. He left the Town-hall to take a part in the Legislature, and when the elective Upper House was created he became its President, and remained so until he retired well stricken in years. Adelaide retained its Corporation thenceforward, and in 1879 the rateable value of property exceeded £350,000. Other Corporations were established under Acts which enabled two-thirds of the householders or owners in a district to put the law into operation, and in 1879 twenty-one Corporations had thus been formed.

A special Act (in 1852) in the time of Sir Henry Young sanctioned the creation of District Councils in rural districts, and in 1879 the assessments within them (112 in number) amounted to a valuation of £850,000. The Government contributed pound for pound to aid their actual expenditure on public works. In so wide a territory, where the formation of main roads made accessible, and increased the value of, the Crown lands, it was just that the public should aid in an expenditure which would redound to public gain. More than 3300 miles of main road were in use in 1879. A Botanic Garden, supported by the Government, is the pride of South Australians. Under the care of Dr. Schomburgh, who was appointed director in 1866, the gardens grew to be the delight of the citizens and of all visitors. A Royal Agricultural Society, established in 1845, made its influence felt in promoting the general progress; but as farming was gradually extended to districts remote from the metropolis, the direction of affairs lapsed into the hands of isolated societies, which seemed hardly to perceive that a sound central organization would best fulfil those functions which foster farming, so far as it can be cherished otherwise than by those who labour in the field.

In one department, vitally important both to graziers and agriculturists, the South Australian Government acted with a

promptitude not displayed by her neighbours. The pest of rabbits threatened to destroy pasture and crops. A law was passed to make extermination compulsory, and it was extended to unalienated Crown lands.

The tariff of South Australia was fixed "for the purpose of raising revenue, and not with a view to protection." Such are the words used in an official pamphlet circulated by the South Australian Government at the International Exhibition in Melbourne in 1880. An *ad valorem* duty, ranging from ten to five per cent., and special duties on such articles as spirits, wine, beer, and tobacco, were deemed sufficient. Manufactures of various kinds throve without artificial aid, and numerous factories supplied the wants of the colonists, who did not sigh for protection, but occasionally growled at the inhospitality of a neighbour in putting a prohibitory duty on the agricultural[1] machines which Ridley had invented, and which had proved the farmers' friends.

On the whole, however, without denying that in one or two matters discourtesy had been shown to her as regarded trade, especially on the Murray river, which flowed into her territory from New South Wales and Victoria, South Australia pursued her industrious way in quiet confidence. With her usual energy she made the northern territory her own by the daring of her explorers and the perseverance of her public men. She had an amusing difficulty with regard to her boundary on the east. The 141st east parallel of longitude divided her from Victoria. Until an accurate survey was made the position of the boundary could not be ascertained, and in the mean time sparse settlement took place. When careful survey was made it seemed that some who had thought themselves in Victoria were really in South Australia. The latter colony thought that mathematics would be respected even by people who distrusted abstract principles of political economy; but some Victorian Ministers were hurt at the insolence of the globe, and declined to conform to the position of the parallel. It cannot be said that the people generally objected to what was right.

[1] In consequence of a debate in the Assembly in Victoria, the machines called "reapers and binders" were after a time placed in a list of "exemptions" in the Tariff.

Western Australia sustained throughout the period under review her grants in aid of religious ministrations. In 1879 her expenditure on ecclesiastical services was £3543. She supported elementary schools at public cost, and (under an Act passed in 1871) assisted schools in which four hours of secular instruction and a "conscience clause" were rigidly maintained. In the elementary schools, in addition to four hours of secular, there was one hour of religious, instruction, and the Bible was read, as well as religious books approved by the Central Board; but no catechisms were used, and a conscience clause guaranteed to all parents that their wishes should not be disregarded.

In a sparsely-populated country the average cost of education is enhanced by the small number of scholars in many schools; and there was a tendency to augmentation rather than diminution of that cost in the Government as well as in the assisted schools. Of the former there were—

| | | | | | £ | s. | d. |
|---|---|---|---|---|---|---|---|
| In 1872 | 60 schools | 2338 (total) | scholars, and the cost | per head was | 2 | 10 | 5 |
| In 1877 | 57 „ | 2515 | „ | „ | 3 | 5 | 8 |
| In 1879 | 63[1] „ | 2719 | „ | „ | 3 | 7 | 0¼ |

Of the latter there were—

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| In 1872 | 13 schools | 1137 | „ | „ | 0 | 16 | 4 |
| In 1877 | 21 „ | 1346 | „ | „ | 1 | 12 | 2 |
| In 1879 | 19 „ | 1334 | „ | „ | 1 | 13 | 7¼ |

The attendance was lax before 1877. In that year an amending Act, containing a compulsory clause, was passed. It was framed so as to insure certain fixed salaries, to be supplemented by payment by results. That payment increased the average cost of education, which was also swollen by the fact that, though education was not free to all, some children whose parents ought to have paid fees, could not resist the offer of the State to relieve them of their obligations.

For higher education the colony had a high school for boys, and Bishop's colleges for boys and girls respectively. The Government, without acknowledging a State Church, contributed funds to support the ministers of different denominations; and when aid from the Imperial Treasury was gradually withdrawn the local contributions were continued.

Governors in Western Australia may be mentioned briefly;

[1] Besides five provisional schools.

but as legislation and administration were mainly controlled by themselves, it is needless to do more than, for convenience of reference, to mention here the order of their succession.

Captain Fitzgerald, R.N., who had the melancholy task of receiving the first convicts at Perth, governed from 1848 to 1855. His successor, A. E. Kennedy, Esq., had retired from the army and had entered the Civil Service in 1848. He had governed at Sierra Leone before he assumed control at Perth in 1855. His despatches show how laborious he was on behalf of the community. When he left in 1862, the population had increased to more than 17,000; but some of the new elements were hardly to be looked upon as wholesome. His services gained approval; he was knighted, served in Africa, governed Hong-Kong, and afterwards Queensland. His successor in Western Australia was Mr. J. S. Hampton, whose experience in Van Diemen's Land as comptroller of convicts was deemed appropriate training for the office of Governor in the only Southern colony to which convicts were transported. The Duke of Newcastle had the honour of selecting him. He remained in the colony till November 1868. In that year transportation was discontinued, and the post of Governor was conferred on Mr. F. A. Weld. It is almost needless to say that he earned respect in Western Australia as elsewhere. When he was translated to Tasmania in 1874, his successor at Perth was Mr. (afterwards Sir) W. C. F. Robinson (a brother of Sir Hercules Robinson), who had passed from the Presidency of Montserrat in 1862, and had governed at Dominica, at the Falkland Islands, at Prince Edward Island, and at the Leeward Islands.

In 1877 Sir Harry Ord became Governor at Western Australia, and Sir W. C. F. Robinson succeeded Sir Harry Ord in the government of the Straits Settlements. Sir Harry Ord quitted office because private affairs demanded his care in England. He had warm friends and was not without enemies; nor, where responsible and powerful, would it be possible for a capable man to escape hostility. Duty compels action; action begets opposition, if not enmity. The inter-relations of the Civil Service of the Empire were exemplified when Sir Harry Ord retired. Sir W. F. C. Robinson returned in 1880 to Perth. Mr. Weld was transferred from Tasmania to the Straits Settlements

which Sir W. Robinson had quitted, and over which Sir W. Jervois, the Governor of South Australia, had recently presided. In 1883 Sir W. Robinson, leaving a substantial balance in the Treasury at Perth, was translated to Adelaide, and Mr. Napier Broome, the Lieutenant-Governor of the Mauritius, was made Governor of Western Australia. Unimportant as she appears when only her population is considered, there is ample room for ability in governing her. If not wealthy, she may be happy. Sober wishes are better than ignoble strife. As loyal, as pious hearts are to be found in the scattered huts of Australia as in her most luxurious saloons, and with the cares of the dwellers in the bush there are seldom mingled any malign class-hatreds, which in denser populations designing demagogues can sometimes create.

The land system of Western Australia so inauspiciously commenced, and so speedily crushed by Gibbon Wakefield's pamphlet, and by facts, was modified by the necessities of the case. The tillage leases of former time still figured in returns. In 1873 there were 804 such leases, covering 85,466 acres. When rent equal to twelve shillings and sixpence an acre had been paid, the tiller was to obtain the fee simple. The code of regulations promulgated in 1864 was superseded in 1873 by another based upon a law then passed, which has undergone slight modifications. Auction was retained for town and suburban lands, and waste lands might be put up to auction on application from a depositor of ten per cent. of the upset price of ten shillings an acre. They could also be selected in sections of not less than 100 nor more than 500 acres. Special regulations invited purchasers to obtain a title, on easy terms, to lands infested with the poison-plant, on the eradication of which a Crown grant could be obtained. It could not be expected that Western Australia could withstand the demand for deferred payments which had spread over the continent, and in deference to which South Australia, marching with her by a parallel of longitude, had lowered the price of land in the northern territory to seven shillings and sixpence an acre. The weak neighbour imitated the strong by enacting that during a limited time land might be selected at the same rate in her northern district.

When Mr. Alexander Forrest in 1879 discovered new pastures

on the Fitz Roy river, explored northwards to Collier Bay, reverted to the Fitz Roy, and thence passed (on his way to the South Australian telegraphic line) a tract described as "magnificently grassed and well watered by numerous streams"—the "25,000,000 of acres suitable for pastoral purposes," with a portion adapted "for tropical produce," stirred the little community to put to use its newly-found treasures. Some time elapsed before the requisite regulations could be framed, and ardent settlers reached Beagle Bay with sheep before the Government had decided on what terms the land might be occupied.

The purchases of land by the scanty population for which responsible government had been claimed, form a strange contrast to the vast tracts lavished on the first settlers. From 1873 to 1877, 1161 lots were sold, containing 97,045 acres. But the humble sales of five years produced revenue. Upwards of £7,000 were received in 1877. The rents of land yielded in that year more than £23,000. In Western as in Eastern Australia, the special fitness of the land for pastoral purposes was forced into notice.

In 1873, 10,375,412 acres, let for grazing purposes, yielded £10,880
In 1877, 22,832,471 „ „ „ £16,726

But the afflicting poison plants were not subdued. The leases with conditions for eradicating them had not prospered. In 1877 an area of 235,458 acres was abandoned, though ten lessees adhered to their task on about 90,000 acres. Among the copious regulations remitted from the colony to the Colonial Office for approval were those which enabled a Crown grant to be issued to lessees for twenty-one years of not less than 1000 acres "infested by poisoned indigenous plants." One pound a year, for every 1000 acres, paid in advance, eradication of the poison plant, and proof that for three years it had not reappeared, with certain conditions as to fencing, and payment of all survey fees, and the "production of necessary evidence," entitled the adventurous lessee to a Crown grant. Regulations, formally approved by Lord Carnarvon in November 1877, divided West Australia into four districts. The Central, extending to Doubtful Bay on the south, and to the Murchison on the north; the Northern, including the territory beyond the Murchison; the

Central Eastern, and the South-Eastern. Along the southern coast the Central district retained "a strip of land five miles wide," on the scene of Eyre's journey in 1840-1. In the Central district auction was maintained, with exceptions in favour of licensees who could (after occupying and improving during three years) obtain a title on paying seven shillings an acre. To foster vine and garden culture, blocks not exceeding ten acres might be sold at ten shillings an acre. All pastoral lands in the Central district were put in the first class; all other pastoral lands in the second. Rural lands in all except the Central district were offered at five shillings an acre. In the three outer districts the pastoral tenant was tempted to buy by proffer of "unconditional pre-emptive rights" over leased land which he could redeem in fee. In the Northern district, in the first seven years of his lease (fourteen years) he might secure the freehold on paying five shillings an acre; in the remaining years the price was doubled.

In the Central Eastern and South-Eastern districts, the amounts demanded were half of those required in the Northern.[1]

[1] In the end of 1880 special land regulations were made for the Kimberley district, described as "all that portion" of the territory lying to the north of 19·30 south latitude. A minimum price of rural and suburban lands was ten shillings an acre, and the land might "be sold by auction or private contract as the Governor in Council might from time to time approve." A bonus in land was offered to any producer of "tea, sugar, rice, cotton, tobacco, or any other merchantable tropical or semi-tropical product" sold for £500 within five years of notice of intention to produce. Pastoral leases were to have currency until 1893, and the minimum rental was ten shillings a year "for every one thousand acres," and before expiration of the second year of the term the land was to be stocked "at the rate of at least two head of large stock, or twenty sheep, the actual property of the lessee, for every one thousand acres," and in default the lease was to be "deemed to be forfeited to the Crown." There was to be no pre-emptive right, but the lessee was to be entitled to "the fair value of any lawful improvements." It was reported that application for more than the whole extent of England and Wales were made within a few months of the issue of the regulations, but that many applications were for the same spots, and that only a fourth part of the area of England was allotted. As might have been expected by those conversant with the impediments to pastoral occupation of remote districts, the provisions as to stocking the land with a minimum of cattle or sheep within a limited time were found difficult to comply with, and representations were made in order to obtain concessions from the Secretary of State, the potent authority on a local difficulty which he had no means of comprehending, and was too far removed from the scene to deal with efficiently if he had comprehended it.

Deeming herself driven by intercolonial competition to depreciate her wares, Western Australia (though only in her inland territory) reverted, as nearly as she could, to the evils of her infancy, by offering land at half-a-crown an acre. Her sparse population protected her from one of the results which had elsewhere attended the experiment of forcing upon the soil persons incapable of cultivating it. It was not probable that Western Australia would be asked to plunder her meagre exchequer to sustain incapable settlers. To attract immigrants she had long granted value in land to those who paid their own passage-money. In her new regulations she aimed at bringing labour to her land, by allowing all immigrants, whether wholly or partially imported at the cost of the Government, to obtain occupation certificates. An adult could take up fifty acres; younger persons less; and the maximum to be held by one family was 150 acres. After five years' occupation, cultivation of one-fourth of the land, and enclosure of the whole within a fence, the occupant could obtain a free grant. Thus did the rulers of a million of square miles compete with neighbours who surpassed her in value of territory more than she exceeded them in extent. Her success may be inferred from the fact that in 1878-9-80, there were more emigrants than immigrants.

Western Australia furnished a fresh proof of the rapid rate at which the criminal class disappears, and dissipation and irregularity, mental and physical, avenge society upon its social parasites. The Colonial Secretary reported that only twenty-eight years after the colony had been made a penal settlement, and ten years after transportation to it had ceased, two-thirds of the worn-out creatures who were maintained in a poor-house were of the convict class.[1] Forced labour was extinguished. Free labour flitted. Temptations in other colonies sorely incommoded the dwellers in the West, who could not offer such wages as were paid in the East, and could not raise in London the large loans which infuse much real and some deceitful prosperity.

Nevertheless she increased her debt from £35,000 in 1873 to £361,000 in 1879. Her total revenue was then £196,000, of which £88,000 were raised by taxation. Of the hundreds of millions

[1] Report on Blue-book for 1877. Western Australian Council Papers, 1878.

of acres ascribed to Western Australia she had alienated less than a million and three quarters in 1881, although fifty years previously she had granted 250,000 acres to one man. In 1879 she had 65,000 acres in cultivation, raised 394,000 bushels of wheat, a third of that quantity of barley, and other produce. In 1881 her production of wheat had declined to 153,657 bushels. Her cattle increased from 47,000 in 1873, to 63,009 in 1881. Her sheep from 748,000 to 1,267,912. Her horses from 26,000 to 31,755. Her principal export was wool, but her graziers did not own the many thousands of sheep which in other colonies had one master. It was not from farming or grazing that her people derived their most tempting profits. She was the home of a timber trade. The jarrah (*eucalyptus marginata*) furnished for other countries timber which defied decay, and repelled termites and teredo. Her sandal-wood, exported to a value of £70,000, found a market in China at from £7 to £10 a ton, and the destruction of the forests seemed more profitable than the toilsome production of corn for the use of man. Grain and flour were largely imported. Another gift of nature was discovered. Pearls (*meleagrina margaritifera*) had been found at Nickol Bay (Dampier's Archipelago) in 1861 by Gregory the explorer. The export was scanty for several years, although restless spirits from various lands gathered on the spot. The aborigines and Malays were employed as divers. The Dutch Government exacted security for proper treatment of the Malay divers hired in its territory, and employers who were careless of the comfort of divers often preferred the friendless Australian, whose wrongs no foreign power could resent. In 1871 the exported value of pearls was £13,000. In 1872 it was £25,000; and in a few years it had reached £70,000. At Shark Bay the true pearl oyster (*avicula margaritifera*) was found, and diverted the attention of the colonists as well as of visitors. The prosaic wants and complaints of the denizens were relieved by the profit, and diversified by the luxurious nature of their exports of mother-of-pearl shells,[1] sandal-wood, and pearls. The rich Geraldine lead-mine, the discovery of which excited so much interest, was not destined to gratify the expectations of those

[1] Those from Shark Bay were estimated at £120 to £190 per ton; those from other places were valued sometimes at £4.

who hoped for speedy profits. Yet, after languishing for years, the works produced in 1875 more than 2000 tons for exportation. Copper also was found, and capital flowed from abroad to take part in obtaining it. Iron also was said to await favourable conditions to permit it to be smelted at a profit. The colonists were not, perhaps, to be condemned for sharing in the belief of their neighbours, that a gold-field was the one thing needful to make them happy. South Australia, in her hour of trial, yearned for the same thing, until her land system showed the better way of forming a settled community. But Western Australia was barred by early errors from the benefits of a wise administration of her land. In 1862 she offered £5000 for the discovery of a gold-field within her borders. She accepted an offer from Mr. Hargraves to examine her territory if she would pay his expenses and give him £500. If her end had been wise her means would have been defective, for her explorer had no scientific qualifications for the task. He had merely shown how by the use of a cradle the miners in California washed gold from drift. He searched for gold near the Murchison river, where other minerals had been found, but he saw no gold-field. He did not venture to say there was none. He rather sought to buoy up the eager colonists. They scraped without avail. Gold there was, as in every other country, and even in sea-water, but not in quantities which it was remunerative to extract.

About eight years afterwards a shepherd at the Upper Irwin river reported a discovery of gold, and the Government sent thither an officer who corroborated the report. High hopes were entertained of the "Peterwangy gold-fields" which were to attract, like Ballarat, hordes of miners. It is perhaps well that they were disappointed; and the day may come when Western Australians may console themselves with the reflection that agriculture, grazing, sullen lead, copper, and iron, contribute more towards industrious happiness, and ought to content them better, than the glittering bait they sighed for. Their exports in 1881, £502,770, exceeded those of any former year; and their imports, £404,831, had only once (1879) been exceeded. As the colony became a borrower, it wisely constructed railways as far as its means allowed. A sinking fund of two per cent. was provided to meet the principal, the general revenue was to pay

the interest. The rate of interest was 5 and 6 per cent. on the early loans. From Geraldton, the sea-port of the Champion Bay district, a line 35 miles in length was commenced (1874) to Northampton in the mining district. For this and for a telegraphic line between Geraldton and Newcastle (about fifty miles from Perth) £100,000 were borrowed in 1873, and £26,000 more under a special Act passed in 1875. Two hundred thousand pounds were borrowed under a new Act of 1878 for various works, and the rate of interest was in this case 4½ per cent. At the south, Busselton at Geographe Bay was the scene of an effort to obtain a railway by concession of 2000 acres of land for every mile of railway made by a timber company. Twelve miles were constructed on those terms. In 1881, 92 miles of railway were completed. There was protracted contention as to the direction of the Eastern Railway from Fremantle to Perth and Guildford. Governor Ord advocated a route on the north side of the Swan River. Legislative Councillors advocated one on the south side. Finally, it was resolved, after deliberation on the Governor's Messages, that "this House is now of opinion that the railway should be constructed on the north." The remoteness of the colony from other communities, and her vast extent, naturally inclined her to hasten the construction of telegraphic lines. In 1881 she had 1593 miles in use; and as King George's Sound was the first point at which the mail-steamers from the Red Sea touched Australia, it was from the little town of Albany that important news were flashed to the other colonies, along the track of Eyre in 1841. The distance between Eucla and Eyre, 160 miles, was found waterless, as it proved to Eyre, and the Surveyor who superintended the construction of the telegraph line (Mr. C. D. Price) earned commendation for the energy with which he accomplished his task during an absence of more than two years from Perth.

The construction of roads in a vast territory sparsely inhabited was of necessity costly, and yet without some roads traffic would have been impossible. While convicts were sent to the colony, they were employed in making roads near Perth, and Governor Hampton availed himself of their talents in building a Government House. Like General Wade in Scotland, or Sir Thomas

Maitland in Cephallonia, Governor Sir Harry Ord addressed himself to the task of road-making. He obtained the assent of the Legislative Council to a special loan of £50,000, which was to be administered by a Central Board over which the Governor was to preside. There were Local Boards in the country, and when a financial deficiency was afterwards exposed in the Treasury, there were angry recriminations between the superintendent acting for the Central Board and the various local authorities as to alleged extravagance of the latter. The less money people have, the more torture they suffer on account of it.

The port of her metropolis was a source of affliction to the colony. Fremantle, twelve miles from Perth, stood at the mouth of Swan River. In endeavouring to praise Fremantle an advocate pleaded that, though northerly gales damaged ships in port, yet the barometer gave ample warning, and there was a harbour of refuge at Garden Island, twelve miles away. In time of danger the security of the harbour consisted in a possibility of escape; as, according to Dr. Johnson, the finest prospect for a Scotchman in his own country was the road to England. From 1855 to 1875 various plans of breakwaters were obtained. To remedy acknowledged defects the colony was ready to incur a debt of £100,000, and the eminent engineer, Sir John Coode, was asked for his opinion. He recommended a viaduct and breakwater scheme, involving an outlay of £638,000, and advised that the least sum which could be usefully expended was £242,000; the costlier plan being on the north, and the other on the south of the Swan Heads. Neither sum was within the grasp of the colony, which sighed to think that at King George's Sound she possessed a harbour unsurpassed throughout the world, but dislocated from the general uses of her people.

The times were out of joint. If highest happiness consist in exports and factories, Western Australia was miserable. She had a climate second to none on the globe, but her people could not be content to breathe pure air. They craved the hurry and morbid excitement engendered by the discovery of gold.[1]

[1] Mr. Barlee, the Colonial Secretary, suggested the compilation of a handbook relating to the resources of Western Australia. Mr. W. H. Knight

The progress of Tasmania after she armed herself with responsible government was less chequered by woe than a cursory observer might have expected. Dregs of a convict population did not influence the elections to the extent predicted. The gold-fields of Victoria had drawn thither thousands of the worst of the freedmen. Nor did the public men of Tasmania indulge in an ill-omened struggle to rend and patch their Constitution before testing its worth. Much of the superior steadiness of Tasmania was derived from the ability and character of Mr. Francis Smith, who had refused to become Attorney-General unless with blank-charter to oppose the transportation policy of Earl Grey and Sir William Denison. He was Attorney-General of two Administrations (in 1856 and 1857), and on the formation of the fourth Ministry, created within seven months of the adoption of responsible government, he became Attorney-General and Premier, and held his post for more than three years, amidst general respect. He was then (1860) made a Judge of the Supreme Court, and ten years later became Chief Justice. He had not been deterred by fear of popular clamour from urging that the colonies were not ripe for a system of government which would entail frequent changes of administration in a community not abounding in men possessed of leisure, capacity, and experience in public affairs. His own example tended to ward off from Tasmania some of the evils he described.[1]

After the introduction of responsible government the doings of Governors of colonies became less important in quiet times than they were when legislative and executive functions were

adopted the suggestion. In a postscript referring to the supposed discovery of gold at the Irwin river, Mr. Knight fervently hoped for "those golden harvests which have raised the colony of Victoria to its present exalted position." The more wholesome golden harvests of South Australia seemed unpalatable to an appetite craving for gold.

[1] In 1880 the number of Ministries successively formed after 1856 had been—

| | | | |
|---|---|---|---|
| In South Australia . | . 31. | Victoria . | . 20. |
| In New South Wales | . 19. | Tasmania | . 14. |

The absence of a necessity for a Minister to seek approval of his constituents after accepting office led to the apparent eminence of South Australia in this list. Many new Ministries were reconstructions. Mr. Ayers was a Minister in six consecutive Ministries in two years and two months.

wielded by the same hand. Yet on critical occasions their tact and sagacity are sorely needed. Sir Henry Fox Young, who presided during the introduction of responsible government in Tasmania, saw an Industrial Exhibition opened in Hobart Town before he gave place to a successor, Colonel T. Gore Browne, who, like himself, had previously been Governor of another colony, and, like him, won esteem in Tasmania. Mr. (afterwards Sir) Charles Du Cane succeeded him in 1869, and was equally applauded throughout the customary tenure of office. After him Mr. F. A. Weld, who had governed Western Australia from 1869 to 1874, earned the same kindly esteem as had been gained by his predecessors. He had to encounter difficulties arising from disputes between the Houses of Parliament; and, though an arbitrator can seldom gratify disputants, his conscientious urbanity contributed to impress upon the colonists the high advantages derived from the presence of an impartial representative of the Crown on occasions of local strife. Even when, by an unfortunate misprision of the exercise of the prerogative of mercy, as distinguished from the reversal of a judicial sentence, Mr. Weld became involved in heated discussion with the Chief Justice, and the Secretary of State deprecated the strife, the mutual courtesy of the Governor and the Chief Justice in dismissing the unpleasant subject made some persons say that it was well that offence had arisen, in order that such an example of reconciliation might be seen. Her public men provided in Tasmania some guarantee that voters shall have an interest in the welfare of the land. Both Houses are elected, and the lowest property qualification for the Assembly is a household rating of £7 a year. State aid to religion was abolished, but compensation was given to incumbents who had claims founded on the law which was repealed.

When a Bill to abolish the grant was passed in 1859, and sent to England, the Secretary of State pointed out that Her Majesty's Government could not in "justice or honour disregard" the "vested interests" which there was an obligation upon the Home Government to preserve with regard to the Civil List. The Bill was therefore not allowed by Her Majesty, and the Colonial Legislature accommodated its desires to the pronounced justice of the case. Voluntary efforts were not wanting to

supply the need which the State disclaimed the function of meeting, and it was deemed that in 1879 there were places of worship for every 314 persons throughout the population. The subject of education, about which Sir George Arthur was so solicitous, was not neglected when a Tasmanian Legislature assumed control. The law made education compulsory, by inflicting fines on neglectful parents, but did not make it eleemosynary. In 1878, when the cost of schools to the State was £15,410, parents contributed in school-fees £5883. Nevertheless, more than one thousand children received free education. Private enterprise also found scope, and derived encouragement from the Government, which granted prizes and scholarships;[1] the latter being, at the option of the scholar, tenable at Cambridge, Oxford, Dublin, or Edinburgh. The University at Melbourne gave facilities for holding examinations abroad, and the Tasmanians availed themselves of the opportunity.

During Sir W. Denison's government efforts were made to retain persons already in Tasmania, or to attract others thither by exceptional terms with regard to acquiring land. Famishing for labour, the hungry colony hoped to relieve its necessities by tempting the needy to become competitors with employers of labour. For Tasmania Gibbon Wakefield had explained in vain the problems of colonization; but, bereft of those who had decamped from the scene of their servitude to dig for gold and elect legislators in Australia, and dreading a complete exodus of her people, the colony might be excused for some errors of judgment. She lowered the price of land by various devices which enabled one of her sons to boast that she had "by far the most liberal land system in Australia." The unfettered selection sanctioned in New South Wales and Victoria was prevented from sacrificing the public domain in Tasmania rather by her secluded position, early settlement, and scanty population, than by the circumspection of her public men. Moreover, it would have been impossible to stir up hatred against graziers on Crown lands, when out of a million and a quarter of sheep only about 100,000 were fed upon those lands. Forests narrowed the

[1] In 1853 a public subscription commemorated the foundation of the colony (fifty years before) by founding twelve scholarships, half at the Hutchins School, and half at the High School.

space coveted by graziers, and Tasmania never derived a large income from the annual wealth of grasses which nature lavished on the mainland.

It is in the nature of things that legislation, founded neither on abstract truth nor imperious necessity, should be inconstant; and Tasmania altered her land laws to suit her own condition when she found that her "most liberal land system" did not divert population from the gold-fields and centres of population in Australia and New Zealand. In 1879 she had resolved to part with none of her arable land for less than £1 an acre, and to sell it by auction, except when alienated by selection on deferred payments in districts officially designated as agricultural. In them the price was to be £1. Credit for fourteen years was given, and the requisite annual payments added one-third to the original cost (of £1 an acre) before a title could be acquired. Land might be selected before survey, but the selector had to pay the cost of subsequent survey. To induce contiguous settlement, and perhaps with a consciousness of the evils arising from isolated selections, the Government raised money on debentures for constructing roads in localities where a stipulated number of neighbouring selections had been made. By slow degrees Tasmania worked her way, both as to sales and pastoral leases, to providence in parting with her domain. The statistics of the island indicate a steady progress in the increase of her live stock and grain crops. In 1881 she had alienated more than four millions of acres (a fourth of her total area) for about two millions sterling,[1] and contained more sheep, cattle, and pigs, than were possessed by Western Australia on an area exceeding six hundred millions of acres. The population of the small colony, however, was nearly four times as numerous as that of the large. One plague of the mainland was rife in Tasmania. An Act was passed under which special districts were proclaimed, trusts were created, and a rate was levied for the extermination of rabbits. Yet, though 1,131,000 rabbit skins were exported in 1878-9, an official report declared that the animals were more numerous than ever, and that "the magnitude of the plague was not understood or realized," although in some places settlers worked

[1] Much of the land was parted with in the shape of free grants in the early days.

energetically to protect their properties from "their neighbours' rabbits."

At one time the colony suffered from the diversion of capital to Victoria. High wages and prices caused a high rate of interest there, and as many colonists of Victoria had immigrated from Tasmania and had maintained intimate commercial relations with their island friends, it was natural that the latter should seek lucrative employment for their funds; for there, as in other communities, were some who, even in disastrous times, possessed the faculty or enjoyed the fortune of accumulating wealth while others lost. Though the spirit and industry of Tasmania were clogged by the temptations of a neighbouring gold-colony, they nevertheless found partial field at home, in her narrow territory. Slowly increasing in number, her children had affection for the beautiful land of their birth. They scarcely envied the riches of other lands while pining for material advantages at home. There was a charm to them which more than compensated for richer gifts abroad; and common consent admitted that in the beauties of her rocky coast, her diversified mountains and glens, her quiet sylvan beauties, and above all, her delicious climate, she was unsurpassed, if not unrivalled. The mountainous and wooded nature of the island prevented pastoral competition with the plains of Australia. Success was the fruit of labour and skill with the Tasmanians. The greater part of their land was covered with dense forest, but their well-bred Merino sheep commanded high prices on the continent. In the half-century which elapsed between the occupation of Hobart and the discovery of Australian gold-fields, the settlers, encouraged by grants of land and of convict labour, had secured the most desirable spots throughout the island, and smiling orchards produced fruits which, in days of free-trade, found a ready market in Melbourne. The population, too small to overspread the land, had made homes in its choicest places.

Amidst her struggles to attract settlers, Tasmania felt wounded by the protective duties which barred her fruits from the Victorian markets; and one of her statesmen was active in intercolonial conferences, with a view to remedy the island-wrongs. Annexation, when suggested, offended the islanders, who complained that, though Bass's Straits were narrow, a

narrower policy made it vain to cross them. At an intercolonial conference held in Melbourne in 1871, Mr. (afterwards Sir) J. M. Wilson, the Tasmanian Premier, was prominent. By their various Constitutions the colonies were empowered to impose what Customs' duties they thought fit, provided they were not differential. Thus the duties on imports from England were paid upon all other imports of like articles.

At the Conference of 1871 it was proposed, but vainly, to establish a commercial union of all the colonies, with a distribution of the Customs' revenue to each in proportion to its population. Mr. Wilson then supported a demand for the removal of all restrictions on "intercolonial fiscal arrangements," and in a paper drawn up by the Premier of Victoria (Duffy) on the subject, it was urged that obstinacy on the part of the Imperial Government would weaken, and ought to weaken, the allegiance of the colonies. By "reciprocity conventions" it was hoped to unravel the tangled mesh in which varying tariffs had involved intercolonial relations.[1]

[1] The tariffs differed much. A few items may be cited from Hayter's 'Victorian Year-book' (for 1881-2).

| | Agricultural Implements. | Spirits. | Tobacco (Manufactured). | Machinery. | Paper—writing, &c. |
|---|---|---|---|---|---|
| N. S. Wales. | nil. | 12/- per gall. | 2/- per lb. | nil. | 1/- per lb. |
| Victoria. | 20 per cent. | 10/- „ | 3/- „ | 25 per cent. | 2d. „ |
| S. Australia. | 5 „ | 12/- „ | 2/- „ | 5 to 10 „ | 10 per cent. *ad val.* |
| Queensland. | nil. | 12/- on brandy. 10/- on other kinds. | 2/6 „ | nil. | nil. |
| W. Australia. | 10 „ | 15/- per gall. | 3/- „ | 10 per cent. | 12 per cent. *ad val.* |
| Tasmania. | 5 „ | 12/- „ | 3/- „ | 10 „ | 10 per cent. *ad val.* |

From 25 to 10 per cent. are rates which appear often in the voluminous Victorian tariff. The shorter tariff of New South Wales contained no *ad valorem* duties. The *ad valorem* duties in Queensland were 5 per cent. Those of South Australia and Tasmania, 10; of Western Australia from 10 to 12½; but there were many exceptions and special duties. In other respects the fiscal regulations of the colonies varied. Stamp duties did not exist in South Australia, but were extant on the rest of the continent and in Tasmania. Excise duties on distilling spirits differed largely in New South Wales and Victoria, and did not exist in Tasmania and Western Australia.

Lord Kimberley demurred at first to propositions which seemed to question the right of the Crown to conclude binding treaties, "subject to the discretion of the Parliament of the United Kingdom, or of the Colonial Parliaments, as the case may be, to pass any laws required to bring such treaties into operation."

Another intercolonial conference was held in February 1873, and again "intercolonial commercial reciprocity" was demanded. The public mind in no colony was vexed by the question, but the public men who were popular had taken it up. Whether ignorant of the first fact, or apprehensive of vexation from the last, Lord Kimberley, apprised by telegram of the wish of the colonial conference, passed the Australian Colonial Duties Act, 1873, which empowered each colony to impose or remit differential colonial duties, and constituted Great Britain as ranking only with the foreign countries, amongst which there was to be equality with regard to duties on importation.

It must not be supposed that while these things were done there was any public disaffection or desire amongst Australians for estrangement from the mother country. On the contrary, about the date of one of these conferences, they were delighted with the ode in which Tennyson stirred the sympathies of Englishmen "loyal to their own far sons, who love an ocean empire, with her boundless home for ever broadening England."[1]

Lord Kimberley's Colonial Duties Act of 1873, though eagerly sought by aid of telegrams, has not as yet been put to use. They who grudged impartial trade to all found it difficult to make special arrangements with some. Even New South Wales and Victoria, with a long line of land frontier, have been disturbed by difficulties as to border duties, and a tax upon live

[1] Canadians agreed with Tennyson. The 'Montreal Gazette' (alluding to Mr. Duffy's proposal [*vide* supra] that the colonies should be neutralized in time of war) said it was mere "puerility." Foreign nations would consent to no such restriction. "This is not the principle upon which to build up a hardy self-assertive dominion anywhere. . . . The Empire must not be thus disintegrated. . . . It is not of such weak fibre that British colonists are made; and if their Australian representatives have seemed to confess an unworthy timidity, we have still confidence that their own constituents will be proud to repudiate the imputation quite as promptly as our own people of Canada."

stock entering Victoria has been resorted to in order to compensate for assumed losses of revenue. There were some who argued, however, that the tax on live stock would reduce the price of meat in Victoria.

As Tasmania was supposed to suffer more than any other colony by reason of Customs' laws, it was convenient to allude in connection with her story to the joint proposals which, with incongruous motives, the several colonies pressed upon Downing Street.

A subsequent intercolonial conference was held in Sydney in 1881. Mr. Berry and Mr. Vale represented Victoria. Mr. Giblin, the Premier, with a colleague, represented Tasmania. Intercolonial free trade was again discussed, after it had been resolved that a Federal Constitution, with a Federal Parliament, was desirable, but that the time for it had not arrived. Mr. Berry's proposal that the land funds of all colonies should be transferred to Federal control found no supporter but himself. A colony which had hastened to alienate her territory could not expect those who retained boundless pastures to merge their plenty in her want. Queensland had parted with about four millions and a half of acres out of about four hundred and thirty millions, and Queensland was not the largest colony in the continent. Out of about fifty-six millions of acres constituting Victoria, her statistician reported in 1882 that less than nine millions were available for selection.[1] The Treasurer of New South Wales (Mr. Watson) carried a resolution that a joint commission of all the colonies should be appointed to construct a common tariff, but both the Victorian delegates voted against him,[2] and against a subsequent resolution (emanating from representatives of Queensland and South Australia) that "it be an express instruction to such commission, that any common tariff must recognize fairly the interests and special circumstances of each colony." On a later day the South Australian delegates, to "test the feasibility of intercolonial free trade," moved that "wines the product of Victoria, New South Wales, and South Australia, be admitted (into each) free of duty."

[1] Hayter's 'Victorian Year-book,' 1881-2, sec. 958.

[2] He allotted three members to Victoria, one each to Tasmania and Western Australia, and two to each of the other colonies.

New South Wales and Victoria opposed, and the other colonies declined to vote on the question. Thus the colonies were remitted to their old expedients of establishing Custom-houses on their inland borders, and granting "permits" entitling "the holders thereof" to send goods "over the boundary without payment of duty." The officers who issued the "permits" could refuse to do so if they should "have reason to believe that goods were being forwarded with a view to take advantage of the dissimilarity of tariffs."[1] Such were the regulations for traffic like that between Liverpool and Lichfield.

Tasmania obtained no attention at the conference of 1881. No love to her had prompted the proposals made in 1871 for severance of ties with England. The observant Anthony Trollope, noting that her trade had declined between 1861 and 1870, and hearing a suggestion that she should be absorbed into Victoria, hoped that "the fairest, and prettiest, and pleasantest of all the colonies would not vanish from the roll of Australian States." That, in spite of her vexations, Tasmania could thus be described is of itself an argument against the fallacy that, in catalogues of exports and imports, and in prices current, prime happiness is to be found. In all classes there may be contentment where there is competence, and the day-labourer in Tasmania was well remunerated. Happy if they had known their blessings, the islanders pined for swollen statistical tables.

For a time the arithmetical measure of happiness was unfavourable. In one year (1875) the arriving immigrants were outnumbered by emigrants, and the total population fell below that of the preceding year. But diligence receives reward though late. Many visitors from the mainland sought refreshment and society in pleasant Tasmania. A gradual increase in the cultivated area prevailed after 1874. Flocks and herds increased from 110,000 cattle, and 1,500,000 sheep in that year to 130,000, and 1,847,479 in 1881. Moderate progress was shown in fiscal and commercial affairs during the same period. Com-

[1] Thus was worded a Border treaty between Victoria and South Australia, 21st February, 1881. The colony which had collected duties at its seaport made stipulated payments to the colony across whose border the goods were finally taken.

pared, however, with South Australia the agricultural state of Tasmania, once the garden and granary of Australia, exhibited poor results. She had alienated 4,265,944 acres, had received only £1,993,646, and had only 374,374 acres in cultivation in 1881, while South Australia, by even a partial adherence to the precepts of Gibbon Wakefield, had received £12,814,212 for 9,582,903 acres, and had 2,613,903 acres under cultivation.

Tasmania had seen her industries languish when she suffered the questionable loss of those who deserted her for the gold-fields on the continent; and she always promoted as far as her purse allowed immigration from the United Kingdom. She gave grants of land to those who immigrated at their own cost. She assisted immigration by means of bounty tickets. Yet the results were trifling. Gold in Australia and in New Zealand was a more potent attraction than land in Tasmania.

New South Wales gave assistance to immigration. Victoria had once passed an Act which set apart annually a large sum for the purpose; but as it was unpopular to import labourers who would compete with those already in the colony, the law was systematically disobeyed in spite of the remonstrances of the few who pleaded for it. South Australia gave assistance in land order warrants. The warrant (£20 for an adult, and £10 for each child) was available as payment for land at the Treasury. Queensland gave free passages to female domestic servants, and contributed towards immigration of farmers, shepherds, farm-labourers, vine-dressers, labourers, mechanics, and their families.

Western Australia, as far as her poverty permitted, gave assistance also; but her public men complained that, instead of procuring agricultural labourers, the authorities in England "picked up in large manufacturing districts" materials for "a discontented and useless community."[1] In April 1878 the existing arrangements were stopped by a telegram from the colony; but fearing to interfere with daily needs by a total arrest of immigration, the Council on the 27th June, 1878, without a division, asked the Governor to place a sum of about £2500 on the estimates for assisted immigration, and a sum

[1] Report on Blue-book for 1877. Colonial Secretary to Governor Ord. Western Australia, Legislative Council Proceedings. 1878.

not exceeding £4500 "for the introduction of Chinese or other labourers from the East," a request with which he complied. As the ages of flint and of metals have existed contemporaneously in different countries, so differing epochs in different communities were exhibited in the fact, that at the same time violent demonstrations were made against employment or toleration of Chinese already at work in Sydney, Melbourne, and elsewhere. At a general election in July 1880 it was one of the most successful stratagems of Mr. Service's opponents to declare that he was plotting against the Victorian labourer by favouring the Chinese, about six of whom were employed by furniture-makers; and though the allegation was known and shown to be untrue, it was persisted in until the elections had taken place. In nearly all the colonies a majority of the inhabitants concurred with the Legislature in desiring to promote immigration from the mother country. To the influx of Chinese there were many opponents on the ground of morals and of religion. But this could hardly be the motive of those who loudly denounced the Chinese while they acquiesced in the proscription of religious teaching (at the charge of parents) before the opening of their State schools. There are, however, in the labouring class many as moral, worthy, and pious, as in any other, and it would be unjust to impute to all the prevailing motive of many. Statistics of immigration show that jealousy of immigrants has been greatest where the population has been most largely composed of those who had recently arrived, and who grudged to others the bridge they had used themselves.

The net results of immigration from the United Kingdom may be summarized here. Up to the period of the discovery of gold, New South Wales, Victoria, and South Australia, had received the lion's share. Only in one year before 1851 had Tasmania received more than 1000 souls. In 1852-3-4 Victoria received from the United Kingdom, 155,000; New South Wales, 38,000; South Australia, 25,800; Tasmania, 6600; and Western Australia, with the aid of Imperial funds, 2184. Up to 1875 (from 1838 inclusive) Victoria received 479,000; New South Wales, 194,000; South Australia, 122,000; Tasmania, 24,000; Western Australia, 9000; and Queensland (from 1860 to 1875),

76,000; while 194,000 had gone to New Zealand. The mother country had parted with upwards of 1,100,000 of her people, who had sought homes in Australasia.[1]

Though, fortunately for her political welfare, neither the original settlers nor the immigrants of later time discovered gold-fields whose reputation could attract restless adventurers, Tasmania was not without gold.

At the end of 1878 the exports of thirteen years amounted to £185,000. In 1879 the export was valued at more than £285,000. The gold was extracted from reefs, the richest of which was near the banks of the Tamar, occupied in 1804. For some years Tasmania maintained a Geological Survey Department, under the supervision of Mr. Gould. His reports on her coal, iron, and gold, were deemed valuable, but the Department was discontinued on the ground of expense and the state of the revenue. The humble metal, tin, discovered to the westward at Mount Bischoff in 1872, rapidly yielded a larger value than was obtained from the Tasmanian gold-fields. The exports of wool, tin, and gold in 1880 were respectively £451,877, £341,736, and £201,655. Iron, discovered by the first colonists near the Tamar, was so abundant that several companies were formed, and large sums were expended in endeavouring to smelt it. But a failure to expel the chromium, which made the iron unmanageably hard, deprived it of commercial value, and speculators were disappointed. They had incalculable quantities of ore, but chemical skill had not discovered the means of fitting it for a market. Coal, also, though obtained in many places, could not be produced so cheaply, nor was it so useful, as that imported from New South Wales; but forecast of its future worth cheered the dwellers in the island. Even without its aid they maintained numerous factories. Their exports of preserved fruits in 1878 were nearly four million pounds in weight, valued at £106,000. Their woollen products won prizes at intercolonial exhibitions; and the Legislature congratulated itself on the fact that an offer of £1000 for the production of woollen goods of that value led to the establishment of a successful factory near Launceston.

[1] The figures (omitting fractions) are taken from tables published in a Colonization Circular in London.

Various necessary and useful arts supplied the wants of the people, who may rejoice in the noiseless tenor of the way which exempts them from strife.

Tasmania did not originally undertake the construction of her railways. She aided private enterprise by guarantees, and after a few years a line from Launceston to Deloraine fell into the hands of the Government under this system, against its will.

A larger work, connecting Launceston with Hobart, was completed by the Government after much negotiation. The original undertaking by a Company enabled the Government to take possession of the line; and eventually it stepped in, and contracted with the Company to complete the work, giving a guarantee of five per cent. for thirty years on £650,000 to the Company.

The enterprise was contemplated with apprehension by many colonists at the time, but in 1879 the restoration of an equilibrium between revenue and expenditure, and the prosperity of the companies which worked the gold and the tin mines, re-acting upon other industries, stirred the members of the Assembly to propose in 1880 various branch lines in connection with the line from Launceston to Hobart Town.

The Government successfully opposed them. In return, when the Ministry proposed to purchase and complete a railway from the Mersey to Deloraine, which the Assembly had formerly approved, but the Council had rejected, the members—baffled in their own schemes—declared by 13 votes against 11 that the proposition was "not urgent," and thus virtually bore witness to the previous sagacity of the Council. One hundred and seventy-two miles of railway were in use in 1881.

There is one subject on which there is little to boast of in any colony except South Australia, and yet there is general conviction as to the duty of each. But the fault is not confined to colonies. The old world suffers for past waste wheresoever the evils of drought have been intensified and made chronic by man. The ancient streams of Greece have shrunk under the barbarism of Roman and of Turk. The "highest plane" under which Phædrus invited Socrates to recline amid the groves of Ilissus, beneath cool air and on fresh grass, has no successor in the arid valley which wasteful barbarism has left behind it. Italy suffered in her turn. The denudation of her forests has

within recent historical times plunged extensive tracts of Spain into a sterility which will be hopeless, unless action follow conviction forced upon the mind by facts strictly accordant with the conclusions of science. The vast continent of India and the minute Madeira have the same tale to tell. Inordinate destruction of native vegetation has been cursed by inexorable consequence of disloyalty to nature. We know, and yet we offend. Generations pay the penalty due to the folly of their forefathers. Rearing her head among the moist airs of the Atlantic, Madeira was clothed with verdure of trees which gave a name to the land when found by the Portuguese. Their carelessness permitted the destruction of the forests, and their descendants are forced to import timber at great cost for their buildings. In St. Helena the same causes constrain the importation not only of materials for the builder, but of fuel for the hearth. The Government of India, through a Forest Department, is striving to ameliorate the climate, and restore the elements which have been marred by the hand of man. While the British Government had active control in Australia, there was feeble but ineffectual effort to stay unnecessary waste. The pastoral tenant was nominally prohibited from using the natural timber except for purposes conducive to his calling. In the main, the pastoral tenants were men who had no desire to infringe any law, or to traffic in timber. And no market was at hand. But the cedar-forests of New South Wales were ruthlessly destroyed by sawyers, who were careless of damage done to future generations. Young trees and undergrowth were swept away without regard. Though timber was recognized as a national possession it was allowed to be taken at random by any one who chose to pay a nominal sum for a license to cut and remove it from Crown lands. No provision was made for the protection of saplings, or planting of young trees to replace the old. Victoria made an effort at improvement. State forests were proclaimed, and licenses (to cut timber in them) were issued, which prohibited the cutting down of trees less than eighteen inches in diameter, and aimed in other respects to prevent waste. But there was little regard for the restrictions.

On slight grounds an enormous tree, when felled, was abandoned if one apparently more profitable was at hand; although

nominally not more than three trees could be felled prior to the cutting or splitting of them for sale. Where licensees had been at work the forest was strewn with trunks of trees destroyed and not put to use. Within fifty miles of Melbourne, and by the side of the road and railway leading to the Mount Alexander gold-fields, and thence to the Murray at Echuca, stood the mountain, called after Wentworth by its discoverer, Hamilton Hume, but named Mount Macedon by Sir Thomas Mitchell. Thickly timbered, and having rich undergrowth along the streams which brawled through its sheltered ravines, the mountain attracted moisture, and rendered it back to the air from leaves fed by the perpetually moistened roots, which knew no dryness in the soil guarded by the forest from the beams of the sun. A more melancholy sight than the mountain presented after a few years of licensed destruction could not be seen. That full-grown trees valuable for commerce should be taken away without concomitant return to the State might be borne. The first-comer has a right to the lawful fruits of his labour. But on the mountain-side saplings and young trees were rent and crushed in thousands by the dragging or rolling of logs on the way to the pit. Successive generations of trees, produced in previous cycles, were marred without remorse, simply because they were not sufficiently mature to serve the immediate purpose of a licensed sawyer. The ruin of the leafy shelter which once kept the ground moist and friable, and admitted rain to percolate freely through the soil, entailed a hardening of the surface, and the rapid flowing away of showers when they fell. Bereft of kindly moisture, which the mountain had received, and rendered back in healthful charity, the springs shrunk in volume, and sometimes disappeared altogether. The Naiad cannot linger long to weep for the spirits of the grove. One ruthlessness destroys the nymphs of the mountain and the stream. When the forest ceases to respond to the breeze, the murmur of the brook dies away. All whose opinions were of value deplored the waste, but the remedy none could apply. In the local Parliaments a warning voice was raised occasionally, but in vain. Where salaries were given to legislators the comfort of living members seemed more important than the averting of evils from the unborn. A generation would pass away before

the full damage would be done, and the danger was too remote to be pressing. That Germany had created a great Department of Forests, and insisted on planting; that France was engaged in repairing the ruin of Alpine and Pyrenean woods, at a cost of hundreds of thousands of pounds, did not interest men bent upon a present use of the Treasury. Their crumenian laboratory was simple. The various chemical, physiological, and mechanical operations by which nature made forests subserve the wants of man were too intricate, and their results too remote for consideration. The Secretary of State directed the attention of the colonies to the subject. The Indian Government, when applied to, lent the services of one of their officers to New Zealand in 1876, in order that a Forest Department might be created. He reported in 1877. The Waste Lands Boards in some provincial districts had made regulations as to the cutting of trees, but none for re-planting. In most of them the existing regulations "were never enforced."[1] Private persons had planted in places. Such a report, and even a worse, might be made in Australia. To improve the grass, the scanty timber scattered over millions of acres had been killed by cutting away a ring of bark, and leaving the trees to die. The moisture which their lateral roots had drunk was left for the grass, but the delicate functions which the leaves had performed, and the sheltering of the earth, were done away with. No fostering care was displayed by the Government. The reservation of State forests, within which continuous destruction was carried on by licensed persons, was the achievement of statesmen in Victoria. A few trees were planted in small patches of land, not to replace ruined forests, but, as nurseries from which they might be distributed.

New South Wales had nothing to distinguish her from Victoria in waste. Sir William Macarthur at various times invited consideration of the forest resources of the colony. He was unregarded. When Sir John Robertson, in 1861, persuaded the Houses to abandon the providence of a watchful state, and to subject the public domain to pillage instead of alienating it with circumspection, the rate of ruin was increased. A dry document prepared by the Director of the Botanic Gardens for

[1] New Zealand Parliamentary Papers, C. 3, p. 45. 1877.

an official record of Industrial Progress[1] will tell the facts without prejudice.

"The trees cut down for these (building, public works, exportation) purposes have been small in number compared with those destroyed since the introduction of the system of choosing land by free selection. . . . The soil of all brush-forest country is invariably rich, and whether on the coast or elsewhere it is the first seized on for cultivation, and the destruction of the natural vegetation follows. . . . All must be inevitably destroyed unless the Government take steps to prevent it. . . . The country generally is now being so rapidly disforested . . . that there is every probability that (these) and a vast number of equally valuable trees will soon be entirely lost. For commercial, industrial, climatic, and other reasons, the destruction of these forests is greatly to be deplored, but it is unavoidable."

Thus when "we are sick in fortune (often the surfeit of our own behaviour) we make guilty of our disaster, the sun, the moon, and the stars, as if we were villains by necessity, fools by heavenly compulsion." Queensland has shown no more prudence than her southern neighbour. Western Australia has been as busy in destruction as her small population permitted, and about a sixth part of the value of her exports in 1879 consisted of her indigenous timber. She might plead that her poverty and not her will restrained her from replenishing the source which she so largely drained.

South Australia, as usual, displayed some energy. Destitute of forest wealth, which the mountain chain on the east conferred upon Queensland, New South Wales, and Victoria, she strove to construct while others destroyed. Of the hardy eucalyptus, of which 134 species were known in Australia, only 30 were indigenous in South Australia; of the acacia genus, of which 300 species were known in the continent, only 70 were found in her territory. The specimens she possessed were diminutive, as well as few, compared to the products of the cordillera in the east. As early as 1873 she passed a law "to encourage the planting of forest trees." She gave land orders available as cash at land sales by persons who had planted not less than five

[1] 'The Industrial Progress of New South Wales, being a Report of the Intercolonial Exhibition of 1870, at Sydney.' Government Printing Office. 1870.

acres with forest trees. Pastoral tenants were encouraged in the good work by an allowance of compensation for planting not less than twenty acres. In 1875 a Forest Board was constituted. Forest reserves were created in the northern, southern, central, and western districts. Travelling-stock reserves were also formed, and on them, as well as on the forest reserves, the Board was empowered to plant. It could obtain revenue by judicious sale of mature trees, and from persons depasturing stock on the reserves.

In 1880 the colonists saw some fruit of their labour. The easy process of "natural regeneration" (as the Board styled it) had restored much to the land. Land trampled upon by live stock cannot put forth its native woods. Even if the young leaves be not browsed upon, the tender shoot is trodden down. The mere fencing of a plot on private estates often enables the recuperative energy of nature to adorn an enclosure with young groves. Shoots from old roots, seeds scattered in former time, germinate and sprout unhurt. Of this energy the South Australian Board availed itself, and 80,000 useful specimens rewarded its care in 1880. It had about 240,000 acres under its control. It reported, moreover, that about 265,000 young trees, planted or sown, had been established. The official return of woods and forests showed in 1881 that 238,800 trees were planted on the reserves in the season of 1880-81. Yet expenditure was neither lavish nor improvident. The Forest Board obtained revenue from pasturage leases and from sale of timber (cut down at maturity and replaced forthwith by appropriate plants). The receipts in 1880 were £6049. The expenditure was only £5295. The example of the State won the attention of colonists; and, if followed by many, cannot fail to modify the arid climate and spread blessings upon the land.

There have long been public (called Botanic) gardens in the chief cities of Australia, and occasionally in other populous towns. By their means, with aid from the Royal Gardens at Kew,[1] and by advice and interchange of plants, it would be

[1] Thus India derived assistance in introducing the Cinchona. Thus Ceylon and Jamaica obtained the same plant. The colonies have it in their power, and there is no lack of will, to render returns to Kew in the shape of local flora.

difficult to exaggerate the importance of the results which may be achieved in clothing with verdure and enriching in productiveness the millions of miles in the south. The Imperial Government must be credited with a benevolent effort to save the colonies from the consequences of imprudence. A Commissioner of Woods and Forests attracted attention to the subject in 1874. A Commission in France had produced a valuable report. Lord Carnarvon communicated with every British possession. The little wisdom displayed in Canada may be inferred from the fact that she was reported to have sinned more than Australia. In no province had measures been taken for replanting denuded districts, although the Canadian timber exports were £5,282,657 in 1876.

A Blue-book on colonial timber was presented to Parliament in 1878; Mr. Dyer, an Assistant-Director at Kew, read to the Colonial Institute in London, in 1880, a paper on the Botanical enterprise of the Empire; Sir Joseph Hooker enforced with earnest words the necessity for checking the "waste of nature's beneficent gifts;" Mr. Dyer was thanked for his paper, and it may be hoped that more and more attention may be devoted to the subject in Australia, where the inhabitants depend so largely upon the bounties of Providence in the early and the latter rain.

A comparative statistical analysis has been given with regard to the year 1856, in a former chapter,[1] and it will be convenient to examine the statistics of a later date. In 1856 the male population of New South Wales was less than that of Victoria by about 90,000, and although both colonies largely increased their general numbers, the difference between the males had fallen in 1881 to about 35,000, and indicated a greater demand, or freer scope, for labour in the older colony. The same influences were visible in the activity of exporters and the purchasing power of the communities. The revenue of New South Wales had increased more than five-fold, while that of Victoria had not been doubled, although the amount levied by taxation exceeded that raised in New South Wales. These facts were dwelt upon by the advocates of free trade as proofs of the wisdom of the older colony, but some friends of protection still

[1] *Supra*, pp 57—60.

contended that their fiscal policy was producing happy results in Victoria, and denied that the alienation of the public domain without regard to its intrinsic value would increase the burdens of the future. A comparison of the estimated population and area of each colony, and the Crown lands alienated, in December, 1881, is instructive:

| | Population. | Approximate Acreage. | Acres of Crown Lands alienated. |
|---|---|---|---|
| New South Wales ... | 781,265 | 197,000,000 | 36,942,449 |
| Victoria ... ... | 882,232 | 56,000,000 | 12,614,400 |
| South Australia ... | 293,297 | 578,000,000 | 9,582,903 |
| Western Australia ... | 30,013 | 624,000,000 | 1,712,363 |
| Queensland ... ... | 226,968 | 427,000,000 | 5,355,576 |
| Tasmania ... ... | 118,923 | 16,800,000 | 4,265,944 |

The avowed object in more than one colony was to force the land into occupation. In one a minister admitted that prospects of free-selectors were gloomy, and that he could devise no remedy except borrowing money "to assist the selectors to remain on their land." Some persons, out of mere pity for struggling farmers, have advocated the construction of irrigation-works, not on a self-sustaining basis, but as a gift. Arguments, that selection and farming pursued in defiance of economic laws could not redound to the advantage of the selectors or of the country, have been contemned by the supporters of "free selection before survey;" and it remains to be seen whether the dispensing with Wakefield's "sufficient price," or with value ascertained by auction, will result in the manner foretold by him or in the manner expected by its advocates. One plain fact is extant, that sale at "sufficient price" would have provided funds for constructions of railways and public works. The supporters of rapid alienation of land without regard to price have contended that a community settled on the land cannot fail to prosper and furnish ample revenue; and that the railway receipts will make the public debt only nominal, inasmuch as the Government will receive them with one hand, and pay interest on the debt with the other. Meanwhile, the unforced yeomanry who devoted themselves to agriculture with due calculation of their means, and with intelligent industry, are increasing in number, and by their exertions the problems of settlement will be solved.

| | Year. | Population. | | | Acres of Land in Cultivation. | Imports. | Exports. | Total Revenue. | Total Expenditure. | Public Debt. |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Male. | Female. | Total. | | | | | | |
| New South Wales | 1879 | 409,665 | 324,617 | 734,282 | 635,641 | 14,198,847 | 13,086,819 | 4,475,059 | 5,839,150 | 14,937,419 |
| Victoria ... | ,, | 457,598 | 383,022 | 840,620 | 1,688,275 | 15,035,538 | 12,454,170 | 4,621,520 | 4,833,379 | 20,050,753 |
| South Australia | ,, | 135,198 | 124,262 | 259,460 | 2,271,058 | 5,014,150 | 4,762,727 | 1,662,498 | 1,847,256 | 6,605,750 |
| Western Australia | ,, | 16,628 | 12,040 | 28,668 | 65,492 | 407,299 | 494,884 | 196,315 | 195,812 | 361,000 |
| Queensland ... | ,, | 130,867 | 86,984 | 217,851 | 106,864 | 3,080,889 | 3,434,034 | 1,461,824 | 1,678,631 | 10,192,150 |
| Tasmania ... | ,, | 59,447 | 53,022 | 112,469 | 366,407 | 1,267,475 | 1,301,097 | 375,367 | 405,839 | 1,786,800 |
| New Zealand ... | ,, | 257,894 | 205,835 | 463,729 | 1,237,501 | 8,374,585 | 5,743,126 | 3,134,905 | 3,845,036 | 23,958,311 |
| New South Wales | 1881 | 429,275 | 351,987 | 781,265 | 645,068 | 17,409,326 | 16,049,503 | 6,707,963 | 5,890,580 | 16,924,019 |
| Victoria ... | ,, | 464,222 | 418,010 | 882,232 | 1,821,719 | 16,718,521 | 16,252,103 | 5,186,011 | 5,108,642 | 22,426,502 |
| South Australia | ,, | 156,445 | 136,852 | 293,297 | 2,613,903 | 5,244,064 | 4,407,757 | 2,171,988 | 2,054,285 | 11,196,800 |
| Western Australia | ,, | 17,216 | 12,797 | 30,013 | 53,353 | 404,831 | 502,770 | 254,313 | 197,386 | 511,000 |
| Queensland [1] ... | ,, | 132,904 | 94,064 | 226,968 | 128,075 | 4,063,625 | 3,540,366 | 2,023,668 | 1,757,654 | 13,245,150 |
| Tasmania ... | ,, | 63,234 | 55,689 | 118,923 | 374,374 | 1,431,144 | 1,555,576 | 505,872 | 468,613 | 2,003,000 |
| New Zealand ... | ,, | 274,986 | 225,924 | 500,910 | 1,319,460 [2] | 7,457,045 | 6,060,866 | 3,757,493 | 3,675,797 | 29,659,111 [3] |

[1] It must be borne in mind that it was in 1859 that the district of Moreton Bay was severed from New South Wales and became Queensland.

[2] In New Zealand land under sown grasses is included. In the other colonies it is not included. It was seldom necessary to sow artificial grasses in Australia, inasmuch as nature provided pasture. The task of graziers on the continent was to ensure a supply of water by making wells, or by storing the rain in channels or in dams. There were of course instances in which, within long-settled districts, artificial grasses were laid down in Australia.

[3] The accrued Sinking Fund of New Zealand (£2,203,894) reduces the amount stated in the table.

The live stock in the colonies in 1881 was as follows; that which was registered in Queensland being mainly the product of stock registered in New South Wales in 1856 :—

| | | Horses. | Cattle. | Sheep. | Pigs. |
|---|---|---|---|---|---|
| New South Wales | 1856 | 168,299 | 2,023,418 | 7,736,323 | 105,998 |
| | 1881 | 364,306 | 2,182,226 | 36,591,986 | 308,205 |
| Queensland . | 1881 | 194,217 | 3,618,513 | 8,292,883 | 56,438 |
| Victoria . . | 1856 | 47,832 | 646,613 | 4,641,548 | 52,227 |
| | 1881 | 275,516 | 1,286,267 | 10,360,285 | 241,936 |
| South Australia | 1856 | 22,260 | 272,746 | 1,962,460 | —— |
| | 1881 | 159,678 | 314,918 | 6,810,856 | 120,718 |
| Western Australia | 1856 | 5,408 | 23,207 | 295,815 | —— |
| | 1881 | 31,755 | 63,009 | 1,267,912 | 22,530 |
| Tasmania . . | 1856 | 18,019 | 88,608 | 1,674,987 | 30,074 |
| | 1881 | 27,805 | 130,526 | 1,847,479 | 49,660 |
| New Zealand . | 1856 | 14,912 | 137,204 | 1,523,324 | 40,734 |
| | 1881 | 161,736 | 698,637 | 12,985,085 | 200,083 |

There were, therefore, in 1881, sprung from the animals imported to Australia with so much difficulty at first, and supplemented by casual additions to improve the blood, no less than 1,215,013 horses; 8,294,096 cattle; 78,156,486 sheep; and 999,570 pigs, in the Australasian colonies. If the critics who condemned Pitt for founding colonies which would never cease to exhaust England for a supply of food could have revisited the glimpses of the moon, they might have learned also that for many years live stock had been killed in Australia for the mere tallow and hides, and that year by year, as improved processes were discovered, increasing quantities of preserved and frozen meats were exported to England.

The multiplication of stock on the new pastures in the western districts of New South Wales and in Queensland demands special notice. Seven millions of sheep had become forty-four millions in 1881. South Australia showed a transfer of enterprise. Her cattle, 272,746 in 1856, decreased to 120,000 in 1869, and rose gradually to 314,000 in 1881.

Victoria exhibited great changes in her flocks. In 1851 she possessed 6,589,923. In 1855 they had decreased to 4,577,872. With slight fluctuations they increased to 11,749,532 in 1875, and then gradually declined to 8,651,775 in 1879, and either puzzled the Victorian statist (who was Secretary to the Embassy to England in 1879) or were attributable to causes which he could not explain without condemning a policy described by one

of its advocates as intended to "drive the squatters across the Murray." The object sought was gained to some extent, though the exodus was conducted under no recognized leader, and for a time escaped recognition. The operations of capitalists were gradual, and some years elapsed before it was found that exiled capital was followed by labour.

Misgovernment may thwart, but can hardly arrest, material progress in young communities stepping into possession of virgin lands. In 1843 there was dread of general ruin in New South Wales, in consequence of the anticipated failure of a firm whose liabilities were estimated at £150,000. It was feared that there was not money enough in the colony to save them; and the bank which strove to relieve them involved itself in their ruin. Brief extracts from returns of Australian banks in 1882 will need little comment.

| Paid up Capital. | Assets. | Liabilities. | Coin and Bullion. | Reserves. |
|---|---|---|---|---|
| £14,940,914 | £76,941,718 | £62,458,989 | £10,574,286 | £5,135,031 |

Their total deposits were £56,937,041, of which £34,078,461 bore interest. Of one institution in Sydney it has been said, "it is a question whether its success has been exceeded or equalled in any part of the globe." Its dividend in 1862 was 15 per cent., never declined, and from 1876 onwards has been 25 per cent.; and its shares, of £25 each, were quoted as worth £114 in 1882, when its report showed—

| Paid up Capital. | Reserve Fund. | Notes in Circulation. | Deposits. | Half-year's Profits. | Coin. | Debentures, &c. | Advances. |
|---|---|---|---|---|---|---|---|
| £600,000 | £610,000 | £483,406 | £6,469,909 | £106,195 | £734,646 | £902,500 | £6,439,955 |

The banking returns in June 1882 were severally as follows, with regard to some of the heads already enumerated in the aggregate:—

| | Note Circulation. | Coin and Bullion. | Assets. | Liabilities. |
|---|---|---|---|---|
| New South Wales | £1,595,502 | £3,182,717 | £30,321,234 | £24,181,372 |
| Victoria . . . | 1,436,120 | 2,817,032 | 26,672,553 | 23,563,955 |
| Queensland . . | 441,046 | 1,076,380 | 7,814,547 | 5,506,787 |
| South Australia . . | 556,691 | 958,513 | 9,263,894 | 5,766,187 |
| Tasmania . . . | 160,960 | 520,470 | 2,869,490 | 2,957,068 |
| Western Australia | 24,254 | 115,746 | 500,000[1] | 483,620 |
| | £4,214,573 | £8,670,858 | £77,441,718 | £62,458,989 |

[1] In the published returns quoted in the text this item is left blank, and. to prevent misconception by means of the blank, a round sum has been

By including the coin and bullion held by banks connected with New Zealand, £1,803,428 are added to the coin and bullion columns, and the total is raised to £10,474,286.

As early as 1818 there was a savings' bank in Sydney, and in 1832 a Board (of which the Governor (Bourke) was President, and on which the names of Wentworth and Deas Thomson appeared) was created by law. Mr. George Miller, long known in New South Wales with respect, became the efficient acountant. In process of time the number of the Board was increased. Some funds deposited with Mr. Robert Campbell, merchant (often mentioned in these pages), and benevolently administered by him for many years, were, in 1833, transferred to the Government Savings Bank. Branches were formed at inland towns, and in 1839 the deposits were found to be nearly at the rate of £1 a head throughout the whole population. The commercial distress of 1842-3 threatened the bank with ruin. For two days there was a run upon it, and though the amount withdrawn (£22,666) was small, it was, in that disastrous time, important. More than 1800 depositors deserted the institution in 1843. Some needed their savings to drive poverty from their doors; others were swayed by panic and distrust. The Government prohibited the discounting of bills, and restrained the investments to Government securities and mortgages. These measures, aided by good management, slowly restored confidence; but it was not until 1851 that the business of the bank exceeded that which it had been in 1842. The careful Deas Thomson in 1853 succeeded in amending and consolidating the laws relating to it, and the even tenour of success has never since been disturbed.

In all other colonies savings' banks, laudably aided by Government, have performed similar wholesome functions; and kindred institutions—building societies—have converted many millions sterling into happy homes, bought or built, and added to from time to time, by means of the savings of the industrious. Generally the more enterprising persons invested in building societies, and the timid in the savings' banks. Although the amount of interest allowed by law in the latter was low the

taken (slightly in excess of the liabilities) to balance the item under the head of the liabilities.

deposits were considerable. Post Office Savings' Banks have within the last twenty years largely added to the facilities offered to depositors, and have been largely availed of.

Prudence displayed in private affairs is not always reflected in public expenditure. Revenues derived from Crown lands, and facility in borrowing upon them, are tempting to Ministries and Parliaments; and the boundary between the good of the community and the cravings of representatives or delegates is not always regarded with respect. Nevertheless, loans have provided works which facilitate commerce, minister to public wants, and, by economy of time, practically extend the life of man. The expansive power of active people in newly-occupied territory can defy misgovernment, which would be fatal to industry in older societies. Where fresh channels are almost daily opened by force of circumstances, enterprise may be retarded, but cannot easily be crushed.

The revenues of the Australian colonies (including New Zealand, nearly three millions and three-quarters) were in the aggregate £20,607,308 in 1881. The value of the total trade per head[1] in the same year was recorded as nearly £44 in New South Wales, and £38 in Victoria; more than £34 in Queensland, than £33 in South Australia, than £25 in Tasmania, than £30 in Western Australia, and than £27 in New Zealand.

Though Australian communities could readily pay for luxuries, the richest among them have occasionally demanded alms from the State. Bridges and roads, other than highways, were not enough. It was deemed liberal to crave that newspapers should be carried without charge. In many rural places letters could be transported at trifling expense, but the bulk of newspapers augmented the cost of the service, and it was demanded that even at great loss newspapers should be carried. Each editor was convinced that only by free course for his lucubrations could the country prosper. Members of Parliament joined in the popular chorus.[2] That it was not the duty of the State to

[1] 'Official Directory and Almanac of Australia.' 1883. Melbourne: G. Robertson.

[2] "The total expenditure of the Post and Telegraph Department (in Victoria) exceeded the revenue by £97,474, or 38 per cent., in 1879; and by £117,764, or 44 per cent., in 1880." (Hayter's 'Victorian Year-book. 1880-81.)

waste money is too prosaic a maxim to be heeded, when it seems the interest of a considerable section to profit at the expense of others.

The peculiarity which vexes communities is found in private life. A prodigal who pays no honest debt, but squanders much with open hand, often enjoys a higher reputation than he who toils faithfully to pay every just debt, and has no remainder for waste. Public reputation for liberality is often acquired in like manner. Yet many who lend themselves to projects which drain the exchequer are often personally generous and profuse in charity.

In Australia, amongst all classes, proofs of comfort abound. Wages of artisans are daily quoted at ten shillings a day, and unskilled labour at from six to seven shillings. The superflux in many homes probably exceeds largely what it would have been deemed a luxury to possess in Europe. Places of amusement, and holiday processions to commemorate the restriction of labour to eight hours a day, testify that the reduction has not limited the means of enjoyment, and believers in the perfectibility of human nature might sigh in acknowledging how large a portion of the leisure procured by shortening the hours of labour is expended on sights, shows, and dissipation. But the taste of the public is deemed of a high order. A theatre contains an auditory, many of whom have frequented the great houses of entertainment from San Carlo to London and Berlin. The classic performances of Ristori were watched with intense appreciation by spectators, many of whom knew not a word of her musical language, but felt that nature in her highest mood addressed them. One of the largest musical societies in the world exists in Melbourne, and public patronage follows musical efforts with assiduity, while in private life great excellence abounds.

None can deny the ability with which the Press caters for the tastes of its readers, and though in each colony it would be found that a local newspaper is deemed superior to any neighbouring production, the value of the latter is acknowledged. Comparatively few readers of a newspaper published in another colony are found except in clubs or hotels, but extracts are furnished by local prints.

It is often said by a traveller in Australian colonies that they reproduce English life more fully than it is elsewhere to be found abroad. Field sports are popular. In all athletic exercises every colony can furnish proficients. The rare excellence of the climate gives facility for outdoor pursuits, and in the cricket-field and elsewhere the youth of Australia have proved their prowess.

Variety of pursuits does not necessarily make different the habits of homes. Landed possessions, mines, and commercial enterprise sustain the wealthy everywhere; although the conditions of climate enable the grazier in Australia, when fortunate, to become rich by the gifts of God, without exertion in raising crops of grass. Except as to long successions of inheritance, the holders of property in Australia are like their cousins in England. There is one product of sunny lands which England cannot know, except by importation. The fruit of the vine attains perfection in the South. It is the belief of most colonists that Australia will produce good wine abundantly; and skilled judges abroad have so commended specimens of Australian vintage, that there can be no doubt that the most favourable prognostications will be realized when time and experience shall have tested results, and so trained vine-dressers and wine-pressers that the product of each year shall be alike. The culture of the vine is, however, costly; and many years elapse before the yield is at its best. Only capitalists can await a long-deferred return for their money.

The statistics of the acreage devoted to the vine, and the wine made in the wine-producing colonies, have occasionally pointed to failure or retrogression.

| | 1865 | | 1870 | | 1875 | | 1879 | |
|---|---|---|---|---|---|---|---|---|
| | Acres. | Gallons made. | Acres. | Gallons made. | Acres. | Gallons made. | Acres. | Gallons made. |
| New South Wales | 2,126 | 168,123 | 4,504 | 342,674 | 4,459 | 831,749 | 4,266 | 733,576 |
| Victoria | 4,078 | 176,959 | 5,466 | 629,219 | 5,081 | 755,000 | 4,284 | 574,143 |
| South Australia | 6,629 | 839,979 | 6,131 | 801,694 | 4,972 | 727,979 | 4,117 | 459,468 |
| Queensland | 110 | —— | 415 | —— | 376 | 77,404 | 743 | 104,674 |

No wine is recorded as having been made in the other colonies[1] in 1879, though Western Australia had more than seven hundred acres devoted to the vine. The acreage under

[1] Parliamentary Papers. (C. 3099.) 1882.

vine-culture compared with the product of wine is sometimes deceptive, inasmuch as in some localities the grapes are not made into wine. How largely fruit is grown for table consumption may be inferred from the fact that about sixty-two millions of oranges are recorded as having been produced in New South Wales alone in the year 1881.[1]

The kindliness of nature towards private enterprise induced an early effort in Victoria to systematize the introduction of animals. In 1857, a few persons, of whom Dr. Thomas Black was one, asked the Governor, Sir Henry Barkly, to become patron of an Ornithological Society. With his usual urbanity he acceded to the application, and in 1858 the new Society became the Zoological Society of Victoria, with Mr. Justice (afterwards Sir) Redmond Barry as President. The energetic Edward Wilson, of the 'Argus,' lent his assistance. The Society prospered, became the Zoological and Acclimatization Society, and in process of time was imitated in other colonies. Its early promoter, Dr. Black, after presiding over it for many years, retired in 1873 with a complimentary record of his services.

The imported thrush and blackbird make musical the groves of Australia, and the skylark already pours his profuse song in New Zealand, where there is more ground shelter, and there are fewer falcons and kites than in Australia. The introduction of the trout was accomplished at a comparatively early period, while, with the aid of ice, strenuous efforts were made to give a new home to the prince of fish,—the salmon. Conspicuous amongst those who laboured to accomplish the latter task, were Mr. J. A. Youl, a member of the Royal Colonial Institute in London, and Sir Robert Officer, long the President of the Legislative Council in Tasmania, where also Mr. J. A. Youl had been a colonist. Many others assisted in England and elsewhere.[2]

More detailed examination of statistics is needless. The

[1] 'Official Directory and Almanac of Australia,' p. 129. 1883.

[2] In August 1878 the zealous Secretary of the Zoological and Acclimatization Society of Victoria transmitted to the Honourable Spencer Baird in the United States of America a silver medal, unanimously awarded to Mr. Baird by the Society, on the motion of Sir Samuel Wilson, "in acknowledgment of the great liberality displayed towards the colony by the Government of the United States and yourself in supplying a large quantity of (Californian) salmon ova free of charge."

magnitude of the foregoing figures proves beyond doubt that important communities are rising in the Southern hemisphere to assume the form which, wittingly or unwittingly, England's colonization has tended to develope. None of them enjoy what Wentworth laboured to secure—the social grace and nobleness of motive with which an hereditary order adorns a nation, for whose worthiest sons an entrance into that order is an object of patriotic ambition, linking indissolubly together the futures of their families and of their country. The colonies lack the security which honours permanently acquired carry with them, and which has caused reverence for ancestry to pass into a proverb as constraining to noble deeds.

Unworthy exceptions have no power to destroy a rule based upon one of the deepest feelings of the heart. Those feelings it has pleased the Colonial Office to neglect. Instead of conferring hereditary distinctions on honoured families attached to the soil by ties which cannot be broken, Secretaries of State have bestowed ephemeral favours on fawners upon themselves or bidders for fleeting popularity.

The fountain of honour has become dim in Downing Street. Noble masters of ceremonies have flattered the vanity of clients, whose brief decorations die with them, but little has been done for the enduring welfare of communities sprung from the loins of Englishmen, and entitled to all that an Englishman can claim.[1] For a British community bereft of the grace which adorns the social structure, and ennobles the aspirations of public men, there was room for growth only in one direction.

The representative principle once implanted, struck deeply into the soil, and enclasped with its branches everything above it. Moreover, the root of the old principle of representation has become somewhat worm-eaten in England as well as in the colonies. It was a representation of localities, not of numbers, and required not that all should have equal power in making laws, but that all who contributed substantially to maintain the

[1] 'Why' (asked Wentworth), 'if titles are open to all at home, should they be denied to the colonists? Why should such an institution as the House of Lords, which is an integral part of the British Constitution, be shut out from us?' (Speech, 1853.) It was an order of Baronets which Wentworth aimed at.

State should be represented in the Parliament which levied imposts and appropriated the public treasure. Equal justice to all was guaranteed by the Great Charter, but general legislation was for a long time deemed the function of the provident and the wise; its course being determined by the resultant of many forces, and not by the domination of one.

A new doctrine declares in effect that taxes paid by the industrious shall be expended at the discretion, or indiscretion, of crowds who have not contributed, and that abstruse problems of government shall be decided at the behest of numbers told by the head; and some are so slavish to this doctrine as to affirm that even a measure plainly injurious to the community ought to be enacted on the demand of a majority howsoever composed. The far-reaching consequences of such a theory can only be glanced at in this place. Demoralization precedes decay. The springs of industry cannot flow freely if men be robbed of the fruits of their labour; and plundered diligence will wither, or will resort to mean devices to defend itself at the expense of its own and of the national honour. It is not only by (except in two or three instances, which served to show how much more might have been done) withholding hereditary honours from the colonies that England has deprived her sons of their full birth-rights, and herself of aid from the loyal. One or two commissions in the army and navy are obtainable by colonial youth, but no one can assert that serious efforts have been made to give them an Imperial character, by embodying in them a representation of the breadth of the empire. And yet the people of the colonies are in themselves as loyal as any within the British dominions. On all occasions of trial, or of joy, spontaneous outbursts testify that not only Queen Victoria, the well-beloved, but her august house, which owns the blood of Cedric and of the Plantagenets, is dear to the hearts of England's sons abroad.

But it is not in nature for the full harvest of national life to ripen if wholesome seed be denied. As England has sown so will she reap; and when she looks not for it, the day may come when the development of principles which she has thought good enough for her children may mar her own social life. Yet he who travels in the colonies will find that within the bounds at their command they have done noble work. In proportion to

their means their generosity is notable. There are homes among them second to none in the world for intelligence and virtue. Hospitality is not extolled as praiseworthy, because it is universal. All the gains of science, and great works of genius produced in other lands, are treasured with avidity; and enterprise, unsurpassed elsewhere, pours them into the colonies with promptitude and profusion. A visitor might deem himself in London as regards the possession of books. The general taste is shown by demand for works of a high order. In several colonies Universities already exist, and their advantages are availed of by denizens in the others. Colleges are springing up in which the inestimable benefits of association with others in study, under guidance of resident principals of high character, is secured for young men. No longer need the hope of a flock journey to Europe, far from domestic sympathy, and from those gentle constraints of affection which bid him be true to his family and himself. In by-gone days there have been melancholy instances of blighted prospects when the eldest-born, committed with anxious prayers to a career of study in Europe, remote from friends, has shattered their hopes with his own perverted life. It has been sometimes cast in the teeth of colonists that they produce no great literary works. The reason is plain, and has been manifested also in America. The books and reviews of the old world follow a colonist in the new, and he has not time to create or to support a special literature. In a primitive community each man has work to do. At first, all are bread-winners, and the stages are slow by which a leisure class is created. The denial of full possession of British institutions, tends to postpone the day when the whole intellectual energies of the colonists shall be combined on behalf of their native land. If England looks on a colony as a mere factory, it is not unnatural that some of the exiles from her polity should shrink from their condition, and betake themselves to London, Paris, or other cities, where they and their children become haunters of hotels. They cease to have a country. The world is to them a show. Duty disappears. They crave but the two delights which the great satirist scornfully described as the aim of a Roman mob. As no land gains by their presence, so none suffers by their death. Nature will, doubtless, compensate a

colony for unnatural desertion by her children, or by those whom she has enriched. Family ties will bind those whom duty could not constrain. The runaways will bear less and less proportion to those who remain. If the full pulse of English life be denied, channels will be found through which colonial life will be sustained, and home-keeping cousins of the colonists can with ill-grace condemn results springing from acts done or permitted by successive Secretaries of State in the name of the Queen.

That wisdom will always prevail, can be expected in Australia no more than in Europe. France deems herself in the van of civilization and intelligence, and she has been convulsed by contradictory schemes of government propounded by her leaders at brief intervals for nearly a hundred years. Theoretical socialists, and enemies of all the characteristics of England's past greatness, worm their way to the very citadel of her strength; and, when their burrowing encounters unusually tough obstruction from any ancient safeguard of the Constitution, they find in the eloquence of a Minister, who has been many things by turns and everything with intensity, an advocate powerful to persuade his countrymen to abandon what he and they once held in reverence. The signs of the times show that there is already a plot to subject the fortunes of England (by means of universal suffrage and equal electoral districts) to the votes of the dwellers in a small number of towns. The strongest position may be lost by an army whose commander is false, and no Constitution can resist the treachery of those who are sworn to maintain it. Its recovery from prostration can date only from the shame which follows adversity.

The colonies of Australasia cannot procure for themselves any of those evils which fall upon nations surrounded by ambitious neighbours ready to take advantage of weakness or unworthiness. They are comparatively safe from foreign dangers, although those dangers are perhaps underrated by many public men, and may perhaps supply the fulcrum by which federation, so long talked of, may be brought about. A spark may kindle aspirations, which without that spark might sleep for generations, and it may be that the dread of annexation of New Guinea by a foreign power will effect that which local jealousies and apprehensions have hitherto retarded.

Downing Street has assisted from time to time in dividing the

colonies, but not often in aiding them to combine. When Lord Palmerston's Government declined to legislate directly on the subject, Wentworth drafted a short Bill to enable the colonies to address themselves to the task, but the Secretary of State refused (1857) to introduce the Bill, "notwithstanding its purely permissive character," although he apprehended that the existing difficulties would increase. The various efforts subsequently made in the colonies, with various motives, have been recorded in the foregoing annals. Side by side with the efforts of the loyal, who have had in view the integrity of the empire, there have been aspirations for colonial federation, with the hope of disintegration of the empire. Projects also for representation of the colonies in the Imperial Parliament, or for a Council of colonial notables in London, whom the Imperial Government should consult, have been discussed. Eminently the Royal Colonial Institute has striven to press the question upon public attention. But abstract theories, or those which seemed abstract, have not aroused the class which puts off measures until they compel, at a time of emergency, the consideration which ought to have been accorded to them in a time of rest. Colonial representation in the mother country has been slighted on the ground, that if it were of any magnitude the Imperial Parliament would not tolerate it, and if it were insignificant it would be useless to the colonies. Yet a proposal to enlist a world-wide sympathy in the deliberations of a body which deals with world-wide interests, deserves more serious reflection than has been bestowed upon it; and day by day the growth of communities abroad brings nearer the time when English-speaking subjects of the Queen who do not dwell in England, will outnumber those who do. The old procrastinating formula, that to-morrow will be as yesterday, is continually falsified, but is continually embraced.

The hopes of those who would broaden the Imperial bond of union are ascribed to sentiment, and that word has acquired a sickly and unreal meaning in many minds. Nevertheless, it is often based upon strong feeling which no wise statesman would deride. It has created the Italy of to-day; has conducted our brethren in the United States through a portentous struggle for the integrity of their Union; has built a

German Colossus out of the fragments of past centuries, and disturbs South-Eastern Europe to the distraction of its neighbours.

In the case of New Guinea, though the informal act of Queensland may have been prompted by local impulse, it has touched chords which vibrate throughout Australasia. Even when rejecting criminals from the mother country, Australia obtained respect from those whose arrangements she incommoded; and she will not shrink from any act within her power to make it sure that there shall be no foreign penal settlement at her very doors in the narrow strait which Cook discovered. The expressed object of the colonies is not to procure the annexation of New Guinea to Queensland, but the assertion of such Imperial authority as shall guard them from the contingency which they dread. The combination of their leading public men is a guarantee that their proposals at a contemplated intercolonial conference will be well weighed and cogently stated. It is improbable that the present Lord Derby will discover any principle to which he is called upon to adhere in resisting the general will; and the particular emergency may pass away. If, however, the occasion should crystallize opinions, and subdue local prejudices, so that a loyal Dominion of Australia may emerge from the crucible, Englishmen at home and abroad will have reason to congratulate themselves upon an occurrence leading to such a result. The vast extent of Australia as compared with its present population suffices to show that no greed for more acres has stirred the colonial mind. Many persons recognize that in the interests of the inhabitants of New Guinea, Imperial control, as in Fiji, should be exerted, and towards the necessary expenses the Colonial Governments have intimated their willingness to contribute. Their own territories will long absorb their growing population. As pressure fills gaps in employment, new interests will arise. The bulk of mankind, in spite of theory, must ever live by means of those above them in wealth and station. Necessity constrains to healthier lives than men's fancies would provide for them.

It must needs be that in Australia, as in America, a leisure class will arise, and though it may be ostracised from the region

of politics, it will exercise more or less sway in social life, and re-act on public opinion. What the physical and mental type of Australians will be it may be difficult to foretell. The perturbed elements which clustered upon the gold-fields have had their day. They found, and in many cases were accompanied by, some of the best of the sons of Great Britain and Ireland, whose sound sense has been, and will be, brought to bear upon public affairs. A genuine agricultural class, the life-blood of national well-being, is being created, not by factitious schemes, but by the enterprise and perseverance of the strong hands and hearts of those who form it. On them must the future depend. As a people the inhabitants throughout Australia are unsurpassed in loyalty, generosity, and a heartiness which wins the good-will of every visitor. They have, indeed, much to do, and that which is most needed is not of a nature to which the thoughtless will give aid. The philosopher who told his patron that wise men waited on kings because they knew their own wants; but the converse did not occur, because kings were not wise enough to know their need, expressed a truth which will hardly die out of the earth. Already, however, in spite of the inexorable demands of young settlements, great exertions have been made to supply the higher wants of the people. Where, but few years ago, there stood no Christian church, hundreds of places of worship now abound; and humble though some of them may be, they were the fruit of self-denial and devotion as admirable as can have actuated the builders of the proudest fanes in Europe.

The elements of the population indicate that they will be wanting in no excellence. English, Irish, Scotch, with other Europeans and some Americans, form the people from whose admixture future generations will spring. The exhilarating climate solicits enjoyment in open air, the very breath of which is pleasure. The remuneration of labour enables a large proportion of all classes to indulge in amusements, and if it were possible to calculate the amount thus expended, the result would be one of the most startling exhibited in Australia. Nevertheless, though pleasure may enervate dwellers in cities, the country cannot fail to maintain a hardy race, especially on the high lands which rib Australia from the sources of the Murray to the northern regions of Queensland. In climates

unmatched[1] where the sun is but "obscurely bright," a full share of inspiration must be the lot of man, and whether Australasia shall "float with flag unfurled, a new Britannia in another world;"[2]—whether the Austral Milton, Shakspeare, or Pindar, for whom Wentworth breathed his aspirations, shall arise or not; it is at least certain that such a land, tenanted by such a community, under such a sky, will be laggard in no sphere of mental activity, so soon as a fair proportion of her people shall have been released from journal claims which enthral or impede the mind.

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[1] Wider observation than has yet been possible may be required to ascertain the relative attributes of the climates of Australia and other countries, but statisticians have made the following statements:

| MEAN DEATH-RATE FOR ELEVEN YEARS ENDING IN 1879:— | | MEAN DEATH-RATE FOR ELEVEN YEARS ENDING IN 1878:— | |
|---|---|---|---|
| In New Zealand | 12·17 | In Denmark and Sweden | 19·1 |
| South Australia | 14·94 | England and Wales | 21·8 |
| New South Wales | 14·96 | France | 24·3 |
| Victoria | 15·54 | Germany | 27·2 |
| Tasmania | 15·59 | Italy | 29·6 |
| Western Australia | 15·66 | Austria | 31·0 |
| Queensland | 17·27 | Russia | 31·89 |

Other statisticians have impugned the accuracy of some of these figures, and it is obvious that in addition to the need of accurate records of fact, time is required (perhaps extending to generations) to prove how far the temperaments of immigrants influenced their health, and how the aggregation of population in cities in the South may be found to qualify the results during the early decades while population was sparse.

[2] Wentworth's 'Cambridge poem,' 1823.